

# Managing the Commons: Indigenous Rights, Economic Development and Identity

Leticia Merino and Jim Robson (editors)

Consejo Civil Mexicano para la Silvicultura Sostenible A.C. / The Christensen Fund  
Ford Foundation / Secretaría de Medio Ambiente y Recursos Naturales  
Instituto Nacional de Ecología





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Edited by  
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# Foreword

Elinor Ostrom

WRITING A FOREWORD for this excellent set of referencing tools is a pleasure for me. It brings back pleasant and intense memories of the Tenth Biennial Conference of the International Association for the Study of Common Property (IASCP) held in Oaxaca, Mexico, in August of 2004. These meetings were well attended by scholars from all parts of the world, by policymakers, by volunteers and staff from many countries, by members of Indigenous communities, and by students. The multi-lingual, disciplinary exchanges that occurred within the sessions, and on the fabulous grounds where the meetings were held, were intense, fun, and exciting. We all came away enriched by new findings and motivated to do even better work in the future.

So many edited books by academics are focused primarily on scientific topics of interest primarily to one discipline. These four volumes dramatically differ from most post-conference publications. The volumes are written by scholars who address broad issues of interest across scientific disciplines that are of major interest to citizens and policymakers in all parts of the world. If scientists are to have any impact on the policy world, efforts like this are essential to provide readable syntheses that document important findings and their policy implications.

In this volume on *Indigenous Rights, Economic Development, and Identity*, Caddy focus-

es on the Maya of Belize and concludes that without a unified voice, the Mayan peoples have lost ground in defending their common property and Indigenous knowledge. In her article, P. Smith examines how Indigenous rights are not a stationary concept describing the past but rather must be jointly developed over time by Indigenous peoples themselves working with governance regimes at multiple levels. Finally, Gibson asks whether the international law that has evolved related to intellectual property rights can be used to protect Indigenous knowledge as well as Indigenous property rights. Her answer is “no,” and she proposes a new organization within the UN to work on protecting Indigenous rights. In her concluding analysis, P. Smith reviews several viewing points for examining Indigenous rights and urges IASCP to continue the dialogue between common-property scholars and Indigenous peoples that blossomed at the Oaxaca meetings.

My recommendation is to put these volumes where you will be sure to read them! We all are inundated with too many publications that swamp our inbox (both electronic and paper) and have to make tough choices as to which we can read. These volumes already provide excellent summaries of an immense body of research—and they are written by authorities who know the field well.

## A Word from the Editors

THIS VOLUME is one of four books that have been put together as a follow-up to the Tenth Biennial Conference of the International Association for the Study of Common Property (IASCP), which took place from August 9–13, 2004, in Oaxaca, southern Mexico.

A brief analysis of the conference showed that this was the best-attended and most geographically diverse IASCP Conference to date, helping to attest to the global importance of IASCP and the relevance of the themes under discussion. The conference brought together a new configuration of knowledge across disciplinary, institutional, regional and generational lines. It produced analyses of direct and contemporary relevance for policy-makers and political establishments, and it introduced new topics for specific debate and discussion at an IASCP event.

With such advances having been made, as the organizers of IASCP2004 we felt it extremely important that a concerted effort be undertaken to follow-up on the conference with a series of short, mid and long-term post-conference projects. This set of four publications is the result of the long-term project of producing a series of cutting edge “referencing tools”, based around what were regarded as the most interesting and pertinent conference themes under discussion in Oaxaca. Our hope is that these publications will: encourage

the exchange of knowledge among diverse disciplines, regions, areas of study, and resource types; promote policies and institutional designs that strengthen sustainable development and sustainable resource management strategies; and promote a more permanent structure of Common Resource studies in Spanish and across Latin America.

As mentioned, these four “referencing tools” cover what we believe to be some of the most interesting, relevant topics / themes that came out of conference discussions. These are: Payment for Environmental Services; Conservation of Biological Diversity; Markets, Commodity Chains and Certification; and, Indigenous Rights, Economic Development and Identity. We believe that these are critical themes for contemporary policy making; and that CPR theory and research provides an important fresh perspective for the governance of natural resources for this new century.

These themes were chosen based on an analysis of the panel reports from the conference, the thematic summaries given at the closing ceremony, and participant feedback and evaluations. We believe them to be of fundamental importance for many of the problems and challenges related to the management of natural resources, and the work presented here is a glimpse of the richness and relevance of some of the most interesting re-

search currently being carried out within the field of CPR study.

Within each volume, the first section provides introductory information on the theme under discussion, its relevance within CPR study, a run down of the most pertinent issues under that theme discussed at the IASCP2004 conference, and an introduction to the three featured articles. The featured articles are not simple reproductions of the papers that were presented during the conference but have been modified to produce texts that are clear and concise, not overly technical, and accessible enough for them to be used and understood by a wide range of actors. In addition, the articles in each publication are conceptually and thematically inter-linked so as to compliment each other as part of the same referencing tool. The final section of each volume looks at the key emerging issues from each article, and tries to draw out a set of principal conclusions and recommendations that can provide pointers for future research and policy-making.

#### **ACKNOWLEDGEMENTS**

The following texts are very much the result of an important investment in collective action, and we would like to take this opportunity to thank all those who've been responsible for bringing this project to fruition.

Firstly, we would like to say a very special thank you to our fantastic group of thematic experts who were involved in (i) the evaluation and selection of papers earmarked for inclusion in these books and (ii) responsible for the excellent thematic introductions and concluding sections which book-end each one of these publications. These individuals are: David Bray, Daniel Klooster, Augusta Molnar, Peggy Smith, Heidi Wittmer, Susan Kandel and Hernan Rosa (PRISMA), Vincenzo Lauriola, and Victoria Edwards. Without their advice, generous support, punctuality, and expert comments these books would never have come about or certainly wouldn't be as good as they are. We also greatly appreciate Elinor Ostrom for her support of this project and for providing these publications with their Foreword, which introduces each one of these volumes so beautifully.

Next, our thanks go out to all the authors of the featured articles for their continued support for the project, collaborative spirit, and willingness to be flexible when it came to meddling with their manuscripts! We would also like to say thank you to those who very kindly provided us with photos and other images to help spruce up the publications.

On the editorial side of things, we have a number of people to thank who were indispensable when it came to editing and trans-

lating texts, and helping with the design and format of these books. Firstly, we very much appreciate the work of Ma. Teresa Ruiz Ramírez, who, as well as translating a number of the articles, was also responsible for coordinating the translation and editing of all texts in Spanish, along with her team of translators: José Ignacio Rodríguez Martínez, Adriana Villagra Peña, Fátima Andreu Marín, and Ayari Pasquier Merino. Teresa and her team worked very hard to ensure that the versions in Spanish were as faithful as possible to their counterparts in English. For the design and formatting of these books, we have to thank Raúl Marco del Pont Lalli, head of publications at the Government of Mexico's Instituto Nacional de Ecología (INE), who has been responsible for putting these texts together into such attractive volumes.

Last but not least, we must thank our sponsors, the Ford Foundation (Deborah Barry, Program Officer), the Christensen Fund (Enrique Salmon, Program Officer), the Instituto Nacional de Ecología (INE), and the Consejo Civil para la Silvicultura Sostenible (CCMSS) (Sergio Madrid, Executive Director), for their support—both financial and administrative—which has been absolutely crucial. These organizations supported IASCP2004 from the very beginning and so their involvement has been fundamental to the success of all our conference-related work over the last few years.

Work that stretches back from early 2003 right through to this latest project—the post-conference publications—some three years later.

A final word of thanks is left for Michelle Curtain, IASCP's Executive Director, and

Alyne Delaney, Assistant Editor of the Association's quarterly publication, the CPR Digest, for their help in advertising these books and getting them out to as wide an audience as possible.

Enjoy!

*Leticia Merino Pérez & Jim Robson*

# Abbreviations

CBD	Convention on Biological Diversity	IDB	Inter-American Development Bank
CCFM	Criteria and Indicators of Sustainable Forest Management	ILO	International Labour Organization
CIDA	Canadian International Development Agency	ILRC	Indian Law Resource Centre
CPPCR	Convention for the Promotion and Protection of Community Resources	KCB	K'ekchi Council of Belize
ESTAP	Environmental and Social Technical Assistance Project	MCMMP	Maya Co-Management Mapping Project
GIS	Geographic Information Systems	NAFTA	North American Free Trade Agreement
GoB	Government of Belize	NGO	Non-governmental Organization
IACHR	Inter-American Commission on Human Rights	OAS	Organization of American States
IASCP	International Association for the Study of Common Property	OEA	Organización de los Estados Americanos
ICC	Indigenous Circumpolar Conference	SFM	Sustainable Forest Management
ICJ	International Court of Justice	TAA	Toledo Alcaldes' Association
		TCGA	Toledo Cacao Growers' Association

TEK	Traditional Ecological Knowledge	UN	United Nations	VCA	Village Council Act
TMCC	Toledo Maya Cultural Council	UNCRP	United Nations Community Resources Programme	VCAT	Village Council's Association-Toledo
TMWC	Toledo Maya Women's Council	UNPFII	United Nations Permanent Forum on Indigenous Issues	WTO	World Trade Organization
TRIPS	Trade-related Aspects of Intellectual Property Rights				

# Managing the Commons: Indigenous Rights, Economic Development and Identity

## Thematic Introduction

### Indigenous Rights and the Commons: Land, Governance, Development and Identity

Vincenzo Lauriola

NELSON LEMUS CRUZ had some of the audience at the Tenth Biennial Conference of the International Association for the Study of Common property (IASCP) in tears as he described the “ancestral struggle and resistance” of the Paez people of Colombia. Although unique, his story of the Paez’s determination to protect their lands was common to many other Indigenous peoples around the globe. In their desire to carry out their sacred duty as stewards of their land, the Paez people have been facing state incursions, invasion by guerrillas involved in civil war and the lawlessness of drug traders. In spite of this, they continue to assert their own stewardship and customary laws. Lemus Cruz’s story wove together with so many other Indigenous peoples’ stories at the IASCP conference. All these voices at the conference, whether speaking directly through Indigenous participants, or indirectly through academic studies, conveyed both a tremendous diversity of unique experiences, as well as some key features common to their struggles for recognition and survival of Indigenous rights.

Although Indigenous issues have been on the agenda of past IASCP conferences, this was the first time that Indigenous rights were raised to the theme level. Given the history of Mexican Indigenous peoples’ struggles to maintain ownership and management of their lands, shared by other Indigenous peo-

ples in Latin America, it is no surprise that the Oaxaca conference organizers embraced this theme. Indigenous representatives came from Latin America (Belize, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Mexico, Panama, Peru and Venezuela), North America (Canada and the United States), Asia & Oceania (Australia, Bangladesh, India, Indonesia and Nepal), and Africa (Zambia and Zimbabwe).

From a qualitative standpoint, assessing the impact of discussions on this theme is not straightforward: it requires an effort to read through the richness and diversity of the contributions provided, trying to synthesize and bring out the core ideas, common to most of the experiences and studies presented. It is with this goal in mind that this publication has been put together.

Indeed, the volume’s very title, *Indigenous Rights, Economic development and Identity*, tries to put this effort into perspective. Why is the theme “Indigenous Rights” of central relevance to the interface between Indigenous Peoples and the Commons? We believe that the reality of common resources used by Indigenous peoples around the world to sustain their physical, social and cultural existence, is directly and profoundly linked to a concept of rights that includes key issues such as land, governance and knowledge, development and identity. We also believe it is only

by exploring these issues that we are able to read into and understand the ways in which Indigenous peoples deal with these times of global change, face up to new and long-standing challenges and seize what opportunities come their way.

Rights play a crucial role in the relationship between Indigenous peoples and common property. They are externally crucial in Indigenous peoples' struggle within and against nation states, whose legal systems—which historically came to justify and support the monopoly of power, force and coercion use, in the name of a written law—are not shared by Indigenous peoples' cultural traditions and cosmovisions. There is limited room for common property regimes, rules and institutions in the legal systems of modern nation states, dominated by the expansion of central state regulation and domestically or globally driven privatisation processes. The way in which modern nation states treat land, turning into a piece of merchandise one of the pillars of human existence and identity, is fundamentally alien to Indigenous cultures. To them land does not belong to man, and man does not inherit land: it is man who belongs to land, which he is merely borrowing from his children. That is why Indigenous people do not recognize the concept of private property, nor do they wish to organize their territories in the form of a nation state. There is not a

single day in which they do not have to face the arrival of a fence or the threat of an enclosure onto their lands, natural or cultural resources, if not their very bodies and traditional knowledge. Pressures on Indigenous commons first came in the form of predatory economic activities, lusting after the forest wood or subsoil minerals and oil found on their traditional lands. Then they started arriving masked by political promises of development in the name of the nation's interests, priorities and strategies, removing them from traditional lands to give way to cattle ranches, roads, towns, or hydroelectric basins. Today, new fences are needed to develop new commodity markets. Instead of chainsaws, bulldozers and concrete, the new enclosures sneak in hidden behind environmental flags, armed with: maps, to promote the creation of untouchable conservation parks; laws and contracts, to introduce state and market regulation on access and use of water, biodiversity and traditional knowledge. The notion of rights, and the struggle to have their own rights systems based on common property regimes, embracing customs and cultural traditions, recognised and respected by nation states and the international community, is fundamental if Indigenous peoples are to face up to these kinds of external pressures.

Rights are also internally crucial in allowing Indigenous communities to develop, main-

tain and permanently update a great diversity of unwritten customary rules and institutions for the collective appropriation, use and management of natural resources. These rules and institutions have historically proven their long term sustainability, showing an amazing resilience in the ways in which they cope with internal and external changes. They have represented, and often still represent, the very basis of Indigenous governance. Today these Indigenous governance systems also face internal challenges and risks. One of them is their lack of visibility, which makes them fragile, not only because of external pressures and a lack of external recognition, but there are other reasons also. Indigenous communities are going through modernization processes and lifestyle changes which take time and space away from traditional inter-generational knowledge transmission mechanisms. At the same time, demographic growth reduces the capability of traditional knowledge to provide sustainable solutions to food access and production problems, increasing the appeal to shift to "white" production models, modern technologies and value systems. Development, in spite of all the new and fashionable qualifications added to it (sustainable, self-centered, equitable, socially just, etc.), remains fundamentally focused on economic growth, thereby generating deep socio-cultural contradictions. Inter-generational conflicts arise and Indigenous communities



struggle to maintain common property-based governance systems and internal socio-cultural cohesion, to build bridges between past, present and future, reconstructing and updating traditions and identities based on community values, common resources management rules and institutions.

In practice, these two ideally distinct levels—external recognition of common property Indigenous rights and internal governance system efficacy—are inextricably linked. This could be observed in so many of the “Indigenous theme” presentations in Oaxaca. I will refer to just a few examples from the Brazilian Amazon Indians’ sessions. Brazil’s case is interesting because, although through what Indigenous law specialist Carlos Marés defines as a “circular concept”, the Federal Constitution practically defines Indigenous lands as common property, while also recognizing Indigenous jurisdiction over them. On the one hand, this legal framework has been crucial in demarcating Indigenous territories, setting aside 12.5% of Brazil’s territory (1,063,863 km<sup>2</sup>) for the permanent exclusive use of an Indigenous population of some 427,000. No doubt, a positive situation for the country’s Indigenous peoples. However, if the external legal and political framework is a necessary condition for Indigenous common property-based rights systems to exist and be effective (a condition shared by differ-

ent countries’ realities and case studies, and a point clearly illustrated by Emma Caddy’s featured article on Belize, this volume), to be sustainable it also needs to be complemented by Indigenous governance systems (own customs, uses and traditions, as recognized by the Brazilian Constitution) that can resist the powerful pressures of state and private property enclosures.

Using their own words and concepts, these were the stories told by most Brazilian Amazonian Indigenous presenters in Oaxaca. After describing the hardships of contact and conflicts on land demarcation, many of the presentations focused on today’s external and internal struggles to keep Indigenous common property-based rights systems alive and functioning. Externally, even with the constitutional guarantee of their boundaries, illegal and predatory logging, fishing, mining, dams and monoculture are current history in the Indigenous lands of the Brazilian Amazon. Internally, many of the presentations looked at the experiences and challenges of re-building common property-based natural resource management rules and productive activities. Nino Fernandes, of the Tikuna people, state of Amazonas, described the efforts of his people to keep outsiders from practicing predatory fishing in their rivers and lakes, while simultaneously setting up and implementing a fishing management plan to allow fish pop-

ulations to reach pre-invasion levels, a project which also requires the development of short term fish breeding alternatives for consumption. After describing the impacts through contact with external groups (during the late 1960s, half of the population died from diseases), Almir Narayamoga, of the Suruí people, state of Rondonia, described current efforts to develop a formal environmental management plan for local Indigenous lands, through the interaction between traditional knowledge and technical expertise. Alvino da Silva, of the Macuxi people, state of Roraima, described a situation similar to Almir’s in the difficult task of re-building an environmental governance system by Macuxi, Wapichana and Taurepang communities. Here, the recent expulsion of invaders left a void in land and natural resource management rules, which communities are now trying to fill and re-build.

Others told stories that referred more to traditional systems of common resource use and management. Crisanto Rudzö Tzemerey’wá, of the Xavante people, state of Mato Grosso, described the traditional system of collective hunting in his people’s savanna lands, still practiced in some areas. His story pointed out how Indigenous common governance institutions still exist and function, despite the reduced availability of hunting areas for Indigenous communi-

ties, increasingly encircled by cattle ranches and soybean monocultures, as well as the cultural impacts suffered from a century of violent contacts with outsiders. The story of Henrique Aleuta Gimenes, of the Ye'kuana people, living on what was officially demarcated as Yanomami Indigenous land, in the state of Roraima on the border with Venezuela, was also different from most others. Living in a remote area, side by side with the Sanuma people, of the Yanomami family, his people did not experience contact through invasion of their territory, common to most other peoples and participants. From the Ye'kuana perspective, the external frontier did not materialize in the face of white settlers, but in the context of inter-ethnic relations with a different Indigenous people. Showing participatory maps mentally drawn by 3 generations of Ye'kuana on the Auaris river, Henrique described the sophisticated and complex sets of rules developed by his community through negotiations with Sanuma neighbors, to share the common land and mutually recognize exclusive use areas of the two tribes for agriculture, hunting, fishing and collecting. At the same time, he highlighted the fragility of these rules in the current context of inter-generational and cultural change, where after the introduction of formal education in the community, the young no longer learn from the elders like

they did before, and consequently traditional knowledge is being eroded.

Throughout the conference the theme of Indigenous rights emerged not only as crucial, but also as one of the most difficult issues for researchers to address and understand.

#### **INDIGENOUS RIGHTS RECOGNITION AND GOVERNANCE**

A principal recognition was that Indigenous rights, especially those based around common property systems, vary widely between different nation states. In some countries, Indigenous rights systems are recognized by national constitutions; in others some infra-constitutional recognition exists with regards common property-based land and/or natural resource use systems; whilst in others, there is no recognition at all. Rights and governance are inextricably linked: if Indigenous rights systems are not recognized strongly enough, there is little chance for Indigenous governance to remain effective. Undoubtedly, one of the main issues is how to reconcile, or at least guarantee mutual co-existence between common property-based Indigenous rights on the one hand, and state and private property on the other. Some insisted on the need for improved dialogue between Indigenous governance institutions and the state, whether at different levels of public adminis-

tration, with regards to the appropriate definition of specific public policies, or through institutional "middle ground" mechanisms for negotiation and conflict management. But the issue of how to allow for the effective representation, presence and weight of Indigenous peoples as principal actors—and not mere spectators—in the global arena, a space traditionally occupied by nation states and increasingly dominated by transnational corporations, also appeared on the agenda. In this "search for a middle ground", the demand for broader recognition of collective representation mechanisms, and the need to generalize the operational application of guiding principles such as the right to free, full and informed consent, participation, just compensation and benefit-sharing stood out as being among the main proposals.

#### **CONSERVATION**

Indigenous peoples around the world are still suffering the consequences of top-down conservation policies, which remain centered on untouchable protected areas. While extensive resources and efforts are invested worldwide into artificially creating real-life versions of the modern myth of human-free, untamed nature, Indigenous peoples lose out twice in the conservation game: firstly because when parks are created on Indigenous lands, they suddenly go

from being responsible co-managers of a common resource into illegal poachers or invaders, to be prosecuted or removed; and, secondly because no value is placed on, nor benefit paid to, the traditional ethno-conservation service these groups have always provided for free. At best, conservation projects offer compensation to local Indigenous peoples, in exchange for giving up use rights and traditional practices. However, from Indigenous peoples' perspective, and in the light of common property-based ethno-conservation studies, it is increasingly clear that: sustainable conservation is the consequence of Indigenous peoples' self-determination and governance, based on traditional knowledge, customary law and common property; biodiversity is highly correlated to cultural diversity; and, Indigenous knowledge, management and governance systems, invisible or ignored, are threatened by business-as-usual conservation policies.

## DEVELOPMENT

When applied to Indigenous societies, the deceiving realities and conceptual limits and fallacies of the development ideology and theoretical framework, increasingly evident in our own societies and economies, become outstanding and flagrant. Some presentations questioned the pertinence of assessing Indigenous peoples' development within a narrow

economic focus, such as measuring formal jobs and monetary income, while giving no value to community well-being, cultural survival and informal solidarity mechanisms. It is true that most of the world's Indigenous peoples live at the margins of their countries' formal economies, facing social and economic inequity, and it is no wonder that economic development is a key issue. But this does not mean that the standard poverty assessment indicators, for instance, have much to tell us about social well-being in Indigenous societies. If equity and justice for Indigenous peoples in benefit-sharing from natural resource use and development was a frequent claim, the clearest message of all was that Indigenous peoples want to make their own decisions about appropriate economic development, including poverty alleviation measures now being touted by development agencies. Indigenous communities are not necessarily opposed to participating in wider economic systems and market integration, but they want to be the ones to decide how to transform their economies and institutions. New economic initiatives, related to environmental protection and ecological services, are regarded as opportunities that match their traditional views of land stewardship. Much will depend on the format in which they are actually developed: whether as new market services or new public policies.

## SELECTED ARTICLES

Following the above premises, the articles featured in this publication have been selected in an attempt to provide an overview of some of the issues that emerged as crucial and representative of case studies and conceptual debates at Oaxaca's IASCP 2004 conference.

Emma Caddy's "Sociopolitical Dimensions of Indigenous Common Property Tenure in Southern Belize" focuses on the external conditions for the long term viability of Indigenous common property natural resource use and governance systems. In the case of tropical forests, these ecosystems not only represent a source of livelihood for approximately 60 million Indigenous peoples worldwide, but their common property use and governance systems also represent the basis of their cultural existence and survival. The author's main point is that the external sociopolitical context, ranging from the existence and quality of Indigenous collective tenure rights recognition, to political space for self-governance at the national level, to the effectiveness of barriers to external economic pressures on these areas, are all key factors in determining the long term sustainability of Indigenous common property systems. In fact, most of the common property literature on Indigenous natural resource management systems has focused on internal aspects and

features, providing abundant evidence of their sustainability. However, as the author points out, “traditional ecological knowledge and the common property systems that sustain them do not exist in isolation from the nation-states in which they are situated”. On the contrary, they “are indeed heavily influenced by the political frameworks in which they are situated, which can either strengthen or undermine their long term viability, and potential contribution to contemporary resource management initiatives”. The Belize case study which Caddy provides is a remarkable piece of evidence for her thesis, as it clearly demonstrates that, where the state law and political system does not provide the possibility of official recognition of common property based land tenure rights, the efforts of Indigenous peoples to maintain the cohesion of their traditional natural resource use governance systems (even if well supported by grassroots mobilization, competent advocacy and qualified technical assistance, including participatory land use mapping and planning) can unpredictably lose momentum, strength and viability. If, after years of collective mobilization and struggle, Indigenous communities see no recognition by the state of their common land rights, an isolated event, such as the death of a traditional leader, can lead to hope being suddenly lost with the only alternative being to claim individual

plots, or accept protected areas on traditional lands. Moreover, by failing the goal of collective land rights recognition, the accumulated experiences of mobilization, advocacy and participatory mapping can end up serving particular and competing interests between and among communities, thus creating tensions and further divisions. By providing an extremely interesting and well supported point, Caddy’s article stimulates common property researchers, theorists and practitioners to carry out further thinking and comparative research. At the same time, by observing that “common property theorists have embraced the important contribution that can be made by traditional ecological knowledge and Indigenous management regimes, this acceptance has not been universally paralleled in other social and political systems. (...) many states (especially in developing countries) nevertheless continue to believe that individual ownership is the only progressive option. Communal ownership systems are regarded as antiquated means of land use and tenure, thus retarding effective development”, it also provokes common property specialists to question: why do the results of common property theory and practice have such a hard time in penetrating more deeply into academic curricula and political agendas? Would it not be time to engage more actively in politically oriented

actions? If we do not act now at politically pertinent and relevant levels, common property resource use and management systems may no longer be there for us to study, wiped out by the increasingly pervasive and powerful advance of the enclosures.

Peggy Smith’s “Community-based Framework for Measuring the Success of Indigenous Peoples’ Forest-based Economic Development in Canada” addresses the methodological bottlenecks and contradictions encountered in dealing with the notion of development in the case of Indigenous peoples. In Canada, as in other countries around the world, the history of development, which invariably reduces itself to a history of economic growth, has been marked by the advancement of enclosures of private property, with little or no consideration for the pre-existence of Indigenous peoples’ unwritten land rights and multiple resource use practices and traditions. In Canada, forests stood on these lands, and timber was the natural resource available to feed economic growth. It really is no surprise that Canadian Indigenous communities, 80% of which are located in what the state economy refers to as *the commercial forest zone*, “have historically and systematically had their access to these lands and resources limited”. No wonder that, even with some land rights recognition and titles, they have experienced “exclusion from industrial

development” and still today “many forest-based Indigenous communities in Canada suffer severe underdevelopment with high unemployment and social problems”. In a genuine effort to carry out sensible socio-economic research of forest Indigenous communities, to produce a reliable assessment of their economic development and social well-being, which could possibly serve as a basis to design and implement consistent and appropriate development and/or social problem-solving policies, Smith faces the challenge of designing a new methodological framework. After making a quick review of different economic development paradigms, from deterministic to human agency theories, then on to sustainable development, and acknowledging the limits of strict economic indicators, the author proposes the adoption of an adapted version of the Sustainable Forest Management paradigm. Culture is incorporated as a fourth dimension of development and well-being, to reflect the wider sets of socio-cultural values relevant to Indigenous communities. The result is a stimulating methodological framework, open to evaluation and testing in current as well as future research. As is often the case when facing methodological challenges and innovations, many questions arise, and the author herself asks a few: “Can such a framework provide a more comprehensive examination of the success of Indigenous

peoples’ forest-based economic development? What criteria for success would need to be assessed under such a framework? How is it possible to move from a single indicator approach—measuring jobs and income or environmental sustainability—to understanding the interaction of all elements and the potential trade-offs among them? Under whose directions are such decisions to be made?”. The reader will no doubt come up with some question of their own, such as: Provided that unemployment, social and cultural problems, or what we refer to as underdevelopment are not specific or exclusive features of Indigenous communities, but increasingly pervasive phenomena in all modern industrial societies, should we not make a further effort to reduce the weight of economic indicators in the assessment of social well-being of our own societies? What can we learn from Indigenous societies in this respect? Isn’t the cultural dimension of paramount importance for industrial societies’ well-being too? And if the assessment of development continues to be focussed on economic and quantitative variables, doesn’t this make the very concept of economic development less significant?

Johanna Gibson’s “Model of Community Resources” deals with a particularly new, fuzzy and thorny issue: the relationship between intellectual property and traditional knowledge. An issue in which much research

and thinking is needed to design viable systems, simultaneously capable of protecting traditional knowledge as a common resource against the piracies of misappropriation and privatization, and enabling local communities to capture some of its potential economic value. The author’s proposal of a *sui generis* system focuses on the need to recognize the global legitimacy and legal authority of the Local Community. Sophisticated and appealing, the proposal faces conceptual and political contradictions and bottlenecks, acknowledged by the author, pointing towards the need for further research. If the removal (physical or immaterial) of a resource or good from its original commons status and/or location is the first step in the enclosure process, how to avoid misappropriation, misuse and privatization and consequent impacts at the community level, “fracturing the relationship between community and resources, and indeed individuals and the community”, becomes particularly important. Moreover, as increased scarcity is a necessary side effect of maximising a resource’s economic extraction value, how can one avoid the generalization of resource scarcity generation and potentially destructive processes at the community level? These questions seem to be of particular relevance in their application to knowledge, which by its very nature is a socially dynamic process, and whose very existence depends

upon socio-cultural mechanisms of sharing and gift reciprocity. The author states clearly that mechanisms based on existing intellectual property rights are wholly inadequate to be applied to traditional knowledge. One could even question whether their long term application to western, modern and/or scientific knowledge is socially or culturally desirable. On the other hand, she argues that “the proposed protection must be compatible with the international intellectual property system”. Finally, her proposal for “Global Legal Authority of Local Community” faces the issue of community authority, capacity and standing within the current global interna-

tional and political arena, where the sole fully recognized actors are nation states, with transnational corporations well established just behind the official scene. The question is whether “the international treaty system can proceed beyond the conventional model of state sovereignty”. In response to this, Gibson advocates “the negotiation of a binding international agreement (...) the Convention for the Promotion and Protection of Community Resources (CPPCR), (which) will formalize fundamental respect for and obligations to cultural diversity with an applicable framework of standards of protectio. The proposal is well argued and the description of

its internal technical structure, principles and mechanisms give it a certain appeal. However, questions about its feasibility remain: Is it viable or would it better serve as a guiding utopia? Or would it not be better to concentrate efforts on analyzing the flaws and drawbacks of the existing international intellectual property system? If it is clear that this system is not compatible with Indigenous and/or traditional knowledge systems, and serious questions can be raised on whether it is really compatible and/or desirable for our own western, modern and/or scientific knowledge systems, why not focus on reforming the international intellectual property system itself?

# Sociopolitical Dimensions of Indigenous Common Property Tenure in Southern Belize

Emma Caddy

## INTRODUCTION

THE LIVELIHOODS of approximately 60 million Indigenous peoples worldwide, today depend upon the use of and access to common property forest resources to meet their subsistence needs (Scherr *et al.* 2004). Although often extremely poor, Indigenous forest-dwelling peoples have survived because of their historical access to the forest ecosystems that sustain them. However, the erosion of tropical forest ecosystems due to agricultural conversion, industrial logging, and land privatization increasingly undermines the futures of forest-dependent Indigenous communities. The extent to which such processes undermine Indigenous common property systems is very much related to the broader sociopolitical context in which they are situated, and the level of recognition, opportunities and constraints that this encompassing state framework affords them.

This article explores how the broader sociopolitical context influences the long-term sustainability of Indigenous common property systems. It considers how, in an effort to negotiate space within inflexible political systems, Indigenous peoples' perspectives with regard their common property resources and systems can become modified by the experience of advocacy, affecting their future longevity. Through case study illustrations of

Indigenous efforts in southern Belize to secure common property resources within an unaccommodating political and legal environment, utilizing often non-traditional representation methods and resources, it will be shown how these often necessary strategies can nevertheless transform their management practices, articulation of land claims and very perceptions of common property systems. Analysis will show how these systems extend far beyond their most visible ecological characteristics, and are subject to change, opportunity and extreme stress due to the sociopolitical context in which they are found. Implications for the longevity of Indigenous common property systems will then be considered.

## POLITICAL IMPLICATIONS OF COMMON PROPERTY THEORY

This article does not pretend to evaluate the inherent ecological, social or economic merits and demerits of Indigenous common property systems. The focus is rather on how efforts to safeguard them, within the fabric of political systems predicated upon individual property management, effect those engaged in their defense. There is already a plethora of evidence provided by research into traditional ecological knowledge (TEK) and resource management to demonstrate the validity and

relevance of such systems in addressing the major management issues of today, and even to “inject a measure of ethics into the science of ecology and resource management” (Berkes 1999). Indigenous common property systems have been shown to maintain resilience and relevance not only because of the ecological knowledge and spatial references accumulated over time that scientific systems are hard pressed to replicate, but also due to the adaptability of Indigenous cultures and institutional systems to continuous change. Common property systems have been acknowledged as providing valuable lessons for institutional management and development, given the pronounced ability of Indigenous institutions to adapt to changing circumstances over time (Watson 2003).

While TEK’s contributions to the study of ecology have become apparent, complementary political analyses considering the broader contexts in which common property systems operate, and seek to survive in, have been less visible. Nevertheless, TEK and the common property systems that sustain them do not exist in isolation from the nation states in which they are situated. As noted by Pritchard and Sanderson (2002), “consideration of human management of and response to natural systems would be incomplete without a consideration of politics”. Indigenous common property systems are indeed heavily

influenced by the political frameworks that surround them, which can either strengthen or undermine their long-term viability and potential contributions to contemporary resource management initiatives. Since Indigenous cultures and interrelated ecosystems are globally threatened, it is clearly important to examine the broader conditions and constraints that are precipitating their erosion. Through this analysis, we should be in a better position to develop innovative strategies in their defense.

Although common property theorists have embraced the important contribution that can be made by TEK and Indigenous management regimes, this acceptance has not been universally paralleled in other social and political systems. Although common property researchers have emphatically demonstrated that open-access regimes, wherein no rules of management apply and costs of individual pursuit are offloaded to society, result in disastrous consequences for the resource in the long-term (Bromley 1991; Berkes 1999), many states nevertheless continue to believe that individual ownership is the only progressive option. Communal ownership systems are regarded as antiquated means of land use and tenure, retarding effective development.

These political perspectives, and the policies they engender, clearly threaten In-

igenous common property systems. It is important to note that Indigenous common property regimes are not static social systems. As research amongst Masai pastoralists has demonstrated, land-use strategies are determined as much by new opportunities for diversification and income generation offered by the dominant economy, as by cultural considerations (Thompson and Homewood 2002). Anthropological research confirms the historical dimension of this process, showing that Indigenous cultures remain fluid and adaptive, whilst norms of practice are simultaneously and constantly renewed and maintained through a shared sense of identity and affiliation to social grouping and place (Gordon, Gurdían and Hale 2003). As such, an alternative political spin used to undermine the legitimacy of Indigenous common property systems can also be neutralized. Less biased assessments of Indigenous management systems are clearly needed, ones that take into account the various social, ecological and political conditions affecting them (de Castro and McGrath 2003:124).

The present article will consider how the complexion and viability of Indigenous common property systems in southern Belize are shaped by their respective socio-political contexts. A lack of national protection for Indigenous common property has encouraged the Maya to seek to protect their (eroding)



common property systems through legal and political avenues. However, the nature of the system in which they operate has created new tensions and challenges with regards Indigenous institutions, leadership and perceptions of common property. As a result, the future of these systems, the ecosystems that they contain, and the cultures that depend on them are inevitably affected by the experience. Possible strategies to mitigate such tensions and to protect these critical interrelated resources will subsequently be considered.

#### CASE STUDY: SOUTHERN BELIZE

Belize's southernmost Toledo District contains approximately 14,000 Maya, from two ethnic groups, Ke'kchi and Mopan, dispersed among 37 villages, ranging from 50 to 1200 inhabitants (Maya Atlas 1997). Toledo's historical isolation from the centres of state power and development has facilitated the persistence of strong Mayan cultural identity, as demonstrated by traits such as language, organization and livelihood practices. An itinerant population, the location of Mayan communities has shifted over time in response to resource availability and land quality. Nevertheless, the Maya's presence clearly predates the creation of modern-day Belize and the arrival of the Spanish in the sixteenth century (Leventhal 1997).

The persistent mobility of the Maya is mirrored in their daily livelihood practices, with forest-based, shifting slash-and-burn agriculture still representing the dominant form of subsistence activity. In addition to this extensive agricultural system, known as milpa, the Maya have traditionally conducted a range of other resource use activities within broad swathes of communal and inter-communal forest lands, strengthening the resilience of their livelihood systems. These include hunting, and the gathering of forest products such as palm heart, tree vines, and plants for consumption, building and medicinal purposes (Boster 1973). Maya communities generally maintain a common forest reserve of palm trees to provide thatching for house roofs (Wilk 1997), while cultivating permanent tree crops such as fruits, cocoa and coffee for household use and sale. This diversified system has enabled the Mayans to remain self-sufficient, despite being the most materially disadvantaged ethnic group in Belize.

Over time, in common with many Indigenous cultures, the Maya's livelihood strategies have been modified in response to available options. In recent decades, the increasing shortage of available cultivable land, impoverishment of forest ecosystems and concomitant resources due to logging, land conversion and encroachment, and the intro-



Local Maya Girl. Photo: E. Leupold.

duction of new wage-labour opportunities - however fleeting - have decreased milpa's dominant role in Mayan livelihoods. Mayans have remained open to these opportunities for livelihood adaptation, without relinquishing their strong sense of cultural identity.

One of the more obvious examples of livelihood innovation is provided by the increasing number of farmers engaged in the commercial cultivation of a traditional Ma-

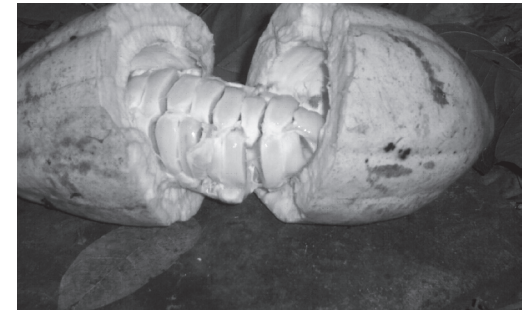
yan crop, cacao. A decade ago, a local producer organization, the Toledo Cacao Growers' Association (TCGA), signed a commercial agreement with a British organic chocolate company, Green & Black's, to export organic, Fair Trade-certified cacao to Europe. Funding from the British Government has enabled the rapid expansion in cacao farming over the past few years. Since cacao depends upon shade to flourish, Mayans are voluntarily reducing the amount of forest being cleared for milpa cultivation, and growing cacao trees (within the natural forest canopy) instead. Their incentive to grow cacao is strengthened by the fact that milpa rotations have been gradually reduced, leading to decreased soil fertility, yields, and economic returns. The cultivation of cacao is a potential win-win situation: it is culturally compatible, economically viable, and helps rehabilitate natural forest ecosystems. In the search for other socially appropriate, economically viable options, Mayans are also becoming involved in cultural eco-tourism, and additional non-timber forest product industries. That said, Mayans are also being engaged in equal numbers in less eco-friendly industries, such as logging, roadwork projects and intensive agricultural plantations. Clearly, both the sustainable or non-sustainable options before them have concomitant impacts on the integrity of their common property systems;

the Mayans' effort to achieve an effective balance between the two remains greatly influenced by the broader socio-political context in which they are situated.

### INDIGENOUS LEADERSHIP AND INSTITUTIONS

Traditional Mayan village leaders continue to play an important role in regulating how communal land and resources are used and owned. Indeed, while the term common property can foster the assumption that no individual ownership of resources exists, Indigenous common property systems are, in fact, governed by internal institutions, which demonstrate a variety of individual rights of access, preference and seniority in the distribution of communal land rights (Watson 2003).

For example, within the Mayan tenure system, village leaders or *alcaldes* uphold farmers' rights to own riverside *matahambre* plots; cultivation lands used for permanent farming. These plots are inherited and can be rented or sold within the village, but not outside it. Milpa lands are, however, less tightly controlled, and village leaders will readily oversee change of user if the previous one is no longer actively using them. Since fruit trees also denote ownership of an area, village leaders will use their presence to resolve



Cacao. Photo: The Ya'axché Conservation Trust.

disputes between contesting farmers should these arise. Within the residential village zone, village leaders also allocate house lots, determine lot boundaries, and arbitrate inter and intra-household disputes (Nietschmann 1997: 7-10). Village leaders are also responsible for adjudicating any inter-communal dispute that should arise between their respective village members.

Although *alcaldes* continue to play a primary role in the management of common property systems, the introduction (by the Government of Belize (GoB)) of new authority figures within Mayan villages in the 1970s created an additional level of complexity within village leadership structures. In an attempt to streamline village management nationwide, village councils were created throughout the country but with no regard for the prior existence of parallel leadership figures in Mayan communities. The resulting

division of authority has, in general terms, translated into *alcaldes* being in charge of adjudicating internal village matters and implementing customary law, while village councils and chairmen have been responsible for liaising with government to represent village needs. In reality, roles and responsibilities of the *alcalde* and village chairmen remain somewhat blurred and overlapping, with internal dynamics and individual personalities determining whether the *alcalde* or chairman wields more control in any given village. Indeed, the adaptability of Indigenous management systems has meant that Mayan communities have been able to absorb these institutional changes, and develop internal rationale to ensure their coexistence.

In addition to village-level authority figures, the Maya developed a new tier of representation for general advocacy purposes. In April 1978, the Toledo Maya Cultural Council (TMCC) was created to safeguard the economic, social, cultural and educational interests of the Mayas. The TMCC was subsequently registered in 1986, with its 12-member (6 Ke'kchi and 6 Mopan) Executive Council elected on a biannual basis. As will be discussed later in greater detail, the TMCC provided the Maya with a new vehicle for national political advocacy. The TMCC's work would later be enhanced by the formation of the Toledo *Alcaldes'* Association (TAA) in

1992; a general assembly consisting of representatives from each of Toledo's elected community *alcaldes*. Since the TAA aimed to safeguard both the *alcalde* system and community interests, their objectives matched closely with those of the TMCC. Together, the TMCC and TAA would take Mayan political mobilization, which began in the 1970s, to a new level in the mid to late 1990s.

### **POLITICAL-LEGAL DIMENSIONS OF MAYAN ADVOCACY**

Before examining the course of Mayan advocacy in greater depth, the political-legal dimensions in which this process played out must first be examined. To put the Belize situation into context, first consider that a quarter of forests in the world's most heavily forested countries (including Brazil, Bolivia, Columbia, Guyana and Argentina in Latin America), are today either owned by Indigenous or rural communities (White and Martin 2002). Belize's neighbours, Mexico and Guatemala, can showcase many examples of successful, community-owned forest management systems that are legally recognized by their respective governments. Recognition of community-based ownership is a clearly accepted practice in many countries of the world, which has moreover yielded notable conservation and development benefits.

Belize cannot be counted amongst this group of progressive states. Mayan common property systems have survived despite a lack of national political support and recognition. The forested lands that the Maya live, use and depend upon are either national lands or reserves, or private property. The Belizean legal system has provided no mechanism to recognize, demarcate or entitle Mayan communal lands; nor as we shall see, has the Government of Belize (GoB) proven particularly eager to amend this state of affairs. During the colonial period, in an effort to placate the Mayas, the British established 10 'Indian Reservations' within Toledo, totalling 77,000 hectares. However, these reservations existed on paper only, were never physically demarcated, nor legally titled as Mayan lands in the Belizean constitution (Maya Atlas 1997). Moreover, this area did not reflect the true extension of Mayan communal land use. Since both colonial and then independent governments ultimately retained the right to bestow private property within the Reservations' confines, and did so without consulting local Mayan communities, the physically limited reservations provided no tangible safeguard for the Mayans. Only Toledo's geographical isolation and underdevelopment helped the Maya's common property systems to persist.

Over time, as Toledo has become increasingly exposed to national development initia-

tives, Mayan communal systems' continued lack of legal recognition has left their lands, resources and communities ever more vulnerable to the pressures of land privatization, encroachment and logging. Although Belize enjoys relative political stability and prosperity compared to its Central American neighbours, the Mayans live on the economic fringes of national growth. Belize's 2002 National Development Report indicated that while 33.5% of the national population was considered poor, in Toledo, where the majority of the population is Maya, this figure was more than double that at 79%. One factor contributing to and compounding the Maya's marginal socioeconomic status is their parallel subsidiary political status in Belize. Until 1998, no Maya had ever been elected to Belize's parliament, while the Belize Senate has never seen a Mayan occupied seat. The invisibility of Mayan issues in Belizean social and political discourse has not helped to resolve the issue of land tenure insecurity that affects all Mayan communities in Toledo.

### MAYAN ADVOCACY STRATEGIES

It was largely in response to the increased threat to communal forests posed by a Government-granted Malaysian logging concession in the 1990s that the modern Mayan advocacy movement began. The large-scale

logging concessions helped Indigenous communities to understand the threat posed to their communal lands by the government's readiness to bestow titles and concessions in the so-called "empty" territory of Toledo. The TAA/TMCC alliance provided a vehicle by which to mount an organized protest against these developments. This process was further facilitated by the election of a new TMCC chairman in 1995; Julian Cho, a Mopan Maya educated to post-graduate level in the United States, whose ability to operate effectively within both national political and grassroots community circles proved a critical factor in coalescing the process. However, to succeed, the focus of Mayan advocacy—their communal lands—needed to be clearly and specifically defined.

The TMCC and TAA elicited the support of a team from the Department of Geography, University of California—Berkeley, led by Barney Nietschmann, as well as the Indian Law Resource Centre (ILRC), a pro bono Indigenous legal rights firm from Washington D.C., to assist them in this process. Between 1996 and 1997, these groups mapped each of Toledo's 37 Mayan communities, training individuals from each village to lead the process in their respective areas. A set of hand drawn but detailed maps depicting the lands used by the Maya communities was produced and published as the Maya Atlas in 1997.

These maps later provided the basis of a petition submitted to the Inter-American Commission on Human Rights by TMCC, later joined by the TAA, on behalf of the 37 communities, which claimed that the GOB had violated the Maya's human rights by not recognizing their ownership of their communal lands and resources. This petition, developed for the Mayan by the ILRC, cited logging, oil and development concessions as major threats to the integrity of Mayan communal lands, and called on the IACHR to evaluate the merits of the Mayan claim.

As well as mapping and legal strategies, the TMCC/TAA (with support from ILRC) also engaged in the direct lobbying of multinational corporations that were funding national development projects in Belize; most notably, the Inter-American Development Bank (IDB), who had signed a multi-million loan with the GoB to construct a highway connecting Toledo with the rest of the country. Arguing that the highway would foster unprecedented land speculation and migration south, a process which was anticipated to further marginalize Mayan communities, the TMCC attempted to block the project altogether. As a mediatory measure, the IDB offered to fund a planning project, the Environmental and Social Technical Assistance Project (ESTAP), to develop district, zone, and community-level management plans that

could facilitate sustainable development in the region, while addressing Maya land concerns. The then Prime Minister of Belize, Manuel Esquivel, recognized this commitment in a letter to the President of the IDB, in which he noted that:

*(the) Government is fully appreciative of the concerns, which have been expressed by the Mayans in connection with land tenure. Allow me to reiterate the Government's commitment to addressing Maya land tenure issues within the context of ESTAP.<sup>1</sup>*

Before ESTAP's reports were completed, Said Musa's PUP party were elected in the 1998 general election, replacing the Esquivel administration. The new Government appeared even more willing than its predecessor to engage in direct dialogue with the TMCC and TAA over the question of Mayan land rights. The parties embarked upon a lengthy but sporadic negotiation process, which eventually yielded an agreement known as the '10 Points of Agreement'. This was signed on October 12, 2000 by the GoB and an association of Indigenous representative organizations, namely the TMCC, TAA, Toledo Maya Women's Council (TMWC), Ke'kchi Council of Belize (KCB) and the Village Council's As-

<sup>1</sup> December 8th 1997.

sociation-Toledo (VCAT) (known collectively as the Maya Leaders). The 10 Points was intended to act as a platform for resolving disputes over the Mayan's land claims and the GoB's development objectives for the Toledo area.

The agreement was significant in that it provided the first ever formal recognition by the GoB that Mayan communities have rights to lands and resources in southern Belize, based on their long-standing use and occupancy of these areas.<sup>2</sup> The GoB and Maya Leaders also agreed to set up a Task Force to establish legislative and administrative measures to identify, recognize and protect Maya traditional land tenure and resource use, including the demarcation of lands, and recognition and protection of communal lands and resources.<sup>3</sup> How this process would be financed was not addressed. Nevertheless, the Maya Leaders were able to secure significant resources to meet these needs themselves, having recently launched an

<sup>2</sup> 10 Points of Agreement: Point 6.  
<sup>3</sup> 10 Points of Agreement: Point 7.



The signing of the '10 Points of Agreement'—Maya Leaders and Prime Minister of Belize. Photo: Said Musa.

ambitious CIDA-funded project—the Maya Co-Management Mapping Project (MCMMP)—in conjunction with a northern Indigenous NGO, the Indigenous Circumpolar Conference (ICC). The objectives of the project were to train local Mayans in GIS and data collection methods to upgrade the hand-drawn Maya Atlas maps, while developing co-management plans and alternative livelihood strategies for the many inter-communal lands in existence, drawing upon the experience of the ICC. As a result of combined legal and political pressure, and external fundraising and technical support, several negotiation and planning spaces had been created by 2001, suggesting that le-

gal recognition of Mayan communal lands and resources would imminently be secured.

### STALLED MOMENTUM

On October 24, 2003, the IAHCR determined that the GoB had violated the Mayas' human rights, by not recognizing their ownership of communal lands and resources. This decision, made public in early 2004, should have represented the victorious culmination of several decades of struggle, and perhaps even been preceded by national legal recognition of Mayan communal lands and resources through the advocacy and technical avenues already being pursued. Unfortunately, the IAHCR's announcement represented a muted achievement, occurring as it did against a backdrop of dislocation and loss of momentum within the Mayan advocacy movement, and the weakening of previously created political spaces for land tenure reform. This new context prevented the Maya communities and leaders from effectively capitalizing upon this otherwise significant accomplishment. The primary factors that had colluded to create this situation will be briefly reviewed, providing insights into the sociopolitical conditions that can enable—or inhibit—state recognition of Indigenous common property rights.

### LEADERSHIP AND ORGANIZATIONAL

### CAPACITY

Clearly, although the IAHCR found in favour of the Maya, international legal recognition is not enough to ensure the protection of Indigenous common property. Other key factors determining success include the effectiveness of Indigenous leadership and institutions. In a globalized age of communication, human rights and environmental consciousness, new political and moral space is available for Indigenous peoples to help them advance their domestic agendas. Indigenous peoples' organizations are increasingly likely to be represented by relatively younger, more educated individuals familiar with modern values and customs, who possess skills such as bilingualism and literacy to function in external political and economic circles (Baland and Platteau 1996: 341:2). These younger Indigenous leaders appear most effective when they work in tandem with older or community-based leaders, who might not possess their political representation and negotiation skills, but nevertheless hold moral authority in the communities by which to influence community-based action.

The Mayan political movement of the mid-1990s mirrored this model of dual leadership, with the TMCC representing the younger, innovative generation of leaders, and the TAA, the traditional moral authority of

customary village leadership. However, this effective political partnership had become substantially weakened by 2004. Most devastating of all, was the death of the TMCC's charismatic leader Julian Cho, in mysterious circumstances in December 1998. The communities believed he was killed because of his opposition to land privatization and logging; as a result, enthusiasm for Indigenous advocacy was replaced by an underlying sense of unease and fear.

Julian's death also exposed the weakness of existing Indigenous institutions. Julian's Vice-Chairman automatically succeeded him as TMCC chairman. However, this individual lacked Julian's unusual worldliness, education and the capacity to effectively verbalize and represent the Mayan strategy, both externally and internally. The new Chairman did not maintain regular communication with community leaders, and as the practice of Julian's weekly informal visits to the communities was discontinued, a dislocation of communication and purpose between the TMCC, the TAA and the communities began to emerge. The TMCC, which had begun as a grassroots movement but had grown reliant on institutional systems to sustain its work, lacked the fundraising capacity to meet these needs independently. Administrative concerns began to consume members' energies. The ILRC became too heavily relied upon

by the TMCC, which led them to step back considerably from institutional management affairs and focus on legal issues alone. Nevertheless, their partnership with the TMCC fostered accusations that the process was an internationally orchestrated initiative, undermining its local legitimacy. Increasingly weakened, the TMCC lacked the capacity to effectively counter this charge.

Meanwhile, latent tensions between the TMCC and the Ke'kchi Council of Belize began to surface in the late 1990s out of a belief that the TMCC was dominated by Mopans. KCB, the TMWC and even the TAA resented the TMCC's greater visibility in the process, and demanded an equal role in the negotiations with the GoB. Initially, the outcome of these inter-institutional Indigenous tensions was positive; the creation of the Maya Leaders saw a broader coalition of Mayan organizations lead the lands rights struggle. However, the difficulties of sustaining the broad coalition and individual member organizations proved critical in reducing the cohesion of Mayan political advocacy.

#### **INTERNATIONAL FUNDING AND INDIGENOUS ADVOCACY**

While the Indigenous movement struggled to sustain itself, increasing opportunities provided by the unprecedented levels of funding

for environmental and development activities in southern Belize led many Mayan leaders to subtly refocus their energies. With Mayan communal rights being of low priority to these new agencies, and seen as too politically contentious, land tenure resolution now began to take a back seat to conservation, which provided a means of income to Mayan leaders, and direct benefits to communities impatient for tangible livelihood benefits. Land tenure advocacy became increasingly a marginal, extra-curricular, volunteer activity. Meanwhile, as advocacy efforts decreased, the Mayans felt more and more distanced from their leaders and the land advocacy movement, and less supportive of it.

At the same time as funding for conservation programs in southern Belize grew, resources to promote Indigenous land rights issues were dissipating. Funds from the IDB and Government of Luxembourg were curtailed or completed. Both these funds had been facilitated by the ILRC and so without their constant support, local organizations lacked the technical capacity to secure replacement financing. Meanwhile, the CIDA-MC-MMP project hit insuperable problems due to conflicts between the ICC and CIDA, which the Maya Leaders were powerless to prevent. The project was suspended in 2002, with only one Maya Atlas community remapped.

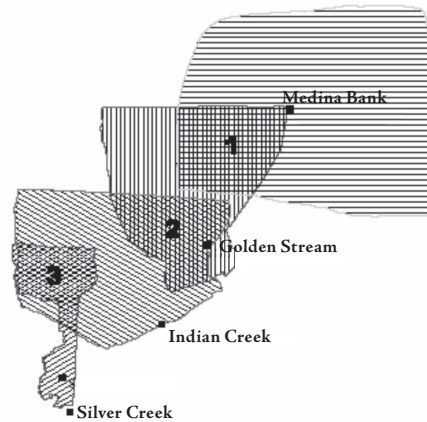
In the midst of these difficulties, threats

to Mayan lands continued to grow. The paving of the southern highway was virtually completed by 2002, and as expected, interest in Toledo's economic potential increased. The IDB-ESTAP project ran out of steam by 2001, having failed to produce more than a handful of pilot community plans, no zone level plans, and only a theoretical regional plan. New logging concessions were granted, and land privatization continued unabated. In the absence of strong Maya leadership or institutions, the Maya Leaders effectiveness was greatly reduced, and negotiations with the GoB became sporadic and unproductive. By 2002, the TMCC offices had closed down; the organization that had galvanized Indigenous advocacy in previous decades had effectively ceased to exist.

#### **WHAT ARE COMMUNAL LANDS?**

In addition to these problems, another reason for the decline in Mayan political advocacy was the difficulty the Maya experienced in clearly articulating their land tenure demands. During the Maya Atlas mapping period, land rights were represented in the form of a "Maya Homeland", an area encompassing all the individual community lands that had been mapped. By presenting communal land rights demands jointly, it was believed that inter-communal land conflicts over overlap-

Co-management Area "A".  
Community Land Use and Overlap Areas



Areas in square miles:

Medina Bank: 90.0	Overlap 1 (MB & GS): 16.0
Golden Stream: 44.8	Overlap 2 (GS & IC): 13.5
Indian Creek: 49.9	Overlap 3 (IC & SC): 8.4
Silver Creek: 12.4	

Source: Maya Leaders' Co-Management Mapping Project.

ping or shared areas could be avoided. However, the "Maya Homeland" concept proved politically untenable in Belize, as it was seen as effectively creating a state within a state. As a result, the Maya Leaders later eschewed references to the "Maya Homeland", and instead called for demarcation on the basis of individual communal lands.

This new position nevertheless created

another set of tensions. Researchers working for the MCMMP project geometrically transposed the Maya Atlas maps to a single comprehensive District map, showing a complex array of overlaps that would be extremely difficult to resolve. Although the University of California geographers knew that the respective community maps presented individually in the Maya Atlas likely overlapped one another, the extent to which this was true was never fully appreciated by the communities themselves, who had since taken ownership of the maps depicting 'their' respective lands. As revealed from research into Indigenous mapping processes in Nicaragua, the very process of map creation can transform participants' perceptions of their land claim, strengthening their sense of exclusive ownership of the recorded area and undermining prior acceptance of collective use practices within the lands depicted (Gordon *et al.* 2003; Offen 2003). Claiming Indigenous lands on the basis of communities therefore threatened to create conflicts between Mayan villages, a situation which would only benefit their opponents. That being said, the MCMMP's holistic experience in remapping one community during its short time in existence, Indian Creek, and mediating discussion of their overlaps with the neighbouring communities of Golden Stream and Silver Creek yielded a surprisingly rapid resolution. The

Indian Creek experience therefore suggested that the issue of inter-communal boundaries might not prove as problematic as anticipated. Nevertheless, the premature termination of the MCMMP project meant that it was eventually impossible to determine how important inter-communal boundaries might be in the definition of communal lands.

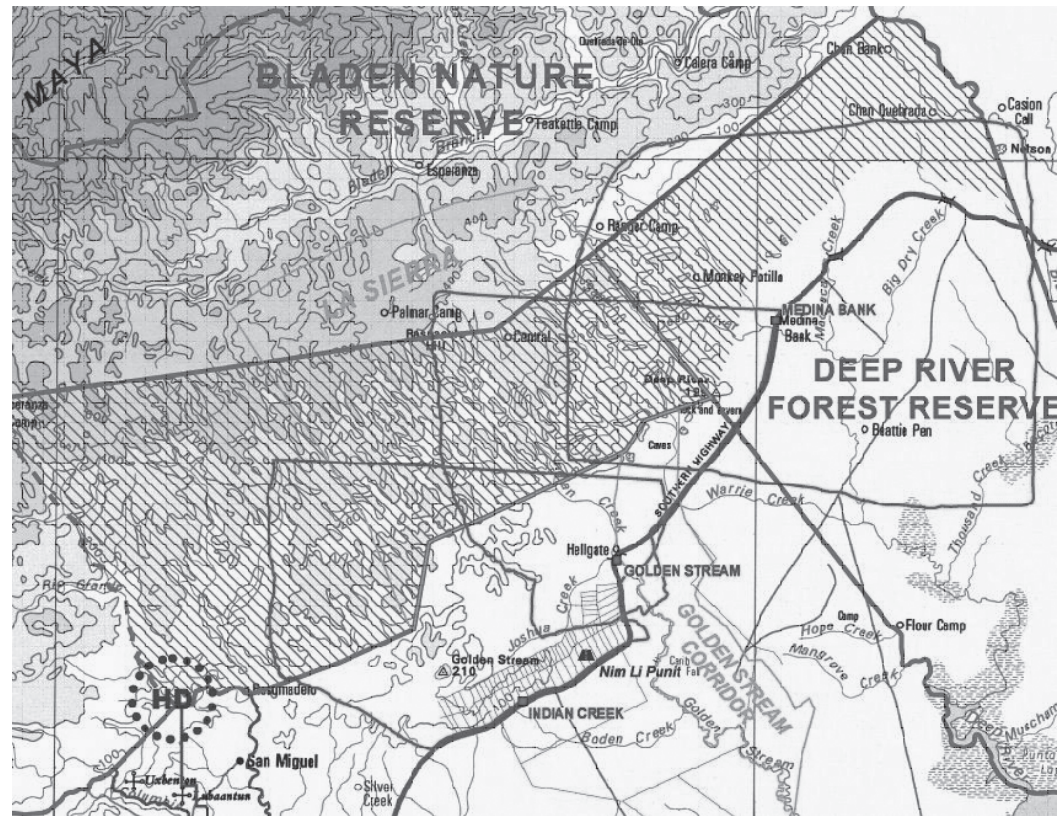
The threat of potential inter-communal conflicts was not the only obstacle faced. The proliferation of individual lease and property titles within communal land areas, held by outsiders and Mayans themselves, represented an additional challenge to the formulation of a cohesive land claims position. In response to the continuous encroachment of private land tenure into their communal land areas, and as a result of their increasing familiarization with the Belizean land system, Mayans took advantage of the right of every Belizean to apply for individual plots of land as the only opportunity by which to stabilize their respective tenure concerns. Land titles have been secured for household plots and agricultural lands alike, entailing an inevitable reduction in land available to be demarcated as communal. Although the Maya were not consciously relinquishing their rights to communal lands by securing land leases and titles, but rather pursuing a necessary survival strategy in the face of furious land privatization, this process nevertheless fostered



the muted accusation that Mayans wanted the both of best worlds: combined communal and private land titles.

The process of land demarcation and entitlement was not, however, the same among all Mayan communities, but was rather concentrated mostly in the larger communities, located near the highway or District capital. Villages in the farthest reaches of Toledo have noticeably fewer leased land properties. The Maya Leaders therefore considered just claiming communal titles for these more isolated villages, with the more 'developed' communities claiming communal rights for buffer forest-based lands only. However, the difficulty of developing legal distinctions between different types of communities made it hard for this proposal to hold sway. The issue moreover exposed the Mayan Leaders' own personal struggle with the issue of lease and communal lands, since many of them had themselves secured individual titles to land. Was it an 'either or' question? Were they betraying their cause by obtaining such titles?

An alternative strategy emerged in 2001, which sought to acknowledge the process of individual titling, and persistence of communal ethics and interests, while also appearing politically palatable within the context of Belize. The Mayans of Belize have only limited experience of conflict with the government to draw upon when radical-



Source: Maya Leaders' Co-Management Mapping Project.

izing or mobilizing their position; indeed, in a country with only 266,000 inhabitants, personal relationships between politicians and Indigenous leaders are forged - creating both opportunities and constraints for advocacy. The strategy devised in 2001 therefore aimed to appeal to the Mayan's desire for po-

litical compromise, speaking to the existing Government's own legislative record; namely the Village Council Act (VCA) of 2000, which gave communities a broad mandate to demarcate and manage—though not own—the lands that they used. The idea was that if villages could have the final say in allocat-

ing and managing lands and resources within their recognized boundaries, this would represent a major step forward in strengthening communal land systems; while still allowing individual communities to sustain both individual land titles and communal areas, according to their internally defined interests. The VCA therefore represented an intriguing mechanism by which communal systems might be recognized.

After being enacted, the VCA had become an invisible piece of legislation; not only in Toledo, but throughout the length and breadth of Belize. The Maya Leaders nevertheless saw an opportunity to propose that the VCA be modified and actively implemented, and function as a strategic vehicle by which the GoB and general public could more readily accept the concept of strengthened village governance—Indigenous or otherwise. Suggested reforms to the VCA framework included legalizing the authority of village leaders to oversee and enforce governance rules for communal lands within the legislative framework, such as the non-transferal of titles outside the village membership. It was also agreed that the widest possible extension of village boundaries should be sought through the auto-demarcation process enabled by the VCA, to encapsulate not only residential but forest-based communal lands.

The proposal to address Mayan land tenure concerns was, however, never made concrete for several reasons. First, the Maya Leaders' legal advisers, who expressed concern that since the VCA would not result in actual ownership of lands it would represent a fragile basis for Mayan common property rights, never wholeheartedly embraced the strategy. The community-based Maya leadership experienced considerable difficulties in fully grasping the intricacies and implications of the VCA proposal, particularly given the sporadic nature of the Maya Leaders meetings held to discuss them. This was, in itself, a consequence of weakened leadership, resources and capacity, as has been discussed previously. The task of conveying these options to the communities therefore represented a heavy burden for them to assume, particularly in the absence of sufficient resources to help mobilize efforts.

In actuality, these same obstacles were manifest at every strategic crossroads in Mayan advocacy. The IAHRC land rights case, the homeland proposal and the VCA option were never fully mastered by the Mayan leadership, let alone at the grassroots level. Ultimately, the difficulties of formulating a clear and concise articulation of Mayan communal land claims, that could be sustained and proven relevant at all political and social levels, has represented a major challenge to Mayan advocacy.

## CONCLUSIONS

The prospects of securing legal recognition of Mayan common property in southern Belize remain unclear. Twenty-five years after the Mayan political representation movement was first launched, and ten years after attaining impressive visibility and momentum, the Mayan's defense of their common property appears today to be tenuous at best. In the absence of a unified Mayan voice and leadership structure, the GoB has found a tactic of delay to be an extremely effective strategy for sidelining Indigenous land and resource rights claims. In 2002, a logging concession was granted on some of the same lands previously given to the Malaysians, without more than a murmur from the Mayan representative groups. Faced by the difficulties of formulating and sustaining an effective strategy to secure recognition of Mayan communal land ownership within a state system that provides no safeguard for common property, the Mayan's clarity of convictions regarding their communal land rights appears to be somewhat clouded by the very experience of advocacy. As a result, the prospects of securing the integrity of their common property systems, and developing sustainable management systems to counterbalance or even replace the dominant processes of land conversion,

deforestation and privatization, seem bleaker than they did a decade ago.

At the same time, as land rights have taken a back seat in Mayan leaders' and communities' agendas, new initiatives have emerged to promote more sustainable management of these same threatened resources. This has primarily occurred through conservation and development funded initiatives, for which the issue of insecure Indigenous land tenure has not represented a major obstacle. Nevertheless, without secure land tenure for rural communities, Indigenous or otherwise, the protected areas and natural resources that these organizations seek to conserve or sustainably develop are likely to become degraded over time, as the deficiency of available lands on which to eke out livelihoods forces Indigenous peoples to invade them for survival. With much of the organic cacao promoted by conservation and development agencies grown on national lands not owned by their growers, what will the fate of these and other promising sustainable resource management initiatives be if Indigenous land tenure or management systems are not recognized?

The Mayan leaders engaged in these projects have proven reticent to make their International conservation and development partners recognize and act upon these concerns. Nevertheless, it would appear that

there is far more scope for mediation and resolution of Indigenous land tenure issues, when presented in the context of conservation and development projects, than is currently being attempted. This is particularly true given the GoB's foreign income earnings from the growing tourism sector, which depends upon a healthy environment to remain successful. There might, therefore, be possibilities for a new advocacy movement to secure legal recognition of Mayan common property resources that does not rest solely on opposition to the state, but rather seeks new, interdisciplinary partners in the search for a mediated resolution that addresses multi-stakeholder and sector interests, not just Indigenous ones.

The preceding analysis of Mayan advocacy to secure communal land tenure in southern Belize has yielded a variety of lessons that this and other parallel struggles can draw from. It is clear that the effort to legalize common property in Belize has suffered from difficulties in maintaining a coherent message and unified mobilization of the different tiers of Indigenous leadership by which to advocate its adoption. As such, it is important to recognize that securing the objectives of common property protection, like any other advocacy initiative, requires adequate resources: a strategic, consensual and continuous planning process; and, education and capacity-building support



Photo: E.Leupold.

across the requisite disciplines of law, politics and resource management. In addition, a detailed, astute analysis of the local political situation, to help determine how community-based interests can be advanced—even when synergies are not immediately clear, such as the VCA, or partnerships with the IDB—is a prerequisite to devising an effective advocacy strategy. A willingness to develop new partners, from perhaps unforeseen quarters, and

identify common interests and grounds for collaboration between different sectors such as conservation, development, human rights, and even national government, is also important. Ensuring that these and other factors are in place clearly represents a formidable task, but to assume that Indigenous peoples will be able to protect their common property systems on the basis of ecological merit alone, in the face of often sophisticated political opposition, is to plan for failure. Indigenous peoples will ultimately need to remain true to their core values of flexibility and adaptation if they wish to successfully safeguard their common property and livelihood systems.

The objective of this article has been to demonstrate the relevance, and importance, of analyzing sociopolitical contexts and conditions when considering Indigenous common property systems. As has been demonstrated, common property systems do not exist in an ecological vacuum, but rather find their nature, integrity and long-term prospects greatly defined by the broader sociopolitical contexts in which they are situated. In particular, when state tenurial systems provide no space for recognition of Indigenous common property systems, there is a good chance that these may become eroded as a result. In the interest of securing the longevity of Indigenous common property systems, to safeguard

both their contributions to sustainable resource management and the very cultural and ecological institutions upon which they are predicated, it is imperative that strategies built upon interdisciplinary experience, planning, adequate resources, local capacity-building and opportunity are devised.

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# Community-based Framework for Measuring the Success of Indigenous Peoples' Forest-based Economic Development in Canada

Peggy Smith

## INTRODUCTION

IN CANADA, Indigenous Peoples' rights are constitutionally recognized and a responsibility of the national government. These rights are integrally tied to Indigenous Peoples' use of lands and resources and, in the case of forest resources, are concerned mainly with land uses associated with forest resource harvesting, including wildlife and non-timber forest products. Most Indigenous traditional economies in Canada were built on forest resources and involved a complex set of institutions governing the relationships among forest users. After colonization, forest management became the constitutional responsibility of provincial governments. Timber harvesting for commodity products—dimensional lumber and pulp and paper—transformed Canadian forests into industrial production yards. The institutional systems constructed by provinces to regulate timber harvesting occurring on publicly owned forest lands supported industrial production. Access to timber resources is controlled by provincial governments, which assign exclusive, long-term, large area licenses to private companies.

In the process of privatizing natural resources on public lands, Indigenous communities have historically and systematically had their access to these lands and resources

limited, even though they maintained an interest in these lands - either an outright form of ownership ("Aboriginal title") or land use recognized through government-to-government agreements, such as treaties. As a result of Indigenous peoples' systemic exclusion from industrial development, many forest-based Indigenous communities in Canada suffer severe underdevelopment, with high unemployment and social problems commonplace. The issue of Indigenous Peoples' access to these lands—over 80% of Indigenous communities in Canada are located in the commercial forest zone (Gysbers and Lee 2003)—is such that the development and maintenance of local economies has been the source of longstanding conflict between Indigenous Peoples and the state in Canada.

This article will explore some of the current theoretical and practical approaches to economic development, Indigenous peoples' economic development in general, and Indigenous peoples' forest-based development in Canada in particular.<sup>1</sup> Some of the method-

<sup>1</sup> This article arises out of an ongoing research project, "First Nations and Sustainable Forestry: Institutional Conditions for Success", begun in 2003 and funded by the Sustainable Forest Management Network. The author is a co-investigator in a research team headed by principal investigator Dr. Ronald Trosper, Dept. of Forest Resources Management, University

ological challenges of carrying out research of this nature are addressed. Finally, a comprehensive framework is suggested to assess the success of Indigenous peoples' forest-based economic development. Cultural sustainability is added as a critical component of the sustainable forest management paradigm that already considers economic, social and environmental indicators. The link between community health and well-being and successful economic development is a critical one, but in order to understand the link, a different set of indicators than simply "jobs and income" or profit (Cornell and Kalt 1998) needs to be developed to assess the success of Indigenous forest-based economic enterprises. Another essential aspect of the assessment of Indigenous peoples' development is the recognition of their unique rights, which is needed to provide the foundation for their autonomous development. This recognition and respect for Indigenous rights will necessitate institutional change, including new rules for access to lands and resources and

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of British Columbia. The project website is [www.forestry.ubc.ca/fnconditions](http://www.forestry.ubc.ca/fnconditions). The author also wishes to acknowledge the work of Sarah Allen, a Masters student working on the project, for her interest in and exploration of community well-being indicators. Allen participated in the development of the community-based framework.



An example of the industrial production yards into which Canadian forests have been transformed. This site is in the interior of British Columbia. Photo: Peggy Smith.

new forms of decision-making to ensure that Indigenous peoples are able to determine the nature, form and extent of economic development. This comprehensive framework is being tested on case studies in Ontario and Quebec and within a larger national research project that is examining national socio-economic indicators for Indigenous communities based on census data.

## ECONOMIC DEVELOPMENT PARADIGMS

It is helpful when analyzing the success of Indigenous peoples' forest-based economic development to place development theories into two broad categories: determinism and human agency or contingency (Anderson 1997). Theories in the deterministic category leave

little room for actors, especially “underdeveloped” groups (be they third world countries, or the fourth world, as Indigenous peoples have been termed), to chart their own course. These theories state that development takes a predictable and predestined path and that certain steps must be followed to achieve “success”. In the human agency category, there is room for actors to influence the nature and direction of development. Both categories of theories have been applied to Indigenous peoples’ economic development. Increasingly, as Indigenous peoples rebel against state-imposed solutions designed to improve their development and make their own choices about their future, they are turning to theories that embrace the notion of human agency.

DesBrisay (1994) reviewed the literature on the impact of major resource developments on Indigenous communities in Canada for the Royal Commission on Aboriginal Peoples, the most comprehensive examination in Canadian history of the status of Aboriginal peoples. In his review he raised some of the essential questions that Indigenous peoples face in making choices about natural resource-based economic development:

*Can Aboriginal people participate in industrial capitalism and do so in a way that respects and is in keeping with traditional values? Can values oriented more toward the collective than*

*the individual survive in an industrial environment if participation in a project is organized at the collective level? To what extent are community values compromised if the environment and the well-being of future generations are put at risk?*

One school of thought is that such questions are frivolous and the real issue is to bring economic development of any kind to “underdeveloped” regions. Economic development in and of itself will solve the social ills of Indigenous communities. Industrial capitalism with its wealth generation will provide the necessary resources to bring jobs, income and profit to counteract poverty, unemployment, lack of education and poor health, if only the underdeveloped region follows the set path. Another school contends that mere “jobs and income” does not necessarily ensure healthy community development and, in fact, the recognition of Indigenous rights or some form of sovereignty is essential for the successful economic development of Indigenous communities – this is the “nation building” approach of the Harvard Project on American Indian Economic Development (Cornell and Kalt 1998).

#### *Deterministic Theories*

Modernist and dependency theorists argue that it is futile to go against industrial capitalism. Modernist theories, popular follow-

ing World War II to promote third world “development”, described development as necessarily progressing through set stages to the inevitable and desirable goal of industrial capitalism. Anderson and Giberson (2004), in their review of theoretical perspectives, describe one view: “... a developing country or region passes through a series of stages during which its people build economic capacity, shed traditional and adopt modern ways, and from which they emerge as fully modern, prosperous states.” On the other side of the coin, dependency theorists, who emerged to oppose modernist theories, explained that development did not follow the modernists’ inevitable stages and many regions remained in poverty. Their rationale for this was that:

*... those groups late in joining the capitalist system can expect, at best, chronic poverty allayed to some degree by incomplete development. A newly developing region will remain a captive to the developed core with its economic activity controlled by, and subservient to that core—in essence, under the dependency theory it is too late for Aboriginal people to “join the club” as a full member. (Anderson and Giberson 2004)*

Various theories about global capitalism explain that firms will move toward vertical production, “from resource extraction to the final product, being subdivided into subpro-



cesses which are assigned to whichever part of the world can provide the most profitable combination of natural resources, capital and labour” (Tykkyläinen 1999). In this system, regions are held hostage to the vagaries of global capitalism.

For Indigenous communities in Canada, these deterministic theories would lead them away from traditionally based forest economies to full integration into global capitalism. However, this has not been the case. As Usher (2003) points out:

*Not so long ago, the prevailing view among social scientists and policy makers was that industrial development in the North would induce Aboriginal people to leave their camps and villages for major resource development sites or planned development nodes. Emigration from the traditional economy (which would simply wither away) to the new economy would thus be the key route to modernisation and acculturation.... In fact, what emerged (or persisted) in Aboriginal communities all across the North, was a mixed, subsistence-based economy that integrates two spheres of activity, institutions and practices: market and subsistence, brought together, not simply side by side in a class-divided village, but directly within the household. Production and consumption are combined in one basic unit, the household, which functions in effect as a microenterprise.*

How much choice, then, can Indigenous communities exercise in determining the nature of their development? Wutunee’s (1992, 2005) stated interest in Indigenous economic development, business and entrepreneurship has centered on “what choices will be made to meet community and individual goals”. She has focused on case studies of entrepreneurship in Indigenous northern communities and noted that there has been a “shift away from primary resource industries to information and service industries” (1992: 4). Her emphasis is on small and medium enterprises. In her latest book, *Living Rhythms* (2005), she too raises questions similar to DesBrisay (1994) about the direction of Indigenous economic development:

*Will we want communities where the environment is cherished and elders and traditions honoured, or will we try to maximize our returns on investment? Are these objectives mutually exclusive? What does it mean to us to participate meaningfully in the economy? What are the benefits, and what are the costs?*

#### *Human Agency Theories*

Anderson and Giberson (2004) offer regulation theory as one that emphasizes contingency and human agency. They define regulation as “the complex and ever evolving

set of ‘things’ that shape and guide the capitalist economy and ‘preserve it, for some time at least, from catastrophic internal collisions and breakdowns”. In regulation theory, each regime of accumulation may be regulated in any number of ways, each unique to local conditions and subject to human choices.

Institutional economists have also focused on human agency. In the Harvard Project on American Indian Economic Development, Cornell and Kalt (1995) used collective action theory, in particular the institutions of government, to explain economic development and well-being. They explain institutions as collective goods and point to the limitations of neoclassical economic analysis in explaining the non-coercive emergence, persistence and evolution of institutions of government. The results of over 10 years of studying mainly tribal economic development in the United States have led the Harvard Project to conclude that for Indigenous communities culture, sovereignty and institutions matter. The Harvard approach has inspired similar studies in Canada. In a series of reports by the National Aboriginal Forestry Association and the Institute on Governance (2000), sponsored by the federal First Nations Forestry Program, the success of Indigenous/corporate forest-based partnerships was explored, considering in addition to the bottom line

of profitability the impact of Indigenous rights, culture and land tenure.

### *Sustainable Development*

Even though the sustainable development approach, popularized by Brundtland following the World Commission on Sustainable Development in 1987, has been adopted worldwide, development continues to be assessed against narrow economic criteria. These criteria are based on the assumption that the accumulation of capital, whether financial, natural or human, is the basis for economic growth. This leads to assessments of development based on economic indicators such as profitability for individual businesses, increases in gross national product for nation states, or employment levels for communities, indicators which, for the most part, neglect social, environmental and cultural dimensions. As Sen (1999:14) argues in linking “freedom” with development:

*It is as important to recognize the crucial role of wealth in determining living conditions and the quality of life, as it is to understand the qualified and contingent nature of this relationship. An adequate conception of development must go beyond the accumulation of wealth and the growth of gross national product and other income-related variables. Without ignoring the*

*importance of economic growth, we must look well beyond it.*

The sustainable development or sustainable forest management paradigm does this by treating all three pillars — social, economic and environmental — as key components. For Indigenous communities, it has been argued that sustainable development should include recognition of their rights, culture and aspirations for self-determination. Mulvihill and Jacobs (1991) argue that the conditions for self-reliance of Indigenous communities include self-determination, decolonization, appropriate institutions and sustainable development. They emphasize that, to achieve sustainable development, it is essential to have Indigenous knowledge to deal with the complexity and periodicity of northern ecosystems, interdependence based on mutual learning and intergenerational equity.

Loomis (2000) too points to Indigenous efforts to explore alternative development paths in keeping with the concepts of sustainable development: “Fourth World peoples in advanced industrial societies are asserting their right to self-determined development. They are questioning the wisdom of Western paths, and looking for guidance to the recovery of traditional perspectives.”

Critically important to Indigenous communities, and frequently subsumed under

the social pillar of the sustainable development paradigm, consideration of culture is integral to defining Indigenous peoples and protecting their way of life. Modernist theorists argue that traditional cultures must be left behind to embrace modern industrial capitalism, but as early as 1954, Merrill was pointing to the Maori as an example of a non-Western people that was “able to carry out fairly extensive economic changes in a culture that had few of the institutions usually considered necessary for executing such tasks and which, moreover, had many institutions one would think would strongly inhibit economic growth”. The institutions he refers to are: “kinship control of productive resources including land, the organization of production and distribution on the basis of kinship groups, and orientation of economic activity toward group generosity and not toward individual accumulation of wealth” (Merrill 1954).

Human agency or contingency theories lend themselves to a fuller exploration of the potential of Indigenous societies to control development within their own cultural perspectives, integrating social, economic and environmental concerns. Research to assess the success of Indigenous economic development, especially forest-based development that is so dependent on the maintenance of forest productivity and health, should ex-

plore these agency theories. The sustainable development paradigm is especially appropriate. However, this is not an easy task. Several methodological challenges arise in conducting such research.

## METHODOLOGICAL CHALLENGES

There are several methodological challenges in conducting research to assess the success of Indigenous peoples' forest-based economic development. These include the quality and availability of data for Indigenous communities, choosing the unit of analysis, working in a multidisciplinary team, applying participatory approaches with Indigenous communities and understanding the interactions among social, environmental and economic indicators.

### *State of Data on Aboriginal Issues*

The first question that must be addressed in assessing the success of Indigenous peoples' economic development is who determines "success"? Forest-based economic development involves a number of different actors: Indigenous people, from the business owner who may be a local entrepreneur or the community government itself to internal governance bodies like economic development officers or development corporations; forest



Youth at Grassy Narrows First Nation in northwestern Ontario have participated in an almost two-year blockade of logging roads in their traditional territory, protesting the practices of a multinational company granted a license by the province of Ontario to harvest timber and manage the forest. Source: Thunder Bay Independent Media <http://thunderbay.indymedia.org/>.

industry partners and their representative organizations; government departments, both national and regional, that provide incentives and through programming often determine the nature, direction and amount of funding available; and other "stakeholders" who have

a range of competing interests in the development of public forests, from conservation to recreation to industrial development. The involvement of competing interests then leads to another important question: what are the indicators of success?

In determining the indicators of success and who should determine them, Indigenous people have historically been left out of consideration largely because economic development policies have been centrally controlled through political and bureaucratic initiatives (Anderson 1997). Today, with the growing Indigenous movement for self-determination, it is becoming more evident that, first and foremost, it is Indigenous people themselves who must determine “success”.

Serious effort should be undertaken to engage First Nations<sup>2</sup> in defining success. What is it that First Nations are looking for

<sup>2</sup> Aboriginal peoples in Canada are defined in the Constitution Act of 1982 to include Indians, Inuit and Metis. “Indians” refers to a broad group of Aboriginal people, some of whom are recognized as “status” Indians by the federal government. These status Indians are an administrative and trust responsibility of the federal government under the Indian Act. Groups of status Indians were granted small land bases called reserves and governed as “bands”. The term “band” was seen to be paternalistic with the rise of the self-determination movement and terminology changed from “band” to “First Nation.” For more background on the nuances of terminology used for Aboriginal peoples in Canada, see Words First: An Evolving Terminology Relating to Aboriginal Peoples in Canada (Indian and Northern Affairs Canada 2004). Indian and Northern Affairs Canada, Communications Branch. 2004. Words First: An Evolving Terminology Relating to Aboriginal Peoples in Canada. [http://www.ainc-inac.gc.ca/pr/pub/wf/index\\_e.html](http://www.ainc-inac.gc.ca/pr/pub/wf/index_e.html). August 24, 2005.

in terms of economic development? Is it jobs, and if so, what type? Is it wealth generation, and if so, how is this wealth to be distributed? Is success to be defined by the quality of socio-economic infrastructure in First Nations? There is a long series of questions to be asked but there has to be a concrete and common understanding as to what constitutes success and what measures will be tracked to determine whether the desired results are being achieved (Shanks 2005).

Given that these questions are only beginning to be addressed, the measures to be tracked are still undefined. As a first step, the discussion about success must take place with Indigenous people and this will necessitate a qualitative approach.

As for the quantitative data available, statistics on Indigenous peoples’ development in Canada are notoriously unreliable. Data that looks at Aboriginal land use and participation in the forest sector is particularly poor. Baseline data are often non-existent.<sup>3</sup> Until such data are available, it is impossible to get a full understanding of the impact of industrial forest operations on Aboriginal communities or to get a measure of the true value of Aboriginal subsistence or commercial activities, particularly for non-timber uses or to protect

<sup>3</sup> This section is taken from a longer paper published by the author (Smith 2004).

those values that forest managers now recognize are uniquely important to Aboriginal Peoples, including cultural and spiritual sites. The Canadian Council of Forest Ministers has reflected on the inadequacy of the data available since it set in place its original *Criteria and Indicators of Sustainable Forest Management* (CCFM 1995) and began to try and measure compliance with the commitments they contained (CCFM 1997; 2000).

With the release of the CCFM’s *National Status 2000* report a few years later—“a first attempt to report on sustainable forest management”—not much had changed. This report also discussed the inadequacy or lack of available data. The report for the indicators on Aboriginal participation, in particular the extent of Aboriginal participation in forest-based economic opportunities, stated: “comprehensive national data are not available” and “the only data collection that does take place is on an ad hoc basis.” For the indicator on the “number of Aboriginal communities with a significant forestry component in their economic base and diversity of forest use”, employment data collected by Aboriginal Business Canada (an arm of the federal Industry Canada) and Statistics Canada led to the conclusion that only seven of 750 Aboriginal Census Subdivisions were found to be forest-dependent. Given that approximately 80% of Aboriginal communities are

within the commercial forest region of Canada, common sense belies this conclusion. Obviously something is awry with the “economic base method” used to come up with this measure. The report did acknowledge that other studies show that “dependence on the forest is greater than typically captured by forest industry dependence measures” (Korber 1997, cited in CCFM 2000: 97).

In a review of the CCFM in 2003, a reduction of the original 83 indicators to 53 was recommended after an assessment of: 1) relevance to the criterion; 2) measurability based on scientifically valid, empirical measurements that can be consistently repeated over time, with data that are both practical and physically feasible to collect; 3) understandability, not only to forest managers, but also to an informed public; 4) ability to be forecast into the future with reasonable accuracy; and, 5) whether or not reference values could be determined for the indicator.

Given the challenges described above from the CCFM technical progress reports of 1997 and 2000, and using the review assessment criteria, the revised C&I (CCFM 2003) addressed Indigenous people’s participation in forest-based economic development under Forest Community Well-being and Resilience. The preamble to this element notes that “unsustainable resource practices have the potential to result in high social costs con-

centrated among residents of rural communities” and that many of these are “Aboriginal communities that are surrounded by forests and are dependent on the forest for their economic and social well-being”. To assess this, the CCFM, except for the indicator on “education attainment levels in forest-based communities”, takes a “jobs and income” approach, with indicators on: “economic diversity index”, “employment rate” and “incidence of low income.”

One way of addressing the challenges inherent in the quality and availability of data and the historical exclusion of Indigenous peoples in defining the nature of success is to combine qualitative and quantitative methods. Qualitative methods in which Indigenous people are engaged in discussions about their definitions of success and these results are then compared with other stakeholders, including business partners, will bring some balance to assessments and give an Indigenous perspective on the definition of success. To improve the quality and availability of data, there will have to be a commitment from both governments committed to tracking sustainable forest management and from Indigenous peoples themselves to participate in the collection of census data on which to base statistical information about the nature of economic development.

### *Choosing the Unit of Analysis*

Another methodological challenge in assessing Indigenous peoples’ forest-based economic development is choosing the unit of analysis. There are a number of possible choices: the individual (entrepreneur, the firm or worker), the joint venture or partnership, the household, the community or the nation.

In addition to the economic base method with its measures of forest dependence through jobs and income, classical assessments of the success of economic development have also focused on the business, either on the firm or the entrepreneur. If businesses are small in size or are in business for only a short term—a common problem in the boom-and-bust cycles of the forest sector—then tracking these businesses becomes very difficult. In the case of individual waged workers or contractors, because Aboriginal peoples have only partially participated in Canada’s national census taking and because self-identification of race is voluntary, it is very difficult to get an accurate picture of the number of Aboriginal people employed in the forest sector. Another issue with tracking individual success is that for many Indigenous communities their criteria for success might not focus on the individual, but more on community well-being. Studies that focus exclusively on the individual deny the collec-

tive nature of most Indigenous communities and focus on individual profit rather than community well-being.

In Indigenous communities, because of a lack of capacity—with regards human capital and natural resources—many forest-based enterprises are developed in partnership with existing forest companies. Joint ventures are seen as a means to address the strengths and weaknesses of both parties. The venture itself is assessed in these cases, with a focus on the business-to-business relationship in which community aspirations are not necessarily considered. The tendency in Canada has been to focus on joint ventures because they are often highly publicized and because of the participation of large, multinational forestry firms, information about their operations is easier to attain.

Another choice for the unit of analysis is the household. Household analyses tend to focus on the mixed economy and kinship-based systems, exploring not just a particular business venture but the range of a household's involvement in forest-based activities. However, such studies, as comprehensive as they are, are time-consuming and expensive. These studies also relate to a specific community and results may not be able to be generalized to other communities.

If researching households is an expensive and time-consuming method, choosing the

community as the unit of analysis is also. For a comprehensive approach, researchers need to interview and/or observe a cross-section of community members from the grassroots to leadership to the individual entrepreneur. No community is monolithic and there will be varying interpretations of success of forest-based economic development. To gain a sense of the range of that variation, a case study approach with interviews of several key actors within the community would be necessary.

Finally, many studies of economic development have focused on the nation state, particularly underdeveloped nations. For Indigenous peoples, in their move toward self-determination, there has been a focus on “the nation” (RCAP 1996). However, in the absence of negotiated understandings with existing nation states, and given the semi-dependent relationship of most Indigenous communities within nation states, studies with the Indigenous nation as the unit of analysis are rare.

#### *Working in a Multidisciplinary Team*

The challenges of the quality and availability of data and choosing the unit of analysis are only confounded by the challenge of working in a multidisciplinary team of social foresters, economists and political scientists with

an advisory committee with representatives from academia, the forest private sector and Indigenous organizations. All academic disciplines come in their restrictive boxes with their distinct disciplinary approaches, theories and terminology. With a national study, different provincial policy regimes, private company practices and Indigenous community approaches make choices particularly complex, given the need to account for the diversity in approaches while seeking common threads. Making choices, reconciling values and getting the work done with a multidisciplinary team conjures up a too-many-cooks scenario that can lead to problems with “deliverables” and deadlines. With the commitment to ensuring that research results are applied, advisory committees have become a tool to guide this work, but on the other hand, can add further complexity.

#### *Using a Participatory Approach*

Research of this nature is undertaken for many reasons, but foremost is to understand and redress the historic injustices toward Indigenous peoples. To improve the status of Indigenous communities and their well-being related to forest-based economic development, there must be capacity and willingness on the part of both Indigenous communities and forest companies to participate.

While most potential participants agree that the research goals are laudable, there are many factors that hinder participation. Given the historic exclusion of Indigenous peoples from the forest sector, there is mutual suspicion on the part of both Indigenous communities and forest companies. For some participants who have broken through this suspicion and developed a working relationship, there is often the fear of jeopardizing these tentative relationships. And for others, they are just too busy and too understaffed to participate! For researchers, academics are often removed from a practical understanding of the history, complexity, different points of view and members of Indigenous communities.

### *A Response to the Methodological Challenges*

To address these methodological challenges, the research team chose a mix of quantitative and qualitative methods. A workshop early in the project with the research team and advisory committee helped to clarify the challenges and approaches.<sup>4</sup> Existing statistics will be analysed. Previous studies conducted in Canada will provide a

<sup>4</sup> Papers from the workshop are available on the project website at <http://www.forestry.ubc.ca/fnconditions/workshops.htm>.

solid base upon which to refine the results (NAFA/IOG; Hickey and Nelson 2005; SFMN Synthesis Report). To understand the success of forest-based businesses, a survey on partnerships is being conducted with a focus on the joint venture in which both forest companies and Indigenous community representatives will be interviewed. A number of case studies will be conducted moving the focus from the business to the community and its context to gain a fuller picture of the criteria for success. It is with the case studies that a more integrated approach can be used.

### **FRAMEWORK FOR MEASURING THE SUCCESS OF INDIGENOUS PEOPLES' FOREST-BASED ECONOMIC DEVELOPMENT**

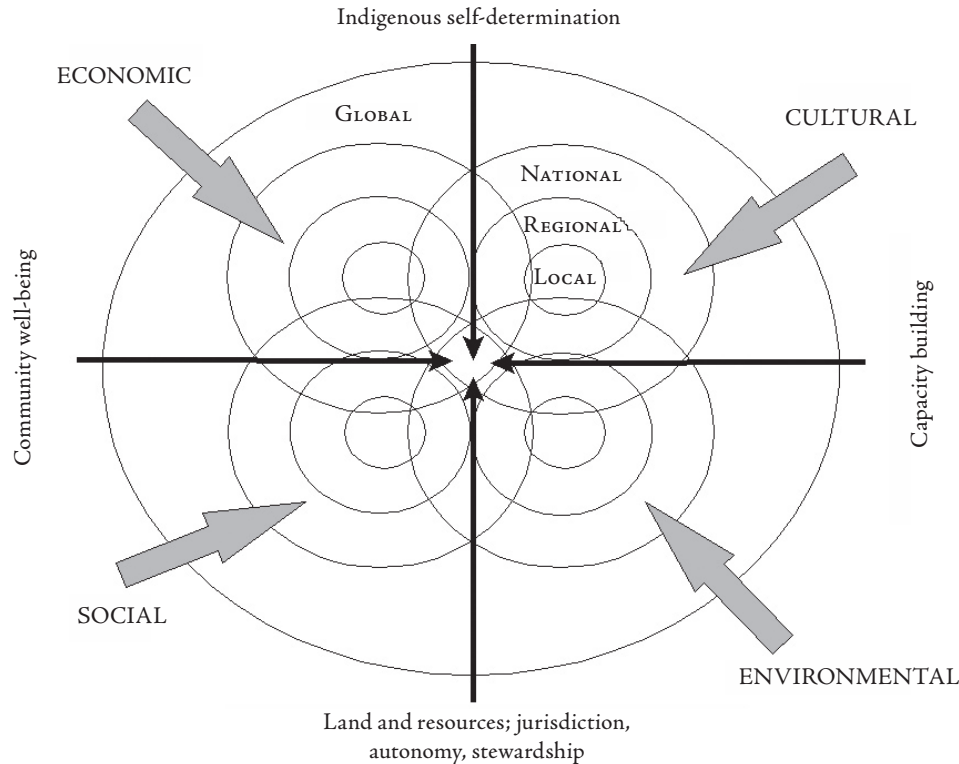
This community well-being framework takes into account the sustainable forest management (SFM) paradigm that attempts to integrate economic, social and environmental considerations. Given the particular historic and political conditions of Indigenous communities, it is necessary to expand the SFM paradigm to include culture and to recognize the essential element of Indigenous rights. Figure 1 tries to capture the interplay of the four elements—economic, cultural, social and environmental—across different scales

from local, regional, national to global. The four directions is a modification of the medicine wheel used by some Indigenous peoples to capture their holistic worldview showing the connection among elements. It relates to aspects of Indigenous peoples' rights and responsibilities—self-determination, capacity building, jurisdiction, autonomy and stewardship of lands and resources and community well-being.

Can such a framework provide a more comprehensive examination of the success of Indigenous peoples' forest-based economic development? What criteria for success would need to be assessed under such a framework? How is it possible to move from a single indicator approach—measuring jobs and income or environmental sustainability—to understanding the interaction of all elements and the potential trade-offs among them? Under whose direction are such decisions to be made? Table 1 outlines some of the criteria for measuring the “success” of First Nations' sustainable forest-based economic development.

Community well-being and satisfaction are shown as the outcome of an approach that combines environmental, social, cultural and economic criteria, founded on the recognition of Indigenous rights with the parallel appropriate institutional development to reflect the framework.

Figure 1: Indigenous Peoples, Rights and Sustainable Development.



Community well-being and satisfaction as an outcome encapsulates meeting the basic human needs of food, clothing and shelter, but goes beyond this to reflect the aspirations of Indigenous communities for self-determination and self-governance. The core of the framework are the three pillars of sustainable

forest management—economic, environmental and social criteria—with the addition of a cultural component.

The foundation of the framework is the recognition, respect and accommodation of Indigenous rights. In Canada, Indigenous peoples still assert their inherent rights and

sovereignty within the Canadian nation state. This assertion of sovereignty is the basis for self-determination. There have been a number of different formal agreements between the Canadian state and Indigenous peoples in which the state interprets that Indigenous rights have been limited or extinguished. However, Indigenous people assert that their rights cannot be extinguished and therefore continue in spite of agreements. These agreements include historic treaties and modern land claims. In some areas of Canada, such agreements are still being negotiated and in those cases, Indigenous title or ownership continues.

The recognition of Indigenous rights necessitates the joint development between Indigenous peoples and the state of new institutions for the management and use of forest resources. Such institutional arrangements might include shared decision-making, ranging from advisory to consent and control, including joint decision-making or “co-management”. Mechanisms for conflict resolution, assessment and monitoring would be important for adaptation over time.

For the environmental criteria, the condition of the forest (Ostrom 1999) as a result of resource exploitation, either through industrial extraction or traditional use, can be measured by the amount and rate of extraction and, importantly for Indigenous com-



Table 1: Criteria by which to assess success of First Nations' sustainable forest-based economic development

<p><b>OUTCOME: COMMUNITY WELL-BEING/SATISFACTION</b></p> <p>Basic needs (food, shelter, clothing), self-sufficiency, self-governance, adequate standard of living, high employment, fair distribution of economic benefits across households, cultural integrity, human health, education, political stability, access to lands &amp; resources, sustainable forest management</p>			
<p><b>SUSTAINABLE FOREST MANAGEMENT ELEMENTS</b></p>			
ENVIRONMENTAL	ECONOMIC	SOCIAL	CULTURAL
<ul style="list-style-type: none"> <li>• Condition of forest</li> <li>• Sustainable extraction of renewable resource (amount and rate of extraction)</li> <li>• Maintenance of habitat for all users, including wildlife</li> </ul>	<ul style="list-style-type: none"> <li>• Jobs, income &amp; profit</li> <li>• Revenue-sharing</li> <li>• Mixed economy with both traditional land uses and cash economy</li> </ul>	<ul style="list-style-type: none"> <li>• Capacity-building (education and skills, ability to hire resource managers long-term)</li> <li>• Increased community stability</li> <li>• Improved individual &amp; community health</li> </ul>	<ul style="list-style-type: none"> <li>• Maintenance of way of life</li> <li>• Language retention</li> <li>• Cultural learning</li> </ul>
<p><b>THE FOUNDATION</b></p>			
INDIGENOUS RIGHTS		INSTITUTIONS	
<ul style="list-style-type: none"> <li>• Recognition, respect, protection and accommodation of Aboriginal &amp; treaty rights = sovereignty or self-government</li> <li>• Rights are inherent, cannot be extinguished and so apply to all areas: historic treaties, modern land claims, title or ownership</li> </ul>		<ul style="list-style-type: none"> <li>• Shared decision-making (ranging from advisory to consent &amp; control, including joint decision-making or "co-management")</li> <li>• Conflict resolution</li> <li>• Assessment and monitoring</li> </ul>	

munities with traditional subsistence as part of their economies, maintenance of habitat, especially for wildlife.

For the economic criteria, classical measures of jobs, income and profit are important. However, given the recognition of Indigenous rights and shared control with the state, revenue-sharing of resource rents would also be a measure of success. In order to maintain traditional forest use and the cultural aspect that is so connected to that use, the maintenance of a mixed economy with both traditional forest land uses and a cash economy based on industrial extraction should be considered.

In the social arena, one of the impacts of the exclusion of Indigenous communities from the industrial forest-based sector has been the lack of skills to participate. An increase in forest business and management skills, gained both practically and through formal education, and the ability of Indigenous communities to hire resource and business managers is a good criterion to measure change over time. It has been posited that the well-being of the community and individuals within it are integrally tied to the health of the land. Although difficult to prove a causal relationship, there have been some studies in Canada that explored the link between environmental and human health. In a study by Usher (2003:370), violence was explored as

an indicator of the impact of environmental pollution. The study found in the First Nation communities of Grassy Narrows and Whitedog, which had lost access to traditional fishing because of mercury pollution from a nearby pulp mill, that:

*a sharp spike occurred in violent deaths at both Grassy Narrows and Whitedog, precisely as the crisis of harvest disruption deepened, and which did not occur on a nearby reserve that we used as a control. Think of what 17 violent deaths in a single year means to a community of a few hundred people.*

Criteria such as community stability and improved health need to be further explored as indicators of successful development.

Finally, with the addition of a cultural component in the interests of encouraging development that maintains the cultural diversity of Indigenous communities, criteria appropriate to the way of life of the community are important. Language retention is a prime indicator of cultural integrity and in Canada Indigenous languages are both threatened in some regions and vibrant in others, with many communities attempting to restore almost extinct languages. In forest-based economic development, historically, Indigenous knowledge has been integral to the success of the larger economy, especially dur-

ing the early period of colonization and the fur trade. Today, with scarce and diminishing forest resources, Indigenous knowledge may once again play an important role in new types of forest-based development. The criterion of the role of Indigenous knowledge in developing and conserving forests is another key aspect of cultural diversity.

## CONCLUSION

Understanding Indigenous economies, both their “success” and “underdevelopment”, requires an exploration of development theories that embrace human agency. These theories allow an exploration of development that is based on Indigenous communities’ aspirations for self-determination and economic development that is appropriate to their worldview, including their traditional economies, culture and recognition of their unique rights. With this acceptance, economic development “success” will be considered from both accepted economic criteria and those that are defined by Indigenous communities themselves.

The methodological challenges that must be addressed to include Indigenous communities’ perspectives lead to more participatory approaches with Indigenous communities helping to define the conduct of research. Multidisciplinary teams of social scientists and ecologists provide new opportunities for

synthesis and creative methodologies, but also challenge researchers with a narrow disciplinary focus to explore and accept new theories and approaches. Given the inadequacies of data, researchers must work to fill in the knowledge gaps. They must also advocate for effective ways of collecting and maintaining databases that will provide a reliable source for measuring indicators that will paint an accurate picture of the changes over time in Indigenous peoples’ economic conditions.

A more comprehensive framework to assess the success of Indigenous peoples’ forest-based economic development is a modification of the sustainable forest management paradigm. Adding culture to the economic, social and environmental pillars gives due weight to the importance of protecting Indigenous peoples’ cultural diversity. Having as the framework’s foundation the recognition of Indigenous peoples’ rights ensures that Indigenous peoples themselves will be the agents of development. This will necessitate the joint formulation between Indigenous peoples and the state of new institutions for the use and management of forest resources.

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# Community Resources: Intellectual Property Systems, Traditional Knowledge, and the Global Legal Authority of Local Community<sup>1</sup>

Johanna Gibson

<sup>1</sup>The model presented in this article is further developed and expanded upon in the author's book, *Community Resources: Intellectual Property, International Trade, and Protection of Traditional Knowledge* (2005).

## INTRODUCTION

THE QUALITY and value of traditional or Indigenous knowledge is currently the subject of international discussions, not only as a matter of property, but also, and more importantly, as a matter of intrinsic importance to the dignity and cohesion of traditional and Indigenous communities. Inevitably, those calls seem to resonate within intellectual property systems, informed particularly by the potential value of trade in traditional knowledge. However, it must be questioned whether protection against the misappropriation of traditional knowledge can be realistically achieved through a system that facilitates and ultimately legitimizes the very misuse of communities' traditional knowledge in the first place. Intellectual property laws make misappropriation possible by judging traditional knowledge according to criteria that make its protection unlikely, and by creating exclusive rights over any works derived, despite the ethical questions that may be raised about the way in which that "intellectual property" was created. Intellectual property is indeed the means by which much of this misappropriation is validated. Can the protection of traditional knowledge justify these means and can these means ever really achieve adequate, appropriate, and relevant solutions?

The *sui generis* system proposed in this article acknowledges the existence and significance of "local" customary law, and the rights of Indigenous and traditional groups to manage resources, according to custom, within a transnational (as distinct from a "nationalistic" international model) system.

While the legitimacy of the recognition of local customary law may be found in several international instruments and sources,<sup>2</sup> those instruments operate as distinct perspectives upon any particular issue,<sup>3</sup> and so may not be helpful in the context of community resources. Separate approaches may undermine the chance of cooperation within a single international instrument. Numerous instruments tend to water down the concerns of Indigenous and traditional communities within the international context of development, efficiency, and trade. Therefore, this article maintains that the protection of traditional knowledge, and the concept of community

<sup>2</sup> Regard for customary law is set out in several international instruments, including: the International Labour Organization (ILO) Convention No 169, Article 8; which refers explicitly to customary law, and builds upon the ILO Convention No 107 on Indigenous and Tribal Populations, which makes similar provisions in Article 7.

<sup>3</sup> The concern with categorising protection in this way occurs throughout the literature. See Mugabe (2001:11).

resources, must be realised through a truly multi-dimensional approach. An approach that achieves the legitimacy of custom, of which intellectual property in cultural products may be one aspect, as opposed to defining protection according to the established criteria of western legal systems.

### **COMMON OBJECTS: THE GLOBAL BASIS FOR LOCAL PROTECTION**

Before proceeding to a discussion of the model itself, it is important to consider the inevitable generalisations inherent in any such model, and how these might be reconciled with the diversity and heterogeneity found within Indigenous communities. While it is critical to recognise and acknowledge the diversity and heterogeneity of Indigenous populations' and traditional groups' interests, any coherent attempt to address and facilitate the meaningful protection of their cultural production and resources must suggest some sort of relevant commonality.

Fundamentally, that commonality emerges in three ways. First, and of most importance, there are a number of potentially common interests, including those regarding cultural and social integrity and indeed dignity, cultural identity, and those of a political and economic nature. Crucially, the fundamental social, cultural, and political relationships that exist

between a community and its resources may be compromised by intellectual property law's alienation of knowledge as information.<sup>4</sup>

Second, there are common elements in the very exploitation of these resources, in their removal, exhaustion (through physical and cultural transformation), and their privatisation. The appropriation of Indigenous and traditional knowledge and resources (whether referred to as traditional knowledge, folklore, natural resources, environmental knowledge, and so on) usually involves the physical removal, through actual harvesting or through the adaptation of methods and knowledge to other products, such that those resources that become commodified as objects or goods of international economic value. Such removal may also be effected through the cultural transformation of knowledge, through offensive use and reproduction, fracturing the relationship between community and resource (and indeed individuals and community).<sup>5</sup> This process of appropriation is premised upon and motivated by a prior assumption that these resources are separate and tangible goods, rather than recognising and acknowl-

<sup>4</sup>Janke (2001).

<sup>5</sup>For instance, elders in communities have described the impact of offensive use on the self-worth and self-identity of young people in the community: See Ahren (2004).

edging the important relationship between them and the community itself.

Finally, there are common issues in the facilitation and protection of that exploitative process and the means by which resources are translated into goods of international economic value. Intellectual property systems, and the principles of protection underlying such systems, suggest that appropriation is drawn from a common heritage of ideas. How those ideas are transformed into products in which intellectual property may subsist is not regulated or restricted. While the products must fulfil certain criteria, the ethical circumstances of their production do not. Therefore, international intellectual property standards are currently silent on issues of biopiracy and misappropriation of cultural expressions, disclosure of origin, prior informed consent, and other key concerns of traditional and Indigenous communities.

### **A MODEL FOR THE PROMOTION AND PROTECTION OF COMMUNITY RESOURCES?**

If an international harmonised model is to be relevant both to local communities and to international trade, it must also be based upon the recognition of the authority and capacity of "community". Ultimately, adequate protection requires a system that creates

rights in the community to use and manage its resources according to applicable customary laws.<sup>6</sup> Furthermore, it is the possibility of allowing individual rights to intellectual property and community rights to management of resources to co-exist that must be considered.

The international harmonised model proposed here is based upon the recognition of the authority and capacity of “community” that might otherwise be unrecognised as a subject of law, but which is an important mechanism for the protection of community resources. This model achieves certainty through the legal process by which a community asserts itself, acceptance through harmonisation of this model with international principles of intellectual property and trade, and substantiation through international principles of reciprocity, community management and custodianship, and cultural and biological diversity.

Despite the increasing awareness that further protection of communities’ resources is needed, the adherence to models derived

<sup>6</sup>The interests of those outside the community, whether excluded “traditional” persons or non-traditional interests, may be understood in terms of equitable principles of balancing those interests, as considered in detail later in the discussion of the model.

from intellectual property frameworks is unlikely to achieve this. Protective mechanisms must acknowledge the significance of this relationship between a community and its resources. Indeed, protection should take the importance of this relationship as its main starting point, and frame community protection using the concept of community resources.

### **COMMUNITY: THE LOCAL BASIS FOR GLOBAL PROTECTION**

While the creation of the schematic model of community resources presents specific concerns regarding the generalisation of diverse communities, it would be of greater concern to isolate particular communities as cultural, geographic, or racialised entities. Although this model must never neglect the heterogeneity of community interests, the principle of “community” is a necessary and crucial strategy from which to commence these discussions, especially if any certainty and acceptance of a framework for the protection of these diverse interests is to be achieved.

Therefore, in order to consider “community” within the model of protection proposed here, the generalisation of the Indigenous community as a “legal entity” must be resisted, whilst still leaving room for some kind of agent with the authority to manage

traditional resources. The definition, if it is to be understood as one, must come from a process of mutual communal recognition. Thus, community is not necessarily a physical location but rather it is a shared resource of custom and tradition from which the expression of self is possible. The proposed model, therefore, sets out to provide the framework for an international agreement, promoting international relationships with communities, and facilitating the subjectification of the model by the community in question.

It is not for this model to “recognise” and “compel” identity,<sup>7</sup> but rather for communities themselves to assert authority with respect to identity and the management of resources and for the international community to recognise that assertion.<sup>8</sup> The basis for those assertions may lie in the legal framework, but not the responses. Rather, the concept of community resources is concerned with the application of custom by a particular community, and the incorporation and realisation of local customary law within an international model, with obligations to communities, rather than between economies.

<sup>7</sup> Appiah (1992).

<sup>8</sup> Habermas (2003:12) explains the distinction between mere tolerance of otherness and tolerance in the form of mutual recognition.

## COMMUNITY RESOURCES AND INTELLECTUAL PROPERTY

Importantly, while the proposed protection must be compatible with the international intellectual property system, any system of protection needs to be distinct from those models provided by intellectual property principles. The protection of community resources, therefore, demands a system that creates rights in the community to use and manage local resources, rather than making the product of an individual's creativity artificially scarce by granting that individual a monopoly over the material created using said resources. Communal rights in the process of tradition are essential to ensure that knowledge continues according to the community's terms.

## LEGAL PARAMETERS OF COMMUNITY RESOURCES

Potential problems in the application of state-conferred rights, contractual agreements (including bilateral agreements between states),<sup>9</sup> and domestic policies, suggest

<sup>9</sup> The impact of bilateral agreements on intellectual property protection, or TRIPS-plus, is of considerable concern, where access to compulsory licensing and other flexibilities in TRIPS are contractually

that the protection of traditional knowledge must be facilitated and effective in a global context, that is, within an international legal framework. While international law presents the opportunity for communities to act beyond the imbalance that frequently occurs in agreements at a community/state level (that is, agreements subject to domestic laws and policies), the administration of justice will often reinstate an artificial unity when conceiving of "community".

For the purposes of adequate protection and respect for community resources, the extent to which the international treaty system can proceed beyond the conventional model of state sovereignty and re-invigorate community sovereignty must be considered. While the legal framework sought for this protection runs the risk of generalising with regards "community", international agreements arguably still remain the most useful and significant tool. In realising the relationship between nation-states and communities through the model of community resources, a legitimate and representative "identity" for community is possible. Notwithstanding the

abrogated in favour of promises of trade opportunities. See the recent study by Carlos Correa, commissioned by GRAIN (Correa 2004). See also Musungu and Dutfield (2003).

problems inherent with imposing identity upon groups, the schematic "recognition" of community within the international legal and political context, to be modified and adapted through implementation by states, will be according to the self-recognition of communities in specific cases.

The community may be identified through self-recognition and self-assertion, without defining its capacity according to conventional models of national sovereignty. In the interests of determinacy, a clear and general legal principle of community must be achieved, but not at the expense of the diversity of communities to whom this would apply. For this reason, the proposed model suggests a set of mechanisms by which to achieve this determinacy, with the assertion of community, and the identification of a single member, through processes of mutual and self recognition.

The negotiation of a binding international agreement, hypothetically referred to here as the Convention for the Promotion and Protection of Community Resources (CPPCR), will formalise fundamental respect for and obligations to cultural diversity with an applicable framework of standards of protection. The CPPCR will be created through the normal procedures associated with international law in order to achieve the consent of members and consultation with stakehold-



ers, NGOs,<sup>10</sup> and above all, communities.<sup>11</sup> Recognising the need for a truly international framework, obligations formalised in the CPPCR will be obligations *erga omnes*.<sup>12</sup> Thus, any state would be entitled to seek the enforcement of obligations to communities, the details of which will be considered shortly, assuming collective global responsibility to cultural diversity, including the possible application of trade sanctions against goods illegitimately containing traditional knowledge.<sup>13</sup>

It is vital that nations are not free to contract upon community resources (as in bilateral and free trade agreements), since it may

<sup>10</sup> The increasing relevance and importance of NGOs and civil society in international trade and the environment provides a significant model upon which to build the relationship between communities and NGOs in the present model: Mason, M. (2004); Lacarte (2004).

<sup>11</sup> For a detailed consideration of the negotiation and UN structure underlying such an agreement, see Gibson (2005).

<sup>12</sup> Ragazzi (2000).

<sup>13</sup> This would be similar to the case of international intellectual property law, where individuals may claim and contract upon rights, but States may nevertheless seek sanctions or access the WTO dispute settlement mechanism, where member States are seen to be in breach. Thus, the consent of communities and the capacity of communities to enter agreements with respect to their knowledge remain important aspects of the model.

then be possible to contract out of obligations tied to such resources.<sup>14</sup> Community resources must be recognised as minimum standards, and which, like the World Trade Organization's *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS), could only be strengthened by bilateral agreements, and not compromised.

## A MODEL FOR COMMUNITY RESOURCES

### *Cultural diversity and dignity*

Fundamentally, the concept of community resources recognises obligations to cultural diversity and dignity through the acknowledgment of and respect for traditional and Indigenous communities. According to the proposed model of community resources, communities are entitled to manage their resources in observance of customary law, communal traditions, and practice.

### *Community and Resources*

Assertion by a community as community will lead to a rebuttable presumption that the claim to community status is valid. Similarly

<sup>14</sup>Correa (2004).

and necessarily, all “resources” of a community integral to its self-identity, freedom of expression, coherence, and dignity must be recognised in the first instance as community resources, as identified by the community. Such a claim to resources, within this model, will also raise a rebuttable presumption.

These presumptions may then be rebutted by the competing claim (considered in more detail below). Under this model, communities would not be required to prove status as such, as this would introduce a potentially inequitable burden upon communities with respect to legal and financial resources. Rather, there would be a procedural burden upon those interests seeking to claim, for example, subsequent intellectual property rights or access to genetic resources, where appropriation has already occurred without the free and prior informed consent of the community, or where such consent had already been refused. The ability, on the part of those seeking access, to challenge a claim to community is a necessary aspect to ensure the fairness and therefore legitimacy of this framework. Thus, a claim to community and to community resources may be constructed as follows:

- Assertion of community by community —self-recognition will trigger a presumption in favour of community.

- Assertion of resources by community—recognition of community and claim by that community to the knowledge in question will trigger a presumption that the knowledge is traditional.
- Rebuttal of presumption by competing claim—the assertion of community and of resources may be rebutted by the parties seeking commercialisation of or access to knowledge (on the grounds set out below).
- Proportionality—the application of equitable principles to determine the validity of the claim (whether to community or to traditional knowledge).

#### *Presumption*

Those seeking access to, or commercialisation of, community resources would be entitled to rebut the validity of the claim made by a particular community. This may be a rebuttal of the claim to community (and therefore necessarily a rebuttal of the presumption that the knowledge is traditional), and/or a rebuttal of the presumption of traditional knowledge. It is necessary for a just and acceptable international law that this be possible. The rebuttal of a claim will depend upon an assessment of proportionality. In other words, the process will involve a balancing of interests according to equitable principles of international law. It is not claimed here that equity is the source of the law, but that

equitable principles necessarily inform the decision as to competing interests.

#### *Free and Prior Informed Consent*

Communities must have the authority and capacity to deal with their resources as they choose, rather than vesting national governments with the authority to consent and manage traditional knowledge on their behalf. Therefore, the principle of free and prior informed consent is fundamental to this model and an essential element of legitimate use or appropriation. Communities must be entitled to consent to the use of their knowledge as appropriate and under conditions to be determined by the communities and in accordance with their customary laws.<sup>15</sup> This will facilitate commercialisation according to the communities' shared values. If a legitimate community chooses to commercialise aspects of its knowledge, that use is *a priori* traditional in that it has been determined by the community.

Achieving free and prior informed consent nevertheless presents several difficulties,

<sup>15</sup> The understanding of free and prior informed consent as consent in accordance with cultural and customary laws of those communities from whom the consent is sought operates in laws concerned with access to resources, including the Philippines Republic Act 8371 on the Rights of Indigenous Cultural Communities and Indigenous Peoples.

not least of which includes identifying the community and/or the representatives from whom to obtain consent.<sup>16</sup> While provision for the accreditation of communities may assist this process, the lack of accreditation should not prove an administrative burden by which communities are denied autonomy with respect to resources.

The application of this principle within the present model would include a duty imposed upon those seeking to use what they believe to be traditional knowledge, or to access natural resources, to make reasonable efforts to ascertain permission from the relevant community. Where a community subsequently challenges the taking of resources, and free and prior informed consent cannot be shown, those seeking to uphold their appropriation of resources will be able to demonstrate that such reasonable steps have been taken. Where such steps have been taken, no damages may be due to the community but the law may say that benefits are shared and/or resources returned where appropriate.<sup>17</sup>

<sup>16</sup> For instance, see the discussion of the problems with identifying the "providers" of resources in Tobin (2002:299-300).

<sup>17</sup> It may also be possible under the Treaty, for example, that contracting parties may provide for invalidation of the intellectual property rights (discussed further below).

Free and prior informed consent will be provided according to the shared values of the community and may include the following elements:

- Fully informed as to the proposed use of traditional knowledge (crucial to the decision to give consent, based on considerations outlined below).
- Consideration of conditions of cultural appropriateness of use.
- Limited to single use and not to secondary uses where further consent may be required (for instance, for trade mark use where the trade mark registration may seek the inclusion of new categories, the community's consent may be required for the mark to be applied to those additional categories).
- Ongoing assertion of community resources, where identification, attribution, and acknowledgment of community may be required (similar to the principle of moral rights in copyright law).

#### *Validity of Claim–Consent*

Where the community is established and knowledge is traditional, and where use may cause harm, where that use occurs without consent, both parties may nevertheless challenge the validity of a claim on the basis of

whether or not free and prior informed consent was obtained. As will become clearer later, consent provided in another instance will not necessarily extinguish rights, and, similarly, disclosure does not apply. Therefore, free and prior informed consent must be context-specific.

Where free and prior informed consent can be shown, subsequent intellectual property claims will succeed on the basis of a legitimate entitlement to the knowledge in question. Where consent is shown to be invalid (for reasons of lack of information, unconscionability, and so on), the taking of traditional knowledge will also be invalid. Therefore, any subsequent rights to intellectual property over that knowledge will be illegitimate and will be revoked. This would require consistency with international intellectual property laws, through the applications of limitations and exclusions based upon the misappropriation of traditional knowledge.

It is accepted that the application of consent within this model requires the identification of those entitled to grant such consent, which may present problems in particular instances. Nevertheless, this does not lessen the conceptual basis for community resources presented in this model.

#### *Proportionality-Harm*

Where parties are unable to rebut the claim to community or the claim to traditional knowledge, they may appeal to the proportionality of the claim, and the question of harm upon the community. Such arguments would make reference to some of the grounds set out above. In particular, the determination of harm will draw upon the balancing implied by the consideration of principles such as the freedom of expression of community, and the means necessary for that expression. This is related to questions regarding the use of traditional knowledge and the potential degradation or transformation of its cultural value and integrity. For example, the wearing of traditional Sámi costume by non-Sámi tour guides, promising an “authentic” experience, has been described as causing great offence to Sámi people and indeed undermining the self-identity and self-worth of the young members of the Sámi community in particular.<sup>18</sup>

#### **EXTINCTION OF RIGHTS**

Under the concept of community resources, community custodianship over resources

<sup>18</sup> Ahren (2004). See also the discussion at <http://www.itv.se/boreale/samieng.htm>

cannot be extinguished by the subsequent creation of intellectual property rights. Therefore, where a community consents to traditional knowledge being used, the model could require that this in no way extinguishes their rights to that knowledge. Therefore, consent in one instance will not justify open access, and the model may require further consent for every new use of a particular aspect of traditional knowledge. While blanket consent may be easier in its practical application, the argument for fresh consent acknowledges the many uses to which knowledge may be put to once it is appropriated in this way.<sup>19</sup>

## ENFORCEMENT

### *Administration of Treaty*

Ideally, the CPPCR would be administered by a proposed new body dedicated to community resources, something along the lines of the 'United Nations Community Resources Programme (UNCRP)'. This body would be committed to community and cultural diversity, and traditional knowledge.

<sup>19</sup> Nevertheless, this ideal does not preclude the granting of blanket consent where appropriate. For instance, the conditions and terms of the appropriation and use may be qualified in agreements to allow for blanket consent.

### *International Court of Justice*

Disputes could be settled within the International Court of Justice (ICJ). Although the ICJ would be limited to states, the CPPCR could also entitle individuals recognised as members of communities, or whole communities, to petition the UNCRP when their rights have been violated. The UNCRP could then provide a recommendation to the ICJ that it hear the claim. This would be similar to the optional protocol of the ICCPR, except that ideally it would be part of the original CPPCR, and not optional to signatories. Alternatively, accredited communities could be granted status as international organisations, and therefore able to stand to address a violation of community resources as a principle of international law. While the UNCRP would be able to refer legal questions to the ICJ for advisory opinions, and recommendations on behalf of communities, states could refer cases of the violation of community resources to the ICJ for decisions.

States may be reluctant to accept the compulsory jurisdiction of the ICJ, a problem which besets all international treaties, and therefore the uptake of the CPPCR might be compromised if this were mandatory. If for reasons of agreement this must be made a voluntary provision, other mechanisms, including economic sanctions and withdrawal

of rights of participation, might apply.<sup>20</sup> Implementation of the agreement at the domestic level will of course be critical here, and the resistance of countries like the United States would severely compromise its efficacy as an international framework.

### *World Trade Organization (WTO) Dispute Settlement Procedures*

Strategically it may be important to include community resources in the agenda on international trade, on the basis that it is through international trade that the greatest injustices against community resources occur. This will also lead to access to WTO dispute settlement procedures. If an appropriate UN body is established, it must have the authority to act on behalf of communities where necessary.

### *Conciliation and Arbitration*

The Treaty may also include provisions for conciliation and arbitration. This may include the appointment of an arbitration panel or referral to a particular international body (such as the previously mentioned hypothetical

<sup>20</sup> For the relevance of such measures in international environmental law, see Birnie and Boyle (2002) See also Waters (2002).

cal UN specialised agency, the International Community Resources Organisation).

## COMMUNITY RESOURCES AND INTERACTION WITH OTHER LAWS

### *Community Resources and Intellectual Property*

Given the importance of traditional knowledge as an issue of international trade and intellectual property, it is necessary to characterise the way in which the system may interact with intellectual property laws and rights.

Community resources are different from information because they can be exhausted through cultural transformation and offence. Therefore, community resources are not about trade in information, but about the practice of knowledge and the dignity and identity of communities. Nevertheless, in the application of intellectual property laws, community resources can become rendered information for the purposes of trade. The effect of successful opposition by communities and the invalidation or absence of consent must therefore be considered, in the context of intellectual property that may include resources improperly taken.

Some of the ways in which the two systems interact have already been discussed, with respect defeating claims to community

resources. For instance, where traditional knowledge has been shown to be obtained through misappropriation, the creation of private intellectual property rights could be invalidated. This would require consideration of the relationship between the implementation of the CPPCR and the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), in order to avoid breach of obligations under TRIPS, or possibly waiver or amendment through the Doha negotiations.<sup>21</sup>

With respect to copyright material, nothing in the CPPCR could prevent copyright arising, but it may impact upon the exercise of those rights. Indeed, the copying of sensitive cultural material, recognised as resources (according to the procedure described above), may constitute substantial copying leading to the invalidation of copyright in that material.<sup>22</sup> The protection of community resources may also be recognised as coming under the

exclusions provided in Article 27(2) (patents and *ordre public*) of TRIPS, to be clarified at the national level. Similarly, trade mark protection can be denied by contracting parties under Article 15(2) of TRIPS, in accordance with the exclusions provided in the Paris Convention.<sup>23</sup>

In addition to communities refusing to provide consent to parties seeking to use knowledge, communities may also bring claims to defeat intellectual property rights that have been acquired from their knowledge, based upon the concept of community resources (and the application of the equitable principle of proportionality in determining the validity of refusal to grant consent or the validity of the claim against access or use).

Also of importance here will be the actions of individual community members. It may arise that an individual member will remove traditional knowledge and assert in-

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(qualitatively) because of the cultural specificity. This notion of substantial copying by virtue of the critical nature of the copied material to community resources (or the “work” of community) may be crucial to the negotiation of copyright protection.

<sup>23</sup> The Paris Convention for the Protection of Industrial Property was concluded in 1883 and last amended in 1979. Prohibition or invalidation of registration is provided in Article 6bis(1) (confusion) and Article 6ter (State Emblems, Official Hallmarks, Emblems of Intergovernmental Organisations)

<sup>21</sup> Gervais (2003:63) suggests that it is “quite unlikely that the Doha negotiators will agree that the current TRIPS framework is simply discriminatory and as a result adopt a sweeping *sui generis* right to protect all forms of traditional knowledge”.

<sup>22</sup> See for instance the Australian decision in *Milpururru v Indofurn Pty Ltd* (1995) AIPC ¶92-116 at 39,069 per Von Doussa J, where a small area of copying was nevertheless held to be substantial

tellectual property rights. Where that use is with the valid consent of the community, or is not necessarily in conflict with community or traditional use, nor does it cause significant harm (based upon equitable principles of proportionality), then there will be no conflict between community resources and intellectual property. However, where that use constitutes culturally inappropriate removal of knowledge outside the community, then this individual may be subject to the same claims described earlier. Possibly of greater importance, that individual will also be subject to retribution for actions under customary law, including possible exclusion by the community, and loss of recognition by the community. Indeed, the very actions of that individual are, by definition, actions against membership of, and recognition by, the community. The influence of these sanctions against the individual under customary law should not be underestimated, and should not be interpreted as unenforceable, uncertain, or without weight. In other words, the legitimacy of customary law must be respected.

#### *Community Resources and Biodiversity*

The critical way in which the concept of community resources interacts with biodiversity (and with the Convention on Biological Di-

versity [CBD] in particular) is in requiring nations to obtain the consent of communities before being able to contract with other nations. This may require a review of the provisions of the CBD to indicate genuine community consent regarding access to biological and genetic resources. That original consent may be accompanied by appropriate agreements concerning remuneration and benefit-sharing, and would be governed by the principles of the CPPCR. Therefore, in acting in accordance with the CBD, the nation must also observe its obligations under the CPPCR, before it may legitimately contract on national resources.

#### *Community Resources and Rights to Land*

It is encouraged that the principle of community resources is recognised in the context of rights to land. As applied, subsequent private land ownership would not exhaust the community's rights to resources in that land, subject to exceptions and the determination of harm, as outlined above. Therefore a community would continue to be entitled to its cultural knowledge and traditional practices associated with that land, where native title or rights to land are recognised. Under the system of community resources, successful native title rights would include modern traditional use, including mineral rights and

other evolutions of the contemporary community compatible with its traditional and shared values, and would not be limited to the uses of resources at the time of colonisation.

#### *Community Resources and Human Rights*

Fundamental human rights to bodily integrity and safety are not compromised or qualified by this model. Nevertheless, where rights to freedoms of speech, self-expression, and so on are invoked, there may be important interactions with the principle of community resources. As in the balancing of other rights and freedoms, community resources will be similarly relevant in deciding, for example, the appropriate exercise of one's freedom of speech in the context of a community's access to expression that may be compromised through misappropriation and offensive use.

Ultimately, the relationship between community resources and human rights is not one of conflict; indeed, human rights principles of self-determination and the right to participation continue to underscore the legitimacy of community resources.

#### **CONCLUSION**

The proposed model of community resources emphasises the dignity of Indigenous and traditional communities, towards achieving co-

herent, consistent, and just protection of their resources. In this model, community is the central performer in the customary management of traditional knowledge and resources, and community evolves as a function of the interaction between tradition, custom, and social life as instantiated by the members of the community. The protection of resources must be in the context of pre-existing customary law, governed by community, rather than subordinating such laws to the relatively recent invention of intellectual property rights.

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# Managing the Commons: Indigenous Rights, Economic Development & Identity

## Emerging Issues, Conclusions and Recommendations

Peggy Smith

WHAT DID WE LEARN from the twelve panels organized under the Indigenous Rights, Traditional Knowledge & Identity Theme, the two side sessions hosted by Brazilian Indigenous representatives and the host of papers in other theme areas that covered Indigenous issues during IASCP2004 in Oaxaca? I will explore some of the key issues, conclusions and recommendations that emerged from these sessions and the selected articles featured in this publication.

As I wrote in the December 2004 issue of *The Common Property Resource Digest*, the arena of much of the discussion around Indigenous peoples' issues is one of conflict over contested and dwindling natural resources, both renewable and non-renewable. These resources run the gamut from minerals to oil and gas, timber and non-timber forest products, water, fish & wildlife, pasture, genetic resources and even the funding so necessary to support and build Indigenous peoples' capacity to participate in decision-making around resource use and management. These resources are now part of a global trading regime serving the development of powerful nation states and transnational corporations. Indigenous peoples worldwide continue to struggle to be heard and find ways to address the land use and conservation issues that arise over these contested resources and, in some cases, threaten their very existence. At

IASCP 2004, the voices of Indigenous representatives mixed with those of academic researchers in an exploration of issues grouped under the sub-themes of Indigenous rights, governance, knowledge and land use, and economic development.

### INDIGENOUS RIGHTS

International legal regimes are evolving and, with the collective pressure of Indigenous peoples, international mechanisms are beginning to reflect the realization that the right to self-determination applies not only to nation states, but to the many Indigenous nations within those states. The establishment of the United Nations Permanent Forum on Indigenous Issues (UNPFII), in 2000, with its mandate to "discuss Indigenous issues related to economic and social development, culture, the environment, education, health and human rights" (UNPFII 2005), illustrates the growing global recognition of Indigenous issues.

The dilemma in recognizing Indigenous rights is how to reconcile those rights with the rights of nation states and private property regimes. There is wide variation among nations states with regards the recognition of Indigenous rights. Very few countries have incorporated a recognition of Indigenous rights into their national constitutions. Even

these countries flounder when it comes to putting such recognition into practice. The United Nations itself is restricted in dealing with the collective nature of Indigenous rights by its narrow view of individual human rights and protection of the concept that nation state sovereignty is sacrosanct (Overmyer-Velázquez 2003).

Caddy illustrates well from a Mayan perspective how Indigenous rights, in particular those regarding communal land tenure, are circumscribed by the nation state. She points to the importance of “analyzing socio-political contexts and conditions when considering Indigenous common property systems”. Although Caddy’s essay is specific to Mayans in southern Belize, the lessons are mirrored in other Indigenous peoples’ attempts to maintain their customary systems.

Gibson, on the other hand, turns to the international arena to explore models to protect “local’ customary law, and the rights of Indigenous and traditional groups to manage resources, according to custom, within a transnational (as distinct from a ‘nationalistic’ international model) system.” She finds, however, that the international regime for protecting intellectual property rights is flawed when it comes to protecting Indigenous peoples’ traditional knowledge, again because of the support for the concept of nation state sovereignty. She proposes a new

body within the United Nations framework committed to community, cultural diversity, and traditional knowledge.

Smith argues that Indigenous rights must be understood to be an essential element of the sustainable forest management paradigm. The recognition of Indigenous rights “necessitates the joint development between Indigenous peoples and the state of new institutions for the management and use of forest resources”, among them shared decision-making and mechanisms for conflict resolution, assessment and monitoring.

Caddy, Gibson and Smith concur with many of the Indigenous theme presenters at IASCP in recognizing that rights and governance are inextricably linked. In spite of the limitations, setbacks and ignorance of Indigenous rights, many presenters remained optimistic that Indigenous rights could co-exist with nation state and individual rights, on the premise that the full, free and informed consent of Indigenous peoples must be sought in natural resource development and management. The principle of informed consent is the key to curbing the expropriation of, and incursions on, Indigenous lands.

Perhaps not an emerging issue, but more of a persistent one, it was clear from the presentations that Indigenous peoples have defended and will continue to defend and advocate for recognition of their rights.

## GOVERNANCE

The conservation of global forest resources, especially biodiversity, is at the top of the agenda for many researchers, non-governmental and governmental organizations. However, Indigenous peoples argue that self-determination must come first before conservation issues can be effectively addressed. Caddy points out the folly of conservation efforts that ignore Indigenous land tenure: “... without secure land tenure for rural communities, Indigenous or otherwise, the protected areas and natural resources that these [conservation and development] organizations seek to conserve or sustainably develop are likely to be degraded over time, as the deficiency of available lands on which to eke out livelihoods forces indigenous peoples to invade them for survival.” Her arguments are mirrored in the international debate that global conservation organizations are promoting their goals at the expense of local peoples (Chapin 2004).

What are Indigenous governance systems and why are they so important? Integral to governance are Indigenous property rights, usually collective in nature and held in common. Traditional governance systems, as much as they have been modified by colonial actions (as pointed out in the Mayan case by Caddy), include the customary laws that informally, and

usually orally, codified the rules for resource use and stewardship. The integrity of traditional governance systems is essential to better resource management. As Gibson points out, top-down approaches will not accomplish this task: "The protection of resources must be in the context of pre-existing customary law, governed by community, rather than subordinating such laws to the relatively recent invention of intellectual property rights".

How can Indigenous governance be addressed? Presenters pointed to cross-scale linkages and relationships between Indigenous institutions and public administrations. Such relationships are not and should not be restricted to a local level, but must be negotiated at regional, national and international levels. Space has to be created, some kind of "middle ground" as Colchester and MacKay (2004) put it, for negotiations and conflict management with states.

## KNOWLEDGE & LAND USE

Definitions of Indigenous ecological knowledge (often called "traditional" or TEK) abound, but all recognize it as being borne out of Indigenous peoples intimate connection with the land. Berkes (1999:8) defines it as "a cumulative body of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cul-

tural transmission, about the relationship of living beings (including humans) with one another and their environment." Many examples of Indigenous adaptation based on their ecological knowledge were offered during IASCP 2004.

Both Indigenous knowledge and land use has a political component, both as an element of the Indigenous movement for self-determination and as commodities in our global capitalist system. Gibson points out that "the appropriation of Indigenous traditional knowledge and resources... usually involves the physical removal, through actual harvesting or through adaptation of methods and knowledge to other products, such that those resources become commodified as objects or goods of international economic value." Caddy emphasizes the importance of understanding the political context: "Indigenous common property systems are indeed extremely influenced by the political frameworks in which they are situated, which can either strengthen or undermine their long-term viability, and potential contributions to modern resource management initiatives."

Again, as with Indigenous rights, the multi-faceted issues surrounding the ownership, maintenance and use of and sharing of benefits from Indigenous ecological knowledge persist with the determination of Indigenous groups, and waiting for solutions. As

with rights issues, the evolving international legal regime around intellectual property rights can either remove this knowledge from Indigenous peoples' control or provide mechanisms, as Gibson suggests, to ensure that control remains in community hands.

## ECONOMIC DEVELOPMENT

Economic development for the world's impoverished Indigenous peoples continues as a central focus in Indigenous communities, development agencies and nation states. A recent World Bank report (Hall and Patrinos 2005), *Indigenous Peoples, Poverty and Human Development in Latin America: 1994-2004*, found the following:

- \* "Few gains were made in income poverty reduction among indigenous peoples during the indigenous peoples' decade (1994-2004).
- \* Indigenous people recover more slowly from economic crisis.
- \* The Indigenous poverty gap is greater, and shrank more slowly during the 1990s.
- \* Being Indigenous increases an individual's probability of being poor and this relationship was about the same at the beginning and at the end of the decade.
- \* Indigenous people continue to have fewer years of education, but the gap is narrowing,

and education outcomes are substantially worse for Indigenous peoples, which is indicative of problems in education quality.

- Indigenous people, especially women and children, continue to have less access to basic health services.”

It is no wonder that economic development is often seen as a panacea to the unequal position of Indigenous peoples around the globe. But the question is, what kind of economic development and at what cost? Indigenous peoples point out that economic development since the industrial revolution has occurred on Indigenous lands with Indigenous resources without Indigenous peoples sharing in the resulting wealth. Nation states have argued that Indigenous rights to resources are limited to subsistence use, even in the face of evidence of Indigenous peoples’ historical involvement in trade and commerce. Are the options limited to Indigenous peoples becoming absorbed into the global capitalist system or staying mired in poverty and trying to eke out a living from subsistence activities?

Caddy illustrated through the Belize example how “the Maya’s livelihood strategies have been modified in response to available options”. The Mayans have maintained a mixed economy of traditional subsistence

activities while “cultivating permanent tree crops such as fruits, cocoa and coffee for household use and sale”. But Caddy points to the difficulty of maintaining this balance and finding culturally, socially and economically appropriate developments. Smith argues that the success of Indigenous economic development should be analyzed within a comprehensive framework with the community as the unit of analysis to address collective rights, assessing the extent of the recognition of Indigenous rights and the development of appropriate institutions. She suggests that the sustainable development or sustainable forest management paradigm provides the critical social, economic and environmental elements, but for Indigenous communities the cultural element should be added.

Other presenters suggested appropriate forms of economic development included cultural ecotourism, non-timber forest products and environmental services. Others pointed out that market integration is not in itself destructive to Indigenous communities, but it must be those communities that decide the nature of the development, including poverty alleviation measures, and the transformation of their institutions to accommodate their participation in any development they choose.

## CONCLUSIONS AND RECOMMENDATIONS

IASCP 2004 strengthened the relationship and commitment between Indigenous peoples and common property researchers. By raising Indigenous rights to a theme level, the conference organizers recognized the most important and most difficult question to address: How do we work together—Indigenous peoples, researchers/academics, non-governmental and governmental organizations—to understand, respect and promote Indigenous rights and land uses? Several recommendations emerged from the conference.

Further research is needed to address the major institutional issue (barrier) of reconciling nation states’ sovereignty and laws with Indigenous peoples’ sovereignty and customary laws.

There is a need for cross-continental comparative studies *with* Indigenous communities as a tool to share and learn from the experiences not only of Indigenous groups, but also the nation states and stakeholders within their boundaries who are grappling (or ignoring) the issue of Indigenous rights.

The promotion of shared learning, appropriate research methods, including participatory research approaches, needs to be supported.

Finally, groups such as IASCP should continue to support Indigenous Peoples, providing the space for them to speak at conferences and be involved in research projects, and continue to support publications such as this one that focuses on such important Indigenous issues.

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