

4.6 The WaiWai Protected Area – Our Land: Our Life

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Abstract

The WaiWai, one of Guyana's indigenous Amerindian peoples, live in a remote area of Guyana. In the space of five years they have moved from being the least known and least understood of Guyana's tribes to being Guyana's largest landowners and the first (and only) creators and managers of an Amerindian protected area in Guyana. In doing so they overcame problems in the national legal system and interference from non-governmental organisations.

4.6.1 Introduction

The WaiWai live in southern Guyana, as far from Georgetown, the capital, as is possible within the boundaries of the country. Long regarded as Guyana's least 'developed' and least-known tribe, they are highly esteemed for constructing Georgetown's spectacular Umana Yana, a traditional WaiWai building of wood and leaves built in 1972 in preparation for the Non-Aligned Foreign Ministers Conference. Ever since, the building has been regularly used for national celebrations and official functions.

In 2003, the WaiWai owned no land and the future of this small remote community of 200 persons seemed insecure and uncertain. According to World Bank data, Guyana is one of the poorest countries in South America. For revenue, Guyana is heavily dependent on the exploitation of its natural resources – agriculture, mining, forestry, and the trade in wildlife – all of which have a damaging impact on biological diversity, the maintenance of ecological processes, and the sustained flow of environmental goods and services. Conversely, the State has an obligation to secure investment, reduce unemployment, and ultimately achieve a higher standard of living for all of its citizens. Consequently, there was a real risk that at any time the State might decide to open up the southern forests of the WaiWai in the interests of 'national development'.

But, in less than five years the WaiWai became Guyana's largest landowners controlling a territory of 2,300 square miles and creating and managing Guyana's first and only Amerindian protected area. The WaiWai have remained true to their values. They have designed their protected area to preserve biodiversity, to preserve their traditions and way of life, and to provide for community and family development. Through their extraordinary achievement, the WaiWai are a powerful contemporary and inspirational example of governance for sustainability.

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4.6.2 Description

The key sustainability challenge for the WaiWai was to ensure forever the protection of the land they occupied, used, and regarded as theirs. The WaiWai faced two enormous obstacles to their vision of governance for sustainability. The first was to obtain ownership of the land and the second was to ensure its protection. In 2003 the economic, legal, and political environment seemed to offer nothing but obstacles to sustainability.

Under Guyana's legal system all land that is not held by a title document legally belongs to the State. An Amerindian community, which does not have a legal title issued by the State, is regarded under Guyana's laws as occupying and using State lands. In 1976, the *Amerindian Act (Cap 29:01)* recognised various areas occupied and used by Amerindian communities as Amerindian land. More communities were granted land in 1991. President Desmond Hoyte then issued formal titles to all 74 communities. The titles were an important step forward, but without an official map it was very difficult for Amerindian communities to prove their boundaries. Across Guyana, Amerindian communities suffered the deleterious effects of illegal encroachment and exploitation of their resources by miners and others.

The WaiWai land issue was first addressed formally in 1969 by the Amerindian Lands Commission. This Commission was set up by the newly independent Government to examine Amerindian land claims and recommend lands that should be titled to Amerindians. It recommended that the southern portion of Guyana should be set aside as a district for the WaiWai. This area had been identified by Robert Schomburgk, in 1840 as being occupied by the 'Woy Woy' (WaiWai) and was marked accordingly on his sketch map of British Guiana.⁴⁴¹ The WaiWai land was clearly separated by rivers and natural boundaries from the Atorad, Taruma,⁴⁴² and Wapishana lands further to the north.

However the Amerindian Lands Commission did not recommend a land title for the WaiWai because of the 'mobility and recent movements of the people'.⁴⁴³ In 1949 when the Unevangelised Field Mission was established at Kanashen, the WaiWai population in Guyana was registered at 46 people. When the mission was set up, Brazilian WaiWai moved to Guyana along with what the Commission called 'allied tribes' – the Katakawina and Cikiyana. The population at the time of the Amerindian Lands Commission Report in 1969 was estimated at about 700, but it was unclear what the future population was likely to be. In 1976 The WaiWai area was established as Kanashen District under the *Amerindian Act* with the State retaining ownership. In 1992 Minister Vibert de Souza, Guyana's first Minister of Amerindian Affairs, assured the WaiWai that the Kanashen land was theirs and the Government would not interfere with them or grant the land to anyone else. The Government honoured his words, but the WaiWai were in a weak legal position and

⁴⁴¹ Robert Schomburgk, *A Description of British Guiana*, 1840, Frank Cass & Co. Ltd: London, reprinted 1970.

⁴⁴² The Atorad and Taruma are no longer officially recorded in Guyana and their traditional lands have been taken over by the Wapishana.

⁴⁴³ Report of the Amerindian Lands Commission, August 1969 Paragraph 290.

vulnerable to a future change in Government or policy. National law contained no formal procedure by which the WaiWai could apply to have their ownership of Kanashen recognised by the Government. The WaiWai were therefore dependent on the Government if they were to obtain title to their land.

At the national level the political relationship between Amerindian communities and the Government was less than cordial, and at times it was tense and adversarial. Amerindian communities complained that the Government was failing to deal with their land claims. The Government's attempts to demarcate the existing land titles, as requested by the Amerindian leaders in 1995, was held up as the result of a campaign against demarcation by the Amerindian Peoples Association, a local non-governmental organisation (NGO) based in Georgetown.⁴⁴⁴ There were suggestions from outside the community that the WaiWai should file a land claim and force the Government to grant title. However the Guyana justice system is slow – a land claim filed in 1998 by Amerindian communities in the Upper Mazaruni was still before the court in 2008.

The WaiWai preferred a non-confrontational approach choosing instead to work through the democratically elected leaders of their community and the Office of the President. In a respectful and dignified letter, Paul Chekema, *Kayaritomo* (chief), wrote to the Government requesting title to Kanashen. The WaiWai discussed their land claim with the new Minister of Amerindian Affairs, Minister Carolyn Rodrigues. On 10 February 2004, acting upon the advice of the Minister and with the support of the Cabinet, President Bharrat Jagdeo issued a formal land grant to the WaiWai community for the entire area they had claimed. The WaiWai title was granted 'absolutely and forever'. Most importantly it was **collective** – the land was granted 'for and on behalf of the Community' to the people **themselves** – not to an NGO or a trust or any individuals. As a form of collective **private property** that title is constitutionally protected against a taking by the State.

Kanashen consists of mostly natural boundaries and **preparations** were underway in 2008 for the demarcation of the land boundary by the **Guyana** Lands and Surveys Commission in partnership with the WaiWai. The WaiWai **had** got their land title and achieved their first objective.

The WaiWai community could now practise their traditional way of life secure from the threat that the Government could use the land for other **purposes**, but they could not stop others from trespassing and taking resources from their territory. There were fears of incursions from Brazilian miners. The WaiWai rules regarding wise use of their land were binding on members of the community as a matter of custom and tradition, but the WaiWai had no power to enforce those rules against outsiders.

The WaiWai had long expressed a desire that their land should be recognised as a protected area thereby giving it legally recognised and enforceable conservation status. Since 1996, the Government had been proposing to set up a national protected areas system with funding from the Global Environmental

⁴⁴⁴ Amerindian Communities subsequently agreed to demarcation and in the space of three years the amount of Amerindian owned land doubled as these claims were settled amicably with the Government.

Facility (GEF). In February 2004, shortly after receiving their title, the WaiWai wrote to the Government asking it to proceed with the process leading up to establishing a protected area in Kanashen. In December 2004, the WaiWai signed a Memorandum of Cooperation with Conservation International, an NGO, and the Government. Conservation International agreed to provide technical support to help the WaiWai set up their own protected area. The Government confirmed they had no objection to the WaiWai protected area being recognised as part of the national system. But it was not to be. The Amerindian Peoples Association in Georgetown and the Forest Peoples Programme in the United Kingdom objected to protected areas and opposed the Government of Guyana/GEF project. In 2006, after ten years of missions from the World Bank, the implementing agency for GEF, the project was dropped. In the absence of a protected areas system there was no legal mechanism the WaiWai could use to ensure the protection of their land. The WaiWai would have to find another way.

That opportunity arose in the context of new national legislation. There had long been a national consensus that the old *Amerindian Act* (Cap 29:01) was outdated, patronising, and based on a paternalistic notion of Amerindians as children of the forest who were not able to make proper decisions. In March 2006, after extensive national consultations, the Government passed a new *Amerindian Act*, which demolished the previous regime and replaced it with collective governance. The *Amerindian Act 2006* gave Amerindian communities sweeping powers over their lands. The elected Amerindian Councils now had the power to make rules for the management, use, preservation, and protection of their lands and resources including rules to restrict hunting, fishing, trapping, poisoning of rivers and creeks, and the burning of forests and savannahs. Once the rules had been published in the *Gazette*, they would be legally binding on everybody within Amerindian lands. Violators could be fined by the community and if they failed to submit to the jurisdiction of the community or to pay the fine, the State could enforce the penalty with an additional fine or imprisonment.

In effect the WaiWai already had a protected area. Their traditional rules provided for protection of certain areas and wise use of their resources. The *Amerindian Act 2006* gave them a way to enforce this *de facto* protected area, but they faced a new problem. Law making is a difficult process and the WaiWai rules would have to comply with the Constitution and with national legislation. The WaiWai community decided to seek legal advice. This was a difficult step. There had never been a lawyer in Kanashen. For many Amerindian communities national law seemed like an alien system imposed from outside: restrictive, confusing, and contrary to the Amerindian way of identifying and solving problems together. The WaiWai consulted trusted advisers and in March 2007 selected the first-named author as their legal adviser. Within a month, the first meeting took place in Kanashen. The community members compiled all the rules that applied within their village and decided which of these rules visitors would have to obey. They developed new rules specifically to cope with threats from outsiders. Based on instructions from the WaiWai, draft legal rules were prepared, discussed, and agreed with the community. The draft rules were then left with the community to reflect on, in their own time, before making a final decision.

At the request of the community, the second legal meeting took place in July 2007 in Kanashen. The community reaffirmed their decision to create a protected area. They requested that the rules go a step further and set out the community's determination on how their land should be zoned. There followed another week of in-depth discussions on existing land use, the community's vision for the future, and the need to ensure the right balance between protection and use of resources. The boundaries of each zone were set by the community leaders along with details of the kind of use that would be allowed. Two vast stretches of land in the west were set aside as a strict nature reserve and a wilderness area respectively. Following instructions from the WaiWai a mapping expert from Conservation International prepared a digital map of Kanashen showing the zones. On 25 July, at a community general meeting, called specifically for this purpose, the leaders presented and explained the zoning and the different uses of each area. Once more the leaders presented and explained each rule. When the community was ready, the matter was put to a vote and agreed unanimously. The resolution was formally recorded in the recitals to the rules:

Whereas

... in a resolution made on 25th July 2007, the Amerindian Village of Kanashen has approved the creation of a protected area over their Village lands comprising Kanashen and have resolved to manage their lands as a community owned conservation area ...

Kayaritomo Sose was authorised to present the rules to the Minister of Amerindian Affairs and request that she gazette them. The presentation of the rules and the map took place a few days later in the Minister's office in Georgetown. The Minister approved the rules without delay and in September 2007 they were published in the *Gazette*. On 26 September, in Kanashen, in the presence of Minister Rodrigues, WaiWai visitors from Brazil, and Trios from Surinam, the WaiWai protected area was formally launched as the WaiWai Community Owned Conservation Area. The WaiWai had achieved their second objective and in doing so had created Guyana's first Amerindian owned protected area.

4.6.3 Evaluation

The WaiWai experience is a story of hope and success based on the WaiWai vision. In a 2007 telephone interview⁴⁴⁵ *Kayaritomo* Sose confirmed, 'We want to protect our land for our way of life and also for our future generations'. Long before inter-generational equity became fashionable in national and international discourse, it was a way of life for the WaiWai.

The WaiWai protected area in Kanashen is a living example of governance for sustainability. The WaiWai seek to maintain their traditional relationship with the land through the protected area. The land is not a commodity to be exploited or sold. The community sets limits on what may be taken from the land and rivers, regulates the numbers and type of fish that may be caught, and sets hunting seasons for animals. Kanashen is a community of life not just people. A

⁴⁴⁵ Conducted by MSNBC at the Latin American Parks Congress in Bariloche, Argentina in September 2007. www.msnbc.msn.com/id/21148934/

fundamental principle is that everything taken from the land must be used, nothing is to be wasted. If one person has more than he can use, it is shared not sold. The relationship is ecological not material. The WaiWai control who may enter their territory and visitors are not allowed to take anything from the land. While the community undoubtedly have the ability to manage their lands, the creation of a protected area offers a way for the WaiWai to formalise and increase their knowledge and to gain income through conserving their lands. They intend that their children, not outsiders, will be the scientists, managers, and other skilled personnel who run the formal protected area. They have used a grant from the Office of the President to establish their office. They have a record keeper, conservation rangers, and a management team, all women and men of the community.

The WaiWai Community Owned Conservation Area is based on a strong sense of national and global responsibility. The headwaters of Guyana's largest river, the Essequibo, are in Kanashen, effectively making the WaiWai protectors of the country's largest source of fresh water. In their Memorandum of Cooperation the community referred to their aim of 'conserving the locally, nationally, internationally and globally important ecosystems and biodiversity'.

Many societies are now struggling to come to terms with the damage they have been inflicting on global environmental systems and processes. In contrast the WaiWai have a well-developed sense of the relationship between personal and planetary well-being and human health, an essential element of governance for sustainability.

The WaiWai were able to overcome all the obstacles and achieve their aims by retaining control at all stages of the process. They dealt directly with the Government rather than working through NGOs or other intermediaries. The Memorandum of Cooperation of 2004 made it clear that neither Conservation International nor the Government acquired any legal rights or decision-making power in respect of Kanashen. Their roles were to support the decisions made by the community. Those decisions were strong and legitimate because of the WaiWai's system of governance, which differs from that of other Amerindian Communities. In addition to the *Kayaritomo* and elected Village Council, there is a second layer of decision makers that includes women, elders, resource users, and conservation rangers. This group takes part in all major discussions. Once the Village Council and this wider group have agreed what should be done, they hold a Village meeting at which the recommendation is presented and explained to the community. No action is taken unless the community agrees. All steps taken by the WaiWai leaders were in reality steps taken by the community – governance by the people rather than mere public consultation and participation.

A related factor was the legitimacy of the decisions and actions of the Government. The Government clearly had the legal power to act as it did but its legitimacy was demonstrated by the level of Amerindian involvement in the political and legal structure. Both Ministers of Amerindian Affairs involved in this issue were themselves Amerindian. The *Amerindian Act 2006* which provided the legal basis for the WaiWai protected area was developed after three years of consultations

with Amerindian communities – a process designed by the Government with Amerindian leaders and Amerindian NGOs. The recommendations from the Amerindian communities formed the basis of the law. When the draft law was sent for review to a Parliamentary Select Committee, three out of the seven Members of Parliament on this Select Committee were Amerindian. Even the terms of reference for the revision of the old *Amerindian Act* had been set by an Amerindian Member of Parliament, Matheson Williams, in a resolution to the National Assembly that was passed unanimously by Government and Opposition.

The process also demonstrates the importance of taking the necessary time to allow the legitimate institutions of a democratically elected government to work effectively. The WaiWai were non-confrontational, patient, and responsible. The *Kayaritomo*, the elected head of the WaiWai, wrote to the elected national government and the relationship between the Government and the WaiWai was based on mutual respect. Ultimately success depends on the individuals involved and it was the integrity of the WaiWai community, the President, the Minister of Amerindian Affairs, and other Government officials that made the WaiWai Community Owned Conservation Area possible. This success was achieved despite interference from non-elected NGOs such as the Amerindian Peoples Association and the Forest Peoples Programme claiming to speak on behalf of Amerindians in Guyana. Even before the WaiWai got their land, the Amerindian Peoples Association had condemned the Government for trying to establish a protected area in southern Guyana and had implied that the WaiWai did not understand the issues.⁴⁴⁶

One lesson that can be learned is to respect community decisions. In 2004 the WaiWai were advised not to accept their land title because it did not transfer to them ownership of minerals. The WaiWai have demonstrated that they are more than capable of making decisions for themselves and do not need anyone else to speak for them. Today the WaiWai have banned all mining on their lands and are able to enforce that ban because the *Amerindian Act 2006* gives Amerindian communities a veto over mining. And although they do not own the minerals, the WaiWai are able, should they choose, to carry out traditional mining in Kanashen without first seeking permission from the State.

Another significant factor is that the WaiWai sought legal, scientific and management advice from experts before taking a decision, thereby ensuring that their decisions were well informed. They chose carefully whom they would work with and consulted people they trusted, but ultimately each decision belonged to the community. They also focussed on problem solving. At a time when NGOs and other communities were engaged in confronting the Government, the WaiWai found solutions within the political and legal framework.

The Convention on Biological Diversity requires a State (subject to its national legislation), to respect, preserve, and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. Consequently communities are dependent on the State for recognition of their

⁴⁴⁶ www.wrm.org.uy/countries/Guyana/areas.html

traditions and knowledge. The Kanashen Community Owned Conservation Area turns this way of thinking on its head. The protected area is based on WaiWai knowledge, competence, and control. The State has no power to interfere with the WaiWai way of life. On the contrary the State has given up control to the community. The result is that a vast area of Guyana is now conserved for future generations.

In doing this the WaiWai have remained true to the vision of Elka, their former chief who, 40 years ago, dreamed of a future in which the southern forests would be protected from plunder and forever be a home for his people.

4.6.4 Conclusion

It is always difficult to look at what happens in one country and seek to apply it elsewhere. This case study demonstrates the importance of accountability, legitimacy, and integrity and of community control. The creation of the Community Owned Conservation Area in Kanashen offers at least one major point for reflection. Between them the WaiWai and the Government have put in place a new paradigm. In a world that is dominated by markets and the commoditisation of everything whether material such as land, or abstract such as knowledge, the WaiWai land cannot be sold or mortgaged. As the Inter-American Court of Human Rights confirmed:

For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.⁴⁴⁷

The WaiWai are fully able to do this. The *Amerindian Act 2006* recognises the spiritual relationship and cultural attachment which Amerindians have with their land and makes Amerindian land inalienable. Instead of seeking revenue from mining, forestry, and other damaging exploitation, the WaiWai intend to earn income by protecting their land. This approach has support from President Jagdeo who has repeatedly said that Guyana is willing to conserve its forests to mitigate climate change, but must receive economic benefits for doing so.⁴⁴⁸ In congratulating the WaiWai on their Community Owned Conservation Area, President Jagdeo linked their success to the global issue of climate change, pointing out that the WaiWai voice needs to be taken seriously.

As Major-General (ret) Joe Singh, an honoured friend of the WaiWai for over forty years, stated at the official launch of the protected area in Georgetown,

The WaiWai will prove to all that they are worthy stewards of the environment and its ecosystems.⁴⁴⁹

His words captured the national consensus.

⁴⁴⁷ The Mayagna (Sumo) Awas Tingni Community V Nicaragua, Judgement of 31 August 2001, Inter-Am. Ct. H.R., (Ser.C) No.79 (2001).

⁴⁴⁸ www.op.gov.gy/speeches/CFMM2007.html

⁴⁴⁹ www.guyanachronicle.com/ARCHIVES/archieve%2028-10-07.html#Anchor-----38457

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