

# **Forest Peoples Programme Bank Information Center**

A Discussion Document

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### *The Guyana National Protected Areas System Project:*

Case study prepared by the Patamona Community of Chenapou  
and the Amerindian Peoples Association of Guyana  
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## **Executive Summary**

This case study examines a GEF/World Bank project from the perspective of an Indigenous community and organization from Guyana. It provides some background information on the situation of Indigenous peoples in Guyana; an overview of the objectives and history of the project; analyses the project in terms of its compliance with Operational Directive 4.20; and ends with a number of concluding remarks. The views of the APA and Chenapou are presented throughout the various sections of the case study.

The Guyana National Protected Areas System project is a GEF-funded, World Bank implemented project that seeks to establish a series of protected areas in Guyana. While the underlying objectives of the project are supported by most Indigenous peoples in Guyana, the project has generated considerable conflict because of the failure of the Government and the World Bank to adequately address Indigenous lands rights and other attendant issues, such as legislative reform.

Settling Indigenous land rights concerns in Guyana is an issue dating back well into the colonial era. An attempt was made in 1967-69 by the Amerindian Lands Commission, which recommended that 128 villages receive title to 24,000 square miles. To-date, title has been issued to only 74 communities for a total of 6000 square miles. Many communities remain without title and many others are demanding extensions of existing titles as the areas are too small to sustain the community. In recent years the Government has issued vast areas of the country to multinational and local logging and mining interests, further restricting Indigenous subsistence options. In some cases these interests are working on Indigenous lands, both titled and untitled, and have caused severe environmental problems.

Conflict is also in large part related to inadequate consultation and lack of Indigenous participation in the project's design and implementation mechanisms. While the Bank and Government have asserted that Indigenous peoples' fully participated at all stages of the project to date, this case study concludes that this was not the case.

The NPAS project has not been approved by the Bank or the GEF yet because the Government is refusing to address Indigenous concerns about the issues noted above. Moreover the Government is threatening to withdraw altogether from the project on the grounds that Indigenous land rights are an unrelated issue that should not be dealt with in a protected areas project.

While the Bank has looked to Operational Directive 4.20 in formulating the project, we conclude that in certain respects the project does not comply with the directive. This is particularly true for the manner in which Indigenous land rights are addressed, the failure of the Bank to require that legislation that substantially compromises security of tenure be revised and the manner in which Indigenous peoples' have participated and will participate in the project in the future. Not only is this contrary to internal Bank policy, it also runs counter to contemporary policy on protected areas and Indigenous peoples adopted by the World's major conservation institutions.

The case study also concludes that the Bank disregarded its own reports commissioned for the project in favour of information provided by the Government, even when this information directly contradicted those reports. The impression this gives is that the Bank was more interested in moving the project to implementation than in ensuring that the project was consistent with OD 4.20 and the rights and well-being of Indigenous peoples.

## Introduction

This case study evaluates the Global Environmental Facility's (GEF) Guyana National Protected Areas System (NPAS) project from the perspective of the Indigenous community of Chenapou, directly affected by the project, and the Amerindian Peoples Association, a national Indigenous peoples' organization and authorized representative of the community. The World Bank is the implementing agency for the project. In addition to community views on the project, various Government of Guyana (GoG), World Bank and other documents related to the project are referred to.<sup>1</sup> These documents are cited in the endnotes and bibliography.

The primary aim of NPAS is to establish a series of protected areas (two initially) in Guyana and to develop the institutional capacity to adequately manage the biodiversity, tourism and administrative functions of the system. Presently Guyana has only one protected area and its substantial tropical forests are threatened by pressures from extractive industries, both large- and small-scale. The first protected area to have been identified under NPAS is the expansion of Kaieteur National Park, home to the famous Kaieteur Falls, the world's largest single drop waterfall. This same area is also part of the ancestral lands of the Patamona people, particularly the community of Chenapou that lies in close proximity to the park.

Although the NPAS project has laudable objectives that are supported by the vast majority of Indigenous people in Guyana, to-date it has been the cause of substantial concern among them at both the local and national levels. Generally these concerns relate to the recognition of and respect for Indigenous rights, especially land rights, that are implicated and threatened by project activities. The underlying causes of these threats, which have not been adequately addressed in the project, are also a major cause for concern (see Section I below). Failure to adequately address these issues has resulted in a serious confrontation between Chenapou, the GoG and the Bank that has stalled implementation of the project and may ultimately lead to litigation that may either substantially delay or force closure of the project.

While the project has looked to and utilized Operational Directive 4.20 on Indigenous Peoples (OD 4.20), in a number of respects it falls short of or directly contravenes the standards set therein. We believe that many of the problems presently associated with the NPAS project could have been avoided, or at least substantially minimized, if OD 4.20 had been observed with greater diligence. Having said this, however, unless read liberally, the protections found in OD 4.20 are not strong enough to provide effective guarantees, both in connection with NPAS and in general, and should be amended to accord with the rights of indigenous peoples as defined by international human rights standards.

This case study will not directly deal with larger issues related to reform of OD 4.20; it focuses on the NPAS project and its impact upon Chenapou and other indigenous communities in Guyana. The first section provides some background information on the general situation in Guyana and issues of relevance to indigenous peoples, particularly land rights, as well as some general information about Chenapou. This background information is necessary for understanding the context within which NPAS is situated and many of the criticisms leveled against it. The second section provides a brief overview of the terms and objectives of the project itself. This is taken largely from the Project Information Document (PID) and related documents. This section also reviews the history and current status of NPAS. The third section deals with NPAS in terms of its compliance with OD 4.20. The final section contains a number of concluding remarks.

## **I. Indigenous Peoples and Land Rights in Guyana**

There are nine Indigenous peoples in Guyana (known as Amerindians) comprising between 8-10 percent of Guyana's population of approximately 800,000.<sup>1</sup> They occupy the vast majority of the forests and savannahs of the interior - 90 percent of the country - while the rest of the population (Afro-Guyanese, Indo-Guyanese, Chinese, Europeans and others) live along the narrow coastal strip. According to all economic indices, Amerindians are the poorest and most disadvantaged sector of the population.

While Amerindian concerns are multi-sectoral, the resolution of outstanding land rights issues and legislative reform are high priority concerns. The need to address these issues has become urgent in the past decade as the government has sought to generate revenue from logging, mining, large-scale agriculture and other destructive and potentially destructive activities. Logging and mining concessions cover substantial areas of the interior – the last two mining concessions granted cover one-quarter of the country and encompass up to 50 Indigenous villages – and have caused numerous problems for Amerindians, the majority of whom are dependent on the productive capacity of their environment for their basic subsistence needs. While many Amerindians believe that protected areas may help reduce these pressures on their lands and resources, the only protected area created to-date, the expanded Kaieteur National Park, has proved to be equally intrusive and threatening to Amerindians rights and well-being, indeed more so in that all subsistence activities are prohibited, land rights have been extinguished and it is now illegal for Amerindians to even travel through the area (see Section II.B.4, below).<sup>2</sup>

The need to address Indigenous land rights has been an issue in Guyana for many years. In 1965, when Guyana's independence from the United Kingdom was agreed upon, the Independence Agreement obliged Guyana to grant "legal ownership or rights of occupancy over areas and reservations or parts thereof where any tribe or community of Amerindians is now ordinarily resident or settled and other legal rights, such as rights of passage, in respect of any other lands where they now by tradition or custom de facto enjoy freedoms and permissions corresponding to rights of that nature. In this context it is intended that legal ownership shall comprise all rights normally attaching to such ownership."

To implement this legal obligation, an Amerindian Lands Commission was established in 1967 and charged with compiling a report on Amerindian lands and making recommendations for titling those lands. Its report, issued in 1969, recommended that 128 Amerindian communities receive title to approximately 24,000 square miles out of the 43,000 square miles requested by the Amerindians themselves. The Commission's recommendations were not implemented until 1976, and then only partially, when 64 communities received title to 4500 square miles. Ten more communities were granted title in 1991, bringing the total to 6000 square miles, exactly one-quarter of that recommended by the Commission and a little less than one-seventh of that requested by Amerindians. Some 50 communities remain without any legal guarantees for their lands, lands that in many cases have been granted to logging and mining interests.

Since 1991 no additional titles have been granted; the only action taken by the government has been to establish a process for the demarcation of existing titles, a process that has been rejected by the majority of Amerindian communities who state that they will not accept demarcation until all outstanding land issues have been resolved. The Task Force on Demarcation, which oversees this process, is mandated only to demarcate existing titled areas. It held a number of regional

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<sup>1</sup> The nine peoples are: Arecuna (Pemon), Arawak, Akawaio, Carib, Macusi, Patamona, Warrau, Wapisiana and Wai Wai.

meetings with Amerindian communities in 1997, the duration of which averaged less than three hours. At these meetings the communities were asked if they would accept demarcation of their existing titles, told that no further land issues would be addressed by the Task Force and told that demarcation was a one time only offer, to be taken now or forsaken forever.

Even under these conditions, approximately 40 percent of the communities rejected demarcation and described the Task Force's activities as arbitrary and imposed. In a letter to the Bank, the APA stated that "In short, the government's Task Force on demarcation has been a sham that was imposed on Amerindian communities."<sup>3</sup> Some thirty communities that initially agreed to demarcation have subsequently either rejected it out of hand prior to the surveyors' arrival or after the surveys had been conducted. This occurred despite threats of imprisonment and legal action for breach of contract issued by both the surveyors and the Minister of Amerindian Affairs. To-date, only 16 communities have agreed to accept the document certifying the demarcation exercise.

Despite the language of the Independence Agreement requiring that Amerindians receive titles on an equal basis with other Guyanese, the legislation governing Amerindian lands, the Amerindian Act as amended in 1976, is replete with conditions and limitations that discriminate against Amerindians. Amerindian land titles may be revoked or modified under Section 20A(4) of the Act for the following reasons:

- (a) in the public interest;
- (b) for the state to resume occupation of lands up to ten miles from an international border "in the interest of defense, public safety or public order;"
- (c) if Amerindians sell or otherwise transfer rights to their titled lands or parts thereof, and;
- (d) titles are forfeited if at least two members of an Amerindian community have shown themselves to be "disloyal or disaffected to the state or have done any voluntary act which is incompatible with their loyalty to the state."

Also, under Sections 3 and 20A(6), respectively, the Minister may by the simple stroke of a pen, create, modify or abolish Amerindian titles and "suspend or apply modifications, qualifications and exceptions" to Amerindian land titles by issuing an order. In only one case (subsection (d)), is there a right to appeal the Minister's decision and only in the case of subsection (a) is the state required to compensate Amerindian title holders for expropriating or interfering with their property rights. According to a report commissioned by the Bank for NPAS, "The effect of these provisions is that the extent and continued existence of the Amerindian titles granted under the Act depend to a large extent upon the goodwill of the Government."<sup>4</sup>

This Act, which is largely based upon legislation dating back to the first decade of the 20<sup>th</sup> century, has been described by World Bank consultants as: "an old style statute, setting out a colonial structure of indirect rule" that is, "almost completely irrelevant to anything going on in Guyana on Amerindian questions;"<sup>5</sup> and, as "neo-colonial."<sup>6</sup> Furthermore, as has been pointed out on numerous occasions by Amerindian communities and organisations, the Act is outdated, paternalistic, discriminatory and offensive to Amerindians. The restrictions placed upon Amerindian property rights, among others, do not apply to any other property owner in Guyana and clearly violate the prohibition of racial discrimination contained in Section 149 of the 1980 Constitution.

Revision of the Act was first proposed in 1988 and a draft Amerindian Bill was circulated in the same year. What happened to the draft Bill is unknown and no further action on revision of the Amerindian Act was taken for a further five years. That action has proved to be equally

inconclusive. In 1993, the Guyanese Parliament authorised the creation of a Parliamentary Select Committee to revise the Amerindian Act. The mandate of the Committee is “to study the Amerindian Act and to make recommendations for its early revision on democratic lines, to enlarge self-determination of Amerindians.” However, since 1993, and its last meeting in 1995, this committee has not produced a single recommendation or conclusion and is effectively defunct. This was also noted in a report commissioned by the Bank for NPAS. Lack of progress is mainly because finances were not allocated to facilitate the Committee’s operations. It is also due to a complete lack of political will on the part of the government to constructively deal with Amerindian issues. Consequently, the Amerindian Act with all its deficiencies remains the primary law in Guyana dealing with Amerindian rights and land titles.

### **The Community of Chenapou**

Chenapou is a Patamona community of around 430 persons. It lies about 29 miles up the Potaro River from Kaieteur Falls at the northern edge of the ancestral lands of the Patamona. These ancestral lands cover a large area of the Pakaraima mountains stretching from the northern Rupununi savannahs in the south, into Brazil and the borderlands of the Upper Mazaruni Akawaio to the west, and out past Kaieteur Falls to the north. There are many archaeological sites near Chenapou and around the Falls, which itself is named after a Patamona hero. Chenapou received title to part of its lands in 1976, along with most of the other Amerindian communities in administrative Region 8; it made no request for title to the Amerindian Lands Commission in 1969.<sup>ii</sup> In recent years, Chenapou has made a number of requests to have its title extended, two of which encompassed lands within the extended National Park, where some of its subsistence activities take place. It has an elected Captain and Village Council, which represent the community and administer the titled area in accordance with the Amerindian Act. The border of Chenapou’s titled area is contiguous with the boundary of the extended Kaieteur National Park (KNP).

Chenapou is isolated from coastal society, the regional administration and from the surrounding Amerindian communities; the nearest settlement is an ten hour walk and the closest villages are two days hard trek through the forest. Its only reliable communication with the coast is through a radio connecting it with the APA central office in Georgetown. Most of the villagers have received only primary school education and most of those over 40 are illiterate. Hunting, farming, fishing and small-scale mining are the primary subsistence activities, with farming and mining ranking as the most important. All of these activities take place within and around Chenapou’s existing titled area, including the area encompassed by the National Park.

Chenapou presently holds the Chair of the Region 8 Amerindian Area Council. The Area Council, established in 1980s, is an umbrella body for the Patamona and other communities of Region 8 and meets quarterly. Its primary members are Captains and Village Councilors, who are elected by their communities to serve for two year terms. As such, the Area Council legitimately claims to represent the Patamona people as a whole. The Area Council has resolved on a number of occasions that Kaieteur is the patrimony of the Patamona people and, while it is not in principle opposed to protected areas, it will not accept expansion of KNP until all outstanding land rights issues for all the Patamona communities have been dealt with to their satisfaction. Indeed, GoG reports related to NPAS and available to the Bank note that as early as 1992 the community of Paramakatoi, a neighbouring Patamona village, had expressed concerns about the

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<sup>ii</sup> The Amerindian Lands Commission did not recommend that Chenapou receive title at all; it merely recommended that Chenapou receive rights of beneficial occupation over the area it now holds under the title granted in 1976. ALC 1969, 92.

expansion of KNP on the grounds that the entire area was the ancestral patrimony of the Patamona.<sup>7</sup> The Captain and Village Council of Chenapou hold the same position. This raises an important issue: who should the Bank/GoG involve in decision making pertaining to NPAS: only Chenapou or all of the Patamona communities? This will be discussed in greater detail below.

## **II. History and Current Status of NPAS**

This section will provide a review of the history and important points in the NPAS project. It will also note the current status of the project and, as the project has yet to be formally approved and is the subject of ongoing discussions between Amerindians, the GoG and the Bank, pending proposals for moving the project forward.

### **A. Aims and Objectives**

In the words of the Bank's Project Information Document (PID), the NPAS project seeks "to assist the GoG with the establishment of a representative system of protected areas . . ." and to "lay the necessary institutional, legal and technical foundation to create and manage a comprehensive protected areas system in Guyana and would finance the establishment and management of at least two (pilot) protected areas."<sup>8</sup> According to the PID, the project is intended to be carried out through a "phased, participatory approach involving all stakeholders, such as hinterland communities (including Amerindian groups and the mining and forestry sectors)"<sup>9</sup> and will include the following: (a) National protected areas system design, identification and selection of PAs; (b) Pilot protected areas; (c) Institutional strengthening and training; (d) Legislative, policy, and long-term financing framework; and, (e) Monitoring and evaluation. To be implemented over a six year period, project costs were estimated to be US\$9.8 million with co-financing to be provided by the European Union and the German Bank for Reconstruction (KfW).<sup>iii</sup>

### **B. Project History**

#### **1. First Steps and the Paramakatoi Workshop**

The NPAS project officially began in November 1994 with a Objectives Oriented Project Planning workshop in Georgetown, followed by a review of Amerindians issues in 1995 by an international specialist on land tenure<sup>10</sup> and an assessment of the potential impact of the project on Indigenous peoples by a cultural anthropologist.<sup>11</sup> To-date, neither document has been made available to Indigenous peoples in Guyana by the Bank or the GoG. The 1995 report by the land tenure specialist noted the following:

- The Amerindian Act is "colonial" and "almost completely irrelevant" to anything going on in Guyana;<sup>12</sup>
- While a Parliamentary Select Committee to revise the Amerindian Act was established in 1993, as of 1995, it had not produced any results;<sup>13</sup>
- The Amerindian Act "should be revised and an adequate system of Amerindian community government formalized, but resolving the land issue is far more pressing;"<sup>14</sup>
- "While there has been considerable attention to the issue of demarcation, it would be pointless to undertake an expensive demarcation project before resolving the many

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<sup>iii</sup> Project costs are broken down as follows: GEF US\$6.0 million, GoG counterpart financing US\$0.1 million, EU US\$1.3 million and KfW 2.4 million. World Bank 1998, 7.

outstanding issues over what lands should be confirmed as Amerindian lands, and what land use rights should be recognized.”<sup>15</sup>

- The Minister of Amerindian Affairs is developing a policy paper that will propose “a policy on lands that gives priority to land rights for landless communities and, secondly, to Amerindian requests for ‘extensions’ of existing Amerindian lands. This is a logical prioritization. It does not respond to the constant calls for ‘demarcation’ of Amerindian lands, but as suggested earlier, those calls are not well informed about the range of land issues that need to be resolved before an expensive project of surveys is undertaken;”<sup>16</sup>
- To avoid any negative impact on Amerindians caused by NPAS, the following steps could be taken: (a) the most “comprehensive way to deal with the many Amerindian land issues” would be a new Amerindian Lands Commission; (b) compiling information about Amerindian land rights; (c) local or regional land rights initiatives; (d) a “last alternative is to begin with land identified for formalization as protected areas;” and, (e) to begin to address use rights.<sup>17</sup>

In connection with point (d) above, the specialist is clear that this is a “last” or least preferred alternative.” He adds that “clear guidelines could be written on the requirements for the designation of an area as a protected area;” that the land “must not be within an existing reservation or that is the subject of a reasonable claim by an Amerindian group for reservation status” (unless a co-management arrangement would be acceptable to the affected communities); and, “the land must not be land that is being used by Amerindian people or for which use rights are reasonably being claimed” (unless the use patterns are consistent with protected area status).<sup>18</sup>

While the NPAS PID does state that areas under prior claim by Amerindians shall not be incorporated into protected areas without Amerindian consent, following the specialists recommendations, the Bank has chosen to ignore the underlying national problems related to land tenure, especially revisions to the Amerindian Act, in essence attempting to deal with the issue piecemeal. Moreover, as discussed further below, Bank staff have employed an overly strict interpretation of the language “prior claim” requiring that there must have been a formal request in writing submitted to the relevant authorities. In general, it must be said that the Bank staff have disregarded many of the observations and recommendations made by the consultants working on the NPAS project.

After these initial studies and meetings were carried out, the Bank and GoG organized a workshop in the community of Paramakatoi.<sup>19</sup> Held in February 1996, this workshop was attended by high GoG officials, Bank staff and by approximately 70 Amerindian village leaders and others. Amerindian NGOs, however, were explicitly excluded from attending the meeting and were forced to submit their comments in writing only. The object of the workshop was to share information on NPAS and to solicit Amerindian views about their participation in NPAS. The workshop was opened by late-President Cheddi Jagan, who was followed by various Ministers and others. All the officials stressed that Amerindian land rights were priority concerns, that the Amerindian Act needed to be revised and that to this end a second Amerindian Lands Commission would be established that would resolve the land rights issue once and for all. Amerindian leaders repeatedly stressed the need to resolve the land issue before protected areas were established, as did the written submissions of the Amerindian NGOs.<sup>20</sup> The official resolution of the meeting repeated this concern, stating that:

- Be it also resolved that the Amerindian Lands Commission be urgently resuscitated to address the long outstanding issue of land boundary demarcation so the process of settling this issue can be addressed and resolved.<sup>iv</sup>

The leaders further resolved:

- That there be an advisory body to the Amerindian Captains who will advise us on issues related to environment, social, economic and legal aspects that will affect the lives and interests of Amerindian Peoples by the NPAS.
- That we be privileged to select this advisory body on our own, as we feel that we are well capable of participating in this process.

To-date, the NPAS project has not incorporated any of these recommendations, even though they were unanimously adopted by Amerindian leaders at the only process that has come close to adequate consultation on NPAS so far. A follow up meeting was scheduled to be held in 1997, at which many of the issues discussed at Paramakatoi would be elaborated upon; this meeting did not take place. Furthermore, the Captains stated that all decisions made at Paramakatoi were preliminary and final decisions would be made at the follow up meeting. Exclusion of the Amerindian NGOs was vigorously objected to at the time of the Paramakatoi meeting, in large part because these organizations tend to be more familiar with policy and other issues affecting Amerindians, and therefore provide much needed advice, than community-based persons who are isolated from national and international developments. Despite these objections and numerous official statements from the Bank about the need to involve NGOs in its operations, the Bank acquiesced to GoG objections to the attendance of the Amerindian NGOs.<sup>v</sup> Also, with the exception of Chenapou, none the leaders heard anything more from the GoG about NPAS until April 1999, when a National Captains' Conference was held and it was discovered that an Order had been issued extending Kaieteur National Park (see below).<sup>vi</sup>

At the Paramakatoi workshop, Village Councilor, Ben Carter, made the following statement on behalf of Chenapou:

Many of us did not know the meaning of many of these things. We have nothing against the protection of our forest and rivers and their inhabitants. However, we must think about our own protection and environment. Our livelihood depends on hunting, fishing, farming and mining.<sup>[vii]</sup> The last is to earn money to purchase things that we do not produce. Hunting and fishing is done to feed our families. Our families do not own cattle farms or fish farms.

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<sup>iv</sup> According to Captains present at the Paramakatoi meeting, this resolution was referring to the entire process of address Amerindian land issues, including extensions and titles for those communities without, not simply the issue of demarcating boundaries, which is how the GoG has interpreted it.

<sup>v</sup> While this does not directly conflict with the letter of OD 14.70 on Involving NGOs in Bank-Supported Project (1989), it certainly raises doubts about compliance with its spirit.

<sup>vi</sup> In February 1996, interviews were conducted in Chenapou by the GoG Committee to expand Kaieteur National Park (Mr. Macsood Hoosein). At this meeting community members described their activities in the area proposed for expansion and the species used in hunting and fishing. In November 1996, the same Committee, as part of field reconnaissance work related to expansion of the park, held a village meeting in Chenapou. At no time at this meeting, which lasted one and one-half hours, was the community asked if they agreed to any of the proposals made by Committee members.

<sup>vii</sup> A number of Amerindians are engaged in small-scale mining activities in Region 8 and in other mining areas. This mining is primarily seasonal, with the agricultural cycle taking precedence, and utilises low impact technology. See, Roopnaraine 1996, for a detailed analysis of Amerindian mining in Region 8.

Our lands are located predominantly [sic] on low river banks and mountains. This means that when the river is high, the banks are covered. We do appreciate the importance of ecotourism in our area [near Kaieteur Falls], as this will certainly bring some amount of development. We are, however, worried about what will happen to us if our traditional hunting grounds come under the control of the parks commission. Will we be told when to hunt and when to fish? We would see this as telling us when we can feed our families, and this we would not like to have.

From a map of one of the proposed extensions of Kaieteur Park, we have noticed that our allocated area would be included in the park. We are not a people accustomed to confinement and some thought should be given to our position by decision makers.<sup>21</sup>

## **2. Questions from the GEF Secretariat and the Rapid Rural Appraisal**

In April 1997, a World Bank/GEF team traveled to Guyana to meet with GoG personnel involved with the NPAS project. According to the Aide Memoire developed after this mission, the mission was prompted by concerns raised by the GEF Secretariat relating to GoG land use policy and compliance with OD 4.20. In particular, the GEF Secretariat was responding to, among others, GoG plans to issue a number of large logging concessions (approximately three million acres in total) and the passage of legislation authorising these concessions.<sup>viii</sup>

In addition to discussing how the preceding could be reconciled with NPAS, the Bank raised the need for compliance with OD 4.20 and “discussed the specific steps the Government will take to promote the resolution of Amerindian land issues within the context of the establishment of NPAS.”<sup>22</sup> In connection with this, the Bank noted that it was pleased to learn that the GoG had taken steps to expand KNP and had established the Task Force on Demarcation of Amerindian Lands. The Bank offered to consider an IDF grant to fund the latter and the GoG agreed that it would submit a proposal to fund Amerindian participation in the demarcation process, training for Amerindians to conduct the surveys and demarcation and to purchase surveying equipment. According to the Bank, this proposal was not submitted. Amerindians have largely rejected GoG attempts to demarcate their existing land titles, generating considerable conflict. Why the Bank welcomed the establishment of the Task Force, when the process it employed was described by its own land tenure specialist as “pointless” if not preceded by a resolution of other outstanding land rights issues is unclear and disturbing.

The mission concluded with an agreement that the GoG would prepare an “NPAS Outline Strategy,” setting out the process by which its land use policy, including Amerindian “land claims,” could be reconciled with the objectives of the NPAS project. In particular, the outline strategy would describe the process for identifying protected areas and “outline efforts underway to resolve pending Amerindian land claims.”<sup>23</sup> It was further agreed that the outline strategy would be reviewed to determine compliance with OD 4.20 and the GoG would be notified if any further modifications were needed. There was no suggestion that Indigenous peoples should in any way take part in defining these processes or the underlying objectives, despite the fact that it

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<sup>viii</sup> In 1996, the GoG entered into Memoranda of Understanding with at least four large logging companies for the granting of ‘Exploratory’ logging concessions. As there was no basis in law for such concessions, the GoG hurriedly amended the Forests Act to allow for these concessions and issued a Presidential Order expanding the forests under the jurisdiction of the Guyana Forests Commission by some 11.4 million acres in Southern Guyana.

was well known at the time that Indigenous peoples throughout Guyana had strongly objected to the GoG's demarcation plans.

In June 1998, the GoG announced through the press that the Bank would approve the NPAS project in the coming months and work would begin to implement the project. Believing that further discussions were to be held on NPAS prior to approval, the APA wrote to the Bank to clarify the matter and to request additional information. The Bank replied and sent a copy of the NPAS PID, noting that a Rapid Rural Appraisal (RRA) had recently been conducted in Chenapou, at which it was learned that "Amerindian leaders in Region 8 have expressed unwillingness to endorse the proposed expansion [of KNP] until all outstanding land claims in the region are resolved."<sup>ix</sup> It added that "Given the great sensitivity of this issue, we have proposed further discussions with the Government and other relevant stakeholders in the hope that we may jointly be able to arrive at a satisfactory solution."<sup>x</sup> To the best of our knowledge, no discussions were held with Chenapou, the Region 8 Area Council, Amerindian NGOs nor Amerindians in general.

The RRA referred to above took place between 9-15 May 1998 and was conducted by four persons selected by the GoG, two of whom were on the Committee established to enlarge Kaieteur National Park and GoG employees, one was an anthropologist employed at the Amerindian Research Unit, University of Guyana, the other an official within the Ministry of Amerindian Affairs.<sup>xi</sup> Its mandate was to assess the impact of NPAS and the extension of KNP on Chenapou. In doing so, it investigated a variety of issues including: land titling status, location, settlement patterns, organization and skill base, health, education levels, resource base and local economy, and attitudes to the expanded KNP and protected areas in general. The report, which has never been made public or available to Chenapou or Amerindian NGOs, was issued in draft form in June 1998.

While we conclude that generally the report of the RRA team was flawed, particularly with regard to understanding Amerindian land rights and the way it carried out its mandate, it did identify a number of important issues and does support a number of the criticisms of NPAS made by the APA and others. While some of these criticisms are most appropriately directed at the GoG, many apply equally to the Bank. In particular, the RRA report explodes the claims of the Bank that Amerindians "participated fully in project preparation" and "were extensively consulted" on NPAS.<sup>24</sup> For instance, the report noted that there had been "insufficient consultation with people at the grassroots" and that GoG attempts at consultation so far had been "with a few unprepared residents for an hour or so" and were "probably worse than if no visit had taken place at all . . ."<sup>25</sup> One of these consultations greatly angered the village and "the memory of that visit still rankled."<sup>26</sup> It added that most villagers "were not aware of what a National Park is," and that "the Patamona have felt ignored by all the proposals regarding an expanded KNP to date."<sup>27</sup> On the issue of consultation, the Captain of Chenapou reiterated that the national park affected all Patamona and therefore consultation must be with all Patamona communities.<sup>28</sup>

On the question of land rights, the report noted that "While it was not within the mandate of the RRA team to evaluate claims for land or to determine their legitimacy, we feel that these issues of

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<sup>ix</sup> Letter from Claudia Alderman to Jean La Rose, re. Guyana National Protected Areas System Project (GEF), 20 July 1998.

<sup>x</sup> Ibid.

<sup>xi</sup> The Enlarged Kaieteur National Park Committee was established shortly after the Cabinet took the decision in 1994 to expand the park. No consultation with the affected communities was held prior to this decision.

Indigenous land claims . . . need the immediate attention of the appropriate authorities.”<sup>29</sup> This statement is curious in that one of the primary reasons for having the RRA was to evaluate Chenapou land title and land claims situation. Further, the team members did not once raise or evaluate aboriginal title issues, even though they did discuss requests for title extensions that had been submitted by Chenapou. Common law aboriginal title rights are clearly legitimate grounds for seeking title extension and registering a land claim. This had been noted by both the land tenure and legal specialists contracted by the Bank. Finally, the report warned that serious problems for NPAS could arise from continuing to ignore Indigenous land rights issues.

While the text of the report did raise some salient issues, the recommendations left a lot to be desired and the RRA exercise itself was heavily criticized by the Captain and other members of the community. In response to the consultation issue and the land rights concerns, the report merely recommends that the Captain and other members of the Area Council be given a tour of the Iwokrama Rainforest Centre, that Chenapou’s extension request “be forwarded to the relevant authorities for review” and that resource use within the extended park be accounted for in the management plan.<sup>30</sup> With regard to the RRA exercise itself, in general it can be said that the team seemed most interested in convincing the community that it had nothing to fear from a protected area and expounding upon the benefits that they would obtain, than in obtaining its views or discussing any potential negatives that may be involved.

The Captain and other members of the community stated that the majority of people in Chenapou did not understand the purpose of the RRA and felt that it was rushed through. More seriously, they believed that certain members of the team had tried to coerce them into accepting the park. In particular, the Captain stated that “members of the team only stressed what they perceive to be the potential benefits to Chenapou of extension of the park and that certain members of the team threatened, that if Chenapou did not agree, the Bank would not provide funding, which in turn would be harmful to the community. This person . . . also stated that the GoG had already made up its mind that extension of the park would take place and that it would be detrimental to the community’s interests and well-being not to cooperate.”<sup>31</sup>

Finally, the RRA team stated that they were conducting a preliminary survey and that there would be a follow up visit composed of a high level government delegation during which the concerns of the community could be elaborated upon. Other than a visit by the Ministers of Local Government and Amerindian Affairs, who refused to discuss NPAS or the KNP, there was no follow up visit.

### **3. The APA Intervenes**

After reviewing the PID for NPAS in July 1998, the APA decided to write a detailed complaint to the Bank, citing serious concerns with the design of the project and its compliance with OD 4.20. Totalling some ten pages, the complaint raised four main areas of concern:

- The PID and Annexes contain inaccurate and misleading information relating to Amerindian land rights issues and makes assumptions that have no basis in fact. The nature of these inaccuracies raises serious questions about the manner in which Amerindian land issues have been and will be addressed in the NPAS and the extent and validity of Amerindian participation in project design to date.
- Recognition of Indigenous land rights and granting of land titles, both in general and as related to the establishment of a protected area system, has not been adequately addressed, in contravention of the guarantees contained in Operational Directive 4.20 on Indigenous Peoples.

- The failure to include a participatory revision of the Amerindian Act and other legislation affecting Amerindian land rights as a specific, required component of the project.
- That the RRA team sent to Chenapau attempted to pressure the community to accept expansion of Kaieteur National Park.<sup>32</sup>

In connection with the first point, the complaint stated that the sections of the PID “concerning Amerindian land rights are replete with inaccuracies, half-truths and faulty assumptions” and that “The use of this inaccurate information portrays the general land rights situation in Guyana as one that, while not without problems, is progressing to an acceptable level, and therefore, not in need of serious consideration in the project.”<sup>33</sup> It is difficult to see how much of the information found in the PID was included as the majority of it is contradicted by the documents written by the Bank’s own consultants. The only conclusion that can be drawn is that the Bank accepted the GoG’s appraisal of the situation at face value or did not read the reports written by its own consultants or chose to downplay issues considered contentious or that may have delayed or otherwise compromised the project.

On the second point, the complaint stated that “While we recognise that the NPAS project cannot resolve all outstanding Amerindian land issues in Guyana, it is nonetheless a fact that all of the areas proposed for protected area status fall within areas over which Amerindians have asserted ownership rights. Therefore, NPAS can and must resolve Amerindian land issues in these areas, including structural issues relating to legislation and government policy, which would be of general application in Guyana.”<sup>34</sup> The requirements of OD 4.20 were then discussed in the context of the measures described in the PID and it was stated that, in the opinion of the APA, the PID did not meet those requirements.

Discussing the third point, the complaint detailed the defects in the Amerindian Act and stated that its revision must be a required component of the NPAS project. This point was consistent with the recommendations of both of the legal specialists contracted as consultants on the NPAS project.<sup>35</sup> Referring to the need to ensure that the Act was revised as a component of NPAS, the complaint concluded that “It is illogical and ultimately counterproductive to address Amerindian land rights piecemeal and only in connection with areas proposed for protected areas. Part of ensuring the protection of Amerindian rights and interests is ensuring that an adequate and acceptable legislative framework exists that fully recognises these rights in accordance with international standards and provides adequate and effective remedies for violations thereof. The Amerindian Act provides neither and piecemeal recognition of Amerindian rights in protected areas legislation will not suffice.”<sup>36</sup> Noting that revision of the Act should be required if OD 4.20 was to be complied with, it added that , “the Act as presently written is highly discriminatory and does not provide secure and effective guarantees for Amerindian land and other rights. Therefore, the Act cannot be an effective component of ensuring the protection of Amerindian rights and interests under the NPAS project [as required by OD 4.20] and must be revised as a prerequisite to addressing Amerindian land issues in NPAS.”<sup>37</sup>

Finally, the complaint addressed the concerns raised by Chenapou about the manner in which the RRA was conducted and requested a meeting with Bank staff to further discuss the concerns raised. This meeting, held on 24 September 1998, was the first of three held between Bank staff and the APA, the first two in Washington DC and the last in Georgetown in April 1999. The first meeting was tense and at times contentious. It was clear that some of the Bank staff were annoyed by the issues raised by the APA and Chenapou. On the land issue the Bank stated that only those Amerindian lands affected by protected areas would be covered by the requirements of OD 4.20 and that revision of the Amerindian Act was beyond the scope of the project and not required by OD 4.20. It did admit that Amerindian participation in NPAS had been inadequate and final

project preparation and implementation “should give adequate weight beyond technical and biodiversity conservation concerns to consideration of social issues, especially Amerindian land claims;” that mechanisms must be established to resolve Amerindian land claims affected by NPAS and; that a roundtable discussion would be arranged in Georgetown with the Bank, other donors, GoG and Amerindians where Amerindian participation and land rights in connection with NPAS would be discussed.<sup>38</sup>

There was substantial disagreement about the contents of the minutes of the meeting, which the Bank asked the NGOs to write. The first set of minutes were rejected out of hand as inaccurate, despite the fact that all of the NGOs present (more than 10) concurred that they were an accurate reflection of the meeting. The Bank’s version, which eventually became the official minutes, differed substantially and relegated many of the agreements reached in the meeting to “points discussed.”

Further discussions with the GoG were planned for the coming weeks and months, although the Bank noted that the GoG had indicated that it was considering withdrawing the project because it felt that the requirements dealing with Amerindian lands were unreasonable and unrelated to the project objectives. In the meantime, the APA met with the European Union in Georgetown (in-country project coordinators), and communicated with the KfW in Germany. Both stated that they would not fund the project without guarantees that Amerindian land claims would be resolved and believed that this was consistent with OD 4.20 as well as their own internal policies.

For reasons that remain unclear, the roundtable discussion agreed to at the September meeting did not take place, although Bank staff had said that GoG officials responsible for the project were not responding to phone calls and letters. This is not surprising given the public statements of Navin Chandarpal, the GoG official most responsible for the NPAS, to an Amazon Cooperation Treaty meeting held in Georgetown in February 1999. He stated, in the presence of European Union staff responsible for NPAS, that

Unfortunately, our efforts to develop a National Protected Areas Strategy (NPAS) have been affected by some international agencies involved, to introduce conditionalities, which seek to undermine our sovereignty. These new conditionalities were introduced after we had already met the final conditions requested. It is unfortunate that the expected major source of assistance for NPAS is being undermined.<sup>39</sup>

This statement is without doubt directed towards the Bank’s attempts to revise the original project document to give additional weight to Amerindian land and other rights issues.

A Bank mission was sent to Guyana in April 1999 to discuss NPAS with the GoG amidst rumors that the GoG was about to formally withdraw from the project. Meetings were held with the Minister of Finance and other GoG officials responsible for NPAS as well as with the APA and other Amerindian NGOs located in Georgetown. No discussions were held with Chenapou or the Area Council. At the meeting with the APA, Bank staff presented a proposal, which they said had been agreed to by the GoG, for the consideration of the APA and Chenapou.<sup>40</sup>

This proposal contained four main points: 1) “The decision to proceed with project negotiations will depend upon the completion of a substantive consultative process with the Amerindians of Chenapau which would conclude with an agreement between the Amerindians and the GoG for an Indigenous Peoples Plan of Action for implementation of Kaieteur National Park as one of the pilot areas under the project.” 2) “The consultation process will be facilitated by independent

parties not associated with the Government, the Bank or Amerindian NGOs;” 3) the consultation process with Chenapou will serve as a model to used with other communities affected by NPAS and; 4) the project will include provisions for a conflict resolution mechanism to deal with issues that cannot be resolved through normal channels. It also noted that the Bank had told the GoG that national Amerindian land claims could not be resolved in the NPAS project, but the Bank was willing to consider an IDF grant to support the establishment of mechanisms to address the situation.

About a week later, the Bank wrote again stating that the GoG’s agreement to the mediation process was “incumbent upon a written statement from Amerindian organizations that they would not demand resolution of the national land claims in connection with NPAS and that they would spell out the role they would play in the consultation process for Chenapou.”<sup>41</sup>

After discussions with Chenapou, the APA wrote to the Bank accepting in principle the mediation process, adding that it must be based upon “mutually acceptable terms of reference,” that the mediator have some understanding of Indigenous peoples’ rights, that Chenapou has the right to have any advisors it wishes present and that the possibility of co-ownership of the park be considered and discussed as part of the process.<sup>42</sup> The possibility of including Indigenous-owned, or part owned, and (co-) managed protected areas in NPAS was also raised in the complaint submitted by the APA to the Bank in August 1998 and in meetings held with the Bank. It was proposed as one solution to potential conflict over land rights and protected areas and as a sustainable alternative that could be a model for others to follow.

To follow up on the mediation proposal, the APA requested another meeting with the Bank. This meeting took place on 1 June 1999 in a cooperative and open atmosphere that was remarkably different from the first meeting. The tone of the meeting was undoubtedly influenced by recent events in Guyana concerning the extension of KNP (see below). The APA and Chenapou’s position on the proposed mediation was set out and discussed and it was reiterated again that neither the APA nor Chenapou were opposed to protected areas, provided that adequate guarantees and protections for Amerindian land and other rights were in place. The Bank stated that it would follow up with the GoG and expected that the process could start soon thereafter as the GoG had already agreed to the process during the Bank’s mission in April 1999.

#### **4. Extension of the Kaieteur National Park: It Shall not be lawful . . . .**

Amerindians were the first enslaved people of this country, Our forefathers rebelled, we were pursued by the slave masters, and we sought refuge in this last stronghold, the Pakaraima area. This is our land, and we have carved out a direction in which our people should go. We have farmed at Chitu Mouth and we fish the length of the Potaro River. These are areas occupied by us. Will our prior rights be respected?<sup>43</sup>

The answer to this question posed by Captain Melville of Chenapou was a resounding no. On 9 March 1999, the President of Guyana signed an Order expanding Kaieteur National Park from 5 square miles to 242 square miles. No provision was made for Amerindian rights; the Kaieteur National Park Act of 1929 applied to the entire area. Section 4(1) of the Act stipulates that

It shall not be lawful for any person to enter into, travel or encamp within the park or to build any structure therein, or to hunt, chase, catch, shoot at, kill or otherwise disturb any animal or cut, pluck or gather any of the flora or interfere with or disturb the soil by mining or other operations within the park or to

remove anything whatsoever from the park except in accordance with regulations made under this Act.

Section 4(2) adds that persons found in violation of section 4(1) shall be summarily convicted and fined and anything taken from the park shall be forfeited.

Chenapou was not even informed that the Order has been issued until almost two months later at the First National Captains' Conference held at the end of April, and then not by the GoG.<sup>xii</sup> The Order was discussed extensively at the Captains' Conference and the participants expressed considerable anger and frustration. While the Bank claimed to have had no knowledge of the passage of the Order, and stated that they believed that it violated NPAS project criteria, the Tshaos also directed their anger at the Bank and related the Order to NPAS. The following is an excerpt of the summary of the discussion made from tapes of the meeting (see also Box I below for the report of the workshop on protected areas/NPAS of the Captains' Conference).

. . . the Tshao from Chenapou claimed that it is the first time he is learning about the extension. The Tshao then showed and explained to the people the area they traditionally use and occupy. He emotionally told the people that he is hurt and angry by the way this was done. All our hunting and fishing grounds are now taken away from us. I think we Amerindian people are too much polite and these people are taking advantage of that, he argued. He thought that it was time we stand up in a serious manner.

Ms. Janki explained the law that governs the extension adding that this law is very strict since all activities done in the area by Chenapou are now illegal, including even walking through the Park area. With the aid of a map Tshao Melville pointed out areas they used for hunting and fishing and discussed why these areas are fundamental to their continued survival.

Tshao Norma Thomas of Kamarang-Warawatta, (Region 7) said that women usually cry easy and get upset with things. When she sees a man, especially a Tshao, crying she knows that some thing is very wrong. She offers her support to the people of Chenapou and hoped that all Tshaos present would stand shoulder to shoulder with Tshao Melville and make sure that the government changes this terrible law that has so hurt the people of Chenapou.

Other Tshaos supported Tshao Thomas and said if this is how the government was going to treat Amerindians that they would not support it ever again. They also blamed the World Bank for the NPAS project which they believed was related to the Order extending Kaieteur National Park and the problems that Chenapou was experiencing.<sup>44</sup>

Following the Captains' Conference, Chenapou, along with the APA and legal counsel, sought to have the Order and the KNP Act amended to ensure that their aboriginal and other rights to the area would be saved and respected. After widespread coverage in the media and support from other sectors of the Guyanese population, the President agreed to meet with a delegation from the community. After agreeing to amend the Act with the assistance of the community, she stated that "it did not enter our collective heads that the order would affect Amerindians."<sup>45</sup>

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<sup>xii</sup> The National Tshaos' (Captains') Conference was the first ever Amerindian organized and led national gathering of village leaders. While Captains' Conferences had been held in the past they were always organized by the government which determined the agenda.

The draft amendments to the Act were submitted to the President, who forwarded them to the Attorney General’s Chambers as the first step in sending them to Parliament for approval therein and enactment. A year later, the amendments still have not been enacted and Chenapou is in the advanced stages of seeking an injunction against the Kaieteur National Park Commission and a judicial declaration that the Order and Act violate their aboriginal and Constitutional rights (see below). Beyond the impact on Chenapou, the most serious problem arising from the Order has been the degree to which Amerindians in general have come to distrust and fear the NPAS project specifically and protected areas in general. Nonetheless, Amerindian communities in two different areas of Guyana are seeking support to have their lands or part thereof recognized as Indigenous-owned and managed protected areas. These areas combined may amount to up to seven percent of Guyana, or approximately 6000 square miles.

**Box I: National Tshaos Conference: Report of the Workshop on NPAS and Protected Areas**

1. We must have the rights to our ancestral lands before talking about identifying any national protected area. The reason being that, if we don’t own these lands we would not be included in the decision making when protected areas are being proposed.
2. Educate the communities on NPAS. They must fully understand all implications before making any decision.
3. The communities must be involved in the decision making process with regards to identifying sites for these activities. Sacred and cultural sites must be respected. We must be involved in the management of these areas from the lowest to the highest level.
4. There must be tangible reasons why proposed areas should be protected. There must be enough information as to the resources that need protection before we give our consent to protected areas.
5. Financial benefit agreements must be well negotiated and defined in good faith by parties involved.
6. We must reserve the right to consult with our legal advisors, via the APA.
7. Intellectual property rights must be recognized and protected according to international standards.
8. We must be full participants in the development of the National Bio-diversity Action plan. We were made to understand that there is a draft for the NBAP and so far there is no Amerindian participation in that drafting.
9. We reserve the right to declare all our territories indigenous owned protected areas. We thought it best to develop our own protected areas so as to have full management and control over these areas rather than someone coming into your territory and telling you that this part of land will be a protected area.<sup>46</sup>

**5. Current Status and the Way Forward?**

NPAS is currently stalled awaiting a response from the GoG on whether it will accept and cooperate with the mediation process. The proposed amendments to the KNP Act are still with the Attorney General and have yet to be enacted. Chenapou has written five times between November 1999 and April 2000 without any response. Consequently, the community is contemplating seeking the protection of the courts to strike down the Order as a violation of their aboriginal and Constitutional rights and an injunction to halt further actions by the Kaieteur National Park Commission, which recently began developing a business plan for the park and has given permission to a South African mining company to collect rock and other samples inside the park. Chenapou was offered a seat on this Commission, but has refused until the conflict has been resolved. The last letter proposed that a committee be established that would be responsible for moving the mediation proposal forward and could demonstrate that Amerindians and the GoG could effectively work together.

APA and Chenapou wrote three times to the Bank between December 1999 and April 2000 seeking updates on the status of the mediation proposal and reiterating its support for the process and the underlying objectives of the NPAS project. They also stated that if the amendments to the KNP Act were not enacted in the near future that legal action would be inevitable and raised serious concerns about the actions of the Kaieteur National Park Commission. Concerning the latter, they made clear that, “We see these actions as indications of bad faith on the part of certain people within the GoG that are directly responsible for NPAS and as such fundamentally undermining our attempts to move the NPAS project forward and to resolve the Chenapou question.” The Bank responded by stating that it had yet to receive a definitive response from the GoG and that discussions were ongoing.

In March 2000, the APA met with the President. Among others, the KNP and the NPAS mediation proposal were discussed. The President promised that the amendments to the Act, at least the Government’s version of the amendment, would be given to Chenapou and the APA within two weeks. With regard to NPAS he stated that the Government was on the verge of withdrawing the project and would not accept mediation, which he characterized as foreign interference in Guyana’s internal affairs. Both the APA and Chenapou were very disappointed by this statement and urged the President to keep the project and proceed with the mediation proposal.

### **III. Compliance with OD 4.20**

Prior to discussing NPAS in the context of OD 4.20, it is important to note that the NPAS project is subject to ongoing negotiations concerning its content and the modalities of implementation. Although the project was to have been submitted for approval, as defined in the PID quoted above, in December 1998, subsequent to the intervention of the APA there have been additional proposals to modify NPAS. These proposals, particularly that of mediation leading to a negotiated agreement and an Indigenous Peoples’ Development Plan for Chenapou/KNP, bring the project more in line with OD 4.20 than the previous version set out in the 1998 PID. Given this, we will discuss both the original project and the proposed modifications here. As we shall see, while the proposed modifications are an improvement, questions remain about NPAS’s compliance with OD 4.20.

The stated objective of Operational Directive 4.20 on Indigenous Peoples is, “to ensure that the development process fosters full respect for [Indigenous Peoples’] dignity, human rights and cultural uniqueness (para. 6).” Indigenous land, resource and other rights are internationally recognised human rights and are found in treaties ratified by Guyana. However, the PID for NPAS states merely that the Bank should “promote dialogue on Amerindian resource use and land tenure issues.” Moreover, the Bank treats human rights solely in the context of domestic laws and regulations, without any reference to Guyana’s international legal obligations. While these international obligations are mentioned in one of the consultants reports, there has been no separate evaluation of the interface between Guyanese laws and human rights standards, nor an evaluation of the compatibility of Guyanese law with these standards, despite a specific request from the APA that this be done and incorporated into NPAS. This is particularly disturbing given the centrality of human rights to OD 4.20 and the manifest incompatibility of Guyanese laws therewith. The Bank’s own consultants described these laws of “colonial” and lacking any semblance of due process and other basic legal guarantees.<sup>47</sup>

On the Amerindian Act, the various annexes of the PID adopt conflicting positions, the position of the Bank staff in meetings with the APA and in general contradict the PID and both are at odds with OD 4.20. Annex 2 of the PID, for instance, states that “although the issue of revisions to the

Amerindian Act and changes to the relevant government structures and procedures are of serious interest, they need not delay progress in the establishment of the NPAS.”<sup>48</sup> Annex 7 of the PID on legal and regulatory reforms related to NPAS, however, states that “The Amerindian Act (Cap. 29:01) is also highly relevant to protected areas because it is the most important legislation in Guyana for the identification and titling of Amerindian lands. ... [I]n the context of developing a national protected areas system, it is apparent that Amerindian land ownership, land claims, and Amerindian claims to continued traditional or customary access to and use of land for the sustainable extraction of natural resources will need to be addressed by the proposed process of legislative reform under the NPAS project.”<sup>49</sup> Bank staff have stated that revision of the Act is beyond the scope of NPAS and therefore not possible.

Revision of the Amerindian Act and other legislation is required as part of the IPDP under sections 14 and 15 of OD 4.20. Section 15(a) requires that an assessment of the legal framework applying to Indigenous peoples be conducted, with particular attention to the remedies available in domestic law to assert and defend rights and to rights to be secure in, use and develop lands and natural resources. The Bank has complied with this requirement insofar as consultants’ reports do provide an assessment. However, based on those reports, it is difficult to see how the Bank concluded that revision of the Amerindian Act was not required, let alone beyond the scope of the project. Section 18 further requires that measures to address Indigenous lands rights, including the legal regime applying thereto, be submitted to the Bank and appraised to determine the adequacy and suitability. Again based on the consultants’ reports it is difficult to see how legislation and GoG plans could be considered adequate or suitable. At the very least, the perception is that the Bank has disregarded or downplayed the reports of its consultants and others and placed an undue reliance on information provided by the GoG (see, Task Force on Demarcation, review of the Amerindian Act and other general information concerning Amerindian land rights).<sup>xiii</sup>

Also, section 15(c) states that, “When local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing legal recognition of the customary or traditional land tenure systems of indigenous peoples. ... These steps should be taken before the initiation of other planning steps that may be contingent on recognised land titles.” Again, the Bank has stated often that revision of the Act is beyond the scope of the project. Additionally, section 15 states that the “development plan should be prepared in tandem with preparation of the main investment” and, “In many cases, proper protection of the rights of indigenous peoples will require the implementation of special project components,” including those related to legal recognition of territorial rights.

With regard to land rights, which, as noted previously, are firmly established human rights, section 15(c) applies as do sections 17 and 18. Section 17 requires that the Bank clarify with the GoG what the procedures will be to regularize land tenure as early as possible, while section 18 requires that the Bank review the adequacy of these measures and be satisfied that Indigenous peoples have participated meaningfully in these and other measures incorporated in the project IPDP. While it is clear that the requirements of OD 4.20 were discussed with the GoG and requests were made that a plan for dealing with land rights be submitted, it is equally clear that Indigenous peoples did not participate in anyway in devising this plan, indeed the document describing it has not even been made available to them. For this reason, we cannot comment on this plan other than to say that the Bank seems to have accepted that the GoG’s Task force on

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<sup>xiii</sup> For instance, the Bank repeated more than once that the GoG was revising the Amerindian Act even though both legal specialists stated that the process was not operational and had not been so since 1995, over three years from the date that the NPAS PID was written.

demarcation was an adequate process for dealing with land rights issues, even though its own land tenure specialist described the process employed by it as “pointless.”

It should be noted here that, despite a restrictive reading of the language “under prior claim” that is inappropriate to local circumstances, the PID contains the important requirement that “PAs will not be located in titled areas of Amerindian populations or areas under prior claim by Amerindian communities without their informed consent.”<sup>xiv</sup> The PID also states that “In the event of a land extension requested by Chenapou overlapping with the Park, negotiations will take place to agree on co-management arrangements. Alternatively, the boundaries of the park could be redrawn to excise any area to which Chenapou may have a legitimate claim.”<sup>50</sup> No consideration appears have been given to the possibility of co-ownership of the park, as suggested on more than one occasion by both Chenapou and the APA. Recent proposals involve a mediation/ consultation process by which Chenapou, the GoG and the Bank will negotiate an IPDP for Kaieteur National Park. While this proposal has not been officially accepted by the GoG, it may hold some promise for arriving at a mutually acceptable process that respects Amerindian rights and accords with OD 4.20. However, it should also be noted that this proposal arose only after the intervention of the APA and would not otherwise have been part of the project.

OD 4.20 is explicit in requiring the “informed participation” of Indigenous peoples, both in general and in connection with the IPDP (secs. 8, 14(a), 15(d), 16, 17 and 18). The PID also makes frequent reference to the necessity of local participation for project sustainability and states that Indigenous peoples have participated fully in and have been thoroughly consulted about the project. The GoG also claims to subscribe to full participation. As discussed above, Indigenous participation in NPAS has been substantially inadequate, a fact that the Bank admitted in meetings with the APA. The Paramakatoi meeting was the closest that the Bank and GoG came to even basic consultation with Amerindians and the Bank has agreed that this was only of a preliminary nature and cannot be regarded as adequate consultation. Moreover, the recommendations made by the participants at Paramakatoi were wholesale ignored. The GoG’s attempts, which the Bank seems to have accepted at face value, were described by its own RRA team as insufficient and “probably worse than if no visit had taken place at all . . . .”<sup>51</sup>

The PID also envisioned that “procedures for the resolution of unresolved land claims will be developed by the Project Management Unit,” which is to be staffed by persons appointed by the GoG.<sup>52</sup> The GoG in general and the PMU have repeatedly demonstrated that they neither understand nor appear to be willing to deal with Amerindian land rights in a constructive fashion. The operations of the PMU will be overseen by a Technical Steering Committee and an independent Peer Review Committee. While provision was made for Amerindians to be on the TSC – in reality they would be a small minority, marginalized among the various government officials and others on the TSC - there was no requirement that persons familiar with Amerindian rights and issues be included on either the PMU or PRC. Only after the intervention of the APA did the Bank consider that there should be Indigenous participation in either of these bodies, and then only that the inclusion of a person on the PRC would be discussed with GoG.

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<sup>xiv</sup> The Bank has interpreted this to mean that a written request for title or extension thereof must have been received by the Ministry of Amerindian Affairs. This is inappropriate insofar as many communities have made prior claims via other means – the Amerindian Lands Commission, for instance – routinely receive no response from the Minister of Amerindian Affairs, who has never acted on a request and therefore do not submit claims to the Minister and, finally, it ignores rights and claims that exist by virtue of common law aboriginal title.

Chenapou and the Region 8 Area Council, which represents Patamona interests in general, have repeatedly stated that discussions about KNP and NPAS must involve the Patamona as a whole and not just Chenapou, as the area is considered the collective patrimony of the Patamona. OD 4.20 requires both that plans be based upon “full consideration of the options preferred” by the affected Indigenous peoples and that “Local patterns of social organization” be taken into account in project design (secs. 14(a) and (d) respectively). OD 4.20 also speaks of Indigenous peoples, not Indigenous communities. While Guyanese law designates Indigenous communities, rather than Indigenous peoples, as rights holders in connection with land rights, this only applies to titled lands not untitled lands over which rights have been asserted. Consequently, the Bank’s and GoG’s repeated assertion that they will only deal with Chenapou, not the other affected Patamona, is difficult to maintain and contrary to OD 4.20. Also, Indigenous proposals and preferences that NPAS include Indigenous- (co-) owned and (co-) managed protected areas have never been given the consideration they deserve.

OD 4.20 also requires that government agencies responsible for administering programs concerning Indigenous peoples have the capacity to adequately implement and oversee project components (secs. 14(c) and 15(f)), and that the borrowing government expresses a clear commitment to abide by OD 4.20 (sec. 20). First, both the GoG and the Bank privately acknowledge that, for a variety of reasons, the Ministry of Amerindian Affairs is incapable of effectively implementing programs and ensuring that Amerindian rights and interests are respected. However, the PID does not contain any capacity building measures aimed at this Ministry. The idea was first mooted in April 1999, in connection with a proposed IDF grant to establish mechanisms to address Amerindian land rights, a proposal the GoG appears to have disregarded. Second, while the GoG has arguably expressed a commitment to abide by OD 4.20 in word, this has clearly not been the case in deed. Not only have Amerindian land rights been the main point of contention in NPAS, with the GoG maintaining that it is an unrelated and extraneous issue, it has threatened to withdraw from the project more than once due to this perception.

Finally, section 20 of OD 4.20 requires that the commitment to abide by OD 4.20 be regularized in project covenants that provide “clear benchmarks” by which compliance can be monitored. The need for these covenants was discussed extensively at APA/Bank meetings and in correspondence between them. It was stressed that, given GoG performance and equivocation on Amerindian rights issues, that Amerindians would not be able to accept NPAS without concrete and verifiable guarantees that the GoG would honour its commitments. The Bank did accept that certain covenants should be included – steps for resolving Amerindian land rights affected by NPAS, procedures for Amerindian participation and conflict resolution mechanisms – but rejected covenants related to, among others, revision of the Amerindian Act. The mediation proposal for Chenapou/KNP will also discuss covenants that could be developed during the negotiation process and later incorporated into the final project documents. However, it remains to be seen if the mediation process will take place at all or, if so, whether any agreement can be reached either on project covenants or other outstanding issues.

#### **IV. Conclusions and Recommendations**

The NPAS project has commendable objectives – the establishment of a representative system of protected areas in Guyana – that are supported by the majority of the Amerindian peoples and organizations of Guyana. Indeed, such a system is sorely needed given the substantial and negative impact of uncontrolled resource exploitation on Guyana’s forest and other eco-systems. These same forests are also part of the ancestral territories of around 80,000 Indigenous people. Despite a number of promises to do so, the GoG has neither recognized nor respected Indigenous

peoples rights to own and control the majority of their lands and territories in violation of international human rights law. The NPAS project and related activities, particularly the extension of KNP, to date have made Indigenous peoples in Guyana deeply suspicious of protected areas and led them to believe that these areas pose a threat to the full exercise and enjoyment of their rights. This belief is justified given recent events in Guyana and is not restricted to Chenapou, one of the only communities to have been directly affected thus far.

While NPAS has attempted to account for Amerindian rights and interests in certain respects, these attempts have been largely inadequate and, as described in the preceding section, either contravene the letter or the spirit of OD 4.20. In particular, NPAS has failed to account for and address the issue of greatest concern to most Amerindians: the full recognition of their rights to own and control their lands. Nor has it accounted for the stated preference of Indigenous peoples in Guyana to include the possibility of including Indigenous-(co-) owned and (co-) managed protected areas. This not only accords with the policy of the world's largest conservation bodies, but also provides an acceptable and sustainable solution to the current impasse at Chenapou. In designing the project, at least as it relates to Amerindian lands, the Bank appears to have given undue weight to the pronouncements of the GoG on the subject, even when directly contradicted by their own consultants and readily available sources of independent information.

Should the GoG reject the mediation process as a way of moving NPAS forward, it is difficult to see how the project can continue. This does however assume that the Bank will not adopt a different strategy if the GoG does reject the proposal. From the APA and Chenapou's perspective the mediation proposal is the preferred means of addressing existing conflicts and may be a model that could be used in connection with the establishment of other protected areas elsewhere in Guyana. Indeed, it is their common position that some form of negotiated settlement process is needed to deal with the larger land rights issues throughout Guyana. In either case, the GoG has stated that it is opposed to such a process.

Whether NPAS does or not go ahead, the Bank may have lost an important opportunity to contribute to environmental conservation and Indigenous peoples' rights in Guyana. The NPAS project could have been a model for dealing with these issues. Instead, in some respects, it has become a model for how not to address these issues. While some of this is clearly attributable to the intransigence of the GoG, some of the problems that NPAS has experienced and is presently experiencing could have been avoided if the Bank had placed greater emphasis on Indigenous participation and rights from the outset, placed greater weight on the reports of its consultants and the stated wishes of Indigenous leaders and applied OD 4.20 with the diligence that a mandatory directive requires. Rather the appearance is that the Bank was trying to mediate between the reluctance of the GoG to deal with Amerindian land issues and the strictures of OD 4.20 so that the project could be approved and added to the list of Bank financed projects. Whatever the reason, it is Indigenous peoples in Guyana who end up on the losing end: either their rights are compromised by protected areas established as state preserves subject to restrictive regulations or, in the absence of protected areas, their lands are issued to logging and mining interests. Neither is an appealing prospect.

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<sup>1</sup> Two workshops were held in Chenapou to discuss the NPAS project in connection with this case study (19-20 February 2000 and 18-19 April 2000. A number of other discussions with the Captain, members of Region 8 Area Council and others were also held between February and April 2000.

<sup>2</sup> Section 4, Kaieteur National Park Act 1929.

<sup>3</sup> APA 1998, 4.

<sup>4</sup> Janki 1997, 2.

<sup>5</sup> Sanders 1995, 6 & 20

<sup>6</sup> ERM 1995, v

<sup>7</sup> GoG 1998, vii.

<sup>8</sup> World Bank 1998, 4, paras. 7 & 8.

<sup>9</sup> Ibid., 4-5.

<sup>10</sup> Sanders 1995.

<sup>11</sup> MacKenzie 1996.

<sup>12</sup> Sanders 1995, 6 & 20.

<sup>13</sup> Ibid., 20.

<sup>14</sup> Ibid., 21.

<sup>15</sup> Ibid., 18.

<sup>16</sup> Ibid., 35.

<sup>17</sup> Ibid., 35-7.

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- <sup>18</sup> Ibid., 37.
- <sup>19</sup> See, World Bank 1996, for a summary of the proceedings of the workshop.
- <sup>20</sup> See the Annexes in Ibid., for the written statements of the Amerindian NGOs.
- <sup>21</sup> World Bank 1996, 45.
- <sup>22</sup> World Bank/GEF 1997, 1.
- <sup>23</sup> Ibid., 2.
- <sup>24</sup> World Bank 1998, Annex 2, para. 2.
- <sup>25</sup> GoG 1998, 6.
- <sup>26</sup> Ibid., 56.
- <sup>27</sup> Ibid., 49 & 56.
- <sup>28</sup> Ibid., 53.
- <sup>29</sup> Ibid., 62.
- <sup>30</sup> Ibid., 63.
- <sup>31</sup> APA 1998, 9-10.
- <sup>32</sup> Ibid., 1.
- <sup>33</sup> Ibid., 2.
- <sup>34</sup> Ibid., 3.
- <sup>35</sup> See, Janki 1997 and Sanders 1995.
- <sup>36</sup> APA 1998, 9.
- <sup>37</sup> Ibid.
- <sup>38</sup> *Guyana – National Protected Areas System Project (GEF). Minutes of Bank/APA Consultation, Washington DC, September 24, 1998.*
- <sup>39</sup> ACT 1999, 32.
- <sup>40</sup> Letter from Maria Donoso Clark, World Bank, to Jean La Rose, APA, 20 April 1999.
- <sup>41</sup> Letter from Maria Donoso Clark, World Bank, to Jean La Rose, APA, 29 April 1999.
- <sup>42</sup> Letter from Jean La Rose, APA to Maria Donoso Clark, World Bank, 10 May 1999.
- <sup>43</sup> Captain Anthony Melville, Chenapou, to the GoG RRA Team, May 1998.
- <sup>44</sup> APA 1999, 27.
- <sup>45</sup> *Kaieteur Park Act for Key Amendment Following Protests by Chenapau Residents and APA.* Stabroek News, 28 May 1999, 1, 3.
- <sup>46</sup> APA 1999, 22-3.
- <sup>47</sup> See notes 4-6 and accompanying text.
- <sup>48</sup> World Bank 1998, Annex 2, para. 8.
- <sup>49</sup> Ibid., Annex 7, para. 7.
- <sup>50</sup> Ibid., Annex 4, 46.
- <sup>51</sup> GoG 1998, 6.
- <sup>52</sup> Ibid., Annex 2, para. 8.