

Chapter 6

Creation of the Guyana Amazonian Park. Redistribution of Powers, Local Embodiment and Territorial Divisions

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The 2006 legislative reform concerning French National Parks took note of the new conceptions of sustainable development. These allow for the presence of local populations in protected areas and promote their participation in the management of the natural heritage¹. However, these conceptions underpin projects that are so diverse that they do not always entail a clear break with the prevailing centralised and protectionist tradition. The French reform on National Parks questions the limitations of the human occupation of protected areas, and how local populations will be associated with management measures.

We examine these issues using the example of the Guyana Amazonian Park which was created in February 2007, following the new legislation on National Parks². We recount at first how the international movement for the integration of conservation and development objectives resulted locally in the creation of the park. We then analyse the extent to which the new legislative framework, stemming from many difficult consultations with Guyanese civil society, offers new opportunities to local populations in terms of status, usage rights and territory delimitation. The idea is to examine, based on the analysis of the Decree on the Creation of the National Park, the extent to which this decree will have an impact on the 'traditional' environmental and economic practices of the communities and, in parallel, the extent to which these communities can be prevented from developing their way of life. More specifically, we analyse the process through which the 'local' is embodied and expressed in relation to the central government. In other words, we propose to evaluate how and by whom exactly the Amerindian

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2 Act n°2006–436 of 14 April 2006 relating to National parks, marine natural parks and regional natural parks. Decree n°2007–266 of 27 February 2007 creating the National Park called "Guyana Amazonian Park".

and Maroon³ communities are represented, as their interests promoted both through their own traditional institutions, and through the territorial authorities stemming from the common law on decentralisation (i.e. *communes*, Departmental Council and Regional Council) which have more opportunities to capture the decisional levels created by the park.

A Forced Reform: From the Earth Summit to the Giran Report

The creation of the Guyana Amazonian Park is the result of major international environmental conventions and geopolitical issues, involving the presence of Europeans in the Amazon. It was in 1992, during the Earth Summit held in Rio, that former French president François Mitterrand announced the French contribution to the Convention on Biological Diversity (CBD): the creation of a large National Park with Surinam bordering it to the west and Brazil to the east and south (See Plate 12).

Trying to establish a National Park in a French overseas territory is not without difficulty, and the Guyana Amazonian Park was no exception in this case: local officials did not always adhere to the unwelcome directives of metropolitan France. While the creation of a National Park seemed indeed to clash with the legacy of decentralisation, it also brought to light the internal dissensions of the very heterogeneous Guyanese society.

Two projects were initiated successively and abandoned following heavy controversies until, at the Summit on Sustainable Development held in Johannesburg in 2002, former French President Jacques Chirac revived the National Park of Guyana as one of the major works of his presidency. This was undoubtedly galvanised by the declaration of Brazilian President Fernando Henrique Cardoso concerning the creation of one of the largest parks in the world, the Parque nacional das montanhas do Tumucumaque, covering an area of 38,000 km² in the states of Amapá and Pará, on the border of the French territory (Fleury and Karpe 2006; Grenand et al. 2006). The Park project, in line with international co-operation as regards protected areas, was the outcome of the development of a treaty peculiar to the Amazonian Basin. The Amazon Co-operation Treaty was signed in 1978 by the Amazon countries, when environmental issues were not on the agenda and when most signatory countries were ruled by dictatorships. In 1998, the Treaty adopted a new image and became the Amazon Co-operation Treaty Organisation (ACTO). French Guyana could not be asked to sign the Treaty, since it is not a state in its own right but the region of a European country. However in 1994, the Executive Secretary of the ACTO as well as the Brazilian Minister of Foreign Affairs, proposed that French Guyana be accepted as an observer in addition to the eight Amazonian countries involved. In this regard,

3 Descendants of fugitive Black slaves of the 18th century, formerly called Bush Negroes.

ACTO's links with the European Union would probably open up new markets to the South American region.

In this international and national context, the 1960 French Act on National Parks, which reflected the notion that a park must be protected against all human action, and that its management is the exclusive business of the central state, was significantly reformed. Two main reasons were behind this change. First, this concept of park management was not in line with the new objectives and management methods of protected areas. In accordance with the notion of sustainable development, environmental conservation must serve local populations and be carried out with their participation. In addition, the conservation objectives can only be reached if the local populations can draw benefits from the existence of the park. Secondly, France had become decentralised (a process initiated by the legislations of 1982–1983) and, as a result, had created many new local governments. French Guyana was endowed with a Departmental Council and a Regional Council with their own jurisdiction. French deputy Jean-Pierre Giran was tasked with visiting Guyana to investigate the elaboration of the policy on National Parks in matters of territoriality, decentralisation and international co-operation. This visit was to be decisive in this regard. The new Act of 2006, which is based to a large extent on Giran's report (2003), dedicates the entire second chapter to the "Amazonian Park in Guyana", and ratifies specific regulations aimed at making the creation of the park politically acceptable for the local governments, local populations and NGOs.

The new Act brought major changes for the normative architecture of a National Park. Indeed, today a National Park is endowed with a dual legal system originating in very distinct logics. On the one hand, the absolute central protection area becomes the 'core' of the park, which is the territory of maximum protection. This area is subject to a legal system first established by law (determined by the Parliament) and then specified by the Decree on the Creation of the Park (falling within the competence of the central executive power). It is then specified further by a specific Park Charter resulting from negotiations between the state, local governments, traditional authorities, scientific and institutional key players as well as key players from associations. The peripheral area, on the other hand, has a different logic which is not, like before, determined unilaterally by the central state. This 'Zone of Free Adherence' (ZFA) is a zone of 'sustainable development' to which *communes* decide to adhere by adopting the Charter. It is delimited by scientific (geographic continuity or ecological interdependence with the core area) and political (the political will of *communes* to adhere to the Park Charter concerning all or part of their territory) criteria.

The demarcation of the core area and the potential ZFA emerges from the Decree on the Creation of the National Park. The Charter which is currently being negotiated in Guyana, must be adopted within five years of the creation of the park, in this case 2012. It contains two sets of standards: the first set specifies what should be recorded in the legislation and the Decree, as regards the core of the park. The second set of standards establishes a local territory project concerning

the ZFA. This has resulted in a complex arrangement for the assignment of jurisdictions and the negotiation of spaces (See Box 6.1).

The success of the Guyana Amazonian Park will depend on how the different interests of the local populations, who had been fairly uninvolved until the establishment of the park, will converge in time. What guaranties and constraints can the legal framework offer these populations?

Box 6.1 The institution of the Guyana Amazonian Park

The Charter proposal is elaborated by the Park Board. The Park Board is made up of a Park Director, a Board of Directors, an Economic and Social Committee (called "Committee for Local Life" in Guyana) and a Scientific Committee. On the Board of Directors, local representation is made up of 12 members from the local government and 5 members from the traditional authorities, which represents a majority compared to the state representation that only includes 10 members.

The Zone of Free Adherence (ZFA) is governed by common law, i.e. as if the Park did not exist, which is made more coherent by the Charter from the viewpoint of the sustainable development project. Thus, it is possible to modify the common law (e.g. town planning legislation) to this end, by following the classic procedures.

The core areas of the Park (the Guyana Park has three) is governed by formal standards which result from the five-level centre of decisions, from the most general to the most specific:

The Orders of the Park Director implement the principles established by the Charter or depart from it in certain conditions.

These Orders most often require regulations elaborated by the Board of Directors and making explicit the regulations resulting from the Charter.

The Charter clarifies the regulations in force in the Park.

These regulations are laid down by the Decree on the Creation of the National Park.

The Decree must observe the general standards included in the legislation of 2006.

As it stands, the Park Board benefits from a certain amount of leeway to elaborate and implement new prescriptions. In time, this leeway will be redefined with the draft of new texts and new interpretations (Filoche 2007b).

The Ambiguous Status of the Park's Populations

The participation of the 'local populations' has become a prerequisite for the success of conservation. How should these populations be defined, considering their heterogeneity, and considering that the notion of 'local' is not restricted to the borders of the park? Should local populations benefit from a unique status? In the case of Guyana, while the Amerindians and the Maroons seem to be the main affected parties, they do not represent the local populations in their entirety and, for this reason, they are not the only populations having a particular role to play in the participative process.

The relations between France and indigenous populations provoked many international denunciations regarding human rights and biodiversity conservation issues⁴. How can France recognise the presence of Amerindian and Maroon populations but not their status as indigenous people (specifically in the case of the Amerindians), as traditional populations or ethnically differentiated communities? Does the creation of the Guyana Amazonian Park bring new identity or territorial rights to these populations?

French Nation and Ethnic Specificity

The population of the three core areas and the potential ZFAs are made up of around 7,000 people living in an area of 34,000 km² and distributed within five *communes*: Camopi, Maripasoula, Papaïchton, Saint-Élie and Saül (See Plate 12). Thus, less than 5% of the population of Guyana lives in more than one third of its territory. Those concerned are a small group of Creoles living predominantly in Saül, three Amerindian ethnic groups (Wayãpi, Teko or formerly Emerillon, and Wayana) and Maroon communities (called Boni or Aluku). These populations practice subsistence activities relying on slash-and-burn agriculture, a technique which is well-adapted to the environment, even if land and demographic pressures can damage the viability of this form of agriculture (Renoux et al. 2003). Maroon populations sometimes also practice gold panning, following the example of the many illegal immigrants (the Brazilian *garimpeiros* in particular) whose activities create important public health and security issues, as well as problems related to the degradation of the environment (Collective 2005). These Amerindian and Maroon populations are undergoing painful transformations imposed upon them by modern society. In this context, they view the park either as protective or threatening.

In Guyana, the French government has always refused to legally and politically acknowledge that individuals can be French as well as members of another community constituting a framework of sociability and constraint (Grenand and Grenand 2005), although it did not refuse to do so in Mayotte or New Caledonia. This means that the French government is rejecting the notion of indigenosity, with all that it entails. Consequently, when it is applied to Amerindians and Maroons from Guyana, French law – from the time of the 1987 Decree acknowledging that they have collective usage rights on specific zones⁵ – uses the following

4 In this regard, the French government did not adopt Convention n°169 of the International Labour Organisation and made a reservation concerning Article 27 of the International Pact relating to civil and political rights, among others. Convention n°169 concerning indigenous and tribal peoples in independent countries, adopted in 1989 and implemented in 1991, was ratified by 15 states. This text advocates the maintenance and development of indigenous peoples as distinct communities within the framework of the states where they live today.

5 Decree n°87-267 of 14 April 1987 on “the modification of the Code of State-Owned Property and relating to state concessions and other acts passed by the state in

circumlocation: “communities of inhabitants who traditionally draw their means of subsistence from the forest”. However, recently, Article 33 of the French blueprint law for overseas territories (2000) accepted the terms of Article 8j of the Convention on Biological Diversity, establishing the links between biological and cultural diversity: “The state and the local governments encourage the respect, protection and maintenance of the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”. Yet, with regard to French law, this is ambiguous or even unconstitutional. In international law, the category of ‘indigenous communities’ makes it possible to acknowledge territorial rights founded on established occupations and ethnic status. Accordingly, all the states of the Amazon Basin explicitly acknowledge the legal status of indigenous and local communities. However, while Article 33 has not been challenged for the time being, no real legal consequence in terms of identity or territorial rights has been derived from the entry of this controversial category into French law. Even if one can say that the law applicable in Guyana acknowledges that indigenous and local communities have their “own legal existence” (Karpe 2007) and configures a sort of legal status *sui generis*, it is difficult to know accurately and concretely how these communities will fare in terms of territorial management and development project implementation.

Thus, irrespective of whether or not a park is established, local populations are only defined through the notions of ‘way of life’ and ‘usage rights’. While the populations situated on the territories of the *communes* of Camopi, Maripasoula and Papaïchton are known for their knowledge and respect of the forest and its ecology, they still need to be identified by the Charter. Their recognition is subject to the opinion of the traditional authorities serving on the board of directors (Untermaier 2008). In this light, the Charter will determine their official existence and whether they have a different status from the Creole residents’ status.

In Brazil, things are very different. The Amerindians and the Quilombolas (descendants of fugitive slaves with a history close to that of the Maroons in Guyana), were acknowledged in the 1988 Constitution. The Amerindians were recognised on the basis of their established occupation of the territory, while the Quilombolas were recognised on an ethnic basis. Both groups were recognised as social groups with rights, regardless of any environmental consideration. It is even acknowledged that they should benefit from a certain autonomy. Only much later was the legal category of “traditional peoples and communities” defined and its usage extended by various decrees for the purpose of sustainable development policies. This category made it possible to reinforce community-based management systems, and to promote the territorial claims of very heterogeneous groups with no reference to their established territorial occupation or their ethnic origin. Rather, they were distinguished according to a common social history and

Guyana with a view to exploiting or ceding state property”, *Journal Officiel* of 16 April 1987, p. 4316.

a sustainable method of resource appropriation and management. This is mainly the case of the rubber tappers, Brazil nut gatherers and babaçú breakers, but also of the communities of fishermen and river residents (cf. also Albert et al., this publication).

An Official Specificity after All

With the Act of 2006, the French government acknowledged that the parks could have resident populations. It also recognised that certain categories of people could circumvent at least some of the more comprehensive environmental protection measures applicable to the core area. These categories refer to “permanent residents in the core of the park”, “natural persons or legal entities exercising permanently or seasonally an agricultural, pastoral or forestry activity in the core”, and “natural persons exercising a professional activity on the date of creation of the national park, duly authorised by the Park Board”. Residents fitting these categories are granted the right to carry out livelihood activities with fewer constraints, and therefore to ensure that they can live under normal conditions while fully enjoying their rights. However, these activities must also be “compatible with the protection objectives of the core of the National Park”.

Do the Amerindian and Maroon communities of Guyana benefit from different advantages? According to the law, “especially considering the particularities of Guyana”, it is possible for the Decree and the Charter to make more favourable provisions for the three categories of persons redefined for the Guyanese case. The situation of a “community of inhabitants who traditionally draw their means of subsistence from the forest, for whom collective usage rights are recognised for hunting, fishing and any activity required for their subsistence”, is not fundamentally different from that of a permanent resident (e.g. a Creole whose residence is in the core area) or that of a natural person or legal entity exercising an economic activity (e.g. a forestry business). The fact that one can, in the core area, depart from the general environmental protection rules, remains a *possibility* and not an *obligation* imposed by law, which should be respected within the classification Decree and the Charter.

The status of the local communities is not entirely ratified by law. It is up to the Decree on the Creation of the National Park and the Charter to transform this possibility of derogation into obligation, i.e. to explicitly guarantee local communities usage rights in the core area. However, the mission of the Park Board is “to contribute to the development [of these communities], by taking into account their traditional way of life”. From this statement, we can infer that the Park Board could indeed apply preferential treatment to these communities of inhabitants. To what extent does the Decree allow such a treatment?

Perspectives for the Development of Local Communities

Without any reference to indigenoussness or ethnicity, the park established the special status of local populations, be they Amerindian, Maroon or even Creole. However, it is difficult to determine whether it consolidated certain rights already acquired, whether it enabled the sustainability of environmental practices and whether this led to new development possibilities.

Strengthening the Usage Rights of Local Communities

The French government has for some time acknowledged the presence of Amerindian or Maroon communities, while abstaining from instituting any substantive reforms in terms of granting rights over the land, as well as defining the actual legal status of these communities. Because the forest in which these communities live is part of the private domain of the state, it falls to the central government – and not to the Departmental Council of Guyana – to recognise the usage rights of these communities and the concession of state-owned lands for their benefit, despite the many requests of the Council for the retrocession of lands to the local government.

The Decree of 1987, as previously mentioned, determines the procedure for establishing the ‘collective usage rights’ on the state-owned lands of Guyana. These rights concern “hunting, fishing and, more generally, exercising any activity required for the subsistence” of the communities of inhabitants which traditionally draw their means of subsistence from the forest. To this end, Zones of Collective Usage Rights (ZCURs) are granted by Order of the *Préfet*. Each Order determines their location, surface area and recipient community. The total surface area of the ZCURs in the park is 5,628 km² and covers a five-kilometre area on either side of all main rivers and tributaries (See Plate 12).

The same decree holds that the Amerindian communities, constituted into associations or companies, can request to benefit freely from a 10-year concession. Such a concession holds that they can utilise state-owned lands situated within a determined area for cultivation, farming or simply for the housing of their members⁶. Since the aim of this decree was to favour settlement above all, theoretically hunting and fishing activities are not authorised in these concessions. It is the *Préfet* who pronounces the definitive or partial withdrawal of the concession, when the members of the association or company have ceased to permanently reside in a given area (although “permanent residence” has yet to be defined), or when the community finds it impossible to fulfil its obligations as defined in the concession (e.g. the land was not developed).

6 In the common law system (Article R. 170–38 of the Code of State-Owned Property) concessions are only granted “to a person of age entitled to stay regularly and permanently in Guyana, the concession being granted in a personal capacity”. This is a remarkable exception in favour of the communities.

In both the ZCUR and concession cases, the legal situation of the Amerindians and the Maroons of French Guyana in relation to their land is very precarious, since their rights depend entirely on the *Préfet*. No objective condition, such as proof of long-term occupancy or the respect of all the conditions imposed by the state, can ensure the territorial permanence of the local communities, unlike what other states of the Amazon Basin have been doing (Filoche 2007a).

Does the park offer more guaranties concerning the rights to access resources and to maintain usage of the land? The core area is generally a profoundly regulated space: Article 10 of the Decree on the Creation of the National Park specifies that agricultural, pastoral or forestry activities in the core of the park are subject to the authorisation of the Park Director. Moreover, hunting and fishing there are strictly prohibited. Indigenous communities as well as permanent residents are not, however, entirely subject to these provisions.

Indeed, the communities inhabiting the park could benefit from the geographic as well as material expansion of their activities. These communities have rights on the entire core area and not just on zones strictly defined by an Order of the *Préfet* or a concession. They are not subject to the regulations as regards building works or the creation and maintenance of new villages for their own use. They can hunt, fish and practice “traditional slash-and-burn agriculture” freely. They can also remove or destroy non-cultivated plants to build traditional houses, open forest tracks or clearings and make fires (Article 22)⁷. They can even sell off their surplus catch from hunting and fishing exclusively to other members of the communities of inhabitants, or to residents of the park, and vice-versa. A restricted commercial circuit is made possible inside the core area, provided no meat or fish is sold outside the park or to people coming from outside⁸. Furthermore, one can deduce from the Decree that the usage rights granted to the communities in the core zone are more extensive than those granted in the former ZCUR. Tolerated activities are not limited to ‘subsistence’ activities but also include the craft industry.

Concerning the permanent residents, particularly the Creoles, hunting and fishing must only be carried out occasionally in the core of the park. However, nothing confirms that the collective usage rights of the communities prevail over those of the residents. It is probably the Charter that will determine how to concretely settle potential conflicts over rights between communities and permanent residents around these resources.

Certain crucial questions currently remain unanswered. Collective usage rights applicable in the core area do not have specific recipients, as opposed to the ZCURs allocated to designated communities. The question remains as to how the various communities are going to arbitrate their potential conflicts. Furthermore,

7 However, food gathering for selling purposes and even for subsistence feeding, is not mentioned, which is a surprising omission.

8 This prohibition refers to a restrictive definition of what ‘subsistence’ can represent. Thus, theoretically, the communities will not be able to sell meals to tourists when the basic ingredients of such meals come from the core area.

former ZCURs will be fragmented between the core zone and the ZFA of the park, which will create some confusion, all the more since the Charter could impose limitations on activities performed in the ZCURs located in the ZFA.

Unclear Development Perspectives

The creation of the park must ensure that the populations benefit from conditions for economic development that will respect biodiversity conservation. Do the constraints applicable in the core area allow this type of development?

Under the Act of 2006, the prohibition of industrial and mining activities in the core zone of any park is clearly defined and final. Yet, the park currently has approximately 10,000 illegal gold panners operating within it. This raises questions concerning how they will be removed and how the ban on gold panning will be policed.

The Decree on the Creation of the National Park in Guyana holds that, in general, commercial and artisanal activities are forbidden in the core area, except as we saw, for the communities of inhabitants which, contrary to the permanent residents, can freely exercise artisanal activities. Within this framework, these communities are also able to remove rocks, minerals, non-cultivated plants and non-domesticated animals. However, some ambiguity remains concerning the commercial nature of this activity. For example, the Decree does not prevent communities from selling their craft to people from outside the park. This was against the Park Board's will which had nonetheless been expressed to the drafters of the Decree.

The status and surface area of the ZFA were still being negotiated in 2011. According to the draft project, certain subsistence activities such as gathering, cultivation on cleared land and local crafts could represent economic networks to be determined. The Charter should foster the creation of networks by encouraging artisans to federate, to plan the creation of labels guaranteeing the quality and origin of their products, and to carry impact assessments on the exploitation of the resources (Mission pour la création du parc de la Guyane 2006). In case the sale of goods produced increases, which then should be included in development objectives, it would be advisable to monitor the ecology of species through scientific research. This research would determine the sustainability of the resource (quantity and geographic distribution of the populations) and its sustainable exploitation (capacity for regeneration, picking technique) (Davy 2006).

How will these limitations to exploitation be determined, and how will the communities of inhabitants be involved in their determination? When the protection of plant or animal species is necessary to the subsistence of indigenous communities or to the maintenance of their traditional way of life, decisions concerning potential measures are taken by the Park Director. This decision-making capacity has been formalised in Article 4 of the Decree on the Creation of the National Park. The decision of the Director is, however, guided by the opinions of the Scientific Council and the Committee for Local Life. Therefore, for example,

to what extent will the Wayãpi be prevented from hunting the collared peccary which is very symbolic to them (Grenand 1996)? Alternatively, will the Wayãpi be able to force the Park Board to take special measures to protect this mammal? One can expect heated debates in this regard.

Surprisingly, the Teko of Camopi do not feel very concerned for the time being by the management of natural resources. They expect that the main source of revenue will come from tourism which is authorised throughout the core area, as is the construction of light tourist infrastructure. In fact, the mayor (at the time) who had been thinking for a long time of building traditional houses or *carbets* for tourists, as well as the representative of the traditional authorities who was a professional boatman, expected much from the park. However, many questions have arisen. Until today, the Order of the *Préfet* issued in 1970 and revised in 1977, regulates access to the upper parts of the rivers in the *Grand Sud* ('Indian country'). This access is authorised by the *Préfet* and the Charter will need to establish whether this authorisation is still compulsory, whether the task of authorisation will fall to the Park Board, and whether the communities of inhabitants will be entitled to prevent tourists from entering their villages and hunting trails. Finally, the Charter will need to define whether the communities have first option to build tourist infrastructure and to regulate the potential associations between them and the tourism agencies based in Cayenne.

Sharing Decisional Jurisdiction and Reconfiguring Alliances

The preparation works for the creation of the park revealed tensions within Guyanese society, where actors often had conflicting expectations. In this light, the participative process has been particularly delicate.

The position of the Guyanese local officials has been ambiguous, to say the least. The conduct of these officials has always been ambiguous towards the metropolitan power, and towards local communities. This ambiguity, however, did not prevent pragmatic and once-off alliances from being created. During the consultations prior to the creation of the park, the fact that metropolitan France refused to confiscate Guyanese territory in favour of the Amerindians (and to the detriment of the Creoles), was often vigorously and even violently denounced: the park must be for all Guyanese people and its wealth must not only benefit the "micro-local resident populations". At the same time, the same elected officials were against Guyana building up stronger relations with neighbouring countries, Brazil in particular which is deemed too conquering, and with the Amazonian region represented by the ACTO⁹. More generally, many elected officials as well as representatives from the private sector fear that the park will impede the

9 This is in fact a view which is shared by the central state which systematically associates the *Préfet* with the external diplomatic initiatives of the president of the Regional Council.

development of Guyana, especially as regards gold mining which represents an important source of local income. Yet they acknowledge that the park's existence can lead to an improved structure and tenure of the land, to the development of infrastructures, increased profitability from ecotourism (or even ethno-tourism), and a more comprehensive strategy against illegal gold panning.

How were the grievances and concerns of the local governments and the local communities heard and potentially conciliated? According to the Act of 2006, the administration of a park is carried out by a Board of Directors which includes representation from local actors: the elected officials and the members chosen for their local expertise (owners, inhabitants, farmers, professionals, users and environmental conservation NGOs) hold at least half the seats, the other half being distributed between the state representatives and national experts (whether scientific or institutional). The nomination of the members of the Board of Directors and their numbers was determined on a case by case basis during the establishment of the park. Nonetheless, the law provides for *ipso jure* members: mayors of *communes* with more than 10% of their territory in the core area (this provision already existed in the Act of 1960), the présidents of the Departmental and Regional Councils, and the chairman of the Scientific Council of the Park.

For the National Park of Guyana, the situation is different in that parity between the state and the local governments was not adopted. The law holds that the mayors of the five *communes* concerned are *ipso jure* members of the Board of Directors. According to the Decree on the Creation of the National Park, the council consists of 44 members: 10 state representatives, 12 local government representatives, five representatives from the Amerindian and Maroon communities (Box 6.2) and 16 key players, plus one personnel representative. The diversity of the council members is certainly expected to promote a wide array of opinions. Local representation is in the majority compared to state representation, insofar as the local governments emerging from the decentralisation and the communities of inhabitants are included in this category. However, the local representation is far from being homogeneous, and alliances between the state and the various associations are changeable.

For example, certain local governments can oppose the central state without acting in the interests of populations living in the park; and it is likely that the state representatives are, on certain issues, more favourable to the interests of the communities than the representatives of the local governments. Moreover, the state can rely on the loyalty of the mayors by offering them various development perspectives (roads and other infrastructure). Generally, the institutional motivations and personal preferences of the members of the Board of Directors may not always coincide.

The place reserved for the communities in the decision-making structures is absolute, but their actual power is uncertain, particularly within the Board of Directors. Likewise, during the procedure for the adoption of the Decree on the Creation of the National Park, within the Steering Committee and during the public enquiry, the Amerindian and Maroon communities were consulted directly

Box 6.2 Reduced participation of the local communities

The Board of Directors only has five traditional authority representatives out of the 44 members making up the board. These representatives are provided for by Article 28 of the Decree. They are appointed by the '*grand man*' concerned or, failing this (and therefore when several ethnic groups are involved), by the meeting of the 'captains' and household heads of the territory, convened by the mayor of the *commune* concerned. They have been made official by the appointment Order (of the Minister of Ecology and Sustainable Development) of 1 March 2007: a representative from the traditional authorities of the village and hamlets of Papaïchton (Aluku); for Maripasoula, a representative from the traditional authority of the village (where a majority of Akulu live), and a representative from the traditional authorities of the hamlets of Upper Maroni (Wayana and Teko), which means one representative for two ethnic groups; for Camopi, a representative from the traditional authorities of the hamlets of the middle Oyapock, the hamlets situated on the banks of the Camopi River and the village (Wayāpi and Teko); and a representative from the traditional authorities of the hamlets of Upper Oyapock (Wayāpi).

and through representatives of the traditional authorities. However, their opinion was not actually enforceable by the French state. In addition, representatives from these communities will sit on the Committee for Local Life. Yet, whether legally or practically, consultations will need to be conducted but all opinions will remain purely consultative.

Despite these limitations, the fact that the Amerindian and Maroon authorities have been taken into consideration must be highlighted. Indeed, for a long time common law authorities (mayors of the *communes*) and the traditional authorities (those tolerated by the administration) have co-existed. Although 'captains' and '*grands mans*' are granted some governance functions, formerly by order of the *préfecture* and currently by order of the Departmental Council, their duties have not been clearly determined. Thus far their duties have covered land clearing, setting dates for traditional holidays and providing a policing structure, although this function has often been questioned. Disputes are submitted to arbitration before the traditional chiefs and when a decision needs be taken, as a rule, the mayor of the *commune* concerned must consult with the traditional leader. Despite the French government's refusal to introduce the notion of collective rights in French law, which would lead to the official recognition of communities interposed between the citizen and the state, certain customary laws of the local Guyanese communities are in fact implicitly recognised (Collective 1999).

Traditional leadership is recognised by the park, however, the formal management structures could entail a loss of authority, for the traditional authorities are somewhat underrepresented on the Board of Directors. Moreover, the interventions of the mayors (who can also be Amerindian or Maroon) and the representatives of the traditional authorities, based on their abilities and legitimacy, remains to be seen. The Decree on the Creation of the National Park

does not provide for the legal recognition of customary law, which means that the tolerance that prevailed prior to the establishment of the park could be affected. And yet, in all the Amazonian states, the explicit integration of customary law into the management plans of protected areas constitutes a cornerstone of conservation policies (Filoche 2007a).

The special case of access to genetic resources, mentioned specifically in the Act of 2006, serves to illustrate the complexity of the situation involving the capabilities of all the actors concerned. It also serves to illustrate the tensions between metropolitan France and the Departmental Council of Guyane, as well as that between Creoles local officials and the local communities living in the park. This is an issue which affects the Guyana Amazonian Park in particular, since the other National Parks do not deal with this question.

While the French government did ratify the Convention on Biological Diversity, it did not implement Article 15 as regards accessing genetic resources and benefit sharing drawn from their exploitation. To the Brazilian and Bolivian governments, Articles 15 and 8j of the CBD mean that bioprospection activities must be subject to a benefit-sharing contract with the indigenous and local communities. This contract should be drawn up with their prior and informed consent. This applies as soon as bio-prospection concerns a genetic resource which has already been used as a communal biological resource, i.e. for which communities would have in one way or another contributed to its perpetuation, and have indicated a possible usage or location for it. Potentially, a contract could also be drawn up as soon as a resource grows on the lands occupied by these communities (Aubertin et al. 2007).

Currently, these provisions have not been implemented in France. Several cases of biopiracy have questioned the activities of French public research institutes. These institutes have been denounced by the Guyanese authorities, as examples of the plundering of Guyanese heritage by metropolitan France.

The procedure for accessing genetic resources and associated knowledge exists neither for Guyana nor metropolitan France. However, the Act of 2006 contains a surprising proposal for local officials to take over the functions conferred by the CBD upon the state. The regulations for accessing and utilising resources and for sharing the benefits will not be defined by legislation from France nor by a Park Board regulation, but will result from a proposal of the congress of elected officials from the Departmental and Regional Councils of Guyana, to be recorded in the Charter. Under Article L. 331-15-6, only the président of the Regional Council, after receiving the assent of the President of the Departmental Council, can issue authorisations to access the genetic resources of species sampled in the National Park, "without prejudice to the application of the provisions of the intellectual property code". While the orientations to be recorded in the Charter must expressly respect the principles of the CBD, "those asserted in Articles 8j and 15 in particular", we need to question the extent to which the Charter will take

into consideration the communities and the expression of their prior consent, all the more since neither the law nor the decree mentions traditional knowledge¹⁰.

Conclusion: An Ambiguous Design

The current shape of the park could be said to reflect the conflicts between all interested parties (See Plate 12). Indeed, although initially the Steering Committee had worked towards establishing a unique core area, now there are three. This fragmentation is presented as the result of late procedures of 'participative democracy' during the public enquiry, where these procedures and their results were much debated by scientists and NGOs. From an ecological point of view, this fragmentation does not take into account one of the fundamental general ecological laws that exponentially links the number of species to the surface area sheltering those species (Rosenweig 2007). Moreover, nothing indicates that the ZFAs will be connected in such a way as to enable the establishment of corridors between the three core areas¹¹: it will depend on the Charter negotiations.

From a socioeconomic point of view, the layout of the park ignores the wish of the Wayana – which was probably expressed too late – to benefit from protection against the ravages of gold panning, by having their villages included in the core zones. These villages will therefore be part of the ZFA, provided the *communes* of Maripasoula and Papaïchon adhere to the Charter. This division is all the more worrying since it could be interpreted as granting *garimpeiros* easy access to gold washing sites. While gold washing is definitely forbidden in the core area, it can be authorised in the ZFA and may even be allowed upstream in rivers crossing one of the three core areas of the park, depending on what the Charter will enact. In this regard, the concept of clean and sustainable gold washing is far from reassuring (Collective 2005). Finally, deciding not to include in the core most of the areas bordering Surinam and the Parque nacional das montanhas do Tumucumaque in Brazil, opens up the possibility for uncontrolled transactions.

The Guyana Amazonian Park gave Guyanese officials an opportunity to assert their authority over a National Park and local communities. There is no doubt that local governments will indeed be controlling the drafting process of the Charter, since they will have a majority vote, and since their adherence to this text will ensure the proper functioning and sustainability of the park. Nevertheless,

10 Yet initially, thanks to an amendment introduced during parliamentary debates, it was acknowledged that the local communities had their own decision power and control over bioprospection through their traditional political authorities (Karpe 2007). This amendment did not hold: it was argued in particular that it was better if genetic resources were appropriated by the entire Guyanese community, and not simply by a few scattered communities.

11 See Carrière et al. and Bonnin, in this publication, about corridors and ecological networks.

they will still need to respect the Decree and the Act (as these are higher in the hierarchy of legal standards), although local governments will be sure to make the most of the leeway offered by these texts. While it is too soon to draw conclusions, the creation of the park was a missed opportunity to grant local communities legal status and unambiguous rights over their lands and resources. Having the entire implementation of the park's operation rely on a future negotiated Charter is a risky wager, in a context where local populations sometimes find it difficult to make their voices heard in relation to the state, to local governments and to economic or even ecological interests. Indeed, it is a risky bet concerning the benefits these populations should be drawing from the creation of the park, and concerning the conservation objectives that will be threatened by the economic imperatives of gold panning.

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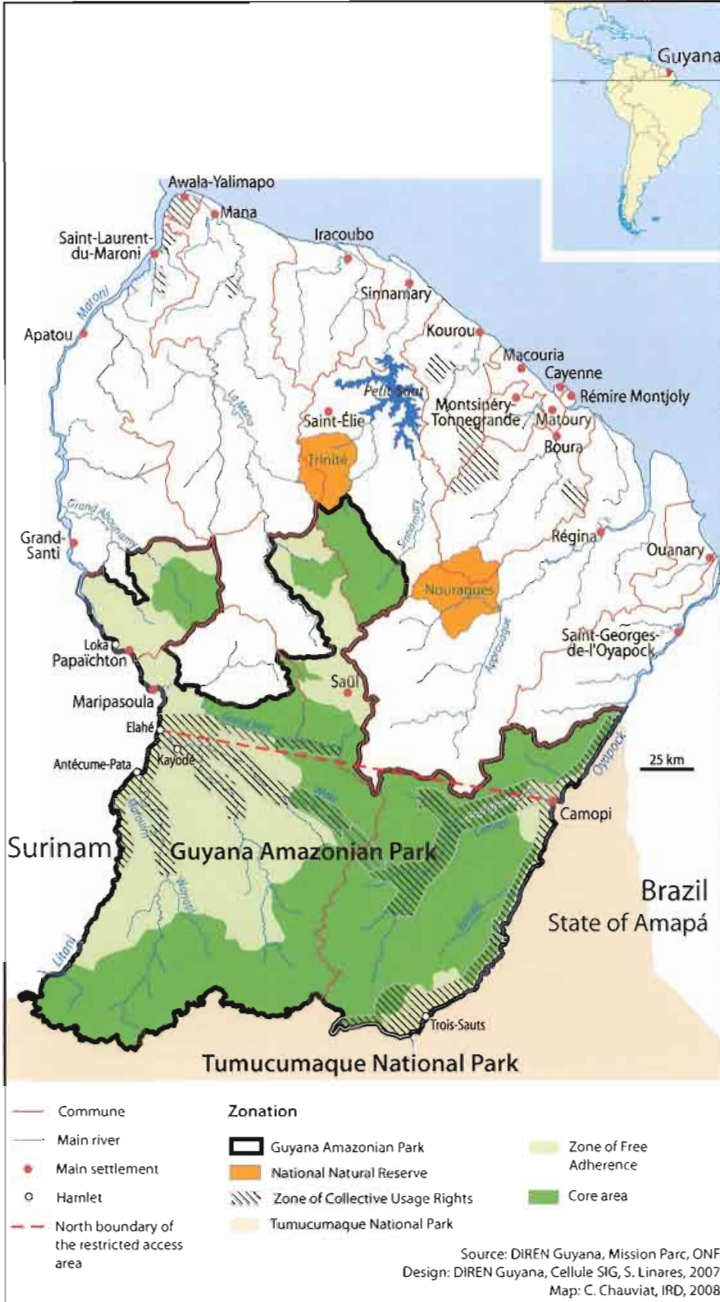


Plate 12 The Guyana Amazonian Park

Aubertin Catherine, Filoche Geoffroy.

Creation of the Guyana Amazonia park :
redistribution of powers, local embodiment
and territorial divisions.

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