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CUSTOMARY LAW

**SWM SUSTAINABLE
WILDLIFE
MANAGEMENT
PROGRAMME**

Customary norms and practices used to strengthen the sustainable use and management of wildlife resources in the Rupununi by Wapichan communities



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Guyana

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INTRODUCTION

The Sustainable Wildlife Management (SWM) Programme is an initiative of the Organisation of the African, Caribbean and Pacific States (OACPS). It is implemented through a partnership involving the Food and Agriculture Organization of the United Nations (FAO), International Cooperation Center for Agricultural Research for Development (CI-RAD), International Center for Forestry Research (CIFOR) and Wildlife Conservation Society (WCS). The objective is to reconcile wildlife conservation issues with those of food security by promoting the sustainable and legal use of resilient wildlife populations by native rural people.

In Guyana, the SWM Programme has focused since 2017 on the Rupununi region in the south of the country. One of the outcomes of this programme is to ensure that policies and regulations enable the sustainable use of species that are resilient to hunting and fishing, and to ensure the conserva-

tion of protected and threatened species. To this end, the programme identified gaps and opportunities for the sustainable use of wildlife through the analysis of statutory and customary laws. The focus of this document is to report on customary rules and practices in relation to land use and planning, hunting, and fishing activities in Wapichan wiizi (Wapichan territory) in South and South Central Rupununi. Gaps and contradictions between customary and statutory systems are highlighted as well as opportunities related to the formal recognition of customary rules.

The information compiled in this document was extracted from publications and technical reports developed by the SWM Programme and other sources such as the International Work Group for Indigenous Affairs (IWGIA). Interviews with experts and local leaders were held to complement the information extracted from secondary sources.

1 HISTORICAL BACKGROUND

Under Guyana's Independence Agreement from the United Kingdom (1965), the Amerindian Lands Commission was tasked to settle Amerindian land claims. Recommendations from the Commission regarding this process have never been fully addressed by successive governments. The land titling process has resulted in the fragmentation of traditional territories into small areas under individual village titles. In 1967, Wapichan village leaders submitted a petition for collective land title over their entire customary territory. Today, the Wapichan people have formal land titles over only about 15 percent of their ancestral territory (Forest Peoples Programme, 2016; IWGIA, 2020).

The South Rupununi District Council (SRDC) has been the legally recognized representative body of the Wapichan people since 2017. This Council has been important in reinforcing traditional jurisdiction over shared farming, hunting, fishing and gathering grounds. The South-Central Peoples' Development Association (SCPDA) acts as the Secretariat for the SRDC (Forest Peoples Programme, n.d.). The aim of this association is to secure and sustainably manage the Wapichan wiizi (traditional territory) and to improve the livelihoods of the

communities. The SRDC and SCPDA supported the development of the Wapichan territorial management plan entitled, "Thinking together for those coming behind us". The Plan was formulated in 2012 by the communities and is based on consultations and agreements made by the Amerindian villages and communities from the South Rupununi (Gomes and Wilson, 2012).

In 2019, with support from SWM Programme, SCPDA created the Wapichan Wiizi Wildlife Management Committee (WWWMC) to promote the care of conservation and sustainable management of wildlife species and habitats across Wapichan wiizi. Their activities include: raising public awareness about conservation and sustainable management of wildlife; incorporating traditional knowledge into conservation and sustainable management of wildlife; empowering communities to make informed wildlife management decisions by carrying out studies of species with critical values for the Wapichan people; exploring wildlife livelihood opportunities; and assisting village councils in establishing rules on the protection, conservation and sustainable management of wildlife.

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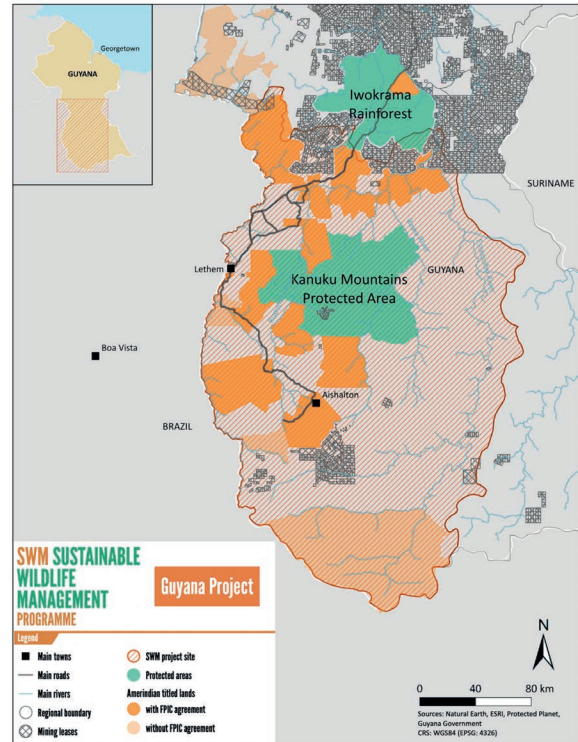
GEOGRAPHIC AREA AND ETHNO-LINGUISTIC CHARACTERISTICS OF THE WAPICHAN WIIZI

The Rupununi region

Activities under the SWM Programme in Guyana are undertaken in Region 9, officially known as Upper Takutu-Upper Essequibo, but more commonly named the Rupununi region after the Rupununi River that flows through the entire region (Henfrey, 2002; Palmeaere, 2018). The Rupununi is in south-west Guyana bordering the Brazilian Amazon, and with a surface area of 57 750 km², is the largest region in the country (Paemelare, 2018; de Souza, Armbruster and Werneke 2012). It consists of rolling savanna grasslands, tropical rainforests, extensive riverine tracts, and mountain ranges such as the Kanukus and the Pakaraimas (Mulder et al., 2009; Bowers, 2016). There are only two seasons in the Rupununi: the dry season from October to March, and the rainy season from April to September (Rodríguez et al., 2011).

The Region is divided into sub-regions from north to south: South Pakaraimas, North, Central, South-Central and Deep South. These correspond to the territories of different peoples and local indigenous councils (Paemelare, 2018). The Rupununi has approximately 24 000 inhabitants, most of whom belong to indigenous peoples: Wai-Wai in the forested deep south, Wapichan in South and South Central, and Makushi in the North (Paemelare, 2018; Luzar Silvius and Fragoso 2012). There are approximately 40 communities that have created special Amerindian governing and representative bodies. The North Rupununi District Development Board (NRDDDB) was registered as a trust in 2001 and is an umbrella organization for the Makushi people from North Rupununi (NRDDDB, n.d.). The South Rupununi District Council (SRDC) is the Wapichan’s collective representative body and is legally recognized as a District Council (Forest People Programme, n.d.). Communities from South Pakaraimas do not have a representative body (Paemelare, 2018).

Indigenous peoples in the Rupununi are organized in villages and satellite communities. Villages hold communal land titles; however, all the villages that are part of the SWM Programme have formally claimed extensions to these lands to the Government because titles do not cover the total extent of customary lands. Their traditional hunting,



harvesting, fishing and farming grounds are often beyond the limits of demarcation, causing restrictions to use these resources. Mining, logging and other extractive concessions, as well as leases for farmers have been granted over customary lands without ensuring the Free Prior and Informed Consent of communities (Gómez, 2020). This is an important international standard but not always incorporated into national legal frameworks. In the South Rupununi, approximately 50 000 ha of land under claim extensions by Amerindians were leased to Dadanawa Ranch, the largest cattle ranch in Guyana. In addition, in 2013, the Government leased 8 000 ha of untitled customary lands owned by the State to Brazilian plantation agriculturalists (MacDonald, 2016).

The Wapichan wiizi

The Wapichan traditional territory lies in the South Rupununi between the Takutu, Kassikaiytu and Essequibo Rivers. The land includes the southern part of the Kanuku Mountains. Wapichan wiizi harbours a highly diverse habitat with continuous tracts of primary forest, ‘bush islands’, gallery forests, open and tree savannah, and seasonally flooded wet-

lands. The Wapichan wiizi is home to many species of fish and wildlife, some of which are rare or threatened globally, such as the red siskin (*Spinus cuculatus*), giant anteater (*Myrmecophaga tridactyla*), yellow-spotted river turtle (*Podocnemis unifilis*) and black curassow (*Crax alector*).

The Wapichan are predominant in the South Rupununi; 94.5 percent of the population from this area identify themselves as Wapichan (David, 2006). Their settlements are spread over a wide area of savannah-forest ecotone in 13 main villages and nine smaller satellite communities (Henfrey, 2002). Their modern language is Wapichan, which belongs to the Arawak family (David, 2006). Most people have knowledge of English since they attended government primary schools. Portuguese is also widely known due to the proximity with Brazil. Wapichan livelihoods are based on fishing, hunting, rearing domestic livestock and the cultivation of fruit trees (Henfrey, 2002).

Phytogeographically, the Wapichan wiizi represents an extension of the Rio Branco savannahs in Brazil, and is therefore distinct from other parts of Guyana (Jansen-Jacobs and ter Steege 2000). The Wapichan wiizi lies on one of Guyana's unique and diverse ecosystems, and is one of the last great wilderness areas on earth. It is home to many species that are highly endangered globally (Jansen-Jacobs

and ter Steege 2000; Hollowell and Reynolds, 2005; DIREN 2006; Conservation International 2003, WWF, 2016). These include many iconic Amazonian species; the jaguar (*Panthera onca*), giant river otter (*Pteronura brasiliensis*), harpy eagle (*Harpia harpyja*), Brazilian tapir (*Tapirus terrestris*), giant anteater (*Myrmecophaga tridactyla*) and giant armadillo (*Prionomys maximus*).

In 2013, the World Wildlife Fund Guianas (WWF-Guianas) and Global Wildlife Conservation (GWC), two non governmental organizations, carried out an expedition in the villages of Potarinau, Sawariwau, Karaudanawa and Parabara to obtain a snapshot of the region's biodiversity and environment, collecting data on seven taxonomic groups (mammals, birds, reptiles, amphibians, fish, insects and plants) as well as on water quality. The survey, led by external scientists, involving Wapichan communities, focused on freshwater and terrestrial habitats, and included a number of distinct habitat types: forests, including rainforest, dry and riparian forest; bush islands and seasonal wetlands; and creeks, rivers and lakes. Overall, the biodiversity survey identified 180 morphospecies of plants, 175 ant species, 201 species of aquatic beetles, 487 species of birds, 27 species of amphibians, 33 species of reptiles, 17 large mammals, 35 species of bats, 2 species of rodents and 168 fish species.



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3 RECOGNITION OF CUSTOMARY NORMS AND PRACTICES BY STATUTORY LAW

The Amerindian Act defines Amerindians as any citizen who belongs to or is descended from any of the native or aboriginal peoples of Guyana (Akawaio, Arekuna, Patamona, Waiwai, Macushi and Wapishana). The Constitution of the Co-operative Republic of Guyana provides special rights and representation organs for Amerindians. While customary law is not expressly recognized, the Constitution in its Article 212T establishes the functions of the Indigenous Peoples' Commission, including the promotion of indigenous people's rights, the protection and preservation of their cultural heritage, their participation in national decision making, as well as the empowerment of Amerindian authorities. The Commission also has the task to strengthen social justice and the rule of law for indigenous peoples (Art. 212G, 212S, 121J(2), Constitution of the Cooperative Republic of Guyana). Nevertheless, Guyana is one of the few countries in South America that has not ratified International Labour Organization Convention 169. The Preamble of the Constitution also recognizes "the special place in [our] nation of the Indigenous Peoples" and "their right as citizens to land and security and to their promulgation of policies for their communities" (Preamble Cap. 1:01).

The Amerindian Act of 2006 does not explicitly recognize customary law, but it establishes traditional rights for Amerindians understood as subsistence rights or privileges (Section 2). It also formally recognizes Amerindian authorities and representation bodies. The Act gives powers to village councils to administer village lands (i.e. lands under a land title) and to draft regulations governing, inter alia, access and administration of lands, and use of the natural resources, including wildlife and fisheries (Section 14). "The forest resources/timber on government-titled Indigenous lands (Amerindian Village Lands) are fully under the managerial authority of the Amerindian title holders, while minerals under the same land remains ultimately under national government authority" (IWGIA, 2020). Furthermore, in its Section 36(d), the Amerindian Act provides for District Councils "to plan and develop programmes for the district on environmental protection and management, health care, education, transportation, culture, economic development and any other issues relating to the functions of the village councils". In this regard, the Wapichan Management Plan developed by the SRDC, which is based on customary rules, is supported or recognized by Statutory Law.

The main concerns of the Indigenous Peoples in Guyana continue to be associated with insecurity of resource tenure (IWGIA, 2020: 428). The defects of the Amerindian Act, 2006 with respect to indigenous resource tenure have been repeatedly reported (Simms, Colchester, 2010 ; La Rose, Colchester 2010), albeit without any significant progress towards reform. After the failure of multiple phases of the Amerindian Land Titling Project which was an initiative of the Government of Guyana in the context of the Low Carbon Development Strategy, which ignored the political and social nature of land tenure, a new tenure assessment was launched in July 2019 in the South Rupununi by Amerindian Peoples Association (a non-governmental organization) and SRDC with multi-stakeholder funding, and aims to provide a better basis for titling and demarcation over 2 million ha (IWGIA, 2020: 434).



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CUSTOMARY NORMS AND PRACTICES FOR LAND AND WATER USE PLANNING

Village councils are the authorities in charge of land use planning and management. Each community has a leader and a spokesperson known as Toshao, who makes decisions about the use of resources through consultation processes and in compliance with customary laws (Isaacs et al., 2006). A group of villages might form a district with its own representation. In the South Rupununi, the representation body is the South Rupununi District Council (SRDC). The Amerindian Act also recognizes village councils as the authorities for land use planning within village lands (i.e. titled lands). It gives powers to the councils to decide on permits for outsiders to access lands and to draft regulations governing who can qualify for residency (sections 5, 14), which implies the acquisition of rights as a member of the Amerindian village. The village council also has the authority to grant leases over village lands and permits for non-residents to use forests resources in compliance with the requirements of the Amerindian Act.

Under customary law, the Wapichan people have the right to freely move within their customary territory and access natural resources for their livelihoods, subject to customary rules and traditions. Each village has jurisdiction over a titled or untitled traditional land area. Each community has its own farming grounds, which are recognized by neighbouring communities. Families and local groups hold prior rights and jurisdiction over the local area they occupy and use for farming and other uses (David et al., 2006). Communities have been established close to safe and reliable sources of wa-

ter such as creeks and smaller rivers. There are no rules on water allocation within Amerindian communities. This is likely because of the abundance of water in relation to the size of the population. Historically, there has been sufficient water for each family for any need or use (Janki, 2010).

The extent of Wapichan family grounds is defined by agreed boundaries marked by creeks, hills, mountains, and farm and hunting lines. Hunting lines are personal hunting paths created by a villager or inherited from a first settler relative. Owners have prior rights of access to the hunting line and the responsibility for sharing its use. Related families often occupy shared farming lands, forming small settlements traditionally led by a headman who is usually the person who first surveyed and settled the area, or the first person to inherit the farmlands. The headman is responsible for allocating farming rights to newcomers joining the settlement (David et al., 2006).

Hunting grounds are located throughout the Wapichan territory in mountains, 'bush mouth' (forest-savannah edge), deep bush, bush islands and savannah, and along creek margins, and are shared by all Wapichan communities. The jurisdiction over these areas is shared among adjacent communities and overseen by traditional authorities (Toshaos) (David et al., 2006). Subsistence fishing is generally practised in water bodies closest to the homestead in rivers, creeks oxbow lakes and seasonal ponds. Locations are often near the village or associated with farming sites (Paemelare, 2018).



Traditional methods of hunting and fishing

The Wapichan traditionally hunt at daybreak and during the early morning. In recent years, night hunting with flashlights has become common in the savannah, where game is sometimes hunted on horseback (David et al., 2006). Hunting may be opportunistic or planned in hunting trips with a partner or in a small family group. Once or twice a year in December and April, a larger group of hunters engage in a community hunt over approximately two weeks. These hunting trips are traditionally carried out to obtain meat for community festivities during national holidays at Christmas and Easter (David et al., 2006).

For the Wapichan people, hunting is traditionally practised with bows and arrows, and a variety of traps, although guns are also available in most villages (Henfrey, 2002; Paemelare, 2018). The use of guns is limited due to strict regulations on gun ownership and the high cost of cartridges (Paemelare, 2018). According to customary rules, hunting should be practised using traditional methods such as bow and arrow, and traditional traps (SWM, 2022a). Most hunters also own hunting dogs that are used to retrieve game. Ancient trapping techniques are still used today, such as the method of “beating up” for game to drive them towards waiting marksmen who stand at agreed waiting points with a bow or shotgun. Trapping is used for some species, such as the collared peccary. Another customary hunting method involves the construction of an elevated platform, called the wabani, at sites where game animals are known to feed and drink, including fruit-bearing trees, pools and saltlicks in the bush (Henfrey, 2002; Paemelare, 2018). Platforms are also used to shoot game feeding on crops or bush-fallows (David et al., 2006).

Taboos related to hunting and the consumption of wild meat and fish

Under Wapichan customary law, people must not kill water eels, stingrays, anacondas, or caiman because this might scare the fish. They also cannot kill animals considered ‘decorative’ (i.e. animals that “decorate” land and make it more beautiful), such as the giant anteater and tamarin monkeys (*Sa-*

The use of fire is also common in hunting and fishing practices. During September and October, fire is used in savannah mountain hills to catch iguana eggs. Fire is also used to flush out animals such as deer, agouti and armadillo around swamps and forest edges (Rodríguez et al., 2011). According to customary rules, this must be practised carefully to avoid uncontrolled fires (SWM, 2022a). Hunting with fire is also restricted to certain times of the year, usually December, April and August. Indiscriminate use of fire for hunting is rejected in the South Rupununi, particularly when it is carried out by an individual or a household. Fire is also used to maintain and clear hunting and fishing paths, and as light when fishing at night (Rodríguez et al., 2011).

The most common fishing methods are hook and line, fishing rod, and bow and arrow. Ancient techniques such as fishing traps and the use of poison are also still common. According to customary rules, traps must be dismantled after use. New methods have been introduced, such as cast net, seine net and dive fishing. There is a growing consensus that fishing with seine nets should be restricted by inter-community rules agreed by District Toshias Councils (David et al., 2006). In the guidelines developed with the support of the SWM Programme, the Wapichan people have established that seine nets should be used sparingly without blocking waterways, and that no seines are allowed during April and May (SWM, 2022a). The use of poison is allowed only in compliance with customary rules agreed on by the community such as: “do not leave fish poisoned in the creek”, “do not poison deep pools nor drinking and bathing waters”, and “clean pool of all dead fish after poisoning” (David et al., 2006: 38).

guinus midas) (David et al., 2006; Gomes, Wilson, 2012). Some animals are believed to have supernatural spiritual powers, such as anacondas (*Eunectes murinus*) and boa (*Constrictor constrictor*). It is believed that anyone who kills these species is subject to the revenge of their spirits and thus the

animals are avoided (David et al., 2006; Paemelare, 2018). Customary rules also indicate that pregnant wildlife and young animals as well as the leader of the White-Lipped Peccary herd (*Tayassu peccary*) should not be hunted (SWM, 2022a).

Some people avoid the consumption of species such as tapir (*Tapirus terrestris*), grey-brocket deer (*Mazama nemorivaga*), tortoises (*Chelonoidis* spp.), capybara (*Hydrochoerus hydrochaeris*), and white-lipped peccary (*Tayassu pecari*) for health and cultural reasons. However, these taboos are not generalized, and most people consume them. The grey brocket deer is the 'grandfather of deer'. Such grandfather species must be avoided, especially by children and their parents (Paemelare, 2018). Shamans also recommend avoiding the skin of fish (Luzar et al., 2012). Young women may only eat certain fish and meat when they take part in traditional puberty rites (David et al., 2006). The shaman is a special figure that provides advice on the meats and fish to avoid and remedies for people who experience the negative consequences of having breached taboos (Paemelare, 2018).

After two weeks following the birth of a child, the father must spend most of the time resting and avoiding hard work, including hunting. It is believed that violating this rule may lead to sickness of the child, or even death if the shaman does not intervene. During the period in which the infant reaches a certain age advised by the shaman, dietary restrictions are imposed for the household (Henfrey, 2002).

Menstruating women should avoid forest areas, rivers, creeks, lakes and springs. They are considered to be particularly vulnerable to the attacks of boa (*Constrictor constrictor*) spirits during menstruation. Many taboos, particularly those relating

to fish or meat consumption, are associated with pregnant women or women during their menstrual cycle. The partner of pregnant women as well as toddlers may also be subject to this taboo (Henfrey, 2002; David et al., 2006; Paemelare, 2018).

There are also taboos related to areas in which hunting and fishing restrictions apply. Some areas are considered sacred and are off-limits, or require special rituals to be accessed because it is believed that they are inhabited by animal spirits (Paemelare, 2018). The rotational use of fishing grounds is a traditional practice by Wapichan fishers based on their belief in spirit guardians of the fish (David et al., 2006).

According to Luzar et al. (2012), taboos related to wildmeat consumption may serve as a management tool for natural resources. This is more evident for some species such as the lowland tapir, which has a low reproduction rate. However, the environmental implications of wildmeat are usually more complex since predatory pressure may shift to other animal species or to domesticated animals. While taboos play an important role, they are not the only reason for meat preferences among the Wapichan. Henfrey (2002) suggests that wildmeat consumption restrictions associated with the birth of a child may have significant impacts on hunting pressure, considering the long duration of restrictions as well as the reproductive life of people. This is reflected, for instance, in the hunting patterns of the Amazonian brown brocket (*Mazama nemorivaga*), a species that most hunters reported to have killed on very few, if any, occasions. Due to beliefs related to malevolent spirits in some species (e.g. anaconda, boa), some areas are free of hunting and from other human activities.



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Consumption of wild meat and fish

There are no customary rules for the preservation and handling of wildmeat; however, there are some practices that are common in the Rupununi. According to David et al. (2006) Wapichan preserve game meat by placing it on a smoking stand called diparii, or by salting and drying in the sun. Smoking is a preferred preservation method among the Wapichan. Fish is consumed by Wapichan either boiled, salted, or smoked (Gomes, Wilson, 2012). Smoking is also a common preservation method for larger fish caught at longer distances from the villages. Food, which would normally be prepared by the women of the family is preserved by the men. According to customary rules, fish must be cleaned on the creek banks and not in the water. This is related to a taboo, because the Wapichan believe that the 'grandfather of the fish' will see the offal of their children in the water and will grieve for them (ibid.). For wildmeat sold on the coast, Puran (2019) indicated that most consumer markets on the coast preserve wildmeat gutted on ice or freshly intact from hunting grounds to point of sale. Once the meat reaches the point of sale, most vendors with access to electricity preserve it by freezing until sold. Those without access to electricity preserve the meat by salting, smoking, or selling fresh.

There is no information available on customary practices by Wapichan regarding wild meat processing and safety; however, Milstein et al. (2021) studied similar practices of the Waiwai people in the South Rupununi. Results indicated that most people avoid hunting animals that appear ill. Most of the butchering occurs inside the household, primarily in the kitchen. Meat is butchered on a

wooden board, in a basin, or on a mat of woven palm leaves. A bowl of water is normally used at the end to wash the hands. Butchering activities usually take place within the next 12 hours after the slaughter of the animal, and people consider that 24 hours is the maximum time for safe butchery and cooking. Regarding consumption, the Waiwai people have always thoroughly cooked wildmeat. People reported that they always avoid raw or undercooked meat (Milstein et al., 2021).

It is customary to share meat with the extended family and neighbours when a hunter kills a large animal or has had a good hunting day. On average, 51 percent of hunters share their catch with other households (SWM, 2022b). In the dry season, the Wapichan people usually go on a collective fishing expedition to poison and catch fish at the invitation of a local elder or the Toshao. The elder hosting the activity ensures that cultural rules are followed and that participants receive an equal share of the catch. The Tshaos ensure that the surplus of the fish are shared with the elderly back in the main village. As a customary rule, fish must be shared (David et al., 2006).

According to customary law, commercial hunting is not allowed without first obtaining approval from the village council and the traditional local headmen. Community members are allowed to sell small amounts of wildmeat as an exception, in extreme cases such as when in need of income, or for heritage celebrations. However, commercial hunting is rarely practised in the Rupununi; only 4 percent of hunters sell part of their catch (Gomes, Wilson, 2012; Paemelare, 2018; SWM, 2022b).

Communities in the Rupununi experience conflict with both terrestrial and aquatic species. Conflicts include predators preying on livestock and pets, herbivores raiding farming grounds, and aquatic predators competing for fish and turtles and destroying fishing equipment. In terms of species, jaguars (*Panthera Onca*) and pumas (*Puma concolor*) are known to kill cattle, sheep, pigs and dogs. Black caiman (*Melanosuchus niger*), Spectacle Caiman (*Caiman crocodilus*) and giant river otters (*Pteronura brasiliensis*) raid and destroy fishing nets. Agoutis (*Dasyprocta leporine*), labba (*Cuniculus paca*) and peccaries (*Tayassuidae*) raid farms, and peccary herds may destroy an entire farm in a single event (Matthew Hallet, interview).

When human-wildlife conflicts are brought to the attention of local authorities, the situation is presented before the Toshao, the village council or the traditional local manager, who decides whether the animal should be destroyed. If the animal is determined to be a serious threat, the decision normally would be to kill it. Accordingly, the village council helps to set a plan and identifies a group of experienced hunters to assist in finding and destroying the animal. However, often, people retaliate immediately. At times these events are then reported back to the Toshao and village council, but at times they are not. In this regard, customary law might recommend involving the village leadership in case of human-wildlife conflict, but in practice this is not always how this is handled (Matthew Hallet, interview).

As a customary practice, fire is used in the Rupununi to chase away dangerous animals such as jaguars and snakes (Rodríguez et al., 2011). When there is a human-wildlife conflict, a typical retaliation to predation of livestock is to place a tree stand near a fresh livestock kill and wait for predators to return to feed on it in order to shoot them dead. People will actively hunt, flush with dogs,

or set traps for animals that raid farms. Generally, people do not speak of acts of retaliation because they are deemed wrong. The interpretation locally is that it is always illegal to kill a big cat, even in a human-wildlife conflict situation whereas the statutory law authorizes the killing of protected species in case of self-defense.

Disputes within Amerindian communities in Guyana are usually settled by a meeting between the disputants by using customary norms and practices. If a resolution is not achieved, the Toshao may be invited as mediator. More serious disputes involve interventions by the village council or other people with influence in the community acting as mediators or arbitrators. In case of disputes between people from different villages, meetings are held with the disputants to resolve the conflict, and who may be accompanied by their elected Toshao or other members of the village council. If an agreement is not achieved, the next step would be to lodge a complaint before the Minister of Indigenous People's Affairs. Another alternative would be to bring the matter to the attention of the Regional Democratic Council. However, this is a last resort option since the Council oversees general administrative matters of the region and is not specific to Amerindians. The traditional institutions in charge of settling disputes are the Tshaos, the village council and the community (through village meetings). A recent development is the system of community development officers (CDOs). The CDOs are Amerindians who have been provided with training in legal and social issues by the Ministry of Amerindian Affairs. They are employed by the Ministry to provide support and advice to the communities; however, they do not have official powers to settle disputes (Janki, 2010).

8

EXISTING OPPORTUNITIES AND CHALLENGES FOR WIDER RECOGNITION OF CUSTOMARY NORMS AND PRACTICES THROUGH STATUTORY LAW

Customary laws have, to some extent, formal legal support in the Amerindian Act, since it gives powers to the village councils to make rules to manage village lands and their natural resources including wildlife and fisheries. However, the Act also establishes that a rule introduced by a village council, or any amendment thereto, comes into effect when it has been approved by the the Minister of Amerindian Affairs and published in the Official Gazette. In this regard, the recognition is not automatic. The poorly regulated exploitation of mineral and forest resources by multinational companies, illegal miners and loggers continues to be one of the key challenges faced by indigenous peoples (IWGIA, 2020: 427).

There are some contradictions between customary and statutory systems, or aspects that are regulated by customary law, but which are not legally supported by statutory regulations. This creates confusion on the rights that Amerindians consider they have and the rights that are granted or recognized by statutory regulations. Further, the

recognition of some statutory rights is limited to titled lands, which contradicts customary rules. The Amerindian Act makes a distinction between Amerindian communities and Amerindian villages. Amerindian villages are groups that have communal ownership of the lands they traditionally occupy (they have formal land titles), whereas Amerindian communities are considered to occupy State Lands as they do not hold formal land titles. The Amerindian Act establishes some rights which primarily benefit the Amerindian villages such as the formal recognition of Amerindian authorities (village councils), the management of lands and resources, and the formulation of local regulations. These rights are automatically granted over titled lands but not over other customary areas, which contradicts customary law, because it states that the Wapichan people have the right to freely access natural resources for their livelihoods over all the customary territory. The titling of Amerindian land is still a challenge for Wapichan communities in the Rupununi that have claimed extension, since the titles do not cover the total extent of



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customary use. The land titling process initiated in 2015, which was already complicated became even more so due to an administrative instruction from the Ministry of Indigenous People's Affairs in 2019 stating that requests for Amerindian land title extension would be considered if the applicants had completed their Village Improvement Plans to the satisfaction of the Ministry (IWGIA, 2020).

Customary rights to exclude access by non-residents over Wapichan territory are also limited by statutory law. While the Amerindian Act recognizes the power of village councils to issue rules governing who may qualify as resident, this power is only applicable over titled lands. Some villages within the project (Parabara, Potarinau, Sawariwaw) identified difficulties in enforcing customary rules to prevent the illegal appropriation of natural resources from their lands. Most of the Wapichan's untitled collective territory remains vulnerable to land-grabbing, destructive logging and illegal mining (Forest Peoples Programme, 2016). Villagers from Potarinau highlighted the problem of illegal crossing of borders from Brazilians and people from Lethem to hunt. The Wapichan people have also expressed concern about tourists accessing fishing areas, which is increasing every year with the number of people visiting the Rupununi (David et al., 2016). This situation has also been aggravated by the fact that state land leases have been granted over Amerindian customary lands that are part of land extension claims, creating land tensions in the Rupununi between Amerindians and private leaseholders.

The right to use wildlife for subsistence purposes is stated under customary rules; however, the scope and conditions of exercise of this right under statutory law are not clear. The Amerindian Act recognizes traditional rights, which are understood as subsistence rights or privileges owned by Amerindian communities and villages. In principle, traditional rights include subsistence hunting and fishing. However, waters (creeks, rivers) are not covered by the land titles granted to Amerindian villages (La Rose, Colchester, 2010) and land leases to private owners do not explicitly recognize the right for neighbouring amerindian communities to use creeks, lakes and rivers within the leased land. Moreover the definitions for hunting, trapping and collecting provided in the Wildlife Regulations do not allow to clearly determine to what extent each one relates to subsistence hunting. The Wildlife Regulations require a trapping licence for amer-

indian villages that engage in trapping wildlife for sale whereas they are entitled by the Amerindian Act to make their own rules for the sustainable management of their lands and resources, including wildlife.

Under customary law, the occasional trade of wild meat surpluses is allowed as an exemption. However, under statutory law, even the trade of small amounts would require a commercial licence. Regarding hunting seasons, closed seasons established by the Government often differ from customary rules. Although according to the Wildlife Regulations, before declaring a closed hunting season, the Commission must consider Amerindian traditional knowledge and hunting practices, there is no process to involve them in this decision. This, despite section 212T of the Constitution which provides for indigenous people's participation in any decisions affecting their lives.

Both the fisheries and wildlife statutory legal frameworks are less prescriptive than the customary ones. Customary law restricts the use of guns and flashlights during night hunting, while the Wildlife Regulations have not yet established a general list of prohibited methods. Regarding fisheries, customary law makes restrictions on poisoning and the use of traps; however, there are no regulations for inland fisheries in Guyana, since the Fisheries Act and the Fisheries Regulations are only applicable to marine fisheries. The Wapichan people have expressed concern about newly introduced fishing techniques such as net, seine net and dive. These methods are not regulated by statutory law for inland fisheries and are not yet fully regulated under customary law. People have mentioned that fish stocks in large rivers have declined. While there are multiple possible causes for this decline (e.g. water turbulence due to mining activities upstream, climate variability), the more modern fishing practices carried out downstream and outside the Rupununi may also partly explain the observed declines (David et al., 2006).

In addition to the gaps related to statutory law, there are also challenges to the preservation of customary rules, cultural practices and traditional ecological knowledge among Amerindians (see, for example, Mistry et al., 2021). According to Paemelare (2018), traditional taboos and beliefs that support wildlife management are being lost as communities have embraced new practices that may often be considered unsustainable. The intro-

duction of Western religions might have an impact on the loss or transformation of traditional taboos. Another threat is the disconnection among younger generations from nature because of migration patterns and cultural changes from traditional use to a cash economy. Similarly, Bellfield et al. (2015) identified that a main driver of cultural change in the Rupununi is the settling and intermarrying of outsiders from neighbouring regions and countries, and the flow of people travelling through the region. As mentioned above, communities are facing challenges to restrict the access by outsiders, which might undermine the practice of taboos and other customary laws associated with the local culture.

The SWM Programme is promoting the participation of different stakeholders in the revision of current regulations on wildlife with the purpose of proposing recommendations to the Guyana Wildlife Conservation and Management Commission. These recommendations also aim to clarify the

gaps or conflicts between statutory and customary laws, such as the right to use wildlife for subsistence purposes. The programme is also supporting the creation of written guidelines on hunting, fishing, and trapping in Wapichan communities. The guidelines are developed by each community with support from the SCPDA. Both customary and new local rules are being codified in the guidelines under the SWM Programme. The codification of customary law may support the perpetuation of ancient rules and practices consistent with sustainable management that are increasingly being lost in modern times and among new generations. Also, since new, unsustainable practices (e.g., new fishing methods) have been introduced, the development of new guidelines through local agreements is important to regulate aspects that are not addressed by customary rules in order to protect local livelihoods.

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