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Abstract

The Cape York Peninsula in far northern Queensland, Australia is a remote region of great ecological significance, home to a predominately Indigenous population beset by intergenerational disadvantage and socio-economic difficulties. While in past years environmental groups and Indigenous communities worked together (in a so-called “green-black alliance”) to achieve Indigenous land rights and conservation outcomes, recent times have seen conflict develop between these two actors. This conflict has been set off by the introduction of ‘Wild Rivers’ environmental legislation in Cape York which seeks to “preserve” the natural values of pristine river systems, many of which are on the Aboriginal estate. Analysis of this conflict shows that inferior property rights, weak land rights, and a lack of coordinated advocacy on Aboriginal lands must be addressed. Secondly, conservation approaches that do not take into account social and economic dimensions of sustainable development should be rejected in favour of approaches addressing economic social and cultural priorities for Indigenous people. This will enable a realistic development and conservation agenda to be put in place that can lift people out of disadvantage and poverty. And thirdly, and most importantly, Indigenous rights and interests in land and land management must be acknowledged, enabling Aboriginal people to take back responsibility for land management and reinstating Aboriginal authority over conservation lore and law. This paper hypothesizes that continued ecological conflict in Cape York will further exacerbate the sidelining of Indigenous sustainable development. The more the debate is framed or wedged as a simple green vs. black (conservation vs. economic development) argument, the more likely that the complex needs of Indigenous communities will be ignored.

Introduction

“Our struggle for rights is not over and must continue — but we must also struggle to restore our traditional values of responsibility. We do not have a right to passive welfare — indeed we can no longer accept it. We have a right to a real economy; we have a right to build a real economy.”

Noel Pearson, Executive Chairman, Cape York Partnerships

The Cape York Peninsula (in northern Queensland, Australia) is primarily an Indigenous domain of over 137,000 square kilometres with over 50 language groups and dialects. The region is overlaid with a myriad of cultural sites, bora grounds, song lines and stories that record the region’s rich cultural diversity and complex land management systems and lore. Forty thousand years of Indigenous sustainable management has retained and shaped a stunning natural environment, famed for its natural beauty and the diversity of its ecosystems. It is home to over 3000 plant species and 500 species of terrestrial vertebrates, including one quarter of Australia's frogs and reptiles and fifty percent of Australia’s birds. (Balkanu and CYI 2007) Native title has been recognized, or is in the process of being recognized, across the region and Aboriginal people now own over forty percent of the land as Aboriginal (inalienable) Freehold and Aboriginal National Park. (Winer and Schuele 2012)

Growing political and public pressure to protect ‘what’s left’ of biodiversity and undamaged landscapes in Australia has focused on remote regions, mainly Aboriginal-owned lands. At the same time as more Aboriginal people have returned to country and are seeking an increasing say in the management and use of their land, green groups have gained increasing political power. (Fenton and Salmon 2003) Traditional alliances between conservation (or green) groups and Indigenous land-owners are unravelling and ecological conflict is becoming a “growing feature of Australia’s political landscape” (O’Faircheallaigh 2011) This tension is evident in the on-going Wild Rivers legislation conflict in Cape York. The Wild Rivers Act covers over 20 rivers flowing through the Gulf of Carpentaria, Cape York, Hinchinbrook and Fraser Islands, many of which are recognised as Aboriginal lands or waters. The Act seeks to preserve these rivers that have been deemed to have “all, or almost all, of their natural values intact.” (Wild Rivers Act, 2005) Different management zones are covered by increasingly restrictive conditions: either being off limits to some types of industry, or requiring applicants to satisfy rigorous conditions set by the regulating authority and conservation requirements. (McLoughlin, 2010). Conflict has grown out of

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dissatisfaction over Indigenous consultation and negotiation processes in the legislative process, as well as the implications for future sustainable development by Indigenous land owners under the Act, exacerbated by weak Indigenous property and land rights.

Ecological conflict can encompass conflict over water, land, territory or resources and is a valuable lens with which to view human-nature interactions. Research has focused on the links between environmental scarcity and violent or armed conflict (Homer-Dixon 1991; Baechler, Spillman et al. 2002) as well as variables such as poverty, governance, economic factors or culture. (De Soysa 2002) This paper examines how conflict arises between actors with fundamentally different world views, perceptions and influence over how environmental change and degradation should be addressed. While indigenous communities view their presence on the land as essential for conservation, often the conservation movement has seen the presence of Indigenous people as incompatible with the conservation of the natural world. (Richardson 2009) Peaceful collaboration between the state, conservation actors and Indigenous communities can founder over lack of recognition of Indigenous rights, interests and knowledge. This case study shows how successful, respectful collaborations between Green and Indigenous groups in Cape York have foundered with the unilateral imposition of conservation legislation that ignores the complex needs of Aboriginal communities.

Environmental injustice is about more than inequity arising from political marginalization and oppression of Indigenous peoples. (Chavis 1993; Bullard 1994) Indigenous groups in Cape York have called for conservation approaches to take their social, economic and cultural needs into equal consideration to allow them to tackle widespread Indigenous disadvantage. This demonstrates the conceptualization of environmental justice as incorporating “a range of demands for equity, recognition, participation... into a concern for the basic function of nature, culture and communities.” (Schlosberg and Carruthers 2010:12) This idea of environmental justice as distributive justice is broad-based, and notes the importance of underlying factors such as education, housing and jobs for the building of sustainable communities where “people can realize their highest potential.” (Bryant 1995)

Seeing a broad set of universal rights as necessary for a full human life means there is a need to “ evaluate... justice...in how those distributions affect the ultimate wellbeing and functioning of people’s lives...[and] how those goods are transformed into the capacity for

people to flourish.” (Nussbaum and Sen 1992) Development therefore must encompass access to the real economy, reducing reliance on welfare, tackling social problems and improving access to health services and education. Viewing the current ecological conflict between Indigenous groups and conservationists from a capabilities viewpoint allows a more nuanced examination of underlying factors. Broader struggles to preserve community, culture and traditional knowledge take place at the same time as efforts to get viable economic futures and sustainable development from Aboriginal lands. Conservation strategies by green groups and government based on purist preservation models have complicated and undermined Aboriginal strategies to use land management as a driver within broader welfare reform approaches.

This paper rejects “northern-driven discourse on environmental change and conflicts” in favour of an Indigenous-driven perspective.¹ (Hagmann 2005:10) It does so in full recognition of the different ways of thinking about Indigenous environmental values and practices which affect Indigenous participation in environmental governance. (Richardson 2009) Indigenous peoples have been viewed as either ‘ecological guardians’, (Berkes 2008) misguided or forsaken environmentalists, (Colchester 1994) environmental victims (Libby 1989) or innovators who develop systems of environmental management through self-governance. (Ross and Pickering 2002) The truth is both more pragmatic and nuanced. This paper recognizes that Australian Indigenous people have always lived by altering their environment. They are “living, real participants in a political actuality...[affected by] political, economic and cultural forces stemming from both Aboriginal and European spheres over the last 100 years.”(Anderson 1989)

This paper goes beyond calling for greater incorporation of Indigenous knowledge and approaches in conservation initiatives, and argues for indigenous-driven conservation outcomes. To achieve these outcomes, several issues must be addressed. Firstly, inferior property rights, weak land rights and land administration and a lack of coordinated advocacy on Aboriginal lands must be addressed. Weak land and property rights have resulted in the biological values on Cape York being acquired at minimal cost and in breach of national and international laws and agreements pertaining to Indigenous and human rights. Secondly,

¹ It must be noted that this refers to the global north-south divide rather than an Australian northern/southern divide (which is generally along Indigenous-non-Indigenous lines.)

conservation approaches that do not take into account social and economic dimensions of sustainable development should be rejected in favour of approaches addressing economic social and cultural priorities for Indigenous people. This will enable a realistic development and conservation agenda to be put in place that can lift people out of disadvantage and poverty. And thirdly, and most importantly, Indigenous rights and interests in land and land management must be acknowledged, enabling Aboriginal people to take back responsibility for land management and reinstating Aboriginal authority over conservation lore and law.

Ecological conflicts such as the one described in this paper are strongly affected by the weakness in Aboriginal land and property rights in Australia. This means that Aboriginal land also has the potential to be equally assumed or resumed for development purposes, which sidelines Aboriginal ownership and control from the opposite angle to an ecological conflict – and both threats are equally serious. It is a controversial but interesting point to consider that Aboriginal land was legally incorporated as inalienable under Queensland law in the early 1990s as a protective measure against the perceived threat of unsustainable and imposed exploitation by outside parties. The point is therefore that Aboriginal people must be enabled to choose their land future subject to the same laws, regulations and planning frameworks that apply to non-aboriginal land.

This paper will examine the Wild Rivers ecological conflict (symptomatic of conflicts likely to be repeated through other imposed conservation measures) and its impact on Indigenous sustainable development outcomes in Cape York. An approach based on a capabilities framework can more usefully assess the interrelationship between social, economic and environmental aspects, in particular the implications of layers of legislative and regulatory regimes imposed over vulnerable Indigenous communities. This paper will be structured as follows: first we examine the history of the Green and Black Alliance. Secondly we consider and contrast the environmental, political, economic, social and rights approaches of Green and Indigenous groups. Implications of the conflict will be drawn out in the concluding discussion.

(1) History of the Green-Black Alliance

Conflict over property and resource rights has always characterized Indigenous and non-Indigenous relations in Australia, formalized in the declaration of the land as ‘terra nullius’ in 1788. Indigenous sovereignty was swept away, and the land could be taken over by anyone who would put it to productive use. This resulted in Aboriginal people being either hunted or forced into remote missions by police and militia as mining, agricultural and pastoral interests expanded across Cape York in the latter half of the 1800’s. Subsequently, Queensland settlers and their descendents would extract huge wealth from resource extraction, leaving Indigenous communities marginalized both economically and socially.

In 1967, ninety one percent of Australian voters voted ‘yes’ in a referendum to count Aboriginal people in the census and give the Commonwealth the power to make laws for Aboriginal people. This recognition perversely brought a new wave of problems to indigenous people. Equal wages saw most Aboriginal people forced out of work on pastoral properties, in domestic service and in agriculture. People were actively recruited by government agents onto welfare and also legally permitted access to alcohol. This catastrophic mix of welfare (sit-down) money, time (unemployment) and access to alcohol saw spiralling social, health and alcohol problems rapidly emerge.

Following the referendum a new vigour entered the land rights fight and the political mobilisation of Aboriginal people. *Mabo vs. Queensland No. 2* in 1992 finally overturned ‘terra nullius’, recognising the existence of native title in Australia with Eddie Mabo successfully proving the existence of his peoples’ system of land ownership and management prior to British occupation. The Mabo case increased awareness and support for Indigenous rights and led to the establishment of the Native Title Act, which enabled Indigenous people to make land rights claims without going to court. In 1996 the Wik people of Cape York and the Thayorre people of Queensland tested native title, and the court held that native title rights could “co-exist” alongside rights of pastoralists on cattle and sheep stations. Despite that fact that pastoralists did not lose any rights as a result, the Wik decision led to a hysterical attack from pastoralists and conservative leaders, who demanded that native title be extinguished, or wiped out, on pastoral leases. What has resulted is a system where native title and rights are granted in a severely limited way, based on the notion of ‘traditional law and customs’. Thus ‘native title’ is much weaker than mainstream ownership rights conferred

by freehold title under the common law. Moreover, the legal system that has since developed to deal with Aboriginal land is separate from the mainstream system, and applies only to Aboriginal people. (Morris 2010)

Under the ultra-conservative government of John Bjelke-Petersen (1968-1987), Cape York Indigenous people battled for land and property rights and against significant development pressures. In 1990 Wuthathi elder Gordon Pablo, Aboriginal elders and young activists (such as Noel Pearson and Frankie Deemal) passed a resolution to form the Cape York Land Council to fight for native title and land rights. Over the next decade, these annual land summits would attract between 400 and 800 community members, leaders, elders and land managers to establish Aboriginal organisations and governance structures, to provide support for economic development, outstations, welfare reform and the resultant alcohol epidemic.

In 1992 the proposed international sale of a large pastoral lease (Starcke) in Cape York, mobilized the Cape York Land Council (CYLC) and The Wilderness Society together in an informal alliance. Starcke stretched north of the Aboriginal community of Hopevale for 150 kilometres along a spectacular and remote coast line, incorporating almost 200,000 hectares of land. Under guidance from the CYLC, the Wilderness Society coordinated a campaign with the traditional owners that captivated the Australian public. The political and media strength of the two groups working together resulted in a quick victory that formed the basis of a Black-Green alliance. The result was land was purchased in Cape York and placed into State Land Dealing processes where, through rigorous negotiation, pastoral properties were divided 50-50 between conservation and Aboriginal homelands; a process seen as a win for Aboriginal people, environment groups and the government.

In the mid to late 1990s, TWS activists worked with the CYLC, pastoralists, government and other green groups to develop the Cape York Heads of Agreement, intended to be an unbreachable process to settle land disputes and broker consensus between all stakeholders in relation to conservation and land use. With this in place, Cape York Indigenous leaders and elders started focusing less on land issues and more on important health, social and economic agendas. Aboriginal people sought to rebuild their lives, communities and homelands refocussing scant resources on pressing problems. However, a decade later when traditional owners were gifting large areas of their land to the conservation estate through the State Land

Dealing process, the Wild Rivers Act was developed and negotiated with government by a new generation of activists in The Wilderness Society, without the involvement or partnership with traditional owners. If fully implemented, Wild Rivers will place over eighty percent of the remaining Aboriginal land on Cape York into preservation zones and almost every river and major tributary into high preservation zones. The depth of betrayal felt by the traditional owners of Cape York is deep and long lasting, causing a complete collapse of the once-highly successful Black-Green alliance.

(3) Causes of the Current Conflict

The causes of this conflict lie in the fundamental philosophical differences between Green groups and Aboriginal groups towards land management and a long and deep desire of Aboriginal people to take back responsibility and achieve equality for the management, conservation design and land use of their remaining land holdings. These approaches can be divided into cultural, political, governance, environmental, social and economic aspects, which will be looked at in detail in the following section. (Refer table 1 following)

| Sector | Greens | Aboriginal |
|---------------------------------|-------------------------------------|--|
| 1. Cultural | Western standards | Importance of land; kin-based; personal responsibility |
| 2. Environmental | Preservation of as much as possible | Caring for country bound by lore |
| | Regulate | Reduce complexity |
| | Non-humanized | Humanized landscape |
| | Scientific | Traditional knowledge |
| | Save what's left | Proportional impacts |
| 3. Political /governance | Powerful | Weak |
| | Joint management | Full management |
| | Imposition | Proper process |
| | Public ownership of the environment | Traditional ownership rights |
| | The state | Self-governance |
| | Simple story | complexity |
| 4. Economic | Green jobs only | ESD |
| | Rangers | Career pathways/diversity |
| | Economic development as threat | Economic development as solution |
| | Government dependence | Ecosystem services |
| 5. Rights | Rights of nature | Human rights/equality |
| | Expand conservation estate | Land rights/control |
| 6. Social | People-less; people as threat | Peopled; being on country (custodianship as solution) |
| | Middle class | poor |
| | Coffee table book | Spiritual health |

Table 1 Comparison of Green/Indigenous Approaches to Land Management

2.1 Green/Indigenous Environmental Approaches

“This beautiful and precious country has been managed by our people successfully for many thousands of years through traditional knowledge, law and a respect for country. Cape York is a cultural landscape formed through the connection between natural processes and our Indigenous management systems. The land needs its people.” (IEF 2012)

The environmental approaches of Green groups and Aboriginal peoples are based on fundamentally different knowledge systems, including values, norms, worldviews and technical knowledge. Indigenous ecological knowledge systems are “contextualized, socially embedded, experiential and territorially oriented.” In Western systems “science is abstract, reductionist and separates the human from the natural.” (Lane, Ross et al. 2003) 91 (Butler and Menzies 2007; Berkes 2008) Moreover, actors are located in different social locations and this affects their environmental experiences, in turn influencing how they perceive environmental issues, construct discourses, organize campaigns, [access resources] and develop activist strategies.” (Taylor 2000:511)

Indigenous people see the land as a humanized environment. The land interacts with people, and must be cared for by living on it, using it regularly, and maintaining social order through adhering to lore. (Anderson 1989:80) A Traditional Owner from Cape York puts it this way: “what we hold sacred is the living culture, Nature, Earth and life-preserving realities in which we are entwined as first Australians.” (Ludwick 2012) Traditional land management approaches are driven by “local knowledge of place, the histories and practices of resource use and management stored in memory...that incorporate and draw on local landscapes”. (Lane, Ross et al. 2003) In contrast, environmental groups, such as TWS have used emotive terms such as “wild” (or ‘wilderness’) to evoke a pristine, untouched landscape “empty of people or any human structures”.² This signals an environmental approach built around the idea that preservation means exclusion of people, and the separation of people and nature. This approach ignores the complexity of Indigenous rights and knowledge “deny[ing] the existence of Australia’s indigenous people and their rightful role in the management of their lands.”(Pearson 2010) (Pickerill 2008) The problematic nature of the term is acknowledged, but TWS admits that Green supporters are more comfortable supporting conservation framed “as a simple appeal to wilderness values rather than one including complex economic and

² Other conservation groups such as the Australian Conservation Foundation do not use this term, referring instead to “nature and culture”, in recognition of this issue. See Pickerill, p. 101

social issues. ”Anthony Esposito, National Indigenous Program Manager quoted in (Pickerill 2008:97)

While environmental management and conservation policies are increasingly acknowledging social, cultural and economic dimensions, in Cape York reconciling the goals of Aboriginal communities with conservation remains a struggle. In addition, while international movements to “overcome the limitations of science by incorporating...indigenous knowledge systems” continue apace, the reality is that traditional ecological knowledge in Australia continues to be undervalued. (Lane, Ross et al. 2003) Thus conservation legislation built on Western approaches, (concerned with verification, precision and regulation) continue to be “selective, bringing some elements into sharp focus, but at the same time obscuring Indigenous people and their customary practices.” (Scott quoted in: Lane, Ross et al. 2003) The Wilderness Society recognises that conservation and Indigenous ecological knowledge (IEK) have much common ground and that conservation is now “open to addressing Indigenous cultural rights and customary tenure”. Unfortunately, however, no detail is provided in their policy documents of how social or cultural dimensions will be managed. (TWS and QCC 2004) Cape York public conservation land is underfunded, (Larsen 2005) as is private aboriginal land placed into the public conservation estate. Underfunding results in a disproportional burden of conservation being placed the poorest and most marginalized section of the Australian people and continued environmental threats to Cape York such as 2 million feral animals and 200 weed species.(IEF 2012)

2.2 Green/Indigenous Political and Governance Approaches

Good governance leads to stronger social, cultural and economic development. (Plumptre and Graham 1999; Jorgensen, Brown et al. 2001; Sterritt 2001) A strong structure of Aboriginal governance in Cape York can help bring about necessary changes to pull people out of welfare dependency, substance abuse and poverty. Effective natural resource management also requires strong Aboriginal governance. The importance of effectively operating Aboriginal governance systems is amplified by the diversity and complexity of Aboriginal culture.

The Indigenous developed model consists of traditional owner groups and Land Trusts, sub-regional centres, regional Aboriginal organisations and the government often referred to as the regional –subregional governance model. Land trusts are key players in the current structure, but many land trusts lack resources, funding, and the necessary skills to function effectively. Support in the way of resources, capacity and capability building would therefore strengthen Aboriginal governance in Cape York. One way to strengthen land trusts may be through development of super-trust structures, where multiple groups can be represented, for example the Congress in Hopevale and Kula in Coen. Good governance requires a clear and transparent process involving free, prior and informed consent. State Land dealings are an example of a clear and transparent process which recognises the rights of Aboriginal people and allows for negotiation between parties, so that Indigenous Land Use Agreements (ILUA) and Indigenous Management Agreements (IMA) can be agreed. ILUAs also use legal mechanisms to ensure that all appropriate traditional owners are engaged.

Despite the critical importance of Aboriginal governance, the government and other organisations have at times actively avoided, ignored or undermined the correct processes in order to achieve their own desired outcomes. The Wild Rivers Act is a prime example of this. Queensland government decision-making processes in relation to the implementation of the Wild Rivers Act has demonstrated (1) inadequate consultation periods for Indigenous consultation, (2) the rejection of late submissions by traditional owners and acceptance of late submissions by The Wilderness Society (3) lack of transparency in the declaration of High Preservation Areas and (4) lack of regulatory impact statements. (Pearson 2009)

The undermining of Aboriginal governance structures disempowers and disengages the very people expected to manage the land. At the height of the Wild Rivers campaign the State Labour government placed full page newspaper advertisements showing a small number of Indigenous individuals and one land trust actively supporting Wild Rivers. This insinuated significant indigenous support for Wild Rivers despite the fact that not one Aboriginal legal representative body – Aboriginal councils, the regional Land Council or Aboriginal organization supported Wild Rivers. Indigenous supporters of the legislation were featured on TWS' web and Facebook sites, and hosted to Canberra to lobby government to broaden public belief of great division within the indigenous community and frame the debate as a general development vs. conservation or good vs. evil argument. In contrast, Aboriginal

organisations seeking proper and transparent processes (such as ILUAs supporting Traditional owner groups wanting Wild Rivers applied to their lands). –were demonised as not being representative, being in the pockets of developers or being puppets of conservative governments. Formal recognition of Aboriginal governance structures is therefore critical. In relation to land management and use, this would include reinforcement of individual rights and increased capacity and resourcing of land trusts for practical management at a local level and representative organisations at a regional level. ILUAs need to be recognised as a formal process for major development or conservation measures to ensure engagement of all correct traditional owners. Until this formal recognition is given, indigenous people will continue to be misrepresented and regularly sidelined by outside agendas.

The power imbalance between Green and Indigenous interests is stark which reinforces the need for recognised rights and land administration capabilities. While Cape York Indigenous people represent less than .07% of Australia’s population (ABS 2000) Green groups average twelve percent of the vote at national and state elections and hold the balance of power in the Australian Senate. The Wilderness society has over 40,000 financial members and has influenced election outcomes on numerous occasions around Australia over the last two decades. The remoteness of Cape York means that understanding or knowledge of Cape York and its people by the rest of the (mainly urban) population is minimal. Thus young Aboriginal leaders from across Cape York who ran a three year campaign against The Wilderness Society’s Wild Rivers campaign were attacked as being anti-environment. Resentment grew as Aboriginal people on Cape York were forced to use valuable resources and time on campaigns that would be better focused on priority issues like the alcohol epidemic, youth suicide and welfare reform. They also increasingly felt that their 40 000 year history and evidence of land stewardship was being questioned and not respected.

2.4 Green/Indigenous Economic Approaches

Green groups such as The Wilderness Society foresee a future for Cape York Peninsula built on increased conservation initiatives such as the Wild Rivers Act, culminating in proposed World Heritage listing. (TWS 2010) This approach is built around the idea of the ‘conservation economy’ designed to achieve lasting environmental protection and economic inclusion, especially for those living in the remote and largely intact landscapes of the State.”

(TWS and QCC 2004:5) According to TWS policy documents, economic arrangements that

don't deplete natural or social capital will allow appropriate economic and community development strategies and "encourage the development of new 'compatible' industries."(Lyndon Schneiders quoted in (TWS and QCC 2004:6) At present this conservation economy consists of short-term government-funded programs provided through a multitude of different federal and Queensland agencies, which provide support through ranger programs, bio-security, training, feral animal control and so on, with little co-ordination between programs. Past land management programs – like so many other areas of Aboriginal life –have been characterized by poorly coordinated and delivered government transfers, which has resulted in disillusionment and distrust of conservation initiatives and the slow decline of the environmental integrity of Cape York.

Employment in the conservation economy is currently confined to a small number of Indigenous Ranger positions, Working on Country programs, in National Parks and under Wild Rivers, attempting to manage ongoing threats such as invasive weeds and feral animals. While TWS calls the Wild Rivers ranger program "a huge success, with real jobs being created in remote communities and demonstrated positive outcomes for the rivers" the reality is that 30 rangers were employed across an area of 170,000 square kilometres in 2010. (TWS 2010) The scale and impact of feral animals and weeds is beyond the capacity of a few rangers to manage. Merely providing jobs as short-term employees of a government controlled conservation estate fails to take into account Aboriginal aspirations for engagement in the real economy, nor does it address on-going high levels of Indigenous un- or underemployment, particularly in remote communities. It also stifles the great diversity of aspiration of local people. For example, under the Wild Rivers Act, ecotourism developments such as cabins and fishing lodges are effectively prevented in High Preservation Areas due to vegetation clearing laws and onerous approval processes. A narrow conservation economy strategy assumes that the future of Cape York will be based on limited types of tourism and government transfers (green welfare), leaving future residents unable to manage and develop land both to create wealth and preserve or indeed enhance the environment of Cape York.

Restricting Indigenous people's ability to economically develop their land means restricting their ability to continue to adapt to modern circumstances and ultimately their ability to survive. A Traditional Owner says:

“How can we counter welfare dependency if we aren’t allowed to develop an economy in Cape York? Today in some communities, as little as ten percent of people have jobs, leaving the rest of the community struggling on welfare. Our people had opportunities to alleviate their demoralising predicament through sustainable development on their lands, but that was stripped from them overnight, leaving them to wallow in the poverty they’ve been struggling to rise above.” (Ludwick, 2012)

Multiple conservation laws and regimes being imposed over the top of Native Title and land rights have the effect of restricting the opportunities Indigenous people have to participate in the real economy. (Copp 2010). The proportional impact of many of the state and federal conservation laws is much greater on Aboriginal lands in Cape York than on the non-Indigenous estate in Queensland. Many laws are designed for landscapes where the majority of land is cleared and high level development pressures are threatening endangered habitats. In Cape York over 95% of the landscape is intact, thus it is heavily impacted by land clearance laws and the Endangered Species Act. This burden is seen as unfair by many Indigenous people and again builds resentment when little compromise can be negotiated to instil some level of equity. In addition, when all Indigenous land, regardless of cultural, conservation or economic values, is seen by government and conservation groups as part of a vast inalienable Indigenous estate, this denies the range of aspirations Indigenous people have for their land. In particular there are Indigenous towns (that have the aerial appearance of any other small Australian town) embedded within this inalienable estate which require some form of alienability, to enable home ownership and economic development.

The development of a broader conservation economy – based on carbon sequestration and biodiversity management – should present one of the best opportunities for the Cape York people. Models for effective land-management programs should combine economic, social and environment sectors. In this model, government transfers are just one part of a conservation solution that includes carbon- and biodiversity-management opportunities, private-sector engagement and diverse enterprises in tourism, bio-prospecting, wild harvesting of produce and contracting businesses for feral-animal and weed control. These areas can provide real jobs and career pathways. (Winer and Schuele 2012) Conservation solutions that enable economic development must also be built on a foundation of good

governance structures. Efforts must be made to strengthen existing Aboriginal land trusts, to enable them to assist in Indigenous business development. The current situation of complex and weak land tenure and the inalienable nature of Aboriginal land holdings are accentuated by poorly functioning land trusts that are unable to assist individuals requesting leases to establish businesses, thus commercial loans and insurance is virtually impossible to attain.

2.5 Human and Land Rights Context

“Nothing unites Traditional Owners like land rights and culture and this is what this fight is about,” Tania Major, (Traditional Owner from Kowanyama and young Australian of the Year 2007)

The implementation of the Wild Rivers Act is an example of conservation legislation being passed with undue haste, without adequate consideration of or genuine consent from the Indigenous people of Cape York. International agreements such as the United National Declaration on the Rights of Indigenous People (endorsed by Australia’s federal government in April 2009) state that “indigenous people have the right to participate in decision-making in matters which would affect their rights...the state shall consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative...measures that may affect them.”(Article 18 and 19) As there was little to no prior and informed consent from Indigenous people during the implementation of the Wild Rivers Act, there was a failure to meet this standard, thus the legislation contravenes the Declaration. Concerns about the flawed government consultation process are common: “For many people who came to our public meetings it was the first time they had seen maps outlining the impact of Wild Rivers. People were shocked, saddened and angered at the level of deceit. Many thought it would just be one river but when they saw the map and that every river on their country will be affected - they realised the enormity of the issue.” (Harold Ludwick 2012)

The Act places another complex layer of laws on top of already complicated conservation legislation and existing Aboriginal-specific land and native title legislation which applies to Cape York areas. The framework set up by the *Native Title Act 1993* (Cth) (NTA) and the *Aboriginal Land Act 1991* (Qld) (ALA) is already highly complex, restrictive and limiting to the rights and control Aboriginal people have over their land. While conserving wilderness is

important, the government should not be allowed to forget the human beings who live on and must make a living on the affected land. Conservation interests must be considered simultaneously with Indigenous human rights and land rights under international and national law. As noted by UN Human Rights Chief, Navi Pillay, “incoherence between international human rights standards, environmental strategies and economic policies can undercut all three... Simply put, participatory, accountable, non-discriminatory and empowering development is more effective, more just and ultimately more sustainable.”(Pillay 2012) The cumulative and disproportionately restrictive effect of *Wild Rivers* law on Aboriginal people may also constitute a breach of Section 10 of the *Racial Discrimination Act 1975 (Cth)* (RDA) as well as human rights commitments under international law. (Morris 2011)

Australia’s obligations to recognize Indigenous interests and rights are clearly outlined in international agreements as well as Australian Commonwealth legislation. For example, Article 2 of the Declaration of Rights of Indigenous Peoples (DRIP) prohibits discrimination against Indigenous people in the exercise of their rights. Article 3 protects their right to freely pursue economic, social and cultural development and Indigenous autonomy with regards to their local or internal affairs is provided for in Article 4. As Gerrard notes, even the Convention on Biological Diversity (CBD) “recognises the importance of Indigenous people’s traditional knowledge in the conservation and sustainable use of bio-diverse ecosystems.”(Gerrard 2008) Indigenous interests are also recognised in Commonwealth conservation legislation such as the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (APBCA Act) which incorporates the CBD into national law and the Racial Discrimination Act. (Morris, 2011) In combination with Australia’s international human rights obligations, these laws constitute a strong obligation for state recognition of Aboriginal peoples’ rights in implementing conservation measures.

An on-going issue is that indigenous tenure and rights are still in the process of being resolved and yet conservation regimes and agreements are being created without proper consideration of how the future grant of rights will be affected. The effect of *Wild Rivers* legislation on Indigenous people must be considered along with the existence of weaker land and property rights than the mainstream of Aboriginal people, the planning and conservation laws which already apply to the relevant land, and the uniquely vulnerable circumstances of the Aboriginal people that inhabit the affected ‘wild rivers’ areas. The ultimate effect of this legislation is to impair the ability of Indigenous people to enjoy their rights before the law on

equal footing with the rest of the population. It is important to note that Aboriginal Freehold land in Queensland is an interest in land granted by the Crown whereas a Commonwealth determination of native title is only a right to use land for traditional or customary use which include the right to occupy where exclusive native title is determined. Thus, unless inferior property rights and weak land rights are addressed and strengthened, Indigenous communities in Cape York will be unable to prevent continued development or conservation pressures from green groups and state governments.

2.6 Green/Indigenous Social Approaches

“For too many years, welfare dependency, combined with addiction, has removed the fierce independence of spirit of my people. It has destroyed individual agency and the lives of too many of our nation’s Indigenous children” (Tania Major, 2007)

The Aboriginal population of Cape York are characterized by lower standards of living than the non-Indigenous population and face broad-based disadvantage. (Jacobsen, Jones et al. 2005) This disadvantage, noted in areas such as housing, education, the labour market, and health, is exacerbated by lack of infrastructure and transport difficulties. (Dockery 2010) In particular, Cape York children have some of the highest rates of disease associated with social disadvantage in the world. (Heazlewood and Weiland 2008) According to TWS, World Heritage listing and a green economy would “provide enormous social and economic opportunity around tourism and sustainable development.” (TWS 2010) While they anticipate the expansion of a ‘conservation economy’ would support sustainable Indigenous development, their policies contain no concrete proposals for dealing with social issues in Indigenous communities. TWS acknowledges that “ environmental, social and economic issues are much more complex to resolve” (Esposito quoted in: Pickerill 2008) but without active participation and engagement with Indigenous groups in Cape York, it is unclear how they intend to resolve these dilemmas. Simply proposing to create jobs in the conservation economy without dealing with underlying social issues will not result in long-lasting change. Rather it will serve to further entrench disadvantage and social dysfunction. It must also be noted that Wild Rivers was developed and implemented at the same time as the design and implementation of Welfare reform programs by Indigenous groups such as alcohol restrictions in communities where a large proportion of the adult population are alcoholics.

Already burdened with potentially divisive and complex issues, Wild Rivers added another layer of conflict at the worst time possible for struggling communities

In contrast, Indigenous organizations recognize the need for broad-based approaches tackling multidimensional disadvantage in concert with environmental protection. Aboriginal leader Noel Pearson has outlined a development approach for Cape York built on increasing capabilities of Aboriginal communities. He states: “Our ultimate goal is to ensure that Cape York people have the capabilities to choose a life they have reason to value. Economic and social development is about expanding the choices available to people. This range of choices is enriched not only by income, but also other capabilities, such as education, health and community.” (Pearson 2005) For conservation to be successful, spiritual health must be addressed through return to country; and human capability issues must be addressed, including welfare reform, education and health issues.

“All we ask is that we be given the rights to implement real conservation. We can alleviate unemployment in Indigenous communities, and tackle poverty head-on through sustainable development.

Cape York communities have been fragmented, and social cohesion and responsibility have been on the decline because programs... [had no] input from the very people that need independent governance. Poverty and caring for country can be solved through sustainable development and conservation, programs imposed on us over and over through the years, gives no hope to my people.” (Ludwick, 2012)

If these more complex underlying issues are not dealt with, environmental conservation initiatives will continue to perform badly, and more conflict will result.

(4) Conclusion

This conflict demonstrates that without meaningful Indigenous land justice and recognition of traditional Indigenous land management practices, environmental protection regimes in Queensland will continue to be divisive and ineffective. This paper argues that the increasing regulation and control of Indigenous land not only denies the importance of long-standing Aboriginal land stewardship and effective traditional ecological knowledge, but also reinforces the unequal distribution of environmental costs and benefits. Current conservation approaches don't adequately recognize the need to address social equity issues for Indigenous inhabitants and respect Indigenous governance structures. With the conflict being framed as a simple development versus conservation dichotomy, approaches that could potentially marry these two goals are being lost. In particular the potential for independent Indigenous

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engagement in the green economy given the current regulatory regime needs to be further explored. Strategies for achieving this engagement are seen fundamentally differently by the two parties to this conflict and this affects how the debate is framed and argued.

“The harsh reality in the physical and social environment of northern Australia is that there is no simple single solution to land management problems or economic disadvantage and its social consequences. All interests in the economic, social and environmental future of northern Australia must look beyond the well-trying and orthodox for options and opportunities.” (Hill and Turton 2003) Efforts to advance the conservation estate and green economy in Cape York must be built on a firm foundation of respect for Indigenous rights and inclusiveness in future regimes. The challenge now for Indigenous people is to reinforce their property rights, strengthen their governance structures and authority and build a loud and unified voice to regain the drivers’ seat in both conservation design and rebuilding a vibrant equitable future. Approaches built on strong property and land rights, and recognition of (1) caring for country as a legitimate foundation land management methodology, (2) the economic values and costs of conservation (3) the need for economic equity and environmentally sustainable development (4) protected areas as living landscapes and (5) a balance between western science and traditional knowledge, will provide the way forward for land management in Cape York.

In the words of a traditional owner: “We have suffered enough at the hands of industrialisation but we never played a part in it. This has led to the demise of an ancient culture. To allow my people to prosper again, employment is obviously the key, health would rise, mental illness would evaporate, poverty won’t be an issue and social cohesion will develop. But under legislations and policies developed by the Australian Government we aren’t allowed to have development such as aquaculture, animal husbandry, agriculture etc; these opportunities to alleviate poverty are banned and application submissions only to then be denied after a extensive and expensive process which would cost more than a local aboriginal family can afford. In Indigenous communities we don’t live, we simply exist because any attempt to rise above the poverty line is met with obstacles that leave my people living in squalor.” A Black and Green alliance was established to assist Indigenous people caring for their country and exploring sustainable development, now we have been discarded without a explanation of why the alliance has been broken, environmental groups have been given free reign and power in exchange for preferential votes and the relentless push from

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international Green groups to annihilate advantages for Indigenous groups in Australia.”
(Ludwick, 2012)

The environment movement has discarded one of the greatest opportunities it had to achieve both conservation and social and economic justice for Australia’s most marginalised people. This opportunity was to build off a platform of mutual respect, dignity, reconciliation and compromise built in the 1990s. This form of cooperation saw millions of hectares of Cape York acquired by the state and divided evenly between expanding the National Park estate and rebuilding Aboriginal Homelands where people could move back onto their country and rebuild their peoples’ culture and economies. The environment movement and the previous state government, by unilaterally imposing Wild Rivers and a raft of environmental legislation over remaining aboriginal land, have placed a huge and unfair burden on the very people whom have caused the least environmental damage in this country and received the least benefit from resource exploitation. The challenge now is to ensure Indigenous people in Cape York have the opportunity to pursue a future that enables the maximization of social, economic and environmental rights.

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