

**Request for Adoption of a Decision under the Urgent
Action/Early Warning Procedure in Connection with the
Imminent Adoption of Racially Discriminatory Legislation
by the Republic of Guyana and Comments on Guyana's
State Party Report (CERD/C/446/Add.1)**

**68th session of the Committee on the Elimination of Racial
Discrimination
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Submitted By

Amerindian Peoples Association of Guyana,

Forest Peoples Programme

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Executive Summary

This report and request is submitted by the Amerindian Peoples Association of Guyana, an indigenous peoples' organization and the Forest Peoples Programme, an international NGO. It highlights widespread, persistent and systematic violations of the Convention on the Elimination of All Forms of Racial Discrimination against indigenous peoples by the Republic of Guyana. This discrimination is particularly evident in connection with Guyana's failure to adequately recognize, guarantee and protect indigenous peoples' rights to own and control their traditional lands and territories. Resource exploitation operations pose a major threat to many indigenous peoples and are often authorized and undertaken with little regard for their rights and well being. In some cases, indigenous peoples and their traditional lands have suffered irreparable harm. The negative impact of these operations is greatly amplified by discrimination in access to health care and education.

Discrimination against indigenous peoples is not a relic of the past. It remains firmly entrenched in current policy and practice and is a prominent feature of the Amerindian Bill 2005, which is presently awaiting enactment by Guyana's National Assembly. This draft law is intended to replace the 1951 Amerindian Act, which has been the main law regulating indigenous peoples and their affairs for the duration of the period that Guyana has been party to the Convention on the Elimination of All Forms of Racial Discrimination. While the Amerindian Act discriminates on its face against indigenous peoples, this report focuses primarily on the Amerindian Bill as this will be the law in force in shortly and most likely for many years to come. The Amerindian Bill does not contain some of the most egregious examples of discrimination found in the Amerindian Act, but it is nonetheless discriminatory on multiple grounds.

The Amerindian Bill will be presented for enactment in the near future in all likelihood with only minor changes from the version discussed herein. The Committee therefore still has the opportunity to assist the State, including members of parliament, on the Bill's consistency with the Convention. This is doubly important as the Convention has now been incorporated into Guyanese law via the Constitution. The submitting organizations strongly believe that it is critically important that the Committee focuses its full attention on the Amerindian Bill and other issues affecting indigenous peoples' rights. We therefore respectfully request that:

- a) The Committee adopt a decision under its Urgent Action procedure expressing its concern about the Amerindian Bill and, so as to assist Guyana to avoid serious violations of indigenous peoples' rights, highlighting the areas in which amendments are required in order to bring the Bill into compliance with the Convention; and,
- b) That the Committee request that the Secretary General of the United Nations bring the situation in Guyana to the attention of UN agencies, funds and programmes, including the World Bank in connection with the Guyana Protected Areas System project, and request them to take appropriate measures to assist Guyana to adequately guarantee and protect the rights of indigenous peoples.

Submitting Organizations



Amerindian Peoples Association of Guyana (APA): The APA is an indigenous peoples' organization constituted under the laws of Guyana in 1991. It is an association of community units located in Amerindian communities throughout Guyana with a central office in Georgetown. A community unit is a group of at least 10 persons within an Indigenous village; there are presently 76 communities represented in the APA, from all 9 of the indigenous peoples living in Guyana. The APA is a member of the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests and the Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA).

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Forest Peoples Programme (FPP): FPP is an international NGO, founded in 1990 and based in the United Kingdom, which supports the rights of forest peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. The Programme has had an extensive field programme in Guyana since 1994.

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Comments on Guyana's State Party Report (CERD/C/446/Add.1) and Request for Adoption of a Decision under the Urgent Action Procedure of the Committee on the Elimination of Racial Discrimination in Connection with the Imminent Adoption of Racially Discriminatory Legislation by the Republic of Guyana

I. Introduction

1. This request is submitted by the Amerindian Peoples Association of Guyana, a Guyanese indigenous peoples' organization, and the Forest Peoples Programme, an international NGO based in the United Kingdom ('the submitting organizations').

2. Indigenous peoples in Guyana are subject to multiple forms of discrimination, both *de jure* and *de facto*. This is particularly evident in current legislation (the 1951 Amerindian Act especially) and the Amerindian Bill 2005, which is intended to replace the 1951 Act; in state policy and practice regarding, *inter alia*, rights to lands, territories and resources; resource exploitation; and in the provision of health and education services that are quantitatively and qualitatively inferior to those provided to other ethnic groups in Guyana.

3. The impact of this discriminatory treatment is exacerbated and compounded by Guyana's acts and omissions that result in persistent threats to health and well-being caused by largely uncontrolled logging and mining operations on indigenous peoples' traditional lands and territories. These operations also cause substantial social problems and disproportionately affect indigenous women.¹ Guyana's 2000 report on the Convention to Combat Desertification confirms that mining operations are largely uncontrolled:

The small-scale gold and diamond mining activities are also not subject to environmental controls. These gold and diamond mining operations concentrate on maximizing profits, without any concern for the amount of natural resources utilized in the process or the environmental effects caused by the activity. Data to quantify environmental impacts are lacking since there has been little or no monitoring.²

These operations, often authorized and conducted without any or only minimal consultation, have caused widespread pollution of water sources, including mercury contamination that has bio-accumulated in fish and humans, and greatly increased malaria infection rates, a leading cause of infant mortality in indigenous areas. In some areas, mining has denied indigenous peoples access to and use of their traditional means of subsistence and large areas of their traditional lands and waters have suffered irreparable harm.

4. Discrimination against indigenous peoples also contributes to and is exacerbated by widespread poverty at rates far above those for other sectors of society. A 2004 World Bank report states unequivocally that indigenous peoples are

¹ See, *inter alia*, annex A(1), A(3) and A(4).

² *Guyana's National Report on the Implementation of the United Nations Convention to Combat Desertification*. Government of Guyana: Georgetown, April 2000, at 19. Available at: <http://www.unccd.int/cop/reports/lac/national/2000/guyana-eng.pdf>

“disproportionately disadvantaged socially and economically.”³ Moreover, the available socio-economic data illustrates that the actual situation and well being of indigenous peoples is deteriorating rather than improving and that poverty among indigenous peoples has substantially increased in past 10 years (see, *infra*, para. 18-9).

5. While certain improvements in law have been realized in recent years, particularly revisions to the Constitution in 2001 and 2003, discrimination against indigenous peoples remains entrenched and continues to hinder and impair the full and free exercise of their rights. The Amerindian Bill of 2005 further perpetuates discrimination against indigenous peoples and fails to adequately guarantee and protect their rights.

5. This request concerns an urgent situation involving the imminent adoption by Guyana of racially discriminatory legislation, the Amerindian Bill 2005, which contravenes the Convention on the Elimination of All Forms of Racial Discrimination (‘the Convention’). The Bill received a second reading by the National Assembly in October 2005 and is presently pending enactment therein in the near term. Brief comments are also provided on Guyana’s consolidated State Party report (CERD/C/446/Add.1) (‘State Report’ or ‘Guyana’s Report’).⁴ Overall, Guyana’s Report is substantially deficient in relation to information about the rights and situation of indigenous peoples. Indigenous organizations in Guyana were not shown or asked to comment on this report prior to its submission.

6. It is critically important that the Committee on the Elimination of Racial Discrimination (‘the Committee’) state its views on the compatibility of the Amerindian Bill with the Convention in order to assist Guyana to avoid serious violations of the Convention. In this respect, we request that the Committee adopt a formal decision under its Urgent Action procedure recommending that the Amerindian Bill 2005 not be enacted by Guyana’s National Assembly until such time as it is at a minimum consistent with Guyana’s obligations under the Convention (see, Section VI, *infra*).

7. The full text of the Amerindian Bill is annexed hereto (Annex B) as is the joint submission of four Guyanese indigenous peoples organizations’ to the Government, which analyzes the Bill in detail and expresses concerns about its contents (Annex C).

II. General Background

8. There are nine indigenous peoples in Guyana (referred to as Amerindians in legislation since the 1950s).⁵ According to the 2002 census, there are 68,819 indigenous persons amounting to 9.2 percent of Guyana’s population of approximately 750,000. They occupy the vast majority of the forests and savannahs of the interior - 90 percent of the country - while the majority of the rest of the

³ *Guyana: Education for All. Fast Track Initiative Program. Amerindian Peoples’ Strategy*. World Bank: Washington DC, 17 September 2004, at 9. Available at: http://www-wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=details&eid=000012009_20041006102054

⁴ *Reports submitted by States-Parties under Article 9 of the Convention: Guyana*. CERD/C/472/Add. 1, 1 April 2005 (hereinafter ‘State Report’).

⁵ The nine peoples are: Arecuna, Arawak, Akawaio, Carib, Macusi, Patamona, Warrau, Wapisiana and Wai Wai.

population (Afro-Guyanese, Indo-Guyanese, Chinese, Europeans and others) live along the narrow coastal strip. There are approximately 130 indigenous communities in Guyana, 90 percent of which are located in administrative regions 1, 2, 7, 8 and 9.

9. Eighty-four of the 130 indigenous villages have a land title that covers a (often very small) portion of their traditional lands. More than one-third of communities therefore lack legal title. Collective title is vested in an elected Village Council, which has limited authority to administer village affairs. Within the central government, the majority of indigenous issues fall within the remit of the Ministry of Amerindian Affairs. Created in 1992, the Ministry has a small staff and budget which are insufficient to develop and implement adequate programmes and policies for indigenous peoples. Inadequate resources are stretched even further because the Ministry of Amerindian Affairs has “adopted the approach of dealing with ... hinterland communities as opposed to Amerindians per se.”⁶

10. Guyana has previously conceded that indigenous peoples suffer from *de facto* and *de jure* discrimination. Before the Human Rights Committee in 2001, for instance, it stated that “The question of the rights of the indigenous peoples was a complicated issue. ... With regard to their enjoyment of equal protection under the law, more government intervention was needed.”⁷ Nonetheless, at the same time, the State “said that discrimination against Amerindians was a political, rather than a legal problem....”⁸

11. UN human rights bodies have all found that indigenous peoples in Guyana suffer from discrimination and are unable to effectively exercise their rights. Expressing its regret about the delay in revising the Amerindian Act, the Human Rights Committee, for instance, expressed its concern “that members of the indigenous Amerindian minority do not enjoy fully the right to equality before the law.”⁹ It added that

It is particularly concerned that the right of Amerindians to enjoy their own culture is threatened by logging, mining and delays in the demarcation of their traditional lands, that in some cases insufficient land is demarcated to enable them to pursue their traditional economic activities and that there appears to be no effective means to enable members of Amerindian communities to enforce their rights under article 27.¹⁰

12. In 2004, the Committee on the Rights of the Child observed that discrimination against indigenous children was persistent and expressed its concern at “the living conditions of Amerindian children with regard to the full enjoyment of all rights enshrined in the Convention, especially the degradation of their natural environment and the fact that they are not taught in their own languages.”¹¹ It recommended, among others, that Guyana “protect Amerindian children against discrimination” and that the current revision of the Amerindian Act reflect the

⁶ *Initial Reports of State Parties due in 1993: Guyana*. CRC/C/8/Add.47, 29 July 2003, at para. 424.

⁷ *Summary record of the 1830th meeting: Guyana*. 01/05/2001. CCPR/C/SR.1830, at para. 36.

⁸ *Summary record of the 1830th meeting: Guyana*. 01/05/2001. CCPR/C/SR.1830, at para. 80.

⁹ *Concluding observations of the Human Rights Committee: Guyana*. 25/04/2000. CCPR/C/79/Add.121, at para. 21.

¹⁰ *Id.*

¹¹ *Concluding observation of the Committee on the Rights of the Child: Guyana*. 30/01/2004. CRC/C/15/Add.224, at paras. 22 and 57.

provisions and principles of the Convention on the Rights of the Child.”¹² In 2005, the Committee on the Elimination of Discrimination Against Women similarly found that indigenous women in Guyana are discriminated against on the basis of both race and gender and that inadequate attention is paid to their particular and special needs.¹³

13. The Committee has also observed that indigenous peoples in Guyana suffer from discrimination in law and practice. In 1997, it noted that

The Amerindians lived in the vast undeveloped tropical forest regions of the country. Their standard of living was much lower than that of other citizens and they could not readily participate in taking decisions affecting their lands, culture and traditions and the allocation of natural resources. Amerindian life was regulated by the Amerindian Act, legislation dating from colonial times and designed to protect the indigenous peoples from exploitation. The Act gave the Government the power to determine who was an Amerindian and what was an Amerindian community, to appoint Amerindian leaders and, where necessary, to annul decisions made by Amerindian councils. That legislation was too restrictive and needed to be revised.¹⁴

14. It is widely acknowledged that Guyanese public life is beset by long-standing racial and ethnic tensions between Afro- and Indo-Guyanese and that this also greatly affects indigenous peoples. This was highlighted by the Committee in March 2003 and 2004 in two decisions made pursuant to its Urgent procedure:

Many intergovernmental and non-governmental organizations and United Nations agencies agree that the vicious circle of political and ethnic tensions has brought Guyana to a state of political instability which adversely affects human rights and has weakened civil society, increasing racial violence, poverty and exclusion among indigenous population groups, and hampering both the administration of justice and the application of human rights standards.¹⁵

The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, who visited Guyana in July 2003, reached the same conclusion.¹⁶ Indigenous peoples are not directly part of these political and racial tensions and are largely excluded from attempts to reach a durable solution to these long-standing problems. On this point, the Special Rapporteur observed that

dialogue and consensus, if they are to be democratically meaningful, must embrace the leadership of the Amerindian community as a full participant. The fact that this sector of society was not involved in the initial drafting of the 6 May communiqué is a further sign of the discrimination and neglect from which it has traditionally suffered.¹⁷

¹² *Id.* at para. 58.

¹³ *Concluding observations of the Committee on the Elimination of Discrimination Against Women: Guyana. 22/07/2005. CEDAW/C/Guy/CO/3-6, paras. 36 and 39.*

¹⁴ *Summary Record of the 1242th Meeting of CERD, 21 August 1997. UN Doc. CERD/C/SR.1242.*

¹⁵ *Prevention of Racial Discrimination, including Early Warning Measures and Urgent Action Procedures, Decision 2(62), Guyana. UN Doc. CERD/C/62/CO/Dec.2, 21 March 2003, at para. 5. See, also, Prevention of Racial Discrimination, including Early Warning Measures and Urgent Action Procedures, Decision 1(64), Guyana. 9 March 2004, para. 4.*

¹⁶ *Report submitted by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Mission to Guyana and Trinidad and Tobago. UN Doc. E/CN.4/2004/18/Add.1, 8 January 2004, at 2.*

¹⁷ *Id.* at para. 41.

15. In our view, one of the primary constraints to effectively addressing indigenous peoples' concerns and issues is the absence of enumerated rights in Guyanese law. While the Constitution now (since 2003) contains some (limited and untested) guarantees, the underlying rationale for legal rights vested in indigenous peoples remains mainly the largesse of the State. This denies indigenous peoples the legal security and certainty that is taken for granted by most other citizens and greatly hampers their ability to focus on the development and well-being of their communities and peoples, as well as their ability to uphold their duties to future generations. This lack of enumerated rights is particularly evident in the treatment of indigenous peoples' lands, territories and resources in the Amerindian Bill (*infra* Section V).

16. Indigenous peoples' rights to lands and resources, for instance, are granted by or transferred from the State rather than recognized as inherent to their status as aboriginal peoples and then regularized. In particular, the State continues to rely on colonial era legal doctrine holding that all lands, except those held under private documentary title, vested in the British Crown (now the State) upon acquisition of sovereignty. This doctrine – rejected by the courts of the vast majority of commonwealth states – continues to apply to indigenous peoples and their lands and territories under Guyanese law to this day. A lawsuit filed by six indigenous communities challenging this position has been pending before the courts since 1998 and has yet to proceed to trial (see, *infra*, para. 54-6)

17. In the same vein, the Amerindian Act is largely an administrative instrument that allows the exercise of some indigenous governance authority subject to the overriding and generally arbitrary power of the State, rather than one that recognizes and guarantees inherent rights of autonomy and self-government derived from indigenous peoples' right to self-determination. In a report commissioned by the World Bank, Professor Douglas Sanders, for example, states that the Amerindian Act is “an old style statute, setting out a colonial structure of indirect rule.”¹⁸ Another report describes the Act and other laws pertaining to Amerindians as “neo-colonial.”¹⁹

III. Discrimination in Health and Education and Increasing Poverty

A. Poverty

18. Discrimination against indigenous peoples has very real and measurable effects in terms of, *inter alia*, poverty, exclusion and marginalization. According to all economic indices, indigenous peoples are the poorest and most disadvantaged sector of the population. While indigenous peoples comprise 9 percent of the population, they are over 17 percent of the poor in Guyana.²⁰ According to the Pan America Health Organization (PAHO), citing a 1993 Inter-American Development Bank study, “the incidence of poverty was highest among the Amerindian population, among whom 85% fall below the poverty line and lack equitable access to health and educational services. Among other ethnic groups, the incidence of poverty among

¹⁸ D. Sanders, *Indigenous Peoples in Guyana*. A Report for the World Bank. Washington D.C., 1995, at 6.

¹⁹ Environmental Resources Management, *Environmental and Social Impact Assessment: Linden-Lethem Road, Guyana*. Unpublished Report, 1995, at v.

²⁰ *Sector Facility Profile: Guyana (Project No. GY-0070)*. Inter-American Development Bank: Washington D.C., 2003, para. 1.6.

Afro-Guyanese households is 43%, Indo-Guyanese households, 33.7% and in mixed households, 6.2%.”²¹

19. Moreover, as reported by the Inter-American Development Bank in 2003, poverty among indigenous peoples has substantially increased and intensified:

the rural interior [more than 90 percent Amerindian], already the poorest area in 1993, became even worse off by 1999, as absolute poverty rose from 79% to 92%. The poverty gap, a measure of how far on average the poor are below the poverty line, followed the same trend as headcount. The national poverty gap declined from 16% to 13% during the 1993-99 period, with declines in all main regions except for the rural interior, where the poverty gap increased sharply from 46% to 67%.²²

20. This overwhelming poverty and lack of equal access to basic services further translates into health and developmental problems. According to a 2004 World Bank report, “less than 5 percent of Amerindians live to be 55 years or older compared to the average life expectancy for Guyana of around 64.8 years (61.5 for males and 68.2 for females).”²³ A 1994-95 UN Food and Agriculture Organization nutrition study of primary school entrants aged 5-7 years showed that a “high proportion of stunting was found among the Amerindian children (61.7%) compared with children of other ethnic groups (7.5-12.3%).”²⁴ As reported by PAHO, a study conducted in 1997 among the Patamona and the Wapishana peoples “showed that the prevalence of stunting increased with age, from 17% at age 7 to 50% at age 13 among the Wapisiana tribe while the figures for the Patamona were 19% and 80%, respectively.”²⁵ Finally, the proportion of children reported as ill in 2000 in the interior was 48 percent compared to 31 percent for children from the urban coast and 32 percent for the rural coast.²⁶

B. Education

21. As observed above by the PAHO and the Inter-American Development Bank, indigenous peoples “lack equitable access to health and educational services.”²⁷ With regard to education, the World Bank states that

Guyanese Amerindians face enormous educational challenges and inequities which, in turn, prolong and exacerbate economic, social, and health problems for these indigenous communities and individuals. The problems are manifold and interrelated. The lack of infrastructure in the Hinterland makes getting to school difficult. Children and youth are much more likely to be absent or drop out. There are very few

²¹ Pan American Health Organization, *Third Evaluation of the Strategy of Health for All by the Year 2000. Guyana: Country Profile*, 1998, at para. 2.3. See, <http://165.158.1.110/english/sha/guyrstp.htm>

²² *Sector Facility Profile: Guyana (Project No. GY-0070)*, *supra*, at para. 1.5.

²³ *Guyana: Education for All. Fast Track Initiative Program*, *supra*, at 9.

²⁴ *FAO Nutrition Country Profiles: Guyana*. UN Food and Agriculture Organization: Rome, 2003, at 15. Available at: <http://www.fao.org/es/esn/nutrition/guy-e.stm>

²⁵ PAHO Country Profile: Guyana. *24 Epidemiological Bulletin* 9-13, March 2003, at 10. Available at: http://www.paho.org/english/dd/ais/be_v24n1-cover.htm. See, also, A.D. Dangour, Cross-sectional changes in anthropometric variables among Wapishana and Patamona Amerindian adults. *75 Human Biology*, 227-240 (2003).

²⁶ *Guyana: Multiple Indicator Cluster Survey*. Guyana Bureau of Statistics: Georgetown, July 2001, 32. Available at: http://www.childinfo.org/MICS2/newreports/guyana/GuyanaMICS00_Rprt.pdf

²⁷ *Sector Facility Profile: Guyana (Project No. GY-0070)*, *supra*, at para. 1.5.

secondary schools in the Hinterland and those that are there are of poor quality. Few attend secondary school and fewer complete it, meaning that very few Amerindians ever go on to higher levels of education. Due to the low education levels attained, few Amerindians become trained teachers and non-indigenous people are often recruited to Amerindian communities knowing little about the culture, language, or heritage of the children they teach. This, then results in inappropriate educational offerings for Amerindian children, who then are even less likely to attend or benefit from school.²⁸

Only 35 percent of indigenous children (35-59 months) have access to early childhood education programmes compared to 49 percent for coastal children.²⁹ Further, other than a pilot project in two areas, there is no provision for bilingual and inter-cultural education and otherwise no teaching of indigenous languages in the school system.

22. While many indigenous communities have primary schools (some do not), these schools often lack qualified teachers, materials, supplies and equipment commensurate to that enjoyed by non-indigenous schools, and in some cases lack any supplies and materials at all. According to the Canadian International Development Agency, “Many teachers in these Amerindian communities were not properly qualified because opportunities were almost non-existent to upgrade their education. In one district alone, over 72 percent of the teachers are currently unqualified, meaning they have not completed secondary education, nor have they received teacher training.”³⁰

23. A 1995 study stated the following about the primary school at Santa Rosa, the largest Amerindian community in Guyana: “There are 31 teachers on the staff including 8 trained and 19 teacher’s aides. Teachers of the lower classes have classes of 80 - 90 children studying their lessons by sitting, kneeling or lying on the floor. Teachers often have no chairs or tables and complain of the inconvenience of late payment of salaries amongst other things.”³¹

24. There are six secondary schools – the majority of which have been in existence for less than 10 years – serving around 85 percent of the indigenous population. Consequently, many indigenous students are simply unable to attend secondary school. For those who do attend, drop out and repetition rates are almost three times the national average.³² Moreover, as stated by the World Bank, “the secondary programs that do exist in the Hinterland are largely “Primary Tops”, primary schools offering limited secondary offerings. Primary Tops are widely regarded as inferior in quality to full secondary schools.”³³ Finally, only 0.1 percent of indigenous people attend university-level education.

25. The results of this neglect of indigenous education are predictable. A 1995 UNICEF study, for example, found “a significant relationship between race and achievement in functional literacy,” with indigenous peoples being the most

²⁸ *Guyana: Education for All. Fast Track Initiative Program, supra*, at 10.

²⁹ *Guyana: Multiple Indicator Cluster Survey, supra*, 20.

³⁰ *Raising the Quality of Education in Guyana at a Distance*. CIDA, 21 November 2001. Available at: http://www.acdi-cida.gc.ca/cida_ind.nsf/0/9f3225f662442c6d852568fc0064158b?OpenDocument

³¹ P. Gomes, *A Diagnostic Review of Regional Administration*, CARICAD, Barbados 1995, at xxxix.

³² *Guyana: Education for All. Fast Track Initiative Program, supra*, at 11.

³³ *Id.* at 12

disadvantaged of all ethnic groups.³⁴ Some 80 percent of indigenous students were found to be achieving below an acceptable level of functional literacy, a fact the report's authors attributed "to the generally poorer quality of education currently available in the interior regions."³⁵

C. Health

26. Health services in indigenous communities are also substantially worse than they are in non-indigenous areas. While most indigenous communities have a health post around 20 percent do not have any facilities at all.³⁶ For those communities with a health post, they frequently do not have basic supplies and medicines and some do not have trained community health workers.³⁷ For example, the indigenous community of Chinese Landing has a new health post, but, according to village representatives in 2002, "This building is a white elephant. It has absolutely nothing in it. There are no drugs or medical personnel in the community. In the case of an emergency we have to rely entirely on the good will of the miners for drugs or transportation to a medical health centre."³⁸

27. It is extremely rare for communities to see a qualified doctor and there are no hospitals in areas heavily populated by Amerindians. The 11 hospitals are all on the coast and Amerindians must travel long distances to either the coast or, for some parts of the country, to Brazil if they need hospitalization and often even basic health care. This is the case despite the fact that indigenous peoples disproportionately suffer from certain diseases. According to PAHO, the main health-related problems faced by indigenous people "include malaria (60% of all cases), diarrhoeal diseases, acute respiratory infections, teen pregnancy, short child-spacing, tuberculosis, dental caries and inadequate access to health care."³⁹

28. Only 44 percent of indigenous people have access to improved sources of drinking water while the proportions in the coastal urban (83 percent) and coastal rural areas (89 percent) are considerably higher.⁴⁰ Substantial differences in access to piped water, either to a house or a communal standpipe, between the coast (66 percent) and the interior (10 percent) have also been documented⁴¹ - "River or stream (an unsafe source) was a major source of drinking water for the interior (34 percent) along with rainwater collection (25 percent)."⁴² These deficiencies are greatly exacerbated by widespread pollution of water sources in indigenous areas by mining and logging operations.⁴³ This in part explains the high prevalence of diarrhoeal diseases among indigenous people.⁴⁴

³⁴ UNICEF, *Guyana: Functional Literacy Survey of Out of School Youth*, 1995.

³⁵ *Id.*

³⁶ See, Annex A(2).

³⁷ See, Annex A(1).

³⁸ M. Colchester, K. James and J. La Rose, *Mining and Amerindians in Guyana: Exploring Indigenous Perspectives on Consultation and Engagement within the Mining Sector in Latin America*. North-South Institute, Amerindian Peoples Association and Forest Peoples Programme, 2002, at 66-7. Available at: www.nsi-ins.ca/ensi/research/research02.html

³⁹ PAHO Country Profile: Guyana. 24 *Epidemiological Bulletin*, *supra*, at 10.

⁴⁰ *Guyana: Multiple Indicator Cluster Survey*, *supra*, 9 6 and 22.

⁴¹ *Id.* 22.

⁴² *Id.*

⁴³ See, Annex A(3) and A(4).

⁴⁴ *Guyana: Multiple Indicator Cluster Survey*, *supra*, 30.

29. Malaria has reached epidemic proportions in many parts of the interior. Guyana, along with neighbouring Suriname, has the highest infection rate in the Americas.⁴⁵ The average number of malaria cases in Guyana annually between 1991 and 1998 was approximately 48,805.⁴⁶ Sixty percent of all reported malaria cases involve indigenous people.⁴⁷ In real numbers, this amounts to almost an average of 30,000 cases a year or between 40-50 percent of the total indigenous population. It is probable that the infection rate among indigenous people is much higher as many cases go unreported. In some communities, for example, up to 80 percent or more of the population has contracted malaria at the same time.⁴⁸ A significant percentage of those affected are infants and children and, according to Guyana, malaria is one of the leading causes of child mortality among indigenous people.⁴⁹

30. According to PAHO, “increased mining and logging activities in these regions [those heavily populated by indigenous peoples], identified as part of the government’s program of structural adjustment to sustain social and economic development of the country, have been the major causes” of the malaria epidemic.⁵⁰ PAHO also concludes that “Mining and logging operators ... purchase antimalarials and use them indiscriminately to suppress symptoms. This practice not only compounds the difficulties of parasitological diagnosis by health service workers, but also eventually enhances the problem of stable resistance.”⁵¹

31. Very little has been done to mitigate the effects of malaria in indigenous communities and most communities lack drugs to treat the disease or have insufficient drugs.⁵² A study conducted by the Guyana Bureau of Statistics illustrates this point:

In Guyana, the Interior was designated as the area with the highest level of malaria risk. Sixty-one (61) percent of under-five children slept under a bed-net the night prior to the survey interview. However, only about 11 percent of the bed-nets used are impregnated with insecticide.

International recommendations suggest the treatment of fever among children in high-risk areas as if it were malaria by immediately giving the child a full course of anti-malarial tablets. Approximately 24 percent of children with a fever in the two weeks prior to the MICS interview were given Paracetamol to treat the fever. Only 3 percent were given an appropriate anti-malarial drug.⁵³

⁴⁵ C. Booth & D. MacLean, *Knowledge, Treatment-Seeking, and Socioeconomic Impact of Malaria on the Essequibo Coast of Guyana*. 6 MJM 17:25 (2001), 18. Available at: <http://www.medicine.mcgill.ca/mjm/v06n01/v06p017/v06p017.pdf>

⁴⁶ PAHO, *The Roll Back Malaria Initiative in the Rainforest Region of South America*. PAHO/HCP/HCT/190/2001, at 23. Available at <http://www.paho.org/English/HCP/HCT/MAL/cartagena-4-guy.pdf>

⁴⁷ PAHO Country Profile: Guyana. 24 *Epidemiological Bulletin*, *supra*, at 10.

⁴⁸ L. Anslemo and F. MacKay, *Indigenous Peoples, Land Rights and Mining in the Upper Mazaruni*. Global Law Association: Tilburg, 1999, 77 – “In July 1998, community members [of Pipilipai village, Upper Mazaruni, Region 7] estimated that nine out of ten persons in the village had malaria. A number of people also died from the disease during the same time.”

⁴⁹ *Initial Reports of State Parties due in 1993: Guyana*. CRC/C/8/Add.47, 29 July 2003, para. 248.

⁵⁰ PAHO, *The Roll Back Malaria Initiative in the Rainforest Region of South America*. PAHO/HCP/HCT/190/2001, at 23. Available at <http://www.paho.org/English/HCP/HCT/MAL/cartagena-4-guy.pdf>

⁵¹ *Id.* at 24.

⁵² See, Annex A(3) and A(4).

⁵³ *Guyana: Multiple Indicator Cluster Survey, supra*, 8.

No attempt has been made to ensure that miners fill in pits in which stagnant water collects providing prime breeding grounds for the malaria vector, and no attempt has been made to restrict miners from areas heavily populated by indigenous peoples. Malaria has a debilitating effect on the agricultural cycle upon which indigenous peoples greatly depend, leaving many, especially the young, without adequate food. This also makes them more susceptible to further infection and lengthens recovery periods.

32. Along with water pollution and malaria, mining is also responsible for serious mercury contamination of Guyana's waterways and fish stocks. The vast majority of the affected areas are inhabited by indigenous peoples. According to some estimates, over a five year period, some 49.37 metric tonnes of mercury were released into the environment by miners.⁵⁴ Mining operations have substantially increased since that study was conducted, and therefore, it is expected that the amount of mercury released has also increased considerably.

33. Few studies have been conducted on mercury contamination among indigenous peoples. A World Wildlife Fund (WWF) study of contamination in the Mazaruni River in Region 7, part of the traditional territory of the Akawaio people, showed that over 50 percent of the residents had almost three times (14 ppm) the WHO's 'safe level' for mercury in hair samples and that 96 percent of residents of the Amerindian village of Isseneru had twice the safe level (10 ppm).⁵⁵ In Region 1, recent research by the Dutch agency Tropenbos found mercury levels in hair samples ranging between 2 and 22 ppm in Carib communities along the Barama River.⁵⁶

34. Finally, discrimination against indigenous people starts at birth and in infancy. Skilled personnel (doctor, nurse/midwife, single-trained midwife, medex) delivered about 86 percent of births occurring in the 2000. The proportions were lowest in the interior (43 percent) and highest in the urban coast and rural coast, 100 percent and 90 percent respectively.⁵⁷ Doctors delivered 23 percent of babies on the coast and 7 percent in the interior.⁵⁸ Also, 90 percent of non-indigenous (coastal) women receive skilled ante-natal care, while only 49 percent of indigenous women received care and then mostly from community health workers and not doctors.⁵⁹

D. Concluding Remarks

35. The obligation not to discriminate against indigenous peoples is an immediate obligation. The State Report mentions that health and education services are weak in indigenous areas due to the remoteness of these areas.⁶⁰ However, not all indigenous areas are remote and such considerations do not at any rate excuse substantial

⁵⁴ L. Anslemo and F. MacKay, *Indigenous Peoples, Land Rights and Mining in the Upper Mazaruni*, *supra*, 58.

⁵⁵ J. Barnes, J. Harrison, J-M Barbera and B. Tisch, *Summary Report: Workshop on Mercury Use in the Mining Industry in Guyana*, 17 May 2000, Ocean View Hotel, Georgetown.

⁵⁶ Pers. Com. Marileen Reindeers, Tropenbos, 24 Nov. 2000, *cited in*, M. Colchester, K. James and J. La Rose, *Mining and Amerindians in Guyana: Exploring Indigenous Perspectives on Consultation and Engagement within the Mining Sector in Latin America*, *supra*, at 34 and 72-5.

⁵⁷ *Guyana: Multiple Indicator Cluster Survey*, *supra*, 9.

⁵⁸ *Id.* 40.

⁵⁹ *Id.* 9 and 39.

⁶⁰ *State Report*, at para. 98.

differences in the quality and quantity of services vis-à-vis non-indigenous persons. Guyana may validly claim that fulfilment of rights to health and education are subject to resource availability, but wide disparities between and differential treatment of persons on the basis of race and ethnicity is not justifiable. Guyana has an obligation to provide equal services to all citizens, indigenous and non-indigenous. Finally, Government data rarely disaggregate indigenous people from non-indigenous people and therefore do not provide an accurate picture of the situation in Guyana, which is expected to be considerably worse for indigenous peoples than current statistics indicate.

IV. Indigenous Peoples and the Laws of Guyana

A. The Constitution

36. As noted above, Guyana's 1980 Constitution underwent a reform process commencing in 1999. Three amendments, enacted in 2001 and 2003, are of particular relevance to indigenous peoples, as are two provisions retained from the 1980 Constitution. The former are generally positive, whereas one of the latter openly discriminates against indigenous peoples.

37. On 8 August 2003, the President of Guyana assented to the *Constitution (Amendment) (No. 2) Act*, which, in Article 154A(1), requires that all organs of the Guyanese state respect and uphold human rights set out in specified treaties ratified by the State, including the Convention.⁶¹ These rights are enforceable, without prejudice to other applicable legal remedies, through application to the Human Rights Commission, a Constitutional Commission established by law in 2001 but yet to become operational. Article 154A(1) provides that:

Subject to paragraphs (3) and (6), every person, as contemplated by the respective international treaties set out in the Fourth Schedule to which Guyana has acceded is entitled to the human rights enshrined in said international treaties, and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of Government and, where applicable to them, by all natural and legal persons and shall be enforceable in the manner hereinafter prescribed.

38. Sub-paragraph 3 provides that "The State shall, having regard to the socio-cultural level of development of the society, take reasonable legislative and other measures within its available resources to achieve the progressive realization of the rights provided for in paragraph (1)." Sub-paragraph (6) states: "[t]he State may divest itself or otherwise limit the extent of its obligation under any of the treaties listed in the Fourth Schedule, provided that two-thirds of the elected members of the National Assembly have voted in favour of such divestment or limitation."

39. These provisions potentially act as substantial limitations on implementation of the Convention and are arguably contrary to international law. Concerning 154A(3), the majority of the rights at issue are of immediate application and not subject to progressive realization based on resource availability (or level of socio-cultural development). Even those rights that may be so categorized contain core obligations that are of immediate application. The obligation not to discriminate is also an immediate obligation. With regard to 154A(6), under the terms of the treaties

⁶¹ *Constitution (Amendment)(No.2) Act*, No. 10 of 2003, Sec. 154A(1) and Fourth Schedule.

themselves, the state may only limit or divest itself of obligations during a lawfully declared state of emergency and some of the rights (those classified as non-derogable) cannot be limited or suspended at any time.

40. A Constitutional-level Indigenous Peoples Commission (IPC) was also established in 2001.⁶² It is important to note, however, that while the Constitutional amendment creating the IPC was enacted in 2001, over four years later this body has yet to be formally constituted and begin operating in fact. An Ethnic Relations Commission is functioning, but it does not include indigenous persons among its members, neither in its enabling law or in fact.⁶³ This is a startling omission given that indigenous peoples are the third largest racial/ethnic group in Guyana.

41. Finally, in 2003, the National Assembly amended the fundamental rights chapter of the Constitution to recognize indigenous peoples' rights as follows: "Indigenous peoples shall have the right to the protection, preservation and promulgation of their languages, cultural heritage and way of life."⁶⁴ The preamble to the amended Constitution further states that Guyana values "the special place in our nation of the Indigenous Peoples and recognizes their right as citizens to land and security and to their promulgation of policies for their communities." This is the first time that indigenous peoples' rights as such have been explicitly recognized in Guyana's Constitution. It should be noted however that the adopted article was the only one of more than 20 specific proposals by indigenous peoples that was accepted in the reform process.

42. Two provisions from the 1980 Constitution were maintained when the fundamental rights chapter was amended in 2003: Article 142 on property rights and 149 on non-discrimination. Article 149(6)(c) permits the National Assembly to make laws "for the protection, well-being or advancement of the Amerindians of Guyana" as an exception to the general prohibition of racial discrimination. Article 142(1) of the Constitution prohibits the taking of property without compensation. However, this article provides limited protection for indigenous peoples as Article 142(2)(b)(i) states that taking the "property of the Amerindians of Guyana for the purpose of its care, protection or management ..." shall not be held to be inconsistent with the general prohibition contained in Section 142(1). No other citizen or group in Guyana is liable to takings, compensated or otherwise, of their property for its 'care, protection or management' and less intrusive means are available to achieve these ends. The Amerindian Bill 2005 similarly permits takings of indigenous peoples' lands without recognizing the heightened obligations of the State with regard to indigenous peoples' property rights. The Bill also does not prohibit forcible relocation of indigenous peoples (*infra*, para. 77-8, 94-5).

B. The Amerindian Act of 1951 and Rights to Lands

43. Although the 1951 Amerindian Act (as amended in 1976) is the primary law in force today that addresses indigenous peoples' issues and has been in force for the

⁶² *Constitution (Amendment)*, Act No. 1 of 2001, Articles 212J and 212T of the Constitution

⁶³ The Ethnic Relations Committee is comprised of Hindu, Islamic, Christian, women, labour and youth representatives. With the exception of the omission of indigenous peoples, the private sector and farmers, this set of interests is consistent with the civil society contingent of the Constitution Reform Commission.

⁶⁴ *Constitution (Amendment)(No.2)* Act, No. 10 of 2003, Sec. 149(G).

entire period subsequent to Guyana's accession to the Convention, we will only note a few points about this law given that it is soon to be repealed by the Amerindian Bill 2005. Similarly, while many of the Act's provisions are discriminatory, we will focus primarily on those provisions dealing with indigenous peoples' land and resource rights.

44. As a condition of its independence from the United Kingdom, Guyana committed to regularize indigenous peoples' land rights.⁶⁵ In 1966, an Amerindian Lands Commission (ALC) was mandated with determining the areas of Guyana "where any tribe or community of Amerindians was ordinarily resident or settled on [26 May 1966, the date of Guyana's independence]..." and recommending areas for title.⁶⁶ Its 1969 report recommended that 128 Amerindian communities receive some form of land title over an area of 24,000 square miles; indigenous peoples themselves requested around 43,000 square miles.⁶⁷

45. Seven years after the ALC Report, the Amerindian Act of 1951 was amended by the Amerindian (Amendment) Act 1976 to include a new provision (Sec. 20A(1)) which transferred title to the indigenous villages described in the Schedule to the Act.⁶⁸ Pursuant to this provision, 62 villages and two districts obtained ownership rights to approximately 4,500 square miles in 1976. The districts of Kanashen and Baramita were added to the Schedule in 1977 by Ministerial Order, but were expressly denied title under Section 20A(1).⁶⁹ Ten Upper Mazaruni/Cuyuni River communities were granted title in 1991 increasing the total titled indigenous lands to 6000 square miles. These titles do not include important features such as rivers and the Act authorizes the Minister to arbitrarily take, modify or suspend indigenous land titles in six different ways. As Arif Bulkan of the University of Guyana observes "the long-awaited awards were made grudgingly, and contained in-built mechanisms whereby they could easily be nullified."⁷⁰

46. No further titles were issued until 2004 when, pursuant to Section 3 of the State Lands Act, two titles were issued to the Wai Wai people of the Kanashen District in Region 9 and the Carib communities of the Baramita District in Region 1. While the exact size of these titles is unknown, they are the largest issued to any indigenous community or communities in Guyana to date. In March 2004, four additional titles were issued to villages in Region 10. According to one report, one of these villages, Wiruni, had requested an area of 518 km², but was granted 259km² by

⁶⁵ *Report of the British Guyana Independence Conference 1965*, Annex C.

⁶⁶ *Amerindian Lands Commission Ordinance 1966*, re-enacted in the *Amerindian Lands Commission Act* (Cap. 59:03), at Section 3(a).

⁶⁷ *Amerindian Lands Commission Report 1969*. Georgetown, Guyana.

⁶⁸ *An Ordinance to make provision for the good Government of the Amerindian Communities of the Colony*. No. 22 of 6 June 1951; the Amerindian Act, Cap 29:01, Laws of Guyana, No. 6 of 1976.

⁶⁹ Order No. 67 of 1977. The Amerindian Lands Commission did not recommend that Baramita and Kanashen receive title, as it deemed that the Wai Wai and Caribs living therein to be too "unsophisticated" to fully understand the nature of property ownership. *Amerindian Lands Commission Report 1969*, *supra*, 157.

⁷⁰ A. Bulkan, Amerindian Land Rights: Is the Struggle for Equality Really Over? 3 *Guyana Law Review* 30, 2002, at 41.

the Government.⁷¹ Finally, in September 2005, an additional four titles were issued and one title was extended (approximately 650 square miles).⁷²

47. Under the Amerindian Act, large areas are excluded from titles and indigenous peoples have limited rights to control and manage their titled lands. Section 20A(2) excludes the following from titles: a) rivers and all lands 66 feet inland from the mean low water mark; b) minerals and rights to mine; c) landing strips or future landing strips; and d) buildings and installations owned by the state before 1976. The title conferred by Sec. 20A(1) is communal and vests in the Village Council in trust for all members (Sec.19(1)(a)). The Council is authorized to manage and care for titled lands (Sec. 19(1)(b)), may make rules for a number of prescribed purposes and specify and enforce penalties for failure to comply therewith (Sec. 21(1)). Rules made by the Village Council must be approved by the Minister, who has the authority to suspend, change or revoke any rule, at any time, for any reason (Sec. 21(3)).

48. Under the Act, indigenous peoples' tenure is extremely precarious. Pursuant to Sections 3, 20A(4) and 20A(6), indigenous land titles are subject to numerous arbitrary and discriminatory conditions and limitations that render their continued existence subject to the goodwill of the State. Section 3(1), for instance, authorizes the Minister, by Order, to add or delete indigenous villages from the Schedule, to modify the boundaries of village titles and to transfer village lands after removing or changing its boundaries. When the Minister decides to remove a village from the Schedule, village land becomes the property of the local government body (Sec. 3(2)). Pursuant to Section 20A(4), indigenous land titles can be taken in four different ways, only one of which requires compensation, including if the Minister decides that members of an indigenous community "have shown themselves by act or speech to be disloyal or disaffected to the state or have done any voluntary act which is incompatible with their loyalty to the state." This condition has never applied to non-indigenous property rights.

49. While the preceding paragraphs have detailed the number of villages issued with title and quantified the areas covered by those titles, we wish to stress that this alone does not provide adequate information with regard to Guyana's compliance with its international obligations. Specifically, under international law, indigenous peoples have the right to own and control their lands, territories and resources traditionally owned or otherwise occupied and used.⁷³ The language 'traditionally owned' refers to indigenous peoples' ownership rights arising from and grounded in indigenous peoples' customary laws and tenure systems.

50. The corresponding obligation of the State is delimit, demarcate and title those areas traditionally owned. In Guyana, the law neither requires that this be done – nor specifies any rights vested in indigenous peoples – nor is titling conducted on this basis. Indeed, it is entirely unclear what criteria the Government uses for delimitation and titling. Moreover, under the Amerindian Bill and to a lesser extent the Amerindian Act (which permits title to vest in a District or Area Council comprised of more than one village), only individual villages may acquire title, thereby

⁷¹ *Guyana Review*, Jan/Feb 2004, p. 9.

⁷² See, Annex A(5).

⁷³ *Inter alia*, Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on Indigenous Peoples* 1997, para. 5.

undermining indigenous peoples' traditional tenure systems. These issues are discussed in greater detail in connection with the Amerindian Bill (*infra*, para. 63-78)

C. Indigenous rights over Untitled Traditional Lands and Resources

51. As noted above, Guyanese land law is based on the principle – as stated by the author of the leading treatise on property rights used by the Guyana Law School – that:

The organization of the early settlements in Essequibo towards the end of the sixteenth century provided no basis for the development of the land law, the earliest settlers having been concerned only with trade with the aboriginal Indians who inhabited the colony. The latter were nomadic tribes whose customary law, if indeed there was any, has not been the subject of academic treatment and may well be left to the anthropologists and historians of the future. The ownership of all land in British Guiana can be traced to the prerogative by virtue of which ownership of land vested in the crown at cession, or to grants from the Dutch West India Company and later from the Crown in favour of the Colonial Government, private individuals and in some cases, corporations.⁷⁴

52. This principle largely underlies the State Lands Act of 1962, which regulates all lands except privately held lands and lands declared to be State Forests. Section 41 of the State Lands Act provides that “[n]othing in this Act shall be construed to prejudice, alter, or affect any right or privilege heretofore legally possessed, exercised, or enjoyed by any Amerindian in Guyana...,” provided that the Minister may make regulations defining these rights or privileges. According to Bulkan,

this provision is a classic example of the disregard for Amerindians running through the law. To have confined recognition specifically to rights or privileges ‘heretofore legally possessed’ was an artful device. Since Amerindian rights have been systematically contracted from the beginning of European occupation, such a formulation could well ensure the exclusion of any claims not solidly grounded in the prevailing legal framework [indeed, this is the practice], not to mention denying recognition to any expanding interpretations as a result of developments in international law.⁷⁵

53. Regulations were made under section 41 in 1910, the State Lands (Amerindians) Regulations, and remain in force today. These regulations substantially limit Amerindian ‘rights and privileges’. For instance, Regulation 5 states that any Amerindian may occupy ungranted or unlicensed State lands for the purpose of residence only and may not clear the forest or cultivate ungranted State lands. Regulation 9(1) provides that any Amerindian who wants to cut timber or dig, remove or carry away any item from State lands will have to apply for permission, which can be denied. The Regulations are also blatantly discriminatory with regard to indigenous women. Regulation 3(1) provides that: “An Amerindian women who is married to or living as the reputed wife of a non-Amerindian loses all privileges held by Amerindians.” The same does not apply to indigenous men or non-indigenous women.

⁷⁴ F.W. Ramsahoye, 1966. *The Development of Land Law in British Guiana*. Oceana Publications, Dobbs Ferry, New York, at 25.

⁷⁵ A. Bulkan, Amerindian Land Rights: Is the Struggle for Equality Really Over?, *supra*, at 32-3.

54. The nature of the savings clause found in Section 41 of the State Lands Act and other laws (i.e., sec. 37 of the Forests Act) may be informed by judicial decisions in pending litigation that seeks recognition of indigenous peoples' 'aboriginal title' to lands at common law. On 27 October 1998, five Akawaio communities and one Arecuna community from the Upper Mazaruni River filed suit in the High Court in Georgetown.⁷⁶ This law suit seeks a judicial declaration, *inter alia*, that the Akawaio and Arecuna communities of the Upper Mazaruni have an unextinguished aboriginal title to the area formerly known as the 1959 Upper Mazaruni Amerindian District (approximately 1,500 square miles excluding their titled areas) and a judicial order vesting freehold title to the same. Contrary to the statement in Guyana's Report that there are no cases before the courts alleging discrimination, the communities are also seeking a declaration that the Amerindian Act's land provisions contravene Constitutional guarantees against racial discrimination.⁷⁷

55. The government's defence in this case denies all the allegations and claims, and argues that any pre-existing rights that the Akawaio and Arecuna may have held in their traditional lands were extinguished when the British Crown acquired sovereignty in 1803 and that title passed to the State of Guyana at independence in 1966.⁷⁸

56. This case is still pending before the High Court and no date for trial has been scheduled despite the passage of over seven years since its submission. Because of this delay, the communities have taken the unusual step of requesting that pre-trial depositions be taken as they are worried that a number of key witnesses will die before the case is tried. While the case has been pending, the State has issued numerous large-, medium- and small-scale mining concessions in the Upper Mazaruni despite the very public and repeated objections of the affected communities. The December 2005 testimony of two community leaders discussing these issues before the National Assembly's Committee on Natural Resources is found in Annex A(3) *infra*. The State is also seeking to establish a protected area over part of the lands before the court. The plaintiff communities are unable to seek judicial protection in the form of an injunction because the courts refuse to grant injunctions in relation to pending litigation. Efforts to resolve the matter with the State through political means have proved inconclusive at best.

D. The Amerindian Act and its Revision

57. The Amerindian Act has long been criticized by indigenous peoples in Guyana and its revision has been demanded since the early 1990s. The Amerindian Peoples Association, for instance, describes the Act as "extremely paternalistic, offensive in many respects, discriminatory, and provides almost no protection for our rights."⁷⁹ United Nations human rights bodies have also strongly criticized the Act⁸⁰ including

⁷⁶ *Statement of Claim, Van Mendason et al v. Attorney General of Guyana*, High Court of Guyana, 27 October 1998.

⁷⁷ *State Report*, para. 110.

⁷⁸ *Statement of Defense by the Attorney General of Guyana in Van Mendason et al. v. A.G.*, High Court of Guyana, No. 1114-W.

⁷⁹ *A Plain English Guide to the Amerindian Act*, Amerindian Peoples Association, Georgetown, 1998, at 3.

⁸⁰ *Inter alia, Concluding observations of the Human Rights Committee: Guyana. 25/04/2000.* CCPR/C/79/Add.121, at para. 21 and; *Concluding Observations of the Committee on the Rights of the Child: Guyana.* UN Doc. CRC/C/15/Add.224, 30 January 2004, at para. 57-58.

the Committee, which, in 1997, observed that the Act “was too restrictive and needed to be revised.”⁸¹ In that same year, a member of the Committee on Economic, Social and Cultural Rights asked “how it was that that Act had not been considered unconstitutional?”⁸²

58. Revision of the Act was first proposed in 1988 as the Government believed that certain provisions “belong to a long time past and serve no useful purpose today.”⁸³ Revision was raised again in 1993 when the National Assembly unanimously authorized the creation of a Select Committee mandated “to study the Amerindian Act and to make recommendations for its early revision on democratic lines, to enlarge self-determination of Amerindians.”⁸⁴ This Committee met only a few times and produced no results. In 2000, the Head of the Presidential Secretariat, told the UN Human Rights Committee that “the Government had established an Indigenous People's [*sic*] Commission, which would be responsible for updating the Amerindian Act and ensuring its compatibility with the Covenant [on Civil and Political Rights]” including the right to self-determination.⁸⁵ As noted above, the IPC has yet to be established in fact.

59. Finally, in 2002, the present Minister of Amerindian Affairs announced that the Government had given her the mandate to revise the Act. In fact, revision of the Act was an implicit condition of the proposed World Bank/Global Environment Facility Guyana Protected Areas System project (*infra*, para. 93) because its precursor, the National Protected Areas System project, was shelved by the World Bank due, in the words of the Government, to an “impasse in 1998 between the GoG and the World Bank over Amerindian concerns about the project design and implementation, including the treatment of Amerindian land claims within the project.”⁸⁶ The revision process has been primarily funded by the World Bank to-date.

60. The Amerindian Bill was given a first reading in Parliament in August 2005.⁸⁷ There was no debate at this time. The Bill was released to the public shortly thereafter.⁸⁸ There was no consultation process with indigenous peoples subsequent to the Bill's first reading, though there was a consultation process prior to the actual drafting of the Bill and on a draft version of Bill.⁸⁹ A second reading and debate, led by the Minister of Amerindian Affairs, took place on 20 October 2005 while indigenous peoples protested behind barricades across the street.⁹⁰

⁸¹ *Summary Record of the 1242th Meeting of CERD, 21 August 1997*. UN Doc. CERD/C/SR.1242 1997.

⁸² *Summary Record of the 5th Meeting*. Committee on Economic Social and Cultural Rights, Sixteenth Session, 30 April 1997. UN Doc. E/C.12/1997/SR.5, 1997.

⁸³ K. Massiah, *The Need for a Revised Amerindian Act*. A paper presented to the 1988 Amerindian Captains and Councilors' Conference by the Minister for Justice and Attorney General of Guyana, 1988, at 9.

⁸⁴ Motion of Matheson Williams M.P., *Revision of the Amerindian Act 29:01*, 3 December 1993.

⁸⁵ *Summary record of the 1830th meeting: Guyana. 01/05/2001*. Human Rights Committee, Sixty-eighth session, Monday, 27 March 2000. UN Doc. CCPR/C/SR.1830 (1 May 2001)

⁸⁶ *Guyana's National Strategy for the Establishment of System of Protected Areas, Environmental Protection Agency*, Government of Guyana, Version 2, February 2002, at 11.

⁸⁷ See, Annex A(6).

⁸⁸ See, Annex A(6).

⁸⁹ See, Annex A(9), A(10) and A(11).

⁹⁰ See, Annex A(7).

61. At the end of the debate, the Bill was referred to a select committee for further consideration.⁹¹ Parliamentary standing orders however only permit minor changes to a bill in a select committee and, therefore, the Bill will be sent back to a full sitting of Parliament without major amendments. The select committee is chaired by the Minister of Amerindian Affairs and comprises five members of the ruling party and four members of the opposition. It began a two day-long period of public hearings on 22 November and received written submissions. Indigenous peoples were only given two weeks to provide written comments, a period of time that is simply unworkable for most communities. Mail, for instance, can take more than a month to reach Georgetown from many interior locations. The Bill remains in the select committee at the time of this writing.

V. The Amerindian Bill 2005 discriminates against indigenous peoples

62. This section will summarize a few of the main areas in which the Amerindian Bill 2005 discriminates against indigenous peoples.⁹² A detailed analysis of the Bill is located Annex C.

A. The Bill's Treatment of Lands and Resources contravenes international law and Undermines Indigenous Peoples' Integrity

63. The Bill's treatment of indigenous peoples' rights to lands, territories and resources is substantially at odds with the recognition and protection of those rights in international human rights law including the Committee's jurisprudence. The Bill does not adequately clarify and guarantee indigenous peoples or their communities' rights to own and control their traditional lands, territories and resources and does little to alleviate the legal insecurity they have experienced in this respect for generations. Moreover, there is no possibility for regularizing territorial rights as, contrary to indigenous peoples' cultures and traditional tenure systems, the Bill only allows for individual villages to hold title.

1. Rights to lands, territories and resources are not recognized and procedures for resolving land issues are arbitrary and unfair

64. The Bill fails to recognize and specify any rights that could form the basis for delimitation, demarcation and titling of indigenous peoples' lands, territories and resources. In particular, there is no recognition and protection of indigenous peoples' communal property rights that arise from and are grounded in traditional ownership systems including indigenous peoples' customary laws. All that is provided for is a procedure for applying for title or extension of title that results in a decision determined solely and – in the absence of enumerated criteria in the form of rights – arbitrarily by the Minister of Amerindian Affairs (secs. 59-64). In the case of indigenous peoples, land titling procedures should be designed to regularize pre-existing rights and this cannot be done if the underlying rights are not recognized and form the basis for delimitation, demarcation and titling. Should the Minister deem it appropriate to issue title or to extend an existing title, there is no guarantee that the title issued will bear any correspondence to indigenous peoples' customary land tenure and resource use systems or the attendant rights in international law.

⁹¹ See, Annex A(8).

⁹² Bill 13, 2005.

65. The absence of enumerated rights also makes it difficult to see on what grounds indigenous peoples would be able to appeal the decision of the Minister as provided for in draft section 64 in the Bill. On what basis will a judge evaluate the validity or propriety of the Minister's decision if the law itself provides no criteria or specifies any rights that would limit the Minister's discretion? No other law, with the hypothetical exception of the Constitutional provision requiring protection of indigenous peoples' ways of life – a term that is not specific enough in the context of regularizing land tenure rights – establishes limits to the Minister's discretion.

66. Under the Bill therefore, the Minister has unfettered discretion to make decisions about land titling through a procedure that is arbitrary and lacks transparency and legal certainty for indigenous peoples due to the absence of enumerated rights or criteria. Also, the possibility for indigenous peoples to successfully appeal decisions that are inconsistent with their rights are minimal given that the law fails to set justiciable limits to the Minister's discretion.

2. Untitled Indigenous Communities cannot Hold and Exercise Rights

67. The failure to adequately recognize and guarantee indigenous peoples' rights to lands, territories and resources should also be viewed in light of the fact that the Bill differentiates between titled and untitled communities for the purpose of holding and exercising rights, and the vast majority of its purported protections do not apply to untitled communities and untitled, but traditional, lands (see, *infra* para. 84-7). The basis for this is found in draft Section 2, which, contrary to international law, defines and limits indigenous peoples' ownership and other rights to lands and resources to only those lands which the State has decided to recognize by issuing title.⁹³

3. Rivers and other bodies of Water are Excluded from Indigenous Title

68. As with the Amerindian Act (sec. 20A(2)), the Bill excludes all subterranean waters, rivers and creeks and other bodies of water from indigenous peoples' title (*inter alia*, sec. 53). Much of Guyana is covered by tropical rainforests that contain tens of thousands of rivers and creeks. Excluding these from indigenous land titles is not only contrary to indigenous customary tenure rights, it also *a priori* excludes large areas from land titles. Additionally, the State has used this provision as grounds for issuing numerous river mining permits within titled areas, sometimes in close proximity to houses and village schools and with severe negative consequences for indigenous peoples' subsistence rights and health. As Robert Goodland, former head

⁹³ Among others, Judgment of the Inter-American Court of Human Rights in the case of The Mayagna (Sumo) Indigenous Community of Awas Tingni v. the Republic of Nicaragua, 31 August 2001, *Inter-Am. Court on Human Rights, Series C, No. 79* (2001), at para. 149, 151; Inter-American Commission on Human Rights, *Report N° 75/02*, Case N° 11.140, Mary and Carrie Dann (United States), Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46, at para. 131; and *Report No. 40/04*, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), 12 October 2004, at para. 117 (footnotes omitted):

the organs of the inter-American human rights system have recognized that the property rights protected by the system are not limited to those property interests that are already recognized by states or that are defined by domestic law, but rather that the right to property has an autonomous meaning in international human rights law. In this sense, the jurisprudence of the system has acknowledged that the property rights of indigenous peoples are not defined exclusively by entitlements within a state's formal legal regime, but also include that indigenous communal property that arises from and is grounded in indigenous custom and tradition.

of the World Bank's Environment Department observes "Missile dredges [a form of river mining prevalent in the Upper Mazaruni and elsewhere] persist because GoG permits their environmental costs to be externalized onto the Indigenous peoples, and is unwilling to enforce its own laws and regulations."⁹⁴

4. The Bill Discriminates with Regard to Ownership of Subsoil Resources

69. Section 6 of the 1989 Mining Act states that "[s]ubject to the other provisions of this Part, all minerals within the lands of Guyana shall vest in the State."⁹⁵ On this basis, subsoil minerals are also excluded from indigenous land titles. However, section 8 of the Mining Act provides that, as an exception to the general principle of State ownership of minerals, that persons holding title issued prior to 1903 have the right to own, mine and dispose of base minerals found in those lands (not including gold, silver, precious stones and petroleum). Indigenous peoples' title to lands, territories and resources traditionally occupied and used clearly predates 1903 – indeed it can be traced to pre-colonial times. Therefore, applying the principle of non-discrimination, indigenous peoples must also be recognized as owners of at least base minerals within their traditional lands and territories and this must be reflected in the Bill.⁹⁶ This must also include ownership of these minerals within titled areas, otherwise the title instruments themselves, to the extent that they deny subsoil rights, should be viewed as uncompensated and non-consensual takings of traditionally-owned indigenous property.

70. There is some evidence that indigenous peoples were mining gold, precious stones and other minerals at the time of European arrival in Guyana. They certainly have been since the mid-19th century and continue to do so today. However, the Bill explicitly excludes traditional mining from the scope of 'traditional rights' and, instead, refers to a, presumably revocable, 'traditional mining privilege' (sec. 2).⁹⁷ Additionally, given that mining and minerals fall within the scope of lands and resources traditionally owned by indigenous peoples, there is no valid reason that such resource rights should not be included in indigenous peoples' title. The South African Constitutional Court, among others, reached this conclusion in 2003, holding that under indigenous law and by virtue of traditional occupation and use, ownership of subsoil minerals may also vest collectively in indigenous peoples.⁹⁸

⁹⁴ R. Goodland, *Guyana: Social and Environmental Impact Reconnaissance of Gold Dredging on Indigenous Peoples in the Upper Mazaruni*. A Report for the Upper Mazaruni Amerindian District Council and the Amerindian Peoples Association, October 2005, at 14.

⁹⁵ See, also, Section 5 of the *State Lands Act*.

⁹⁶ *Inter alia*, see, S.J. Anaya, Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction. The More Fundamental Issue of What Rights Indigenous Peoples have in Lands and Resources. 22 *Arizona Journal of Int'l and Comp Law* 8, at 10, 2005 -- "Pursuant to the norm of non-discrimination, however, indigenous peoples must not be denied subsurface and mineral rights where such rights are otherwise accorded landowners." Available at: <http://www.law.arizona.edu/journals/ajicl/AJICL2005/vol221/vol221.htm>

⁹⁷ Section 2 reads: "traditional right "means any right or privilege, in existence at the date of the commencement of this Act, which is owned legally or by custom by an Amerindian Community or Amerindian group and which is exercised sustainably in accordance with the spiritual relationship which the Amerindian Community or Amerindian group has with the land, but it does not include a traditional mining privilege."

⁹⁸ *Alexkor Ltd and the Republic of South Africa v. The Richtersveld Community and Others* CCT 19/03, para. 64 (2003). See, also, decision of the Supreme Court of Canada in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at 1086 (per Lamer CJ) -- "aboriginal title also encompass [sic]

71. In a statement that is highly relevant to the situation in Guyana with regard to section 8 of the Mining Act and the exclusion of mineral rights from indigenous peoples' title, the South African Constitutional Court further concluded that

In this case, the racial discrimination lay in the failure to recognise and accord protection to indigenous law ownership while, on the other hand, according protection to registered title. The inevitable impact of this differential treatment was racial discrimination against the Richtersveld Community which caused it to be dispossessed of its land rights. Although it is correct that the Precious Stones Act did not form part of the panoply of legislation giving effect to "spatial apartheid", its inevitable impact was to deprive the Richtersveld Community of its indigenous law rights in land while recognising, to a significant extent, the rights of registered owners.⁹⁹

5. Title may only be Held by Individual Villages Denying Territorial Rights and Rights of Freedom of Association

72. Another major defect in the Bill is that, while the extant Amerindian Act recognizes that title may be vested in groups of villages jointly through a District or Area Council, under the Bill only individual villages may hold title. The crucial function of holding title is purposefully excluded from the functions of a District Council in the Bill. The result to date has been, and in the future under the Bill once enacted will be, the (further) fragmentation of once contiguous indigenous lands and territories into small islands of titled lands, which are and will continue to be surrounded and intersected by areas of State Lands that are often issued to logging and mining interests.

73. The preceding not only undermines traditional indigenous land tenure systems, which vest paramount ownership (territorial) rights in indigenous peoples and subsidiary (land) rights in sub-entities, such as villages and clans, it also contributes to the destruction of traditional resource management systems and traditional knowledge, both of which are integral to maintaining subsistence resources and are inter-connected with fundamental spiritual practices; undermines socio-cultural integrity by disrupting traditional systems of exchange based reciprocal kinship ties and obligations; sometimes causes conflict between communities; at a minimum, hinders the free exercise of rights of freedom of association for political and cultural purposes; and, in general damages the foundations of indigenous peoples' integrity as distinct peoples with rights guaranteed by international law.

74. The Committee has affirmed on numerous occasions that the Convention protects the rights of indigenous *peoples* as such and not solely as aggregations of their constituent entities. The Committee has similarly affirmed that the Convention protects the territorial rights, as distinct from land rights, of indigenous peoples. General Recommendation XXIII, for instance, calls upon states-parties to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, *territories* and resources and, where they have been deprived of their lands and *territories* traditionally owned or otherwise inhabited or used without

mineral rights, and lands held pursuant to aboriginal title should be capable of exploitation in the same way...."

⁹⁹ *Alexkor, id.* at para. 99.

their free and informed consent, to take steps to return these lands and *territories*” (emphasis added).¹⁰⁰

75. Denying indigenous peoples’ communities the right to freely associate with each other for the purposes of holding and exercising property rights is also contrary to the stated wishes of a large number of communities in various regions of Guyana. One of the primary demands of the Upper Mazaruni communities in their law suit is that title be vested collectively and jointly in all six of the plaintiff communities through a District Council. The same request has been submitted to the State by the six indigenous communities of the Moruca sub-region, Region 1; a request that has been disregarded for almost four years.¹⁰¹ All of the Wapisiana communities of Region 9 have requested that title be vested collectively and jointly in a council on behalf of their respective villages rather than individually in village councils, as have the nine communities of Region 2. Among others, these communities point out that it would be impossible for them to divide common areas among the constituent villages and that some villages simply could not extend existing titled areas individually as they are surrounded on all sides by other titled villages.

6. Some Indigenous Communities are Ineligible to Hold Title

76. Pursuant to draft sec. 60, a number of indigenous communities may be ineligible to apply for title at all under the Bill. This section requires that untitled indigenous communities must, as a prior condition to applying for title, have been in existence for 25 years and consisted of at least 150 persons for the five years prior to the application. This provision equates indigenous peoples’ land and resource rights with occupation and use of specific sites rather than occupation and use of traditional lands and territories and ignores the fact that these communities, because of prevailing ecological conditions and cultural traditions, traditionally move around within their traditional territory. Moreover, for indigenous peoples, establishing valid rights and title to lands is not a function of population size, but rather a function of holding and exercising ownership rights pursuant to applicable customary laws.

7. The Bill does not Prohibit Forcible Relocation or Compulsory Takings

77. There is no prohibition of forcible relocation of indigenous peoples in the Bill and the Bill also does not provide adequate protection for indigenous peoples in relation to compulsory acquisition of their titled lands. This is also the case in connection with the establishment of protected areas (*infra* para. 93-5). In principle, there would be no need in the Bill for protection against compulsory acquisition of traditional, but untitled, lands as these by law are vested in the State. The Bill fails to explicitly address forcible relocation and compulsory acquisition and, therefore, these

¹⁰⁰ *General Recommendation XXIII on Indigenous Peoples*, at para. 5. See, also, *inter alia*, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Sri Lanka*. 14/09/2001; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*. 23/08/2002; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Botswana*. 23/08/2002; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Costa Rica*. 20/03/2002; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Japan*. 27/04/2001; and, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*. 20/08/99.

¹⁰¹ *Formal Application Seeking Recognition of the Land and Resource Rights of Six Amerindian Villages of Moruca Sub-Region, Region 1*. Prepared by the Moruca Amerindian Land Council with Support from the Amerindian Peoples Association of Guyana, May 2002.

matters are regulated by extant laws, none of which prohibit takings of indigenous lands or forcible resettlement.

78. In a statement released to the press, the Ministry of Amerindian Affairs stated that “Amerindian lands would now be granted under the State Lands Act which is absolute and forever. This means lands cannot be taken away unless, as is the case for all Guyanese, it is done by the State for public purposes. When this is done a legal process must be followed and the State is required to pay compensation.”¹⁰² This statement, and the corresponding lack of protection accorded in the Bill or other laws, fails to account for indigenous peoples’ profound relationships to their traditional lands and territories and stands in sharp contrast to international law, which requires that indigenous peoples’ free, prior and informed consent be obtained in relation to forcible relocation and takings of traditionally-owned indigenous lands, territories and resources.¹⁰³

B. The State Insists on Calling Indigenous Peoples ‘Amerindians’

79. During the consultation process on the revision of the Amerindian Act, the vast majority of indigenous peoples and their communities requested that the new law be called the ‘Indigenous Peoples Act’ and that they be referred to as ‘indigenous persons’, ‘indigenous communities’ and ‘indigenous peoples’ rather than as ‘Amerindians’, a term that they no longer believe is appropriate. This would seem logical given that the recent amendments to the Constitution use the term ‘indigenous peoples’.

80. The State however has refused to recognize indigenous peoples’ stated desire to be identified as ‘indigenous peoples’ and insists that only the term ‘Amerindian’ may be employed in the law. It has attempted to justify this on a number of grounds, including by arguing that the term has no agreed meaning in international law; may be applied to Afro-Guyanese and therefore cannot be applied exclusively to Amerindian peoples; and, most recently, that all persons have a right under to self-identify as ‘indigenous’ and, thus, recognizing Amerindians as *the* indigenous peoples of Guyana would breach the government’s obligations to all other citizens.

81. The following statement, taken from a government information sheet distributed to indigenous communities in late 2005, sets out the Government’s most recent reasoning:

Why is it still called the “Amerindian Act” and not the “Indigenous Peoples Act?”
Indigenous Peoples” is a very wide term that means different things to different people. Everybody has a right under international law to define themselves as “indigenous.” In addition, the Government looked at many international definitions

¹⁰² See, Annex A(13), for full text.

¹⁰³ Among others, International Labour Organization, Convention No. 169, Art. 16; and *U.N. Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2. February 11, 1998, at para. 9, -- “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.” The UN Principles were considered illustrative of the obligations of States-Parties under Article 22 of the American Convention of Human Rights by the Inter-American Court of Human Rights in the Case of *Moiwana Village v. Suriname*, Judgment of 15 June 2005, *Inter-Am. Court on Human Rights, Series C, No. 124*, at para. 111. The Court further stated that the Guiding Principles “are based upon existing international humanitarian law and human rights standards.”

and found that some of them include not only Amerindians but also other sections of the Guyanese community.

Some people suggest that we define “indigenous” so it only applies to Amerindians but then it means that other Guyanese would no longer be able to call themselves indigenous and this would breach the principle set by international law.

All people have a right to call themselves “indigenous peoples” if they want. Indeed, earlier this year a French delegation made a presentation to the United Nations Working Group on Indigenous Peoples in Geneva as the Indigenous Peoples of France.¹⁰⁴

82. The logic employed here is obscure because if all persons have a right to define themselves as indigenous, it would obviate the need for a category of indigenous peoples’ rights altogether and would lead to absurd situations that benefit neither the State nor indigenous peoples. It is entirely unclear why the Government has adopted this position, particularly as until very recently there was never any question about who are the indigenous peoples of Guyana. The revisions to the Constitution in 2001 and 2003 specifically refer to indigenous peoples and they unambiguously apply only to so-called Amerindians. Similarly, in Guyana’s Report to the Committee, it is clear who the State considers to be indigenous peoples.¹⁰⁵ Furthermore, it is worth noting that the State’s views on this matter have led to racially inflammatory editorials in the main newspaper.¹⁰⁶

83. In its General Recommendation XXIII on indigenous peoples, General Recommendation VIII on the application of article 1 (self-identification) and General Recommendation XXIV concerning article 1 (international standard), the Committee has confirmed that, without justification to the contrary, self-identification as ‘indigenous’ must be respected. Self-identification as indigenous must also include the right to be referred to in law as indigenous peoples and not by descriptors that are considered inappropriate and offensive by indigenous peoples themselves.

C. The draft Act denies legal personality and rights to unrecognized indigenous communities

84. The Bill creates an unjustifiable distinction between indigenous communities holding title to their lands and having a Village Council and the approximately 50 indigenous communities that have neither because the State has previously failed to legally recognize their rights and existence. This distinction establishes a second class status for those indigenous communities because they are denied the same degree of protection as that enjoyed by those the State has chosen to recognize. For instance, protections pertaining to mining (secs. 48-53), logging (secs. 54-6) and protected

¹⁰⁴ *The New Amerindian Act. What it will do for Amerindians. Answers to your questions.* Booklet prepared by the Government Information Agency (GINA) and distributed to Indigenous Communities in Guyana. October 2005.

¹⁰⁵ *State Report*, para. 7 – “The Ministry of Amerindian Affairs was established in the latter part of 1992, as a result of Guyana viewing and treating the human rights of its indigenous population as a matter of prime concern;” – para. 11 – “The Amerindians are indigenous to and were the first people to have settled in Guyana;” – para. 38 – “In recognition of the peculiar needs of the indigenous peoples of Guyana, the reformed Constitution of Guyana provides for the establishment of an Indigenous Peoples Commission. This Commission will comprise three representatives of the Amerindian communities and two from the Amerindian Non-Governmental Organizations. The nominations for this Commission by the Toshaos (leaders) of the communities have been concluded.”

¹⁰⁶ See, Annex A(11).

areas (sec. 58) only apply to recognized or titled communities. Other examples include draft section 5(1) which provides that persons wishing to conduct research among indigenous peoples must obtain permission and provide information on the results of their research. However, this only applies to ‘community lands’, meaning those recognized by the State (see, sec. 2). The same is also the case in section 78(1), which only protects recognized communities from non-consensual removal of indigenous artefacts.

85. Similarly, draft section 85 denies legal personality to indigenous communities that have not established (undefined) ‘councils’ prior to 31 December 2003. In addition to penalizing communities who have been living under their own traditional authorities without a ‘council’ subsequent to 31 December 2003, and potentially also communities that have associated with the Village Council of a recognized community but have no ‘council’ of their own, this provision creates yet another second class status for indigenous peoples, this time a category of unrecognizable communities within an existing second class status of unrecognized communities.

86. Even if a ‘Community Council’ is recognized by the Minister under section 85, section 86 expressly denies the council the same jurisdiction over its lands as applies to titled villages and none of the protections pertaining to titled lands apply to the village’s traditional lands and resources.

87. The distinction between titled and untitled communities should be used in the Bill with great caution and applied only where it is strictly necessary. To do otherwise is to deprive a large number of indigenous communities of the (albeit sometimes limited and illusory) protections provided in the Bill.

D. Rights to be Consulted, Participate and Consent are not Adequately Recognized and Guaranteed

88. The Committee has repeatedly confirmed that States-Parties must obtain indigenous peoples’ informed consent prior to authorizing or engaging in activities affecting their rights and interests.¹⁰⁷ Other UN and regional human rights bodies have similarly affirmed the right of indigenous peoples’ to free, prior and informed consent.¹⁰⁸

1. Mining

89. Section 48(1)(g) of the Amerindian Bill requires that the consent of indigenous communities must be obtained for mining activities on titled lands. However, in addition to not applying to untitled traditional lands of both titled and untitled

¹⁰⁷ *Inter alia*, *General Recommendation XXIII on Indigenous Peoples* (1997), at para. 4(d); *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*. 24/03/2000, para. 9; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Costa Rica*. 20/03/2002 and, *Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America*. 14/08/2001.

¹⁰⁸ *Inter alia*, Inter-American Court of Human Rights in the Case of *Moiwana Village v. Suriname*, Judgment of 15 June 2005, *Inter-Am. Court on Human Rights, Series C, No. 124*, at para. 199; Inter-American Commission on Human Rights, *Report No. 40/04*, Case 12.053, *Maya Indigenous Communities of the Toledo District (Belize)*, 12 October 2004, at para. 142; *Concluding Observations of the Human Rights Committee: Canada*. 02/11/2005, para. 22 – “stressing the obligation of the State party to seek the informed consent of indigenous peoples before adopting decisions affecting them”

communities, sections 50 and 53 substantially undermine this right. Section 50(1)(a) provides that should a community refuse consent in the case of large-scale mining, its decision may be over-turned “if the Minister with responsibility for mining and the Minister [of Amerindian Affairs] declare that the mining activities are in the public interest.” International law does not make exceptions to the right of indigenous peoples to give or withhold consent in the case of large-scale mining and a ‘public interest’ test will, by definition, not afford adequate protection to the rights of minority indigenous peoples. This section also substantially weakens a community’s ability to negotiate agreements with miners as the miner will be aware that refusal to consent can simply be overturned by the Minister.

90. Section 50(1)(a) also weakens protections contained in the Government’s policy on mining that has applied since 1997. This policy states that

There have been criticisms of the [Guyana Geology and Mines Commission (GGMC)] entering into agreements for mineral prospecting and other development over Amerindian lands without reference to the Amerindians living there. Government has decided that recognised Amerindian lands would stand exempted from any survey, prospecting or mineral agreements unless the agreement of the Captain and Council for the proposal is obtained by the GGMC in writing. While upholding the law that subsurface rights are vested in the State, Government is of the view that the search for and development of mineral deposits on Amerindian lands is desirable since it can contribute to rapid growth and development of Amerindians and Amerindian communities. Government recognises too the many potential negative impacts and the need to arrange to minimize if not avoid them altogether.¹⁰⁹

While this policy also only applies to titled lands, it nonetheless requires that prior consent be obtained by GGMC for all kinds of mining and makes no exception for large-scale mining.

91. Section 53 is also inconsistent with the right of free, prior and informed consent insofar as the Guyana Geology and Mines Commission, the body responsible for issuing mining concessions, is not required to consult with nor obtain an affected community’s consent *prior* to issuing a mining concession either on or around titled lands or in a river within titled lands. It is simply required to notify the community and, by unspecified means, “satisfy itself that the impact of mining on the Community will not be harmful” (sec. 53(i)(ii)). When a community begins negotiating with a miner pursuant to section 48 therefore, the miner will already be in possession of vested right in the form a mining concession. This provision in effect and inappropriately shifts the obligations of the State to the private sector. This must be remedied by requiring that consent is obtained from a community by the GGMC prior to issuing a concession as well as subsequently by the miner in relation to the actual mining operation.

2. Forestry

92. Forests within titled lands are owned by the community and therefore concessions for logging cannot be issued within titled indigenous lands. However, in addition to the approximately 50 indigenous communities that lack title, large areas of

¹⁰⁹ *Government’s Policy for Exploration and Development of Minerals and Petroleum Resources of Guyana*. Government of Guyana, Georgetown (1997), at 12.

traditionally-owned indigenous lands lie outside of present titled areas. Both of these areas, provided they fall within in State Forests, may be issued as concessions. Pursuant to draft section 56, if the “Guyana Forestry Commission intends to issue a permit, concession, licence, timber sales agreement or other permission in respect of any state forests which are contiguous with Community [titled] lands the Guyana Forestry Commission shall first consider the impact on the Community.” There is not even a requirement that an affected community be notified, let alone consulted and give its informed consent in relation to concession grants and logging operations should these take place on untitled traditional lands.

3. Protected Areas

93. Guyana is in the process of establishing up to ten protected areas with support from the Global Environment Facility via the World Bank. More than 80 percent of these areas encompass traditional indigenous lands and territories. The process of establishing protected areas to date has been rife with conflict over indigenous land and resource rights, so much so that the World Bank declined to further process the project in 1999 citing disagreement with the State about how to protect indigenous peoples’ rights (*supra*, para. 59). A new project is being negotiated at present and may be approved by the World Bank in the near future depending its on approval of the revised Amerindian Act.¹¹⁰ Nonetheless, the GEF observes that:

The main controversial aspect of this project relates to indigenous land and resource use rights in the project study areas. Direct opposition on the part of Amerindian groups to the notion of protected areas and the establishment of a GPAS per se is not expected -- in fact, they are interested in co-managing the areas under the project. Nevertheless, some Amerindian communities have emphasized the need to get their land issues resolved before the pilot PAs are established and demarcated.¹¹¹

94. Draft section 58 of the Amerindian Bill concerns protected areas and provides that consent is required in relation to the establishment of protected areas on titled lands. With regard to the traditional lands of untitled communities or traditional lands contiguous to titled lands, consent is required in relation any “alteration or abrogation of any traditional right over such land.” Consultation also must be undertaken for a management plan for the protected area. There is no requirement that outstanding land rights issues be resolved prior to the establishment of protected areas. Additionally, as Guyanese law does not recognize traditional ownership rights over lands, but merely limited usufruct rights, the ‘traditional rights’ protected by this section will not include ownership rights. This fact is also reflected in the World Bank project, which only accounts for and provides protection for use rights outside titled areas.

95. Draft section 58 thus fails to provide protection for unrecognized communities and the State is free to unilaterally expropriate their traditional lands without due process, their free, prior and informed consent, or compensation should it wish to establish a protected area on those lands. The State may also establish a protected

¹¹⁰ See, *GEF Project Document for a Proposed Grant of US\$6.0 million to the Cooperative Republic of Guyana for the Guyana Protected Areas System Project*, Global Environment Facility: Washington DC, April 2005, 5, 15, 22 and 34. Available at: http://www.gefweb.org/Documents/Project_Proposals_for_Endorsement/Guyana_Protected_Areas_Ph1.pdf

¹¹¹ *Id.* at 22.

area on the untitled, traditional lands of a titled community and thereby expropriate those lands without due process, free, prior and informed consent or compensation. The Committee has previously addressed such situations finding that protected areas may only be established on traditional indigenous lands and territories with the informed consent of the affected indigenous peoples and without violating their traditional property rights.¹¹²

4. Regulations

96. Draft section 82 provides that the Minister may make regulations in relation to the Act. However, it fails to recognize indigenous peoples' rights to be consulted about and participate in the development of these regulations.

E. Indigenous peoples are denied due process guarantees

97. In general, the Bill provides for arbitrary decision making powers vested in the Minister of Amerindian Affairs that are devoid of due process guarantees and the right to appeal the Minister's decisions. A few examples of this are provided here. Draft sections 85, for instance, allows the Minister complete discretion in establishing 'Community Councils'; there is no right of appeal should an application for establishment of a 'Community Council' be rejected by the Minister. In draft section 35, the Minister has complete discretion to establish a District Council when requested by three or more indigenous communities; there are no criteria established for such decision and no right of appeal should the Minister refuse.

F. The Minister may Veto Democratically-determined, Internal Decisions made by Indigenous Peoples and Councils

98. The Bill vests arbitrary and overly broad powers in the Minister that permit substantial interference in the democratic functioning of indigenous governmental entities. Such conditions do not apply to non-indigenous local government bodies. In this respect, it should also be noted that the Bill imposes term limits (two terms) on elected indigenous leaders, when such limits do not apply to any other elected official in Guyana (sec. 71(2)(b)).

99. Draft sections 15(2) and 81 allow the Minister to veto, without any stated grounds, any and all rules adopted by the Village Council and at least two-thirds of the community. There is no specified right to appeal the decision of the Minister. Draft sections 18(3) and (4) authorize the Minister to veto internal community taxes and to unilaterally alter methods of assessing and levying tax. Again there is no specified right of appeal. In draft section 43(1), the Minister may veto any rules of procedure adopted by the National Toshaos Council, a body established by indigenous peoples in 2003 and comprised of all of the elected leaders of indigenous communities. There is no justifiable reason that the Minister should have the power to veto the internal procedural rules of the Toshaos Council. Finally, under section 5(3), the Minister's consent is required in relation to any research or study conducted on indigenous peoples' titled lands even if that research has been commissioned by the Village Council. No other owner of private property is required to obtain the Minister's consent under such circumstances and there is no specified right of appeal.

¹¹² *Concluding observations of the Committee on the Elimination of Racial Discrimination: Botswana. 23/08/2002, para. 13 and; Concluding observations of the Committee on the Elimination of Racial Discrimination : Sri Lanka. 14/09/2001.*

G. The Bill Weakens Rights Recognized under other Laws of Guyana and Privileges the Rights of Non-indigenous Persons over those of Indigenous Peoples and Communities

99. Draft section 57 provides that the rights saved under the Forests and State Lands Act are subject to the existing rights of private leaseholders. No such limitation exists in the Forests Act and under the State Lands Act and its Regulations; on the contrary, private leaseholders are required to respect the rights of indigenous peoples.¹¹³ The effect of this provision is to privilege the rights of private leaseholders over those of indigenous peoples and to limit rights presently enjoyed under the Forests Act and State Lands Act.¹¹⁴ The same may also be said about section 52(1)(b) as it relates to section 111 of the Mining Act. Specifically, the latter contains no requirement that traditional miners comply with “any obligations imposed by or under any other written law” as draft section 52(1)(b) now provides.

VI. Conclusion and Request

100. As can be seen from the preceding, there are substantial problems with the Amerindian Bill. This draft law discriminates against indigenous peoples on multiple grounds. This is particularly evident in relation to protection of indigenous peoples’ rights to own and control their lands, territories and resources traditionally owned or otherwise occupied and used. Failure to fully recognize and protect these rights threatens indigenous peoples’ survival as distinct cultural and political entities in violation of their internationally guaranteed rights. Even where indigenous property rights are in part protected by legal title, these rights are subject to limitations that do not apply to non-indigenous private property holders. Discrimination is also present in Constitutional provisions on property rights that only apply to indigenous peoples.

101. The failure to adequately recognize indigenous peoples’ property rights should also be viewed in light of the severe negative impacts suffered by them as a result of resource exploitation operations on and around their traditional lands and territories. Some of these operations have caused irreparable harm which is further amplified by substantially deficient and discriminatory access to health care. The failure of the Amerindian Bill to adequately recognize indigenous property rights arising from customary law and its failure to meaningfully guarantee rights to participate in and consent to decisions will ensure that indigenous peoples continue to suffer severe violations of their rights in relation to resource exploitation. To this should be added the threat of forcible relocation and involuntary takings of indigenous lands, neither of which are prohibited in Guyanese law, draft or extant. This also applies in the case of protected areas, which disproportionately affect indigenous peoples and their traditional lands. Domestic remedies have also proved ineffective and unduly prolonged.

102. Discrimination against indigenous peoples is additionally evident in overly broad and undemocratic provisions in the Amerindian Act and the Amerindian Bill

¹¹³ Regulation 39(k), 40(k) and 41 (a-c), *State Lands Regulations*, made under Section 17 of the State Lands Act

¹¹⁴ See, *Forests Act*, sec. 37, and *State Lands Act*, sec. 41.

that permit numerous arbitrary interferences with, and in some case negation of, indigenous peoples' rights to self-determination and autonomous self-government within the framework of the Guyanese state. In almost every case, there are no attendant due process rights or the right of appeal. The majority of these powers are not applied to non-indigenous local government bodies and the imposition of term limits on elected indigenous leaders does not apply to any other elected official in Guyana, local or national.

103. Discrimination against indigenous peoples also extends to the State's refusal to accede to indigenous peoples' desire to be referred to as such in the law – as they are in the Constitution – rather than as Amerindians, a term that they do not believe is appropriate. The submitting organizations are unaware of any other racial or ethnic group in Guyana that is forced by the State to be called by a name that it has vociferously rejected.

104. The Amerindian Bill will be presented to Guyana's National Assembly in the near future for enactment, in all likelihood with only minor changes from the version discussed herein. The Committee therefore still has the opportunity to assist the State, including members of parliament, on the Bill's consistency with the Convention. This is doubly important as the Convention has now been incorporated into Guyanese law via the Constitution. The submitting organizations strongly believe that it is critically important that the Committee focus its full attention on the Amerindian Bill and other issues affecting indigenous peoples' rights. We therefore respectfully request that:

- c) The Committee adopt a decision under its Urgent Action procedure expressing its concern about the Amerindian Bill and, so as to assist Guyana to avoid serious violations of indigenous peoples' rights, highlighting the areas in which amendments are required in order to bring the Bill into compliance with the Convention; and,
- d) That the Committee request that the Secretary General of the United Nations bring the situation in Guyana to the attention of UN agencies, funds and programmes, including the World Bank in connection with the Guyana Protected Areas System project, and request them to take appropriate measures to assist Guyana to adequately guarantee and protect the rights of indigenous peoples.

Annex A – Newspaper Articles

1. Abuse of indigenous women increasing - La Rose, Stabroek News, 18 August 2002

There is an increase in abuse against indigenous women and very often the police do not prosecute the perpetrators, says Programme Administrator of the Amerindian People's Association (APA), Jean La Rose.

This disclosure came at a press conference yesterday morning at the Ocean View International Hotel, which brought the curtains down on a three-day National Amerindian Women's Conference, which was aimed at finding ways of empowering the indigenous women of Guyana. The theme was 'Empowering Indigenous Women - The Way Forward'. According to La Rose, in many cases of abuse, there is a lack of accessibility to legal advice and counselling. She said very often, the offences are committed by miners and the police are unwilling to prosecute, either because they are friends with the accused, or are getting "drawbacks." "We found out that there has been an increase [in cases of abuse] but we also found out that there has been an increase in certain activities in the communities, for example, mining.

Where mining activities are taking place, there is a lot of [selling] of rum, drugs. So you find that not only the elders, but the younger persons are using alcohol and drugs and then there is physical violence, sexual abuse," she told reporters. After three days of panel presentations and discussions, the general consensus was that women need to be educated and form support groups to help each other in order to overcome the various issues affecting indigenous women. Some of the other concerns raised were the basic rights Amerindian women should enjoy, in terms of health, economic opportunities, education and empowerment. The government is being called upon to boost health care in outlying areas. La Rose said very often, there are no proper health facilities, personnel or adequate prescriptive drugs.

The delegations, drawn from six of the ten administrative regions of Guyana, Four, Five, Six and Ten not included, also examined why indigenous women were not in leadership positions. Very often, they pointed out, women are involved in a myriad of community activities but not very many of them hold the post of village captain. Some other recommendations put forward were: the need for educating women about their rights, especially those pertaining to owning land; the need to train Amerindian women in areas of management and accounting; and a need for markets for products coming out of the various communities.

The opening of the conference attracted various speakers including Merle Mendonca of the Guyana Human Rights Association, who dealt with the norms, legislation and conventions pertaining to the rights of women, both locally and internationally; and Yvonne Fredericks, APA Vice President and captain of Mainstay/Whyaka, who together with Norma Thomas presented on land rights and mining for indigenous women.

On Friday, issues of abuse, HIV and AIDS alcoholism and violence against women were dealt with by Vidyatha Kissoon of Help and Shelter and Thomas; while attorney-at-law Anande Trotman looked at the Guyanese law affecting Amerindian and other women. Women's activist, Karen DeSouza presented on the economic opportunities and alternatives.

2. Amerindians in Micobie appeal to govt for land demarcation, Stabroek News, 20 Sept. 2000

Amerindians in Micobie in Region 8 (Potaro/Siparuni) have called on government to urgently address the need for land demarcation in their community.

According to the Guyana Information Services (GIS), Captain Leonard Raymond told Minister of Amerindian Affairs, Vibert De Souza who visited the community on Monday, that "miners in the area are claiming that they have concessions over the land and the Amerindians in

Micobie should not do farming on the land." De Souza met with residents to discuss their problems and issues as part of his schedule for Amerindian Heritage Month.

Captain Raymond also stated that the water in the Tamachari River which runs through Micobie is polluted owing to dredging operations and the water cannot be used for domestic and other purposes, the GIS release said.

The Micobie village captain said that his main concern was that the community did not have a health outpost and that this posed a threat to the 300 residents. However, Raymond noted, there is one voluntary health worker who does not have adequate medical supplies. Raymond observed too that Region 8 officials had several meetings with residents to share their concerns but nothing significant had happened, the GIS reported.

Responding to the problems pointed out by the residents, De Souza promised to look into the matter while expressing his concern "over the behaviour of the regional officials." De Souza also told the residents he needs a proposal for demarcation from the Captain and his councillors.

3. Mining wrecking traditional way of life in Cuyuni/Mazaruni -community leaders tell Parliament committee, Stabroek News, Saturday, December 3rd 2005

Mining activities in Cuyuni/Mazaruni (Region Seven) have destroyed the way of life for many of the Amerindian communities as a result of the environmental hazards, including the pollution of the rivers and creeks.

Two community leaders also say mining has made many settlements almost entirely dependent on the activity for subsistence, although they continue to suffer the medical and social implications.

Toshao John Andreas and Lawrence Anselmo outlined these points for the members of the Parliamentary Committee on Natural Resources during a special hearing at the Public Buildings yesterday that was convened to take evidence on pollution of rivers and creeks as a result of mining.

Committee chair Abdul Kadir asked the two leaders to be straight and direct, and they hardly pulled any punches during their almost two-hour interview.

The dismal descriptions eventually prompted PPP/C MP Heeralall Mohan to ask the men to detail the positives that have come out of mining in the area. "The bottom line is that even if it has created jobs, the negatives far outweigh the benefits. There is a big imbalance when you weigh the whole thing," Lawrence Anselmo told him. Meanwhile, Andreas added, "if there were any positive impacts we wouldn't have had any reason to be here." Indeed, he gave a first-hand account of the damage that mining has wrought on the indigenous people, and as Toshao of Paruima Village, he was also well acquainted with the difficulties that are encountered in dealings with the bureaucracy.

Anselmo had also been a leader of the village for twenty-two years, and he felt that very little recognition has been given to the rights of the local people in the mining areas. He said since the increase in mining in the early 90s in the Upper Mazaruni there has been great damage inflicted on the communities and it has now assumed such proportions that it can be seen as a great threat to their survival. In addition to the overlapping of concessions into titled lands, he cited the cross-border penetration by Brazilians.

Anselmo said that waste material from the tailing ponds at the sites often find their way into the creeks and rivers that communities depend on for drinking, bathing and cleaning. According to him, the river water once assumed a black clear colour but no more, it is now a rusty brown and not fit for human consumption. He said the polluted waters have also seen the decline in the fish population as it affected the aquatic life that residents depend upon for sustenance. He gave a similar account of the game that once populated the areas and blamed the destruction of their habitat and their dwindling numbers on the pollution. He said

the use of mercury for extraction by small-scale miners has also alarmed the residents who are well aware of the implications for their health.

Andreas complained that officials charged with monitoring mining in their communities were unaware of what was taking place on the ground, although he saw two causes for this problem. In the first instance, he said mining rangers have little authority on the ground. Added to this, are the deliberate attempts by the miners to hide the negative practices of their occupation. He explained that when officials visit the sites, miners take care to ensure that nothing detrimental is done until the end of the inspection. And as a result, there was nothing to prevent the pollution in the communities. He named Kambaru, Kamarang and Waramadong as just some of the communities that are suffering as a result of the turbidity of the creeks and other water sources. He also noted that while it is claimed that chemicals used in mining would only take effect within a two-mile radius of the mining site, he pointed out that the creeks and rivers flow beyond two miles.

Communities along the Mazaruni continue to suffer from the mining done at Itaballi, he observed. Anselmo said there were complaints to the Guyana Geology and Mines Commission (GGMC), the Prime Minister, and even the Head of State but nothing has been done to correct the problem. He said when the GGMC admitted it did not have an adequate number of community mining rangers to monitor the mining operations in the regions the communities proposed training locals. This was done but he lamented that they could not do much as they had little authority outside their own communities, from where the pollution came. At the same time he said there were 20 mining concessions between Imbaimadai and Chi Chi, including illegal ones. "But that is not the point," he said, "the problem is the pollution of the river, having a paper, or being in order, it would not correct the situation."

Andreas also complained of mining and forestry concessions being granted on titled lands and he said if they were not vigilant they would lose all, as he recognised that while officials made plans the experience on the ground is different. Anselmo on this point however noted that there is little distinction between titled and untitled land occupied by the communities, despite what is proposed in the new Amerindian Bill. He said that while the untitled communities continue to wait for their titles the destruction continues, and he listed Kambaru as being among these.

Anselmo also spoke of what he called the "cultural erosion" that has befallen the communities near mining areas. One of the more worrying developments has been the decline in traditional activities in favour of mining, which he estimated to be the result of the heavy penetration of the trade. An equally worrying development has been the rift that mining has created in some communities, where there are disagreements about whether it is the best vocation for residents to pursue. Cases where village leaders granted concessions without the support of either council or the general community were also mentioned in the discourse.

Alcohol and drug abuse was also listed as being among the problems caused by mining. Anselmo said wherever there are miners there is widespread drunkenness and alcoholism, while marijuana and cocaine are also widely available. But perhaps even more disturbing was the impact on women. He said women are often left alone when men go off to work at the mines, and since there is no one then to do the subsistence farming or assist with childcare it creates a dependency on mining activity. He also mentioned the prospects of prostitution owing to the lack of jobs. He said Amerindian women are attracted to mining camps where they can find jobs as cooks, but they also engage in prostitution, which is the first stage of their exploitation as it can lead to human trafficking. He added that rapes are also widely reported although investigations bear little fruit.

Andreas said rapes go uninvestigated and in instances where there is some probe the findings are usually in favour of the coastlanders or Brazilians. He said there were a high number of Sexually Transmitted Disease-cases, including HIV in the Upper Mazaruni. Indeed, the potential health risks associated with mining were also not lost to the presenters. Anselmo said malaria is known to be rampant in Amerindian communities that are closed to mining sites, and he also cited cases of typhoid. "Now you can argue that this is not accurate information," he said, "but it is our experience from living in the area and seeing the malaria

outbreaks." In this regard, he hoped that some attempt would be made to look at the causes of the problem instead of the symptoms.

The Natural Resources committee will be considering the submissions of both presenters while looking at addressing some of their concerns and alerting the relevant authorities on related issues like health, and social services and home affairs. Other members present at yesterday's meeting were PNCR MP Lance Carberry, GAP/WPA MP Shirley Melville and PPP MPs Mohan and Husman Alli.

Representatives of the GGMC and the Ministry of Human Services were also present at the hearing.

4. Mining operations in Mazaruni indefensible, Stabroek News, 9 July 2003

The Amerindian People's Association (APA) has sharply criticised head of the Guyana Geology and Mines Commission (GGMC), Robeson Benn for what it says was his attempt to defend the environmental degradation in the Mazaruni River.

Benn, in a recent interview with Stabroek News, downplayed claims that a dredge was piling up tailings in sections of the Mazaruni River and might not be conforming to mining regulations. Benn maintains that even without the intervention of the dredges, sandbanks would be moving down the river.

But the APA on Friday said such comments were "misleading and a deliberate attempt to defend the environmental degradation in the Mazaruni caused by licensed mining operations." According to a joint statement from Toshao Anderson Hastings of Kako and former Toshao Lawrence Anselmo of Paruima, Upper Mazaruni, it is the operation by miners that has caused the build up of tailings and water contamination in the Mazaruni River.

"These have caused severe problems to the communities in and around the mining areas. While there are some sandbanks that were naturally formed, it is highly irresponsible for the Commissioner to suggest that mining has not caused most of the sandbanks in the Mazaruni River when there is more than ample evidence to prove otherwise."

The APA said many complaints were made, in writing, to Prime Minister Sam Hinds and the GGMC, by residents of some of the communities affected by the mining operations. The organisation said the problem of navigation was also highlighted, but despite the many pleas, not much was done to address the concerns.

"It is not common to see sandbanks building up in the middle of the river in a short space of time and disrupting navigation. Our ancestors have navigated this river for centuries without playing hide and seek with numerous sandbanks.

These sandbanks are created by mining activities in the form of tailings. The river does not remain high throughout the year and therefore, tailings cause even more inconvenience for those of us travelling by river during the dry season. The truth is that miners do not comply with the regulations."

The APA said Benn's call for miners to regulate themselves was an exercise in futility, since most miners did not live in the area, therefore, the destruction of the environment and the consequent threat to people's lives did not matter to them.

"We live there and observe the way these miners operate. If Mr Benn should spend six months in the Mazaruni, camouflage his identity and have a look at the way miners behave, he would think differently. Communities have made recommendations to the GGMC in the past as to how to deal with the mining problems.

We have asked that community members be trained to do the monitoring of activities ourselves. While this was accepted, it seems as though this idea is shelved somewhere.

In the meantime, more huge dredging equipment is being permitted by the GGMC to work in the Mazaruni River to the detriment of the surrounding communities. Meetings with GGMC, Ministry of Amerindian Affairs and the Prime Minister have not yielded fruit. We challenge the Commissioner to carry out his responsibilities in a responsible and humanitarian manner. Being the Commissioner responsible for mining means that you are also responsible for the well-being of all those involved in and affected by the effects of mining," the organisation said.

5. Five Amerindian communities get land titles -Orealla's area extended. Stabroek News, Friday, September 23rd 2005

Five Amerindian communities were on Thursday presented with land titles. The land grants were made to Weruni (located on the Berbice River), Malali, Muritaro and Great Falls (on the Demerara River) and Orealla (which is on the Corentyne River) at a ceremony at the Office of the President (OP). President Bharrat Jagdeo handed over the titles to the village Toshihos and Minister of Amerindian Affairs Carolyn Rodrigues described the occasion as "a positive step in the road of Amerindian development" and "a tangible demonstration of the commitment of the government to resolve Amerindian land issues."

According to her, many of the communities have recognized that the only way forward is to work together with the government and she noted that a number of them came forward in order to advance the process under the PPP/C Government's policy. She said this policy was observed in the granting of the titles, particularly for the Region 10 communities. Orealla, which has been extended as a result of the grant, is in Region Six.

The policy is a two-step process involving the demarcation of lands that are already titled and, secondly, addressing extensions of titled lands and titling of untitled communities.

Rodrigues said government has adopted an approach to move to the second stage after all titled communities in a sub-region have been demarcated, since more than one community may be claiming the same area of land as has happened in some instances. She noted that demarcation is necessary because although communities were granted legal ownership of lands in 1976 and 1991 these lands were never surveyed. As a result, she said this has seen encroachment by miners, loggers and others, in the absence of clear boundaries and as a result the communities cannot enforce their laws.

Additionally, Rodrigues said that in several cases descriptions that are listed in the Amerindian Act do not match the reality on the ground. To illustrate her point she cited some communities that are located totally out of the legally recognized areas. She said they have been there since before the titles were issued, indicating that mistakes were made. She said some others have the wrong creek names.

Minister Rodrigues noted that the process of granting titles to the four untitled communities began more than two years ago. She said that with the Guyana Lands and Surveys Commission and the communities, a situational analysis was conducted on seven communities with a specific focus on land use. These were Kimbia, Sandhills, Riversview, Weruni, Muritaro, Great Falls, Malali and River's View. However, after consideration only four were then invited to submit their requests for lands and these areas were mapped and other stakeholders were identified. She said these included persons who had transports to plots of land within the areas requested and also mining and logging concessionaires. She also noted that while Great Falls was mentioned in the Lands Commission Report of 1969, according to the report no request was received from the community that numbered approximately 50 Akawaio persons back then.

The Guyana Geology and Mines Commission and the Guyana Forestry Commission were consulted and through negotiations with all of these stakeholders a final decision was arrived at. Rodrigues said although the titles are now being issued, the communities were managing the lands as any other titled community since early 2004.

She mentioned that the process involved some concessionaires relinquishing land so that the communities could receive their titles, while in others she said it was agreed to have them

continue work with fees being paid to the Village Council. She added that to ensure adherence to the Constitution, transported plots of land, which are owned by individuals, have been saved.

With respect to Orealla, the Minister said it was the first community to be surveyed in 1991. However, in early 2003, the Orealla Village Council made a report to the Ministry of Amerindian Affairs that a logging concession was granted by the Guyana Forestry Commission on their titled village lands. She said checks with Lands and Surveys and the Forestry Commission found a number of discrepancies. Among these was the fact that the area surveyed and represented on the Map and State Lands Grant that was presented to the community, includes two tracts of land titled "Tract A" and "Tract B." However, Tract A is not described in the Amerindian Act, while Tract B includes the area described in the Act and an additional portion of land. It was also discovered that the Grant presented by then President Desmond Hoyte to the community was not signed. As such, she said legally the community had no ownership of the lands that were demarcated, except that part described in the Amerindian Act.

She said the matter was considered at Cabinet and approval was subsequently granted. The total area of Orealla will now be 266 square miles, while the total area of land that will be received by the five communities, whose combined population is approximately 1500 persons, is approximately 601.5 square miles (Muritaro 102, Malali, 95, Great Falls 31.6, Weruni 107, Orealla 266 square miles).

The Minister urged the villages to exercise good judgment in managing their lands, saying it must benefit not only those who are here now but future generations as well. "As you are aware, your close proximity to markets makes you prime targets for logging ventures. Please ensure that you make agreements that will benefit your communities now and in the future," she told the Toshias who were present.

6. Government tables Amerindian bill -Few fundamental changes, Stabroek News, Sunday, August 7th 2005

Government has tabled the long-awaited Amerindian Bill but with few significant changes from the draft version that was rejected by indigenous rights' groups, which felt that the provisions fell short of the rights and recognition for which they had been lobbying.

More than a decade after it was first proposed the Amerindian Bill 2005 was tabled in the house at last Thursday's sitting, but with the house now going into its annual recess it is not expected to come up for debate until later this year.

The bill, which has been informed by two countrywide consultations, is to replace the current 1976 legislation that has been criticised for years for its "patriarchal provisions."

The bill will provide for the recognition and protection of the rights of Amerindian communities, the grant of land to them, and the promotion of good governance within the communities.

The most obvious of the issues of concern held over from the draft bill is the retention of the term 'Amerindian' in the name of the bill, instead of Indigenous Peoples, as was proposed during the first round of consultations almost three years ago. However, many more provisions that drew strong criticisms from the groups during the consultations on the draft of the bill are retained in the version tabled, including the minister's powers, which have been likened to some of the legislative excesses already provided for under the current legislation.

Under the new laws that are proposed, Amerindian village councils would have greater administrative responsibilities in relation to their respective communities and this will include more rights over their lands than is provided for in the law at present.

The minister is empowered to set up village councils and she is also vested with the authority to make the regulations that would give effect to the act. Also, the rules passed by the council to carry out its functions under the law would still have to be approved by the minister. Similarly, the minister would have to approve the rules of procedure that govern the National Toshias' Council.

The draft provision for the minister to set and pay a stipend to toshaos is retained in the bill. But the minister would no longer have to approve decisions by any of the communities to authorise payments to supplement the stipend.

One new provision in the tabled bill is to allow persons the option of paying taxes by providing goods and services to the value of the taxes due, that is, if permission is recorded in writing and a proper account is kept, showing the value of the goods and services provided.

One of the more significant changes from the draft to the tabled version is that there would be no need for a village council to get the minister's consent before granting or amending a community land lease. The council would, however, be required to get advice from the minister in the matter. (In the face of the criticisms - that the minister's powers should try to strike a balance between justifiable ministerial oversight and autonomous governance by indigenous peoples - Minister Carolyn Rodrigues has said that most instances in the legislation that required her intervention catered for situations where the village councils were unable to reach decisions.)

Also notable is that miners (also persons interested in using forestry products from community lands) would need the consent of at least four fifths of the residents at a community general meeting before a mining lease would be granted. Only seventy-five per cent approval was required in the draft version.

Nonetheless, where communities have refused to give consent there are still provisos retained from the draft that provide for the responsible minister to give consent if the mining activities are deemed to be in the public interest. The miner would still, however, be subject to the relevant requirements of the law. The Guyana Geology and Mines Commission (GGMC) under the new law would be required to inform all communities about the issuance of permits, concessions or licences in any part of community lands.

The GGMC would also be required to inform the community of the impact of mining on its lands. Mining on communal lands has always been a contentious issue as the communities have been seeking subsoil rights over the years, similar to arrangements in other countries.

International law provides that indigenous people have the right to give or withhold their free, prior and informed consent to activities that affect them and their lands, territories and resources that are traditionally owned or occupied. The groups, the APA, TAAMOG, NADF and GOIP, were worried the "public interest" proviso would undermine negotiations between the respective communities and the prospective miners. They took exception to the fact that none of the proposed laws applied to unrecognised or untitled communities while also limiting traditional mining rights. Moreover, they said that the draft also deviated from the 1997 Government Policy on Mining, which stated "recognised Amerindian lands would stand exempted from any survey, prospecting or mining agreements unless the agreement of the captain and council for the proposal is obtained by the GGMC in writing."

Instead, the groups felt the proviso "allows for indigenous objections to mining to be negated in the 'public interest' only after GGMC has already granted concessions, rendering the consent requirement meaningless and negating the affected community's negotiating power..."

Also new in the bill are the time limits set out to guide the minister in the process for the grant of communal land to Amerindian communities or groups. The minister would be required to investigate the requirements relevant to a claim within six months of receipt of an application and would also have six months to make a decision based on that investigation. There was no time period for the process in the draft.

Before the bill was tabled, the Amerindian People's Association, one of the indigenous rights' organisations, expressed its concern about the procedure leading to the tabling of the bill and the contents of the bill.

A meeting between the four indigenous rights groups and the ruling party at its Freedom House headquarters, resulted in a promise being made to the organisations that the amended draft would be given to them before it was tabled in the house, according to a statement from the group. "To date, the organisations have not received any such document," the statement said. It said it was of "extreme concern" that the amended bill would not be seen by the organisations or any of the indigenous communities until it had been tabled in the house. "Concerns about the contents of the bill... abound greatly, given the experience with the draft Amerindian Act which was circulated to the communities," the statement added.

The draft act, it said, did not reflect the majority of the recommendations made by the indigenous communities and failed to make adequate provisions for the protection of the rights of the indigenous peoples. "The APA hopes that the Amerindian bill will reflect the recommendations made and the provisions to protect the rights of indigenous peoples."

7. Amerindian Bill moves ahead -despite fierce opposition in marathon session, Stabroek News, Friday, October 21st 2005

The new high-profile Amerindian bill was sent to a special select committee late last night after a long drawn-out debate where members of the House struggled with the question of whether the indigenous people were truly ready for complete self-determination.

Government used its majority to force a second reading of the historic bill, despite calls by the opposition for it to be withdrawn and referred to the yet to be established Indigenous Peoples' Commission which they said was the body that was properly mandated to draft the bill. Their position was in keeping with the calls by the indigenous rights NGOs which have been waging a relentless campaign for the withdrawal of the bill over the last few months. But opposition to the bill wasn't confined to the chambers of the assembly. Behind steel barricades erected across Brickdam scores of protestors gathered and with their painted faces and their hoisted placards they made their dissatisfaction with the new bill known. The stance of the opposition parties raises doubts about whether they will participate in the work of the select committee. Minister of Amerindian Affairs Carolyn Rodrigues, who piloted the bill in its second reading during the six hours of debate, seemed unfazed by the protest as she defended the provisions set out in the new bill, which is intended to overhaul current laws that date back to 1951, with a subsequent amendment under the PNC administration in 1976. Critics have dubbed the laws "draconian" and "paternalistic," labels that Rodrigues ironically found herself facing down as she looked to justify the Ministerial powers provided for in the bill as well as the degree of her office's involvement in the critical administrative roles in the community councils.

"I can't sit in the Ministry and let the communities learn to fail," Rodrigues said, responding to criticism from ROAR MP Ravi Dev, GAP/WPA MP Shirley Melville and PNC MP Clarissa Riehl, who all urged that the powers and control vested in the ministry be devolved to the indigenous organs in order to promote more independence in the communities for long term development.

Rodrigues made it clear that she did not think that the time had come as yet, explaining that many communities had little access to secondary education, "but we are now trying to build that capacity and there will be a time when we say we don't need that, when the Amerindian communities will be able to manage themselves." She also stared down questions dealing with land rights and mining as well as the ticklish issue of the decision to retain the use of the word "Amerindian," as opposed to "indigenous peoples," as recommended by a number of the groups.

Dev, Melville and Riehl comprised the main opposition to the bill, with support from PNC MPs Basil Williams and Vincent Alexander. TUF MP and Minister of Commerce Manzoor Nadir noted shortcomings in the form (rather than content) of the bill and along with Prime Minister Samuel Hinds, Local Government Minister Harripersaud Nokta, Attorney General Doodnauth Singh and PPP MP Pauline Sukhai supported the bill and its referral to the special committee of the house.

Outside, the protesters made their presence felt throughout the debate as they continuously chanted their opposition. Among them were a number of prominent Amerindian personalities, including PNC MP Dr. George Norton, who did not take part in the debate, anthropologist Hubert Wong, several Toshias and members of the indigenous NGOs, including the APA, GOIP and TAAMOG. Wong, who said he came out as an Amerindian and a citizen, felt that the bill was of national importance given the significance of the Amerindian people's historical rights to land and natural resources. He however felt that the bill created what he called a "structure" to grab more land from the indigenous people.

There was a similar feeling from David Newsum, Waramaru Village Toshias, who was among those crowded into the public viewing gallery during the debate. He wore the face paint like that of some of the protestors and he felt as they did, that the bill did not properly reflect the feelings of the people on the issue of ownership of lands and the use of the term Amerindian as opposed to indigenous.

But there were others there who supported the enactment of the new bill in the presented form. Among them was former WPA Region 8 MP Matheson Williams, who in 1993 proposed the new bill in the house. Yesterday he said that he felt a sense of pride in the fact that the bill had finally come before the house and he thought that it was a great moment for the Amerindian people. Williams said that during his time in the house there was not enough money to get the work done but he was happy that the minister was able to move the process forward. He thought that it would be best if more of the groups supported the bill, adding that the document was workable while reminding that the laws would always be subject to future review. "Laws are not there to stay there forever. But for now, I think it's a good start and all Amerindians should come together and support the bill," he said.

The bill was produced after lengthy consultations throughout the country but Amerindian NGOs have argued that it doesn't incorporate enough of their recommendations. As a result there has been intense disputation between the two sides over the bill.

8. Amerindian Bill for select committee after debate in National Assembly –Rodrigues, Stabroek News, Thursday, October 13th 2005

Minister of Amerindian Affairs Carolyn Rodrigues yesterday gave assurances that the Amerindian Bill will go to a Select Committee following its debate when the National Assembly reconvenes on October 20.

She was speaking at the press conference held by Head of the Presidential Secretariat Dr Roger Luncheon at the Media Briefing Room of the Office of the President.

Rodrigues said there are forces with a vested interest in having the proposed Act "lost in the wilderness and would manufacture every conceivable mechanism to ensure that this is done." The bill was tabled in the National Assembly in August just before the parliamentary recess and has come under sustained attack from various Amerindian groups.

The minister's announcement comes in the wake of calls by several Amerindian groups for the bill to be sent to a Select Committee. Two of the major groups opposing the bill in its present form are the Amerindian Peoples' Association (APA) and the Guyanese Organisation of Indigenous Peoples (GOIP).

These groups have completely rejected the bill, saying that it did not reflect the recommendations made during the national consultations two years ago and at the beginning of this year. The new piece of legislation seeks to replace one put in place since 1951.

The rejection of the proposed legislation is based on their contention that it contradicts prior commitments by the National Assembly and the government and the Parliamentary committee on constitutional reform.

Among the concerns of those groups were the adequacy of rights to land and resources; the autonomy of governing institutions; the use of the term 'Amerindian' rather than 'Indigenous'; and the need to establish the Indigenous Peoples' Commission, among others.

The lobby groups are also urging that the legislation be put on hold until the United Nations Committee on the Elimination of All Forms of Racial Discrimination reviews Guyana's efforts in fulfilling its obligations under the convention.

Rodrigues said that she looks forward to the contributions from the political parties and hopes that "we can work towards achieving consensus on the bill for the betterment of the Amerindian peoples of Guyana."

According to Rodrigues, of the more than 70 recommendations received during the consultations, government has taken on board 46 of them. "I should let you know that the recommendations were di-verse and in many cases contrasted significantly with one another," she said. She also spoke of recommendations that had to be cast aside because of their unconstitutionality.

She stated that every single Amerindian community will be able to see recommendations in the bill that they had put forward. Rodrigues assured that government tried to ensure that it incorporated the wishes of the people expressed in the recommendations while simultaneously keeping its sights trained on the beacon of national unity, which she said is of paramount importance.

The minister noted that the bill is quite lengthy, containing more than 80 clauses. "As such, in this point in time we have every intention of sending the Bill to a Select Committee following the debate on Thursday, for it to be further examined by the various political parties in Parliament."

She added that those who wish to make further submissions could do so at the same time. "I should note though that nothing prevents people from consulting with the various Members of Parliament since at the end of the day it will be the MPs who will have to vote on the bill."

She said further that the Amerindian people, especially those living in Amerindian communities have waited "a very long time for a new Act to be put in place." She said that it was her intention and the Government's not to have them wait much longer.

9. Indigenous rights groups recommend changes to draft law provisions. Stabroek News, Tuesday, February 22nd 2005

Indigenous rights groups ratcheted up their bid to force revision of some new provisions in the proposed new legislation yesterday before it is enacted.

The Amerindian Peoples' Association (APA), the Amerindian Action Movement of Guyana (TAAMOG), the National Amerindian Development Foundation (NADF) and the Guyana Organisation of Indigenous People (GOIP) compiled their comments and recommendations for the new laws into a report that was submitted to the minister at yesterday's consultation, held at the Red House, Kingston.

Minister of Amerindian Affairs Carolyn Rodrigues told Stabroek News that the comments and recommendations out of the consultations now being held countrywide would be taken to cabinet for consideration, before the draft is taken to the national assembly for enactment. The indigenous groups have expressed some serious reservations about the enactment of the new legislation in its present format, with the powers of the minister being among their primary concerns.

Attorney Arif Bulkan who was one of the legal facilitators in the original consultations informed the meeting that it is necessary for the minister to approve the village council rules as she would be the one required to publish them in the Official Gazette.

"Everyday I meddle because everyday you have complaints coming from the village," the minister told the meeting after one participant questioned whether the amount of powers vested in the minister constituted meddling in the internal affairs of the communities.

However, Rodrigues tried to impress upon the meeting the importance of the oversight in the context of past experience with councils that have tried to enact rules in conflict with the Constitution.

She said the oversight was only a safeguard against any recurrence. Guyana Human Rights Association's Co-President Mike McCormack said if it was understood that only laws that are in harmony with constitutional and other legal provisions would be enacted then it was unnecessary for the minister to give an approval. Alternatively, he suggested that the proposed National Tshao's Council that is to be set up under the new law do any approval that needs to be granted.

The minister said people continued to go to her ministry with complaints. McCormack pointed out that that was the very problem that new legislation should be trying to change. But another man felt that there was need for ministerial oversight, to ensure that the communities were properly run.

TAAMOG's Peter Persaud did not share this view as he observed that a lot of the minister's powers could be channelled to either the Tshao's Council or the ordinary village council. Under the proposal in the draft any rule or amendment to a rule made by a village council does not come into effect unless the council has consulted the community general meeting and gained two-thirds approval; and until it is approved by the minister and published in the Official Gazette.

In their joint comments and recommendations' report, the groups proposed that the minister should be required to give approval to any village or district council rule provided that it is neither in contravention with the new law or the constitution. This modifies the substantive proposal by making approval compulsory rather than discretionary once it satisfies the conditions set out in the law.

Also, according to the groups' proposals, the minister would have the opportunity to provide her views and advice in writing to the councils no later than 120 days after receiving the rules. The groups also suggest that the councils should be made to consider the minister's views and advice and re-submit the rules with any amendments they saw fit.

The minister said the recommendations would be considered when the draft was taken to cabinet.

Indigenous peoples

The groups were disappointed that the new legislation did not take on the term indigenous peoples as was proposed during the first round of consultations almost three years ago. Dr George Norton told the meeting the word 'Amerindian' is a misnomer as the people are neither Americans nor Indians and he said he found it difficult to accept a title that was based on the misconception of an era.

Linguist Dr Desrey Fox, however, felt that also using the term indigenous peoples was problematic in its own right because it would usurp the birthright of other groups of people born in the country who also have a claim to nativity.

Her solution was having the communities use their ancestral names or the term first people. Norton said that 'indigenous peoples' apart from being used in the constitution also has a legal meaning, as legally it applies only to those descendants of pre-colonial inhabitants. He also pointed out that international law definitions of the indigenous peoples only apply to Amerindians.

Rodrigues said there had been no unanimous position on the issue but it would be revisited on account of the proposals out of the consultations.

The definition of an Amerindian also provoked some debate among the participants at the meeting.

The draft proposes that an Amerindian would be defined as any citizen of Guyana who belongs to any of the native or aboriginal peoples of the country or any descendant of such a person.

But some at the meeting felt that the definition was too broad and could mean that third or fourth generation descendants without the traditional physical features or any connection to a village would be recognised by the law.

The APA's Jean La Rose wondered about citizens who did not belong any of the nine recognised nations in the country.

However, Bulkan said the definition sought to capture more than physical identifications in an attempt to avoid shutting out persons who identify with the indigenous way of life.

Research

The groups were also concerned about the rigorous criteria for entry and access into the villages as is set out in the draft, specifically for scientific and other research.

The draft says any person wishing to carry out any research must obtain the permission of the village council, the minister and permits required under any other written law. The person would also have to provide the village council or the minister with a full written report of his/her findings, a copy of all recordings made and a copy of any publication containing material derived from the study. The person would also be required to get the permission of the council, the Culture Minister and the EPA before making any commercial use of the research.

But participants questioned the need for the minister's consent, even after the council gave permission.

Rodrigues said it was a safeguard because in the past persons have posed as tourists to get into communities then later published reports that the councils dispute.

McCormack felt the criteria was ominous as it left the minister to interpret what is scientific research while also allowing her to put the brakes on research that did not meet the government's approval.

10. Five indigenous rights groups reject draft Amerindian Act - minister's control key concern. Stabroek News, Sunday, February 13th 2005

Indigenous rights groups have given a collective no to new laws they say fall short of giving their people the rights and recognition they have been seeking since colonial days.

Worried too about the range of powers vested in the minister they are urging the government to go back to the drawing board before risking enactment of laws they say would be incompatible with some local legislation and international provisions.

"Overall, the draft is [insupportable] in its present form as it is regressive and fails to adequately address, or address at all, the major issues of concern to indigenous peoples in Guyana," the Amerindian Peoples Association (APA), The Amerindian Action Movement of Guyana (TAAMOG), the National Amerindian Development Foundation (NADF) and the Guyana Organisation of Indigenous People (GOIP) said in a statement issued at a joint press conference on Thursday on the draft of the new Amerindian Act.

Consultations on the proposals began at the end of the week and will run until the end of the month in Regions One, Four, Seven, Nine and Ten, before the legislation is taken to Parliament.

The move to introduce modern and progressive legislation has been on the agenda for more than a decade as the 1976 Amerindian Act was seen as paternalistic and discriminatory.

But although they acknowledge some improvements they say some of the provisions of the new law are alarming, particularly the powers granted to the minister.

"Under the draft Act, the Minister of Amerindian Affairs is vested, in many cases, with arbitrary and draconian powers that are incompatible with indigenous people's self determining status and the enjoyment of fundamental rights and freedoms," the groups said.

"In many cases, these powers are also discriminatory in so far as no other minister is able to exercise equivalent powers with regard to non-indigenous persons and there is no justifiable reason why these powers should be exclusively applied to indigenous peoples," they added. In this vein, comparisons were drawn with the colonial laws and the groups insisted that amendments must be made to strike a balance between justifiable ministerial oversight and the exercise of autonomous governance by indigenous peoples. Further, they suggested the proposed National Touchaus Council as a body that would be appropriate instead of the minister.

The groups also said, "...in some ways the draft Act represents a step backward from existing protection in the law." As an example they cited Section 14 (1) of the draft which omits 21 (1) of the current law that provides for village and district councils to make rules for a number of prescribed purposes or other activities that the minister approves of. Instead the draft sets out that only village councils may make rules and only for prescribed purposes. According to the joint statement, "this omission unduly restricts the ability of the Village Councils to govern the community and its lands."

The statement said too that Section 57 of the draft gives private leaseholders privileges over indigenous peoples and further limits rights the people currently enjoy under the Forest Act and the State Lands Act. The altering of any traditional right over state lands and state forests, except where leases have been granted traditional rights, must be exercised subject to the existing rights of private leaseholders.

As a result the groups feel that "discrimination against indigenous peoples remains entrenched and manifest in the draft Act," and their rights to lands, territories, and resources and to self-determination are neither adequately recognised nor protected.

Indeed, the groups considered that many recommendations made during the consultation stage for review of the law were disregarded. Further, they said that in some cases government policies that the indigenous population have rejected over the years have been institutionalised in the draft, including the requirement that the titled community lands be demarcated before they are considered grants for land extensions.

The groups also said the draft is in contrast to prior commitments made by the National Assembly and the 1993 Parliamentary Select Committee to revise the Amerindian Act. They noted that the National Assembly had stated that "the revision of the Amerindian Act has to be done on democratic lines, to enlarge self-determination of Amerindians. The groups however argued that "the numerous veto powers by the minister undermine any pretence of enlarging self-determination of Amerindians...." They added that ignoring the recommendation that the terms "indigenous peoples" be used instead of "Amerindians" is a prime example of failing to recognise the right to self-determination and they said this was an underlying concept used in numerous recommendations by the communities.

Article 149 (g) of the country's constitution stipulates that the indigenous people will have the right to protection, preservation and promulgation of their languages, cultural heritage and way of life.

The groups believe the draft offers no such protection, instead only recognising the people's right to land and the extent to which the minister may decide to do so.

In addition to this they felt the draft placed no importance on compatibility with international human rights law. It was noted that Article 154 (a) of the constitution has seen a number of ratified international human rights instruments integrated into the domestic law. "On certain

issues such as rights to lands, territories and resources, the draft Act is clearly incompatible with international human rights law, including those instruments specified in the schedule of Article 154 (a)," the groups pointed out.

As a result they concluded that if enacted in its present form the new legislation could be challenged in the courts and by international human rights bodies. With Guyana up for review by the UN Committee in the Elimination of All Forms of Racial Discrimination in the summer of this year the groups said there is no doubt they will take a great interest in the Act and express their views about it. "It is our hope that the changes will be made along the lines that we recommend and [we] strongly urge the government not to adopt the draft in its present form and to enact an Act that truly protects the rights of indigenous peoples of Guyana."

Meanwhile, the Amerindian Affairs Ministry also announced on Thursday that there would be two consultations at the Cheddi Jagan Research Centre in the city. The ministry said in a statement that on the Feb 16 and 17 there will be consultations only for touchaus of Regions Two, Three, Four, Five, Six, Middle and Lower Mazaruni in Region Seven, Micobi and Campbelltown in Region Eight and Region Ten. Also on February 21 consultations will be held for stakeholders and other interested persons as well at the centre. The consultations for touchaus of other regions will be held within the regions. At Mabaruma in Region One consultations will begin today and end tomorrow; at Kamarang in Region Seven consultations will be held next Monday and Tuesday; at Lethem in Region Nine on Friday and Saturday; and at Paramakatoi in Region Eight on February 25 and 26.

11. Amerindian groups seek clarity on draft law consultations - others urge deferral, need time to study provisions. Stabroek News, Sunday, January 30th 2005

Two of the lead indigenous peoples' groups are ready for the upcoming consultations on the draft of the new Amerindian legislation proposed but say they are still awaiting word from the Amerindian Affairs Ministry on what form those talks will take.

However, another group is pushing for more time to study the draft of the new law which is proposed to replace the current 1976 legislation that critics both within and without the indigenous population say is out of date.

Both the Amerindian People's Association (APA) and the Amerindian Action Movement of Guyana (TAAMOG) say they are still awaiting a response from the ministry on their role in the consultations on the draft.

"We don't know whether there will be any consultations with us," APA Pro-gramme Manager Jean La Rose told Stabroek News, explaining that her organisation is still waiting on a response from the ministry after it asked the group to provide "feedback" on the draft by a set time.

She said the ministry gave no notification of a consultation and a letter was sent to the ministry asking for clarification of the issue but there has been no response as yet. TAAMOG's Peter Persaud said the same thing when he was contacted. "We have written a letter to the minister for an explanation but there has been no response as yet," he said, adding that, "Certainly, we would like to be a part of the consultations but so far we have received no word... in relation to our involvement...."

The ministry postponed the consultations originally scheduled for the start of the year after the groups complained about the short time given to study the draft which was completed only last year, about two years after the end of initial consultations that were held across the country.

The ministry subsequently announced a rescheduled itinerary for the consultations. In Region One on February 11 and 12 meetings will be held at Kumaka and Mabaruma. In Region Seven, meetings will be held on February 14 and 15 at Warawatta and Kamarang (Upper Mazaruni). For Regions Two, Three, Four, Five, Six, Seven (Middle and Lower Mazaruni), Eight (Micobie and Campbelltown) and Ten, meetings are scheduled for February 16 and 17

at Red House, Kingston, Georgetown. Region Nine's consultation will be held on February 18 and 19 at St Ignatius Village and Region Eight's on February 25 to 26 at the Paramakatoi Community Centre.

But the Guyana Organisation of Indigenous People (GOIP) is in the process of putting in a request to the ministry for more time to study the draft. Its Chief Mary Valenzuela says the group still needs more time to consult with its members in the various communities to formulate a precise position on the provisions set out in the legislation. She added that the recent flooding along the coastland has played a part in disrupting the work of members who live in affected areas as well.

But the group is working towards completing its own consultations with its members in the different communities by next month.

Valenzuela said it was impossible to visit all the regions but said the group hopes to meet members in communities like Orealla, Santa Mission and Moraikobi and St Cuthbert's mission.

On Saturday, some representatives were supposed to visit Muritaro for a community meeting to discuss some of the area's objections to the changes suggested.

Valenzuela however, pointed out that the village was only provided with one copy of the draft and it was difficult for everyone to study it to form a consensus position.

Valenzuela also said that touchaus in the Moruka sub-region have written to President Bharrat Jagdeo seeking the postponement of the consultations until July because they felt the time has been too short to go through the whole draft.

"I guess everybody wants to go through it with a fine tooth comb," she said, adding that in most communities the people complain that they do not understand the language that was used to frame the law.

She said it is for these reasons her group will be approaching the ministry to ask for a postponement of the consultations for a further two or three months.

She stressed that it is important for the indigenous people to be careful about the provisions they agree to because they will be enshrined in the law.

"We have to consult with legal minds to guide us and to discuss the draft act because when it's passed there will be no turning back," Valenzuela said.

"But we feel we still have to meet with the communities because we are here and we can't make decisions for them who are living in the communities and will be directly affected by those decisions," she added.

GOIP is not the alone in its call for a postponement on the start of consultations. A group of touchaus in a letter published in this newspaper last Friday said they "[wrote] to express [their] deep concern about the time period set for the final consultation process on the draft Amerindian Act."

They noted that from previous experience in the process they had not been afforded sufficient time to study the draft and or consult among themselves about the content. They recommended March as a more suitable time saying the period would be enough to ensure there is a proper discussion of the document that would yield a meaningful consultation.

They also sought clarification about assurances that their input into the consultation would result in concrete changes to the draft. They noted that this was because it implied that changes will only be made to remove inconsistencies and or conflicts with other laws.

"Should, for some reason or the other, the period for consultation not be extended to commence on March 1, 2005, we believe the consultations will not be meaningful and therefore will not be able to participate at the said January meeting," the letter closed.

12. The Amerindian Bill offers a fair deal, Editorial, Stabroek News, Tuesday, December 6th 2005

Twelve years have elapsed since the National Assembly unanimously approved Matheson Williams' resolution to revise the old Amerindian Act, which includes three years to hold consultations in Amerindian villages and with NGOs, and several months in Parliament. The proposed new Amerindian Act has come down a long and difficult road. The Government, but especially the Minister of Amerindian Affairs, is to be commended for taking a courageous but crucial step that affects every single citizen in this country, not just Amerindians.

The basis of the new law is to settle land claims. Amerindian cultures are more nomadic and quite different to the settled lifestyles of other Guyanese living in towns and countryside. Both ways of living must be respected and catered for.

When it becomes law the bill will give Amerindians a formal mechanism for claiming the State lands they feel should be theirs. This is not to say their claims have been ignored - far from it. Under Presidents Burnham and Hoyte, about 90 Amerindian villages received title to land. More titles have been awarded by President Jagdeo. Last year the Wai wai who number a few hundred at last received title to their lands in Konashen based on the original description in the existing law, Chapter 29:01 - about 2,300 square miles (about 8 times the size of Barbados).

In the 1960s the Amerindian Lands Commission recommended titling 24,000 square miles to Amerindians out of the 43,000 square miles claimed (the NGOs say not all Amerindians were consulted so this second figure may not be final). We must all be able to see what these claims are, how they are assessed and settled. The new Amerindian Act will establish an open, transparent and fair legal mechanism. The Minister must take into account Amerindian traditions and customs and the spiritual relationship which Amerindians have with the land. This is state-of-the-art thinking - imposed by the Inter-American Court on Latin American states but accepted voluntarily by Guyana. Respect for the Amerindian way of being, not just living, is the foundation of the new law and it shows a national maturity and generosity conspicuously absent in the rest of the world. In return Amerindians have a responsibility to nurture and care for this land of ours, to use it wisely and well.

The State owns all minerals in this country and has a legal right to authorise mining wherever minerals are located. A second key aspect of the bill is to allow Amerindians to veto mining. The hardships and dangers miners face on a daily basis are well known but mining also has a huge impact on Amerindians. Even a quick trip to the Upper Mazaruni shows environmental destruction and social problems to make any of us weep - a huge river so polluted it looks like milky coffee and terrifying claims about the spread of HIV.

The bill proposes that Amerindians have the right to veto small- and medium-scale mining on lands which they own. They can say no but if they say yes they can attach conditions to protect themselves from social and environmental threats. They will get tribute of at least 7% of the value of the minerals. A further 20% of GGMC's royalties must be spent for the benefit of Amerindians, (think of other countries where aboriginal peoples are lucky just to be consulted before the excavators and explosives arrive.) In the case of large-scale mining Amerindians still have a veto but it can be overridden in the national interest provided there are safeguards to protect Amerindians. The Ministers responsible for Mining and Amerindian Affairs must both declare that the mining is in the public interest. They must put in place measures to protect the village and its environment and ensure that tribute is paid to them. The village can make rules to protect themselves. And they have a right to change their mind and negotiate with the miner. The bill has struck a balance between legitimate Amerindian interests and the overall national interest of which Amerindians are also a part.

The third pillar of the act is self-determination. In addition to control of resources Amerindians will have the right to regulate the behaviour of anybody who is on their land and it will be illegal to break these rules. Ordinary citizens must first get permission from the Village Council to enter their lands.

And yet special interest groups claim this is not enough and there is a desperate and confused campaign to stop Amerindians from gaining these rights. These groups say that Amerindians have more rights which pre-date and trump the State's legal rights. They claim that international law somehow gives Amerindians special legal rights as "indigenous peoples" including rights to self-determination which other Guyanese do not have. This is simply not true.

But such dangerous and divisive claims could upset the carefully crafted balance between the just recognition of Amerindian needs and the rights of all Guyanese to be here and to contribute fully to the redemption of our land from the historical burdens created by slavery, indentureship and colonialism.

Nowhere is this balance so threatened as by the claim that only Amerindians are "indigenous" to Guyana. Where are the rest to go if they do not belong here? "Indigenous" is not a term of art or law but a simple word which applies to anything originating in a country. In relation to people it simply means born there. Worse still, the NGOs also claim that even some descendants of Amerindians should not be regarded as indigenous.

International fora produce endless definitions of "indigenous peoples", none legally binding, all criticised as simultaneously under-inclusive and over-inclusive, all agreeing on the importance of self-definition. At these fora anybody claiming to be indigenous is welcomed and there is a solidarity and comradeship that is inclusive, not exclusive. All Guyanese are also entitled to participate at these fora.

Even States cannot agree what "indigenous peoples" means; many of them reject the term altogether. The closest that States get to any kind of international consensus is that everybody has a legal right to make their own decision about whether they are "indigenous peoples". Can Amerindian NGOs really want to deny 700,000 people a right that everybody else in the world has?

Without question, Guyana must try to heal the deep hurt many Amerindians feel at historical injustices - but let it not be done at the expense of others. We must come to terms with all of our history not just selected bits. Let us not forget the evil that slavery inflicted on the Africans brought to this country. Let us not forget how those tiny Dutch settlements were able to suppress the 1763 rebellion. Don't the descendants of those courageous African men and women also have some right to be recognised as belonging here? And what about the descendants of all those other people who built this country?

Amerindians have a right to call themselves indigenous. But Amerindians cannot and must not insist that only they are legally entitled to do so. This is an act of disrespect and hurtful to other Guyanese - they also belong to this country and nowhere else.

Those interest groups demanding a regime of unrealistic special rights are in danger of creating hostility and division among us, of jeopardising the gains made by Amerindians. There is an overall national interest which cannot be compromised and which the bill protects but within that framework Amerindian concerns have been generously accommodated. Isn't it time to go forward together in a spirit of mutual respect and accept the balance of rights in the Amerindian bill?

13. **Questions and Answers on the Amerindian Bill 2005**
(Prepared by the Government Information Agency), Guyana Chronicle, 19 October 2005, (available at: <http://www.guyanachronicle.com/ARCHIVES/archive%2019-10-05.html>)

Why was it necessary to have a revised Amerindian Act?

The 1951 Amerindian Act is for the most part outdated and is not relevant to Amerindian communities today.

Does the bill adequately represent Amerindians?

Yes, it does. The Government of Guyana was very cognisant of the need to ensure Amerindian people participate in the revision process so that they can make recommendations for the new Act. As such the Bill comprises many recommendations from Amerindians. Having recognised the need for revision of the 1951 Act, it would be contradictory, useless and a waste of time for the Ministry of Amerindian Affairs and the Government to table a Bill that would see Amerindians regress instead of moving them forward.

Who contributed to the Bill?

Amerindians from the many communities throughout Guyana, Amerindian non-governmental organisations and other interested Guyanese had the opportunity to make contributions as consultations were held nationwide. They were not only consulted on what should be in the Bill; consultations were held on the draft Bill as well. Many of the recommendations that were put forward by the aforementioned entities are included in the Bill along with those that the Government feels is necessary. Legal advice both internally and externally was also provided in terms of the provisions in the Bill and its compatibility with international standard, and precedent.

Why were some recommendations not considered?

There was a diverse range of recommendations since the situations of Amerindian communities are not homogenous. For example, some communities that have serious alcohol issues recommended that restrictions be placed on alcohol while others said they are like all other Guyanese and have a right to choose. Some recommended that community lands should not be leased while others felt this should be allowed. Some recommended the use of the word "Amerindian." Others recommended the word "indigenous" and there was also a recommendation for "First Peoples." Some recommended that Amerindian women must leave the community when they marry a non-Amerindian, but men must not be subjected to the same rule, while others felt that once the community rules are maintained, people should be free to inter-marry and reside in the community. As in any consultation where many diverse recommendations are made, it was not possible to put all of these in the Act. Some recommendations contrasted with each other. Some were policy issues and many were unconstitutional; others were not workable.

What are some of the major inclusions in the Bill?

LAND

1. The recognition of Amerindian land rights is probably the most significant. Amerindians will now be granted lands under the State Lands Act which is "absolute and forever." The old Act had a number of restrictions on the lands granted, including one which states that the Minister can increase or decrease the land granted at any time. The Minister was not required to have any consultations with the community. That restriction has now been removed. It should be noted that Amerindians in some countries such as Brazil only have usufruct (rights of use) rights to land while in Guyana Amerindians have ownership.
2. There is now a procedure for granting lands which do not have titles to Amerindian groups, and also for extending lands for those communities with titles but which community members believe is inadequate.
3. Amerindians will now be able to lease their land. Since in the first round of consultations there were different views on this issue. Some said the land should not be leased while others said it should. To ensure that the communities always maintain the majority of their

titled land, they will only have the authority to lease up to 10% of the titled area.

MINING

4. Amerindians will now have veto power in the leasing of land to medium-scale mining, including the rivers and creeks.
5. If Amerindian communities agree to have small and medium-scale mining, the miner has to pay at least 7% tribute to the community. He/she also has to comply with all other laws such as the Environmental Protection law.
6. There is now a procedure that must be followed before mining is granted on titled Amerindian lands and the miner is required to provide the community with any information they request.
7. If large-scale mining is allowed on Amerindian lands, a tribute must be paid to the community.

FORESTRY

Communities will maintain their exclusive rights over the forest resources on their titled land and the new Bill also makes provisions for the communities to seek the assistance of the Guyana Forestry Commission (GFC), if necessary. Another important inclusion is the requirement for persons desirous of conducting commercial forestry operations to abide with the GFC regulations. This is a very important provision since many communities have had problems with agreements of this nature.

RULES

Communities, as provided in the old Act, will continue to make rules. However, the new Bill goes further by allowing the communities to attach fines for breach of any rule and the fines collected would be paid into the Council's treasury. In the old Act the fines were paid to the Government.

RESIDENCY

Communities will now determine who is a resident of the community. This is an important inclusion, since it has implications for voting at village elections. Some communities had difficulties in the past where persons who were Amerindians but lived out of the community for decades, returned for voting only, or when there is some benefit to be had such as Government scholarships. There were other instances where persons who are not Amerindians but living and contributing to the community for many years, were not allowed to vote and benefit in other ways, resulting in confusion in the community. On these occasions, the Minister or the Regional Administration would be asked to mediate. Provisions in the new Act will solve this problem.

ENTRY INTO AMERINDIAN COMMUNITIES

Village Councils are now empowered to grant approval to persons entering the community, except for persons conducting official Government business. This was previously only in the domain of the Minister of Amerindian Affairs.

Why is demarcation of titled lands necessary before extensions can be granted?

All lands held under title in Guyana require demarcation (survey) – whether it is a house lot or a titled Amerindian community - in order for boundaries to be known. Further, it is only logical that you know what you have before you request more. Whereas most persons requiring house lots on the coastland have to pay for their surveys, the Government has been paying for such demarcations (over \$100M) and this responsibility will now be enshrined in the new Act. Demarcation is basically marking out boundaries of legally-owned land and is purely a technical process.

Does the Act make provision for the protection of Amerindian cultural heritage?

People, whether they are Amerindian or not, should all make an effort to protect their cultural heritage and they do not require legislation to do this. Amerindians have been doing this and the Government has also been supportive by designating September as Amerindian Heritage Month and translating the National Anthem and Pledge in Akawaio, among other initiatives. Amerindian culture is part of Guyanese culture and should be promoted and maintained, and is included in the Amerindian Bill. Under Sub-section 13(1) one of the functions of the Village Council is to “encourage the preservation and growth of Amerindian culture.” At Sub-section 41 (g) (i) one of the functions of the National Toshias Council is to advise the Minister on “the

protection of Amerindian culture and heritage including the identification and designation of Amerindian monuments.” Even if the Bill did not include the aforementioned, Article 149 (g) of the Constitution of Guyana states as follows “Indigenous peoples shall have the right to the protection, preservation and promulgation of their languages, cultural heritage and way of life.” In short, Amerindian culture is recognised at the highest level – the Constitution.

Does the new legislation cater for District Councils?

Yes. This is included. Three or more communities in the same geographical area can request the establishment of a District Council and the Minister is empowered to do so by Order.

Why does the Minister of Amerindian Affairs have to approve Village Council Rules?

Amerindian villages are part of a system, and not States within a State. They have to abide with national laws. The Minister’s involvement is to ensure that the rules do not conflict with, first and foremost, the Constitution of Guyana and other laws. It should also be noted that these rules will become the by-laws of the communities and the Council is empowered to impose fines if rules are breached. If the Minister rejects a rule, she/he is required to let the community know why it was rejected. The Minister is also obligated to work with the communities to ensure that appropriate rules are made. This is being done at present in the North Rupununi communities and in Moraikobai (Region Five). This particular requirement is not a new provision as it was included in the old Act.

Why was the word “Amerindian” used instead of “indigenous”? Does this mean that benefits of Amerindians would be reduced under international law?

There are several definitions of “indigenous” which may have implications for other Guyanese in the future. The Constitution refers to both Amerindian and indigenous people. More importantly, the Bill at sub-section 3(1) 2 provides for communities to call themselves whatever they desire including “indigenous.” However, there must be room for other people to do so as well. Benefits to indigenous peoples under international law would not be reduced in any way if the word Amerindian is retained. If that were true then all the countries in the world would have to legally use the word “indigenous.” This is not so – in Australia, the word ‘Aboriginals’ is used, while in Canada, the word ‘Indian’ is used in their legislation.

Can the Government take away land from an Amerindian community?

Amerindian lands would now be granted under the State Lands Act which is absolute and forever. This means lands cannot be taken away unless, as is the case for all Guyanese, it is done by the State for public purposes. When this is done a legal process must be followed and the State is required to pay compensation. Most countries have eminent domain laws, including the United States.

How much power does the Minister have in terms of “control” over Amerindians?

The new Bill is not designed for the Minister to control anyone. In fact, significant powers have been given to the communities and the Village Council which were previously with the Minister under the old Act.

What are some of the powers transferred from the Minister or other Government agencies to Village Councils?

- * Communities under the new legislation have the power to lease their titled land
- * The Village Council is now the authority to give permission to persons entering their community
- * The community has veto power in saying “no” to small-scale and medium-scale mining in their communities
- * At least 7% of tributes from small and medium-scale mining on titled land will be paid to the community instead of to the Geology and Mines Commission.
- * The old Act provided for the Minister to appoint and remove Tosaos. While this has not been in practice for some time as elections are held, it is now explicit in the Bill and there are very detailed procedures.
- * Setting and collecting fines
- * Determining who is a resident.