

Searching for justice and land security: Land rights, indigenous peoples and governance of tenure in Guyana

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Key issues

- The orthodox view in Guyana is that indigenous peoples' rights to their lands and territories became null and void when the British crown acquired sovereignty in the 19th century and their property rights today are dependent for their existence on affirmative acts by the State, grants of title in particular. This is not only contrary to fundamental tenets of international human rights law, it is also contrary to the preponderance of commonwealth jurisprudence on these issues
- Effective recognition and protection of indigenous peoples' land rights has been an obligation of the State of Guyana since independence from Britain almost 50 years ago, yet until today many land issues remain unresolved
- Land titles "granted" to Amerindian Villages in 1976 and 1991 were drawn up without field surveys and boundaries were not agreed through prior consultation, meaning many titles have boundary errors and none cover the full extent of lands that communities know to be theirs under customary law
- Under current law options for indigenous peoples to obtain a title to their collective territories are restricted as (with the exception of three named Districts) the law limits titles to individual villages
- Existing land titling procedures fail to properly recognise customary systems of land tenure, while official decisions on title boundaries are generally arbitrary, lacking in transparency and unfair in as much as these decisions are not tied to and constrained by any enunciated rights
- Given the lack of enunciated rights that could constrain the Minister's discretion, effective means of appeal are unavailable to Amerindian villages who are unhappy about government decisions on their land title areas
- Some land titles "granted" to Amerindian Villages in the last ten years exclude lands lawfully held by loggers and miners and others, while community appeals have been rejected by Guyanese judiciary which has privileged non-indigenous parties' rights at the expense of indigenous title
- New titles still exclude "river and creek banks "66 feet from the Mean High Water Mark" and all minerals and ground water, which remain State property under national law
- While prior law and the current constitution provided for restoration of lands held by third

parties to indigenous peoples, the present Amerindian Act is retrogressive insofar as it fails to provide for any legal mechanism by which indigenous peoples may seek and obtain restitution of their lands held by third parties (as noted above, these rights are ab initio privileged in the title deed issued to indigenous communities)

- The United Nations Committee for the Elimination of Racial Discrimination (UNCERD) has more than once concluded that national norms for regulating indigenous peoples' rights to land do not meet standards enshrined in international law, but Guyana refuses to accept these findings
- The UNDP-Guyana REDD Investment Fund (GRIF) Amerindian Land Titling (ALT) Project (2014-16) also fails to address well documented inadequacies in the existing system of land titling and demarcation and risks violating applicable UN standards on indigenous peoples.

Introduction

International human rights bodies, the UNREDD Programme, forest policy makers, social justice organisations and human rights specialists agree that full respect for the land tenure and resource rights of indigenous peoples and other customary land owners is necessary to ensure the legality and sustainability of forest and climate initiatives in forest nations.¹ Guyana is a high forest cover country, which has a bilateral agreement with Norway intended to deliver financial rewards for the protection of forests and actions to limit land use emissions (See Section 3).

Most of the country's forests are located on the customary lands of nine different indigenous peoples (Arukuna, Akawaio, Arawak, Carib, Makushi, Patamona, Wapichan, Wai Wai and Warrau). These customary landowners number around 80,000 people and are mainly located in the forested interior of Guyana. The purpose of this article is to assess the past and current status of Amerindian land tenure security and pinpoint actions and reforms required to properly secure indigenous peoples' lands and ensure good governance of land tenure in Guyana's forest and climate policies.

Part I examines the historical development of land law and policies in Guyana, while Part II summarises the current land tenure situation of indigenous peoples and pinpoints shortcomings in the national legal framework for tenure governance.

Historical framework

In order to understand the existing national legal framework relating to tenure governance and indigenous peoples in Guyana it is necessary to examine the historical development of laws during the colonial and post-colonial period. This section provides an historical sketch

¹ See, for example, report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights. UN Doc. A/HRC/10/61, 15 January 2009, para. 51-4, 68-8; *Report of the UN Permanent Forum on Indigenous Issues*, UN Doc. E/C.19/2008/13, at para. 45; MacKay, F (2009) *Indigenous Peoples' Rights and REDD: The Case of the Saramaka People v. Suriname FPP* Briefing paper, Moreton in Marsh; See also, Sunderlin, W.D., Larson, A.M. and Cronkleton, P (2009) *Forest tenure rights and REDD+: From inertia to policy solutions* Center for International Forestry Research (CIFOR) Bogor, Indonesia http://www.cifor.org/publications/pdf_files/Books/BAngelsen090211.pdf. See especially, UNREDD (2013) *Legal Companion to the UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC)* International Law and Jurisprudence Affirming the Requirement of FPIC UNREDD, New York;

of Amerindian occupation of the land and summaries some key points and events in the formation of laws and policies dealing with indigenous peoples and their land rights.

Ancient occupation of the land

Archaeological studies demonstrate that Amerindian peoples occupied lands within the area now known as Guyana for several millennia prior to European colonization.² Some shell mounds in the Pomeroon valley in Region 2, for example, date back 7000 years³, while pottery remains indicate that Caribs and Arawaks arrived in the region between 4000 and 5000 years ago.⁴ Recent investigations in the Berbice area have identified sophisticated raised field agriculture and agricultural black earths created 5000 years before present.⁵ Investigations into charcoal remains in forest soils in central Guyana suggest that human occupation by pre-Columbian populations may date to 9000 years ago.⁶ Based on the nature and location of different cultural artefacts and ceramic ‘phases’, archaeologists maintain that it is likely that all nine indigenous peoples present in Guyana today were already occupying the land at 1000 A.D.⁷

European records of Amerindian land use and occupation

A considerable body of evidence from archival and oral history sources demonstrates that indigenous occupation of lands at the time of colonisation has continued to the present time and, while not without exception, indigenous peoples continue to occupy largely the same lands today.⁸ Colonial despatches and the reports of explorers since the sixteenth century confirm the pre-existing occupation of indigenous peoples across the interior of Guyana. For example, Warrau, Carib and Arawak peoples were reported to occupy the Pomeroon and Moruca river regions in the seventeenth century.⁹ Multiple colonial records dating to the sixteenth century also testify to the presence of the Akawaio people in the Mazaruni River Valley (and beyond),¹⁰ while Dutch despatches record the “Wapisiana” in the Rupununi in the seventeenth century.¹¹ Unlike the Spanish policy of subjugation through forced labour (encomienda system), Dutch colonial powers sought alliances with several indigenous peoples.

Early records show how the Dutch considered the leaders of the ‘Indian’ ‘nations’ as ‘kings’ and they signed formal treaties with them to enable their trade and help defend the small Dutch colony against Spanish settlement.¹² Dutch regulations on its West Indian colonies recognised and guaranteed the rights of indigenous nations to own and control their lands and resources.¹³ As the plantation economy grew on the coast of Guyana in the eighteenth century, the Dutch set up a formal system of trading posts and appointed recognised indigenous chiefs as ‘owls’ to mediate trade and oversee relations with the Dutch authorities.

2 Plew, M G (2005) *The Archaeology of Guyana* Archaeopress, Oxford; Plew, M G (2003) “Archaeology in the Iwokrama Rainforest, Guyana” *Antiquity* Vol 77 No 298 December 2003

3 Williams, D (1985) *Ancient Guyana* Walter Roth Museum of Anthropology, Georgetown

4 Williams, D (1997) “Early Pottery in the Amazon: a correction” *American Antiquity*, 62(2)(1997):342-352

5 Whitehead, N, Heckenberger, N J and Simon, G (2010) “Materializing the Past among the Lokono (Arawak) of the Berbice River, Guyana” *Antropológica 2010 Tomo In*”114(2010): 87-127

6 Hammond, D S, ter Steege, H and van der Borch, K (2007) “Upland Soil Charcoal in the Wet Tropical Forests of Central Guyana” *Biotropica* 39(2):153-160

7 Wishart, J (2000) “Guyana this millennium” *Guyana Review (Jan-Feb)(2000)* Free Press

8 See, for example, H.G. Dalton (1855) *The History of British Guiana Comprising a General Description of the Colony; a Narrative of Some of the Principal Events from the Earliest Period of its Discovery to the Present Time*. Vol I. Longman, Brown, Green and Longmans, London: 1855, at pgs. 88-126.

9 Edmundson, G (1901) “The Dutch in Western Guiana” *The English Historical Review* XVII(1901): 640-675

10 Butt-Colson, A J (2009) *Land: its occupation, management, use and conceptualization – the case of the Akawaio and Arekuna of the Upper Mazaruni District, Guyana* Last Refuge, Panborough at page 22ff.

11 Whitehead, N (1988) *Lords of the Tiger Spirit: a history of the Caribs in Colonial Venezuela and Guyana 1498-1820* Foris Publications, Dordrecht

12 Colchester, M (1997) *Guyana – fragile frontier – loggers, miners and forest peoples* Latin American Bureau, London

13 MacKay F and Anselmo, L (2000) *Indigenous Peoples, Land Rights and Mining in the Upper Mazaruni*, FPP-APA, Moreton in Marsh and Georgetown at page 37

Colonial land policies

Early colonial policies recognised to a greater or lesser degree the prior occupation of the land by indigenous peoples, but did not otherwise legally regularise customary lands rights. In particular, the Dutch colonisers were largely preoccupied with trade with indigenous peoples and never resolved the question of aboriginal land rights established under customary law.¹⁴

While the Dutch and later British colonial rulers did not define nor specifically recognise and protect indigenous peoples' land rights in legislation, they did adopt 'savings' for indigenous peoples' - again undefined - traditional use and access rights over Crown/State lands under different laws. Until 2006, the State Lands Act, for example, maintained a provision that had been in law since at least 1838 and provided 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 (Section 41). According to Arif 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.¹⁵

In short, despite saving Amerindians use and access rights, colonial legislation also increasingly placed restrictions on indigenous peoples' livelihood rights and freedoms to occupy, use and freely dispose of resources located on Crown lands. For example, Regulation 5 of the 1910 State Lands Act Regulations, in effect until 2006, stated that any Amerindian could occupy ungranted or unlicensed State lands for the purpose of residence only and could not clear the forest or cultivate ungranted State lands. Regulation 9(1) provided that any Amerindian who wanted to cut timber or dig, remove or carry away any item from State lands would have to apply for permission, which could be denied. The Regulations were also blatantly discriminatory with regard to indigenous women. Legal restrictions on Amerindian land and resource rights over untitled customary lands have been carried forwards in post-independence land and forest laws, such as the 1953 Forest Act as amended in 1997 (Article 21).

In the same way, the current Amerindian Act 2006 establishes or maintains numerous legal constraints on Amerindian rights (Box 1). For example, the Act repeals Section 41 of the State Lands Act and replaces it with an amended and further contracted savings clause for "traditional rights" on State Lands and State forests pursuant to Articles 2 and 57. Article 57 ostensibly protects traditional rights in State Lands and forests, unless expressly provided otherwise in the Act and subject to the rights of any private leaseholders that were in effect in 2006. However, the definition of traditional rights in Article 2 (the first express definition in Guyana law) limits those rights to only "subsistence rights or privileges," which were in existence in 2006 (the same "artful device" identified by Bulkan above), and adds a novel limitation requiring that those rights be "exercised sustainably" in accordance with indigenous peoples' "spiritual relationship"

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

15 Bulkan, A (2002) "Amerindian Land Rights: Is the Struggle for Equality Really Over?" *Guyana Law Review* 30 (2002)

with their lands.¹⁶ The latter applies to no other private landowner in Guyana – if it did, the vast majority of logging and mining operations would be, at least, of questionable legality – and, lacking any reasonable or objective basis for application only to indigenous peoples, is therefore discriminatory; and would require a court to rule on the ‘sustainability’ of indigenous peoples’ subsistence practices should an action be brought – a term that is, among other things, highly subjective and likely too vague to be applied with certainty.

Paternalist policies

Colonial laws dealing with indigenous peoples became increasingly paternalistic from the nineteenth century onwards and these tendencies still influence existing laws. In the late nineteenth century and early 1900s, the British had defended Amerindians against slave raids by Brazilians and used alliances with indigenous peoples in the interior to strengthen British claims to Guyanese territory and secure the international boundaries with Brazil and Venezuela. Yet by the 1920s, Amerindians were more or less abandoned, while communities suffered abuses and exploitation by miners and loggers.¹⁷ Amerindian population numbers had crashed since early colonial times due to disease. A survey of Amerindian settlements completed in the 1940s found that many of the 15,000 surviving indigenous people were living in extreme poverty, ill health and deprivation. The report recommended centralising dispersed Amerindian settlements (including relocation of communities) in order to access basic services and schooling. It also proposed the formation of Amerindian Districts to protect Amerindians from “exploitation” by outsiders and enable their gradual and controlled incorporation into the market economy.¹⁸

Although concerned with protection and welfare of Amerindians, British policies did not secure Amerindian land ownership rights. No titles were issued to any lands within Amerindian reservations. In contrast, British support for the establishment of church missions included provision of title deeds for church enclosures in Amerindian settlements. By the twentieth century, the British had effectively demoted Amerindian peoples from sovereign nations to wards of the state.¹⁹

Annexation of indigenous peoples’ territories

British land and development policy was primarily geared towards colonisation of the interior and increased economic development, including mining development and plans for commercial farming and market gardening. Definition of Amerindian Districts was seen as part of wider land use planning needed to include Amerindians in national administration and a process for national development. As already noted, the Districts did not possess titles and indigenous peoples did not enjoy security of tenure. The British also had powers to reduce Districts without consultation and agreement, and in 1959 they dereserved 0.4 million ha of the Upper Mazaruni District to create a Mining District for the extraction of diamonds and gold (this followed earlier large-scale dereservation of extensive tracts of land in the Mazaruni Indian District in the lower and middle Mazaruni in 1933 – mainly for mining).

16 Article 2 of the Act reads in pertinent part that traditional right means “...any subsistence right or privilege, in existence at the date of the commencement of this Act, which is owned legally or by custom by an Amerindian Village or Amerindian Community and which is exercised sustainably in accordance with the spiritual relationship which the Amerindian Village or Amerindian Community has with the land, but it does not include a traditional mining privilege (emphasis added)”.

17 Forte, J (1993) “Amerindians and Poverty” Paper prepared for IDS Seminar on Poverty, March 19, 1993

18 Peberdy, P S (1948) British Guiana: *Report of a Survey on Amerindian Affairs in the Remote Interior: with additional notes on coastland population groups of Amerindian origin* Colonial Development and Welfare, Scheme No.D426

19 Mackay, F and Anselmo, L (2000) *op. cit.*



Mining blocks have been imposed on community lands throughout the interior of Guyana. Communities often first learn of these blocks when notices go up on land they know to be theirs.

Photo Alanca Morales

Pre-existing and inherent land rights

In international law, indigenous peoples' property rights are inherent and their existence and enforceability is not dependent on any affirmative act by states.²⁰ These rights arise from indigenous customary tenure and states are obligated to equally protect indigenous peoples' rights in law and practice. As noted above, in Guyana, however, the "orthodox view"²¹ is that the acquisition of sovereignty by colonial powers extinguished any rights indigenous peoples may have had to their territories and, therefore, the only valid rights to land are derived from title issued by the colonial government or the state.²² While the legal basis for the abrogation of pre-existing indigenous land rights due to the acquisition of sovereignty by the British Crown has been rejected as doctrinally unsound and bad law by the judiciary in almost all

20 See e.g., *General Recommendation XXIII on Indigenous Peoples*, adopted by the Committee on the Elimination of Racial Discrimination at its 51st session, 18 August 1997, at para. 5 (calling on 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 their free and informed consent, to take steps to return these lands and territories"); and Inter-American Commission on Human Rights, *Report No. 40/04, Maya Indigenous Communities of the Toledo District, Case 12.053 (Belize)*, 12 October 2004, at para. 117. (observing that "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").

21 See M. Janki, *Customary Water Laws and Practices: Guyana*. A Paper for the UN Food and Agriculture Organisation, 19 August 2005, at p. 10 (explaining that "There is no recognition of aboriginal systems of tenure and all land in Guyana is treated as having become the property of the State irrespective of whether it was occupied and used by Amerindians. This position is entrenched in a number of statutes. The State Lands Act ... acknowledges the State as the owner of all land not privately held under transport or registered title. ... This line of legal reasoning does not recognize Amerindians as landowners nor as the holders of any rights to water, whether as an incident of land ownership or otherwise. This is the current legal position until the courts of Guyana pronounce otherwise"), http://www.fao.org/fileadmin/templates/legal/docs/CaseStudy_Guyana.pdf.

22 Ramsahoye, F H (1966) *The Development of Land Law in British Guiana* Oceana Publications, New York, p. 25. Ramsahoye cites an Australian case (*Williams v. A.G. of New South Wales* [1913] 16 CLR 404, at 439), as authority for the proposition that the Crown owns all land to which title cannot be shown. However, the Australian High Court directly addressed Williams in its landmark decision in *Mabo v. Queensland* (No. 2), where it affirmed that upon the acquisition of sovereignty radical title indeed vested in the Crown, but that such radical title was entirely consistent with the maintenance of native or aboriginal title to land. With regard to the ruling in *Williams* that full beneficial ownership vested in the Crown, which is the sole authority that Ramsahoye relies on, the High Court emphasized that "that proposition is wholly unsupported" and noted the comment in Roberts-Wray's authoritative treatise on British colonial law that the proposition was "startling and, indeed, incredible." *Mabo v. Queensland* (No. 2), [1992] 175 C.L.R. 1, per Brennan J., at 22, (citing K. Roberts-Wray, *Commonwealth and Colonial Law* (1966), at 631).

Commonwealth jurisdictions where indigenous peoples live, including in decisions of the Judicial Committee of the Privy Council that were binding on Guyana until 1980,²³ Guyana continues to cling to the fiction that indigenous peoples' property rights became null and void on this basis.²⁴

This fundamental misconstruction of indigenous peoples' rights has been endorsed by the Guyanese judiciary; is asserted as a defense by the State when indigenous peoples seek recognition of their rights before the judicial system²⁵ and; underlies Guyana's legislative framework pertaining to indigenous peoples' property rights. In 2009, for instance, Guyana's Chief Justice opined (unnecessarily insofar as it was entirely unrelated to resolving the dispute before the court) that the assertion of sovereignty over Guyana by the British fatally displaced pre-existing indigenous property rights, which passed to the Crown and then Guyana.²⁶ Commenting on this judgment, one Guyanese lawyer and academic observes that:

The result was not only to set the law back by more than 100 years, but also to render completely worthless the slew of constitutional reforms enacted in 2001, by which an enhanced regime of equality rights and strengthened respect for indigenous peoples were incorporated in the Guyana constitution. Equally disquieting is the Chief Justice's rejection of international law, despite the legitimacy of recourse thereto when interpreting the fundamental rights provisions.²⁷

This fundamental misconstruction of indigenous peoples' rights underlies the legislative enactments that affect all aspects of indigenous peoples' lives today, including the 2006 Amerindian Act and sectoral legislation such as the 1989 Mining Act. The Amerindian Act, for example, fails to specify any rights that could form the basis for the delimitation, demarcation and titling of indigenous peoples' lands, territories and resources; solely requires that the

- 23 See e.g., *Amodu Tijani v. Secretary, Southern Nigeria* [1921], 2 A.C. 399, per Viscount Haldane, at 407 (holding that "a mere change in sovereignty is not to be presumed to disturb rights of private owners..."); and *in accord, Nireaha Tamaki v. Baker*, (1901), NZPCC 371; *Re Southern Rhodesia* [1919] A.C. 211; and, *Adeyinka Oyekan v. Mussendiku Adele* [1957], 1 WLR 876.
- 24 See e.g., *Roberts v. Canada* [1989] 1 S.C.R. 322, at 340 (holding that aboriginal rights and title arise "by operation of law, and do not depend on a grant from the Crown"); *Wik Peoples v. Queensland & Ors*, [1997] 187 CLR 1, at 84 (per Brennan CJ, explaining that "native title does not require any conduct on the part of any person to complete it, nor does it depend for its existence on any legislative, executive or judicial declaration"); *Te Weehi v. Regional Fisheries Officer* [1986] 1 NZLR 682, at 687 (per Williamson J., observing that the "treatment of its indigenous peoples under English common law had confirmed that the local laws and property rights of such peoples in ceded or settled colonies were not set aside by the establishment of British sovereignty"); *Johnson v. MacIntosh* 21 US (8 Wheat.) 543, 574 (1823) per Marshall C.J., stating that acquisition of sovereignty "could not affect the rights of those already in possession, either as aboriginal occupants or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase.... [The original inhabitants] were admitted to be the rightful occupants of the soil, with a legal as well as a just claim to retain possession of it, and to use it according to their own discretion") and; *Nor Anak Nyawai et al* (12 May 2001), Suit No. 22-28-99-I, High Court for Sabah and Sarawak, at para. 57 (explaining that "[native/aboriginal title] is therefore not dependent for its existence on any legislation, executive or judicial declaration ... though they can be extinguished by those acts. Therefore, I am unable to agree ... that native customary rights owe their existence to statutes. They exist long before any legislation and the legislation is only relevant to determine how much of those native customary rights had been extinguished"). See also *Alexkor Ltd and the Republic of South Africa v. The Richtersveld Community and Others*, [2003] CCT 19/03 (finding, at para. 64, that "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"); and *Maya Village of Conejo v. A.G et al*, Supreme Court of Belize, Claim No. 172 (2007), at para. 77 (per Conteh CJ, stating that "I am, however, convinced and fortified by authorities that the acquisition of sovereignty over Belize, first by the Crown and later, by independent governments, did not displace, discharge or extinguish pre-existing interests in and rights to land. The mere acquisition or change of sovereignty did not in and of itself extinguish pre-existing title to or interests in the land").
- 25 See e.g., *Statement of Defense by the Attorney General of Guyana in Van Mendason et al. v. A.G*, High Court of Guyana, No. 1114-W. This case is still pending in the court of first instance almost 15 years after it was submitted
- 26 *Thomas and Arau Village Council v Attorney General of Guyana and another*, No. 166-M/2007, HC of Guyana, unreported decision, 30 April 2009.
- 27 A. Bulkan, *From Instrument of Empire to Vehicle for Change: The Potential of Emerging International Standards for Indigenous Peoples of the Commonwealth Caribbean*, Faculty Workshop Series, Faculty of Law, University of the West Indies, 17 March 2010, p. 23-31, at p. 24-5, http://www.cavehill.uwi.edu/news/articles/2010/March/Bulkan_Instrument_to_Vehicle.pdf.

Minister “consider” relationships to lands in making decisions about title; and, pursuant to Section 63(1), the Minister is not required to issue title at all should she decide against doing so. Obtaining title is therefore not a right that is vested in indigenous peoples, but is an entirely discretionary power vested in the Minister of Amerindian Affairs and the same is also the case with respect to identifying the extent and boundaries of title. The preceding was correctly encapsulated in one sentence by the UN Committee on the Elimination of Racial Discrimination in 2006: “to the extent title has been granted to indigenous groups, this has been done unilaterally by the State party, rather than within the framework of a procedure respecting the inherent rights of the indigenous groups to such areas.”²⁸ Respect for the inherent rights of indigenous peoples in this context requires that those rights are somewhere legally recognized and made express in sufficient detail so as to provide the parameters for and particular criteria by which decisions about delimitation and titling shall be made as well as to provide the basis for appeals against decisions that are considered to be inconsistent with those articulated legal rights.

However, Guyana’s law – sanctioned repeatedly by the judiciary – is that indigenous peoples have no effective rights to control their lands in the absence of title grants by the State. The date when the State decided to grant title and the extent of that title, however arbitrarily determined, thus become the primary reference points for whether an indigenous community may exercise and enjoy its internationally protected rights. The situation of Isseneru illustrates the effect of this substantial defect in domestic law.

A land title was “granted” to Isseneru in 2007 to approximately 25 percent of its customarily owned lands because the Minister of Amerindian Affairs had decided that its request for title was, without further justification, “too big” (Box 3). The title issued includes a clause ‘saving and excepting’ any prior property rights, which resulted in the continuation of almost 100 mining permits in and adjacent to the titled area. Isseneru’s ‘lack of rights’ prior to the granting of title thus underpins and legitimizes the following in domestic law: a) issuing mining permits within its traditional lands without even notifying the community; b) allowing those mining permits to survive the grant of title when made in 2007 and; c) the denial of the community’s right to control and manage its lands in light of these concessions and permits even after title had been issued and the statutory rights of the Village Council became operative pursuant to the Amerindian Act. Additionally, while extant law prohibits issuing mining permits on State sanctioned titled lands, due to discrimination against indigenous peoples and their unequal treatment in law, this provision does not extend to lands owned pursuant to customary indigenous title. This situation has also been repeatedly sanctioned by the judiciary, despite the recognition by one judge that this “may appear to be manifestly unfair to the Isseneru Villagers...”²⁹

This situation is not only manifestly unfair to Isseneru, it also contravenes indigenous peoples’ rights in international law, many of which are incorporated into Guyana’s Constitution (Article 154A). The incompatibility of Guyana legal regime with the basic elements of indigenous peoples’ property rights in international law is amply illustrated in the following summary of those rights by the Inter-American Court of Human Rights. The Court observed in this respect that: “(1) Traditional possession by indigenous of their lands has the equivalent effect of full title granted by the State; (2) traditional possession gives the indigenous the right to demand the official recognition of their land and its registration; [and] (3) the State must delimit, demarcate

28 UN CERD, Communication under the Follow Up Procedure: Guyana, 24 August 2007, at p. 2.

29 *Joan Chang v. Isseneru and Ors*, High Court of Guyana, January 2013, at p. 18-9

and grant collective title to the lands to the members of the indigenous communities.”³⁰ The lands that must be delimited and titled and treated equally to other lands titled by the State are those “traditionally possessed” by indigenous peoples not, as is the case now, those deemed acceptable by the State.

Independence agreement

Through the efforts of Amerindian leaders like Stephen Campbell, the issue of Amerindian land rights, commitments to provide for increased tenure security and recognition of land ownership were incorporated into Guyana’s Independence Agreement. This major achievement was secured following the adoption of the British Guyana Independence Conference report in 1965 that contained clear recommendations on Amerindian land rights that were then included in full into a new Amerindian Lands Commission Act (1966). Annex C to this report required that Guyana regularise Amerindian land rights and specified that:

Amerindians should be granted legal ownership or rights of occupancy over areas and reservations or parts thereof where any tribe or community is now ordinarily resident or settled and other legal rights, such as rights of passage, in respect of any other lands where they now by tradition or custom de facto enjoy freedoms or permissions...legal ownership that comprise all rights normally attaching to such ownership.³¹

Amerindian Lands Commission (1966-69)

In order to fulfil the legal conditions on Amerindian land rights contained in the independence agreement, the Amerindian Lands Commission (ALC) was set up in 1966 and spent two years documenting the land tenure situation of Amerindian Communities. The ALC recorded Amerindian requests for recognition of their lands and made (mostly different) recommendations for freehold title boundaries. While the Commission did make efforts to visit villages and hold individual and group meeting to receive Amerindian petitions, a number of villages and many minor communities were not visited. In other cases, settlements were visited for only very brief periods, to assess the local situation, but detailed consultations were not held with the inhabitants due to language barriers or other reasons (e.g. in Baramita).³²

In its final 1969 report, the ALC recommended that 128 Amerindian communities receive land title covering a total area of 24,000 square miles out of the 43,000 square miles requested by 116 communities. A major failing in the ALC process was that the Commissioners apparently often failed to consult and agree on the definition of final areas recommended in their report. In many cases, the title areas recommended by the ALC were much smaller than areas requested and did not always take proper account of Amerindian customary occupation and use of the land.

Fragmentation of indigenous territories

Requests to hold lands jointly over collective territories were not accepted by the ALC, though they were faithfully documented. In most cases, the ALC justified its decision to

30 *Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations and Costs*, Judgment of 24 August 2010. Ser. C No. 214, at para. 109. See also *The Mayagna (Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001, Inter-Am. Ct. H.R. Ser. C No. 76, at para 151 (“The customary law of indigenous peoples should especially be taken into account because of the effects that flow from it. As a product of custom, possession of land should suffice to entitle indigenous communities without title to their land to obtain official recognition and registration of their rights of ownership...”).

31 Annex C, Section L. of the Independence Agreement

32 Amerindian Lands Commission (1969) *Report of the Amerindian Lands Commission* ALC, Georgetown at page 154

limit Amerindian land claims on the questionable and discriminatory assumption that areas requested were “excessive and beyond the ability to develop and administer”. Other than recommendations for the creation of Amerindian Districts in Baramita and Konashen, the ALC proposed individual village free hold titles, often divided up by intervening state lands. In this way, while the ALC process set in train a process of securing tenure rights, at the same time it entrenched a system for the fragmentation of indigenous territories and set of a system for the “villagization” of Amerindian lands.³³

Many Amerindians feel that the ALC did not honour its promises to secure their lands and have never accepted that their people are unable to manage and control their lands, territories and resources. Elders alive today who remember the ALC feel strongly that it should have considered requests for joint areas and note that individual and limited village titles have resulted in land conflicts and land tenure insecurity e.g.

I remember as a young man my cousin Malachai Lewis who was then the Captain would have met with Steven Campbell and other leaders to discuss a way forward on the land issue. He made numerous representations on our land issue and there was an agreement with the other leaders of the Northwest in jointly seeking a district title instead of individual village titles as we have today. We do not know why the ALC only put forward small title areas for individual villages. Our fore parents asked for large areas of lands because we had always occupied this place and they foresaw the conflicts which are taking place today! In our traditional areas where villagers used to use the forest there are restrictions now, which cause conflicts with forest concession people and sometimes with our neighbouring villages.” [Elder, St Monica Amerindian Village, 2012]

1951 Amerindian Act (as amended in 1976)

The 1951 Amerindian Act was amended in 1976, which was the first time that the State acted to implement the recommendations of the ALC or to otherwise issue title to indigenous peoples. Despite these amendments, the Act retained or modified many of the discriminatory and paternalistic and colonial provisions adopted in 1951, including powers to extinguish land rights and alter boundaries without consultation. The Act contained a schedule of titles for 62 villages and a number of “Districts” based on the boundaries recommended unilaterally by the ALC report over an area of 4,500 square miles. While the Act introduced the first formal legal recognition of Amerindian land ownership rights over title areas, it excluded State installations, airstrips and river corridors 66 feet from the mean high water mark. The Act also failed to include more than 60 other indigenous communities included in the ALC recommendations. The land titles “granted” under Section 20A of the 1976 Act were never properly surveyed nor consulted on the ground with the villages, and were also subject to extreme and discriminatory conditions that applied to no one else in Guyana, including the revocation of title if two or more members of the village were determined to have been disloyal or disaffected to the State.

Numerous confusions were created through the use of “unnamed” creeks in the title descriptions derived from the ALC that continue to cause grievances and land conflicts up until the present day. These errors have been exacerbated by inaccuracies on official 1:50,000 baseline maps surveyed in colonial times that have misplaced or incorrectly named creek and mountain names. These errors have never been corrected and community requests for map corrections are disregarded (see below).

33 See Hennessy, L (2012) “Re-placing Indigenous Territory: villagization and the transformation of Amerindian Environments Under Cooperative Socialism in Guyana” *Annals of the Association of American Geographers* 10.1080/00045608.2012.740382

Other than state installations, the Act did allow for the transfer (transport) of the lands of third parties like the Church to pass to the possession and control of Amerindian Villages if no objections were received by 1977. In practice, up until today, it is not always clear which parcels of land passed to Amerindian ownership. Confusion and disputes remain in several villages over the ownership of church lands and in some cases the church has charged rents to Amerindian families living on church 'property' (e.g. in Wakapao).

1991 Land titles

In 1991, then-President Hoyte issued all Amerindian communities listed in the schedule to the 1976 Amerindian Act with documents of title. Ten additional villages also received titles to a limited portion of their ancestral lands in 1991, including six villages in the Upper Mazaruni. However, more than 50 Amerindian communities remained without title, including Baramita, Konashen, Parabara, Isseneru, Kambaru, Meruwang etc, among others.

The 1991 titles were issued under the States Land Act (Section 3). The State Lands Act empowers the President "to make absolute or provisional grants of any State lands of Guyana, subject to such conditions (if any) as he thinks fit..." In this case, all 1991 title deeds specify that Village property rights do not extend to subsoil resources and ground water that remain vested in the State (see below). Each and every title document affirms:

"...this grant (sic) shall not confer on the grantee any right to gold, silver, or other metals, minerals, ores, bauxite, gems or precious stones, rock, coal, mineral oil, uranium or subterranean water in or under the land hereby granted (sic), all of which shall be vested in the State."

Despite these shortcomings, it is important to note that the 1991 titles are absolute grants, applying forever, that not even the President is authorised to revoke or modify. Significantly, these titles, backdated to 1976, all state that the community in question "has from time immemorial been in occupation of a tract of State Land" indicated in the description.

Boundaries were not surveyed prior to issuing the 1991 titles. While the States land Act does allow for grant of titles without prior land surveys where boundaries are defined by rivers, watersheds creek and other natural boundaries, many title boundaries or a portion thereof are defined by arbitrary straight lines between two or more points. In any event, as noted above, the location and naming (or lack of names) of key natural features on baseline maps often does not match local indigenous knowledge of the landscape. It is often these contested places names and locations that have led to errors in the demarcation of Amerindian Village title boundaries and land disputes throughout the country (see II. below).

Community land use maps

Those villages that did receive title in 1991 were most dissatisfied that the title boundaries did not cover the full extent of their customary lands and left intervening State lands that have since become occupied by miners and loggers given rights by the government to extract resources without prior agreement or consent of the affected villages. In several cases, indigenous peoples in the Upper Mazaruni (1997), Pakaraima Mountains (2002), Moruca sub-region (2003) and the South Rupununi (2012) mapped their own lands and collective territories to show the names of creeks and land marks and traditional land use in order to challenge the defective titles.³⁴

34 Colchester, M (2005) "Maps, Power and the Defense of Territory" in Brosius, P J, Lowenhaupt Tsing, A and Zerner, C (Eds)(2005) *Communities and Conservation: Histories and the politics of community-based natural resource management* Altamira Press, Walnut Cree

Formal presentations of these community land use maps have been made on multiple occasions to government authorities, yet until today these maps have never been formally recognised by the State of Guyana. At the same time, petitions sent to the authorities for recognition of collective titles to joint areas, as submitted by the Moruca Land Council in 2002, have never received any acknowledgement or reply from the government up until the present day.³⁵

2006 Amerindian Act

Indigenous peoples' organisations in Guyana, including the APA, had pointed out the serious shortcomings and discriminatory provisions on land in the 1976 Amerindian Act for many years and in 2002 the government of Guyana finally agreed to a process for review of the Act. Major community level consultations were conducted between 2002 and 2003, marking best practice in the participatory development of legislation in the country. Detailed inputs and submissions were received from Amerindian Villages and organisations such as the APA, including solid proposal for full recognition of indigenous peoples collective land rights according to their customary law and traditional systems of land tenure.

When the Bill was finally shared in 2005, indigenous peoples welcomed the fact some of the most offensive provisions of the former 1976 Act, including the powers to extinguish titles without consultation or consent of affected villages, were removed. However, they were dismayed to learn that many of their most important recommendations on rights to land and other fundamental rights had not been taken up. The Bill also retained the unjust, discretionary and unilateral powers of the Minister of Amerindian Affairs to veto title boundaries and to interfere in and reject village rules or decisions (akin to the powers of colonial British authorities). It also allows for the imposition of large scale mining concessions without consent and discriminates against untitled communities who do not enjoy equal protection under the law. Despite further detailed submissions by the APA and other parties, no further changes were made to the Bill and the Act was finalised in 2006 and retains fundamental flaws (Box 1).

The Act was delayed several years in coming into force, but since its publication the APA and others have criticised its serious shortcomings in relation to rights to land and the rights in general of indigenous peoples. The United Nations Committee for the Elimination of Racial Discrimination (UNCERD) thus urged Guyana in 2006 to:

...remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act and from any other legislation...³⁶

It also urged the State Party to the Convention:

...in consultation with the indigenous communities concerned, (a) to demarcate or otherwise identify the lands which they traditionally occupy or use, (b) to establish adequate procedures, and to define clear and just criteria to resolve land claims by indigenous communities within the domestic judicial system while taking due account of relevant indigenous customary laws.³⁷

35 E.g. Moruca Amerindian Land Council (2002) *Formal Application Seeking Recognition of Land and Resource Rights of Six Amerindian Villages of Moruca Sub-Region, Region 1* Moruca Amerindian Land Council and APA, Santa Rosa Village and Georgetown

36 UNCERD (2006) Concluding observations of the Committee on the Elimination of Racial Discrimination: GUYANA CERD/C/GUY/CO/14 21 March 2006 at paragraph 15 <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/guyanacerdconclobsmar06eng.pdf>

37 Ibid. at paragraph 16.

Box 1: The Amerindian Act 2006

The Amerindian Act 2006 is very problematic on a number of counts in relation to indigenous peoples' land rights. Problems with this piece of legislation are, *inter alia*, that it:

- Retains the legal fiction that all untitled lands are held by the State
- Fails to recognise indigenous peoples' inherent rights to their lands, territories and resources
- Retains an arbitrary process for land demarcation and titling
- Fails to require that titling be based on customary land tenure systems or customary laws pertaining to land and resource ownership - contrary to international law
- Vests title to land and resources only in individual villages and not also in another entity that could hold title on behalf of a number of villages jointly
- Excludes all creeks and rivers and other water bodies from indigenous title
- Lacks protections for the land and resource rights of communities who still lack a legal land title
- Imposes unjust eligibility requirements on indigenous communities wishing to apply for land title
- Allows mining and logging concessions to be issued over untitled traditional lands without prior consultation and consent, or in the case of logging without notification
- Invests the government with arbitrary powers to interfere in the functioning and decision-making of indigenous peoples' governing bodies
- Subjects traditional rights of indigenous peoples over State Lands and State Forests to the rights of leaseholders and others (Article 57)

In a letter to the Guyana government in 2008, UNCERD referred to the need to amend legislation to secure subsoil rights, noting:

The Committee would like to recall that the full right of indigenous populations over their lands include the right to the subsoil...³⁸

Current Situation

In 2014 the 2006 Amerindian Act remains unaltered and the government has repeatedly rejected any proposals to enable reform of the legal rules for the titling, demarcation and control of indigenous lands, territories and resources. Formal responses to the UNCERD observations have reasserted the outdated and discredited legal fictions regarding State ownership of land following acquisition of sovereignty by the British, which passed to the Guyanese State in 1966.³⁹ While reforms have not been undertaken to properly secure Amerindian rights to their lands and territories, titling has proceeded in fits and starts (often close to or soon after national election periods). Official figures indicate that there are now 96 villages with land titles, suggesting that a further 24 villages have been titled since 1991.⁴⁰ This situation results in at

38 UNCERD (2008) *Letter Ref TS/JDV/JF, 15 August 2008* <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/guyanacerdletteraug08eng.pdf>

39 *Comments of the Government of Guyana on the concluding observations of the UNCERD on the Elimination of Racial Discrimination*. UN Doc. CERD/C/GUY/CO/14/Add.1, 14 May 2008

40 Amerindian Land Titling Project Document (2013) at paragraph 13.

least two dozen main settlements without land title, with many additional hundreds of minor hamlets and homesteads lacking legally recognised land rights.

Inadequate land titles

Those indigenous communities that do possess title continue to hold major concerns about their land titles, which fail to properly protect the lands to which they hold collective attachment and which they traditionally occupy and use. In this regard, Amerindian communities highlight that land tenure security does not just relate to the possession of a legal land title or lack of one. Crucially, security and enjoyment of collective property rights in land relates to the *adequacy* of the existing legal title in securing their collective lands and ensuring that they have ownership and rights to manage and control the range of resources within their territories, including soil, sand, rocks, vegetation, including standing forests, waters, river corridors, ground water and subsoil resources.⁴¹

All over Guyana, the vast majority of Amerindian villages that do possess land titles consider that they are inadequate because they were never consulted over the final boundaries (see above), which only cover a fraction of their collective territories. Existing title areas do not extend to the full extent of lands and resources under customary use and occupation.

Just 50% of our suitable farmlands are found inside our title area. There is a need for more farm lands because of the growth of population in our village. Our main hunting and gathering grounds at Wanakai hatabauina, Maboni head and Mehokobunia (turtle creek) are all traditional lands that are outside our title. These important areas are shared with neighbouring villages, including Hobodia and Powikuru. [Resident, Hotoquai Village, Region 1, 2012]

Our fore parents have lived on this island for generations. We feel that the current boundary line of the title is unfair. We don't feel happy about it as we now find out that we are left outside. We were never told nor consulted about the line. The bush towards the coast is all part of our living. We feel that the people responsible for these matters must put it right. [Resident, Cashew Island, Kamawatta, Santa Rosa Village, Region 1, 2012]

The existing title does not cover the full extent of our traditional lands used for farming, gathering, hunting, fishing and lumbering. There are also families excluded from the title in the area of Bat Creek. Most untitled customary lands are now occupied by non-Amerindian State Forest Permit holders who tend to block access by Amerindians for cutting nibbi, kufa and lumber...We feel that we are being squeezed and are prisoners in their limited title boundary where many resources are already depleted and exhausted. [Village Councillor, St Monica Village, Region 2, 2012]

The demarcated and titled land is just a small part of our hunting, fishing and farming grounds. We use land and resources far beyond the village title area. This is why we want all our traditional land titled... [Village Resident, Karaodaz Naawa, Region 9, 2011]

41 Cite here IACHR report



Families living on Cashew Island near Kamawatta Settlement (Santa Rosa) in Region 1 are outside existing title boundaries and now located within the Shell Beach National Park. The families feel insecure and are working with the Village Council to seek restitution of their lands and waters.

Photo: Tom Griffiths



The APA land tenure assessment team visiting Bat Creek families living on customary lands outside the land title boundary of St Monica Village, Region 2 (December 2012). Dozens of Amerindian settlements and hundreds of family homesteads and farming, hunting and fishing camps have no secure legal land title in Guyana.

Photo: Tom Griffiths

We seek legal recognition over the lands that we submitted decades ago to the Amerindian Lands Commission. We are not talking about small individual titles or limited areas around our villages. The Government of Guyana has an obligation to address our land claims since the time of independence. This is what our elders and leaders have been saying for years. Many of us live and occupy land outside the small existing village titles that were drawn up without full consultation of our people... [Former Toshao, Sawari Wa'o, Region 9, 2005]

These major limitations on Amerindian land titles mean that effective control over traditional lands is confined to parcels of land between waterways and does not even extend to sand used for building, which Village Councils have been advised requires a permit for extraction from the Guyana Geology and Mines Commission (e.g., Mashabo Village, Region 2).

Limitations on rights to waters also mean that communities have little or no control over a key natural and cultural resources vital to their livelihoods and way of life. In the case of Kako Village in the Upper Mazaruni, for example, a national court ruled in 2013 that the village has no right to control access and use of riverine resources by third parties along waterways passing through their lands, despite the fact that these waters are essential to their way of life, fishing practices, food security and daily subsistence (Box 2).

Flawed land titling and demarcation procedures

Arbitrary procedures and discriminatory practices permitted under Guyana's legal and regulatory frameworks for titling and demarcating the lands of indigenous peoples are a key underlying cause of inadequate land titles, leading to rights violations and resource conflicts. These flawed procedures and resulting community grievances have in turn led to multiple village applications for extension of land title boundaries, as well as legal actions in the courts and community complaints to international human rights bodies (see below).

Problems in the titling and demarcation process can be traced to current national norms and procedures set out in the States Lands Act (Chap 62:01) and Amerindian Act (2006), which lack clear and fair procedures for defining the geographic extent of indigenous peoples' lands and contain no criteria for securing their traditional territories in accordance with their customary law and traditional systems of land tenure.

A key hindrance to the effective recognition of Amerindian land rights is that existing rules for deciding on the extent of land titles only require the Minister of Amerindian Affairs to "take into account" and "consider" different sorts of information regarding the applicant's "... physical, traditional, cultural association with or spiritual attachment to the land requested."⁴²

Under existing domestic legislation, there are no objective criteria for assessing and validating lands and resources held under custom and traditionally occupied and used by communities. Other than subjective reasoning on decisions over Amerindian title areas set out by former Ministers in the national press,⁴³ there is no publicly available explanation about the basis on which Amerindian title areas are determined. The current subjective nature of the titling process means that title descriptions and areas are decided according to the whim of the individual Minister occupying office during the processing and granting of land titles.

42 Amerindian Act (2006), Article 62(2).

43 See, for example, Rodrigues, C (2007) "All land titles granted were done after consultations" Letter to the Editor, *Guyana Chronicle*, 13 September 2007 <http://www.gina.gov.gy/archive/daily/b070913.html>

Box 2: The Case of Kako Village, Upper Mazaruni, Region 7 ⁴⁴

In July 2011 a miner presented herself in Kako village (Upper Mazaruni) informing the Toshao that she had a mining permit that allowed her to prospect for minerals past the village along Kako river. The villagers were very alarmed by this news as they had never been consulted or informed about any mining activity in the area, which comprises the traditional lands of Kako and many of its neighbouring communities. After a village meeting the Toshao informed the miner that the village unanimously opposed her planned activities because they occupy the land and waters according to tradition for hunting, fishing, and farming and settlement sites. Villagers expressed concern about the contamination of the Kako River upstream of the village and potential harmful impacts on the community's numerous riverine homesteads. They also informed the miner that they were concerned that the area to be mined is included in the Upper Mazaruni aboriginal title case (see Section 2).

Despite the opposition by the village, the miner returned in March 2012 and put up notice boards on trees in Kako's traditional land stating that the area was her mining concession. A few months later, in July, she returned attempting to transport mining equipment through the village via the Kako River. Even though no environmental or social impact assessment has been conducted in relation to this operation, the letter from the GGMC inexplicably asserted that the GGMC is satisfied that "said locations will not provide harmful effects to your village". The community nonetheless prevented the miner from accessing the concession and did so on other occasions, on 21 August and 5 October 2012, when she again tried to transport mining equipment up the Kako River.

On 18 September 2012, the miner filed for an injunction in the High Court, which was granted on 20 September 2012 and restrained the Kako village Council from preventing her water dredge and other mining equipment "from safe passage through the Kako River." Further, on 5 November 2012, as a result of Kako's repeated objections to the entry of the miner, a 'Notice of Motion' was submitted to the High Court requesting that "the Toshao of Kako village be committed to the Georgetown Prison for his wilful and brazen disobedience and contempt of the Order of the Judge granted the 18th day of September 2012." The 'Notice of Motion' was rejected in February 2014 due to failures related to the way it had been put forward by the plaintiff. On March 25th 2014, the injunction was also discharged, as the judge stated that due to the actions carried out by the defendants, the civil court is not the right forum for the case.⁴⁵

These two developments might have given immediate relief to the people of Kako, but they do not entail any long-lasting victory. Newly acquired maps show that the traditional lands of the communities involved in the Upper Mazaruni aboriginal title case are covered with mining concessions (see Section 2). The insecurity and potential violation of land and resource rights posed by these imposed mineral properties was already made clear in March 2014 when another injunction was filed for against Kako village by a second miner claiming to possess mining claims up Kako River. The hearing for this case is set to start the 8th of May 2014. The dispute is ongoing and unresolved, while the land rights case has been stuck in the High Court since 1998 and is proceeding at a painfully slow pace.

44 *Guyana court ruling violates indigenous peoples' rights* APA Press release, 28 January 2013, <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2013/01/press-release-guyana-court-ruling-violates-indigen>

45 *Stabroek News*, 26 March 2014, *Injunction granted to miner against Kako toshao discharged*, <http://www.stabroeknews.com/2014/news/stories/03/26/injunction-granted-miner-kako-toshao-discharged/>

This major failing in the titling procedure for indigenous peoples lands in Guyana has been found by UN human rights bodies to be inconsistent with the country's obligations under international law that require land titling arrangements to ensure recognition of indigenous systems of land use and tenure through procedures that are fair, objective, transparent and open to effective means of appeal. While the 2006 Amerindian Act allows for appeal to the High Court, there is much evidence to show that this legal mechanism is not able to provide timely and effective redress for aggrieved Amerindian communities in relation to land rights matters (the Upper Mazaruni land rights case, for example, has been in the court for more than 15 years).⁴⁶ For this reason, in 2006 UN Committee for the Elimination of Racial Discrimination (UNCERD) urged Guyana:

“...the State party afford non-discriminatory protection to indigenous property, in particular to the rights of ownership and possession of indigenous communities over the lands which they traditionally occupy.”⁴⁷

The lack of effective recognition and legal protection for indigenous peoples' territories and customary systems of land tenure has resulted in many settlements and areas of vital importance to communities being left outside their current titles. In many parts of Guyana, indigenous peoples therefore complain that their existing land titles only cover a fraction of their traditional lands:

We only claim the lands already submitted nearly 40 years ago to the Amerindian Lands Commission. We are not talking about small individual titles or limited areas around our villages...The Government of Guyana has an obligation to address our land claims since the time of independence. This is what our elders and leaders have been saying for years...Many of us live and occupy land outside the small existing village titles that were drawn up without full consultation of our people. ... We need all of our lands to maintain our way of life, our culture, and our traditional practices”. [Resident, Sawari Wa'o Village, Region 9, 2005]

Many of our farmlands and camps are found outside the 1976 description and disputed village title boundary. There are hunting, fishing, gathering grounds outside the boundary on all the untitled traditional lands right up to Turtle Creek above Macaw falls on the upper Waini River (right bank). Farmlands are also found at White Creek where several families have farms as well as over the Waini on the western side of the river. [Resident, Kwebana Village, Region 1, 2012]

Our title covers just 17.11 sq. miles. It was issued in 2001 but did not cover the area we requested. It is limited to the right bank of the Ituribisi creek but does not cover the left bank. It does not secure customary lands on Yarrow Creek, Lake Ikuraka and it excludes homesteads on Lake Ikuraka and left bank of the Ituribisi. The title is much smaller than the request made to the Amerindian Lands Commission and cuts off important historical sites from the village, including former settlements and cemeteries. [Resident, Mashabo Village, Region 2, 2012]

⁴⁶ *Concluding observations of the Committee on the Elimination of Racial Discrimination: GUYANA CERD/C/GUY/CO/14, 21 March 2006* <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/guyanacerdconclobsmar06eng.pdf> See also Communication of UNCERD to Guyana, 1 March 2013 http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Guyana1March2013.pdf.

⁴⁷ *Ibid.* at 17

Map and boundary discrepancies

A further serious problem in Guyana relates to major discrepancies between certain maps held and used by different government agencies involved in land administration and the control of resource exploitation. Problems with errors on government baseline 1:50,000 scale maps have been identified for many years, including incorrect naming of creeks and mountains and inaccuracies in the courses of creeks and rivers (among other errors).⁴⁸ These errors have resulted in disputes with loggers and miners (see Section 5.) and mapping mistakes continue to cause major confusion with regards to land title boundaries between villages and between Amerindian Village residents and government land surveyors.

It is not uncommon for GFC and GGMC maps to vary markedly in their depiction of Amerindian title areas. GGMC maps in particular sometimes show reduced Amerindian boundaries. In extreme cases, like Kako Village, official maps do not show the titled village at all. In this regard, it is noteworthy that some villages, including Kako, are entirely absent from the 2013 national land use plan.

Most worrying are indications that these same lands unofficially excluded from mapped village boundaries are being leased to miners and loggers by the authorities. In examining land tenure needs for REDD, the World Bank has noted the urgent need for a coordinated land use database to ensure all map baselines in Guyana are accurate and faithfully describe the same community boundaries, land use designations and areas of private property.⁴⁹

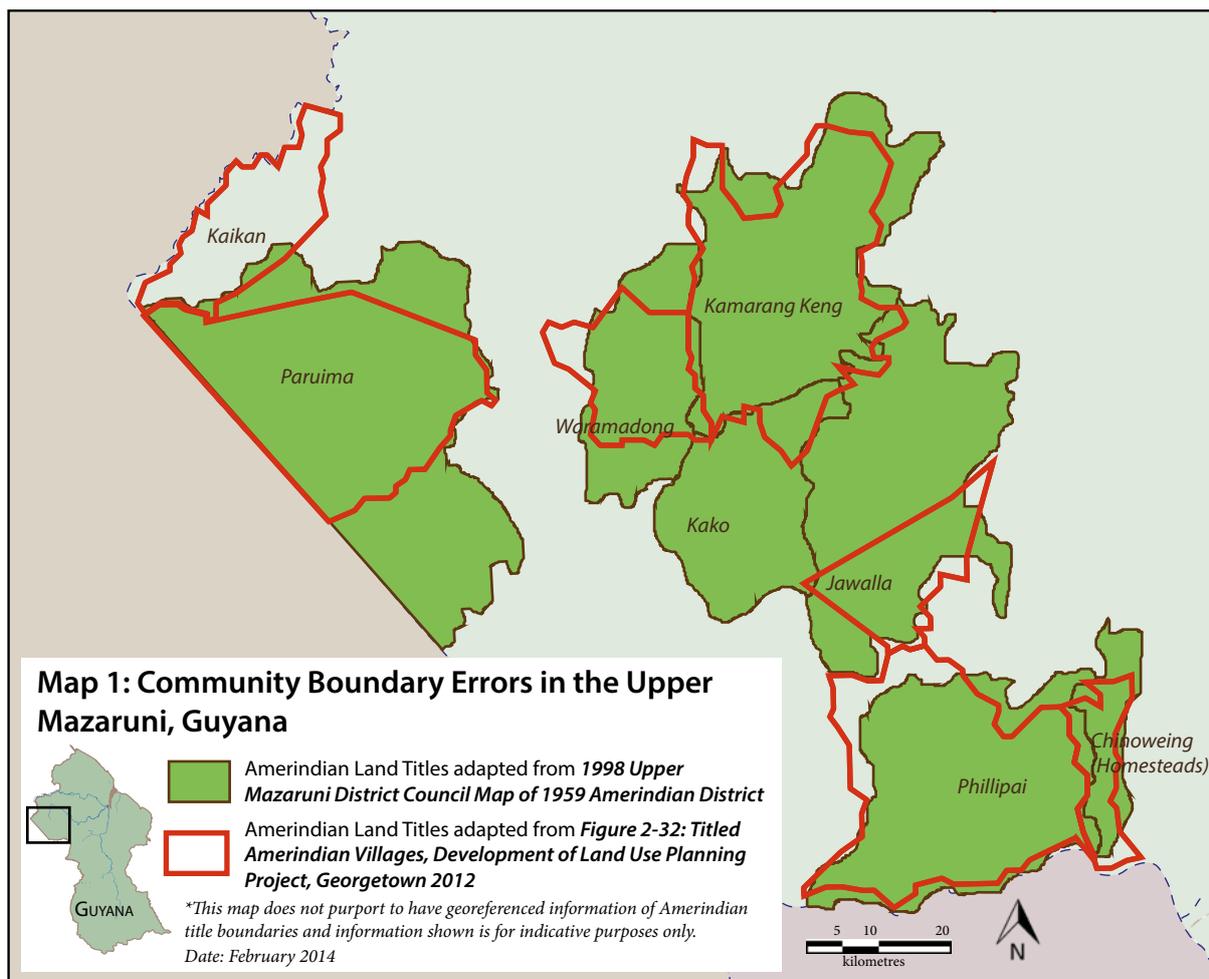
Now you see it, now you don't

In recent years there have also been shocking irregularities in the issuance of land titles whereby they have sometimes been handed to community leaders only to be subsequently withdrawn (in a few cases almost immediately after having been received). One example of this problem occurred in 2012. After waiting for years for their land title applications to be processed by the Ministry of Amerindian Affairs, eight Amerindian communities received land title documents during a National Toshao Council (NTC) meeting in August that year. However, after handshakes were done and pictures taken, five of the Toshaos were told that the Ministry needed the title documents back. No clear reasons were given for this request and one Toshao has reported that he was simply told that the document needed to be rectified.

When the community of Kangaruma made queries with the Ministry after the same NTC meeting, they were told that their land description needed further investigation. An investigation meeting was arranged in the village in 2013 where the residents were shocked to learn that a large part of the land they had applied for to be titled had been granted to an external party as a forestry concession in 2012. The community has also discovered that GGMC has granted mining blocks on their land. Residents of Omanaik have similarly found that their land has been given away to miners while the Ministry keeps promising that the community soon will get their title document back.

48 See, for example, Copeland, Peter, and Craig Forcese (1994) "Mapping Guyana's Amerindian lands: errors and oversights on maps of Amerindian lands" Canadian Lawyers Association for International Human Rights (CLAHR)

49 Childress, M (2010) *Land Tenure and Land Management Issues for REDD Preparation in Guyana: framing the agenda for policy discussion* Paper Prepared for the Annual World Bank Conference on Land Policy and Administration, April 26-27, 2010



Official government maps of Amerindian land titles often contradict one another. Information on the boundaries of Amerindian land titles varies between State agencies. In some cases, entire villages are left off maps as is the case with Kako Village, shown here and absent from the 2013 national land use plan.

To the knowledge of APA, as of early 2014, none of the five communities have to date had their title document returned to them, meaning that they have no legal right to their land under national law. Instead the communities have found that the lands they had proposed for titling have been given out as mining and logging concessions. This suggests that there is a lack of coordination between government agencies when it comes to land use and planning or/and a preferential treatment of the extractive sectors compared to unjust approaches to Amerindian community land titling, which lack transparency and violate fundamental rights.

Problematic title extension process

Problems also abound in relation to the national process for extending the boundaries of existing land titles. Under Section 59 of the Amerindian Act, villages with title are eligible to apply for title extensions via the Minister of Amerindian Affairs. Given the inadequacy of existing titles, many Amerindian Villages throughout the interior have sought and continue to seek extension to their titles. Some have been seeking extensions for years since receiving their titles in 1976 or 1991, while others have sought extensions more recently since adoption of the revised Amerindian Act in 2006.

According to government figures in 2013, 29 villages have applied for expansion of the boundaries of their land titles. This figure does not reflect the total number of villages seeking extensions. Some have made only verbal petitions and have not yet developed the required paperwork, whilst many others are currently developing their extension plans and intend to submit applications in the near future. Examples include several villages in the South Rupununi (e.g. Shorinab, Achawib) in Region 9 and various villages in Regions 1 and 2, which are not included in the current titling and extension plans of the government under the Guyana REDD Investment Fund.⁵⁰

Those that have applied for extension, often protest that they get no response and are sometimes told that their papers have been misplaced and are asked to re-apply. Many report that in meetings with the Minister they have been told in no uncertain terms to reduce the size of their applications, which the Ministry see as 'excessive' or 'too large' without any objective reason or explanation.

When the Minister visited our Village in 2004, we presented a request to extend the village title along the Issororo River and along the Arunamai Creek going up to the creek heads on either side of these creeks as well as along the Upper Pomeroun River as far as Patawau Creek. The Minister's response was negative and she advised that the area requested be reduced... Villagers were not happy that the Minister has not been open to their proposal to have their other traditional lands recognized. They feel this was unfair and a denial of their land rights. [Resident of St Monica Village, Region 2, 2012]



Lands 'taken' from the villages in apparent mapping 'errors' are often covered in mining or logging concessions – as shown here in the case of Baramita Village. Baramita is challenging these gross violations of their legal title area, yet around Haiari Creek the land is already severely degraded by mining. Who will compensate and restore these lands? Who is responsible for such serious map 'errors' and are they intentional?

50 UNDP (2013) Amerindian Land Titling Project: draft project document, UNDP, Georgetown, June 2013
<http://www.guyanareddfund.org/images/stories/ALT%20Project%20Document%2009.18.2013.pdf>

The village title is just three square miles and we are not feeling good about it as it is just a little piece of what our fore parents requested to the Amerindian Lands Commission. The village Council sent an application in 2006, but did not receive any reply from Ministry. The Toshao did remind Ministers on several occasions and a VC letter was sent to the Indigenous Peoples Commission. The Village also made complaint to Local Government Minister Norman Whittaker in 2011 about the lack of progress on extension issue, but nothing has been done as to date. The villagers are upset that the government has been so slow to respond to our application. *[Resident of Hobodia Village, Region 1, 2012]*

Extension applications have been made on several occasions in 2001, 2006 and 2008. The Village did not receive replies to the first set of applications, but did finally get a response in 2008. The MOAA responded asking for a map, proof of an agreement in the VGM and justification for the application. The village answered by sending all the required materials to the MOAA in 2009. The VC has so far received no written reply to this submission. It has only obtained a verbal response that the Village would receive an extension in due course, but that it would have to wait as the government is conducting the matter on a 'first come first served basis'.... *[Resident of Mashabo Village, Region 2, 2012]*

Official responses to requests for extensions often appear to be arbitrary, with different villages being told different procedures. Despite the cessation of a past government policy to complete all demarcations in the country before dealing with any extensions in 2002,⁵¹ in 2009 the Minister was reportedly still using this position in discussions with communities:

In 2009 the Minister of Amerindian Affairs told our former Toshao that the village title extension could not proceed until all Amerindian Villages in Guyana had accepted and completed demarcation (she noted that Upper Mazaruni Villages are refusing demarcation). She also advised that the extension was too big and that the village would be unable to administer the land with its limited education and knowledge *[Resident, Little Kanibali, 2012]*

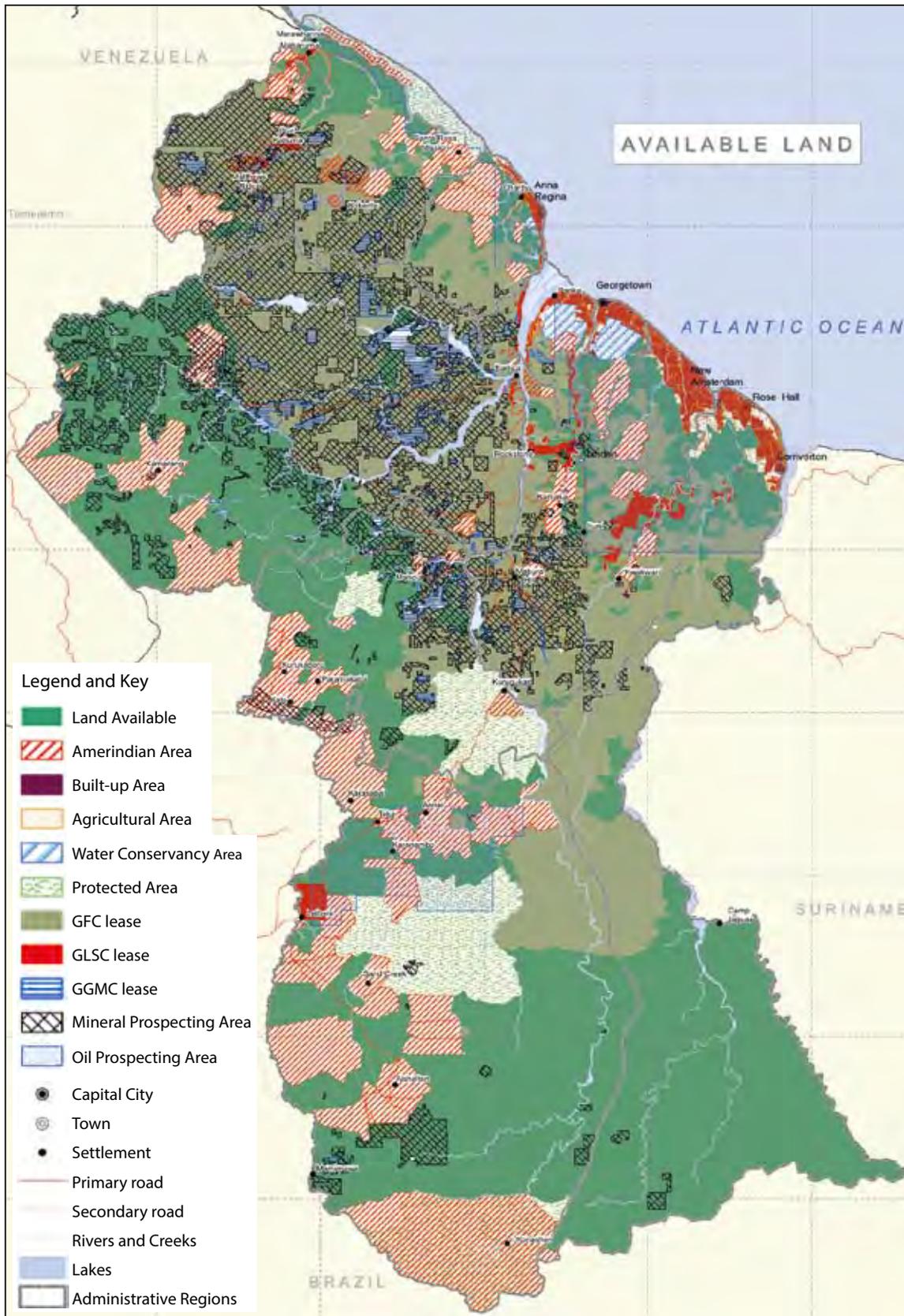
As the government delays in processing extensions, villagers are increasingly concerned that the GGMC and GFC are handing out concessions and exploration permits to miners and loggers on the same lands requested:

...most villagers have concerns as to what will become of their traditional lands by the time the minister is ready to approve extensions, as the granting of concessions on traditional lands by Guyana Forestry Commission continues and we are not consulted. We are worried about the increase logging and mining activities by concession owners on our untitled traditional lands. We have complained to the Ministry, but as yet we have no response back. *[Resident of Hobodia Village, Region 1, 2012]*

Failure to register and safeguard land title extension areas

A further major problem is that applications for extension of title and formal notification of intentions to apply for extension are not registered by the relevant authorities (see also Section 5 on this problem in relation to forestry concessions). The Wapichan villages of the South Rupununi, for example, have been deeply disappointed to note that the 2013 national land use

51 On changes in demarcation policy since 1994, see <http://www.amerindian.gov.gy/projects/land.html>



Map 2: Government of Guyana land use map indicating *land available* for lease and development on the customary lands of indigenous peoples under claim for legal recognition since prior to independence [adapted from Figure 4-2, Guyana National Land Use Plan (2013)]

Indigenous peoples have been deeply disappointed to see that Guyana’s national land use plan (2013) fails to recognise their territorial claims and land title extension applications, instead showing most of these lands as “available” to foreign investors (areas shaded in dark green).

plan fails to acknowledge their proposed extension areas and identifies the vast majority of their untitled customary forest and savannah lands as “available lands” (Map 2).

The absence of any significant recognition to Wapichan land rights and title extension proposals (other than a fleeting note in the body of the land use plan), pending since the Amerindian Lands Commission in the 1960s, is unlikely to be a mere oversight. Since at least 2006, the villages had formally shared their title extension proposals with the Ministry of Amerindian Affairs and other agencies, including the GGMC and Guyana Forestry Commission.⁵² A Wapichan map and land use plan were presented in Georgetown in February 2012 and face-to-face submissions on Wapichan land claims were made by community leaders in official regional consultations on the national land use plan held in Lethem in the same year.⁵³ The same extensions were overlooked in GGMC auction of mineral rights in the South Rupununi in March 2013, which resulted in public protests by the affected villages. In early 2014, there is still no evidence that government promises made in 2013 to annul these concessions in the South Rupununi have been upheld, while customary lands inside extension areas are threatened by controversial roads and further mining developments affecting traditional hunting, fishing and gathering grounds.⁵⁴



Use of excavators and open pit mining is increasing in Guyana and resulting in extensive and permanent deforestation, serious land degradation and damage to Amerindian livelihood resources and cultural heritage sites.

Photo: Tom Griffiths

52 See, for example, David, B, Isaacs, P, Johnny A, Johnson L, Pugsley M, Ramacindo C, Winter G and Winter Y (2006) *Wa Wiizi, Wa kaduzu – Our Territory, Our Custom: customary use of biological resources and associated traditional practices within Wapichan territory in Guyana*, South Central and South District Toshaos Councils, Georgetown <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/guyana10capr06eng.pdf>

53 South Rupununi District Tosahas Council (2012) *Thinking Together for those Coming Behind Us: an outline plan for the care of Wapichan territory in Guyana* DTC, Georgetown <http://www.forestpeoples.org/sites/fpp/files/publication/2012/05/wapichan-mp-22may12lowresnomarks.pdf>

54 “Guyana: Wapichan people speak up once again for their lands and forests” *FPP E-News July 2013* <http://www.forestpeoples.org/topics/extractive-industries/news/2013/07/guyana-wapichan-people-speak-once-again-their-lands-and-fo>

Box 3: Land tenure insecurity and violation of FPIC: Isseneru Village (Region 7)⁵⁵

After many years of suffering no legal protection for its traditional lands, Isseneru was 'granted' (sic) title in 2007 more than 20 years after first petitioning the government for legal recognition. The titled area was demarcated in late 2009-early 2010 and a 'certificate of title' (an administrative requirement needed to complete the titling process) was issued on 21 May 2010. This title, however, was considerably smaller than the area initially requested by the community, being just one quarter of the area over which the community sought recognition and secure title. The village's request for title to protect and secure its traditional area of occupation and use of the land had in several communications with the Ministry of Amerindian Affairs been rejected. The Minister has no explanation for such rejection of the application other than advice that the described area requested was "too big".

Isseneru has long complained about the activities of miners – small-scale and medium-scale – within its traditional lands. In 2007, there were more than 24 dredges only within its newly 'granted' title. The villagers' attempts to stop one of the miners from carrying out activities on their land were without luck. In December 2007, the miner filed an injunction against the Village Council and the High Court of Guyana ruled in his favour in August 2008, holding that the community has no authority over mining that commenced prior to its obtaining title pursuant to the 2006 Amerindian Act⁵⁶. The community appealed against this decision, but to date no final ruling has been made on the matter. In the meanwhile the miner continues his operation with impunity in Isseneru's titled lands and the community enjoys no benefits and suffers all the negative consequences.

To make matters worse, in 2011, another miner entered Isseneru's titled lands to commence operations in a mining permit acquired in 1989. The community's objections to this were ignored. When mining operations started, the community was obliged to seek 'Cease Work Orders' from the Guyana Geology and Mines Commission (GGMC), the State agency that regulates mining. Two Cease Work Orders were issued in November and December 2011, but both were disregarded by the miner, and in late December 2011, the miner filed a request for an injunction in the High Court. On 17 January 2013, the High Court granted the injunction, holding that miners who obtained mining permits prior to the entry into force of the *Amerindian Act* in March 2006 are not bound by its provisions and, consequently, do not have to obtain permission from the village before carrying out operations on titled land.

The villagers of Isseneru are deeply disappointed and concerned about the ruling and stated in a press release that "We feel that when the High Court tells us that we have no rights to decide and control what takes place on our land, then the land is not ours"⁵⁷. This observation received further grounding a few days after the ruling when the village was able to obtain a map from GGMC showing that almost the entire area of their land title is covered in mining concessions that they had never been informed nor consulted about.

The dispute and land conflict is unresolved in 2014. Villagers have pledged to challenge the unjust court rulings and seek redress to remove unwanted miners from their land title area.

55 *Urgent communication on the situations of the Akawaio indigenous communities of Isseneru and Kako in Guyana, February 2013* <http://www.forestpeoples.org/sites/fpp/files/publication/2013/02/urgent-communicationakawaioissenerukakoguyana-feb2013.pdf>

56 See in this respect, Section 48(1)(g) of the *Amerindian Act*, which requires that the consent of indigenous communities must be obtained for mining activities on titled lands, but only after a concession or permit has already been issued by the State.

57 'Miners win ruling over indigenous groups in Guyana', *Mongabay*, 29 January 2013. Available at: <http://news.mongabay.com/2013/0129-hance-mining-guyana.html>



Mining operations are encroaching upon indigenous peoples' untitled customary lands throughout the interior of Guyana without the prior agreement of affected villages and communities.

Photo: Tom Griffiths

Defective new land titles

In addition to problems with the 1991 land titles, there are disturbing indications that at least some and maybe all recent title deeds issued in the last ten years have new and additional conditions and limitations placed on Amerindian land titles, presumably under Section 3 of the States Land Act. Specifically, additional clauses and exceptions have been added which stipulate that the title is granted to the Amerindian Village “save and except 66 feet on either side of all navigable rivers and creeks and **all lands legally held**” (emphasis added (e.g. titles of Campbelltown (Region 8), Isseneru (Region 7), Yarakita (Region 1). This latter clause excludes mining permits, mineral properties and presumably also logging permits and concessions issued to third parties before the date of “granting” of the land title to the Amerindian Village.

Complaints about the exclusion of land from their title in areas pursuant to these clauses in the title deeds have been dismissed by the Guyanese courts, as has happened in the recent case of Isseneru Village in the Middle Mazaruni as noted above (Box 3). To add insult to injury, the Court have stated that the third parties have constitutionally protected property rights that must be upheld and have made no reference to indigenous peoples' internationally protected rights in making these decisions. In the most extreme cases, Villages may have as much as 80% of their title area occupied by unwanted miners and other interests, as is the case with Campbelltown in Region 8.

Lack of land restitution procedures

These recent cases of land rights violations bring to light that there is currently no effective mechanism in Guyana for indigenous peoples to remove third parties from their traditional lands. Unlike many other countries in South and Central America, there are no regulatory and compensatory procedures nor resources to ensure territorial and title 'ordering', meaning that indigenous lands may be fragmented and undermined by third parties occupying areas within the title boundaries. This is a huge major potential problem for the many pending extension area applications in Guyana, many of which have been issued to miners and loggers by State agencies in recent years.

Without major reform of the system of land regulation in line with international standards and obligations, there is a genuine risk that extension areas planned and proposed will not be secured and may be broken up by logging and mining interests who have been sold rights without the prior agreement of the Amerindian communities seeking extensions. This would be a serious injustice and violation of indigenous peoples' rights if the current 'save and except' approach to land titling remains unchanged.

Severe negative impacts of insecure tenure

All the above problems with insecure tenure and systematic disregard for community customary rights to land have major and well documented negative impacts on indigenous peoples. Mining encroachment on Amerindian titled and untitled lands and violation of FPIC are responsible for damage to forests, clear cutting of trees and long term degradation of soils and farming lands. Mining pollution has also harmed potable water supplies and fisheries, while mining camps and roads result in a series of serious negative social impacts on the life of Amerindian communities (Box 4).

Industrial forest concessions and the extraction of lumber on Amerindian lands have similar impacts. Logging operations result in linear deforestation along logging access roads, pollution of creeks (mainly sediment) and damage to non-timber and game resources. Some loggers are also reported to limit the access of Amerindians to their traditional fishing, gathering and hunting grounds (see Section 5). Land and resource damage caused by logging and mining coupled with increasing confinement of Amerindian communities to restricted and inadequate title areas are resulting in food insecurity, increasing poverty and more dependence on store bought foods leading to sickness and poor health.⁵⁸

Indigenous peoples in Guyana have emphasised in public statements and technical engagement in national policy-making processes that successful and sustainable forest and climate policies must be built on effective measures to secure indigenous peoples rights to their land, territories and resources.⁵⁹

58 Griffiths, T and Anselmo, L (2010) *Indigenous peoples and sustainable livelihoods in Guyana: an overview of experiences and potential opportunities* APA-FPP-NSI, Georgetown and Moreton in Marsh <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/guyanaiplivelihoodsjun10eng.pdf>

59 Statement of workshop participants on Extractive Industries, Indigenous Peoples' Rights and National Development Policies, Georgetown, March 2010. See also Colchester, M and La Rose, J (2010) *Our Land, our Future: Promoting Indigenous Participation and Rights in Mining, Climate Change and other Natural Resource Decision-making in Guyana*, Final report of the APA/FPP/NSI project on 'Exploring Indigenous Perspective on Consultation and Engagement within the Mining Sector in Latin America and the Caribbean: Phase II: Toward Community Strengthening, Dialogue and Policy Change'. Amerindian Peoples Association, Georgetown, Guyana, May 2010

Box 4: Negative impacts of mining on Indigenous Peoples ⁶⁰

More than 14,000 small-scale mining permits and almost 2000 licenses for dredges have been issued by the Guyana Geology and Mines Commission (GGMC) while institutional controls for environmental and social protection are weak. Exploratory permits cover up to one quarter of the entire surface area of Guyana and many affect the traditional lands and forests of indigenous peoples.

Mining with river and land dredges and more recently a growing use of mechanical excavators coupled with the uncontrolled use of mercury and other toxic chemicals has resulted in:

- land loss, land degradation, soil erosion and deforestation
- declines in game and fish abundance
- damage, blocking and diversion of river and creek courses
- river and drinking water pollution (mainly mercury contamination)
- weakening of the subsistence economy and increasing dependence on store-bought foods
- high levels of malaria, typhoid and sexually transmitted infections (STIs)
- human trafficking and prostitution of Amerindian women and children
- sexual violence, social conflicts and community disturbances
- loss of cultural heritage
- abuse of alcohol and narcotic drugs
- racial discrimination and exploitation of Amerindian workers

Shortcomings in government response

In response to persistent demands for resolution of land issues the Government of Guyana has developed a land titling project under the Guyana REDD Investment Fund (GRIF). While this initiative has been welcomed by indigenous peoples and the APA in principle, legitimate concerns regarding the design of the project and its failure to address the major shortcomings in the legal framework for land tenure governance have been disregarded. Crucially, the project has failed to ensure participation in the development of the project plan and approach to land titling and demarcation. As it stands, the project is tightly locked into the Amerindian Act and consequently suffers from all its defects, which risk generating yet more land tenure grievances should the project go ahead without corrective measures (for a more detailed discussion of the problems with the ALT project, see Section 3).⁶¹

60 Colchester, M, La Rose, J and James, K (2002) Mining and Amerindians in Guyana Final report of the APA/NSI project on 'Exploring Indigenous Perspectives on Consultation and Engagement within the Mining Sector in Latin America and the Caribbean' http://www.nsi-ins.ca/english/pdf/guyana/guyana_final_report.pdf

61 APA (2012) *Comments on the draft UNDP-GRIF Amerindian Land Titling Project* Technical submission to the GRIF

Recommendations

- There must be the institutionalisation of a **Task Force on Amerindian Lands and Territories** or similar body to address unresolved land issues and the titling and demarcation of indigenous peoples lands based on agreed upon principles and guidelines developed with indigenous participation.
- Legislative reform of national laws must be carried out to include rights to traditional lands and resources as recognised and protected under international law. This does not only refer to reforms to the Amerindian Act, but also to other relevant legislation pertaining to land rights and the use, exploitation and development of natural resources
- Reforms must enable adoption of national procedures for land regulation that include fair and transparent processes for land titling and demarcation as well as resolving land conflicts and removing third parties occupying Amerindian lands without their consent
- Official recognition should be given to the legitimacy of community land use and occupation maps for defining community lands and territories
- Indigenous participation and representation in processes for legal reform and the formulation of land policy must reflect the knowledge of the situation in the communities
- Government information on land title extension applications of Amerindian Villages needs to be updated and more agile and transparent procedures for the processing of these petitions need to be developed
- Errors in government maps of Amerindian title areas and lands need to be corrected through a participatory process to ensure uniformity of maps between national agencies
- Mineral and timber prospecting and extraction rights issued to third parties on (titled and untitled) customary lands without the agreement of affected communities need to be annulled, and procedures must be developed for the restitution of these lands back to Amerindian communities
- International agencies must prioritise indigenous peoples' land tenure issues recognising the rights of Amerindians as peoples and not as mere stakeholders
- Cooperating international agencies must do more to understand indigenous concerns on land tenure issues through interaction with the communities and their leaders
- Inter-agency coordination and collaboration must ensure effective participation of Amerindian communities in both the design and implementation of all projects and programmes that impinge on Indigenous Peoples' land rights, land use systems and livelihoods
- Agency arrangements and procedures for due diligence and effective implementation of agreed safeguards for Amerindian land rights must be strengthened as a priority
- The GRIF-UNDP project for Amerindian Land Titling (ALT) must address legitimate outstanding concerns regarding key gaps in the project plan and develop a solid baseline on the land tenure situation of indigenous peoples in Guyana
- The ALT project must as a priority conduct culturally appropriate community consultations for finalising its design and operational modalities, including the development of robust FPIC procedures (including FPIC verification) and the setting up of a grievance mechanism
- Stronger local and national mechanisms need to be developed to hold government agencies accountable for violation of indigenous peoples' land rights, non-compliance with

multilateral and bilateral forest and climate agreements and failure to properly regulate extractive industries

- Indigenous peoples' FPIC must be of substance rather than token and therefore adequate time and resources must be allocated to ensure this fundamental standard is upheld, including in relation to proposals, decisions and measures that may affect untitled customary lands

Amerindian lands and resources in the Upper Mazaruni under siege

Laura George and Oda Almås

Key issues and concerns

- Akawaio and Arekuna communities of Paruima, Waramadong, Kamarang (Warawatta) Kako, Jawalla and Phillipai in the Upper Mazaruni have long sought legal title over the area defined by the 1959 Amerindian District, but existing land titles issued in 1991 without consultation cover only half this area
- Legal action by the communities to secure these untitled lands and obtain recognition of their territory have been stuck in the Guyana High Court since 1998, without resolution of the matter for over 15 years
- Many neighbouring communities likewise suffer insecure tenure rights over their lands, including the villages of Chinowieng, Omanaik, Kambaru and Imbaimadai
- The government continues to issue mining rights to outside miners over Akawaio and Arekuna untitled traditional lands subject to legal dispute without the free, prior and informed consent (FPIC) of affected communities
- Official government plans for a mega-dam in the Upper Mazaruni that were rejected by the Akawaio and Arekuna peoples in the 1970s have resurfaced in recent years (under different names)
- Robust and credible mechanisms for FPIC have not been established in relation to the government's proposed massive hydroelectric scheme, while official information shared with communities is confusing and emphasises potential advantages without attention to risks and potential costs for communities
- There is a proliferation of roads and destructive mining across the region generating resource conflicts, water pollution, environmental damage, deforestation and social harm
- Government actions to address these problems are wholly inadequate or absent
- Legal rulings in national courts dealing with land conflicts in the Upper Mazaruni have unjustly sought to privilege the rights of miners over indigenous communities' legitimate rights to their lands, territory and natural resources, in direct violation of Guyana's obligation to uphold the right of indigenous peoples

Background and introduction

The Upper Mazaruni District is located in the west-central part of Guyana, bordering Venezuela and Brazil and is part of the Guiana Shield, recognized as one of the most ancient and vulnerable ecosystems on earth. It encompasses the upper part of the Mazaruni River basin where the Akawaio and Arekuna peoples have been living since ‘time immemorial’ and who maintain a strong collective attachment to their territory up until today.¹

Archaeological investigation indicates that human presence in the region dates back thousands of years, resulting in a culture that is deeply interconnected with the land: “The social structure, economy, conceptual system and the whole way of life of its present inhabitants are embedded in this landscape, its climate and its biodiversity, flora and fauna.”²

In the face of increased external pressure, especially from mining and related infrastructure developments, the people of the Upper Mazaruni continue to struggle for legal recognition and security for their ancestral territory under Guyanese law.



Akawaio and Arekuna peoples depend on their forests, savannahs, mountains, rivers and wetlands for their sustenance and distinct way of life. They believe that the spirits of their ancestors populate the landscape and that any relocation from their traditional land will bring sickness and misfortune to their communities.

Photo: Audrey J. Butt Colson

- 1 Butt Colson, A J (2009) *Land: its occupation, management, use and conceptualization – the case of the Akawaio and Arekuna of the Upper Mazaruni District, Guyana*. Last Refuge, Panborough
- 2 Butt Colson, A J (2013) *Dug out, dried out or flooded out? Hydro power and mining threats to the indigenous peoples of the Upper Mazaruni district, Guyana*. FPIC: Free, Prior, Informed Consent? at page 42

Long struggle for land rights recognition

The Akawaio and Arekuna peoples have been demanding legal protection for their lands for decades. Akawaio leaders made detailed requests to the Amerindian Lands Commission (ALC) in 1967 requesting title to the full extent of their Upper Mazaruni catchment territory.³ Akawaio Captains (community leaders) also made powerful demands for resolution of the land issue in the First Conference of Amerindian Leaders held in 1969.⁴ During the 1970s, they made effective public statements against hydropower development that would have forced them from their ancestral lands, and worked successfully with international organisations to get the project shelved (see below).⁵ Repeated calls for fair settlement of the land issue were also made throughout the 1980s, including at the 1988 Regional Captain's Conference.

Several communities of the Upper Mazaruni were finally issued land titles by then President Hoyte in 1991. The titles covered a total of 1500 square miles, which is just one third of the areas requested in the 1960s and just a half of the 1959 Upper Mazaruni Amerindian District. These partial titles have left the communities' land fragmented and broken up by so-called "state land", thereby excluding a substantial part of the territory traditionally occupied and used for fishing, hunting and farming purposes. Akawaio and Arekuna leaders protested against the inadequacy of their land titles as soon as they received them in 1991 when they made a formal joint request for extension of title boundaries to cover their entire territory. Leaders also once again condemned government approval of mining operations on their lands.⁶ By the late 1990s, no action had been taken by the government to address the land issue further, and on these grounds, six communities filed a lawsuit against the state in 1998 with the aim of obtaining a legal title to encompass the entire 3000 square miles that were recognised by the British colonial administration in 1959 as the Upper Mazaruni Amerindian District.⁷

More than fifteen years later the case of the Akawaio and Arekuna peoples is still in the High Court of Guyana with no resolution in sight. Meanwhile, the land in question is left without legal protection and is vulnerable to occupation by third parties, while socially and environmentally destructive activities which are causing serious resource conflicts and violation of indigenous peoples' rights are being allowed and promoted by the state. An example is the Kako Village where most of their untitled customary lands were granted as concessions to miners by the Guyana Geology and Mines Commission (GGMC) during 2011-12. This was done without prior knowledge or agreement with the village whose rights have been ignored in recent controversial court rulings on the matter made in 2013 (see below).⁸

Errors and omissions in government maps

A further major concern is that recent official government maps of Village land title boundaries in the Upper Mazaruni appear to differ substantially from boundary descriptions contained in title deed documents and mapped by the Upper Mazaruni Amerindian District Council in 1997 (see Map 1, Section 1). In short, official government maps show significantly reduced title areas

3 "Memorandum by the Captains and Leaders of Amerindians settled in the Upper Mazaruni River Lands" at page 163-64 in Amerindian Lands Commission (1969) *Report by the Amerindian Lands Commission* Georgetown, August 1969

4 Menezes, N (1988) "The Amerindians of Guyana: original lords of the soil" *América Indígena XLVIII (no.2)*353

5 Bennett, G, Colson, A and Wavell, S (1981) *The Damned: the plight of the Akawaio Indians of Guyana* Survival International Document VI, London

6 Upper Mazaruni Amerindian District Council (1991) *Memorandum for Amerindian Captains Conference* Waramadong Amerindian Village, 27 November 1991

7 See MacKay, F and Anselmo, L (2000) *Indigenous Peoples, Land Rights and Mining in the Upper Mazaruni* FPP-APA, UMADC

8 "Unscrupulous miners and mining companies have been handed yet another weapon to undermine Amerindians' control of their own communities" <http://www.guyananeews.co/2013/01/19/ghra-lambasts-judge-over-ruling-on-mining-on-amerindian-lands/>. See also, APA and FPP (2013) *Urgent Communication on the Situation of the Akawaio Indigenous Communities of Isseneru and Kako in Guyana*. FPP-APA Briefing sent to UN Agencies and Special Rapporteurs <http://www.forestpeoples.org/sites/fpp/files/publication/2013/02/urgent-communicationakawaioissenerukakoguyanafeb2013.pdf>

(e.g. Paruima and Jawalla), which have seemingly been covered with mining concessions and permits (see below), while Kako land title has been omitted altogether from maps contained in the 2013 National Land Use Plan (see, for example, Map 2, Section 1).

Mining invasion

During 2012-13, Villages complained that the proliferation of mining licences was negatively impacting on their traditional livelihoods and undermining their land security. They were dismayed to see that most of their remaining untitled lands, including in remote and fragile river headwater areas, were covered in mineral properties and/or exploratory mining permits that were authorised by GGMC in violation of community rights and in total disregard for the land rights case that is still being heard in the High Court of Guyana.

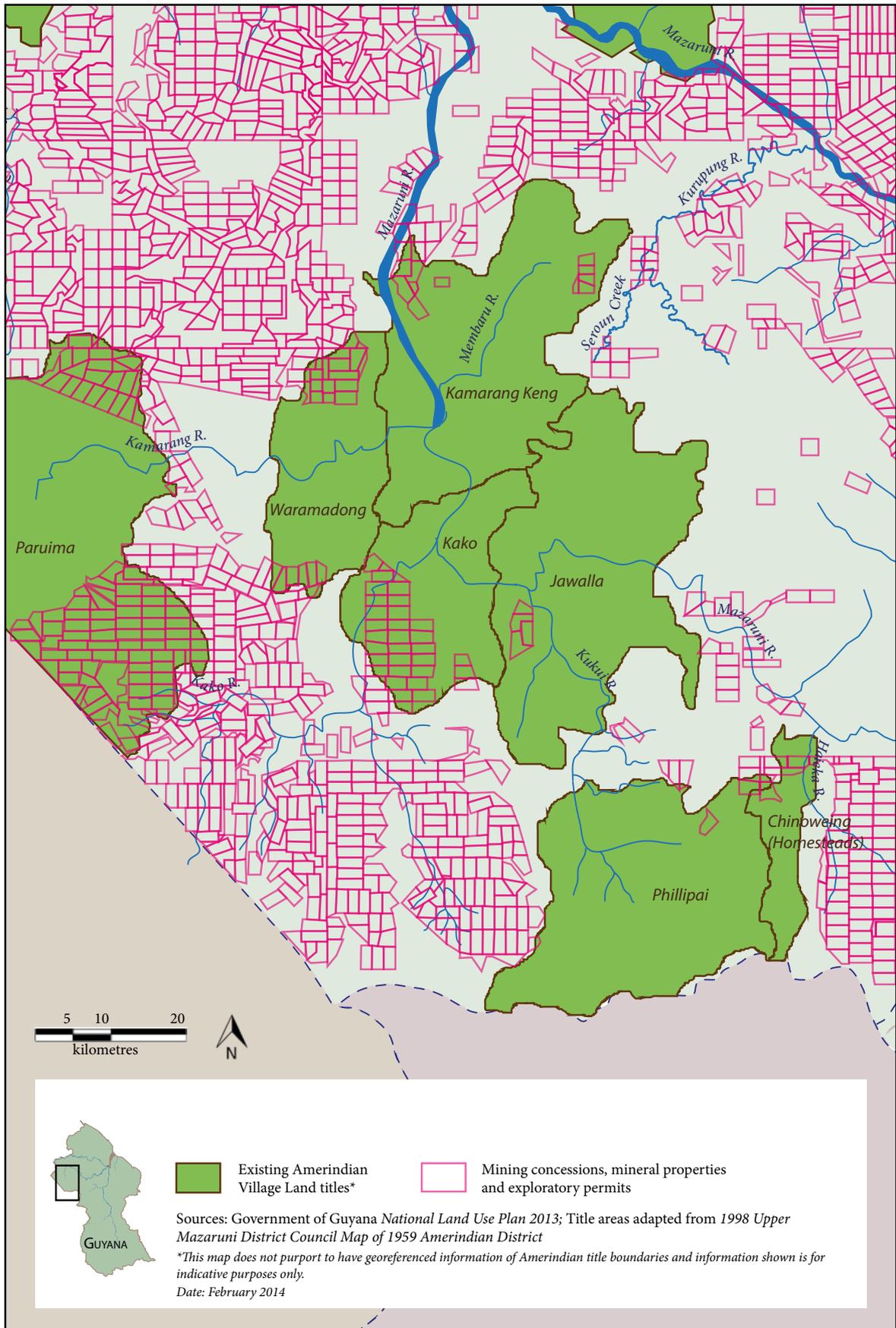


Akawaio and Arekuna Communities in the Upper Mazaruni maintain a deep spiritual attachment to remote forest and mountain areas within their territory. Many of these places are located outside existing Village land titles and are insecure, yet they are fundamental to the maintenance of the Akawaio way of life, and include areas of special importance designated as community bodawa “reserves” for forest, game and non-timber resources.

Photo: Audrey J. Butt Colson

In addition to growing threats from mining on their lands, villages in the Upper Mazaruni are presently alarmed at the expansion of the road networks by mining interests. Additionally, controversial plans put forward by private companies and the governments of Brazil and Guyana to revive a proposal for an Upper Mazaruni mega-dam is another major concern of the communities (see below).

This article seeks to provide an update on the current situation in the Upper Mazaruni, including the problematic situations relating to road construction and plans for a hydropower facility. It also documents the impacts of mining concessions and related harmful activities on the indigenous people of the Mazaruni basin. The analysis concludes that taken together existing and planned extractive, infrastructure and energy developments seriously threaten the wellbeing, land security and survival of the Akawaio and Arekuna peoples.



Map 3: Much of the Upper Mazaruni territory of the Akawaio and Arekuna is affected by imposed mineral properties and concessions that have been issued to miners without the knowledge or consent of affected communities and without respect for ongoing litigation on the same lands in the High Court of Guyana.

Road construction linking Middle and Upper Mazaruni

Amerindian Villages in the Upper Mazaruni are most troubled over the increase in road construction that is proceeding on their lands without their prior knowledge or authorisation. Three different roads have caused concern in the past five years or so and continue to generate anxiety for the people. These include:

- A length of road cut through the forest adjacent to the Aruwai Falls - Sand Landing stretch of the Upper Mazaruni River below Kamarang Mouth opened during 2010-11 allegedly by Brazilian miners (the actual origins and purpose of this roadway remain to be verified).
- A road down the Pakaraima escarpment, linking the mining area of Imbaimadai with miners on the middle Mazaruni, started with government funding in 2011, but then stopped for a time. A recent report intimates that road construction may have begun again in the first quarter of 2014.
- A new stretch of road through old growth forest from the Aricheng junction to the Seroun River, (a branch of the Kurupung River) at the base of the Pakaraima escarpment, opened by the US-owned Dream Hole Mining Company Inc. in 2011-2012.⁹ Some reports suggest that this road has crossed the escarpment into the Upper Mazaruni Basin. An air photograph on the Dream Hole website (April 2013) shows that, the company has located the old track up the escarpment which was pioneered by the Swedish Company SWECO in the 1970s in an attempt to reach the Sand Landing hydro site, and that Dreamhole have re-opened this route. Now poised on the top of the escarpment there are (unconfirmed) indications that there may be plans to drive the road into the upper basin as far as Kamarang mouth.¹⁰

In relation to the Aruwai-Sand Landing Road, residents of the Warawatta Amerindian Village became aware of the presence of this road on their ancestral land about three years ago when they went out to hunt and fish. The village had never been informed about the plan to build the road nor its purpose but it appears that it was built to avoid a dangerous section of the river in the vicinity of Sand Landing where the presence of powerful rapids impede navigation, making the transport of heavy machinery impossible. Described as a 'two mile track made through the forest', unofficial information received by APA indicates that the road extension was granted to a Brazilian miner in the region, and heavy machinery is already being transported along this road.

9 Butt Colson, A J (2013) op cit at pages 44-45

10 <http://www.dhmcinc.com/gallery/>



Road constructed near Sand Landing along the Upper Mazaruni River (apparently by miners). This road was opened without the knowledge or agreement of affected Akawaio Villages

Photo: Alanca Morales

No prior consultation with communities

The Sand Landing road is located approximately 12km down the river from the village of Warawatta/Kamarang. The village leader (or Toshao) of this village had raised the issue of this road with former President Jagdeo, Prime Minister Samuel Hinds and the Minister of Public Works and Communication at a National Toshias Council (NTC) meeting held in Georgetown in July 2010. The government denied any knowledge of the road but promised to follow up on it, however no findings or any further information were reported. Noting that road building permits have to be granted by the Ministry of Public Works and Communications, the credibility of the government's claimed ignorance is questionable considering that once notified, they should have moved to investigate. It is a case where either the government is concealing information from the communities or that the road is actually illegal and therefore subject to investigation. If the latter situation is correct, then the road was built without any environmental or social impact assessments, lacks any accountability and was done in violation of environmental regulations.

Lack of social and environmental impact assessment

According to information available to APA, no consultations with affected Amerindian Villages were ever carried out on the three existing road projects, nor did the Village Councils or any other members of the communities participate in any of the decision-making about any of these roads. Villagers therefore do not have any official information on the objective, benefits and impacts of these roads, and in the case of Waratta/Kamarang feel strongly that they should have been given the opportunity to participate in discussions and plans about road building affecting their lands and communities.

We're not against development, but they [the State] should let us participate in decision-making. [Leader from the Akawaio people in Warawatta¹¹]

Amerindian residents of the nearby villages are deeply concerned about the negative environmental and social impacts the roads could have on the entire Upper Mazaruni territory. The lack of impact assessments raises serious concerns about the potential negative impacts of these roads, as well as contravention of Guyana's international obligations,¹² specifically those under the Convention on Biological Diversity (CBD), to which Guyana is party. This convention includes "guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities."¹³

No free, prior and informed consent

The three roads also raise the question of how Guyana is respecting the rights of indigenous peoples to free, prior and informed consent (FPIC). International law and standards require that FPIC is sought for all proposed decisions and actions that may affect the lands, resources and territories occupied and used by indigenous peoples,¹⁴ which would mean both titled and untitled lands under traditional occupation and use. However, existing Guyanese legislation, specifically the Amerindian Act, restricts FPIC primarily to titled lands and even places various limits on the application of this standard within title areas. This serious shortcoming has been criticised by the UN Committee for the Elimination of Racial Discrimination (UNCERD) in its observations on Guyana on three separate occasions in 2006, 2007 and 2008.¹⁵

Security concerns

As far as the communities are aware, the Aruwai-Sand Landing Road is the first to directly penetrate the borders of the Upper Mazaruni and allows unprecedented easy entry to outsiders. This has already brought problems as several robberies have been reported, with bandits possibly using the road for easy access. The former Warawatta Toshao stated, "We are not safe any more because the road is there". Another concern of the Akawaio is the possibility that the road will extend further up into their territory which could lead to further encroachment on their traditional lands and also resulting in more mining activities and security problems, the latter being of particular concern for those communities close to Warawatta/Kamarang.

Mining concessions

Increased mining activities are also severely threatening, or in some cases already causing actual destruction of ancestral land and therefore violation of the rights of the Upper Mazaruni indigenous peoples. Introduction of illegal drugs and cases of sexual abuse have long been reported as a consequence of the presence of outsiders and these incidences are increasing.

11 Morales, A and Anselmo, L (2012) *Situation of Indigenous Peoples' Rights in the Upper Mazaruni District (Region 7)*, FPP-APA Trip report, July 2012

12 See especially, a summary of legal norms and obligations relating to environmental and social impact assessments and indigenous peoples in FPP and APA (2013) at page 20. See also, *Saramaka People v. Suriname, Merits and Reparations*, Judgment, 2007 Inter-Am. Ct. H.R. (ser. C) No. 172, para. 129 (28 November 2007)

13 Convention on Biodiversity - Akwe: Kon Guidelines. Available: <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

14 See, inter alia, *General Recommendation XXIII on Indigenous Peoples*, adopted by the UNCERD on the Elimination of Racial Discrimination at its 51st session, 18 August 1997, at para. 5; IACHR (2007) *Saramaka People v. Suriname, Merits and Reparations*, Judgment, 2007 Inter-Am. Ct. H.R. (ser. C) No. 172

15 FPP and APA (2013) *op cit*

In addition to these social problems, there are also environmental problems where, for example, the water of the Mazaruni River is no longer drinkable due to contamination by tailings, waste-oil from dredges or human excrement, among other things. Mercury used for gold extraction is also disposed of indiscriminately. Fish have died in huge numbers in some of the tributaries yet the government has not initiated any study to determine the cause of this problem. Judging from the pace at which the government has been granting mining permits, it seems that they are more concerned about revenue earning than the protection of the lives of the people whose rights are being violated by these very activities.



Severe mining pollution and heavy sediment loads have discoloured the black waters of the Mazaruni (left), while the cleaner waters of the Kamarang retain their natural dark colour (right).

Photo: Adrian Warren

Licenses granted without prior consultation nor FPIC

Villagers in Kako are growing increasingly concerned over mining claims in the head of the Kako River and its tributaries (See Map 3). The GGMC granted licenses to coastal miners with no consultation with the Village Council or the community¹⁶ and the people immediately reacted by objecting to the entry of claim owners in their area who were installing their dredges and beginning operations in the river.

Kako and the surrounding communities maintain special attachment to the entire Kako River Valley and adjacent lands and all are therefore concerned about maintaining the integrity of the area. The people have well founded fears that they may be denied access to the entire area as already a miner is seeking a court pronouncement in relation to trespassing by the Kako community on his concession in the area. This concession area forms part of their ancestral territory and is very important for their livelihood. They navigate up and down the river and its tributaries to fish, hunt, gather forest products and engage in other traditional practices.



River dredge on the Upper Mazaruni River, 2012.

Photo: Alancay Morales

In July 2012 the residents of Kako village were approached by a miner claiming to have a permit to carry out operations further up the Kako River. The villagers, never informed about any such permission and worried about the effects on the land on which they hunt, fish and have farms, objected. After this encounter it was revealed that the miner had in her possession letters from both the GGMC and the Ministry of Amerindian Affairs (MoAA), in the latter case confirming the Minister's consent of the permit granted by the GGMC. The miner has since returned three times to the area attempting to pass through the village with equipment, but has been prevented by village residents through peaceful actions and protests. Consequently, the miner took the

¹⁶ Ibid

village Toshao to court. The matter was thrown out, but only on a technicality within Guyanese law. The village remains steadfast that they hold legitimate land and territorial rights to the area, and that their property rights and the FPIC standard have been violated:

We're getting no benefits from this and our river and way of life are under threat. They haven't informed the communities. People are currently exploiting these resources without our permission. Outsiders come and do their own thing without letting us know about it. [Leader from Kako village]

Violation of legal norms

This Kako land and mining dispute could be the first of many for this village and the other villages in the Upper Mazaruni. Official mineral maps of Guyana show Kako as an extraction area for gold, diamonds and ferrite. The Amerindian Act (Article 53) contains provisions making it obligatory for the GGMC to notify a village about impending mining permits and ensure that any activity will not cause harm before such mining permissions are given out on village lands, on any land contiguous with it, or in any waterways which pass through village Lands (Map 3). Reports indicate that the GGMC only informed the local mines ranger in the area about the concessions, but did not report to the Village Council.

Letters to miners by the MoAA in support of their activities raise questions about the government's commitment to uphold indigenous peoples' rights. Considering the failure by the GGMC to inform communities of mining concessions in their area, it is most worrying that the MoAA appears to be supporting the GGMC and the miners' interests over and above the rights and interests of the inhabitants of the area which the Ministry and other government agencies have a duty to protect.

Similar questions arise in relation to delays and irregularities in the proper titling of Upper Mazaruni Amerindian communities. At a conference for the Amerindian leaders of Guyana in 2012, the community of Ominaik in the Upper Mazaruni was given a land title document only to have it taken back upon the conclusion of the conference without any reasonable explanation. The village Toshao later found out that that the reason for withdrawal of the title document was apparently because the GGMC had objected to it claiming that the title overlapped with existing mining concessions. Ominaik villagers have expressed their discontent with mining activities on their ancestral lands and the fact that they lack security of tenure on not having a title to these lands. They strongly reject any notion that miners' rights should trump their legitimate prior rights to their customary lands.

Genuine questions also remain over the willingness of the government of Guyana to enable communities to enjoy the right to sustainable development. For many communities in the Upper Mazaruni, mining is the only substantive cash generating activity they have at this time for fulfilling the basic needs of the communities, as there is a lack of support from the government for innovative community-driven activities or projects. For these communities, their priority is to secure their land for their sustainable use.

Widespread damage to land and livelihood resources

Mining has had a direct and intrusive impact on the villagers, with reports from village leaders about the destruction of farmlands and homesteads where the land is dug up and left as open pits. As already noted, the GGMC has obligations under the Article 53 of the Amerindian Act in relation to the issuance of permits, concessions, licenses or other permissions that may affect Amerindian lands. This provision states that if GGMC intends to issue a permit on village lands

or lands contiguous to village lands, or rivers, creeks or waterways which pass through village lands, the agency must first notify the village and satisfy itself that the impact of mining on the village will not be harmful.¹⁷ Villages and the APA are not aware of any records or proof to show that this has ever been done by the GGMC in the Upper Mazaruni.

In addition to violations of provisions and procedures of the Amerindian Act in their issuance of mining permits, experience with top-down mining development in the Upper Mazaruni communities demonstrates that the government is not fulfilling its international obligations to protect indigenous peoples' rights under the various international treaties ratified by Guyana.

The communities are deeply concerned that the GGMC is issuing exploratory and mining permits on their customary lands that are the subject of an unresolved court case brought by the Akawaio and Arekuna peoples against the Guyanese State. Letters to the GGMC on behalf of the Akawaio seeking a suspension of mining permits and activities on the lands citing this case have received no response from the GGMC to date.



Mining in the Upper Mazaruni is responsible for widespread deforestation and land degradation and damage to waters as shown in this 2013 picture of mining damage near the Amerindian Village of Omanaik. Amerindian Village residents and Akawaio and Arekuna leaders complain that uncontrolled mining harms water quality, farming grounds and valuable forest resources. They point out that supplying water wells is no replacement for clean rivers and streams that sustain fish populations and are used for fishing, bathing, swimming and other cultural activities.

Photo: Oda Almås

¹⁷ Amerindian Act of 2006, Article 53. Enacted by the Parliament of Guyana

Planned hydropower project in the Upper Mazaruni

In the last few years there has been news that the government plans to revive proposals to develop a gigantic hydroelectric plant in the Upper Mazaruni. The current plans appear to be a resurrection of a deeply controversial project dating back to the 1970s and 1980s – the Sand Landing dam, which has more recently been known as the ‘Kurupung Project’ under a revised proposal. If the new proposed dam were to be built along the lines of the 1970s design it could flood 1000 square miles (2500 km²) of forest, savannahs and wetlands. Although the government has recently claimed that impacts on communities will be minimal (see below), this massive 3000 MW hydropower project could potentially wipe out four communities and put large areas of three others under water at Stage 1 of the development, with the potential to displace thousands of people if the project were ever to be developed to its final stages as envisaged in the 1980s (Map 5).

Although national newspapers reported in 2010 that the Upper Mazaruni hydroelectric project is being revived for the provision of energy to an alumina refinery and smelting plant, the government at first consistently sought to deny that any plans for the dam had been approved, affirmations that later had to be withdrawn (see below).¹⁸ In 2012, the Prime Minister of Guyana confirmed that Brazil and Guyana have signed a MOU for the studying options for the development of potential hydropower sites within the Mazaruni and Potaro river basins.¹⁹

Revival of earlier ‘Sand landing project’

Official governmental documents confirm that plans for an Upper Mazaruni hydro project were never discarded after the failure to obtain financial backing in the 1970s and 1980s. In February 2007, the Government granted RUSAL, a Russian mining company, exclusive rights to conduct a pre-feasibility study of this site for an initial period of three years.²⁰ Potential linkages with bauxite mining and processing are confirmed in the 2011 ESIA for the Amaila Falls hydro project (Section 4).

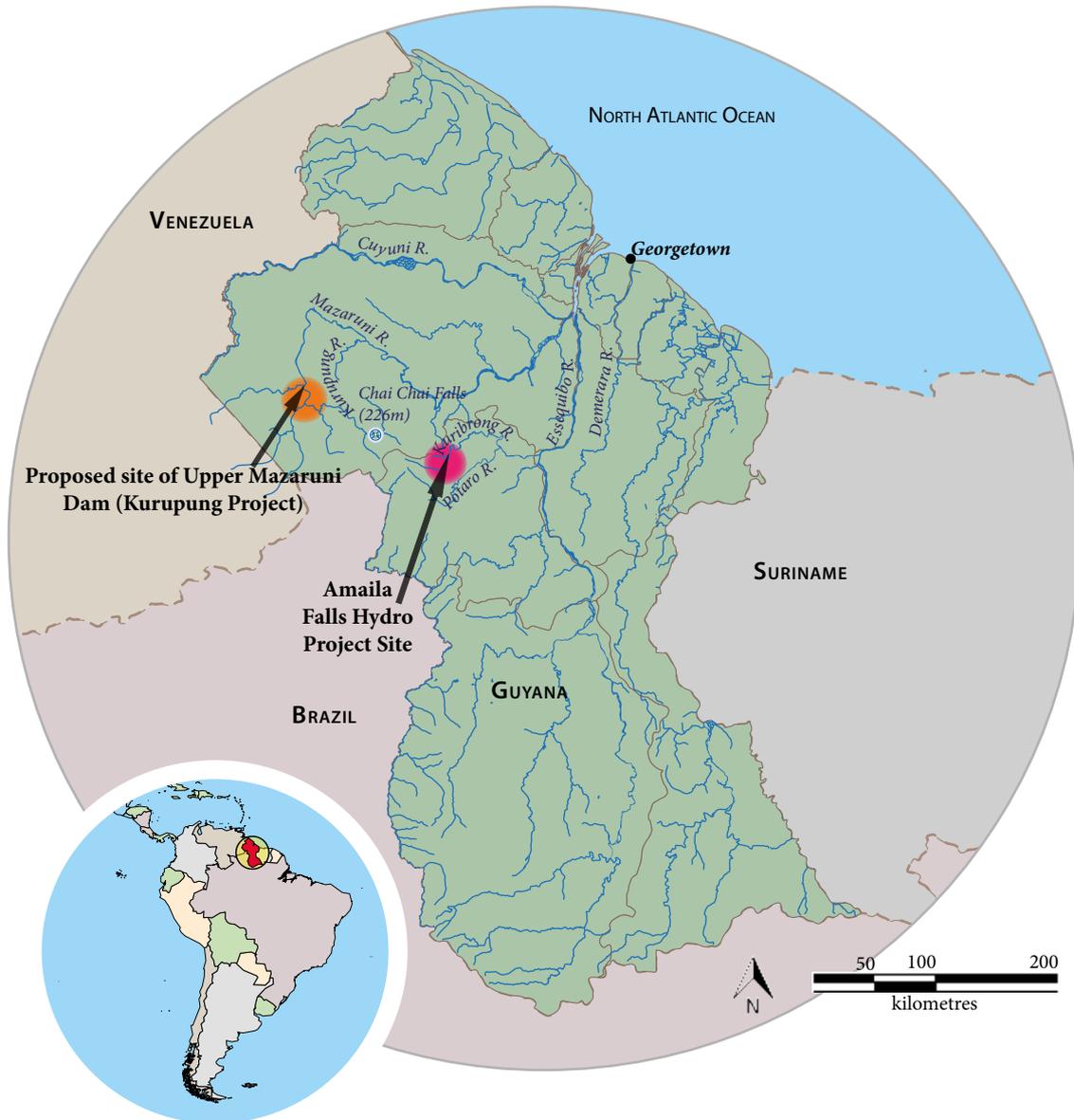
The Amaila Falls ESIA comments on the size of the Upper Mazaruni hydropower project, with its significantly greater environmental and social impacts, noting this is “many times the total installed capacity of the country, and therefore requires either the development of large industry within Guyana or export of electricity from Guyana, neither of which is consistent with the Guyana National Development Strategy or Low Carbon Development Strategy”.²¹

18 ‘RUSAL, Brazil company still talking about massive Kurupung hydro project’ Stabroek News, 20 May 2010

19 Kaieteur News, February 2012: *Prime Minister Sam Hinds’ response to Carl Greenidge*

20 Electricity & Energy Sectors of Guyana, *Potential Hydropower sites in Guyana*. See reference 26 on the Upper Mazaruni diversion scheme, available at: <http://www.electricity.gov.gy/hydro1.pdf>

21 *Amaila Hydropower ESIA Update 2011*, Executive Summary



Map 4: Relationship between the proposed Sand Landing/Kurupung and Amaila Hydro projects, Guyana.

Despite recent government indications that dam design has been modified to reduce the area of flooding by as much as 90%,²² there remains much confusion over the nature of the revised plans that have not been seen by the communities nor by any independent observers. Though no recent maps have been obtained of the dam flood area, differing villager reports stemming from government visits to villages in March 2014 suggest that the dam may still be built at Sand Landing, above the Pakaraima escarpment, and Kamarang may be “30 or 50 feet” under water. In this regard, it is not clear if the recent claims of the government on the 90% reduction in flooded area only refer to the *initial* stage of a much larger plan (as in the 1980s) or if such assurances refer to a final stage.

22 “US\$45M to study Mazaruni hydropower potential” *Demerara Waves*, 24 March, 2014 <http://caribnewsdesk.com/news/7649-us-45m-to-study-mazaruni-hydropower-potential>

If the project option to build different stages is followed and if dam design is still to include the river basins of the Mazaruni and Kurupung, upstream of the River confluence, then it could still potentially flood an enormous area in the Upper Mazaruni within the traditional territory of the Akawaio and Arekuna peoples. By looking at the plans for the original Sand Landing dam in the 1980s, it appears that this project could still “entail the creation of a reservoir of vast dimensions which would flood the entire basin and cause the forced removal of thousands of indigenous inhabitants from their ancestral homeland (Map 5)”²³.

In 2007 then President Bharrat Jagdeo signed a letter of intent (LOI) with Russian aluminan company RUSAL for pre-feasibility studies for a hydropower plant and an alumina refinery and smelter named the “Kurupung project”.²⁴ In May 2010, three newspaper articles reported that the Upper Mazaruni hydroelectric project had been revived for the refinery and smelting plant.²⁵

When one of the Akawaio Tashaos had questioned publicly about dam-building proposals for the Upper Mazaruni, the government had initially denied that it had approved any such plans but the Minister of Amerindian Affairs later admitted to a feasibility study after some information started becoming public.²⁶ Press reports in 2010 confirmed that the government of Brazil and big Brazilian power companies were interested in building a dam “on the border of Guyana” to supply energy to Roraima State and the city of Boa Vista.²⁷

Map 5 depicts the potential effects of inundation on the people living in the area to be flooded in phases 1 and 2, as determined by field investigations into resettlement of Amerindians in the Upper Mazaruni in 1983 as well as the extent of the final stage of the project if developed to full capacity.²⁸ The resulting report notes that most of the main villages in the Upper Mazaruni Basin would have been flooded by the Stage 1 reservoir, and that Stage 2 would have caused all of the villages and most of their lands to be underwater or unsuitable for settlement.²⁹ It is estimated that the population who would have been affected by the project has grown from approximately 4,000 Akawaio and Arekuna peoples in 1975, to as many as 10,000 people today who live in or regard the Upper Mazaruni area as ‘home’.³⁰

The inundation of the Upper Mazaruni would mean the “destruction of a people through the obliteration of ancestral lands and of the complex relationships within a social structure which rests on a particular, unique topography and fluvial system.”³¹ The Upper Mazaruni people are united by the concept of being A'murugok, ‘People of the Headwaters’, a unique cultural entity (by language, custom and general way of life and thought), located at the sources of the Mazaruni River. Faced in the 1970s with the prospect of ejection they asserted:

23 Butt Colson, A (2013) *Dug out, dried out or flooded out? Hydro power and mining threats to the indigenous peoples of the Upper Mazaruni district, Guyana. FPIC: Free, Prior, Informed Consent?* at page 22

24 *Guyana Chronicle Online*, 8 February 2007: ‘RUSAL studies aluminum smelter for Guyana – hydro-power plant also likely.’ By Mark Ramotar. See also *Stabroek News* 24 March 2007: ‘Russian team here to do pre-feasibility study for hydropower plant’)

25 <http://guyaneseonline.files.wordpress.com/2010/06/rusal-kurupung-hydro-project.pdf>

26 (see, for example, *Stabroek News*, 21 May 2010).

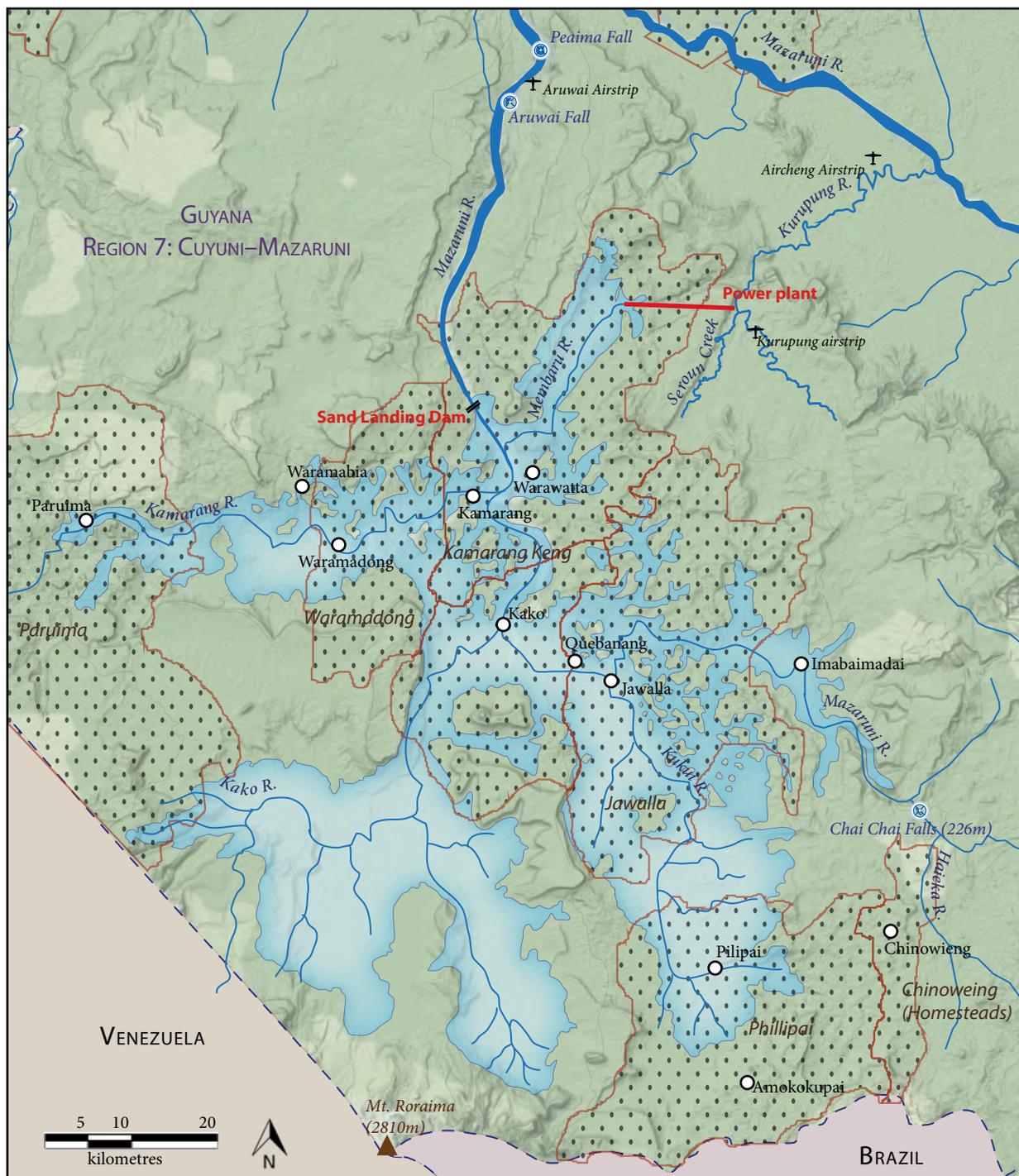
27 See, among others: *Kaieteur News*, August 10, 2010. *Akawaio and Arekunas will lose livelihoods with hydro project – Int'l report*, Available at: <http://www.kaieteurnewsonline.com/2010/08/10/akawaio-and-arekunas-will-lose-livelihoods-with-hydro-project-int%E2%80%99l-report-2/>

28 In 1983 the company Swedish Engineering Consultants (SWECO) were engaged and presented an investigation on the effects of the people living in the area to be flooded. The results were presented in the following report: SWECO (1983) *Upper Mazaruni Additional Field Investigations: Final Report. Resettlement of Amerindians in the Upper Mazaruni Basin*. In: Butt Colson, A (2013) *Dug out, dried out or flooded out? Hydro power and mining threats to the indigenous peoples of the Upper Mazaruni district, Guyana. FPIC: Free, Prior, Informed Consent?*

29 SWECO Report: p 59-60. In: Butt Colson, A (2013) *Dug out, dried out or flooded out? Hydro power and mining threats to the indigenous peoples of the Upper Mazaruni district, Guyana. FPIC: Free, Prior, Informed Consent?* at page 27

30 Butt Colson, A (2013) *Dug out, dried out or flooded out? Hydro power and mining threats to the indigenous peoples of the Upper Mazaruni district, Guyana. FPIC: Free, Prior, Informed Consent?* at page 30

31 *Ibid* at page 31



Map 5: Potential Flooded Area associated with the 1980s design of the Upper Mazaruni dam*

[*details of 2013-14 design of the Upper Mazaruni dam not available at time of publication]



- | | | |
|---|---|--|
|  Possible extent of Upper Mazaruni Dam Reservoir |  Tunnel to Power Plant |  Waterfalls |
|  Existing Amerindian Village Land titles* |  Dam |  Airstrip |
| |  Amerindian Village |  Mountain |

Map adapted from Maps 1, 3 & 4 in Butt Colson (2013) *Dug Out, Dried Out or Flooded Out? Hydro Power and Mining Threats to the Indigenous Peoples of the Upper Mazaruni District, Guyana, FPIC: Free, Prior, Informed Consent?*

Other sources: Government of Guyana *National Land Use Plan 2013*; Title areas adapted from 1998 *Upper Mazaruni District Council Map of 1959 Amerindian District*

*This map does not purport to have georeferenced information of Amerindian title boundaries and information shown is for indicative purposes only.

Date: February 2014



Many Akawaio and Arekuna families in the Upper Mazaruni still traverse the dense network of rivers and waterways in their territory by ‘woodskin’ and corial.

Photo: Audrey J. Butt Colson

This land keeps us together within its mountains — we come to understand that we are not just a few people or separate villages, but one people belonging to a homeland.³²

Confused and one-sided official information

After a number of years of near silence on the Mazaruni hydropower development issue, the government finally announced publicly in early 2014 that it is to proceed with pre-feasibility and feasibility studies for the Upper Mazaruni dam development and a potential second site in the Middle Mazaruni.³³ Plans for the feasibility studies have been put forward by a *Joint Technical Guyana-Brazil Working Group on Infrastructure* that met four times in 2013 to lay down a road map for the development of hydropower sites, transmission lines, roads and a deep sea port in Guyana.³⁴

During visits to the Upper Mazaruni in March 2014, government Ministers and officials have sought to assure Akawaio and Arekuna Villages that there are “no plans to flood the Upper Mazaruni and make your lives miserable”, and that no decisions have yet been taken to go ahead with the dam development.³⁵ These statements do not appear to square with recent information on government visits to Kamarang, Paruima, Jawalla and Kako in March 2014, where villagers reportedly learned that Kamarang would be “30 or even 50 feet” under water.

32 Bennet, G, Colson, A and Wavell, S (1981) op cit. at page 9

33 “Govt. announces feasibility studies for massive hydro in Mazaruni” *Kaieteur News* February 28, 2014

34 “Mazaruni to be surveyed for best hydro site under cooperation programme with Brazil” *Stabroek News*, 28 February, 2014

35 Rodrigues-Birkett, C (2014) *Guyana Brazil Cooperation in the area of Energy* Public PowerPoint Presentation, Ministry of Foreign Affairs, 20 March 2014

It is also highly disturbing that other recent official presentations by the Guyana Energy Agency (GEA) appear to suggest that feasibility studies will focus primarily on technical and economic aspects, without giving special attention to social issues and the potential costs, risks and impacts on Akawaio and Arekuna villages.³⁶

Will core standards be respected and legal obligations met?

Meanwhile, although the press has identified the prior consent of affected villages as core issue that will need to be addressed,³⁷ government ministers have yet to pronounce on the vital matter of FPIC and how this will be applied at all stage of the planning process. Nor are there yet any commitments to adhere to accepted international standards for the development of large dams, like those applied by the World Commission on Dams (WCD) (see Box 11, Section 4).

In short, at the time of writing this article there are no indications that FPIC will be properly applied in line with Guyana's international obligations and norms established in related human rights instruments, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Reaction from Amerindian Communities

Though the government kept quiet about its dam proposals for several years, the Upper Mazaruni communities were taken aback and angered when information was provided to them by the APA about this potential threat in 2011:

Why doesn't the government develop their own lands, instead of proposing projects that affect Amerindians? *[Elder from Kako Village]*

We don't want to be wiped out just for the sake [benefit] of other people. *[Leader from Kako Village]*

When the hydro-project was being developed in the 1970s heavy mobilisation by the communities contributed to the halting of the process. Forty years later there is still unanimous opposition to a dam in the region, as can be seen in an excerpt from the Kamarang Statement issued by Upper Mazaruni Amerindian Villages in 2011 (Annex 1):

We are aware of its [the dam's] possible effects and consequence and all our communities strongly oppose this project as our elders did in the 70s...Our grandparents didn't accept the hydro-project in the past, the grandchildren including myself, share the position of our grandparents and say NO to the "Kurupung Project."

In March 2014, in a meeting of the Upper Mazaruni Amerindian District Council involving leaders and residents from the communities of Chinowieng, Omanaik, Jawalla, Quebanang, Kako, Warawatta, Waramadong, Paruima and Kako (host village), the Akawaio and Arekuna again reiterated their opposition to the dam. Villagers have once more called for prior resolution of the land and territorial rights before any formal consultations on the dam development move ahead.³⁸

³⁶ See, for example, Sharma, M (2014) *The Potential for Hydropower Development in Guyana* Public PowerPoint Presentation, Guyana Energy Agency (GEA), Georgetown

³⁷ Supra note 35.

³⁸ Upper Mazaruni Amerindian District Council meeting, Kako Village, 13th March 2014.

In the meantime, Akawaio and Arekuna people in the Upper Mazaruni are left with three pressing questions:

1. How do plans for the dam and the process for its development meet international standards that uphold the rights of indigenous peoples?
2. If the project were to be imposed on the Villages, where would the people move? There are no suitable areas to establish new settlements and no other lands can replace or sustain the special spiritual, cultural and historical attachment of the Akawaio and Arekuna peoples to their Upper Mazaruni territory.
3. Why are communities told by the government to preserve their forests when the government itself wants to flood such a large forest area? There is general confusion among the communities as to how the dam fits into Guyana's acclaimed commitment to protect tropical forests and fight climate change.

Residents of Kako Village (pictured) are deeply concerned that miners have been issued permission by the GGMC to extract minerals from the community's traditional lands and waters, including in remote and fragile forest areas in the Kako River valley and headwaters.

Photo: Oda Almas



Conclusions

The Upper Mazaruni situation reveals profound structural problems in Guyana's legal framework and national policies for hinterland development, grounded in the aggressive expansion of mineral extraction and the marginalisation of indigenous peoples. Social and environmental norms are being violated on a grand scale as mining development is imposed on fragile forest, mountain and aquatic ecosystems of deep cultural, economic and spiritual importance to the Akawaio and Arekuna peoples. Without major changes to current State land, mining and energy policies and without solid actions to secure and protect the land, territorial and resource rights of Amerindian communities, the very survival of the Akawaio and Arekuna in the Upper Mazaruni as distinct peoples is in peril.

Key actions required to address this grave situation include the need for:

- Full disclosure of all relevant information in an accessible form to Amerindian Villages and communities in the Upper Mazaruni in relation to proposed infrastructure developments, including hydro dams, roads and investments planned under the LCDS. Information Disclosure must include publication of the Terms of Reference (TOR) for the pre-feasibility and feasibility studies, including provision of all associated plans, maps and technical documents to Amerindian Villages in the Upper Mazaruni
- Establishment of robust and credible FPIC mechanisms and procedures to ensure full compliance with this core standard in all proposed, decisions, projects or policies that may affect Amerindian Villages and their traditional lands (titled and untitled)
- Suspension of all mining concessions affecting Amerindian land, territory and natural resources until there has been an effective opportunity for the indigenous peoples to give their consent based on the principles of FPIC
- Annulment of mineral rights issued to third parties on customary lands without community consent, and restitution of these lands back to the full control of the Akawaios and Arekunas
- Urgent reform of relevant policies and legislation to protect and promote the rights of indigenous peoples to their lands, territories and resources in the Upper Mazaruni and throughout Guyana

