

Press Statement, January 22, 2012

Amerindian Peoples Association Disappointed With Court Ruling

“As the country’s mining section [sic] continues to expand and more persons seek their riches in the ‘gold bush’, Amerindian villages may soon be finding themselves before the courts more often than ever trying to defend the locations they insist are ancestral territories”. This very telling statement appears in the January 18, 2012 edition of the Kaieteur News and is even more predictive than imagined as other communities are already in the courts not through their own making yet seeking to defend their ancestral lands. The APA has said on numerous occasions that it would only be a matter of time before the court made such a declaration as was made on January 17 regarding Amerindian lands, that Isseneru Village has no authority to prevent a miner from operating on their lands. According to the ruling, the village does not have complete jurisdiction over their lands even though they hold title to such lands. The implication here is that the rights of miners takes precedence over the people who were there before, simply because one was granted their legal papers before the other. What does this pronouncement mean for other Amerindian communities? What then is the relevance of the constitution that says “Indigenous peoples shall have the right to protection, preservation and promulgation of their languages, cultural heritage and way of life” (Art. 149G) and what is the relevance of the various conventions and declarations that the government has agreed to abide by when it comes to protecting the rights of the indigenous peoples of this country?

This ruling is very troubling on many fronts. In the first instant it clearly pits communities against miners who have concessions on titled Amerindian lands – it makes residents aliens on land they thought was theirs, with no authority to control the activities of these miners. Secondly, it speaks of the emptiness of the titles given to some Amerindian communities where savings clauses protect those miners who have concessions. In giving out these titles to the communities the government was aware of their true status regarding mining concessions and was therefore clearly involved in deception at the highest level. That they did not find it necessary to explain to the communities the true nature of their titles further heightens this deception. The Minister of Amerindian Affairs has been known to tell leaders who complain about mining on their lands that there are other Guyanese who also have to be considered. This begs the question, “Where does her loyalty lie and why does she feel she has to represent other interest over those of the country’s indigenous peoples whom she is touted to represent?”

Why is it that the government feels that it makes sense to give a title crisscrossed with mining concessions? What is the real purpose of these titles? Are they for publicity sake to appear to be doing something for indigenous communities when this is not really so? We are aware that at the last Toshias conference, the Toshias of Omanaik in the Upper Mazaruni had his title document taken back almost immediately ‘to be photocopied’. To date he has not gotten back his title document. It would be interesting to know how many more communities are in a similar situation as Isseneru with numerous mining concessions granted before and after the passage of the Act. We know of some.

The situation as happened last Thursday should never have happened. When the revised Amerindian Act was passed in 2006, the APA immediately recognised that there were shortcomings that did not account for traditional and other tenure rights that fully protect indigenous lands. Since then this has been pointed out to the government, agencies and so many others with an interest in indigenous issues on numerous occasions, and it has been ignored just as many times. The government has gone as far as saying that the Amerindian Act is the best piece of legislation when it comes to a country’s protection of its indigenous peoples. It is in this context that the Memorandum of Understanding (MOU) between the

Government of Guyana and the Government of Norway regarding the latter's support for Guyana's LCDS was signed citing the Amerindian Act as the authority legislation protecting indigenous rights. It is through recognition of this Act that the Land Titling and Demarcation project being developed by the Ministry of Amerindian Affairs and the United Nations Development Programme is being developed. How can the obvious failing and ambiguity of this document continue to be the guiding principle for decisions on Amerindian land? Today we see how useless it can be when, through lack of clarity or in some cases direct provisions, it remains open to interpretation that can work against indigenous communities. Not only is it necessary for the legislation to be revised but also that clear policies are enumerated by the indigenous peoples themselves. Furthermore if the Amerindian Act is the law that governs the indigenous peoples of this country then this should be the guiding law when it comes to recognizing indigenous rights and other laws should be made compatible.

Until this is done, communities will continue to hear from the Minister of Amerindian Affairs that lands are either too big for them when they seek to have their official titles, that there are other interests that have to be taken into account and that they must negotiate with the miners as though there are no other options. What would be the fate of Kako? Would the interest of a miner take precedence over that of a people?

The ruling in the High Court begs the question "Where is the process of recognising indigenous people rights in Guyana heading?" The answer seems to be, in the opposite direction to those in other South American countries. Just recently, a constitutional court in Colombia upheld a 2009 decision halting a mining project in the country's north western department saying the Afro Colombian and indigenous communities there have the right to determine what happens on their land. Peru's top court has also affirmed the right of an Amazon indigenous community to prevent outsiders from entering its land setting a precedent for tribes trying to halt, logging, mining, or oil drilling on their lands. The government of Guyana must accept complete blame for what took place in the courts recently and must take steps to correct the existing situation regarding our lands.