

PINPOINTING PROBLEMS – SEEKING SOLUTIONS:

A rapid assessment of the underlying
causes of forest conflicts in Guyana



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Disclaimer:

While some field information in this document dates from 2012, the authors are not aware of any significant changes to the situations described. Every effort has been made to ensure that the information is correct and any mistakes are the sole responsibility of the authors.



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At a glance:

- Lack of full recognition of indigenous peoples' land rights in line with international law, absence of effective FPIC procedures and limited transparency in forest governance are key underlying causes of forest-related conflicts in Guyana;
- These legal shortcomings and policy gaps create fundamental flaws in the timber concession allocation system, which generate uncertainty over the legality of timber supply chains and risk further conflicts unless reforms are put in place, leaving future FLEGT licences open to challenge;
- It is recommended that laws, policies and rules governing land tenure and land allocation for commercial timber extraction in Guyana must be reformed to explicitly recognise and protect the inherent collective rights of indigenous peoples to their customary lands and resources; and that new procedures are established to properly apply the FPIC standard.



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A rapid assessment of the underlying causes of forest conflicts in Guyana¹

Conflicts in the forest

Indigenous communities in Guyana report a number of cases in which external actors, including forest concession holders, infringe the communities' rights to self-determination, lands and resources. This has caused several problems including:

- **Forest concessions being allocated on the customary untitled lands of Amerindian communities without their knowledge and free, prior and informed consent (FPIC)²**

A resident of Little Kaniballi explains that logging concessions cover a large part of the village's customary untitled land. The village found out that a new concession would affect the south-eastern portion of their land only after it was advertised by the Guyana Forestry Commission (GFC) in the newspaper. *"We don't like it that the government gives out these lands to outsiders without us knowing about it. Much of that land is our extension area! Our people fear that when these areas are occupied the concession holders may restrict access to the forest"* [Resident, 2012]³

Kwebanna residents, moreover, are deeply concerned by two logging concessions which cover a large area of the village's untitled traditional land. One is held by Barama and the other was earlier controlled by Mazaharally and Sons Ltd since the 1990s, but new information indicates that Bai Shan Lin has acquired interests in the area through Kwebanna Wood Products. The precise status, including information on the beneficial ownership, of this concession is unclear. Villagers complain that the industrial logging has 'eaten out' their land and that there will be no resources left for their grandchildren.

- **Encroachment on Amerindian titled village lands by logging concessions, logging operations and illegal extraction of lumber⁴**

Official map and land allocation data from the Geoportal website of the Guyanese government shows that the Barama logging concession encompasses the Amerindian villages of Chinese Landing, Barima-Koriabo, Kokerite, Eclipse Falls and Kurutuku. The GFC has explained that there is no logging taking place by the company in these villages and that the titles show up as part of the concession because some of them have been 'granted'⁵ after the Barama concession was allocated⁶. Apparently, an ongoing process of verifying the Amerindian land claims will result in these areas being excised from the concession area. However, it is not clear who is in charge of the process, when it will be finished, how land title extensions may be dealt with, or how key standards like FPIC will be fully respected.

¹This briefing is based on research carried out by the Amerindian Peoples Association and Forest Peoples Programme since 2012 regarding the land tenure situation of Amerindian communities in Guyana. It also draws on work, including community workshops and consultations in relation to the EU-Guyana FLEGT process, carried out by the same two organisations in 2014 and 2015. Consequently, the briefing reports the views of Amerindian village residents and community loggers. The analysis does not encompass the perspectives of non-Amerindian loggers and other actors. Attention to such third party views may give additional information and insights that could be helpful in efforts to reduce forestry conflicts in Guyana.

²E.g. St Monica, Kwebanna, Mashabo, Little Kaniballi, Kwebanna, Bethany, Akawini, Yarakita and Apoteri. Out of 42 communities visited by APA and FPP, 15 report that they have conflicts with commercial logging interests on their customary land (See APA (2016) *A participatory evaluation of the land tenure situation of indigenous peoples in Guyana: a land tenure assessment for Region 1 and Region 2 (2012-2015)* APA and FPP, Georgetown and Moreton-in-Marsh – forthcoming)

³APA (2016) *A participatory evaluation of the land tenure situation of indigenous peoples in Guyana: a land tenure assessment for Region 1 and Region 2 (2012-2015)* APA and FPP, Georgetown and Moreton-in-Marsh – forthcoming

⁴E.g. St Monica, Eclipse Falls, Chinese Landing, Barima-Koriabo, Kokerite, Kurutuku.

⁵The word 'granted' is used wrongfully in national legislation and policy as in international law indigenous peoples' property rights are inherent and their existence and enforceability not dependent on any affirmative act by states

⁶Personal communication with the GFC, October 2015



St Monica residents report that the village had to struggle to remove the Barama company's logging yard and office from its titled land. The village also had to remove the machinery of a logger, Mr. N. Sanichara, who had cut a boundary line inside St Monica's title boundary. After complaints by the village, the GFC eventually sanctioned the logger.

- **Restricted access by Amerindian villages to their forest and resources, which disrupts traditional livelihood activities⁷**

Residents in a number of villages say that concession holders block their access to materials such as *nibbi*, *kufa* and lumber. Some concession holders and the GFC also restrict people's access to their fishing and hunting areas. People lament that their freedom has been taken away and that they are no longer allowed to use their own customary forests, which belong to them under customary law.

"The SFP holders fight us down and stop us accessing the forest to cut materials we need to make a living. When we asked for extension of our title the Minister [of Amerindian Affairs] told us we cannot apply as the area is needed for loggers" [Resident, St Monica, 2012]⁸.

"Persons now are saying that the Amerindians are stealing the produce from the land but we have been doing this activity for as long as we can remember and we should not be stopped" [Resident, Barabina, 2014]⁹.

In many cases, the loggers who are operating on the customary land of the communities damage land and resources, including scaring away and hunting animals. As a consequence, the villages report a significant decrease in the population of certain animal species, which they depend on for their livelihoods.¹⁰

⁷E.g. St Monica, Mashabo, Bethany, Kwebanna and Barabina.

⁸APA (2016) Op. cit.

⁹APA (2015) *Community views on the Guyana-EU FLEGT VPA process*, Georgetown: www.forestpeoples.org/sites/fpp/files/publication/2016/03/community-views-guyana-eu-flegt.pdf

¹⁰Bethany, Kwebanna, Akawini, Wakapoa.

- **Intimidation, threats and fines¹¹**

Several concession holders are known to threaten Amerindian villagers and tell them to stay out of concession areas. Despite national laws recognising certain rights to customary lands, concession holders have often stated that communities have no rights there.¹² Community loggers from Mashabo report being harassed by a concession holder even when they were working outside his concession area – he seized 10 chainsaws from the local loggers. Residents from Kwebanna explain that they were fined by the GFC for ‘illegal logging’ inside their own traditional untitled lands, claimed by the Commission to be state land.

- **Inconsistent and conflicting maps and boundary descriptions¹³**

A serious problem faced by many Amerindian villages relates to major inconsistencies and discrepancies between different maps used by government agencies, the title maps and descriptions held by villages, and demarcation exercises carried out on the ground. The incorrect naming of creeks and mountains in government and title maps often lead to flaws in title descriptions and demarcations. Consequently, forestry and mining concessions are allowed to take over community lands.

Kabakaburi villagers, for example, describe how an ‘unnamed creek’ was incorrectly located by the GFC and caused forestry officials to move the physical demarcation boundary to give a forestry concession holder a larger area: *“It has taken many years for us to try and correct this problem and still GFC maps are confusing our boundaries. A 2009 GFC map places our line at White Creek, whilst another 2011 GFC map places it at Mapuri creek. Both maps show a different boundary for the Insanally forestry concession. Another more recent GFC map (2012) doesn’t even show Kabakaburi at all.”* [Resident, 2012]¹⁴ The GFC has now declared the area in question disputed land and ordered that no logging can take place either by the concession holder or the community loggers.

- **Overlapping logging and mining concessions**

Government maps available in March 2016 show that logging and mining concessions are frequently given on the same land. Holders of long-term concessions (Wood Cutting Leases and Timber Sales Agreements) are highly concerned about what this means for their plans and investments in sustainable forest management, including the application of selective logging methods. This lack of coordinated land use planning is violating indigenous peoples’ land rights, creating conflicts between loggers and miners on the ground and raising questions about the power relations between the agencies in charge of the two sectors, the GFC and Guyana Geology and Mines Commission (GGMC).



¹¹Kwebanna, St Monica, Mashabo, Wakapoa.

¹²See Section 5(2) (e) of the Forest Act 2009 and Section 57 of the Amerindian Act 2006

¹³Of the 29 villages visited in regions 1 and 2 that have a land title, only one reports that it is satisfied with the existing title and boundary demarcation. In all 29 cases, the existing titles exclude community hunting and fishing grounds. Of the 23 villages that have completed land title demarcation, 16 (70 per cent) consider that the demarcated boundary does not correctly match the description on their title document. ¹⁴APA (2016) op. cit.

The causes

- **Lack of recognition of indigenous land rights in the law and restrictive definition of Amerindian lands**

Many of the problems mentioned above are closely linked to the national legal system, which only recognises indigenous property rights over those lands that have been 'granted' to the villages by the state. The law does not explicitly state the nature and extent of indigenous rights to lands.¹⁵ On the other hand, the Amerindian Act (2006) provides the Minister of Indigenous Peoples Affairs with overly broad discretion to determine what land should be 'granted' to the communities. This violates international law, which states that indigenous peoples' property rights are inherent and that their existence and enforceability does not depend on any affirmative act by states. States are also obligated to delimit, demarcate and title the lands, territories and resources that correspond to indigenous peoples' rights.

The related process of land titling, demarcation and administration in Guyana has left out of formal land titles large parts of the lands that Amerindian communities have customarily owned, used and occupied. A great number of homesteads find themselves located on state land without any protection of their rights, either while waiting for their applications for title or extension to be processed or because they were left out of titles already 'granted'. Government maps do not show the full customary areas, including the areas claimed under land title extension application or those that have long been earmarked by communities as future extension areas. GGMC has even refused to adhere to a recommendation made by the Ministry of Indigenous Peoples Affairs that it refrain from issuing new concessions on lands applied for by indigenous communities.¹⁶

- **Lack of transparency and FPIC**

The fundamental lack of transparency in the concession allocation process also contributes to the violation of indigenous peoples' internationally protected rights to land and resources. Currently, only procedural steps in the application and allocation processes are available to the public. The Forest Resource Allocation Committee (FRAC) reviews applications for State Forest Permissions before sending their recommendations to the GFC Board for a decision. It also describes how the GFC Board is in charge of reviewing applications for all other types of applications before final decisions are made by the government (for State Forest Exploratory Permits) or the president (for Timber Sales Agreements and Wood Cutting Leases). There is no description, however, of what objective criteria are used by these actors to make a decision and it does not appear to be any opportunity to seek independent review of such decision.

In this scenario, the right of Amerindian communities to participate and to give or withhold their free, prior and informed consent (FPIC¹⁷) to any development that may affect their land and resources is only minimally respected and protected.¹⁸ The current Amerindian Act (2006) does not require the

¹⁵Such rights are inchoate in the Constitution however, which, in Article 154A, incorporates a variety of international human rights instruments, most of which have been interpreted to both define and protect indigenous property rights and affirm that these rights are grounded in and arise from indigenous customary tenure systems.

¹⁶Stabroek News, *Urgent reform planned to strengthen land rights under Amerindian Act – Allicock*, 8 Nov. 2015 (quoting a letter from the GGMC, dated 30 October 2015, as follows: "There is no legal obstacle in the Mining Act or the Amerindian Act to the grant of permits or licences in areas applied for by the Amerindians under the Amerindian Act either as new titles or as extensions to existing titles except that by virtue of Section 53 of the Amerindian Act, GGMC is required to notify the village and satisfy itself that the impact of mining will not be harmful if it intends to issue a permit, concession or lease..."), www.stabroeknews.com/2015/news/stories/11/08/urgent-reform-planned-to-strengthen-land-rights-under-amerindian-act-allycock/.¹⁷The principle of FPIC is affirmed in the UN Declaration on the Rights of Indigenous Peoples and in the jurisprudence of international human rights treaty bodies, including the Inter-American Court on Human Rights.

¹⁸It should be noted that the problem of lack of participation and FPIC goes back to the creation of state forests (see section 3 of the Forest Act 2009). The minister in charge of forests can declare any area of public forested land to be state forest without consulting with Amerindian communities whose customary untitled land is affected by such a declaration.

involvement of communities in relation to the parts of their customary lands that have been left out of official titles. It only requires that the GFC shall consider the impact on an Amerindian village if it 'intends to issue a permit, concession, licence, timber sales agreement or other permission in respect of state forests that are contiguous with Village lands' (section 56). Consequently, forest concessions are allocated on these lands without FPIC or any due respect for customary land tenure systems. This is happening in contradiction to the GFC 1999 rules of procedure that prohibit the issuance of forest exploratory permits for any area that is occupied, claimed or used by Amerindians.

The lack of transparency when it comes to allocating logging rights and the preferential benefits given to selected foreign investors have stirred political debate. Allegations of corruption in the forest sector made by the media and civil society have also increased, particularly since it was discovered that a Chinese logging company, Bai Shan Lin, had acquired control over a controversially large forest area without parliamentary scrutiny or publicly accessible agreements (see box). The current Minister of Natural Resources, Mr. Trotman, further fueled the debate in February 2016 when stating that 100 per cent of the productive forest in Guyana was allocated by the previous government, mainly to foreign investors. Former government officials and the GFC, have provided maps to dispute this, but the debate continues.¹⁹

BAI SHAN LIN

Bai Shan Lin (BSL) is part of a group of 11 companies operating under the China Forest Industry Group in Guyana. The company entered the country in 2006 and has since received regular media attention due to allegations of a series of illegalities in its operations. The allegations include illegal renting of forest concessions and timber export under a false name or without a logging licence, bad treatment of workers, and failure to deliver on commitments of value-added production.²⁰

One of the questions that has received the most attention is how much land BSL is controlling and how it gained that control. The GFC has reported that the company has legal access to 627,072 hectares of Guyana's forest, while BSL itself in 2012 claimed control over an area of 960,000 hectares. Independent forestry experts, however, argue that the concessions operationally controlled by the company add up to a minimum of 1.3 million hectares.²¹ Of these, it is estimated that over half are allegedly acquired through illegal renting, which refers to a practice in which the legal holder of a forest harvesting concession gives up managerial control and rents it out to another enterprise. Without prior approval from the president, such transfer is illegal under Forest Regulation 12 (1954) and condition 13 of the Timber Sales Agreement. The GFC is claiming that renting, which it calls 'joint ventures', can take place with the approval of the GFC board (according to section 16 of the Forest Act). However, the Forest Act only came into force in October 2010, by a backdated commencement order from 2012, so any transfer prior to this date will be illegal without presidential consent, of which there is no proof in public domain.²²

¹⁹Kaieteur News, Jagdeo deliberately misleading on forest giveaway, 14th February 2016: www.kaieteurnews.com/2016/02/14/jagdeo-deliberately-misleading-on-forest-giveaway/

²⁰Stabroek News, 8th May 2015, Bai Shan Lin has most certainly contravened laws, regulations, administrative procedures and approved policies of Guyana: www.stabroeknews.com/2015/opinion/letters/05/08/bai-shan-lin-has-most-certainly-contravened-laws-regulations-and-approved-policies/ ²¹Stabroek News, Letter to the Editor, 17th January 2015, Would the GFC place documents relating to joint ventures with Bai Shan Lin in public domain: www.stabroeknews.com/2015/opinion/letters/01/17/gfc-place-documents-relating-joint-ventures-bai-shanlin-public-domain/

²²Kaieteur News, Concessions controlled by Bai Shan Lin show GFC's fragile understanding of forest legislation: www.kaieteurnews.com/2014/09/18/concessions-controlled-by-bai-shan-lin-show-gfcs-fragile-understanding-of-forest-legislation/

Allegations of illegality exist not only with regards to the rented concessions, but are found also in relation to permits awarded directly by the previous government to BSL. In a forensic audit of the GFC from 2015 it is revealed that a State Forest Exploratory Permit (SFEP) in Region 9 was granted to BSL in 2011 despite the company not providing evidence of technical and financial qualifications as is required by the 2009 Forest Act. When the permit expired in 2014, the company had still not met the conditions on which the GFC had 'granted' it, including the completion of an Environmental and Social Impact Assessment (ESIA). Nonetheless, the GFC awarded a one-year extension of the concession, which is in violation of the Forest Act (section 9(9)). Despite the company having failed to fulfill its obligations, the GFC awarded a second SFEP to BSL in the same area in 2013.

Moreover, the SFEPs held by the company in Region 9 were allocated on the customary lands of Amerindian villages without their consent or even their knowledge. Only after BSL had built a road almost all the way to the concession area, was a meeting held in Apoteri village (September 2014) to inform the residents, as well as villagers from neighboring Rewa and Crashwater, about the concessions. No ESIA was carried out before the road was built and the company started to export truckloads of logs under permits for exploration, not extraction.²³

In March 2016, the Toshao (elected village leader) of Apoteri reported that the village has not seen anyone from the company or other actors responsible for the ESIA after the 2014 meeting. He is alarmed that one of the concessions overlaps large parts of the land applied for as an extension by Apoteri in 2012. Apoteri villagers are extremely concerned about the possible destruction of their remarkably diverse forest where they fish, gather materials and have plans for ecotourism.²⁴

Early actions taken by the new government indicate that it will not let BSL continue its operations without scrutiny. The government told the company in July 2015 that if it did not deliver on its promises to commence value-added production by the end of the year, the contract would be terminated. Minister Trotman noted that much depends on BSL securing new financing after investors have pulled out and that while the company is in the phase of seeking finance and internal restructuring, engagement between the government and the wood company is on hold.²⁵ In April 2016, BSL's two SFEPs in Region 9 and Region 6 expired and the GFC Board announced that the concessions have not been renewed and have now returned to the state.²⁶ These steps are welcome and it remains to be seen if the government will follow the same line of inquiry and possible prosecution to put an end to other illegalities that the company has allegedly been engaged in. This situation may also apply to other companies.

²³Kaieteur News, Not only in containers, Chinese vessel exporting logs in bulk, 8th August 2014: www.kaieteurnews.com/2014/08/08/not-only-in-containers-chinese-vessel-exporting-logs-in-bulk-2/

²⁴Personal communication, March 2016

²⁵Gina, *Government's engagement with Bai Shan Lin on pause – Minister Trotman – as company restructures, seeks new financing*, 5th November 2015

²⁶Stabroek News, *Some Baishanlin forests back with state*, 27th April 2016 www.stabroeknews.com/2016/news/stories/04/27/baishanlin-forests-back-state/

What does this mean for the FLEGT VPA process in Guyana?

The restrictive definition of “Amerindian land” and related rights in Guyanese laws and policies entails that timber harvested from indigenous peoples’ untitled customary land without their knowledge and FPIC is defined as “legal” in the country’s system for allocating land for commercial timber extraction and trade. At the same time, the use by local people of their own resources is often criminalised and penalised, while community applications for title or extension of land title boundaries may be disregarded for years or even decades by the competent authorities.

Amerindian communities have since the beginning of the VPA process in Guyana disputed this definition of legality and have called for their rights to customary lands and resources to be respected and protected in the VPA.²⁷ It could be expected that they will keep challenging and publicly disputing the legitimacy of timber that is harvested in violation of their internationally protected rights. A failure to address the flaws in the concession allocation system, including the lack of transparency, will subsequently cast uncertainty over the legality of the national forest sector, leaving it open to challenge. The juxtaposition of mining and logging concessions on the same areas of land may also raise questions of the sustainability and legality of any future FLEGT licences from Guyana. In order to influence a positive decision in the European Parliament upon the ratification of the VPA, complaints and concerns from national stakeholders, including the indigenous communities, must therefore be addressed.

²⁷See for example reports from legality seminar and community workshops:
www.forestpeoples.org/sites/fpp/files/news/2015/11/Community%20Views%20on%20the%20Guyana-EU%20FLEGT.PDF and
www.forestpeoples.org/sites/fpp/files/news/2015/11/Summary%20report%20from%20legality%20seminar.pdf

Recommendations for solving forest conflicts and enabling a successful VPA between Guyana and the EU:

To ensure that forest concessions are not imposed on the customary land of indigenous peoples:

- The VPA process should include international law in its definition of forest legality in line with that of the FAO, which reads: “Forest illegality occurs when forest products are harvested, transported, processed, bought or sold, or when forests are cleared or otherwise degraded, in violation of subnational, national or international laws”²⁸.
- Laws and policies governing land tenure in Guyana must explicitly recognise and protect the inherent and preexisting rights of indigenous peoples to their customary lands and resources, particularly those living on untitled customary lands, by bringing them in line with the country’s constitution (e.g. articles 142, 149D, 149G, 154A and the Fourth Schedule) and international human rights laws and standards that the country has signed on to, including the FAO VGGT.²⁹
- The forest concession allocation process must respect and protect the right to self-determination of the indigenous peoples of Guyana, including their rights to decide what forestry and other activities take place on or otherwise affect their customarily owned lands. This requires the development of clear FPIC rules, including over untitled customary lands occupied and used by indigenous peoples.
- The GFC must coordinate with other agencies to make sure that it has up-to date information about what areas have been applied for, or long identified, as title or extension areas by indigenous communities.
- A transparent process (including consideration of options for land restitution) must be established to address situations where extractive concessions have nonetheless wrongfully been issued on Amerindian customary titled or untitled land. Such a process must be supported by an overarching government policy on multiple land usage and how to resolve conflict.
- The GFC Board should include non-governmental indigenous representation.
- The GFC Board approved criteria referred to in the procedures for allocation of forestry concessions³⁰ must be included in the information to be made publicly available (i.e. in the list of information in Annex X).
- The obligation of the independent Auditor to verify compliance with such criteria must be explicit in the Terms of Reference for the Independent Audit (Annex VI).
- The VPA process must support the establishment of an independent monitoring body that includes community monitoring initiatives.
- Independent monitoring reports submitted by indigenous communities must be an accepted source of information for the GFC and the Independent Auditor.
- Individuals and communities must have access to mechanisms for dispute resolution, including methods for challenging verification and the granting of concessions.

²⁸www.fao.org/sustainable-forest-management/toolbox/modules/forest-law-enforcement/basic-knowledge/en/

²⁹E.g. the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Elimination of All Forms of Discrimination against Women. Important international standards such as the United Nations Declaration of the Rights of Indigenous Peoples (which encapsulates the position in relation to indigenous peoples’ rights set out in several of the above-mentioned treaties), and the FAO’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security, are also important measures of compliance

³⁰To be found here: www.forestry.gov.gy/sfp-sfep-application-forms/

