

# Indigenous Peoples' Rights, Forests and Climate Policies in Guyana

A SPECIAL REPORT



## **Indigenous Peoples' Rights, Forests and Climate Policies in Guyana: a special report**

Edited by Kate Dooley and Tom Griffiths

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**Amerindian  
Peoples  
Association**



# Acronyms

ADF	Amerindian Development Fund
ALC	Amerindian Lands Commission
APA	Amerindian Peoples Association
CBD	Convention on Biological Diversity
CDP	Community Development Plans (under ADF)
EC	European Commission
EITI	Extractive Industries Transparency Initiative
ESIA	Environmental and Social Impact Assessment
EU	European Union
FLEGT	Forest Law Enforcement, Governance and Trade
FPIC	Free, prior and informed consent
GFC	Guyana Forestry Commission
GGMC	Guyana Geology and Mines Commission
GLAS	Guyana Legality Assurance System
GoG	Government of Guyana
GRIF	Guyana REDD+ Investment Fund
HEP	Hinterland Electrification Programme
IDA	International Development Association
IDB	Inter-American Development Bank
IFM	Independent Forest Monitoring
IIRSA	Initiative for the Integration of the Regional Infrastructure of South America
IPC	Indigenous Peoples' Commission
JCN	Joint Concept Note
LAS	Legality Assurance System
LCDS	Low Carbon Development Strategy
LOI	Letter of Intent
NTC	National Toshias Council
NTWG	National Technical Working Group
MFA	Ministry of Foreign Affairs
MNRE	Ministry of Natural Resources and the Environment
MoAA	Ministry of Amerindian Affairs
MoU	Memorandum of Understanding
MSSC	Multi-Stakeholder Steering Committee
OCC	Office of Climate Change
PMO	Low Carbon Strategy Project Management Office
REDD	Reduced Emissions from Deforestation and Forest Degradation
R-PIN	REDD Readiness Idea Note
R-PP	Readiness Preparation Proposal
SESA	Strategic Social and Environmental Assessments
SFP	State Forest Permits
TIGI	Transparency Institute Guyana Inc.
TSA	Timber Sales Agreements
UNFCCC	United Nations Framework Convention on Climate Change
UNDP	United Nations Development Program
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VPA	Voluntary Partnership Agreement

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# Executive summary

Guyana is a high forest cover and low deforestation country with tropical forests covering up to 85% of the national land area. The vast majority of Guyana's forests are found on lands traditionally used and occupied by Amerindian families and communities. Indigenous peoples include the Arawak, Akawaio, Arekuna, Carib, Makushi, Patamona, Wapichan, Warrau and Wai Wai who together number around 80,000 people dispersed in more than 160 communities and thousands of scattered homesteads in the interior of the country. Since 2007 the government of Guyana has become a lead advocate among Southern governments for 'green growth' and international payments for forest nations tied to proven reductions in forest clearance alongside avoided deforestation and investments in low carbon development. In 2009 the government was successful in securing a major bilateral agreement with the Kingdom of Norway in support of forest and climate protection and Guyana's Low Carbon Development Strategy (LCDS). Since the start of the development of the LCDS, indigenous and civil society organisations have highlighted the essential need for special attention to indigenous peoples' rights to ensure sustainability, legality and equitable benefit sharing in all forest and climate initiatives and policies, including robust protections for customary land rights and free, prior and informed consent (FPIC).

More than four years after the signing of the Guyana-Norway MoU, this special report seeks to assess the quality of treatment of indigenous peoples' rights in Guyana's national policies on land, low carbon development and forests. The review draws on extensive community visits and policy analyses conducted by the APA and FPP between 2009 and 2013.

**Section 1** examines past and present land policies and laws in Guyana as they relate to indigenous peoples. The analysis finds that discriminatory norms established during the colonial period remain embedded in the existing national legal framework, which continues to apply the legal fiction that all untitled lands are vested in the state without due respect for the pre-existing customary land ownership rights of indigenous peoples. Major shortcomings in national land laws and policies are identified, including flawed procedures for the demarcation and titling of Amerindian lands, failures to recognise and protect customary systems of tenure, a lack of procedures for land regulation (ordering) and land restitution, and no effective means of appeal for Amerindian villages who are unhappy about government decisions on their land title areas.

A review of the current land tenure situation highlights that land conflicts with loggers and miners are commonplace. Most Amerindian villages and communities are not satisfied with their existing titles because they do not secure the full extent of lands traditionally occupied and used by community members, whilst dozens of settlements and many hundreds of family homesteads across the country have no land title at all. It is stressed that land security is not

even guaranteed within title areas, since logging and mining areas are being excluded from recent title deeds to Amerindian lands. Means of redress in the country are also ineffective as community challenges to third party occupation of their lands have resulted in local court rulings in favour of the rights of miners and forestry lease holders at the expense of indigenous communities. Evidence is also presented to show that national land use plans and official maps contain conflicting information on Amerindian land title areas, and in some case even appear to ‘disappear’ whole Amerindian village land areas (e.g. Kako Village, Upper Mazaruni).

**Section 2** describes the current situation facing indigenous peoples in the Upper Mazaruni basin where aggressive mining expansion, uncontrolled road development and plans for a mega-dam for hydropower generation threaten the very survival of the Akawaio and Arekuna as distinct peoples. The analysis exposes deep contradictions in Guyana’s national policies, which on the one hand seek to protect forests and the climate under the LCDS, while other economic and land use policies are promoting rapid mining growth and large-scale infrastructure projects without due regard for indigenous peoples’ rights and the environment.

**Section 3** assesses progress in Guyana’s LCDS and related plans for Reducing Emissions from Deforestation and forest Degradation (REDD) as they relate to indigenous peoples. Although some local benefits have been delivered to Amerindian settlements, the assessment finds major gaps in the LCDS approach to indigenous peoples’ rights. Meaningful consultation on the LCDS and REDD have so far not taken place at the community level, whilst a watered down version of core safeguard like FPIC is restricted to titled communities and limited title areas, thus leaving untitled communities and customary lands unprotected from potential ‘green land grabs’. It is found that six years after Guyana joined the World Bank Forest Carbon Partnership Facility (FCPF), effective implementation mechanisms for applying agreed safeguard standards to uphold the rights of indigenous peoples have still not been put in place. Independent audit of Guyana’s compliance with social conditions under its agreement with Norway validates these serious shortcomings, yet Guyana has taken few clear remedial actions to address implementation problems, while vital rights issues continue to be side-lined. The Guyana REDD+ Investment Fund (GRIF) and UNDP Amerindian Land Titling project (2013-16), for example, is failing to address fundamental flaws in Guyana’s laws and procedures for the titling, demarcation and protection of indigenous peoples’ lands, territories and resources. The review stresses that unless timely LCDS measures are adopted to implement social components, the effectiveness and sustainability of existing forest and climate initiatives will be fatally undermined and the potential for future rights violations and land and resource conflicts will remain.

**Section 4** documents the treatment of indigenous peoples’ rights in the LCDS “flagship” project to develop a hydropower facility within Patamona territory at the confluence of the Amaila and Kuribrong Rivers in the Potaro catchment in west central Guyana. Lack of a credible FPIC process, failings in the prior consultation with affected villages and shortcomings in the social and environmental impact assessments are pinpointed. While the dam construction is currently on hold due to financing difficulties, road access to the dam site is nearing completion and risks opening up Patamona lands and old-growth forests to intensive logging and mining that would generate deforestation, environmental pollution and major social and cultural upheaval, yet effective measures to address these risks have yet to materialise. The analysis concludes that the Amaila project does not meet the sustainability guidelines of the World Commission on Dams (WCD) and violates applicable national and international standards on the rights of indigenous peoples.

A fine grained assessment of existing approaches to indigenous peoples’ rights and participation in Guyana’s Forest Law Enforcement, Governance and Trade (FLEGT) and Voluntary Partnership Agreement (VPA) initiative with the European Union is made in **Section 5**. Core



FLEGT principles of good governance and good faith stakeholder participation are summarised before assessing the current status of the FLEGT VPA process against these benchmarks. The analysis notes that effective arrangements for multi-stakeholder participation and transparency in the VPA process are lacking and the current draft legality definition does not take adequate account of customary law and Guyana's obligations to uphold international legal norms on the rights of indigenous peoples. A further gap is the absence of effective dialogues between the government and communities on land tenure and forest governance reform measures needed in the VPA to tackle corruption, illegal practices and land tenure insecurity.

A review of critical issues in the forest sector finds that timber concessions are routinely issued by the Guyana Forestry Commission (GFC) to both national and foreign logging companies over the customary lands of indigenous peoples without the prior knowledge or consent of affected communities. Violation of community rights and environmental rules is common with frequent encroachment and theft of lumber on titled Amerindian lands; abusive benefit sharing agreements with communities; extensive sourcing of timber from outside concession boundaries; misuse of timber tags; illegal trade in timber rights and money laundering through logging operations. The section concludes that a first vital step in strengthening the VPA process must be government acceptance of critical views and official acknowledgement of the problems with illegal logging, weak governance and violations of FPIC and land rights in Guyana. The need to slow down the process and amend the VPA road map to enable meaningful stakeholder and community participation is emphasised as a priority.

The report presents multiple general and specific recommendations on measures required to strengthen the recognition and respect for indigenous peoples' rights in national land use, forest and climate policies, including, *inter alia*, the need for:

- Targeted legal and regulatory reforms, including reforms to the Amerindian Act 2006, to bring national land laws and policies into line with Guyana's international obligations to protect the land, territorial and resource rights of indigenous peoples according to UNDRIP and related human rights instruments
- Adoption of procedures for land regulation that include fair and transparent processes for resolving land conflicts and removing third parties occupying Amerindian lands without their consent
- Official recognition of community land use and occupation maps as valid information for input to LCDS and FLEGT planning and policy-making
- Updating of government information on land title extension applications of Amerindian Villages and adoption of more agile and transparent procedures for the processing of these petitions
- A participatory process with Amerindian Villages to correct errors in government maps of Amerindian title areas to ensure uniformity between national agencies
- Annulment of mineral and lumber rights issued to third parties on customary lands (within and outside existing land titles areas) without community consent, and restitution of these lands back to Amerindian communities
- Reform of national FPIC rules and procedures to extend coverage to untitled customary lands
- Robust mechanisms for independent verification of FPIC for mining and logging concessions, LCDS policies and the GRIF-Amerindian Land Titling project
- Full public disclosure of the government's national GIS land-use planning database,

including information on mining and logging concessions affecting Amerindian lands and territories (titled and untitled)

- Timely sharing with Akawaio and Arekuna villages of all documents, maps and plans and terms of reference for feasibility studies relating to the proposed Upper Mazaruni Hydropower development
- Immediate review of the LCDS Opt-in procedure with indigenous peoples' organisations to assess alignment with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Establishment of a dedicated project grievance mechanism for the LCDS-GRIF project for Amerindian Land Titling (ALT) and community consultations to secure agreement on project design and effective FPIC procedures
- Setting up a fully transparent and participatory national land task force dedicated to redress for land rights violations, resolution of land conflicts and settlement of Amerindian land and territorial issues (along the lines of 1960s Amerindian Lands Commission with strengthened participation, verification and appeals procedures).
- Further revision of the VPA roadmap to extend the timeline for negotiations to enable meaningful multi-stakeholder and community participation
- Inclusion of requirements for compliance with international and customary law in the the VPA legality definition and related Legality Assurance System (LAS), including clear-cut protections for land rights and FPIC

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

Tom Griffiths and Jean La Rose

## 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.<sup>1</sup> 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

<sup>1</sup> 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](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.<sup>2</sup> Some shell mounds in the Pomeroon valley in Region 2, for example, date back 7000 years<sup>3</sup>, while pottery remains indicate that Caribs and Arawaks arrived in the region between 4000 and 5000 years ago.<sup>4</sup> Recent investigations in the Berbice area have identified sophisticated raised field agriculture and agricultural black earths created 5000 years before present.<sup>5</sup> Investigations into charcoal remains in forest soils in central Guyana suggest that human occupation by pre-Columbian populations may date to 9000 years ago.<sup>6</sup> 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.<sup>7</sup>

### 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.<sup>8</sup> 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.<sup>9</sup> Multiple colonial records dating to the sixteenth century also testify to the presence of the Akawaio people in the Mazaruni River Valley (and beyond),<sup>10</sup> while Dutch despatches record the “Wapisiana” in the Rupununi in the seventeenth century.<sup>11</sup> 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.<sup>12</sup> Dutch regulations on its West Indian colonies recognised and guaranteed the rights of indigenous nations to own and control their lands and resources.<sup>13</sup> 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 Borden, 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.<sup>14</sup>

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.<sup>15</sup>**

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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>

### 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.<sup>20</sup> 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"<sup>21</sup> 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.<sup>22</sup> 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](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,<sup>23</sup> Guyana continues to cling to the fiction that indigenous peoples' property rights became null and void on this basis.<sup>24</sup>

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 system<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>**

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](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.”<sup>28</sup> 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...”<sup>29</sup>

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.”<sup>30</sup> 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.**<sup>31</sup>

### **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).<sup>32</sup>

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.<sup>33</sup>

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.<sup>34</sup>

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.<sup>35</sup>

## 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...<sup>36</sup>**

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.<sup>37</sup>**

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...<sup>38</sup>**

## 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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>

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."<sup>42</sup>

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,<sup>43</sup> 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 <sup>44</sup>

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.<sup>45</sup>

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).<sup>46</sup> 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.”<sup>47</sup>**

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]

<sup>46</sup> *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](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Guyana1March2013.pdf).

<sup>47</sup> *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).<sup>48</sup> 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.<sup>49</sup>

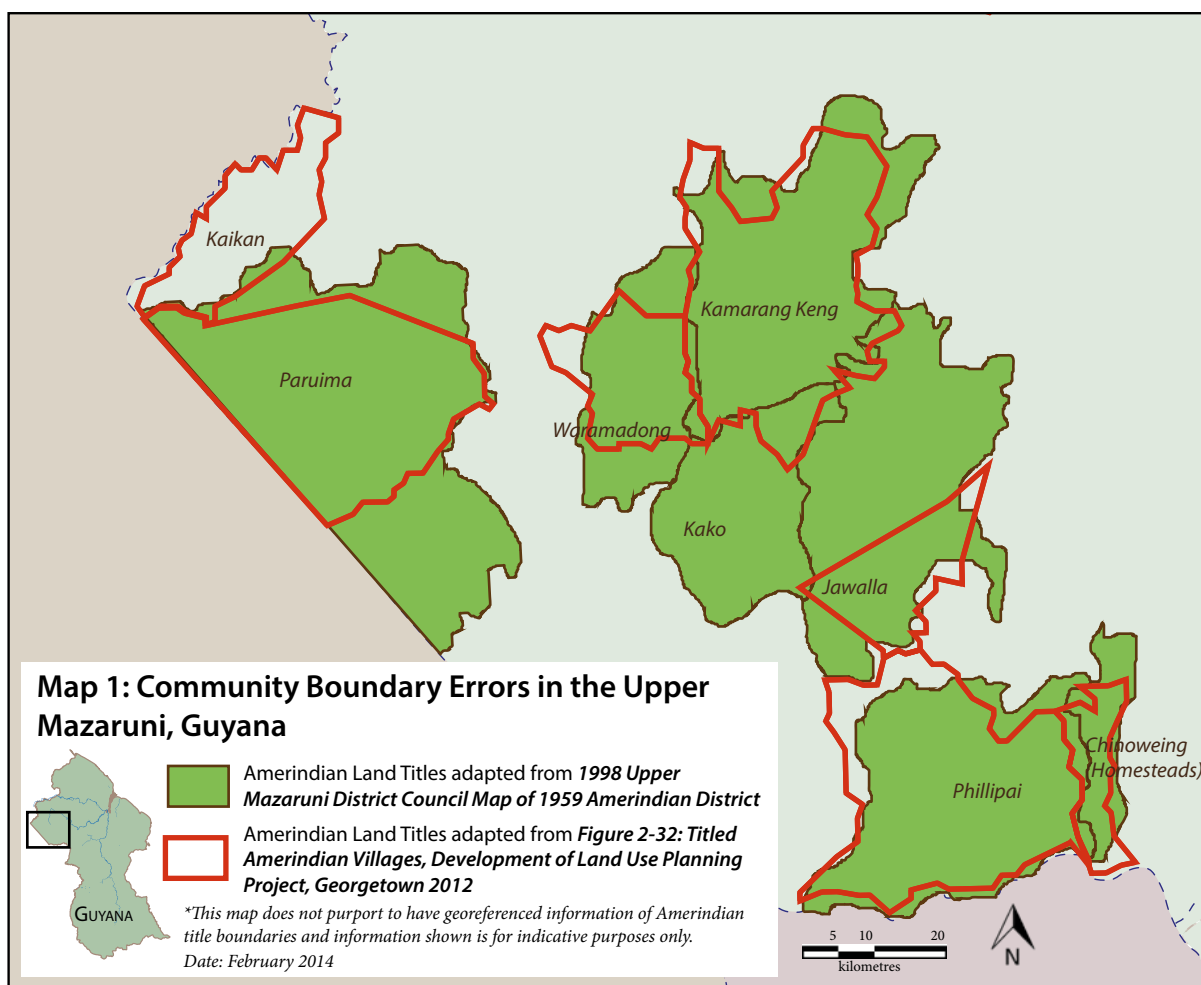
## Now you see it, now you don't

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.<sup>50</sup>

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,<sup>51</sup> 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:

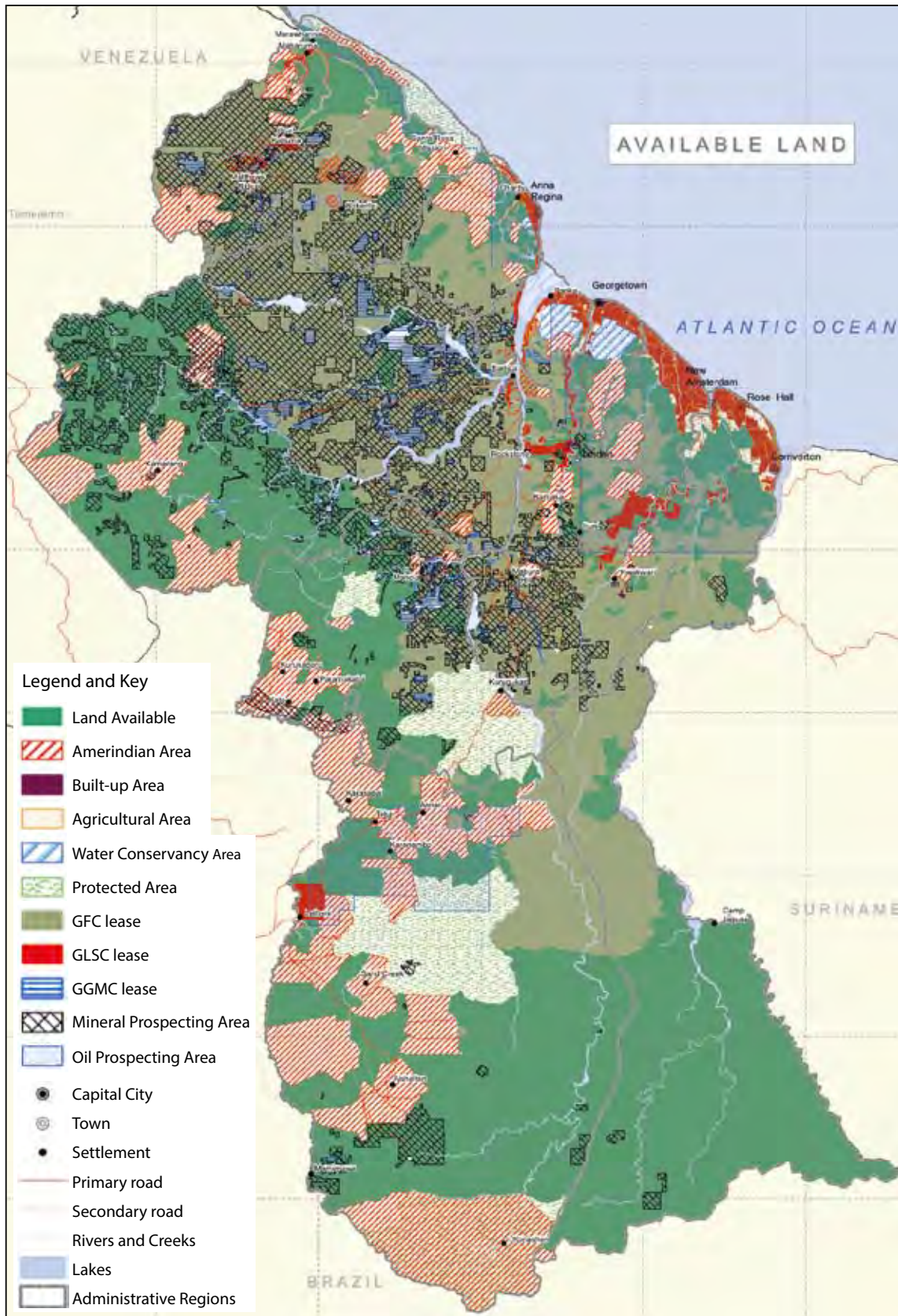
**...most villagers have concerns as to what will become of their traditional lands by the time the minister is ready to approve extensions, as the granting of concessions on traditional lands by Guyana Forestry Commission continues and we are not consulted. We are worried about the increase logging 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.<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup>



**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 Toshihos Councils, Georgetown <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/guyana10capr06eng.pdf>

53 South Rupununi District Tosahos 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)<sup>55</sup>

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 Act<sup>56</sup>. 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"<sup>57</sup>. 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.<sup>58</sup>

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.<sup>59</sup>

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 <sup>60</sup>**

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).<sup>61</sup>

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](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.<sup>1</sup>

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.”<sup>2</sup>

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.<sup>3</sup> Akawaio Captains (community leaders) also made powerful demands for resolution of the land issue in the First Conference of Amerindian Leaders held in 1969.<sup>4</sup> 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).<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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).<sup>8</sup>

## 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.

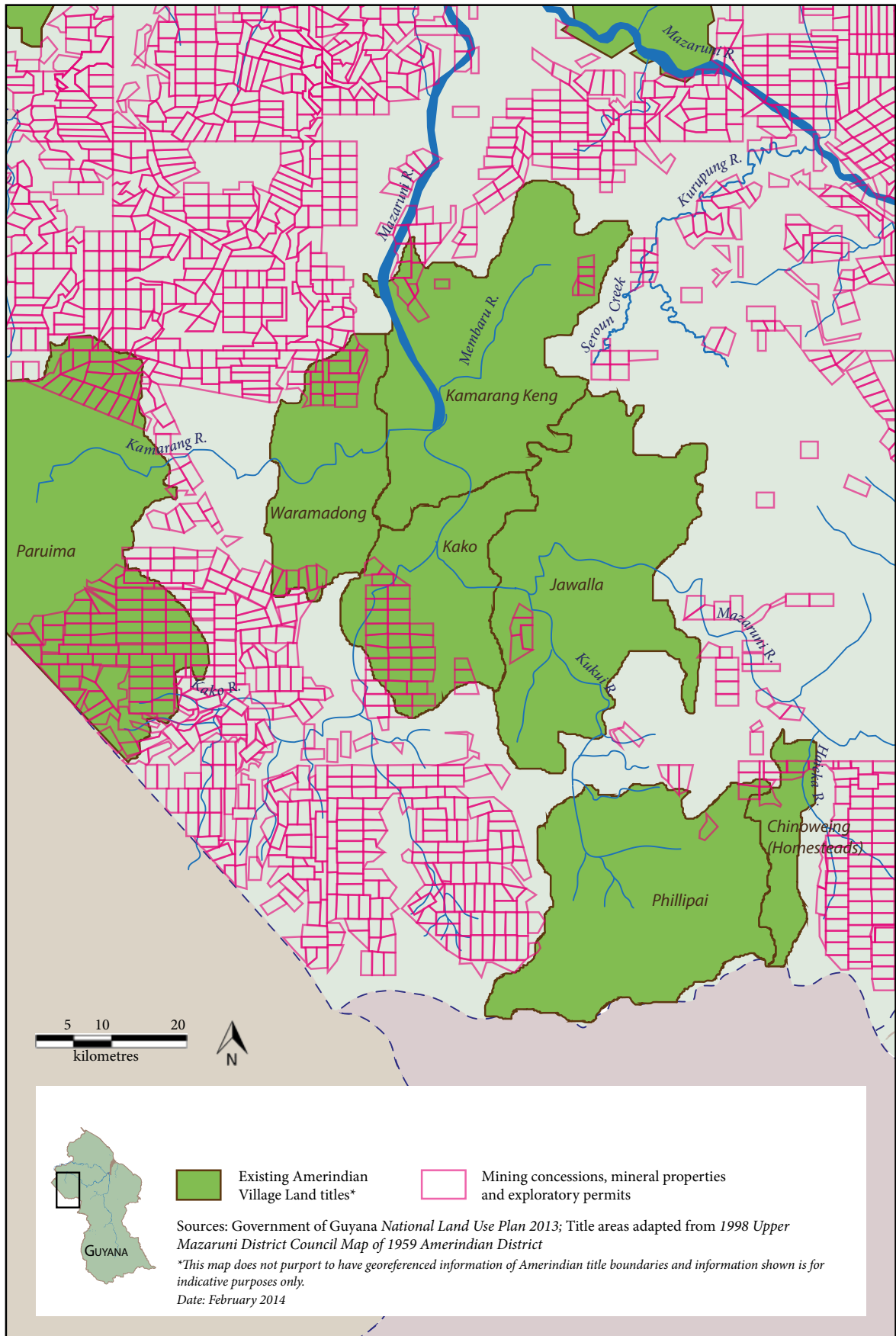


**Akawaio and Arekuna Communities in the Upper Mazaruni maintain a deep spiritual attachment to remote forest and mountain areas within their territory. Many of these places are located outside existing Village land titles and are insecure, yet they are fundamental to the maintenance of the Akawaio way 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.<sup>9</sup> 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.<sup>10</sup>

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 y 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 Toshiacos 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 Warawatta<sup>11</sup>]**

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,<sup>12</sup> 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."<sup>13</sup>

### **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,<sup>14</sup> 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.<sup>15</sup>

### **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 community<sup>16</sup> 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

<sup>16</sup> 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.<sup>17</sup> 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*

<sup>17</sup> 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 km<sup>2</sup>) 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).<sup>18</sup> 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.<sup>19</sup>

### 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.<sup>20</sup> Potential linkages with bauxite mining and processing are confirmed in the 2011 ESIA for the Amaila Falls hydro project (Section 4).

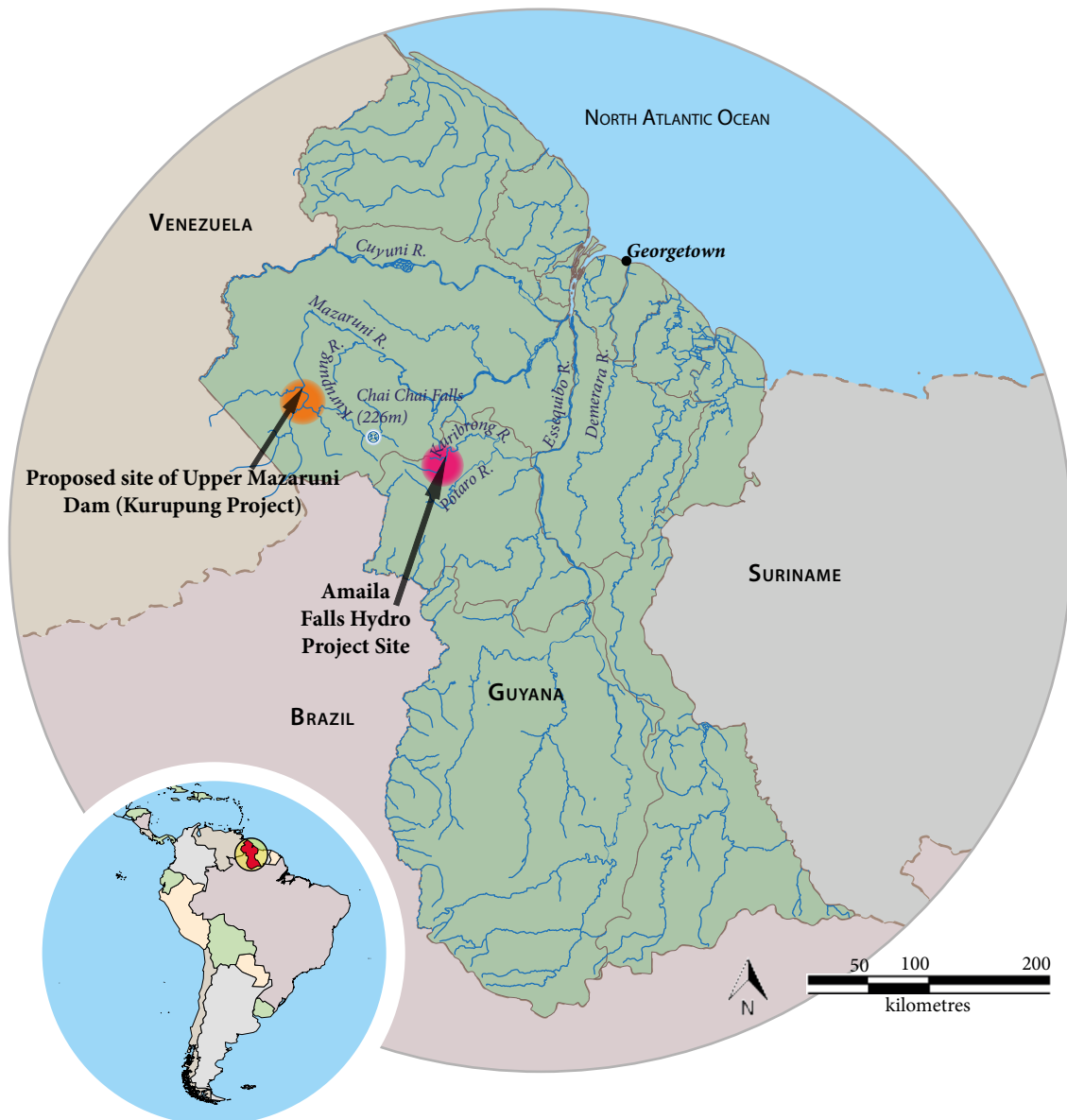
The Amaila Falls ESIA comments on the size of the Upper Mazaruni hydropower project, with its significantly greater environmental and social impacts, noting this is “many times the total installed capacity of the country, and therefore requires either the development of large industry within Guyana or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

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%,<sup>22</sup> 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)”<sup>23</sup>.

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”.<sup>24</sup> In May 2010, three newspaper articles reported that the Upper Mazaruni hydroelectric project had been revived for the refinery and smelting plant.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup> 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’.<sup>30</sup>

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.”<sup>31</sup> 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).

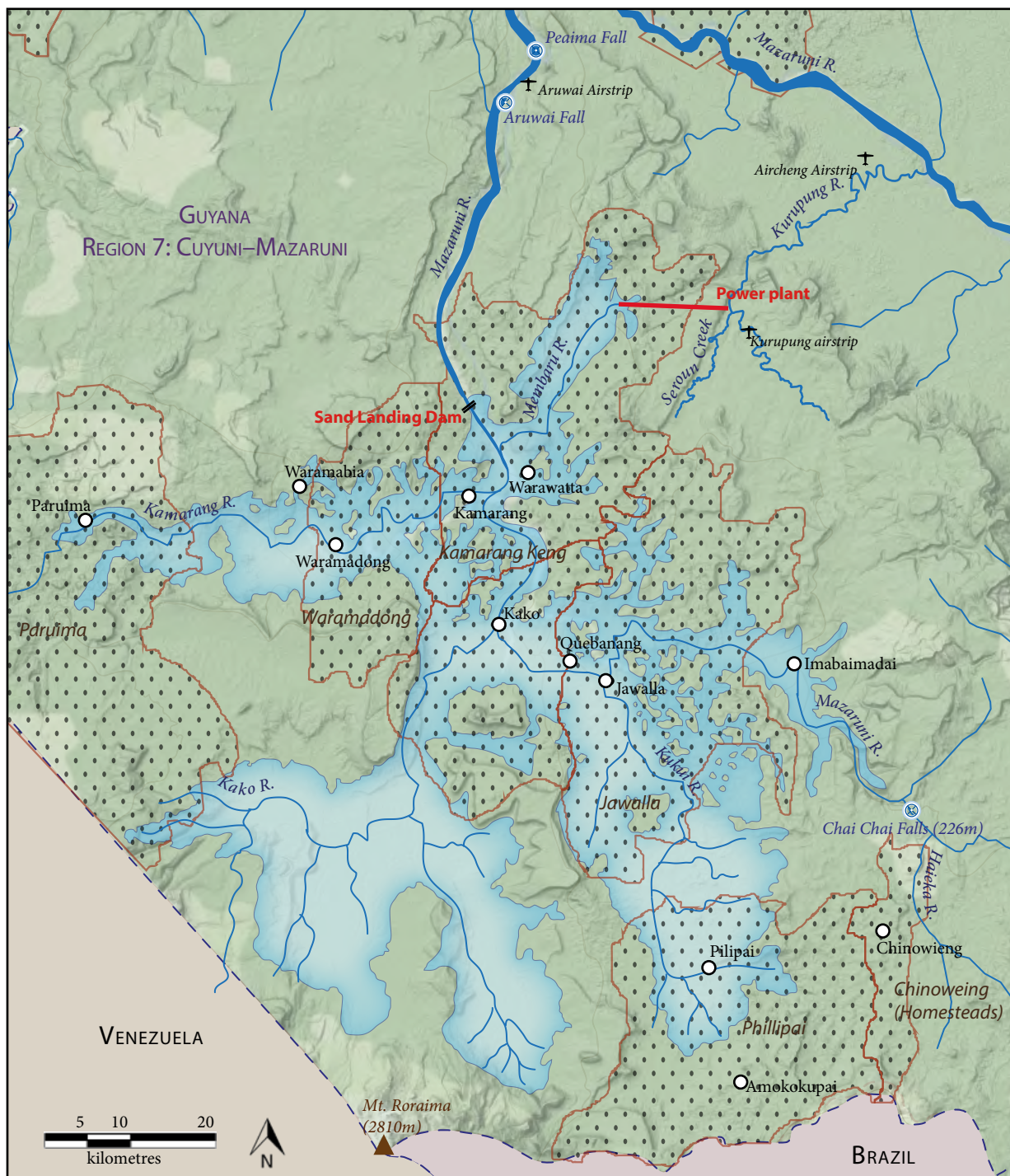
27 See, among others: *Kaieteur News*, August 10, 2010. *Akawaio and Arekunas will lose livelihoods with hydro project – Int'l report*, Available at: <http://www.kaieteurnewsonline.com/2010/08/10/akawaio-and-arekunas-will-lose-livelihoods-with-hydro-project-int%E2%80%99l-report-2/>

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.<sup>32</sup>**

### **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.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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.<sup>36</sup>

### **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,<sup>37</sup> 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.<sup>38</sup>

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

<sup>37</sup> Supra note 35.

<sup>38</sup> 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

# Taking stock: Indigenous peoples and low carbon development policies in Guyana

Jean La Rose, Tom Griffiths and Solveig Firing Lunde

## Key Issues and concerns

- Guyana's Low Carbon Development Strategy (LCDS) is not ensuring effective participation and is failing to meet core safeguard indicators on indigenous peoples' rights, including land rights, yet corrective actions have still not been put in place
- LCDS policies, including a proposed opt-in procedure for Amerindian Villages, confine respect for Free, Prior and Informed Consent (FPIC) to titled Amerindian lands and do not extend this core standard to untitled communities and customary lands, thereby violating Guyana's international obligations
- There is still no reliable information available on the potential risks, costs and benefits for indigenous peoples if they choose to opt-in to a national forest and climate scheme (thus preventing any credible FPIC process)
- Despite government claims that most village leaders (Toshaos) in the National Toshaos Council support draft opt-in procedures, these plans have not been discussed at the community level
- Treatment of rotational farming (shifting cultivation) remains problematic in the LCDS framework
- Infrastructure developments (including large dams) are being approved by the government under the LCDS without adequate attention to cumulative impacts and without full respect for FPIC
- The Guyana REDD+ Investment Fund (GRIF) and the UNDP Amerindian Land Titling project (2013-16) are failing to address fundamental flaws in Guyana's laws and procedures for the titling, demarcation and protection of indigenous peoples' lands, territories and resources, and thus risk violating applicable human rights standards
- LCDS linkages with plans being developed by the Guyana Forestry Commission (GFC), the Forest Carbon Partnership Facility (FCPF) and the Inter-American Development Bank (IDB) for a national REDD scheme remain vague, while Villages have still not been properly consulted on Guyana's REDD Readiness Proposal (R-PP)
- Despite commitments to protect forests under the LCDS, an aggressive expansion of the mining sector is driving increasing rates of deforestation in Guyana, causing gross violations of indigenous peoples' rights and damage to forest and livelihood resources.

## Lessons

Without early measures to respect and secure the land rights of forest peoples and ensure full alignment with applicable international standards, forest and climate initiatives are likely to restrict local benefits and risk generating land conflicts

The sustainability and credibility of initiatives like the LCDS are undermined if effective decentralised mechanisms for meaningful community consultation are not in place<sup>1</sup>

Participatory social and environmental impact assessments are essential for the development of sustainable, fair and efficient national forest and climate schemes: they are needed to inform communities of possible risks and opportunities and to ensure that upstream measures are taken to avoid potential negative impacts

Mechanisms for compliance with human rights standards and safeguard policies of implementing agencies like the UNDP must be strengthened in order to ensure that rights are respected and LCDS projects are fully accountable to intended beneficiaries and citizens in Guyana and donor countries.

## Introduction and background

Since 2006, Guyana has become a lead player among developing countries in calling for international finance and performance-based payments for forest and climate protection in forest nations, including through so-called policies for Reducing Emissions from Deforestation and Forest Degradation (REDD). Guyana joined the World Bank's Forest Carbon Partnership Facility (FCPF) in 2008. In 2009, the country signed a bilateral partnership agreement with Norway with the potential to deliver up to US\$250 million in payments to Guyana for forest protection, based on independent verification of annual deforestation rates and an assessment of country performance in relation to social and environmental issues (see section C below). In 2012, Guyana's Low Carbon Development Strategy (LCDS) was heralded at the UN Rio+20 Earth Summit as a best-practice model for "green growth", which Guyana claims has potential for duplication in other developing economies.<sup>2</sup> Guyana now boasts that it has the world's first national-scale forest and climate scheme in operation.

At the start of Guyana's participation in the FCPF in 2008, indigenous peoples and social justice organisations, including the Amerindian Peoples Association (APA), had called for effective participation of indigenous communities and early actions to address unresolved land tenure issues as well as to establish robust mechanisms for Free, Prior and Informed Consent (FPIC) and local benefit sharing.<sup>3</sup> The same points were made to Guyana and international donors at the launch of the LCDS in 2009. After 4.5 years, what progress has been made? Have vital social preconditions and safeguards been met? Have promised benefits been forthcoming? What can we learn from the situation on the ground?

This paper seeks to give answers to some of these questions. It sets out some basic background on the LCDS objectives and summarises key social commitments made by Guyana and Norway at the start of the process. Local experience on rights and tenure issues are then reviewed before setting out some basic conclusions and recommendations.

1 See also, Brown M I (2013) *Redeeming REDD: policies, incentives and social feasibility for avoided deforestation* Earthscan Routledge, London and New York at pages 96 and 137

2 "Guyana at Rio+20" LCDS Newsletter No.2, September 2012

3 Griffiths, T (2009) *Guyana: indigenous peoples, forests and climate initiatives* FPP, Moreton in Marsh

## LCDS origins, objectives and components

The government of Guyana first introduced its LCDS plan titled “*Transforming Guyana’s Economy while Combating Climate Change*” to the Guyanese public in June 2009. Updated versions of the LCDS document were published in December 2009 and May 2010. The current version was launched in March 2013 by President Donald Ramotar. From the outset, one of the benchmarks of the LCDS process has been the setting up of the LCDS oversight body, the Multi-Stakeholder Steering Committee (MSSC), which first met in June 2009. The MSSC was chaired from 2009-2011 by former President Jagdeo and is now being chaired by President Ramotar. The MSSC is made up of government agencies, business associations, NGOs and indigenous peoples’ representatives as well as indigenous and other participants (including former President Jagdeo) attending in an individual capacity. This body has so far held 60 meetings and minutes for each are published on the LCDS web site.<sup>4</sup> To date, the MSSC has not published any terms of reference for its rules of procedure and functions, and its capacity to address contested issues and foster multi-stakeholder dialogues remains in question (see below).

The LCDS intends to use revenue generated from international payments for forest protection to:

- increase access to healthcare and education;
- help businesses and citizens improve their access to safe and affordable water and electricity;
- protect vulnerable sectors of society;
- provide targeted support for land tenure and development in Amerindian villages;
- alleviate poverty.<sup>5</sup>

Stated goals of the LCDS are to transform Guyana’s economy through “green growth strategies”, which aim to deliver economic and social development by following a low carbon development path; and provide a “scalable, replicable model for the world” of how climate change can be addressed through low carbon development in developing countries, mainly through economic incentives and international payments to avoid deforestation.<sup>6</sup>

Strategies to enable transition to a low carbon economy include support for investments in low carbon infrastructure, including hydroelectric dams; reform of the forestry sector to promote more environmentally friendly practices “utilising the high internationally accepted standards of sustainable yield harvesting”; reform of the mining sector; improving information technology and renewable energy sources; and the creation of employment opportunities in activities that “do not threaten the forest”, including the production of fruit and vegetables and seafood products.<sup>7</sup>

4 Multi-Stakeholder Steering Committee: [http://www.lcds.gov.gy/index.php?option=com\\_content&view=article&id=340&Itemid=166](http://www.lcds.gov.gy/index.php?option=com_content&view=article&id=340&Itemid=166)

5 Ibid, at page 14

6 LCDS (2013) *Frequently Asked Questions* OCC, July 2013 [http://www.lcds.gov.gy/images/stories/Documents/Frequently%20Asked%20Questions\\_July%202013\\_Final.pdf](http://www.lcds.gov.gy/images/stories/Documents/Frequently%20Asked%20Questions_July%202013_Final.pdf)

7 *Low Carbon Development Strategy Update: transforming Guyana’s economy while combating climate change* Office of the President, Republic of Guyana, March 2013 [http://www.lcds.gov.gy/images/stories/Documents/low%20carbon%20development%20strategy%20update\\_final\\_march%202013.pdf](http://www.lcds.gov.gy/images/stories/Documents/low%20carbon%20development%20strategy%20update_final_march%202013.pdf)

## Current and planned LCDS activities

There are three pillars of the LCDS: avoiding deforestation; low carbon development; and adapting to climate change. A set of specific investments areas is to be supported under these themes, including targeted support to Amerindian peoples in the hinterland (Box 5).

Infrastructure development involving the construction of hydropower facilities is a core element in the low carbon approach. Guyana has extensive plans for the generation of hydroelectricity (Map 6), but transparency in national energy policies has been lacking. Any information reaching communities has tended to be partial, tardy and sometimes confusing (see discussion of Upper Mazaruni dam proposals and Amaila Falls Project in Section 2 and 4).

### Box 5: Elements of the LCDS

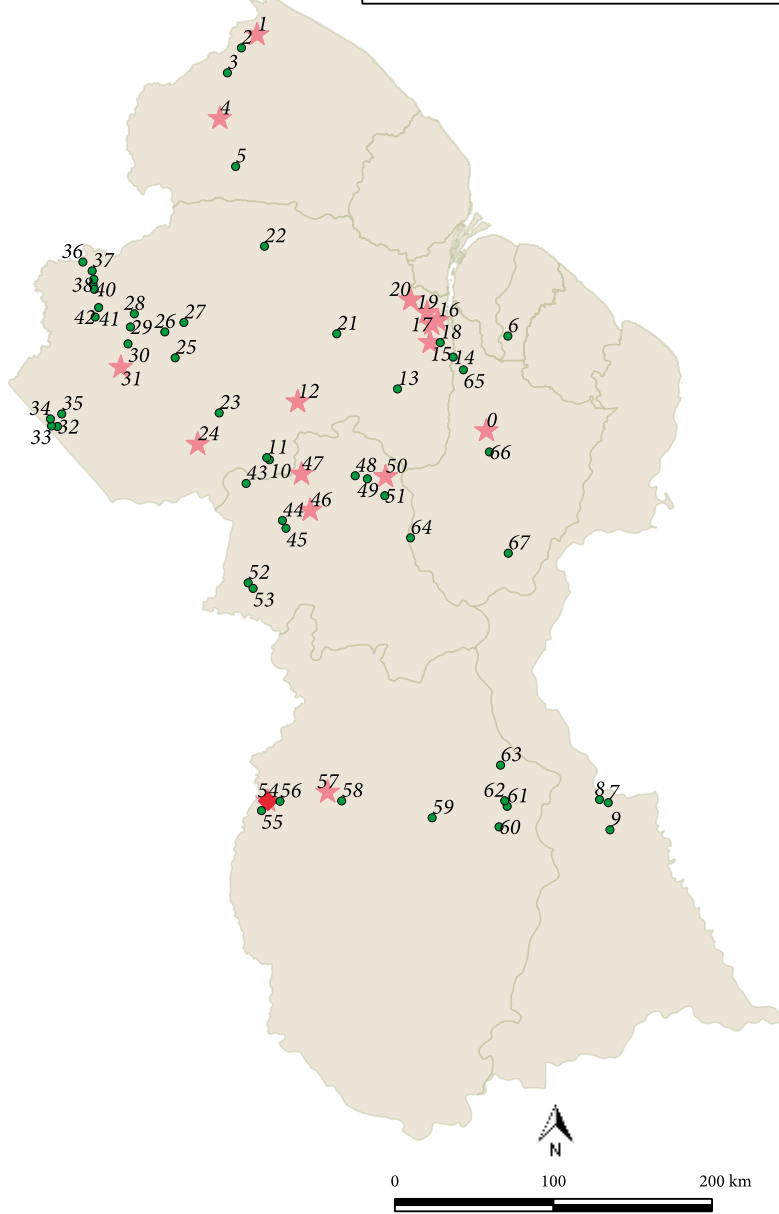
In 2009, the LCDS identified eight priority investments that would be the early focus of Guyana's transition to a low carbon economy:

- **renewable energy:** with The Amaila Falls Hydropower Project as the “flagship” LCDS project
- **Amerindian titling, demarcation and extensions:** The March 2013 LCDS states that over the next three years “all” outstanding requests will be processed through the Amerindian Land Titling Project – in accordance with the 2006 Amerindian Act (a potentially misleading statement – see section B)
- **Amerindian socio-economic development:** including (i) small-scale hydropower resources and solar power home systems for Amerindian and other hinterland households (ii) capitalisation of the LCDS Amerindian Development Fund to finance Community Development Plans (CDPs)
- **expanding the digital economy:** Support to expand access to IT and high-speed internet involving three initiatives - *Fibre Optic Cable; One Laptop per Family; and Telecommunications Liberalisation*
- **support for small and medium-scale enterprises:** US\$10 million are allocated for micro and small enterprise (MSE) sectors and vulnerable groups
- **Centre for Bio-Diversity Research and curriculum development:** An International Centre dedicated to researching possible ways to derive economic value from Guyana's bio-diversity
- **climate resilience and adaptation** (sea defenses, etc.)
- **monitoring, reporting and verification (MRV):** Development of a national forest monitoring framework, including an independent forest monitoring system.

Promoting REDD is also seen as core element in the LCDS – see IDB (2013) *Forest Carbon Partnership Facility in Guyana (GY-T1097) TC Document, IDB, Washington DC*



Map 6: Existing and Proposed Hydropower Sites in Guyana



**Legend of Hydropower Sites**

- ◆ Existing Hydropower Projects
  - ★ Hydropower Projects at Feasibility Stage
  - ◆ Potential New Hydropower Sites
- Site names
- |                  |                  |
|------------------|------------------|
| ★ 0 - Big Barara | ◆ 30 - Chitigoke |
| ★ 1 - Hossororo  | ★ 31 - Sand Land |
| ◆ 2 - Mauro      | ◆ 32 - No. 1 Dam |
| ◆ 3 - Dindiyal   | ◆ 33 - Great Fal |
| ★ 4 - Eclipse F  | ◆ 34 - Utshi     |
| ◆ 5 - Towakaima  | ◆ 35 - Paruima   |
| ◆ 6 - Loo Creek  | ◆ 36 - No.5 Dam  |
| ◆ 7 - Barringto  | ◆ 37 - No.4 Dam  |
| ◆ 8 - Barringto  | ◆ 38 - No.2 Dam  |
| ◆ 9 - Amaripa    | ◆ 39 - No.3 Dam  |
| ◆ 10 - Sabrek    | ◆ 40 - Sakaika   |
| ◆ 11 - Semang    | ◆ 41 - No.1 Dam  |
| ★ 12 - Tibiku    | ◆ 42 - Aikwaduik |
| ◆ 13 - Kaburi    | ◆ 43 - Chi-Chi D |
| ◆ 14 - Arisaru   | ◆ 44 - Akobenang |
| ★ 15 - Ikuribisi | ◆ 45 - Iatuk     |
| ★ 16 - Teperu    | ★ 46 - Kaieteur  |
| ★ 17 - Turtruba  | ★ 47 - Amaila    |
| ◆ 18 - Wineperu  | ◆ 48 - Queen Dai |
| ★ 19 - Kamaria   | ◆ 49 - Konawak   |
| ★ 20 - Oko Blue  | ★ 50 - Tumatumar |
| ◆ 21 - Puruni    | ◆ 51 - Itabu     |
| ◆ 22 - Devil's H | ◆ 52 - Kurukabar |
| ◆ 23 - Chi-Chi D | ◆ 53 - Kato      |
| ★ 24 - Chi-Chi D | ◆ 54 - Moco-Moco |
| ◆ 25 - Kumarau   | ◆ 55 - Kuma      |
| ◆ 26 - Upper Maz | ◆ 56 - Cozier    |
| ◆ 27 - Apaikwa   | ★ 57 - Wamakaru  |
| ◆ 28 - Peaima    | ◆ 58 - Maparri   |
| ◆ 29 - Aruwai    | ◆ 59 - Rewa      |
|                  | ◆ 60 - King Geor |
|                  | ◆ 61 - Manarowa  |
|                  | ◆ 62 - King Will |
|                  | ◆ 63 - Patterson |
|                  | ◆ 64 - Takwari   |
|                  | ◆ 65 - Anarika   |
|                  | ◆ 66 - Tiger Hil |
|                  | ◆ 67 - Itabru    |

Projection: WGS84

**LCDS implementation arrangements**

Oversight of the LCDS is carried out by the Office of Climate Change (OCC), the Low Carbon Strategy Project Management Office (PMO), the Guyana Forestry Commission (GFC) and the Ministry of Natural Resources and the Environment (MNRE). Strategic guidance is meant to be given through the MSSC. According to information in the March 2013 version of the LCDS, the roles and responsibilities for these different government agencies can be summarised as follows:

Agency/body	Responsibilities
Ministry of Natural Resources and the Environment (MNRE)	Lead agency on efforts to “sustainably develop the forestry and mining sectors” and on negotiations with relevant international enforcement and trading initiatives, including the Extractive Industries Transparency Initiative (EITI) and EU- FLEGT, Independent Forest Monitoring (IFM) and UN Minamata Convention on Mercury. Also responsible for the implementation of national programme of work on protected areas.
Guyana Forestry Commission (GFC)	Implementation of the national scale REDD+ Monitoring Reporting and Verification (MRV) system to assess forest cover, land use change, deforestation and measure carbon stocks. Also the national focal point for the World Bank’s Forest Carbon Partnership Facility (FCPF) process, including liaison with the FCPF delivery partner in Guyana (IDB).
Office of Climate Change (OCC)	Serves as secretariat to the MSSC and coordinates relations with bilateral and multilateral organisations supporting Guyana’s climate change policies. Also supports Guyana’s engagement in global and regional climate and development fora.
Project Management Office (PMO)	Coordination of public and private agencies to ‘accelerate implementation’ of critical projects, including hydropower projects.

### Bilateral agreement with Norway and international funding

After approaching various donor governments since 2007, Guyana secured support for its climate change mitigation and adaptation plans from the government of Norway in 2009. In November of that year, Guyana and Norway signed a Memorandum of Understanding (MoU) regarding bilateral cooperation for combatting climate change, in particular through joint support for a national REDD scheme. Under this agreement, former President Bharrat Jagdeo negotiated Norwegian commitments of up to US\$250M for Guyana over a five-year period, subject to meeting certain environmental and social benchmarks to be verified each year by independent auditors. The MOU declares that financial support from Norway for REDD results will be used to support activities and investments under Guyana’s LCDS (Box 6).



Amerindian leaders and APA members meet with representatives of the Norwegian government to discuss the LCDS and the need for climate and forest measures to address unresolved land rights issues, Georgetown, March 2010.

Photo: Tom Griffiths

Funds for REDD readiness are also received from the FCPF with implementation of a US\$3.8 million grant being overseen by the IDB (see II.IV below).

#### **Box 6: Norway Guyana MoU (2009-2015)**

The stated objective of the MoU is to foster a partnership between Guyana and Norway on issues regarding climate change, biodiversity and sustainable, low carbon development, involving the development of a framework for result-based financial support for REDD in Guyana. The MoU outlines three ‘pillars of cooperation’:

- a) Policy and political dialogue on global climate change (contributing to the inclusion of REDD in a global climate change regime)
- b) Collaboration and sharing of lessons on sustainable low-carbon development
- c) Collaboration on REDD, including establishing a framework for results-based financial support from Norway into a Guyana REDD+ Investment Fund (GRIF)

In relation to social safeguards and rights, the MoU recalls that Guyana and Norway are both parties to the UNFCCC and signatories to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The MoU also states that Norwegian financial support will be tied to **verified** results, including:

*“...arrangements to ensure systematic and transparent multi-stakeholder consultations will continue and evolve, and enable the participation of all affected and interested stakeholders at all stages of the REDD/LCDS process; **protect the rights of indigenous peoples**; ensure environmental integrity and protect biodiversity; ensure continual improvements in forest governance; and provide transparent, accountable oversight and governance of the financial support received.”* (bold emphasis added)

An accompanying Joint Concept Note (JCN) sets out the framework for taking the Guyana-Norway cooperation forward, detailing how Norway would provide Guyana with financial support for REDD+ results (see II. below). The JCN has been revised and updated several times resulting in various changes in the bilateral agreement. The current version includes the longer-term goals of the partnership towards 2015 when it is scheduled to end.

### **LCDS social standards, country commitments and international obligations**

In addition to the general commitments to multi-stakeholder participation and the protection of indigenous peoples’ rights set out in the MoU (Box 6), the JCN specifies that support from Norway to Guyana should depend on Guyana’s independently verified performance against two sets of indicators: REDD+ Performance; and Enabling Activities (Box 7). Specific assessment indicators for enabling activities relating to safeguards include:

**“...continuous multi-stakeholder consultation process; governance; and the rights of indigenous peoples and other local forest communities as regards REDD-plus.”<sup>8</sup>**

Elaborating on these performance measures the JCN stipulates that:

**“There shall be a mechanism to enable the effective participation of indigenous peoples and other local forest communities in planning and implementation of REDD-plus strategy and activities.”**

The JCN also states that all cooperation will uphold the constitutional rights of indigenous peoples. Though the JCN makes no explicit reference to international obligations, it is understood by Norway that they will be a benchmark for the assessment of LCDS performance (see below). In short, by virtue of being a party to multiple international treaties, Guyana is already bound through its constitution to comply with its obligations enshrined in different intergovernmental agreements and conventions. For example, under the UN Climate Convention, Guyana is bound to apply safeguards for REDD that “promote and support”:<sup>9</sup>

**“...respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples.”**

As well as ensure:

**“The full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities, in (forest and climate) actions....”<sup>10</sup>**

The same 2010 UNFCCC agreement calls on Parties to develop:

**“A system for providing information on how the safeguards referred to in appendix I to this decision are being addressed and respected throughout the implementation of the activities referred to in paragraph 70 above.”**

In addition to commitments made in the MoU and JCN, Guyana’s 2011 REDD+ Governance Development Plan affirms that:

**“...underpinning the (low carbon development) strategy are overall objectives of broad-based poverty reduction, inclusive national multi-stakeholder participation, applying social and environmental safeguards in accordance with international standards, and protecting the rights of Amerindians in accordance with the principles of free, prior and informed consent.”<sup>11</sup>**

With regards to the commitments of Norway, in a reply to an APA letter<sup>12</sup> sent in 2010 to the Norwegian government raising concerns about the lack of adequate protections for indigenous peoples’ land and territorial rights under the LCDS, Norway replied that:

8 *Joint Concept Note 2012* <http://www.lcds.gov.gy/images/stories/Documents/Joint%20Concept%20Note%20%28JCN%29%202012.pdf>

9 The 2010 Cancun Agreements include a decision on ‘REDD+ Safeguards’ in Decision 1.CP/16, Annex II: <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=2>

10 UNFCCC (2011) 1/CP.16 and Appendix I <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>

11 *Guyana’s REDD+ Governance Development Plan*, Office of the President Republic of Guyana, June 2011 at page 3 <http://www.lcds.gov.gy/images/stories/Documents/RGDP%20-%20June%202011.pdf>

12 <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/guyanalcdrsredd-pluslettonoradmar10eng.pdf>

**“Indigenous peoples’ issues are high on the agenda of Norwegian development cooperation. It is a goal in itself to safeguard indigenous peoples’ rights in Norwegian supported operational activities...Because the relationship with their land is at the core of indigenous societies, we understand your concerns regarding land rights issues within the context of REDD+ and LCDS. Norway will continue to address this issue in our dialogue with the Guyanese government...”**

The Norwegian letter also clarified that in line with the JCN:

**“...a system of reporting on how the Constitutional protection of the rights of indigenous peoples and local communities is facilitated within the framework of Guyana’s REDD+ efforts, will be developed. ILO 169 and the UNDRIP provide essential standards which performance should be assessed against (emphasis in the original).”<sup>13</sup>**

These clarifications made by Norway are important. However, up until today, concerns raised by APA regarding flaws in Guyana’s legal framework and land titling procedures, as documented by UN human rights bodies, have received no specific public response from the Norwegian International Climate and Forest Initiative (NICFI).

### **REDD Performance Indicators**

Reporting indicators were finalised in an updated JCN in 2011 and, as noted above, relate to both deforestation measurements and ‘enabling’ activities centered on participation, transparency, good governance and respect for indigenous peoples’ rights (Box 6). Indicators are independently assessed through auditor field visits to Guyana and reviews of publicly available information on progress regarding policies and safeguards to ensure that REDD contributes to the goals set out in the MOU and JCN.

### **Guyana REDD+ Investment Fund (GRIF)**

The GRIF is a multi-contributor trust fund, established in 2010 as an interim measure for handling performance-based payments to Guyana, pending the creation of an international REDD mechanism. The World Bank’s International Development Association (IDA) is *Trustee* to the GRIF, with the Inter-American Development Bank (IDB), the World Bank, and the United Nations Development Group (UNDP) serving as *Partner Entities*, who can enter into agreements with and transfer funds to *Implementing Entities*. The GRIF is governed by a steering committee (SC), chaired by the government of Guyana (GoG), with membership comprised of government and financial contributors to the GRIF. Minutes to SC meetings are available on the GRIF website.<sup>14</sup> The Trustee, Partner Entities, civil society and private sector organisations are invited by the SC to participate as observers, but decision making is largely confined to the Guyanese and Norwegian governments.<sup>15</sup>

13 Royal Ministry of Foreign Affairs (2010) *Letter to the APA, 20 May 2010*

14 [http://www.guyanareddfund.org/index.php?option=com\\_content&view=article&id=95&Itemid=125](http://www.guyanareddfund.org/index.php?option=com_content&view=article&id=95&Itemid=125)

15 *Guyana REDD Fund: Fact Sheet*. [http://www.guyanareddfund.org/images/stories/pdffiles/GRIF\\_Fact\\_Sheet\\_September.pdf](http://www.guyanareddfund.org/images/stories/pdffiles/GRIF_Fact_Sheet_September.pdf)

## Box 7: Performance Indicators

### Indicators of Enabling Activities

- **Strategic framework:** covering the degree of consistency of Guyana REDD with international frameworks such as the rules of the UNFCCC and the World Bank's FCPF
- **Continuous multi-stakeholder consultation process:** including particular attention to the effective participation of indigenous peoples and other forest-dependent communities
- **Governance:** including *inter alia* Guyana's entry into formal negotiations with the EU to agree on a FLEGT VPA by 2015; implementation of Independent Forest Monitoring (IFM) and implementation of a programme to manage degradation from extractive activities
- **The rights of indigenous peoples and other local forest communities as regards REDD+:** upholding of constitutional rights (and related international standards and obligations)
- **Integrated land-use planning and management:** encompassing the development of a system for holistic area planning and management, and a publicly available map of area use, by 2015
- **Monitoring, reporting and verification:** increased technical capacity for MRV and development of a reference level for baseline deforestation to submit to the UNFCCC by 2015

### REDD+ indicators

- **Annual deforestation rates and agreed reference level:** set at 0.275% deforestation per year (controversially above current levels allowing an increase in deforestation rates) with reduced incentives if deforestation exceeds 0.056% per annum. Payments will cease altogether if deforestation exceeds a 0.1% ceiling (with the exception of deforestation associated with the Amaila Falls project)
- **Carbon-density proxies** to determine avoided emissions
- **Interim carbon price** of US\$5 per tonne of avoided emissions

*These interim indicators will be replaced "as a system for monitoring, reporting and verifying (MRV) emissions from deforestation and forest degradation in Guyana is established"*

## Financial flows through the GRIF

Three tranches of the committed US \$250M had already been deposited by the beginning of 2014, totaling US \$115 million. The first two payments to the GRIF were made in 2010 and 2011 for results achieved up to September 30, 2010. The third contribution was announced in December 2012, despite the conclusions of the independent verification report (released on the same day) finding that Guyana had failed to protect indigenous peoples' rights and conduct transparent and effective consultations (see C below).<sup>16</sup> An independent audit in 2012 found that only US\$ 9.2 million out of a total of \$US 69.8 million had been released by 30 June 2012, almost 2 years after the GRIFs inception.<sup>17</sup>

16 Rainforest Alliance, December 2012, *Verification Of Progress Related To Indicators For The Guyana-Norway REDD+ Agreement*, Richmond, VT. [http://www.redd-monitor.org/wordpress/wp-content/uploads/2013/01/Rainforest\\_Alliance.pdf](http://www.redd-monitor.org/wordpress/wp-content/uploads/2013/01/Rainforest_Alliance.pdf)

17 Rainforest Alliance, December 2012, *Verification Of Progress Related To Indicators For The Guyana-Norway REDD+ Agreement*, Richmond, VT. [http://www.redd-monitor.org/wordpress/wp-content/uploads/2013/01/Rainforest\\_Alliance.pdf](http://www.redd-monitor.org/wordpress/wp-content/uploads/2013/01/Rainforest_Alliance.pdf)



Rotational farming forms the core of Amerindian livelihoods, food security and identity in Guyana. Indigenous farmers and community leaders maintain that forest loss is small scale, temporary and sustainable. These assertions are backed by scientific studies.<sup>18</sup> Current LCDS treatment of traditional swidden farming is ambiguous. Early guarantees given by the government to villages in 2009 that Amerindian farming would not be affected by the LCDS have since been withdrawn.

Photo: Tom Griffiths

### Application of GRIF safeguards

The GRIF website states that it is committed to "...ensuring that REDD+ funds adhere to the highest internationally recognized standards for financial, environmental and social safeguards."<sup>19</sup> In terms of application of safeguards to the activities and projects financed by the GRIF, the safeguards of the organization serving as Partner Entity for a given project will apply for that project. There are currently six GRIF projects, with the IDB, UNDP and World Bank all serving as Partner Entities, hence the safeguards of each of these organisations should be applied to the relevant project.<sup>20</sup>

Despite important GRIF commitments on safeguards, there are genuine concerns that its projects are not meeting agreed standards. The GRIF-UNDP land-titling project is a prime example. APA and civil society concerns about this GRIF project and the process for its development have been largely dismissed, despite serious questions over compliance with international standards for titling and demarcating indigenous peoples' lands. APA, FPP, RFN and other civil society organisations are very concerned that the UNDP is in serious risk of

18 See, for example, Eden, M J (1986) "Monitoring Indigenous Shifting Cultivation in Forest Areas in Southwest Guyana using Aerial Photography and LANDSAT" pp. 255-278 in Eden, M J and Parry J T (Eds)(1986) *Remote Sensing and Tropical Land Management* John Wiley and Sons, London. See also Mutuo, P. K., Cadisch, G., Albrecht, A., Palm, C. A., Verchot, L. (2005) "Potential of agroforestry for carbon sequestration and mitigation of greenhouse gas emissions from soils in the tropics" *Nutrient Cycling in Agroecosystems*, 2005 (Vol. 71) (No. 1) 43-54

19 <http://www.guyanareddfund.org/>

20 See GRIF Projects summary for a summary of current projects, status, costs and Partner Entities: [http://www.guyanareddfund.org/images/stories/pdf/GRIF\\_Projects\\_Update\\_26-11-13.pdf](http://www.guyanareddfund.org/images/stories/pdf/GRIF_Projects_Update_26-11-13.pdf)

breaching of its own policies, unless major actions are taken in 2014 to rectify flaws in the project design (see C, Failure to uphold FPIC, below).

### **The Forest Carbon Partnership Facility (FCPF) and REDD Readiness**

In addition to bilateral finance through cooperation with Norway, Guyana has been seeking funding through the World Bank FCPF since it became operational in 2008. This multilateral forest and climate fund (funded by donor countries like the UK, Germany, the Netherlands and also Norway) was set up to provide grants to enable forest countries like Guyana to prepare or 'get ready' for future national REDD programmes through so-called 'readiness' activities. In order to access these readiness funds, a country must prepare a REDD Readiness Preparation Proposal (R-PP) document in accordance with FCPF rules, social principles and criteria and in line with the safeguard policies of the 'delivery partner' implementation agency. In 2010, implementation arrangements for FCPF readiness grants moved beyond the World Bank to include a range of potential implementation agencies known as 'delivery partners' that adopted a 'common approach' to safeguards in 2011 (see Box 8). Under this approach core safeguard objectives are as follows:

- Environmental assessment: ensure environmental, and social soundness and sustainability
- Natural habitats: support the protection, conservation, maintenance, and rehabilitation of natural habitats and their functions
- Forests: realize the potential of forests to reduce poverty in a sustainable manner; protect the vital local and global environmental services and values of forests
- Involuntary resettlement: avoid or minimize involuntary resettlements and assist displaced persons in improving or at least restoring their livelihoods
- Indigenous peoples: ensure the full and effective participation of indigenous peoples in a way that fosters full respect for: indigenous peoples' dignity, human rights, traditional knowledge, and cultural uniqueness and diversity<sup>21</sup>

The Guyana Forestry Commission (GFC) is responsible for the R-PP process in Guyana, although its coordination with the LCDS initiative run from the Office of Climate Change (OCC) has been unclear since 2009 (see below). There have also been long delays in the readiness planning process due to changes in the FCPF's rules and modification of its framework for the implementation of readiness grants. At the same time, multiple drafts of Guyana's R-PP have been issued, the final draft being dated December 2012. No versions of the R-PP have been the subject of community consultations, though draft versions have been open to public comment by national organisations with internet access, including the APA (see below).

### **R-PP social commitments**

The final version of Guyana's R-PP makes several commitments on community consultation, FPIC, land rights and plans to conduct a Strategic Social and Environmental Assessments (SESA). The December 2012 R-PP states that:

21 FCPF (2012) *Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners*. Final version revised 9th August 2012. Available at: <http://forestcarbonpartnership.org/common-approach-environmental-and-social-safeguards> [Accessed 27th January 2014].



**"Land tenure and land rights are priority areas that are included as aspects under the R-PP as the clear definition of the rights over carbon is critical to establishing a benefit sharing mechanism. Advancing efforts in the titling process has therefore been identified as a priority area." (R-PP at page 6).**

**The R-PP proposes conducting "a Strategic Environmental and Social Assessment (SESA) of the potential impacts of REDD+ on the environment, access to land and natural resources, as well as on the livelihoods of forest dependent Stakeholders. The potential impacts and risks will be assessed and based on these; appropriate mitigation measures to *avoid* or manage negative impacts will be developed." (R-PP at page 6, *emphasis added*).**

**The GoG is... "Committed to implementing a robust consultation, participation, and outreach plan geared towards gathering information, issues and opinions from relevant stakeholders and processing these so that possible solutions can be formulated or amended to address the concerns of stakeholders... The stakeholder Consultation and Participation Plan will be based on the principle of Free, Prior and Informed Consent (FPIC)." [R-PP at page 20].**

However, on the matter of FPIC, the R-PP is contradictory. In one part, like the LCDS, it affirms that FPIC will apply to titled lands and villages only:

**"Titled Amerindian villages will have the option to participate in any Interim REDD+ mechanism at any time during the period 2010-2015, in accordance with the principle of free, prior and informed consent." (R-PP at page 9, *emphasis added*).**

In another part of the R-PP, the GFC notes:

**"GoG interventions will be guided by the principles of free, prior and informed consent, covering both titled and untitled Amerindian areas, thus ensuring that no one will be forced to participate in REDD+ or the LCDS." (R-PP at page 45, *emphasis added*).**

### **World Bank involvement and due diligence issues**

The World Bank started the FCPF process in Guyana in 2008 and an early draft of the R-PP was controversially approved by the FCPF governing body (Participants Committee) in June 2009, despite proven evidence of poor participation and unresolved concerns of indigenous peoples. The FCPF did request corrections to Guyana's R-PP, which resulted in later drafts as noted above. World Bank teams undertook field missions in 2009, including visits to the Upper Mazaruni and the Rupununi, to learn about tenure and community participation issues as part of its safeguard due diligence process. Other than a World Bank paper on tenure and REDD in Guyana published in 2010,<sup>22</sup> the results of this due diligence assessment are unclear up until today.

22 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

## Box 8: The FCPF's Common Approach and social principles and procedures

The **WB's safeguard policies and procedures** serve as a minimum standard for FCPF activities. Through legally binding *Transfer Agreements*, the Delivery Partners have to specify how they achieve “*substantial equivalence*” to the WB's standards.

Where the Delivery Partner's safeguard policies and procedures are superior to the WB's (e.g. UN-REDD Programme) the more “stringent and/or protective” safeguards apply.

**The role of stakeholder engagement:** The FCPF and the UN-REDD Programme have jointly adopted guidelines and principles regarding effective stakeholder engagement, with a special focus on indigenous peoples and forest-dependent communities.

**Free, Prior and Informed Consent (FPIC):** The FCPF does not require FPIC but Free Prior Informed Consultation (FPICon), which aims to obtain broad community support (see WB's OP 4.10). Given that FPIC standards are more protective and stringent than FPICon, FPIC needs to be applied under the following conditions:

- When the participant country has ratified ILO Convention No. 169 or adopted national legislation on FPIC
- When the Delivery Partner's safeguard policies require FPIC (e.g. UN-REDD Programme requirements extended to UN agencies such as UNDP and FAO)

**Specific venues for stakeholder participation:** The CA explicitly addresses stakeholder engagement in relation to the following mandatory FCPF instruments:

**R-PP:** Readiness Preparation Proposal

**SESA:** Strategic Environmental and Social Assessment

**ESMF:** Environmental and Social Management Framework<sup>23</sup>

**Disclosure of information:** The importance of access to information is emphasised and important documents such as the R-PP, periodic monitoring reports and the ESMF must be made publicly available.

**Grievance and accountability:** Country participants must establish mechanisms for grievance and accountability. In addition to national grievance mechanisms, some delivery partners under the FCPF (such as IDB and UNDP) have their own grievance procedures. The FCPF has adopted guidelines on accountability and redress, while the UN-REDD Programme is also developing grievance procedures.

The R-PP template that is common for both UN-REDD National Joint Programmes and FCPF Readiness Plans contains a dedicated section on the establishment of recourse mechanisms. Additionally, the FCPF has recently published a draft toolkit for the establishment of grievance mechanisms at the national level.<sup>24</sup>

23 The ESMF is composed – among others – of an Environmental and Social Assessment Framework, an Indigenous Peoples Planning Framework (IPPF), and a Stakeholder Engagement and Dispute Resolution Framework. The IPPF includes a framework for Free Prior Informed Consultation with affected communities.

24 For more information see: <https://www.forestcarbonpartnership.org/draft-toolbox-addressing-grievances-and-disputes-during-redd-readiness-preparation-0>



Amerindian organisations in Guyana, including the APA, have sought to undertake their own capacity building efforts for Amerindian Villages on the LCDS and REDD given a strong demand for information coming from Village residents throughout the interior. After more than five years since Guyana joined the World Bank Forest Carbon Partnership Facility (FCPF), no formal consultations on and REDD+ and Guyana's Readiness Preparation Proposal (R-PP) have taken place at the community level. Official government Plans for local consultations are still pending in early 2014.

*Photo: Tom Griffiths*

### **Enter the Inter-American Development Bank (IDB)**

With changes in the FCPF's implementation rules (see above), Guyana chose the IDB as delivery partner in 2011.<sup>25</sup> Little progress was made until 2013 when Guyana signed a new agreement with the IDB for a US\$3.8 million grant for R-PP implementation over a period of 3.5 years.<sup>26</sup> This FCPF grant to be implemented by GoG and the IDB is to support the following activities:

- setting-up national REDD readiness institutions, including a national conflict resolution and grievance mechanism (within existing national frameworks)
- development and implementation of a communication, outreach and consultation strategy and action plan (consultancy firm, GFC and National Toshias Council)
- assessment of forest clearance and degradation (consultancy firm)
- development of a REDD+ strategy options and a REDD+ implementation framework
- training of government agency staff on legislation, policies, guidelines and safeguards
- definition of carbon rights, including land tenure linkages (consultancy firm)
- completion of a SESA impact assessment, including a review of the legal and policy frameworks in Guyana

<sup>25</sup> Stabroek News, March 18, 2011. *IDB to administer carbon partnership grant*

<sup>26</sup> Stabroek News, January 14, 2014. *Guyana awarded US\$3.8 million to strengthen forest protection*

— monitoring of readiness activities, including the independent monitoring of safeguard compliance.<sup>27</sup>

### **IDB safeguards triggered, but due diligence remains vague**

The IDB safeguard due diligence process undertaken in 2013 classified the FCPF grant under a 'B' risk category. The Bank identifies a series of risks that trigger its safeguards policies and rules on Resettlement (OP-710), Indigenous Peoples (OP-765) and Gender Equality (OP-761).<sup>28</sup> While the IDB Safeguard Screening undertaken in August 2013 notes failures to address risks for indigenous peoples in voluntary isolation as well as possible negative impacts on gender equality, it is not clear on risks to land rights, livelihoods, customary resources and FPIC. More positively, the assessment does note that impacts on indigenous peoples' territories and natural resources are "...presumed to be significant unless further analysis demonstrates otherwise."<sup>29</sup>

Overall, however, the summary IDB safeguards assessment completed in 2013 is somewhat abstract and difficult to comprehend. One major gap in the assessment is its failure to document problems with Guyana's legal framework that risk serious violations of indigenous peoples' rights if forest and climate policies and pilot projects move ahead without prior legal and governance reforms (see Section 1).

## **Experiences on the ground**

Despite important commitments on participation and indigenous peoples' rights under the LCDS and the FCPF proposals, indigenous peoples' experiences of the LCDS and REDD initiatives in Guyana, including the GRIF, are so far mixed. There is strong evidence to show that participation standards and other safeguards have not been met.

### **Lack of effective participation**

From the outset of government of Guyana's interest in forest and climate projects in 2007, the APA and FPP along with other civil society organisations have raised concerns about the lack of participation in government dealings with international agencies and donors. As early as 2008, concerns were raised over the submission of a REDD Readiness Idea Note (R-PIN) presented to the World Bank's FCPF without consultation with indigenous peoples in Guyana.<sup>30</sup>

Multiple concerns have also been raised in relation to the process for developing the LCDS policies. Whilst international monitors claim that consultation had met best practice principles during initial LCDS outreach in June-August 2009,<sup>31</sup> reports from indigenous peoples tell a different story. Many meetings were rushed, materials were not provided in appropriate formats, legitimate community questions on land issues were rebutted by ministers (e.g., in LCDS meetings in Lethem), translation into local languages was defective, and most meetings

27 IDB (2013a) *Forest Carbon Partnership Facility in Guyana (GY-T1097)* TC Document, IDB, Washington DC

28 IDB (2013b) *Safeguard Policy Filter Report* 2013-08-05

29 IDB (2013c) *Safeguard Screening Form* 2013-08-05

30 Dooley, K, Griffiths, T, Leake, H and Ozinga, S (2008) *Cutting Corners: World Bank forest and carbon fund fails forests and peoples FPP and FERN briefing*, Moreton-in-Marsh

31 The IIED report did note multiple shortcomings in the government-run outreach process, including lack of feedback to hinterland communities after consultation and the lack of understanding on core elements of the LCDS. Surprisingly, however, these limitations did not impact IIED's conclusion that the 'consultations' were credible, transparent and inclusive. See IIED (2009) *Independent review of the stakeholder consultation process*, at page 5.

only lasted a few hours.<sup>32</sup> The APA has highlighted the problem with overly technical language used in LCDS and REDD documentation and public presentations made by the government on numerous occasions.

The Guyana Human Rights Association has likewise recently raised the same concerns. It has stressed that the technical terminology of the LCDS and FCPF is a serious barrier to accountability and transparency in public policy making on forests and climate change in Guyana.<sup>33</sup>

Independent capacity building work on rights issues carried out by the APA in 2011-12 with communities in Regions 1, 2, 7, 8 and 9, has confirmed that the level of understanding of the LCDS is low in Amerindian villages, while Amerindian awareness of REDD and related initiatives like the FCPF is even lower and close to zero in most cases. To date, the majority of the indigenous communities still do not understand the LCDS and how it could impact them. In 2010, it was proposed that 'information sharing' with Amerindian villages would be led by the National Tshaos Council (NTC), while the GFC would deal with 'technical aspects' of REDD. This has still not taken place (as of March 2014), though it is still promised in official FCPF documents, including the 2012 R-PP document.

Supporting the NTC to do its own capacity building and outreach would seem to be a good thing provided that the materials are well-balanced. In order to ensure effective capacity building, it would also be necessary for the NTC to be able to have full access to independent information on REDD and its risks and opportunities. At the same time, a note of caution is needed. Even if this NTC work does proceed, there are legitimate questions about the viability of consultation and outreach being left solely to indigenous peoples, when it is the state and also international agencies, like the IDB, that have duties and commitments to ensure community participation in their programmes and operations.<sup>34</sup>

Participation and effective consultation in relation to specific investments under the LCDS have also been lacking. APA field visits to Patamona communities in 2011 and 2012 confirmed, for example, that the 'flagship' Amaila Falls Hydropower Project had not undertaken meaningful consultation with impacted communities. Social and environmental impact assessments had likewise failed to include effective mechanisms for the participation and input of local rights-holders and potentially affected villages (see Section 1). In the same way, while communities have broadly welcomed the solar panel units supplied under the LCDS frameworks, most were surprised to learn in 2012 of hidden service payments required each year. Beneficiaries claim that these payments were never explained clearly upfront to households and Village Councils.

In addition to ongoing shortcomings in LCDS participation frameworks, the issue of community participation in REDD readiness in Guyana is still unresolved. The GFC claims it has made numerous outreach efforts on REDD issues in hinterland communities. While some GFC visits to 'cluster' communities have been carried out, community consultations have still not taken place.

32 *Public Statement by participants Workshop on Indigenous Peoples' Rights, Extractive Industries and National Development Policies in Guyana, 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 resources decision-making in Guyana* FPP-APA report, Moreton in Marsh

33 Stabroek News, October 27, 2013. *Complex language inhibits oversight in forest protection programme – GHRA*

34 On IDB commitments to ensure effective participation of indigenous peoples in all its projects and programmes affecting indigenous communities, see IDB (2006) *Indigenous Peoples and Indigenous Development: Operational Policy and Sector Strategy*. Available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=2032081>. IDB documents on the FCPF grant published in 2013 are not clear on the division of labour between international consultant, the GFC and NTC on the development and implementation of a readiness and REDD consultation strategy and action plan – see IDB (2013a) *Forest Carbon Partnership Facility in Guyana (GY-T1097) TC Document*, IDB, Washington DC at pages 3-4

Recent documentation from the IDB now indicates that a full communications plan for national REDD Strategy development will now be developed in 2014. However, the potential for confusion on the roles of the GFC, NTC, international consultants and the IDB in any communications and consultation effort remains (see footnote 33).

### **Ineffective framework for land tenure governance**

One of the most glaring and serious gaps in the entire LCDS safeguards framework is a persistent lack of due attention to problems in national laws and normative frameworks for the titling and demarcation of Amerindian lands. The APA, among others, has communicated these problems and the need for corrective actions to the government of Guyana, international agencies including the UNDP and World Bank, as well as directly to the government of Norway on multiple occasions.<sup>35</sup> Problems with the current land rights system in Guyana have been confirmed by UN human rights bodies numerous times and these findings have also been made plain to international donors and the government (see Section 1). Unfortunately, however, to date no actions or even commitments have been made under the LCDS to address problems with the land rights framework in Guyana.

Though land tenure is seen as a core issue for Guyana's REDD plans (see above), the final version of Guyana's R-PP does not address substantive issues raised on land rights and FPIC by the APA in several formal submissions regarding the 2009 and 2010 draft versions of the R-PP. The December 2012 R-PP contains no direct acknowledgement that there are serious problems with the official process for titling and demarcation process for Amerindian lands. The R-PP discussion of demarcation "challenges" only refers to the perceived high cost of titling operations and the potential for disagreements on title boundaries between communities.<sup>36</sup>

Attention to Amerindian tenure issues has been largely tied to a GRIF project for Amerindian Land Titling (ALT) with a budget of \$10.7 USD over three years (2013-2016). This project has never included community-level consultations. The APA can confirm that in 2013 most Amerindian villages were unaware of the contents of the UNDP-GRIF project and had little or no understanding of the government and UNDP proposed schedule for land titling, demarcation and processing of land title extension applications. Indeed, the ALT project document is not available at the village level. APA and international NGOs wrote to UNDP and the GRIF urging that the project must be designed in a participatory manner in order to meet LCDS safeguards and the UNDP's own policies on indigenous peoples. While the final project document pays lip service to international safeguards, there is no concrete plan to ensure compliance in project design and implementation.

Most worryingly, the 'situation analysis' in the project document is incomplete as it fails to identify weaknesses and gaps in Guyana's legal and regulatory framework for securing the land rights of indigenous peoples. The APA, FPP, RF-US and RFN recommendations for changes in project design have been disregarded, and the project was formerly approved in October 2013.<sup>37</sup> The disturbing fact is that the UNDP itself is likely itself to already be in breach of agreed social safeguards for failing to ensure adequate participation during the design of the project and for sidelining legitimate concerns raised by the APA and international NGOs.

35 *Comments by the Amerindian Peoples Association (APA) on the Government of Guyana project concept note on "Amerindian Land Titling and Demarcation" submitted to the Guyana REDD Investment Fund (GRIF), January 2011*

36 FCPF (2012) Guyana's Readiness Preparation Proposal (R-PP), December 2012 at page 35 <http://www.forestcarbonpartnership.org/sites/fcp/files/2013/FCPF%20-%20Readiness%20Preparation%20Proposal%20-%20Guyana%20December%202012.pdf>

37 *Amerindian Land Titling, demarcation to move ahead*. Available at: [http://www.lcds.gov.gy/index.php?option=com\\_content&view=article&id=473:amerindian-land-titling-demarcation-to-move-ahead&catid=58:slide-show&Itemid=176](http://www.lcds.gov.gy/index.php?option=com_content&view=article&id=473:amerindian-land-titling-demarcation-to-move-ahead&catid=58:slide-show&Itemid=176)

Also worrying is the fact that original plans for the establishment of a grievance mechanism for the ALT to receive community concerns have seemingly been abolished in the final ALT project document.<sup>38</sup> The only substantive safeguard remaining is a commitment to uphold the principle of FPIC in the project, yet how this will be done and according to which principles and agreed criteria are not at all clear (see C, Non-compliance confirmed by independent verifiers, below).

If the ALT FPIC system seeks to rely on existing rules and legal procedures, it is unlikely to work and will have little credibility as the Minister of Amerindian Affairs and the government's Lands and Surveys Commission officials are known to consistently interfere in (and even overrule) community positions and Village Council decisions in relation to land titling matters - itself one of the key problems with the existing system of land tenure governance (see Section 1).

APA strongly rejects any accusations that commenting on an international project and seeking adherence to agreed standards is in some way 'blocking' Amerindian titling, yet these accusations have allegedly been made to Village Councils and the NTC by government officials. The APA has welcomed efforts to progress with titling of indigenous peoples' lands in all its communications on the ALT, but it has at the same time insisted that any UN-sponsored programme must meet international standards to ensure that Amerindian collective systems of land tenure are duly recognised through transparent processes that are fair and objective, with guarantees for community access to agile and independent means of appeal when things go wrong (see also Section 1). So far these guarantees are not forthcoming and the LCDS is thus in breach of its own social commitments and Guyana stands to violate its international obligations.<sup>39</sup>

World Bank papers on land tenure issues and REDD in Guyana have noted some of the problems with unresolved land issues in the country (including the Upper Mazaruni land rights case in the High Court), yet have failed to pinpoint underlying structural and legal causes for land tenure insecurity among indigenous peoples.<sup>40</sup> At the end of 2013, it still remained unclear how the World Bank's FCPF and the Inter-American Development Bank (as FCPF delivery partner) will address unresolved land issues as part of the implementation of the Guyana's REDD Readiness Proposal (R-PP). A recent update document from the FCPF issued in October 2013 on Guyana simply states: "discussions (on Amerindian land issues) are underway on approaches that may be used to address these claims in a mutually-agreeable manner during the readiness phase."<sup>41</sup>

The current prospects for progressive dialogue involving indigenous peoples look slim, given the reluctance of the GRIF and the UNDP country office to address proven problems in the land titling process. Matters are not helped by the fact that the R-PP itself fails to recognise systemic problems in the forest tenure framework, a shortcoming that APA has communicated to GFC and the World Bank numerous times, including through face to face meetings in Washington DC and in community forums in Guyana since 2009.<sup>42</sup>

38 Though plans for a REDD 'conflict resolution and grievance' mechanism are contained in the IDB FCPF project document issued in 2013, there is no guarantee that this FCPF mechanism – if it is developed - will be linked to the GRIF land titling project.

39 APA (2013) *Concerns with Amerindian Land Titling Project under the Guyana/Norway Guyana REDD Investment Fund (GRIF)* APA Press Release, 25 October, 2013 <http://www.forestpeoples.org/topics/redd-and-related-initiatives/news/2013/10/amerindian-peoples-association-apa-press-release-co>

40 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

41 *REDD Readiness Progress Fact Sheet COUNTRY: GUYANA Sept 2013* [http://forestcarbonpartnership.org/sites/fcp/files/2013/Oct2013/Guyana%20FCPF%20REDD%20Readiness%20Progress%20Sheet\\_September%202013%20final.pdf](http://forestcarbonpartnership.org/sites/fcp/files/2013/Oct2013/Guyana%20FCPF%20REDD%20Readiness%20Progress%20Sheet_September%202013%20final.pdf)

42 APA (2009) *Comments on the draft Readiness Preparation Proposal (RPP), September 2009* <http://www.forestpeoples.org/region/guyana/publication/2014/amerindian-peoples-association-apa-comments-draft-readiness-prepara-0> ; APA (2010) *Comments on the draft Readiness Preparation Proposal (RPP), April 2010* <http://www.forestpeoples.org/region/guyana/publication/2014/amerindian-peoples-association-apa-comments-draft-readiness-preparati>

Like the GRIF, however, the GFC has failed to act on the APA's legitimate concerns and constructive proposals on ways to address the land issues and find workable legal solutions.<sup>43</sup> Of deep concern is that the latest version of the R-PP reaffirms the rights of third parties, including loggers and miners, over Amerindian lands where leases and permits have been issued prior to government granting of a land title.<sup>44</sup>

As explained in the first section of this report, it is unhelpful that legal rulings in Guyana's courts have sought to privilege the rights of third parties over communities, which in turn has led to protracted land conflicts and land insecurity for many Amerindian villages affected by miners and loggers occupying their titled and untitled customary lands. The lack of any formal process for land restitution and territorial ordering (*saneamiento*) of Amerindian land titles to ensure titles are undivided (i.e. without gaps and excluded properties and leaseholds) and secure is not addressed anywhere in the LCDS or REDD plans on forest tenure, nor in the UNDP-GRIF Amerindian Land Titling project. This remains a major shortcoming of the LCDS and Guyana's land policies in general (see Section 1).

### **Failure to uphold FPIC**

Linked to the land rights issues is the failure of the LCDS to properly apply the FPIC standard for indigenous peoples. Although national media and government-run press has repeatedly suggested that indigenous peoples express support for LCDS and REDD, in reality there is still no agreed process for free, prior and informed consent and communities do not have adequate information to make informed collective decisions (see above).<sup>45</sup>

While the Guyana 2012 R-PP claims that measures are taken to try and ensure that logging and mining rights are not issued on untitled areas under claim by Amerindian communities ('areas identified for extension'),<sup>46</sup> governmental practice in Guyana routinely ignores this core standard. As a result, timber and mineral concessions are imposed on Amerindian customary lands throughout the country, including on lands notified to the government for title extension applications. Violations of FPIC in relation to mineral and forestry developments have been committed by both GFC and GGMC in 2013 (see Sections 1 and 5).<sup>47</sup>

### **Problems with the proposed 'Opt-in' framework**

Numerous LCDS documents claim that the government will respect the principle of FPIC.<sup>48</sup> What is not made clear is that FPIC applies to LCDS decisions and actions that may affect Amerindian titled lands, whilst FPIC over community forests on untitled lands is not protected under either the LCDS or REDD. This major shortcoming seems to stem, at least

43 The R-PP does note that land tenure issues are 'complex' and challenging and does acknowledge that communities may not be happy with their title areas, but puts forwards no solution to these problems and does not explain why these grievances occur (most are linked to flawed titling procedures). Much of the tenure analysis in the R-PP centres on the financial costs of titling and demarcation. See *Guyana's Readiness Preparation Proposal (R-PP), December 2012* <http://forestcarbonpartnership.org/sites/fcp/files/2013/FCPF%20-%20Readiness%20Preparation%20Proposal%20-%20Guyana%20December%202012.pdf> at page 35

44 Ibid.

45 La Rose, J (2013) "Guyana: indigenous peoples and the lack of adequate consultation on REDD+" at page 8-11 in Accra Caucus (2013) *REDD+ Safeguards: more than good intentions? Case studies from the Accra Caucus on Forests and Climate Change* Rainforest Foundation Norway, HuMA, CED, APA and CARE.

46 FCPF (2012) *Guyana's Readiness Preparation Proposal (R-PP), December 2012* at page 35 <http://www.forestcarbonpartnership.org/sites/fcp/files/2013/FCPF%20-%20Readiness%20Preparation%20Proposal%20-%20Guyana%20December%202012.pdf>

47 See, for example, Guyana: *Wapichan people speak up once again for their lands and forests*, FPP Enews, July 2013 <http://www.forestpeoples.org/topics/extractive-industries/news/2013/07/guyana-wapichan-people-speak-once-again-their-lands-and-fo>

48 See, for example, LCDS (2013) at pages 9, 11, 22 and 33. See also, REDD+ Governance Plan (2011) at page 27; and Guyana's R-PP at pages 9, 20, 24, 28



in part, from a fundamental flaw in Guyana's legal framework that defines 'Amerindian lands' under the Amerindian Act as only those lands granted (sic) title by the state. This is in direct contradiction of international norms and obligations that establish that indigenous peoples' possession of lands and territories does not depend on prior grants or privileges given by the state, but are rather preexisting and inherent rights that require protection under law, including through respect for FPIC.<sup>49</sup> In other words, the minimum FPIC standard applies to indigenous peoples' customary lands and territories irrespective as to whether or not they possess legal title to those lands.<sup>50</sup>

The GoG in 2013 claimed that the "overwhelming majority" of Toshaos support the draft opt-in<sup>51</sup> proposal that would form part of the LCDS and the REDD FPIC framework,<sup>52</sup> yet Toshaos spoken to by the APA and FPP report that elements in the draft opt-in paper still make little sense. Vital issues for agreement also remain ambiguous (e.g. approach to rotational farming and actual REDD rules that would need to be met by each Village deciding to opt-in).

The draft opt-in framework repeats the fundamental error in the application of FPIC and discrimination against untitled communities found in many national policies.<sup>53</sup> The Concept Paper establishes that only villages with legal title can opt-in, and that the decision to opt-in shall be guided by FPIC. Once again, the requirement for villages to be titled, as well as the assumption that FPIC applies only to titled villages is guided by the 2006 Amerindian Act, which contains some limited protection of the right to FPIC for titled villages, however it does not provide similar protection for untitled communities. This situation is not consistent with international law, or the Guyanese constitution. The UN CERD considers this discriminatory, and 'urges' Guyana to remove the distinction between titled and untitled communities from the 2006 Amerindian Act.<sup>54</sup>

Considering the 'performance based' nature of the opt-in mechanism, it is vital that communities understand the full costs and obligations associated with entering into a legal agreement with the GoG over their forested lands. In contrast, the consultations so far have been somewhat one-sided, highlighting the praises for the LCDS and focusing on the possible financial benefits that could be accrued for Amerindian Villages, rather than potential challenges and risks for indigenous rights, freedoms and livelihood security: if people are asked to consider reducing the use of subsistence farms, where will they get their food? What are the potential impacts on their welfare and way of life? These are serious questions that have not been discussed nor answered so far under the LCDS/REDD initiative.

49 See IACHR (2009) *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System* <http://cidh.org/countryrep/Indigenous-Lands09/TOC.htm> See also, *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs Judgment* of 12 August 2008. Series C No. 185. [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_185\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf).

50 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

51 A Technical Working Group coordinated by the Office of Climate Change and comprising key Government entities has been tasked to take the initial steps towards developing the 'Opt In' Mechanism, and in early 2010 this group prepared a Concept Paper, *Developing a framework for an 'Opt In' Mechanism for Amerindian Communities*. This version was reportedly amended in 2012, but the authors have not obtained a copy of the latest version as the only version found online is the original 2010 draft paper.

52 Guyana Chronicle, 25 October, 2013, *Toshaos Conference reaffirms support for LCDS – signals approval for Draft Opt-in Mechanism*. Available: <http://guyanachronicle.com/toshaos-conference-reaffirms-support-for-lclds-signals-approval-for-draft-opt-in-mechanism/>

53 Office of the President, Republic of Guyana. March 2010. *Developing a Framework for an "Opt In" Mechanism for Amerindian Communities*. Concept Paper, at page 3

54 UNCERD specifically "...urges the State party to remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act..." *Concluding Observations of the UN Committee on the Elimination of Racial Discrimination*, March 2006 at para. 15

In short, one of the most basic gaps in the whole FPIC and Opt-in framework is the absence of objective information on the potential costs and negative impacts (risks) for Amerindian Villages should they consider opting in to a contract for REDD. As already highlighted, this problem stems from the fact that no impact and risk assessments have been undertaken to pinpoint the potential advantages and disadvantages of joining a REDD scheme and receiving payments under the LCDS.

### **Non-compliance confirmed by independent verifiers**

Following an independent review of the stakeholder consultation process for the LCDS by IIED in 2009, Rainforest Alliance was twice awarded the assignment to verify the progress in the enabling activities under the LCDS, in 2011 and 2012. When the report from the first verification audit was released in 2011, Rainforest Alliance received strong criticism from various international NGOs for not taking into consideration a series of concerns and proven challenges relating to problems in Guyana's legal framework in relation to indigenous peoples' rights.<sup>55</sup>

In December 2012, the Rainforest Alliance released their second verification report. This time the verification team had more time for field visits and did conduct rigorous discussions with affected communities. They visited six different regions and met with representatives of 16 Amerindian villages. In total, the team met 264 members of Amerindian communities and 10 representatives of Amerindian organisations, in addition to other interested parties.

### **Guyana meets three indicators out of ten<sup>56</sup>**

The increased level of field visits by the independent verifier in 2012 delivered deeper insights into the delivery of the LCDS. Overall, the report found that Guyana had met only three of the ten indicators (with four indicators partially met).<sup>57</sup> The poorest performance was found in relation to protection of indigenous peoples' rights, Amerindian participation, multi-stakeholder consultations and measures to reduce forest degradation associated with mining (Box 9). The audit team concluded that Guyana had so far failed to conduct transparent and effective multi-stakeholder consultations, and that the MSSC was not an effective mechanism for communication and consultations between all stakeholders interested in the LCDS and REDD+ at the time of the audit (indicator 1). The report says that the role of the MSSC seems to have become more political and partisan as a result of what appear to be actions led by government representatives.

55 *Analysis of Rainforest Alliance Report on the Verification of Progress Related to Enabling Activities for the Guyana-Norway REDD+ Agreement*. Joint NGO Letter to Norwegian International Climate and Forest Initiative (NICFI) and Rainforest Alliance regarding independent verification of social conditions attached to Norwegian aid for forest and climate schemes in Guyana, April 2011 <http://www.forestpeoples.org/sites/fpp/files/publication/2011/05/norway-guyanamouanalysis-ra-report-final.pdf>

56 Note: Together with the release of the 2012 audit report from Rainforest Alliance, a revised and updated Joint Concept Note was launched. The verification indicators reviewed in the RA 2012 audit (presented in Box 7) are therefore from the previous JCN, while in the 2012 JCN two more indicators are listed

57 See Box 7 for table of enabling indicators

### Box 9: LCDS verification indicators

Lcads verification indicators		Rainforest alliance's audit conclusion
1:	Transparent and effective multi-stakeholder consultation continue and evolve	Not met
2:	Participation of all affected and interested stakeholders at all stages of the REDD+/LCDS process	Partially met
3:	Protection of the rights of indigenous peoples	Not met
4:	Transparent and accountable oversight and governance of the financial support	Partially met
5:	Initial structure for the Independent Forest Monitoring (IFM)	Met
6:	Continuing stakeholder consultation on the European Union Forest Law Enforcement, Governance and Trade (EU-FLEGT) process	Met
7:	Continuing development of a national inter-sectoral system for coordinated land use	Partially met
8:	Continuing stakeholder consultation on the Extractive Industries Transparency Initiative (EITI)	Partially met
9:	Measures by the GoG to work with forest dependent sectors to agree on specific measures to reduce forest degradation	Not met
10:	Mapping of priority areas for biodiversity in Guyana's forests	Met



Field visits to villages made by FPP and APA throughout the hinterland of Guyana during 2009-2013 documented a general lack of understanding of LCDS policies and potential benefits and risks for Amerindian Villages.

*Photo: Tom Griffiths*

In the 2012 audit, Rainforest Alliance concluded:

**“...participation, consultation and feedback from all affected and interested stakeholders, and specifically from Amerindian communities, as articulated in the JCN, were not effectively enabled during this evaluation period.”<sup>58</sup>**



The APA assembly held in May 2011 reaffirmed consensus among participants on the need for prior resolution of outstanding Amerindian land issues before LCDS and REDD projects may move ahead.

*Photo: Tom Griffiths*

The same social audit found that government outreach efforts have declined since 2009, with the Guyanese government making very few visits to Amerindian communities during the audit period.<sup>59</sup> Rainforest Alliance reported:

**There has also been a noticeable reduction in the efforts by the Government of Guyana (GoG) to communicate and consult with stakeholders. Amerindian communities are particularly concerned about the lack of information available to them in regards to their many questions about the REDD+ activities, and the Low Carbon Development Strategy (LCDS) more generally. They are also concerned about the absence of a consistent, ongoing and robust approach or framework for interactions between the Government of Guyana (GoG) and Amerindian communities [...]**<sup>60</sup>

The Rainforest Alliance audit team observed that the level of interest and the desire for information was high among the Amerindians they met during their community visits, but they found that the level of frustration was also high and that good information about the LCDS and REDD+ was lacking in “most, if not all of the Amerindian communities visited.”<sup>61</sup>

58 Rainforest Alliance, December 2012, *Verification Of Progress Related To Indicators For The Guyana-Norway REDD+ Agreement*, Richmond, VT, at page 7, Verification Indicator 2. [http://www.redd-monitor.org/wordpress/wp-content/uploads/2013/01/Rainforest\\_Alliance.pdf](http://www.redd-monitor.org/wordpress/wp-content/uploads/2013/01/Rainforest_Alliance.pdf)

59 Ibid

60 Ibid at page 5

61 Ibid at page 30

At the start of 2014, this situation had not changed: Amerindian villages and organisations still await the promised culturally appropriate capacity building and consultation programme for REDD promised under the FCPF several years ago.

As noted above, the opt-in mechanism is supposed to be the means by which forest-dependent Amerindian communities can participate in the REDD/LCDS process. The Rainforest Alliance audit found a lack of understanding, concerns and confusion with regard to the mechanism in most of the villages visited. Evidence gathered by the team suggests that the communities have been provided with insufficient information, and that the Government of Guyana had failed to enable indigenous communities to opt in:

**Several cases make it clear that FPIC has been lacking in the REDD+/LCDS process, particularly with respect to territorial rights and the REDD+ opt-in process that will soon be available to forest-dependent Amerindian communities. The opt-in mechanism appears to suffer because of a lack of understanding by the very people who need to make a decision on how to proceed.<sup>62</sup>**

During the 2012 Independent Review, Rainforest Alliance reported difficulties in getting access to necessary and meaningful information on the land titling process and pending cases from the MoAA, who apparently withheld dates of pending applications for absolute grants, demarcation and extensions, despite requests from the audit team. This made it impossible for Rainforest Alliance to determine if the MoAA has complied with its own three-year plan for titling, demarcation and extension of Amerindian lands:

**Multiple stakeholders indicate that the GoG has failed to document and address land titling concerns of many Amerindian communities within the time frame established by the Amerindian Act. Attention to, and negotiation over, untitled community lands and extensions appears to have stalled.<sup>63</sup>**

Reactions by the government of Guyana and Norway to this highly critical review have not been made public, short of the revised Joint Concept Note being released. The APA and FPP are unaware of concrete actions taken to address the shortcomings in meeting key social safeguards and commitments on the rights of indigenous peoples highlighted in the review.

### **Flawed 2013 audit**

Despite recent GoG claims under the 2013 independent verification audit that “the UNDP and Government of Guyana ensured that the ALT project complied with the laws, policies and safeguards of Guyana, and the international treaties and declarations that it is a signatory”,<sup>64</sup> there is much evidence to demonstrate that this is not the case. Even though it is admitted in the audit report that customary rights are not properly documented,<sup>65</sup> the audit concludes that the LCDS is in compliance on respect for IP rights. In this regard LCDS and GRIF compliance with indicator 4 on indigenous peoples’ rights is highly questionable. It appears that the verifier contracted in 2013 (Indufor) has used the problematic GRIF Amerindian Land Titling Project as a proxy indicator for verifier 4.0 on “the rights of indigenous peoples”. In addition, the fact

62 Ibid at page 7, Verification Indicator 3.

63 Ibid

64 Indufor (2013) *Independent Assessment of Enabling Activities of the Guyana-Norway REDD+ Partnership: final report* Indufor, Helsinki, November 2013

65 Ibid at page 13. The report states: “Community Consultations with indigenous peoples were carried out through their own existing processes, with a representative from the Ministry of Amerindian Affairs and the village representatives and Tashaos (village/community chief). Special emphasis was given to issues of land tenure, resource use rights and property rights because in many cases, these may not be clear, especially if customary rights on land areas are not codified”

that Indufor was accompanied by MoAA in the meetings with Amerindian communities raises questions about the openness and impartiality of the consultations and thus independence of the audit.

The verifiers did not take account of (or did not examine) the documented concerns regarding the GRIF-UNDP land titling project raised by APA and civil society organisations that are available on the internet, including on FPP's web site. Also concerning are indications that key international NGOs interviewed by the Rainforest Alliance as part of the 2012 audit, were not interviewed in 2013 by Indufor. Neither FPP nor RFN (despite being civil society observer to the GRIF), were approached to make inputs to the verification process. These gaps and omissions raise serious questions about the credibility of the 2013 audit.

### Performance-based payments

Guyana's LCDS and the bilateral agreement with Norway highlight the difficulties with implementing an international arrangement for performance-based payments. Determining the rate of deforestation is a critical factor for determining performance based payments in reducing rates of forest loss. In the Guyana – Norway MoU, the baseline was set around twenty times higher than the actual historical rate of deforestation.<sup>66</sup> During the first year of the agreement with Norway the actual rate of deforestation increased threefold (from 0.02% to 0.06% per year), yet Guyana received its first tranche of payments for reducing deforestation.<sup>67</sup>

This caused some controversy in international circles,<sup>68</sup> and resulted in the MoU with Norway being modified to reduce payments if deforestation increases above 2010 levels, and halting payments if the deforestation rate exceeds 0.1%, which still allows for a considerable increase in deforestation (see Box 7). Deforestation has continued to rise since the Guyana-Norway MoU was put in place.<sup>69</sup> The overall increase in deforestation compared to the last decade is due to the damage caused by gold miners, with mining remaining the main cause of deforestation in Guyana. The increased deforestation in 2012 could see Guyana lose as much as US \$25 million, due to the modified MoU, which reduces payments if deforestation increases above 2010 levels.<sup>70</sup> As this report went to press, a final decision on the level of Norwegian payments to Guyana for 2012 had not been made.<sup>71</sup>

Despite the potential financial losses to Guyana from mining-driven deforestation, in January 2013, the Guyanese High Court ruled that mining permits obtained prior to the Amerindian Act of 2006 are not bound by its provisions, meaning miners do not have to obtain consent from villages before beginning mining operations. This is in clear contradiction of international norms and obligations as well as the safeguards in the Joint Concept Note to the Guyana-Norway agreement and in Guyana's own LCDS strategy (Section 1).

66 Henders, S and Ostwald, M (2013) *Guyana-Norway REDD+ agreement – Payments based on performance – or politics?* Focali brief <http://www.focali.se/en/articles/artikelarkiv/new-focali-brief-guyana-norway-redd-agreement-payments-based-on-performance-or-politics>

67 Some observers also question the methodologies used and accuracy of deforestation assessments completed by consultancy firms for monitoring of the Guyana-Norway agreement under the terms of the MoU and JCN, noting that estimates of deforestation linked to mining and logging appear to have disregarded official information showing an expansion in both sectors over the last few years.

68 See: Global Witness press release, March 2012, *Guyana sees a threefold increase in deforestation, despite landmark deal to protect its forests*. <http://www.globalwitness.org/library/guyana-sees-three-fold-increase-deforestation-despite-landmark-deal-protect-its-forests>; and Forest Justice, March 29 2011, *Deforestation skyrockets in Guyana despite deal with Norway*. <http://www.forestjustice.org/2011/03/29/when-things-fall-apart-deforestation-skyrockets-in-guyana-despite-deal-with-norway/>

69 Footnote 30 supra

70 Kaieteur News, November 2 2013, *Gov't admits deforestation could hurt Norway Funding*. <http://www.kaieteurnews.com/2013/11/02/govt-admits-deforestation-could-hurt-norway-funding/>

71 "Guyana, Norway still discussing 2012 payment" Stabroek News, 6 May 2014

Despite cases such as this indicating an apparent unwillingness of the government to tackle the drivers of deforestation, performance based payments from Norway have continued, highlighting that results-based payments are not necessarily the best way to incentivise performance in countries with severe governance and corruption issues.<sup>72</sup> Performance measures aimed at improving environmental regulation and respecting rights could be a more direct and cost-effective way to achieve results in terms of reduced deforestation in Guyana.<sup>73</sup>



Mining methods in Guyana are increasingly shifting towards highly destructive open cast land-based operations using large mechanised excavators, leading to extensive and permanent forest clearance.

*Photo: Tom Griffiths*

### Local benefit-sharing

While major shortcomings exist in relation to performance in tackling deforestation and applying safeguards in the LCDS, components linked to local livelihoods have made some progress in delivering local benefits. As of April 2012, several thousand households had benefitted from the solar panels under the Hinterland Electrification Programme (HEP), as well as 21 schools and two health centres. The April 2012 LCDS newsletter reports that an assessment of the pilot programme (pre 2010) showed that the solar systems helped to improve the quality of life in many households, with increased reading, completion of school assignments and listening to educational programmes.<sup>74</sup>

72 Karsenty, A (2011) *Can "fragile states" decide to reduce their deforestation? The inappropriate use of the theory of incentives with respect to the REDD mechanism.* Forest Policy and Economics

73 Karsenty, A et al (2012) *Financing options to support REDD+ activities.* CIRAD report for the European Commission.

74 Focus on the LCDS, Volume 1, April 2012. *Lives are set to be transformed under the LCDS as Hinterland Electrification Programme kicks into full gear.* <http://www.lcds.gov.gy/images/stories/Documents/newsletter/Focus%20on%20the%20LCDS.pdf>

The government of Guyana also reports that gradual progress is being made under the Amerindian Development Fund (ADF), which is supporting 180 Amerindian villages to compile Community Development Plans (CDP), including plans for ecotourism, sustainable agriculture, manufacturing, village business enterprises and transportation.<sup>75</sup> The inception phase for the fund was launched in March 2013, with President Donald Ramotar announcing that G\$5 million (US\$25,000) had been budgeted for each Amerindian community in Guyana for the development of their chosen project towards socio-economic development.

In August 2013, the MoAA and UNDP signed an agreement as implementation partners for the ADF, with the first US\$6 million available for the initiation phase, following an inception workshop in March 2013 for the initial pilot group of 27 communities. The GRIF project status table indicates that the 27 initial communities were selected to ensure that at least one village from each region and at least one project from each sector is represented.

In July 2013, MoAA and UNDP visited communities to conduct capacity building, provide technical assistance and sign agreements with communities/villages for CDP funding and implementation, with over G\$73,000,000 disbursed to communities by September 2013.<sup>76</sup> Agreements have been signed between MoAA and the respective Toshias of seven Region 1 communities: Kamwatta, Manawarin, Waikerabi, Barabina, Three Brothers, Baramita and Four Mile, to begin funding for their CDPs.<sup>77</sup> The initial pilot group of 27 communities will be given a nine month implementation deadline. After an assessment, the second stage of the project will be implemented and the funds will be dispersed to the remaining Amerindian communities. However, to date no independent assessment has been undertaken to assess the quality of the CDPs.

The GoG has committed to developing a benefit-sharing mechanism under the ADF, as part of its 2015 goals.<sup>78</sup> This is supposed to be in line with FPIC, and to form part of the opt-in mechanism, but as of yet there has been no stakeholder consultation on what the benefit sharing mechanism would address or how it would operate.

75 Initiation Plan for the Amerindian Development Fund signed Monday 13 August 2012 [http://www.lcds.gov.gy/index.php?option=com\\_content&view=article&id=442:signing-of-the-initiation-plan-for-the-amerindian-development-fund-adf&catid=58:slide-show&Itemid=176](http://www.lcds.gov.gy/index.php?option=com_content&view=article&id=442:signing-of-the-initiation-plan-for-the-amerindian-development-fund-adf&catid=58:slide-show&Itemid=176)

76 Focus on the LCDS, issue 4, September, 2013: *GRIF projects status update*. <http://www.lcds.gov.gy/images/stories/Documents/september%202013.pdf>

77 [http://www.lcds.gov.gy/index.php?option=com\\_content&view=article&id=461:-first-batch-of-villages-sign-agreement-to-implement-community-development-plans-toshias-express-happiness&catid=55:slide-show](http://www.lcds.gov.gy/index.php?option=com_content&view=article&id=461:-first-batch-of-villages-sign-agreement-to-implement-community-development-plans-toshias-express-happiness&catid=55:slide-show)

78 *Low Carbon Development Strategy Update: transforming Guyana's economy while combating climate change* Office of the President, Republic of Guyana, March 2013, Table 3a - proxies used as part of REDD+ model: earning payments, proxy indicator 4.4: *Rights of indigenous peoples and other local forest communities and safeguards for REDD+ participation*, at page 89. [http://www.lcds.gov.gy/images/stories/Documents/low%20carbon%20development%20strategy%20update\\_final\\_march%202013.pdf](http://www.lcds.gov.gy/images/stories/Documents/low%20carbon%20development%20strategy%20update_final_march%202013.pdf)





The LCDS has been effective in delivering solar panels to Amerindian Villages and outlying families and minor settlements, though hidden service payments have taken most users by surprise.

*Photo: Tom Griffiths*

Most of Guyana's old growth and high carbon stock forest is located on the untitled customary lands of indigenous communities, as pictured here in the Upper Essequibo basin. Indigenous peoples in Guyana maintain that land rights issues must be resolved and titles secured over their community forests before any negotiations and FPIC processes can start with communities in relation to the forest projects under the LCDS.



## Conclusions and recommendations

Taking stock of the LCDS and related forest and climate initiatives in Guyana reveals a mixed picture. On the one hand, some worthwhile local benefits are being delivered. On the other, fundamental commitments on social issues, rights protections and transparency are not being met. These failings risk undermining the sustainability of the entire initiative, and could end up generating adverse impacts on indigenous peoples in Guyana.

This critical review has stressed that one of the main obstacles to sustainability is that land rights protection for indigenous peoples in Guyana still fails to meet international standards. Shortcomings in the 2006 Amerindian Act on land rights matters are widely documented, as well as inconsistencies in the 2009 Forest Act (yet to come into force). APA maintains that effective implementation of social standards and safeguards in Guyana will require national legal and policy reforms under the LCDS and related national policies like FLEGT. These initiatives must enable positive policy changes and set in train a process of legal and governance reforms to ensure sustainability and respect for human rights, including alignment with the minimum standards set out in the UN Declaration on the Rights of Indigenous Peoples (see also Section 5 on FLEGT).

APA welcomes efforts to secure Amerindian land rights, such as the titling of some indigenous peoples' lands and territories, but actions must address and resolve the pending land issues of all Amerindian communities (the current GRIF ALT plan has left many villages out). Land tenure measures need to be carried out in conjunction with broader reforms of national policies in relation to land rights, forests and indigenous peoples. Any programmes carried out under the LCDS must meet international standards to ensure that Amerindian collective systems of land tenure are duly recognised through transparent processes that are fair and objective, with guarantees for community access to agile and independent means of appeal when things go wrong.

Other unresolved needs and issues of importance to indigenous peoples likewise require urgent attention, including the vital need for workable and fair FPIC procedures covering untitled customary lands. Treatment of rotational farming under the LCDS policy framework must also be clarified and fully respectful of traditional practices. At the moment, the LCDS policy on this matter is unclear. "Agricultural conversion" is identified as a key driver of forest loss in Guyana Forestry Commission REDD documents, without specifying which agricultural activities are causing 'deforestation'. These are core matters of concern to indigenous peoples that require public discussion and balanced and fair treatment in line with the Guyanese constitution (Article 149G) and related international obligations.

Public participation in national climate schemes must also include open debate on the pros and cons of different finance options for forest protection payments, including risks of corruption and fraud linked to carbon markets and trade in offset credits, as well as the effectiveness of performance based payments; this discussion has not taken place thus far in Guyana.<sup>79</sup> Crucially, further development of LCDS and related national forest and climate schemes must ensure prior resolution of Amerindian land issues, enable capacity building for communities and their organisations and develop consultation plans in line with FPIC principles and standards. To this end, the APA has the following recommendations for the further funding and implementation of the LCDS:

<sup>79</sup> See, for example, Global Witness (2011) *Forest Carbon, Cash and Crime*. GW, London. <http://www.globalwitness.org/library/forest-carbon-cash-and-crime>.

## **1. Protect land and territorial rights**

The LCDS must establish a fair and transparent process to reform and strengthen land-titling procedures in Guyana to bring them in line with international obligations and standards, including under the GRIF Amerindian land-titling project (2013-16):

- Measures to ensure respect for indigenous peoples' land rights must necessarily include changes to the Amerindian Act in relation to methods and regulations for land demarcation, delineation and titling based on customary occupation, land use and traditional tenure
- The GRIF project for Amerindian Land Titling (ALT) needs to undertake community consultations as a priority for finalising the design and operation of this important project, including development of solid procedures for application of FPIC (including FPIC verification measures)
- The GRIF ALT project should also include plans for a project grievance mechanism
- Robust safeguards for Amerindian land and territorial rights must likewise be built into the IDB implementation of the FCPF REDD+ Readiness grant in Guyana. It is essential that baseline studies and consultations on land issues occur as a priority action under this readiness grant
- The Government of Guyana must recognise community maps showing lands under traditional occupation and use and acknowledge the value of these maps in the settlement of territorial claims, land titling and processing of title extension applications.

## **2. Ensure transparency, participation and effective consultation**

- LCDS policies, including the design of benefit sharing mechanisms, must be subject to a thorough and fair consultation process, in order to ensure full understanding of these policies and their implications by impacted groups
- Much more consultation on the opt-in mechanism is needed at the community level, before it is finalised
- More time must be allowed for effective consultation processes, which adhere to international standards, including the provision of material in local languages, and in an appropriate and accessible format.
- Consultation has to allow adequate time for due respect for local internal systems of decision-making within and between Amerindian Villages
- Caution must be taken not to overburden the NTC with 'consultation' duties
- The GFC and IDB need to ensure that consultation approaches and official information materials on REDD are fair, balanced and transparent, with full information on risks, disadvantages and potential costs of REDD for communities (not just potential benefits and possible advantages)
- Robust participation must be guaranteed for the completion of the SESA and the approach needs to involve careful consideration of potential impacts with communities and indigenous peoples' organisations

## **3. Develop FPIC procedures and mechanisms in collaboration with indigenous peoples**

- FPIC protection must apply to untitled customary lands and territories and not be restricted to titled lands only

- Local Village Council and community rules on FPIC must be respected and must be integrated with any national FPIC procedures
- Mechanisms for independent verification of FPIC have to be developed (for LCDS, FCPF and GRIF-ALT)

**4. Take urgent action to address shortcomings in safeguard implementation under the LCDS and related forest and climate projects**

- Problems with the 2013 audit of ‘enabling’ conditions must be acknowledged and timely remedial actions need to be taken to address the unresolved shortcomings pinpointed in the 2012 audit
- The planned independent monitoring of safeguards by the IDB for the FCPF readiness project should involve indigenous peoples’ communities and organisations

# Amaila Falls hydropower dam threatens the territory, livelihoods and forests of the Patamona people

Lawrence Anselmo and Oda Almås

## Key issues and concerns

- Community consultations on the Amaila Falls Hydropower Project have so far been superficial
- Flawed impacts assessments have downplayed indirect risks of severe negative consequences of dam development in a remote forest area
- Access roads risk opening up Patamona lands and old growth forests to intensive logging and mining that would generate deforestation, environmental pollution and major social and cultural upheaval
- Construction works have started without the prior agreement of affected communities
- The project does not meet the sustainability standards of the World Commission on Dams and is not compliant with the Norway-Guyana MOU on low carbon development and REDD+
- The Amaila Falls Hydropower project is part of the larger transnational Initiative for the Integration of the Regional Infrastructure of South America (IIRSA), which risks causing major potential impacts on indigenous peoples in Region 8 and throughout Guyana

## Lessons

- Credible impact assessments must be based on attention to cumulative impacts
- Effective social and environmental evaluations must involve potentially affected communities in the impact evaluation process in ways that ensure meaningful and effective participation
- Mechanisms for free, prior and informed consent (FPIC) must apply to untitled customary lands as well as titled lands in line with Guyana's international obligations
- FPIC procedures need to be defined by affected communities and agreed early on in the project design stage prior to construction of roads and other infrastructure
- More rigorous procedures and mechanisms are needed to ensure effective implementation of social and environmental safeguards

### Situation in early 2014

The access road to the project site is nearing completion, while the wider dam development work has been put on hold as major investors have withdrawn from the project due to a lack of national consensus over its financing and management. Meanwhile, affected Amerindian communities still face a lack of adequate information and have not been consulted in a culturally appropriate manner.

## Project description and background

Guyana is currently developing a major hydropower scheme in the Potaro river valley, which, if it goes ahead, is expected to serve the nation with clean electricity by 2017. Phase 1 of the project consists of two dams about 2.5 km long, crossing the Kuribrong and Amaila Rivers in the North Pakaraimas/Potaro region. The site of the dam is located within the traditional territory of the Patamona people and is heavily forested, with 4,540 ha of planned forestland to be cleared for the Project.<sup>1</sup> Phase 1 has a predicted electricity generation capacity of 165MW and will flood 23km<sup>2</sup> of land, with future phases included in the original (2002) project documents for a hydropower facility generating up to 1060MW. A road up the Pakaraima escarpment for access to the Amaila Falls hydropower project involves the construction of some 32 miles of new road.



**Much of Patamona territory is forested. Forests provide vital livelihood resources and spiritual sustenance for the Patamona people.**

*Photo: Michael Mc Garrell*

<sup>1</sup> *Amaila Hydropower ESIA Update January 2011, Executive Summary.* Available: <http://amailahydropower.com/news/ESIAJan11.cfm>

The planned energy development at Amaila Falls is a flagship project of Guyana's Low Carbon Development Strategy (LCDS), which seeks to combine the prospect of economic growth with the effort of combating climate change (see Section 3). The development is intended to remove Guyana's dependency on imported oil and meet domestic electricity needs by utilising a renewable and reliable source. According to government figures, the cost of electricity to consumers in Guyana is also meant to fall as a result of the development. The project could also be seen to be a part of the Initiative for the Integration of the Regional Infrastructure of South America (IIRSA), a development plan to link South America's economies through new transportation, energy and telecommunications projects. This plan has far reaching implications for the Patamona Akawaio and peoples in the remote border region of Guyana, Brazil and Venezuela, with Brazil showing particular interest to develop this region.



## Unresolved concerns

This energy project is highly controversial within and outside Guyana. Locally affected Patamona people are concerned that construction has started without proper prior agreements with their affected villages. Villagers complain that information is still lacking at the community level and this is hindering the capacity of communities to engage effectively in impact assessments and public consultation on the project (see below). Nationally there are major concerns over the governance, financial management and oversight of the project.

## Access road

The construction of an access road to the area, which began in 2010, has been highly controversial, with criticisms focused on increasing costs, lack of transparency, reports of increasing corruption and lack of proper attention to potential indirect environmental and social impacts.<sup>2</sup> Critics stress that the road development will rupture the relative isolation of this part of Guyana, which has, up to the present, protected the forest, mountain and riverine ecosystems located in indigenous territories in this remote area of the Pakaraima Mountains. Despite these concerns, the road development has gone ahead and is now close to completion, with less than 2 miles of road left to be built, at an estimated cost of more than US\$38.4M.<sup>3</sup>

## Uncertainties over project finance

The project was developed through a public-private partnership between the Amaila Falls Hydro Inc. (AFHI), a subsidiary of Sithe Global, and the Government of Guyana (GOG). Planned project finance was through debt funding from the China Development Bank (CDB) (US\$500.8M), and the Inter-American Development Bank (IDB) (US\$100M), and equity from Sithe Global.<sup>4</sup> The Government of Guyana is financing the construction of the road and was planning to invest equity into the overall project,<sup>5</sup> however the financial status of the project is now unclear following the withdrawal of the project developer – Sithe Global.<sup>6</sup>

## Project's future highly uncertain

In August 2013, Sithe Global's President Brian Kubeck said that the project was too large to continue without national consensus, and pulled out following a Parliamentary vote which saw the opposition voting solidly against the completion of the project review.<sup>7</sup> Following the withdrawal of Sithe Global as the project developer, the Minister of Finance (Dr Ashni Singh) blamed the opposition Party, the APNU (A Partnership for National Unity), for failing to join a consensus which would let the IDB complete its last few weeks of work on the Project's due diligence. Singh stated: "The IDB's due diligence has now ceased, and without it, the six-week public review of the Amaila Falls Hydropower Project cannot move forward."<sup>8</sup> The IDB intended to complete its feasibility studies and review the project, with a view to funding and financial

2 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 3

3 Kaieteur News, January 26 2014, *Amaila Falls Access Road less than two miles from completion – Ramotar*. <http://www.kaieteurnews.com/2014/01/26/amaila-falls-access-road-less-than-two-miles-from-completion-ramotar/>

4 Stabroek News, 25 August 2013, *An analysis of the leadership failure on the Amaila Falls hydropower project*. <http://www.stabroeknews.com/2013/features/08/25/an-analysis-of-the-leadership-failure-on-the-amaila-falls-hydropower-project/>

5 The Government of Guyana had committed US \$100M to the project with US \$20M of that coming from the nation's coffers and the remaining US \$80M to be used from the money Guyana receives from Norway. Source: Kaieteur News, 26 August 2013, *Work on IDB due diligence for Amaila comes to a halt*.

6 <http://amailahydropower.com/project/Financing.cfm>

7 Stabroek News, 9 August 2013, *Sithe Global pulls out of Amaila*. <http://www.stabroeknews.com/2013/news/stories/08/09/sithe-global-pulls-out-of-amaila/>

8 Stabroek News, 28 August 2013, *Finance Minister: Unless APNU changes its mind, seems Amaila is dead*. <http://www.stabroeknews.com/2013/news/stories/08/28/finance-minister-unless-apnu-changes-mind-seems-amaila-is-dead/>



closure. Many analysts blame the current administration for failure to gain consensus due to lack of good leadership, lack of transparency and leaving many important issues unresolved.<sup>9</sup>

The hydropower facility, initially slated to be operational by late 2013, is now on hold following Sithe Global's withdrawal and the cessation of due diligence and financial commitments from the IDB. Despite this setback, President Donald Ramotar in August 2013 pledged to make the stalled Amaila Falls Hydropower Project a reality, stating that the millions spent so far have not been wasted.<sup>10</sup> In November 2013 Ramotar declared that Sithe Global is still interested in pursuing the Amaila Falls project.<sup>11</sup> The initiative has not been conclusively terminated given that Sithe Global is still the holder of the licence to develop a hydro-electric power station in Guyana, but the real status of the project seems highly uncertain, with members of Cabinet divided over whether there is any future for the project.<sup>12</sup>

The ability of the IDB to invest in the project is now under question, with the 2014 Appropriations Act requiring the United States to vote against multilateral funding for large-scale hydroelectric projects in developing countries.<sup>13</sup> Though the government of Guyana suggested in the national press in April 2014 that the IDB may again be interested in financing the project, there were no formal indications of same as this report went to press.

9 Stabroek News, 25 August 2013, *An analysis of the leadership failures on the Amaila Falls hydropower project*.

10 Stabroek News, 4 October 2013, *Amaila will be reality – Ramotar tells GuyExpo opening*. <http://www.stabroeknews.com/2013/news/stories/10/04/amaila-will-be-reality/>

11 Kaieteur News, 9 November 2013, *Sithe Global still interested in Amaila hydro plant – Ramotar*. <http://www.kaieteurnews.com/2013/11/09/sithe-global-still-interested-in-amaila-hydro-plant-ramotar/>

12 Ibid

13 Stabroek News, 4 February 2014, *IDB to fund further studies on Amaila hydropower project*. <http://www.stabroeknews.com/2014/news/stories/02/04/idb-fund-studies-amaila-hydropower-project/>

## Box 10: Continuous controversy over Amaila Falls Hydropower Project

The Amaila Falls project has been subject to a lot of critical attention nationally since its inception. Accusations of corruption and the lack of transparency in the process of contracting a constructor of the access road have been widely heard. In addition, speculations have been made about the economic profitability and viability of the project after the estimated cost has escalated. From US \$325M in its early stages, project costs have now ballooned to in excess of US \$915M;<sup>14</sup> making it Guyana's most expensive project ever.<sup>15</sup> Analysts have long argued that the planned 165 MW of hydropower could be obtained at a cheaper cost if unnecessary rates of return and interest charges were stripped away,<sup>16</sup> calling for the project to be re-tendered.<sup>17</sup> Critics point to the fact that the GOG gave away the rights of the project to an initial developer (Motilall) who then sold these rights to Sithe Global for US \$10 million, while Guyana will now support large loans to finance the project – saddling taxpayers with debt for many decades to come. “The Guyana Government gave Motilall something for nothing and must now pay Motilall for that which it gave away.”<sup>18</sup> Other sources report that the actual amount of money Motilall walked away with remains unknown.<sup>19</sup>

Further controversy has since befallen the project as China Railway First Group, contracted for the construction of the hydropower plant, access road and transmission lines, is one of five Chinese enterprises being investigated for shoddy work in the construction of railway projects in China.<sup>20</sup>

The project has drawn further criticism following a severe dry season, with the falls reported to be ‘bone dry.’ Local press have reported that “the graphic image of a dried up Amaila Falls and Kuribrong River, vindicates the position held by the APNU that the proposed 165MW project was badly conceived in the first place.”<sup>21</sup> While Minister for Public Works Robeson Benn dismissed these concerns, saying that the reservoir would be used to regulate water flow during dry spells,<sup>22</sup> experience from neighbouring countries indicates there is cause for concern. The 2011 ESIA for the Amaila Falls project notes that the reservoir could sustain a dry period (zero inflow) of 23 days, before the hydropower plant would cease to operate. Climatic data reveals the region has experienced a series of excessively severe and prolonged droughts (in 1988, 1992, 1998, 2003, 2005 and in 2009–2010), while in Estado Roraima (in neighbouring Brazil) it was reported that a February 2010 drought lasted more than 70 days.<sup>23</sup>

- 14 Kaieteur News, 29 August 2013, *Amaila Hydro project... price jumps to US\$915M*. <http://www.kaieteurnews.com/2013/08/29/amaila-hydro-project-price-jumps-to-us915m/>
- 15 Kaieteur News, 23 May 2013, *US\$840M Amaila Falls hydro project... Govt. worried about penalties as deadline looms for financial closure*. <http://www.kaieteurnews.com/2013/05/23/us840m-amaila-falls-hydro-project-govt-worried-about-penalties-as-deadline-looms-for-financial-closure/>
- 16 Stabroek News, 9 August 2013, *Sithe Global pulls out of Amaila*. <http://www.stabroeknews.com/2013/news/stories/08/09/sithe-global-pulls-out-of-amaila/>
- 17 Stabroek News, 25 July 2013, *Re-tender Amaila or scrap it – Ram Gaskin*. Analysts Christopher Ram and Ramon Gaskin say the Amaila Falls Hydropower Project (AFHP) should be re-tendered internationally or scrapped entirely, while warning that the cost associated with the project is well over the country's US\$1.7 billion national debt.
- 18 Kaieteur News, 13 October 2013, *The needless problems with Amaila*. <http://www.kaieteurnews.com/2013/10/13/the-needless-problems-with-amaila-2/>
- 19 Kaieteur News, 2 August 2013, *Amaila Falls Hydro...Brassington dodges queries of Fip Motilall's gains*. <http://www.kaieteurnews.com/2013/08/02/amaila-falls-hydro-brassington-dodges-queries-of-fip-motilall-gains/>
- 20 Stabroek News, 6 October 2013, *Intended builder of Amaila project being probed in China for shoddy railway work*. <http://www.stabroeknews.com/2013/news/regional/10/06/intended-builder-of-amaila-project-being-probed-in-china-for-shoddy-railway-work/>
- 21 Kaieteur News, 13 October 2013, *Dried up Amaila Falls vindicates opposition stance on project*. <http://www.kaieteurnews.com/2013/10/13/dried-up-amaila-falls-vindicates-opposition-stance-on-project/>
- 22 Guyana Chronicle, 12 October 2013, *Amaila Falls dry spell... : Minister says: 'No need to worry' : --all it needs is a reservoir*. [http://www.guyanachronicleonline.com/site/index.php?option=com\\_content&view=article&id=65129:amaila-falls-dry-spell--minister-says-no-need-to-worry--all-it-needs-is-a-reservoir&catid=4:top-story&Itemid=8](http://www.guyanachronicleonline.com/site/index.php?option=com_content&view=article&id=65129:amaila-falls-dry-spell--minister-says-no-need-to-worry--all-it-needs-is-a-reservoir&catid=4:top-story&Itemid=8)
- 23 UOL Noticias, São Paulo, 19/02/2010. *Roraima item 332 focos de incêndio; todos os municípios foram afetados pela ação do fogo.*

## Flawed environmental and social impact assessments

“Behind all of this political mud slinging, the impact of the project on Amerindian communities who inhabit the area has received little attention. The traditional territory of the Patamona people covers the Potaro River Valley and Upper Ireng catchment and stretches to the Ayanganna mountains at the source of the Potaro River in the NW and across to the Essequibo in the SE. The total Patamona population is estimated to be at least 6000 people. Most Patamona families make their living from subsistence farming, hunting, fishing and gathering with an increasing number of villagers involved in mining. A major concern of communities communicated to the APA during field visits made in 2012 and 2013 is that very little meaningful information has reached the Patamona about the potential direct and indirect impacts of the Amaila dam and related energy, road and extractive industry developments that are likely to follow from this major project.

### Gaps and problems with impact assessment approach

An Environmental and Social Impact Assessment (ESIA) was released by AFH in 2011.<sup>24</sup> It claims to provide a framework for implementing and managing the project in a way that would satisfy the requirements of potential financial lenders. As part of the ESIA, a number of Amerindian communities were visited in 2010/2011, including three villages in the Potaro region most closely adjacent to the dam site – Kopinang, Chenapou and Kaburi.<sup>25</sup> While the ESIA states that a brief written summary of the Project was prepared and distributed several days prior to the meeting, the communities have only seen brief “Question & Answer” documents, and not the full project design and ESIA. Fieldwork conducted by the APA in 2012 has confirmed that communities are unaware of the full scale of potential project impacts. In short, the genuine possible negative impacts of the project have never been conveyed to the communities.

While the ESIA emphasises that the land directly impacted by the construction is owned by the state (sic), it does, however, recognise that the neighbouring Amerindian communities customarily use the area that will be flooded for fishing and hunting. The impact study claims that that people’s visits to the area are not very frequent, but notes that the project-affected area has an important symbolic value for the Patamona. To date, it is not clear how this important cultural and sacred value has been addressed in the project design and options assessments and how this will or will not affect preparation and execution of the project. In relation to indigenous peoples, the ESIA comes to the highly questionable conclusion that: “no significant adverse impacts of the Project on physical and food security, lands, territories, resources, society, rights, the traditional economy, way of life, and identity or cultural integrity of indigenous peoples have been identified”.<sup>26</sup>

### Supplemental Assessment of Amerindian Communities

Promised future consultations did take place in some villages in 2013, but again these consultations have been found to suffer from serious shortcomings. During May - June 2013, a Supplemental Assessment of Amerindian Communities was carried out, with the aim of under-

24 *Amaila Hydropower ESIA Update January 2011, Executive Summary* <http://amailahydropower.com/docs/ESIAJan11/00-ESIAJan11-Full.pdf>

25 The 2011 ESIA states the key Amerindian stakeholder communities in the Potaro region as the Kaburi, Chenapou and Kopinang. After an IDB review, an additional 5 communities, the Waipa, Kamana, Kaibarupai, Maikwak and Karisparu, were included in the Supplemental Assessment, released in 2013.

26 *Amaila Hydropower ESIA Update January 2011, Executive Summary*. Available: <http://amailahydropower.com/news/ESIAJan11.cfm>

standing the social, community, historical, cultural, livelihoods, mining and extractive profiles of communities in the proximity of the dam site, through a ‘rapid participatory exercise.’<sup>27</sup> AFH representatives visited five additional communities, as well as re-visiting Kopinang and Chenapou to fill ‘knowledge gaps’ left by the first ESIA visits in 2010/11.

The supplemental assessment finds that “only one community (Kamana) reported using the project site for hunting and fishing” and noted that “only two communities specifically named the Amaila Falls site as part of their history and culture.”<sup>28</sup> The supplemental assessment concludes in a similar fashion to the 2011 ESIA, that hunting, fishing, and other cultural activities do not represent a significant activity by Amerindian communities within the project area,<sup>29</sup> betraying a basic misunderstanding on the part of the evaluators of Amerindian land use and livelihood systems and related way of life. Under these indigenous systems of land occupation, the remoter areas under low intensity resources use are often vitally important sites valued by communities as essential reserves of game animals, medicines and other non-timber forest products. These same remote sections of Amerindian territories also often hold special spiritual value for communities.

While the Supplemental Assessment overlooks important land use and livelihood dynamics (see also below), it again notes that all of the communities show a close spiritual and cultural connection with the natural environment and by extension the proposed project site, with several communities expressing fears that construction of the project could result in illness disease and death. Again, how this will or won’t affect the project design and how this links to legal requirements for free, prior and informed consent is not discussed. As in other sectors in Guyana (see Sections 3 and 5), there is a fundamental misunderstanding among local and outside social ‘specialists’ on indigenous peoples about the requirements of FPIC and how this fundamental safeguard links with collective rights to land and territory, including in areas that remain without legal title.

### **Violation of indigenous peoples’ rights**

It is clear from the 2011 ESIA and the 2013 Supplemental Assessment that the communities surrounding the planned dam have not been properly consulted, nor even adequately informed about the project. The clearly stated aim of the evaluation teams was to gather information from the communities, rather than to inform or consult communities on any project elements.<sup>30</sup>

As noted above, contrary to the flawed conclusions of the ESIA reports, the affected Patamona communities fear that their culture and practices will be severely affected.<sup>31</sup> The residents of Maikwak, Kamana, Waipa, Kopinang and Chenapao, for example, all dispute the ESIA’s claim that their use of the Koribrong/Amaila area is infrequent and only of symbolic value. The area is important for their hunting and fishing activities and its importance has increased in recent years. For some of the communities the reason for this is growth in population, for others it is due to nearby fishing and hunting grounds being polluted and destroyed by heavy mining activities. A resident in Chenapao says:

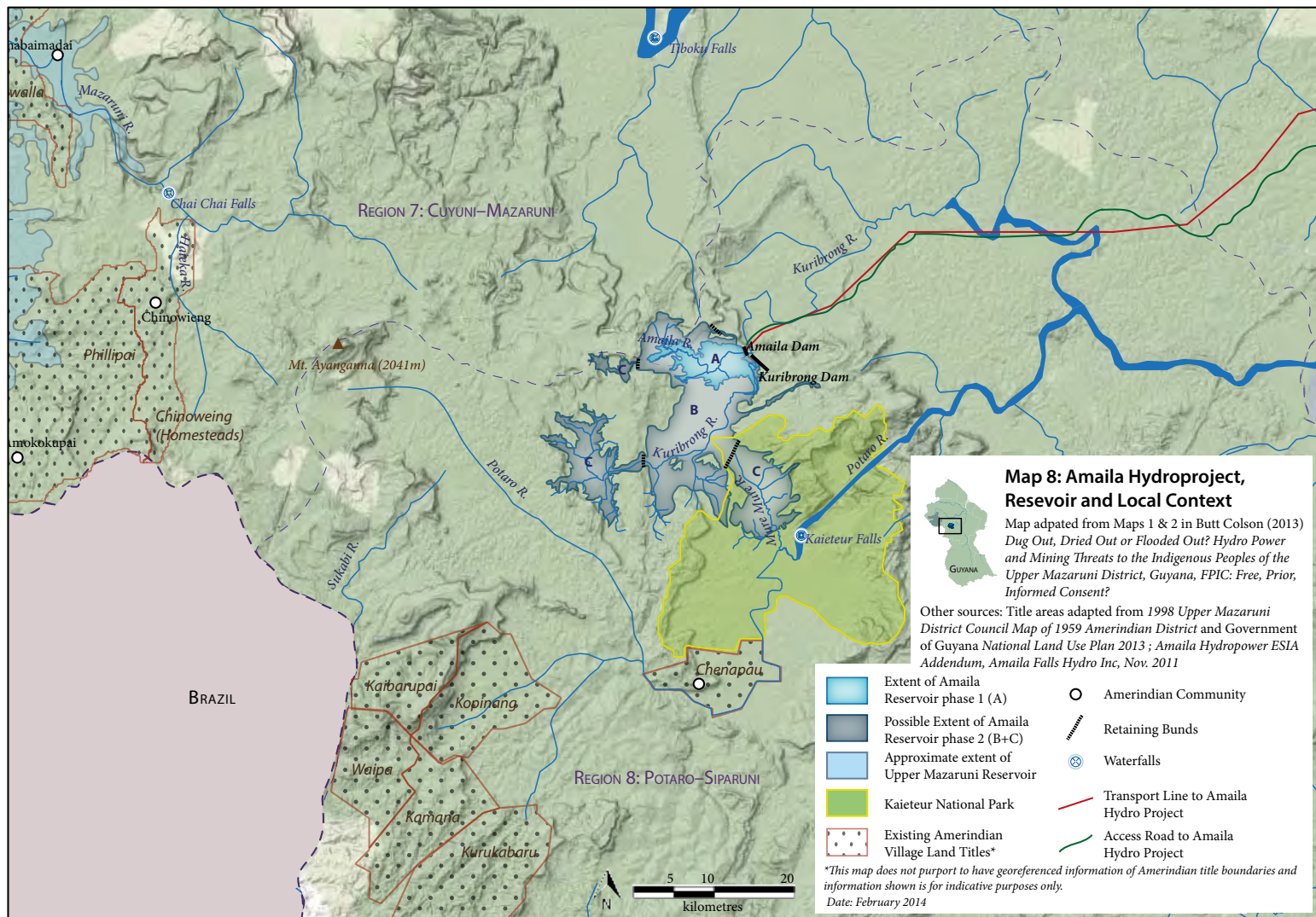
27 *Amaila Hydropower Project ESIA Addendum II: Supplemental Environmental & Social Assessments – Chapter 9: Supplemental Assessment of Region Eight Amerindian Communities*. Available: <http://amailahydropower.com/news/ESIAJuly13.cfm>

28 *Ibid*, at page 3

29 *Ibid* at page 4

30 The purpose of the rapid research exercise carried out for the supplemental assessment is described as ‘understanding stakeholder communities and their use of the local environment’. *Ibid* at page 7

31 The information in this article is based on field trips to North Pakaraimas and Potaro conducted by the Amerindian Peoples Association in November 2011 and April 2012



**“We have children attending secondary school and they have their needs. We have to support them financially but many of us don’t earn salary. We sell our farm produce to earn money or we go out to do hunting and fishing and we sell whatever we get on those trips, and that is how we depend on our traditional lands. We don’t want to be restricted by national park or hydro dam.”**

Despite the 2011 ESIA emphasising that lands within the project area are state owned, all the communities stress that the area is part of their traditional lands and express great disappointment that this is not legally recognised by the government in its land titling programme. Many are also deeply concerned about the government and project developer’s failure to include them in a meaningful way in the planning of the dam. Some of the villagers can vaguely recall having heard about the dam, but many people were not aware of the plans until APA visited the area in November 2011 and April 2012.

Official visits to Kopinang and Chenapao in 2010/11 were headed by Sithe Global and did on one occasion comprise representatives of the Ministry of Amerindian Affairs and the World Wildlife Fund. The villagers say that the information provided focused on the benefits to the community and almost no attention was given to the possible negative impacts. They are not satisfied, with either the information given, or the benefits promised. The villagers were, for

example, promised employment opportunities, but experience already puts into doubt whether this would represent a genuine gain or a relative loss to the people. About 16 residents from the two villages have already had employment with the project, but no written agreements were signed and many were told that only skilled persons are entitled to some benefits in the case of accidents. Villagers from Chenapao are especially sceptical to the benefits promised, as their experience from the establishment of Kaieteur National Park on their territory was that none of the promises made to them were kept: “what the company is offering now are bare promises just to get our support for the hydro dam project”, said one of the residents.



**Waterfalls are spiritually highly important sites for the Patamona. The Kaieteur fall is the Patamona’s most sacred place where a great spirit is believed to live behind the falls.**

*Photo: Logan Hennessy*

### **Box 11: WCD Criteria and Guidelines – a rights-based approach to decision making for large water and energy infrastructure projects<sup>32</sup>**

The WCD 'Guidelines for Good Practice' offer 26 guidelines for the development of large dams. Key points from these guidelines include:

1. **Stakeholder Analysis:** The stakeholder analysis must recognise existing rights and those who hold them, being aware that stakeholders have unequal power and this can affect their ability to participate in and influence decisions. A stakeholder analysis based on recognising rights and assessing risks should identify and address:
  - Groups whose livelihoods, human rights and property and resource rights may be affected by an intervention are major rights holders and thus core stakeholders
  - Those at risk through vulnerability or risk analysis, and consider them as core stakeholders, including those who face risk to their livelihoods, human rights, and property and resource rights
  - Constraints to establishing a level playing field for stakeholder involvement
  
2. **Negotiated Decision-Making Processes:** A negotiation process is one in which stakeholders (as identified through the stakeholder analysis) have an equal opportunity to influence decisions, resulting in demonstrable public acceptance. Attributes of a fair negotiation process include:
  - Representation of Stakeholders in the stakeholder forum is assured through a free process of selection
  - Adequate time is allowed for stakeholders to assess, consult and participate
  - In negotiations involving indigenous and tribal peoples, special provisions are made for free prior and informed consent (guideline 3)
  - Power imbalances should be addressed through the availability of adequate financial resources
  - Transparency is ensured by jointly defining criteria for public access to information, translation of key documents and by holding discussions in a language local people can understand
  
3. **Free, Prior and Informed Consent:** FPIC is conceived as more than a one-time contractual event – it involves a continuous, iterative process of communication and negotiation spanning the entire planning and project cycles. Progress to each stage in the cycle should be guided by the agreement of the potentially affected indigenous and tribal peoples, through:
  - All countries should be guided by the concept of FPIC, regardless of whether it has already been enacted into law
  - The customary laws and practices of the indigenous and tribal peoples, national laws and international instruments will guide the manner of expressing consent
  - Effective participation requires an appropriate choice of community representatives and a process of discussion and negotiation within the community that runs parallel to the discussion and negotiation between the community and external actors.

32 *Dams and Development: a new framework for decision-making. The report of the World Commission on Dams.* November 2000. Earthscan publications, London and Sterling, VA.

An independent dispute resolution mechanism to arrive at a mutually acceptable agreement should be established with the participation and agreement of the stakeholder forum, including the indigenous and tribal peoples, at the beginning of any process.

### **Misunderstanding Amerindian systems of land use and tenure**

The reports from the villages surrounding the planned dam, and their assertions that the project is planned within traditionally owned lands, have yet not received public attention. However, the failure by the project developer to keep the promise to be “actively engaging communities during the planning of the project”<sup>33</sup> has the potential of adding to the controversial profile of the project. The visits to communities so far from project developers have failed to adequately consult communities, and in many cases may have gathered misleading information. For example, a community’s description of ‘infrequent’ use of an area may be due to the area being inaccessible during the rainy season and/or customary law on sustainable land use and respect for spiritual sites. Whether usage is seasonal or limited in intensity under customary law, that use and the importance of the area to local communities are in no way less significant.

Likewise, use of the words ‘Amerindian lands’ can be misunderstood by outsiders to refer only to titled village lands, rather than the full extent of lands that indigenous peoples are historically associated with for fishing and hunting, cultural, social, spiritual and other purposes (a confusion reinforced by the current Amerindian Act, which defines ‘Amerindian lands’ as only those lands titled by the State). Crucially, it is in remote areas far from the village that the Patamona and other Kaping peoples set aside areas, which are kept as reserves, and ‘stores’ (potawa) for the regeneration of game animals and other resources and so these areas are rarely visited. These reserves appear as ‘unoccupied’ areas to outsiders that know little about the Patamona land use system when, in fact, these zones of traditional community land use are of vital importance to indigenous livelihoods and food security, constituting undisturbed multiplying and breeding grounds for animals which disperse to other areas where hunting is permitted.<sup>34</sup>

Up to this point inadequate information and lack of consultation have rendered the people who will be affected unable to raise their concerns. This might be about to change as the villages warn that they will raise with relevant international agencies and funders that their right to give or withhold their free, prior and informed consent (FPIC) - which is both required under international law and in Guyana’s agreement with Norway – is being violated.

33 <http://www.sitheglobal.com/projects/amaila.cfm>

34 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 38





Patamona communities have not been properly consulted on the Amaila Falls development, while information on indirect impacts has not been fully assessed by responsible agencies.

*Photo: Oda Almås*

## Potential enlargement of Amaila Falls Hydropower Project

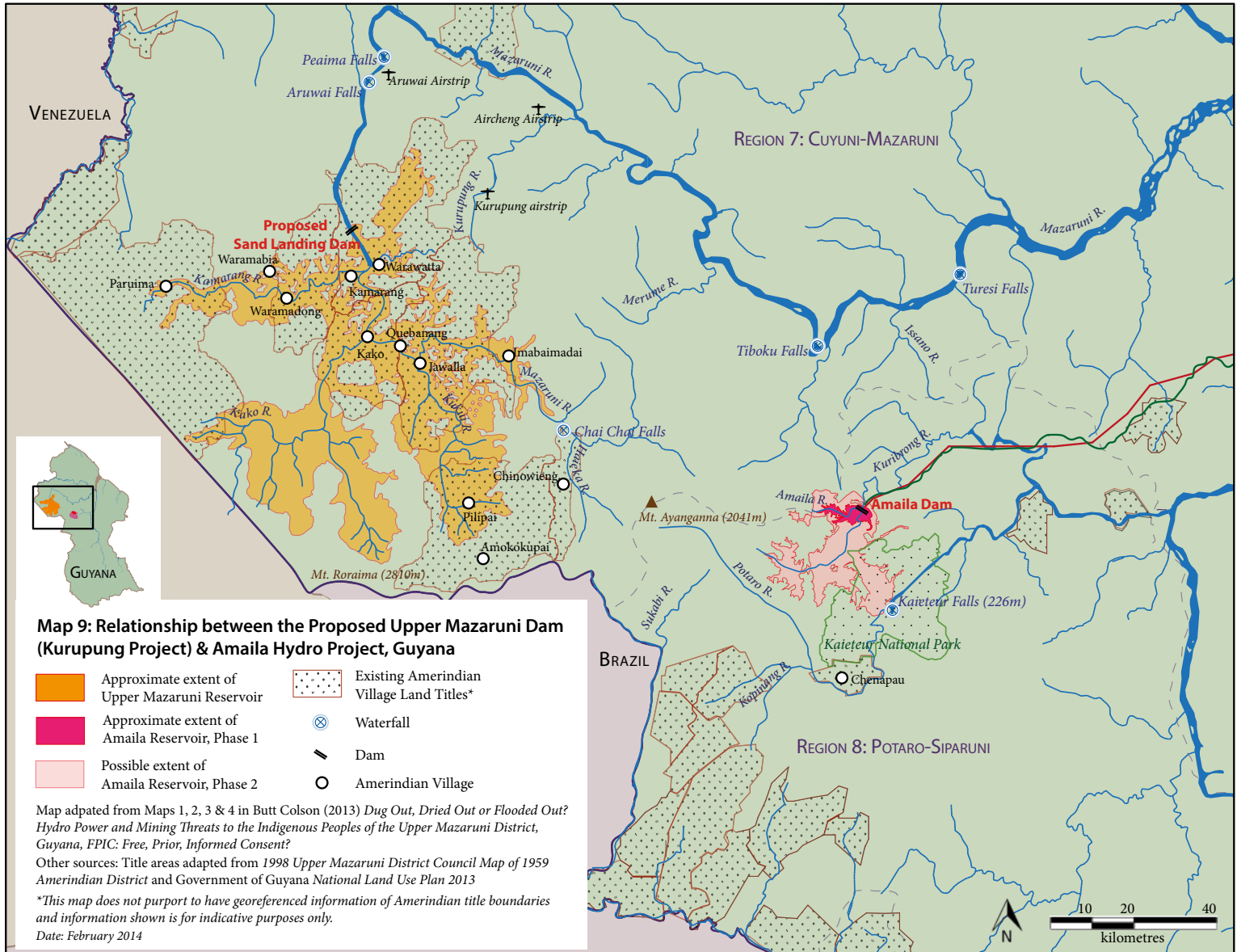
Current discussions and controversy over the Amaila Falls Hydropower Project are focused on the first, core phase of the project, with the 2011 ESIA and the 2013 Supplementary Assessment from AFH pertaining only to this phase. However, the 2011 ESIA forms only additional environmental and social studies to assist in the final pre-construction phase of the project. The original project documents were approved by the Guyana Environmental Protection Agency in July 2002 based on the EIA completed the same year. An Environment Permit was subsequently approved (in 2009) which covers all activities fully described in the April 2002 ESIA. This document refers to an expansion of the Amaila Falls Hydropower facility through a potential second and third phase, to a total power output of 1060MW, entailing the possible flooding of a far greater area of land than the 23 km<sup>2</sup> of phase 1.

It is normal practice that an initial EIA should consider all future developments facilitated by the first, core hydro construction, and it is vital to consider the human and environmental impacts of all potential phases, before a first phase is commissioned. Once a first phase has been built, it is often too late to consider broader concerns and to avoid proceeding to succeeding phases, given the already existing investment costs, such as access roads and transmission lines.<sup>35</sup>

35 Ibid

## Social and environmental impacts

There is very little availability of information on how any potential enlargements of the Amaila Falls project through phases 2 and 3 would eventually achieve the 1060MW stated in the 2002 EIA, and what environmental and human impacts these developments would have. Initial maps from 2002 suggest it would entail the diversion of water from the main Potaro and Upper Mazaruni Rivers, and the construction of other dams and retaining bunds.<sup>36</sup>



36 Final Environmental Impact Assessment Report: Amaila Falls Hydroelectric Project, Ground Structures, April 2002

The proposed diversion of waters from the Mazaruni into the Potaro basin if implemented would have serious, wide reaching impacts, affecting the entire Kaping ethnic group (Patamona and Akawaio). If a third phase, linking to the upper Mazaruni at Chai-chai went ahead, the project would seriously affect the Upper Mazaruni valley as well. Any diversions from Chai-chai in the south of the Mazaruni basin would cut off the flow of water from the source and headwaters of the upper Mazaruni River, starving the lower, downstream section of water in the dry seasons and periods of drought.



Rivers and creeks form a mainstay in Patamona livelihoods and way of life, providing water for drinking and bathing, fishing grounds and valuable spirit charms used in healing and livelihood rituals.

*Photo: Logan Hennessy*

## Conclusions

The lack of information on the extent and impact of future phases of the Amaila Falls hydropower project are very serious omissions given that the project is being promoted as the “flagship” of Guyana’s Low Carbon Development Strategy. The potential far-reaching impacts of subsequent phases, as well as the impacts of phase 1, must all be considered in terms of assessing the impact on Amerindian communities in the project-affected areas.

To date, consultations for the Amaila Falls project have proved inadequate, with little information available to communities, and the full scale of potential project impacts not communicated. Inadequate information and lack of consultation have rendered the people who will be affected unable to raise their concerns, and there is no evidence that concerns which have been documented (such as cultural and spiritual concerns of sites impacted by the project) will be dealt with. The ESIA consultation documents also show a basic misunderstanding on the part of the evaluators of Amerindian land use and livelihood systems and related way of life, where areas of low use are not ‘unoccupied’ or open to development, but rather vital reserves for the regeneration of species.

A review of the World Commission on Dam's Criteria and Guidelines for a rights-based approach to decision making shows that the Government of Guyana has not conducted consultations in line with international norms and obligations, and has failed to respect indigenous peoples' rights, including the right to free, prior and informed consent.

If the project is to move ahead from its current stalled status due to financial uncertainty, an ESIA in line with international standards must be conducted, including a more rigorous consideration of the cumulative impacts of all phases of the projects and the free, prior and informed consent of impacted indigenous communities must be obtained before Phase 1 of the Amaila Falls Hydropower project construction begins.

# Strengthening forest governance or business as usual?

## Indigenous peoples and the EU Forest Law Enforcement, Governance and Trade (EU FLEGT) process in Guyana

Laura George, Oda Almås and Tom Griffiths

### Key Issues and concerns

- Formal commitments made by the Government of Guyana to enable an open and participatory national FLEGT Voluntary Partnership Agreement (VPA) process are highly positive, but existing participation mechanisms have not yet facilitated the effective involvement of indigenous peoples and forest-dependent communities
- Notwithstanding an important workshop held with indigenous peoples in March 2013, the VPA development process has so far been mainly dominated by governmental interests
- FLEGT meetings and workshops with indigenous stakeholders have been characterised by a one way flow of information that can be described as ‘awareness raising’, rather than consultation
- There has so far been little scope in current FLEGT-VPA discussions to enable a multi-stakeholder review of the need for forest sector governance and tenure reform
- The operation of the VPA National Technical Working Group (NTWG) currently lacks transparency
- Development of key documents to guide the FLEGT-VPA process, including a Communications and Consultation Strategy and Social Impact study, have so far been mainly in the hands of consultants and the GFC, without timely disclosure to the public
- Problems with insecure land tenure and related resource conflicts in Guyana, and in particular the inadequacies of the 2006 Amerindian Act, are being side-stepped in the VPA process
- The second draft of the Legality Definition (June 2013) does not take adequate account of customary law and Guyana’s obligations to uphold international legal norms on the rights of indigenous peoples
- While the VPA negotiations proceed, the GFC continues to hand out logging concessions to national and foreign companies in violation of indigenous peoples’ land rights and without respect for FPIC.

## Lessons from the early stages of the FLEGT-VPA process in Guyana

- As in other VPA processes, strong participation of indigenous peoples and civil society in negotiation and implementation of the VPA must be a pre-condition for meaningful forest sector reforms and FLEGT-VPA credibility. An effective, credible and participatory FLEGT-VPA multi-stakeholder process must ensure transparency, create trust, foster consensus and encourage real dialogue between all parties
- VPA dialogue and community consultations must enable sharing of different views, ensure participatory assessment of legal gaps and inconsistencies in relevant laws and regulations, help build consensus on required forest sector reforms, and foster frank discussions on the need to tackle corruption and weak governance
- Guyana's legality definition and legality assurance system for the VPA must address customary law, international legal norms and related obligations, including FPIC, in order to ensure that legal timber production and trade include effective protection for the land and territorial rights of indigenous peoples.

This article examines the EU FLEGT-VPA process in Guyana and reviews the experience of indigenous peoples with this bilateral forest governance and trade initiative during 2012-13. The article provides some general background to the EU FLEGT and its requirements for effective participation and discusses the treatment of indigenous peoples' concerns and issues in the case of Guyana. Gaps and shortcomings in the process are identified. Key conclusions are presented alongside some core recommendations for improving the process in order to ensure effective participation by indigenous peoples and inclusion of measures to promote positive forest sector reforms.



**Most of Guyana's forests are located on the lands of indigenous peoples, yet many of these lands still lack effective legal recognition under national laws.**

*Photo: Tom Griffiths]*

## EU FLEGT: Background and introduction

Guyana is one of nine tropical countries currently negotiating a Voluntary Partnership Agreement (VPA) with the European Union (EU) to tackle illegal harvesting and trade in timber and improve forest governance (see Map 9).<sup>1</sup> Once ratified, VPAs are legally binding bilateral trade agreements between the EU and timber producing countries setting out agreed measures and controls to address illegal logging and promote sustainability and good governance in the forest sector. The VPA is a central element of the EU's 2003 Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, which is the EU's response to the threat that illegal logging represents to the world's forests.

The VPA process places particular emphasis on governance reforms and capacity building in timber-producing countries.<sup>2</sup> The commitment to a VPA by countries like Guyana is thus meant to enable good forest governance and ensure legality so that only legally harvested timber is exported to the EU. All VPAs ratified to date address all timber exports and most cover supply in the domestic market, something that should also be the aim of the Guyana VPA.

Negotiating a VPA involves defining legality – a crucial step to identifying gaps and contradictions in the national legal framework and between the constitution, national and international and customary law, which require legal and regulatory reforms to tackle illegal resource use, uphold community rights and strengthen forest governance. The legality definition must be developed through in-country negotiations and discussions with all rights holders and relevant stakeholders.<sup>3</sup>

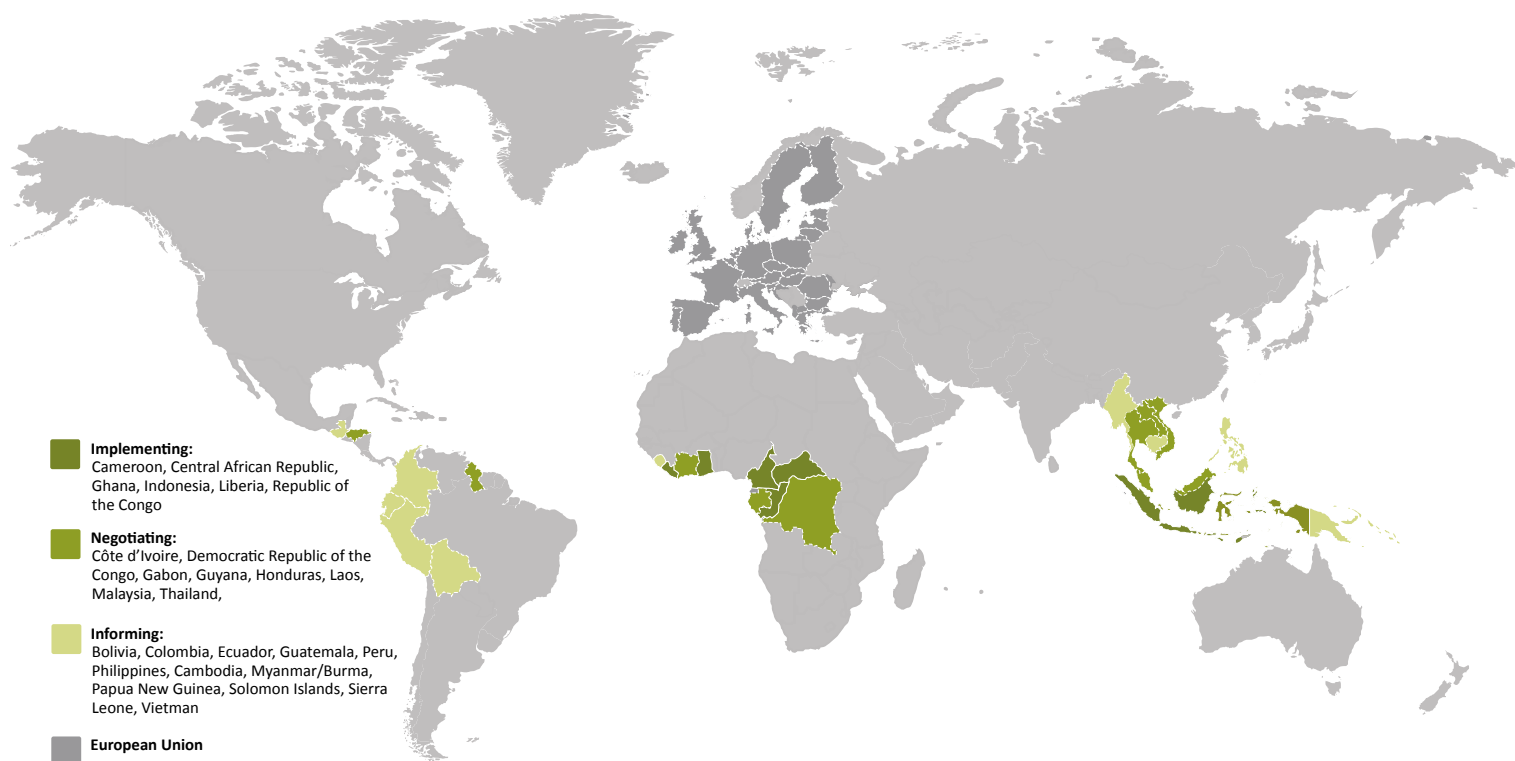
The Legality Assurance System (LAS) is therefore a central part of the VPA as it includes agreements and measures to establish a national system to identify, monitor, verify and license legally produced timber in order to guarantee that the supply chain fully complies with legal standards.

### Origins of the FLEGT process in Guyana

Guyana's engagement in the FLEGT process stems from a bilateral agreement with the government of Norway on forest and climate protection and low carbon development made in 2009 (Section 3). Under this agreement, Guyana committed to commence formal negotiations on FLEGT with the EU by the end of 2012, with the aim of agreeing to a VPA with the EU by March 2015.

According to Guyana's existing VPA roadmap, ratification and development of a plan for the implementation of the VPA are to be completed by the end of 2015 (see section B, below).<sup>4</sup>

- 1 Eleven countries have expressed interest in VPAs, but are not yet engaged in negotiations. Six countries have already signed a VPA and are at the implementation stage (developing the systems needed to control, verify and license timber exported to the EU). See <http://www.euflegt.efi.int/vpa-countries>
- 2 *European Commission (2007) FLEGT Briefing Notes 2007: a timber legality assurance system* <http://www.euflegt.efi.int/documents/10180/28299/FLEGT+Briefing+Notes+3++A+timber+legality+assurance+system/e9ce3bcd-6243-4bb6-b702-d48e8843079c>
- 3 EU FLEGT Facility, European Forest Institute (2012) *Guidance for developing legality definitions in FLEGT Voluntary Partnership Agreements* [http://www.forest.go.th/check\\_wood/images/stories/file/EU\\_FLEGT\\_information/EFI\\_FLEGT-in-action\\_LD\\_Legality\\_Definition\\_A4\\_ENG\\_web%20%282%29.pdf](http://www.forest.go.th/check_wood/images/stories/file/EU_FLEGT_information/EFI_FLEGT-in-action_LD_Legality_Definition_A4_ENG_web%20%282%29.pdf)
- 4 *Memorandum of Understanding between the Government of the Cooperative Republic of Guyana and the Government of the Kingdom of Norway regarding Cooperation on Issues related to the Fight against Climate Change, the Protection of Biodiversity and the Enhancement of Sustainable Development*, signed 9 November 2009. <http://www.lcds.gov.gy/images/stories/Documents/MOU.pdf>; and *Joint Concept Note 2013*, at page 5. <http://www.lcds.gov.gy/images/stories/Documents/Joint%20Concept%20Note%20%28JCN%29%202012.pdf>



**MAP 10: Countries engaged in the FLEGT initiative.**

Source: EU FLEGT Facility, European Forest Institute. [www.euflegt.efi.int](http://www.euflegt.efi.int)

### Relevance to indigenous peoples

Forest policy negotiation processes are of major concern to indigenous peoples in Guyana as the vast majority of forests are located on their titled and untitled customary lands. These lands remain the subject of unresolved land claims that have been pending since independence from Britain in 1966. If indigenous peoples' rights and good governance can be enshrined in the VPA, then this bilateral agreement has the potential to promote a sustainable timber trade and deliver benefits to Amerindian villages.

### Promoting good forest governance

As noted above, improving forest governance has been a core aim of the VPAs under the EU FLEGT Action Plan. Put forward by the European Commission in 2003, the action plan is "the start of a process which places particular emphasis on governance reforms and capacity building."<sup>5</sup> The action plan identifies that illegal exploitation of natural resources, including forests, is closely associated with corruption and organised crime.<sup>6</sup>

The VPAs aim to guarantee that any wood exported from a timber-producing country to the EU comes from legal sources, while helping the partner country stop illegal logging by improving forest governance. In this regard, it is important to recall that when the Council of

<sup>5</sup> Ibid at page 3

<sup>6</sup> European Commission (2003) *Communication from the Commission to the Council and the European Parliament on Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan*, at page 4. COM (2003) 251 final. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0251:FIN:EN:PDF>.



the European Union adopted the Action Plan in October of 2003, it urged the EU to use FLEGT to enable forest sector reforms, including through strengthening land tenure and access rights; strengthening effective participation of all stakeholders in policy-making and implementation; and reducing corruption in the forest sector.<sup>7</sup>

### Requirements for meaningful participation

The FLEGT-VPA process requires a fully participatory approach that is supposed to ensure the involvement of communities, civil society, private sector and government stakeholders in discussions and consensus on the contents of the VPA before it is finalised and adopted (Box 12). This requirement includes the development of the LAS, which is meant to result from "... an inclusive multi-stakeholder process". The EU states that in order to:

**...achieve in-country consensus on a number of VPA requirements, partner countries develop and organise a process that allows stakeholders to provide input and their perspectives and help formulate country positions (stakeholder consultation process).<sup>8</sup>**

In addition to EU requirements, the Joint Concept Note between Norway and Guyana in relation to REDD and low carbon development also establishes the requirement to ensure participation. The agreement commits both government parties to an inclusive policy making process in all activities relating to forest and climate protection and implementation of Guyana's Low Carbon Development Strategy (LCDS):

**The Constitution of Guyana guarantees the rights of indigenous peoples and other Guyanese to participation, engagement and decision-making in all matters affecting their well being. These rights will be respected and protected throughout Guyana's REDD-plus and LCDS efforts.<sup>9</sup>**

### Lessons and experience in other VPA countries

So far six VPAs have been ratified, all of which include recognition of rights and social provisions, legal reform, transparency requirements and independent monitoring.<sup>10</sup> Key to achieving lasting legal and policy reforms, and combating corruption, is the 'unprecedented' nature of the multi-stakeholder negotiation process, which has been central to all successful VPA agreements to date. Where these processes are effective, VPA processes have ensured that stakeholders have real power in developing the agreement: the first time that "legally binding trade agreements have been negotiated and agreed in such an inclusive, consensus-based process."<sup>11</sup> It is this process that has been perceived as empowering local civil society actors, representing a potential groundbreaking tool for forest governance reform.

7 Council of the European Union (2003/C 268/01) *Council Conclusions. Forest law enforcement, Governance and Trade (FLEGT)* <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:268:0001:0002:EN:PDF>

8 <http://www.euflegt.efi.int/the-process/>

9 *Joint Concept Note 2013*, at page 5. <http://www.lcds.gov.gy/images/stories/Documents/Joint%20Concept%20Note%20%28JCN%29%202012.pdf> On the challenges encountered in complying with this participation commitment under the LCDS, see also Section 3.

10 FERN (2013) *Improving Forest Governance: a comparison of FLEGT VPAs and their impact*. FERN, Moreton in Marsh and Brussels. Available: <http://www.fern.org/improvingforestgovernance>

11 *Ibid* at page 5

## Box 12: Requirements for a consultation process under FLEGT?<sup>12</sup>

### I Planning Stage

- Accept the need for sufficient time and resources
- Recognise ‘governance’ issues: take into account representation and accountability questions on the part of all actors
- Adopt a learning approach to the process on the part of all actors
- Define the objectives of the consultation process and terms of engagement at the outset
- Are funds available to allow for an equitable consultation process?
- How are cultural and local considerations taken into account in organising the meeting and its preparations?

### II Management stage

- Ensure a proper and equally balanced cross selection of participants
- Ensure all participants will have at least a 2 months notice period for meetings to allow them to prepare and organise their constituencies
- Provide sufficient information to all participants: background material should be made available at least two weeks prior to consultation, including an explanation of the process and proposed substantive issues to be discussed etc. Ensure any necessary translations are made available
- Ensure independent or shared facilitation by different stakeholder groups, approved by all participants
- Ensure meetings have rapporteurs and minutes are approved by all participants
- Consider the formation of a multi-stakeholder drafting committee to draft the final agreement with self-selected members from each constituency

### III Final stage

- Provide feedback to participants including how their input influenced decisions
- Present the draft VPA text and ask for feedback, ensure participants have ample time and opportunity to review any final draft before it goes for approval
- Present final VPA text
- Evaluate the consultation process

### Practical conditions that need to be met:

- Facilitators should clearly state the purpose of the meeting, the role of the participants and ensure everyone agrees to common ground rules, which should be circulated for feedback prior to any face-to-face meeting. Facilitators must not interject personal views and opinions, but be active listeners, accepting ideas and suggestions without evaluating them and encouraging all members to participate and respect differences in views and opinions. The facilitator will focus the group’s energy on the task at hand
- Rapporteurs will accurately record the proceedings and ensure that the group’s findings are presented for approval
- NGOs, CBOs and other stakeholders will be asked to represent their constituencies or their partners and therefore need to have sufficient time before and between meetings to consult, prepare positions and organise travel
- Financial means need to be made available to those participants who are financially disadvantaged but whose views would not otherwise be heard

12 [http://www.fern.org/sites/fern.org/files/2008.06\\_Consultation%20Requirements%20under%20FLEGT\\_EN.pdf](http://www.fern.org/sites/fern.org/files/2008.06_Consultation%20Requirements%20under%20FLEGT_EN.pdf)

The experience in other countries thus demonstrates that where robust multi-stakeholder arrangements have been put in place and civil society organisations are able to engage in VPA consultations in a meaningful way, the EU FLEGT-VPA negotiation process has the potential to achieve significant success in promoting forest sector reforms and strengthening civil society participation in national forest policy making.<sup>13</sup> In Ghana, for example, civil society has secured important legal and governance reform commitments and principles under the VPA. Liberia is another noteworthy example, where communities have been empowered by directly participating in the negotiation and implementation process for the VPA, instead of being 'represented' by national NGOs.<sup>14</sup>



A meeting between NGOs from eleven VPA countries held in October 2012 found that effective FLEGT multi-stakeholder processes can empower forest communities and civil society organizations.

Photo: Ann Bollen

## Status of the Guyana FLEGT VPA process (2012-13)

Following preliminary discussions with the EU and key stakeholder groups, in March 2012 Guyana formally expressed its intention to commence VPA negotiations with the EU.<sup>15</sup> Official negotiations between the EU and Guyana began in December 2012. A roadmap for the EU FLEGT negotiations has been developed as the main document to guide the negotiations process in Guyana. The roadmap was developed jointly with the EU in December 2012, and a date was set for conclusion of the process in 2015.

13 FERN (2012) *Forest Watch Special – VPA Update, November 2012*. FERN, Moreton in Marsh and Brussels [http://www.fern.org/sites/fern.org/files/VPA%20Update%20Nov%202012\\_0.pdf](http://www.fern.org/sites/fern.org/files/VPA%20Update%20Nov%202012_0.pdf)

14 See also, FERN (2013) *Improving Forest Governance: a comparison of FLEGT VPAs and their impact*. FERN, Moreton in Marsh and Brussels

15 <http://www.illegal-logging.info/sites/default/files/Tasreef%20Khan.pdf>

The roadmap was revised slightly in July 2013 following concerns raised by APA and international NGOs about problems with the multi-stakeholder process and lack of community consultations (see below). Adjustments in the roadmap can be seen in the figure below (see blue font).

In December 2013 APA again called for a slowing down of the process to enable more meaningful and effective community consultations on the VPA, including on the legality definition and related LAS. At this stage, however, the process is still tied to the basic original timeline that intends to conclude the VPA by 2015. It remains to be seen if this is a viable timeline given the large amount of consultation and consensus-building that will be required to develop a credible and sustainable VPA outcome.<sup>16</sup>

**Table 1: Adjustment to Guyana-EU VPA Roadmap made in 2013**

Time-line		Original timeline	Revised timeline (July 2013)	Details ( <i>revised details in brown</i> )
2012	March	Guyana formally expresses intention to commence VPA negotiations with the EU		
	September	NTWG formed		– First meeting held same month – TOR for sub-committees presented
	November	First meeting of Indigenous Peoples' Constituency Group		
	December	Formal negotiations start		– Road map for negotiations presented
	2013	January	Road map defined	
	March	Draft Legality Definition presented		
	July	Second formal negotiation		– Draft Legality Definition discussed – Wood Tracking System discussed – Road map revised
	September	Joint Technical Meeting 4 and 5	Joint Technical Meeting 4 and 5	– Communications and Consultation Strategy presented – Revised draft of Legality Definition
	November			
	December			
2014	January		Consultants to draft Communications and Consultation Strategy and Scoping of Impacts announced	– Stakeholders to be consulted
	February		Joint Technical Meeting 6	– Main social, economic and environmental impacts on stakeholders assessed (e.g. indigenous peoples)
	March		Third formal negotiation	– LAS reviewed and developed – Main social, economic and environmental impacts on stakeholders assessed (e.g. indigenous peoples)
	May	Forth formal negotiation		
		July		Forth formal negotiation
	December	Fifth formal negotiation		
2015	January			
	February	VPA signing and ratification		
	August			

<sup>16</sup> As of April 2014 the third negotiation (originally planned for March 2014) had still not taken place.

## Preparatory workshop and national technical body

A National Preparatory Workshop was held in Georgetown in September 2012,<sup>17</sup> which resulted in the formation of a National Technical Working Group (NTWG) made up of government, private sector and indigenous peoples' representatives and national bodies dealing with indigenous peoples' issues. This national technical group has a governmental mandate to lead the process of negotiations from the Guyana side, and has identified the GFC to speak on behalf of the group.<sup>18</sup> Terms of Reference (TOR) for the NTWG were developed and four NTWG sub-committees were established during the preparatory workshop. The NTWG held its first meeting during the same month. Concerns remain in early 2014 over the lack of transparency in the workings of the NTWG (Box 13).

## Meetings of constituency groups

In November 2012, the GFC and the NTWG started to convene short meetings with 'constituency groups' to discuss FLEGT issues outside of the closed meetings of the NTWG, including with a small indigenous peoples' group involving Amerindian organisations and NGOs based in Georgetown.<sup>19</sup> The agenda for these meetings is developed by the GFC.

At the start of 2014, there is still uncertainty among some members as to how the group links to the work of the NTWG and official bilateral negotiations on the VPA (see section C, below).

## Development of a legality Definition

A first draft of the Guyana VPA Legality Definition was released in March 2013, with a deadline for public comment of May 31, 2013. A second draft was developed in June 2013,<sup>20</sup> and the comment period was extended to December 31, 2013 following concerns raised by APA and international civil society organisations, including FPP, about the limited time for public comments. Although this extension to the public comment period has been welcome, the lack of broader GFC outreach and effective consultation with indigenous peoples on relevant legal issues and concerns of fundamental importance to Amerindian villages remains a problem that must be addressed before any legality definition is finalised (see section C, below).

## Communication and Consultation Strategy

The Stakeholder Engagement and Coordination sub-committee of the NTWG has been tasked with developing a Communications and Consultation Strategy for the VPA process in Guyana. It is also tasked with overseeing the development of an impact assessment that is supposed to evaluate possible impacts of the VPA on indigenous peoples and local communities. Draft TOR were developed for these two pieces of work in early 2013. During a GFC FLEGT-VPA workshop with community representatives held in March 2013 (see section C, below), initial inputs from indigenous peoples were sought on the Communications Strategy TOR, and some preliminary discussions were held on likely impacts from the VPA.<sup>21</sup>

17 GFC (2013) *Indigenous Workshop: Guyana's Engagement with the European Union Forest Law Enforcement Governance and Trade Initiative*, GFC's Multiplex, Georgetown 20-21st March, 2013, at Section 3.3.2 [http://www.forestry.gov.gy/Downloads/Guyana%27s\\_National\\_Preparatory\\_Workshop\\_for\\_EU\\_FLEGT\\_Negotiations.pdf](http://www.forestry.gov.gy/Downloads/Guyana%27s_National_Preparatory_Workshop_for_EU_FLEGT_Negotiations.pdf)

18 *Aide Memoir of the first negotiation session between Guyana and the European Union on a FLEGT VPA*. [http://www.forestry.gov.gy/Downloads/FLEGT\\_EU\\_Guyana\\_Aide\\_Memoire\\_Nego1\\_Dec\\_5th\\_2012\\_Revised\\_April\\_10\\_13.pdf](http://www.forestry.gov.gy/Downloads/FLEGT_EU_Guyana_Aide_Memoire_Nego1_Dec_5th_2012_Revised_April_10_13.pdf)

19 Participants include the National Tshao Council (NTC), the Indigenous People's Commission (IPC), the Amerindian Peoples Association (APA), The Amerindian Action Movement of Guyana (TAAMOG), the Guyanese Organisation for Indigenous Peoples (GOIP), and the National Amerindian Development Foundation (NADF).

20 *Draft Legality Definition for EU – Guyana Voluntary Partnership Agreement*, Version 2, 5 June 2013. [http://www.forestry.gov.gy/Downloads/Draft\\_Legality\\_Definition\\_Version\\_2.pdf](http://www.forestry.gov.gy/Downloads/Draft_Legality_Definition_Version_2.pdf)

21 GFC (2013) *EU FLEGT VPA process in Guyana moves apace with development of first drafts of Scope of Agreement and the Definition of Forest Legality*, March 2013. [http://www.forestry.gov.gy/Downloads/EU\\_Piece%202.pdf](http://www.forestry.gov.gy/Downloads/EU_Piece%202.pdf)

### Box 13: National Technical Working Group (NTWG)<sup>22</sup>

#### Members:

1. Guyana Forestry Commission
2. Ministry of Natural Resources and the Environment
3. Representative of Guyana's Forest Products Exporter to the EU
4. Chairperson, National Toshias' Council
5. Ministry of Legal Affairs
6. Small Loggers Association
7. Forest Products Association
8. Forest Products Development and Marketing Council Inc.
9. Guyana Manufacturers and Services Association
10. Ministry of Foreign Affairs
11. Ministry of Amerindian Affairs
12. Guyana Revenue Authority (GRA)
13. Indigenous Peoples Commission

#### NTWG sub-committees:

- Stakeholder Engagement and Coordination
- Legality Assurance System (LAS)
- Voluntary Partnership Agreement Implementation
- Independent Audit under the EU FLEGT VPA<sup>23</sup>

#### Concerns over transparency and independence:

The membership and modalities of the NTWG led by the GFC has generated accusations of FLEGT in Guyana being a government dominated process. Concerns about NTWG transparency have also been raised. Meetings of the NTWG and its sub-committees are closed to observers. The minutes of the meetings are not public and the process for selection of members to the groups is unclear. <sup>24</sup> Meanwhile, unease has been growing in early 2014 that concerns raised by non-governmental NTWG members on tenure and governance issues are not being duly documented in internal NTWG meeting notes, thus raising more worries about the credibility of this group and its multistakeholder sub-committees.

The Communication and Consultation Strategy has since been developed by a consultant who conducted meetings with various stakeholders in the start of 2014. A first draft of the Strategy was shared with APA at the end of March 2014 with only a one week period for comments. In its written response, APA raised concerns about the Strategy's focus on information sharing and awareness raising instead of consultation seeking to obtain community concerns, views and recommendations. APA has recommended that the strategy should contain a section clearly defining good consultation principles and commitments. APA has also called for the Strategy to emphasise that all outreach material and consultations on FLEGT should be providing balanced information and cover vital topics for forest governance, including discussion on gaps in the existing legal framework governing forest and land tenure in Guyana.

22 GFC (2012) *National Preparatory Workshop: Guyana's Engagement with the European Union Forest Law Enforcement Governance and Trade Initiative*. GFC's Multiplex, 1 Water Street, Kingston, Georgetown 27 – 28th September, 2012 [http://www.forestry.gov.gy/Downloads/Guyana%27s\\_National\\_Preparatory\\_Workshop\\_for\\_EU\\_FLEGT\\_Negotiations.pdf](http://www.forestry.gov.gy/Downloads/Guyana%27s_National_Preparatory_Workshop_for_EU_FLEGT_Negotiations.pdf)

23 TORs for these sub-committees can be found in an Annex to the report on the National Preparatory Workshop: [http://www.forestry.gov.gy/Downloads/Guyana%27s\\_National\\_Preparatory\\_Workshop\\_for\\_EU\\_FLEGT\\_Negotiations.pdf](http://www.forestry.gov.gy/Downloads/Guyana%27s_National_Preparatory_Workshop_for_EU_FLEGT_Negotiations.pdf)

24 The report of the National Preparatory Workshop, which lists in its Annex the members of the NTWG, does not provide any information as to how members of the NTWG were selected.

## Formal VPA negotiations

Two official negotiating sessions between the EU and Guyana occurred in December 2012 (in Georgetown), and July 2013 (in Brussels).<sup>25</sup> The first negotiation session agreed timelines and expectations for the process, while the second reviewed technical details of the VPA, including Guyana's existing timber-tracking system. Both parties noted a need for more work to determine the appropriate scope of the VPA, and some slight revisions were made to the roadmap to give Guyana time to conduct further consultations with stakeholders in addition to those originally planned.<sup>26</sup> As noted above, the revised roadmap developed in July 2013 consequently contains some adjustments, but the main schedule remains intact.<sup>27</sup> Changes to the roadmap included an extra Joint Technical Meeting and the postponement of the third formal negotiation from late 2013 to the first quarter of 2014 (Table 1).

## Experience with the FLEGT-VPA process in Guyana

Notwithstanding a joint EU/Government of Guyana (GoG) statement highlighting the importance of stakeholder involvement,<sup>28</sup> APA and international NGOs have noted the lack of an effective and meaningful consultation process comparable to other VPA countries. In particular, APA and civil society organisations are concerned that the VPA process in Guyana is driven by a VPA Secretariat, which is located within the Guyana Forestry Commission (GFC), while the operations of the NTWG are not very open to public scrutiny (Box 13).<sup>29</sup> As a result, much of the development of FLEGT policy and technical documents has so far been led by the GFC and consultancy firms, while key civil society organisations like the Guyana Human Rights Association have not been involved in initial stages of VPA development. Others have been invited late to the process.

The Transparency Institute Guyana, for example, did not receive any invitation to participate in national FLEGT VPA meetings until August 2013. In a statement from February 2014, the Transparency Institute Guyana (TIGI) observed that EU-FLEGT has the potential to contribute to increasing transparency and reducing corruption in the forestry sector, and commended the authorities in Guyana for their attempts to establish a multi-stakeholder process. TIGI noted however, that the existing process is significantly flawed, citing the lack of an accurate stakeholder analysis at the beginning of the process, which resulted in the exclusion of some stakeholders from the NTWG; power imbalances in the facilitation of workshops; and lack of monitoring and evaluation systems as key areas of concern.<sup>30</sup>

25 Aide Memoirs from these meetings can be found on the news section of the GFC website: <http://www.forestry.gov.gy/news.html>; and the Guyana page of the EU FLEGT Facility: <http://www.euflegt.efi.int/guyana>

26 *Guyana to conduct additional stakeholder negotiations on the VPA*. 22 July 2013. [http://www.euflegt.efi.int/news/-/asset\\_publisher/VoA92AEZlro/content/guyana-to-conduct-additional-stakeholder-consultations-on-the-vpa?redirect=http%3A%2F%2Fwww.euflegt.efi.int](http://www.euflegt.efi.int/news/-/asset_publisher/VoA92AEZlro/content/guyana-to-conduct-additional-stakeholder-consultations-on-the-vpa?redirect=http%3A%2F%2Fwww.euflegt.efi.int)

27 The revised Roadmap can be found as an Annex to the Aide Memoir from the second Guyana - EU negotiation session: <http://www.euflegt.efi.int/documents/10180/23380/Aide+Memoire+on+the+occasion+of+the+second+Guyana-European+Union+negotiation+session+on+a+FLEGT+VPA/fd880061-ce85-4046-9164-abb9d7cf1b94>

28 EU FLEGT: EU / GoG *Joint Statement Final*. <http://www.forestry.gov.gy/news.html>

29 There is currently no mention of the VPA Secretariat on the GFC website. The GFC news page, however, does contain links to all the relevant documents available so far on the VPA process, including news releases issued by the VPA Secretariat: <http://www.forestry.gov.gy/news.html>

30 Transparency International, Guyana, February 2014, *Statement on the EU-FLEGT process in Guyana*. C. R. Bernard, Director, TIGI

## Lack of consultation in Amerindian villages

Although formal VPA negotiations started in 2012, a core problem with the process is that there has so far been no meaningful involvement of indigenous peoples' communities other than the national workshop held in March 2013 (see below).<sup>31</sup> In short, while the GFC has done some outreach sessions in Amerindian villages (in the latter part of 2013 and early 2014), no structured community-level consultations on the FLEGT-VPA initiative have so far taken place. The NTWG claims to have embarked on a programme of national stakeholder consultation in August 2013 with the first three sessions being held in Berbice, Essequibo and Georgetown that month.<sup>32</sup> However, there are no publically available reports or minutes to confirm that these sessions have taken place.

Reports from communities indicate that some further outreach was conducted by the GFC in Region 9 at the start of 2014. It is not apparent whether these GFC-led meetings were confined to more information sessions, or if they were run as properly organised consultations. Feedback from the meetings held in Region 9 in January 2014 suggests that the GFC outreach is primarily about sharing information. Villagers report that the GFC focus is on the potential market and income opportunities for Amerindian Villages, with little discussion of legality and governance matters. In Aishalton Village, for example, questions raised by villagers about the Amerindian Act and land rights were not addressed by GFC in any detail.

Overall, at the start of 2014 communities and Village Councils still poorly understand FLEGT and critical elements of the VPA process and few people have any information on its implications for their rights to lands, livelihood and self-determination. Community members and indigenous representatives therefore consider that what the GFC calls *consultations* can at the best be defined as *awareness raising*.

Despite APA written recommendations in June 2010 calling for the government to ensure a meaningful and good faith dialogue before a VPA can be agreed,<sup>33</sup> the VPA negotiation process in Guyana so far appears to be rushing through the preparatory phase, with little in the way of stakeholder consultations and legal review, and is embarking on formal negotiations with the EU while key stakeholders in the country remain uninformed and are not engaged in the process.

In general, the FLEGT-VPA meetings in Guyana have been mainly characterized by a one way flow of information carried out in a highly technical language with limited time for response to questions (see Table 2). It remains to be seen if the current outreach efforts in 2014 and the final adoption and application of the national communication strategy will break this trend.

## March 2013 Indigenous workshop

It is fair to point out that despite the wider aforementioned (and on-going) problems in the participation process, a FLEGT-VPA workshop with indigenous peoples organised by the GFC in March 2013 was welcomed. At this workshop, a limited number of representatives were able to attend on the recommendation of the APA, who insisted that community participants should be involved. The GFC used the workshop to consult on a wide range of technical issues,

31 GFC (2013) *Indigenous Workshop: Guyana's Engagement with the European Union Forest Law Enforcement Governance and Trade Initiative* Draft report. GFC's Multiplex, Georgetown 20-21st March, 2013. [http://www.forestry.gov.gy/Downloads/EU\\_FLEGT\\_Workshop\\_with\\_Amerindian\\_Villages\\_and\\_Communities.pdf](http://www.forestry.gov.gy/Downloads/EU_FLEGT_Workshop_with_Amerindian_Villages_and_Communities.pdf)

32 NTWG reply to the letter sent by international NGOs to the European Commission (Re: Guyana – EU VPA negotiation) in September 2013. The reply has no heading or date and was sent electronically to the European Commission in October 2013. It was not forwarded to the relevant NGOs until January 2014

33 APA (2013) *Re: Concerns about EU-FLEGT negotiations – APA Letter to the Guyana Forestry Commission*, March 2013



including the draft Legality Definition, the proposed Impact Study and the Communication Strategy (see above). Although the GFC reports that the workshop had been a great success where people were invited to 'voice concerns' and 'give views',<sup>34</sup> some participants felt the agenda was crammed with topics entirely new to them and that terminology used was very technical.

A number of participants found the content of the Legality Definition technical and difficult to comprehend, while others felt uncomfortable that they were asked to support the draft legality definition without any time to prepare or consult with their communities.<sup>35</sup> Other participants reported that the moderation of the proceedings did not always make it clear when they could intervene on issues of direct concern to their villages.<sup>36</sup> All participants identified the need to learn more about the process of FLEGT-VPA in a simple but effective manner in ways that involve their communities and could reach a wider set of people. The workshop report which remains in draft, did record some community interventions on minimum requirements for an effective communications strategy for the FLEGT-VPA process in Guyana,<sup>37</sup> but it remains unclear if these have been taken on board in the official plans for consultation.

### **Defective consultation on legality definition**

A major concern is that vital issues linked to the rights of indigenous peoples have not been the subject of widespread consultation in relation to the VPA legality definition. In this context, the APA communicated to the GFC in December 2013 that:

**The APA maintains that although there has been some GFC outreach to 'cluster communities', this draft legality definition has not been initially developed with the effective participation and inputs of indigenous peoples' communities located in the interior and hinterland areas of Guyana...In order to ensure that the legality standard properly upholds indigenous peoples' rights in line with Guyana's international legal obligations, the APA recommends that the legality definition should be subject to much more widespread review and consultation.<sup>38</sup>**

### **Lack of transparency in the NTWG**

APA is concerned that NTWG meetings are closed and minutes of the meetings are not made public (Box 13). In the FLEGT updates published on its website, the GFC reports that several meetings between the NTWG and stakeholder constituency groups have already been held (including indigenous peoples, NGOs and the private sector),<sup>39</sup> but there is no information available to the public describing the time, duration, location and nature of any such consultations (aside from the Workshop for Amerindian Communities held in March 2013), nor any of the internal meetings of the NTWG.

34 GFC presentation to 22nd Illegal Logging Stakeholder Consultation and Update Meeting, July 2013 (source: FPP notes)

35 Government efforts seeking indigenous peoples 'support' for official policies before they have properly discussed the pros and cons of proposed national policies is common in Guyana. This accelerated and top-down approach to 'consultation' has been common in government efforts to influence the NTC in relation to the LCDS

36 APA (2013) supra note 33.

37 GFC (2013) *Indigenous Workshop: Guyana's Engagement with the European Union Forest Law Enforcement Governance and Trade Initiative*. GFC's Multiplex, Georgetown 20-21st March, 2013, at Section 3.3.2. [http://www.forestry.gov.gy/Downloads/EU\\_FLEGT\\_Workshop\\_with\\_Amerindian\\_Villages\\_and\\_Communities.pdf](http://www.forestry.gov.gy/Downloads/EU_FLEGT_Workshop_with_Amerindian_Villages_and_Communities.pdf)

38 APA comments on Draft Legality Definition, 31st December, 2013

39 Update on Guyana's engagement on EU FLEGT, February 11, 2013. <http://www.forestry.gov.gy/news.html>

Question marks remain over the transparency of the formation of the NTWG, which is meant to facilitate representation of indigenous peoples at the highest levels of VPA consultation and negotiation.<sup>40</sup>

Although the NTWG has representatives of the NTC and IPC as members, it is unclear if they have sought the space for detailed consideration on forest tenure, natural resource conflicts, indigenous peoples' rights and measures needed to increase transparency and tackle corruption in the forest sector in Guyana, as reports from the working group are not available.

Although the NTC is made up of Toshaos (elected villager leaders), the degree of independence of this body is uncertain as much of the NTC agenda and public statements are steered closely by the MoAA thereby compromising independent representation.<sup>41</sup> There are worries that the GFC is likewise steering the NTC approach to FLEGT without space for independent NTC consideration of the implications of the VPA for indigenous peoples in Guyana.



**Forests provide communities with bush foods as well as essential materials for building dwellings, fabricating crafts and making traditional remedies.**

*Photo: Tom Griffiths*

40 APA (2013) *Re: Concerns about EU-FLEGT negotiations – APA Letter to the Guyana Forestry Commission*, March 2013 <http://www.forestpeoples.org/sites/fpp/files/publication/2013/07/letter-gfc-vpa1.pdf>

41 The APA is of the understanding that the NTC Executive is currently seeking to reduce ties to government agencies and offices and increase its autonomy, including efforts to hold internal meetings and conferences independent from the government

**Table 2: Stakeholder and other meetings of the Guyana EU FLEGT process (to 01/2014)**

Date	Meeting / workshop	Comments by indigenous peoples and other non-State Actors
March 2010	Stakeholders preliminary discussion, Georgetown	APA engaged in preliminary discussions, and recommended that land rights of indigenous peoples be dealt with in the process of identifying what is legal timber.
September 2010	Exploratory workshop with stakeholders, Georgetown	
September 27-28, 2012	National Preparatory Workshop, Georgetown	NTWG established and members selected (apparently by the government)
November 14, 2012	Meeting between GFC and a previously unknown Indigenous Constituency Group, for GFC update from the National Preparatory Workshop.	APA concerns included: – Composition and representation of the NWTG – questions over how the Roadmap was drafted APA recommendations: – land rights issues must be dealt with in the roadmap – representativeness of NTWG should be broadened to include independent organisations such as APA
November 28, 2012	Meeting between GFC and the Indigenous Constituency Group	– APA questioned how recommendations from “Constituency Group” meetings will be incorporated into NTWG meetings – APA requested a meeting with the EU negotiating team
<b>5 Dec 2012</b>	<b>First EU – Guyana formal negotiation, Georgetown</b>	Development of a communication strategy through an inclusive multi-stakeholder process is announced, APA is not invited
January 2013	Meeting between GFC and the Indigenous Constituency Group for GFC update on first negotiations.	APA recommended: – a workshop to hear stakeholder views on the draft legality definition – the importance of a participatory process and the need to address land rights
20/21 March 2013	Workshop with indigenous village representatives, Georgetown	– The GFC stated that land issues cannot be addressed under this process – TOR for the communication and consultation strategy introduced – TOR for scoping of impacts introduced and discussed – Discussion on draft legality definition was rushed – Overall workshop was rushed and overly technical
28 May 2013	Meeting between GFC representatives and the APA on FLEGT VPA process	Meeting requested by the GFC as follow up to APA letter of 23 April 2013 regarding concerns about the EU FLEGT VPA process. APA raised some of the concerns in its original letter. One response from the GFC was that the FLEGT process should not be asked to deal with legislative reform.
<b>18 July 2013</b>	<b>Second EU – Guyana formal negotiation, Brussels</b>	NTC presentation continues to ignore land issues in the VPA negotiations
August 2013	NTC outreach with Amerindian communities in Region 1	APA was unaware of this until after the event
August 2013	Three NTWG stakeholder consultation sessions held in Berbice, Essequibo and Georgetown	APA was unaware of these sessions despite NTWG claims to have extended invitations to all stakeholders
August 2013	GFC update meeting after Brussels negotiation with indigenous communities, Georgetown	APA officially invited for the first day, even though there was a second day meeting with selected IP representatives. No publically available information on this meeting.
9 January 2014	Meeting between GFC and the Indigenous Constituency Group	GFC informs group of: – consultants appointed to develop the Communications and Consultation strategy and Impacts study – ongoing consultations by GFC, the next to be held in Region 9 – third draft of Legality Definition under preparation for the end of February (to discuss at the next technical meeting with the EU in March) APA recommends that in the absence of a communication and consultation strategy, any outreach to the communities must not be considered as ‘Consultations; in addition: – the consultant should consult with individual groups before meeting groups in an open constituency meeting – discussions from the outreach sessions must not be incorporated into a ‘third draft’ Legality Definition for the February 2014 negotiations as is intended by the GFC.

## Conflicting accounts of the VPA process

A July 2013 illegal logging update at Chatham House in London<sup>42</sup> included a session on the Guyana FLEGT process, with panel members consisting of GFC, IPC, NTC and private sector representatives, all members of the NTWG. The session conveyed some confusion to participants, with a contrast between the rosy picture of the FLEGT process in Guyana presented by the panel, and sharp criticism from informed members of the audience.

Issues of concern included a recent GFC sale of timber rights to over 6.5% of Guyana's forest area to a Chinese logging conglomerate without FPIC and without transparency (See Box 14, below). Civil society participants from Guyana and Europe also highlighted the need for land tenure issues to be resolved as a 'pre-condition' for conclusion of the VPA. On the panel, the GFC expressed the view that the VPA will only relate to existing legal systems, while the IPC representative acknowledged 'conflicting legislation' in Guyana on IP rights and identified the need for legal reform based on a review of IP rights and national laws.<sup>43</sup>

More shocking in the July 2013 London meeting was a comment from a government lawyer on the panel who responded to questions on land issues by affirming that indigenous peoples' rights in Guyana had been extinguished on the conquest by European powers. This offensive comment drew grumbles and gasps of astonishment from the audience as the view exposed a deep lack of governmental understanding of indigenous peoples' rights in international law and apparent ignorance of legal jurisprudence on indigenous land rights in commonwealth countries.<sup>44</sup>

The Chatham House meeting was followed a few days later by a meeting in Brussels between European NGOs, European Commission (EC) officials and representatives of the Guyanese government, including members of the NTWG. During discussions, NGOs emphasized the importance of genuine multi-stakeholder consultations and the need for stakeholders to be able to self-select, rather than those involved in the VPA negotiations being selected by government. The EC noted that it heard the concerns of NGOs, and that it takes its human rights commitments very seriously, including freedom of speech, and that the necessary time would be taken for a proper consultation process to ensure all voices are heard.

## Call for slow down and more effective multi-stakeholder arrangements

Despite public claims and strong written assertions made by the government that a fully participatory and inclusive framework has been established for the negotiation and adoption of a VPA in Guyana,<sup>45</sup> there is little doubt that there are shortcomings in transparency and the problems with the current VPA participatory arrangements. For this reason, the APA has made repeated calls for a slow-down of the Guyana FLEGT process in comments and recommendations made to GFC in meetings and written communications.<sup>46</sup>

42 Chatham House (2013) *22nd Illegal Logging Stakeholder Consultation and Update Meeting 8–9 July 2013 Energy, Environment and Resources Summary*, Chatham House, London [http://www.illegal-logging.info/sites/default/files/22nd%20IL%20meeting%20report\\_EN.pdf](http://www.illegal-logging.info/sites/default/files/22nd%20IL%20meeting%20report_EN.pdf)

43 GFC and IPC presentations to 22nd Illegal Logging Stakeholder Consultation and Update Meeting, July 2013 (source: FPP notes)

44 Ibid.

45 GFC (2013) *Letter from GFC to APA*, 14 May 2013, in response to APA letter expressing concern about EU FLEGT VPA negotiations; Undated NTWG letter to international NGOs, including FPP, received January 2014 via the European Commission.

46 See, for example, APA (2013) *Letter to GFC re "Concerns about FLEGT VPA Process"* 23 April, 2013 <http://www.forestpeoples.org/sites/fpp/files/publication/2013/07/letter-gfc-vpa1.pdf>

In May<sup>47</sup> and September<sup>48</sup> 2013, European NGOs wrote letters to the EC supporting APA and asking for the process to be halted until a meaningful, transparent and inclusive consultation is ensured and that all VPA-related documents are made publically available. In response, the EC highlighted the importance of stakeholder participation and committed to providing financial support for capacity building of local NGOs to take part in the VPA process. In a formal reply sent to NGOs in October 2013, the EC affirmed:

**The EU places a strong emphasis on the importance of a transparent and participatory consultation process. This is valuable not only for the democratic values of transparency and accountability per se, but also because an agreement based on the accumulated knowledge and experience of all actors in the forest sector is normally of higher quality and more relevant. The VPA agreement will also be easier to implement if it is based on far reaching consensus...In this spirit...the EU is...supporting, within the FAO FLEGT Programme, the development of a communications and consultation strategy for the Guyana VPA process, with emphasis on consultation with VPA stakeholders.<sup>49</sup>**

The EC commitment to participation is welcome and indigenous peoples and international NGOs will continue to engage with the government of Guyana and the EC on ways to improve the participatory arrangements for the VPA process.

The GFC maintains that current shortcomings in the consultation process will be addressed under the aforementioned Communications and Consultation Strategy (see section B, above) that will spell out how Amerindian Villages and indigenous peoples' organisations will be involved in the process. As mentioned above, a first draft of this strategy was circulated for comments with an extremely tight deadline. How and when Amerindian Villages will be consulted on the Strategy is unclear.

## Critical Issues

As well as measures to strengthen the participation process, it is vital that the FLEGT-VPA process in Guyana enables inclusive multi-stakeholder analysis of forest sector issues, including legality verification matters. Multi-stakeholder discussions must also generate proposals for forest tenure and governance reforms required to achieve sustainable and fully legal timber production. At this stage, the government has not put forward any solid proposals for forest sector reforms and maintains that FLEGT is primarily a "market access tool". In the same way, government officials have insisted that the FLEGT process and final VPA must work within existing legal and regulatory frameworks. This position completely misses a key rationale underpinning the FLEGT initiative through which multi-stakeholder consultations are meant to identify gaps and inconsistencies in the legal framework as well as pinpoint legal obligations that must be met beyond the strict confines of forestry and environmental law.<sup>50</sup>

47 FPP, FERN and Global Witness letter to EU Commission and Guyanese government re. absence of an inclusive and effective multi-stakeholder consultation process in EU FLEGT VPA negotiations, 9 May 2013. <http://www.forestpeoples.org/sites/fpp/files/publication/2013/07/letter-ec-re-guyanamay2013.pdf>

48 FPP, FERN, Global Witness, Rainforest Foundation UK and Forest Management Trust letter to EU Commission. Re: Guyana-EU VPA negotiation, 14 September 2013 <http://www.forestpeoples.org/region/guyana/publication/2014/fern-fpp-global-witness-rainforest-foundation-and-forest-management-t>

49 Pasca-Palmer, C (2013) *Re Your Letter of 14 September on Guyana-EU FLEGT VPA DEVCO C2 Unit*, European Commission, 8 October 2013 <http://www.fern.org/sites/fern.org/files/Answer%20letter%20Guyana-EU%20VPA%20negociation.pdf>

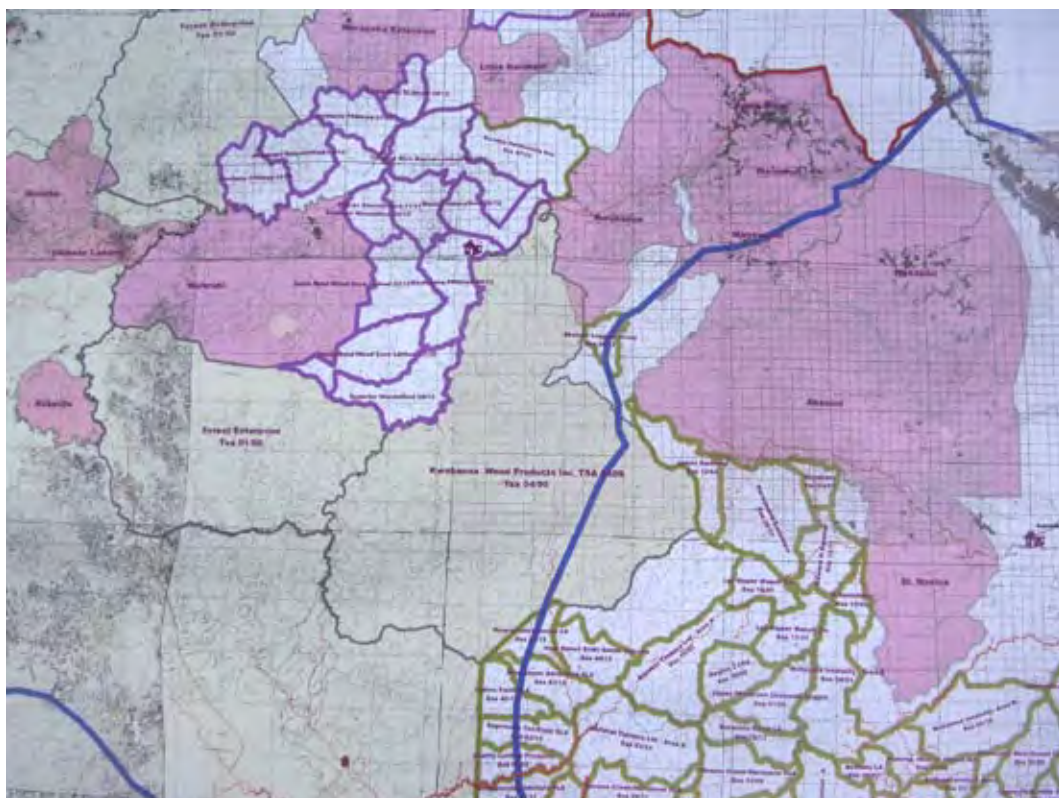
50 See especially, "Step 4" and "Step 6" in EU (2012) *Guidance for developing legality definitions in FLEGT Voluntary Partnership Agreements* EU FLEGT Facility and European Forestry Institute, Brussels

In relation to indigenous peoples' rights and livelihoods, there is a pressing need for the FLEGT-VPA process in Guyana to address unresolved land tenure and legality issues linked to compliance with the principle of FPIC, and Guyana's related legal obligations under various international human rights and environmental treaties.

### Unresolved land rights issues

Many Amerindian communities in Guyana do not enjoy full legal security over their lands and territories, which have been the subject of land claims since colonial times. The same customary lands have been the subject of numerous petitions to the government for legal recognition as detailed in the Amerindian Lands Commission Report of 1969. While some titles were issued in 1976 and 1991, and again in the new millennium, these titles were not as a result of consultation and typically only cover a fraction of the lands under traditional occupation and use, meaning that a significant amount of customary and ancestral land remains without legal recognition up to today (see Section 1).

These untitled Amerindian lands are classified as State lands under existing national land and forestry laws and a great deal of forested lands have already been granted to non-Amerindian third parties for timber extraction under Timber Sales Agreements (TSAs) or State Forest Permits (SFPs) without the knowledge or consent of affected communities (Section 1).



The land titles of many Amerindian communities in Guyana are surrounded by large-scale logging concessions and state forest permit holders, as pictured here in Region 1 and 2. Village residents complain that their efforts to extend their land titles are being blocked by powerful logging interests, while logging companies and SFP holders often restrict Amerindian forest access and harass communities carrying out traditional land and resource use (hunting, fishing gathering, farming).

Source: GFC map for Region 1 and Region 2, 2012

Allocation of concessions in violation of Amerindian land rights appears to be in breach of the GFCs own 1999 Manual of Procedures that requires that any granting of exploratory timber rights should not interfere with Amerindian lands, including untitled lands under claim. The overlapping of forest concessions with Amerindian lands likewise do not square with legal requirements under existing forestry legislation that requires Environmental and Social Impact Assessment (ESIA) prior to the issuance of TSAs, large exploratory permits and timber cutting licenses.<sup>51</sup> A credible ESIA would necessarily need to examine land tenure issues, including past and present Amerindian claims seeking legal land titles, as well as documentation of traditional occupation and use of the land by Amerindians in the areas under consideration for the allocation of commercial and/or exploratory timber rights.

In sum, the practice by the GFC in issuing concessions on the customary lands of Amerindian communities thus appears to be linked to systemic non-compliance with legal and institutional rules and an apparent lack of due diligence. This latter conclusion is partly based upon reports that since the 1990s the GFC and other government agencies have been in possession of digitised maps of Amerindian land claims (including those submitted to the Amerindian Lands Commission (ALC) in the 1960s).<sup>52</sup> GFC officials are also aware of outstanding land claims and extensions made public by indigenous peoples in various fora and in face-to-face meetings in the capital and in villages in the interior (e.g. extension applications and land use plans of Southern Rupununi Villages).



**Amerindian Villages protest that commercial loggers in Guyana often do more harm than good due to their harmful practices that damage construction and craft materials (house-building lumber, nibbi, kufa etc), compact and erode soils, pollute water sources, destroy medicinal plants, desecrate burial grounds, violate sacred sites and mash up bush fruits and planted orchards. Negative impacts also include sexual harrassment of Amerindian women and girls, exploitation of Amerindian workers and encroachment on titled and untitled customary lands leading to land conflicts.<sup>53</sup>**

*Photo: Marcus Colchester*

51 See, for example, *Procedure for the Issuance of a Timber Sales Agreement (TSA) and Wood Cutting Lease (WCL)* [http://www.forestry.gov.gy/Downloads/Procedure\\_for\\_issuing\\_TSA\\_or\\_WCL.PDF](http://www.forestry.gov.gy/Downloads/Procedure_for_issuing_TSA_or_WCL.PDF)

52 Palmer, J (2012) *Insecure Tenure of Amerindians in Guyana* Unpublished Email memo

53 Wilson, D and Atkinson, S (2014) "Deforestation and Indigenous Peoples' Rights in Guyana" Presentation to *International Workshop on Deforestation and the Rights of Forest Peoples*, Palangaka Raya, Central Kalimantan, Indonesia, 9-14 March 2014.

## Forest conflicts

Insecure tenure rights and the imposition of forest concessions and sales agreements on Amerindian lands are causing numerous conflicts and community grievances in the hinterland, many of which are exacerbated by unresolved problems in Guyana's system of land titling, demarcation and administration which has generated boundary disputes across the country (see Section 1).

Villages in Region 2, for example, accuse GFC officials of confusing community boundary maps and even moving physical demarcation boundary markers to enlarge logging concession areas:

**Our village boundary was reduced when forestry official moved the signboards from Tapakuma creek and Hurihe creek downriver to Mapuri creek in order to allow Insanali concession to claim the area. The 'unnamed creek' has caused a lot of problems and been mistakenly located on three separate occasions. Initially it was considered to be the Mapuri creek then the Mohoroni creek, now the White Water creek, but we know it was the Hurihe creek where the signboard was located. It has taken many years for us to try and correct this problem and still the 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 also show a different boundary for the Insanali forestry concession. Another more recent GFC map (2012) doesn't even show Kabakaburi at all!** *[Village resident, Kabakaburi, Region 2, 2012]*

In the neighbouring village of St Monica, the residents complain that much of the traditional hunting and fishing grounds are occupied by loggers who impede access for traditional livelihood activities:

**Most of our lands outside our title are now occupied by non-Amerindian State Forest Permit holders who tend to block access by Amerindians for cutting nibbi, kufa and lumber. Some SFP holders and GFC also restrict access in some areas for hunting and fishing. 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 told us we cannot apply as the area is needed for loggers.** *[Village Resident, St Monica Village, Region 2, 2012]*

**There are permit holders all over our lands. All of those guys have occupied our forests and there is no space for our Amerindian Village to use the forest not even to get an SFP for ourselves! These men say that we Amerindians not got any rights no longer in their SFP areas. They say we cannot work there as it goes against forestry rules and they say it is their land. They are claiming that the land is their own! I just be sorry that we cannot get access any longer. All of our extension area is occupied!** *[Resident, St Monica Village, 2012]*



Villagers feel that they are being squeezed inside their limited title boundaries where many resources are already exhausted. Villagers protest that they are often threatened by loggers who inform villagers that they cannot enter their forest concession and permit areas:

**After Saleem got the concession he came over and informed the community that the land is his and not to go there anymore. Another time, the same logger seized 10 chainsaws from community loggers working in lands outside his permit area! ...Only last week, Saleem seized ten square posts off a villager and he said he don't want to see anyone on the land even walking or even cut a wattle. Our villagers feel restricted by their boundaries and unable to hunt, fish and log on our traditional lands e.g. left bank of the Ituribisi. [Village resident, Mashabo, Region 2, 2013]**

Problems also occur with loggers invading the titled lands of Amerindian Villages in order to extract lumber:

**The Village is very concerned that the SFP holder (Mr Sanchara) had cut a boundary line inside St Monica's title boundary. The logger had no permission to enter Village lands. Complaints had been sent in writing to the Minister of Amerindian Affairs in October 2012, but so far no solution has been secured for the Village. [Village resident, St Monica, Region 2, 2012]**

Amerindian villages complain that loggers also take advantage of demarcation errors and conflicting official maps to extract lumber on titled community lands:

**Loggers exploited the error in demarcation at Massari Creek accusing villagers of working outside their title and claiming it was their land shortly after the demarcation. This caused a conflict and was resolved by clarification from GFC who used GPS to show that the area was within Mashabo title and was simply an error by surveyors conducting demarcation. The mistake was corrected, but our lumber has been taken. [Village resident, Mashabo, 2013]**

### **Non-compliance with FPIC**

Much of the aforementioned land conflicts and rights violations stem from the fact that in many parts of Guyana TSAs and SFPs have been issued by GFC to outside interests without the knowledge or consent of affected villages. Despite requirements in GFC's 1999 Rules of Procedure that prohibit the granting of forest exploration rights that might affect Amerindian lands, timber rights are often sold by GFC over Amerindian lands that indigenous communities have traditionally used and occupied for generations, including lands claimed under land title extension applications or long earmarked by the community for future extension areas. Examples include the allocation without FPIC of concessions to Sherwood Forests Inc and to Kwebana Woods Inc, under the Bai Shan Lin consortium (Box 14).

## Disregard for customary land rights

Indigenous peoples in Guyana have been dismayed to learn that the latest 2013 national land use maps have almost entirely disregarded their longstanding territorial claims as well as existing and pending applications for land title extensions under Section 59 of the Amerindian Act (see also Section 1).<sup>54</sup> Existing Guyana Lands and Surveys Commission (GLSC) maps in the national land use plan show large scale timber sales agreements, SFPs and the “unallocated” State Forest Estate, yet make no reference whatsoever to indigenous peoples’ untitled customary lands over which villages are seeking legal title and to which they possess legitimate rights under customary and international laws (See, for example, Map 10).

While the UNDP Amerindian Land Titling Project (See Sections 1 and 3) jointly planned with the Ministry of Amerindian Affairs documents at least 29 villages seeking land title extensions – itself an underestimate (see Section 1), the Guyana Lands and Surveys Commission claims it has only registered 12 such applications.<sup>55</sup>

Even where formal land title extension applications have not yet been submitted by some Villages, the GFC already reportedly has access to maps of indigenous land claims, and due diligence in line with Forestry Rules should ensure consultation and avoid overlaps with indigenous lands (see also footnote 54). Crucially, an effective community-level consultation would undoubtedly identify forest areas claimed by affected villages and thereby avoid future conflicts and grievances. The problem is that due diligence is not completed (or is disregarded) and community consultations prior to allocation of lumber rights are almost never undertaken by GFC (nor any other government agencies).

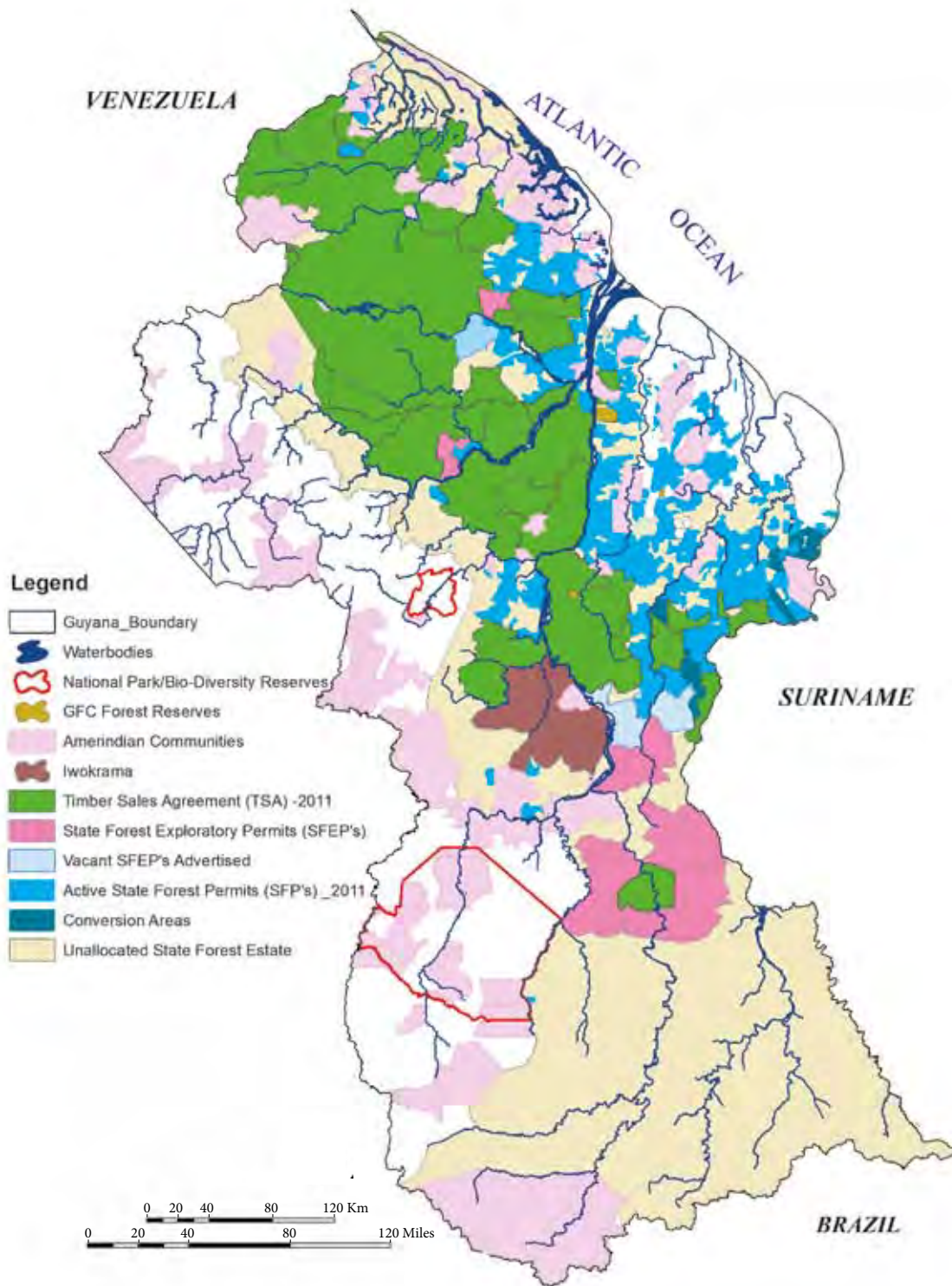
Villages report that often the first they learn of a concession affecting their lands is GFC interference in their livelihood practices and penalties for cutting timber and forest resources:

**Villagers only learned of the A Mazaharally concession through maps provided by the GFC in 2009 in connection with fines on villagers for alleged ‘illegal logging’ inside their own traditional (untitled) lands. Now the land is occupied by an Asian logging company and we know nothing of these deals. We do not understand how the government says it wants to save the forests, while it allows massive forest destruction by big Chinese and Malaysian companies yet punishes small people like us under the LCDS. Why do the authorities pick on us Amerindian people?**

*[Village Resident, Kwebana, Region 1, 2012]*

54 See, for example Development of Land Use Planning Project (DLUPP) “Forestry Leases” Map ID No. T005 V1.0, September 2012 included as Figure 2.19 in *Guyana Lands and Surveys Commission (2013) Guyana National Land Use Plan, June 2013* GLSC, Georgetown. See also Figures 2.32 (Titled Amerindian Villages) and Figures 4.2 (Available Land). The National Plan does make passing mention of land title extensions (at Section 3.4.7), but claims that these are “unmappable” until they have been formally demarcated (something which appears make little sense as these could be shown as indicative areas. In any event, this position does not stand up to scrutiny as concessions, unallocated lands and State Forest Estate have often not been demarcated on the ground, yet are shown on the national land use maps). <http://www.lands.gov.gy/National%20Land%20Use%20Plan%20GoG%20June%202013%20with%20cover%20pages.pdf>

55 Section 3.4.7 of Guyana National Land Use Plan, June 2013



**Map 11: Forest Resources Allocation Map of Guyana\***  
*\*Adapted from: Figure 2-18 in National Land Use Plan, June 2013, Guyana Lands and Surveys Commission, Government of Guyana, Ministry of Natural Resources and Environment*

Government of Guyana forest resources allocation map indicating forestry concessions and land “available” for lease for timber extraction – much of which overlaps Amerindian customary lands.

### Box 14: Controversial allocation of logging rights to Chinese logging company Bai Shan Lin

Bai Shan Lin, a Chinese logging company, has outlined large-scale investment plans for Guyana, which include forest concessions covering 960,000 hectares; a 20-kilometre river gold mining concession; and extensive commercial developments to facilitate trade in wood products. This was outlined in a presentation given by Chu Wenzhe, the chairman of Bai Shan Lin, in November 2012 at the 2nd World Congress on Timber and Wood Products Trade. Chu Wenzhe outlined the geographical advantage of Guyana, with its easy access to Brazil and Venezuela (the two biggest economies in Latin America), and its access to the “over \$130 billion dollar US export market”.<sup>56</sup>

Bai Shan Lin is part of a group of 11 companies operating as part of the China Forest Industry Group in Guyana. These companies have seven logging concessions in Guyana, covering a total area of 960,000 hectares (about 4.5% of the country). These concessions were taken over from other concession holders, a process known as “land lording” which is illegal in Guyana (unless officially authorised by the President).<sup>57</sup> Under Guyanese law, forest concessions cannot be traded, but must be re-advertised by the Forestry Commission in an open auction. In addition, Bai Shan Lin’s target of 300,000 m<sup>3</sup> of timber per year will exceed the threshold set for log production in the Norway-Guyana MoU.

Members of Bai Shan Lin’s Project Promotion Team include Guyana’s President, Donald Ramotar, Prime Minister, Sam Hinds, and former President, Bharrat Jagdeo. Despite the scale of the planned operations, and the involvement of senior political figures in Guyana, Bai Shan Lin’s agreements with the government of Guyana are not public and there has been no discussion in the National Assembly about the company’s plans.

Responding to questions in the national press,<sup>58</sup> James Singh, Commissioner of Forests in Guyana,<sup>59</sup> claims that Bai Shan Lin has Joint Ventures with WAICO and Haimorakabra for forest concessions, and with Sherwood Forrest Inc. for a State Forest Exploratory Permit, approved in early 2000 prior to the requirement for Presidential approval of such takeovers. Independent researcher, Jannette Bulkan, contests that *Condition 2 of the Timber Sales Agreement concession licence (in law since 1982) and Section 12 of the Forest Regulations 1954 have required presidential approval for transfers of any kind of interest in a concession, making it reasonable to conclude that Bai Shan Lin has not acquired control of logging concessions by fully legal processes.*<sup>60</sup>

Commissioner Singh also noted that the MoU between Guyana and Norway refers to an interim group of indicators, which will be phased out by 2014. Hence, the GFC argues, timber volumes harvested by Bai Shan Lin will not exceed the current agreements until they have expired, suggesting a lack of commitment to the continued reduction of deforestation in Guyana once the MoU terminates.

56 *Chinese Enterprises to Guyana*, Chu Wenzhe, Board Chairman of Heilongjiang Baishanlin Timber Industry Co., Ltd. Link: <http://www.redd-monitor.org/wordpress/wp-content/uploads/2013/04/cwz-en.pdf>

57 Stabroek News, 28 August 2007, *Transfer of assets between forest companies must meet approvals – Jagdeo*.

58 See: Stabroek News, May 5 2013, *Bai Shan Lin holds 960,000 hectares of forest*. <http://www.stabroeknews.com/2013/news/stories/05/05/bai-shan-lin-holds-960000-hectares-of-forest/>; and Kaieteur News, 7 May 2013, *Questions about Bai Shan Lin (BSL) interventions in the forest sector* (by Janette Bulkan).

59 Guyana Times, 7 May 2013, *Commissioner James Singh GFC responds to Janette Bulkan*. <http://www.guyanatimesgy.com/?p=13325>,

60 Stabroek News, 11 May 2013, Janette Bulkan: *It is time the Natural Resources Sectoral Committee of Parliament asked serious questions of the Ministry of Natural Resources, the GFC and Bai Shan Lin*. <http://www.stabroeknews.com/2013/opinion/letters/05/11/it-is-time-the-natural-resources-sectoral-committee-of-parliament-asked-serious-questions-of-the-ministry-of-natural-resources-the-gfc-and-bai-shan-lin/>

There are logging concessions covering much of the community's untitled lands west of the Waini River. GFC has also advertised forests for concession in the SE portion of Kaniballi's untitled lands south of Troolie Creek. The Village Council and villagers were not consulted on any of the forest concessions affecting our land. We only discovered the GFC advertisement affecting the SE portion of our area by chance in the newspapers (seen by Kwebana people). 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 concessions holders may restrict access to the forest. *[Village resident, Little Kaniballi, Region 1, 2012]*

Amerindian leaders and community members maintain that prior consultation and FPIC procedures in Guyana must be overhauled in order to ensure fair and sustainable logging practices in the country:

The government and loggers should stop destroying the forest. The government must stop giving out concessions on our lands: logging and mining permits are causing health problems as well as social problems. We find that these permit holders are pressuring our people and cleaning out our lumber and other resources. That is not right and we are not even consulted. All concessions must be properly consulted and our agreement obtained. The government should allow Amerindians to have title and to work our own resources for the benefit of our people. *[Village resident, St Monica Village, Region 2, 2012]*

Our villagers are upset that logging and mining concessions have been given out with no prior consultation nor FPIC. They are very worried that these companies are eating out the land and that there will be no resources left for their children and grandchildren. *[Village Resident, Kwebana, Region 1, 2012]*

All those people using our untitled lands are miners and loggers that have permits given by the government, including the Barama company, James Smith, Barakat and Imam Persaud, Nandram Sanichara, Insanally and James Ramroop as well as Parmanan. These are just a few of the companies: there are many other companies with SFPs on our lands, which we do not even know about. *[Village Resident, St Monica, Region 2, 2012]*

## Violation of international legal norms

The imposition of timber harvesting rights over indigenous peoples' lands without their free, prior and informed consent is in violation of Guyana's international obligations. As with the incomplete and flawed application of the FPIC standard to the LCDS (Section 3), the underlying legal problem in Guyana appears to be a restrictive definition of "Amerindian lands" limited to areas granted (sic) title by the State. Current minimum legal standards on the rights of indigenous peoples in international law are unequivocal that the FPIC standard applies to all lands held under traditional occupation and according to customary law, and are not confined to lands with legal titles (Box 15).<sup>61</sup>

61 On the legal FPIC norm established in international law, see, for example, 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 Programme, UNREDD, New York

### Box 15: Saramaka Judgement of the Inter-American Court of Human Rights<sup>62</sup>

In November 2007, the Inter-American Court on Human Rights ('the Court') adopted a landmark judgment for indigenous peoples' rights in the case of the Saramaka People v. Suriname.<sup>63</sup> The case was brought by the Saramaka people against Surinam over violations of indigenous and tribal peoples' rights to their traditional lands, territories and resources. The Saramaka people asserted that Surinam had actively violated these rights in the granting of logging and mining concessions in traditionally owned territories. The Court found in favour of the Saramaka people, determining that the state has obligations to recognise, secure and protect indigenous and tribal peoples' property rights, including through demarcation, delimitation and titling, conducted in accordance with the norms, values and customs of the indigenous peoples concerned.<sup>64</sup>

The judgment maintains that indigenous and tribal peoples' property rights do not depend on domestic law for their existence, but are grounded in and arise from customary laws and tenure.<sup>65</sup> This means that the property rights of indigenous peoples exist even if they do not hold legal titles to land held under customary or traditional use.<sup>66</sup> The Court has also held that indigenous peoples have a right to restitution of traditionally owned lands which have been taken or lost without their consent, including where title is given to third parties.<sup>67</sup>

The rules set forth in the Saramaka judgment apply to any proposed development or investment project that could affect the integrity of indigenous and tribal peoples' territories, particularly any proposal to grant logging or mining concessions.<sup>15</sup> The Court noted that where projects could affect the integrity of the Saramaka people's lands and natural resources, the state has a duty not only to consult with the Saramaka, "but also to obtain their *free, prior, and informed consent*, according to their customs and tradition"(emphasis added).<sup>68</sup> The findings of this case illustrate the rights of indigenous peoples that are affirmed and protected in universal human rights instruments. This finding is consistent with the definition of FPIC in the UN Declaration on the Rights of Indigenous Peoples, and in related human rights instruments.<sup>69</sup>

### Restrictions on local livelihoods

As well as loggers imposing unjust restrictions on Amerindian access and freedom of movement, villagers complain that in recent years the GFC has become increasingly punitive and restrictive with regards to Amerindian use of the forest outside their title areas.

62 For more detailed information on this case please see: Forest Peoples Programme, March 2009, *Indigenous Peoples' Rights and Reduced Emissions from Reduced Deforestation and Forest Degradation: The Case of the Saramaka People v. Suriname*. FPP, Moreton in Marsh.

63 Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2007. Series C No. 172, at para. 194-96. [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf)

64 Ibid at para. 115

65 Ibid at para. 122, which notes that: "the demand for collective land ownership by members of indigenous and tribal peoples derives from the need to ensure the security and permanence of their control and use of the natural resources, which in turn maintains their very way of life"

66 Ibid at para. 121.

67 See Yakye Axa Indigenous Community Case, Inter-American Court of Human Rights, 17 June 2005, Series C No 125; and Sawhoyamaya Indigenous Community Case, Inter-American Court of Human Rights, 29 March 2006, Series C No. 146.

68 *Saramaka People v. Suriname*, at para. 134.

69 UNDRIP, Article 32(2)

**Our freedoms to extract lumber, manicole cabbage and other bush resources have been restricted by GFC since demarcation was completed in 2006. GFC already placed a 600,000 GY fine on one villager for cutting two Washiba trees. People have been warned by GFC that if they are found on “State land” cutting lumber of NTFPs, they will be fined and if they cannot pay they will go to jail. People do not feel free anymore. They live in fear that they might be caught walking and using resources on their traditional land. Government officials have told us that they do not want villagers using state land. One even tell us that this is why the village receives the Presidential grant, so that we stay on the demarcated title! [Village Resident, Little Kanubali Village, Region 1, 2012]**

**We are getting more and more concerned about the GFC presence in the (untitled) backlands of area. Villagers feel that their freedom to roam and use their own lands is being reduced. The GFC is especially strict outside the title area. [Village resident, Wakapau, Region 2, 2012]**

Villagers also complain about growing GFC interference in their use of forest lands inside their titled areas:

**We are most upset that the GFC is now telling us that all logs must be tagged on Village Lands, including those used for domestic use. Villagers feel this is not justified and they are completely unsure of how or why the GFC is asking for this. The tagging of trees for domestic use is rejected by our village. [Village Councilor, St Monica, Region 2, 2012]**

### **Unjust benefit sharing agreements**

A further serious problem in Guyana relates to the lack of equitable and sustainable benefit sharing agreements with Amerindian Villages who are sometimes pressured by companies and even the GFC to enter into agreements that have unfair terms. As villagers from Baramita in Region 1 reported in 2013:

**Two lumber companies did approach the Village Council for permission to log our land title area, including Jialing Company and Grand Bright Company. The papers were all wrong. The Grand Bright Agreement, for example, would have given fully exclusive rights to the company to all commercial timber across the entire reservation, meaning that villagers would be restricted in their use of the forest and freedom of access. Even the Commissioner of Forests himself advised that it was a good offer, but a review of the agreements by our independent lawyers and advisors led to the previous Council to reject the applications. The companies have come back several times to try to pressure us, but the current Village Council does not wish to negotiate. We are determined to protect lumber reserves outside the mining areas. [Resident, Baramita Village, October 2013]**

Even where potentially useful benefit-sharing agreements are made, Villages complain that they are not implemented. A well known case is that of Akawini Village in Region 2 that was forced to throw the Barama Timber Company off its land after repeated broken promises in the delivery of benefits and the failure of the company to address damage by loggers to community resources.<sup>70</sup>

<sup>70</sup> Akawini Village: Logging & Indigenous Rights – Akawini, Barama & IWPI 2006



Amerindians who work in logging camps complain that they are often underpaid, receive late payments for their work and have basic equipment (like safety clothing) deducted from their wages.

*Photo: Tom Griffiths*

Problems with implementation in community agreements have also been found in the case of Iwokrama, which has been presented as a model of sustainable logging in Guyana. In 2008, FSC certifiers noted that the community benefit-sharing arrangements with Iwokrama Timber Inc (ITI) and firm Tigerwood Inc (TGI) are complex and open to confusion, as ordinary community members often do not grasp the basis of the agreements.<sup>71</sup>

While community resources, including nibbi and kufa vines and sacred sites, are meant to be protected under the agreement, the management plan maps used by loggers do not take account of non-timber forest products, fruits, medicines, sacred sites and watersheds. Non-Amerindian forest managers advise that there is only an “unspoken agreement” that trees with plentiful nibbi and other vines will not be felled, while villagers report that these valuable livelihood resources are often damaged by company logging activities.<sup>72</sup> As a result, in 2009, the Fairview Village Council requested that the buffer areas in the management plan be increased to protect community water and forest resources. The authors have not been able to verify the current status of the community benefit sharing in Iwokrama.

### **Lack of transparency and corruption in the forestry sector**

Corruption and lack of transparency in the forest sector in Guyana has been reported for decades. The APA and FPP are not aware of any indicators available to verify that any improvement in forest governance has taken place in recent years. Indeed, the Guyanese forest sector is sometimes likened to a feudal system based on patronage and clientelism through

71 Soil Association (2008) *WoodMark Forest Certification report for Iwokrama Timber Incorporated - Public Summary certification report*, Soil Association, Bristol [http://www.soilassociation.org/web/sa/saweb.nsf/librarytitles/25162.HTML/\\$file/RT-FM-001-04%20IWOKRAMA%20MA%20Report%20FINAL.xls](http://www.soilassociation.org/web/sa/saweb.nsf/librarytitles/25162.HTML/$file/RT-FM-001-04%20IWOKRAMA%20MA%20Report%20FINAL.xls)

72 FPP and APA field visit to Fairview Village and Logging Operation, 2009



which concession rights are allocated to family, friends, business partners and powerful foreign companies known to the GFC.<sup>73</sup>

Despite claims from the GFC in 2011 that the forestry sector in Guyana is more than 90% legal,<sup>74</sup> there is a large amount of evidence suggesting that this is not the case. Serious distortions in the rule of law and corruption in the forest sector have been documented in Guyana, including:

- Loopholes in the 2009 Forest Act allowing large concession holders to export great quantities of logs by sourcing these from other concessions (holders of hinterland agricultural leases and small and short-term logging concessions).<sup>75</sup>
- The private trading of concessions which lack approval of the President that is required under the law (Forest Act of 1953).<sup>76</sup>
- The exemption of large companies from regulation, while reaping high returns from Guyana's resources, with a widespread lack of required forest management plans, and large foreign logging companies receiving significant tax concessions.<sup>77</sup>
- Links between large-scale logging and serious crimes related to the trafficking in humans, drugs and guns.<sup>78</sup>
- Encroachment of logging activities and extraction of lumber on Amerindian titled areas without prior agreement.
- Manipulation of concessions and community boundaries by loggers in order to gain access to lumber (exacerbated by contradictory maps held by GFC, GGMC, concession holders, and Lands and Surveys).
- Illegality in small-scale logging frequently connected with misuse of timber tags and extraction from non-designated areas.<sup>79</sup>

Information coming from communities and other indicators suggest that, in a way not supported by laws and procedures, the GFC is focusing excessively on the illegalities committed by the small-scale loggers as opposed to those of the large-scale operators,<sup>80</sup> with penalties for small-scale offenders often exceeding the limits allowed by law.<sup>81</sup> It is suggested that

73 On the weak governance in the forest sector in the 1990s and poor GFC supervision of large logging concessions, see especially Colchester, M (1997) *Guyana: fragile frontier: loggers, miners and forest peoples* Latin American Bureau-WRM and Ian Randle Publishing, London at pages 101-114.

74 <http://www.agriculture.gov.gy/Bulletins/January%202011/Emphasis%20placed%20on%20sustaining%20legality%20of%20forestry%20activities.html>

75 Large scale traders are using these rural communities as a front for illegal practices, with timber log exports worth as much as US\$36 million when landed in China reported to have been exported from just one region of Guyana in 2010-11. See: Bulkan, J (2012) *The rule of law? – not in the forest sector of Guyana*. Stabroek News, 16 January 2012. <http://www.stabroeknews.com/2012/features/in-the-diaspora/01/16/%E2%80%98the-rule-of-law-%E2%80%93-not-in-the-forest-sector-of-guyana%E2%80%99/>

76 Out of the 33 Timber Sales Agreements (TSA) and Wood Cutting License (WCL) that were issued during 1985 and 2005, only 5 were still operating by the original licensees in 2005 and 19 were rented illegally to Asian-owned logging companies. See: Bulkan and Palmer, 2008. 'Breaking the rings of forest corruption: steps towards better forest governance'. In *Forests, Trees and Livelihoods*, Vol 18. See also for example: <http://www.stabroeknews.com/2013/news/stories/04/30/businessman-remanded-over-800lb-cocaine-in-timber-shipment/>

77 Bulkan and Palmer, 2008. Breaking the rings of forest corruption: steps towards better forest governance. In *Forests, Trees and Livelihoods*, Vol 18

78 Ibid at page 117-118

79 Reports often suggest that some loggers are able to obtain identification tags from the GFC and use them on timber that is cut outside their concessions. See: Bulkan and Palmer, 2006. *Timber tag: the currency of illegal logging and forest corruption in Guiana Shield countries*. <http://www.illegal-logging.info/content/timber-tags-currency-illegal-logging-and-forest-corruption-guiana-shield-countries>

80 Bulkan and Palmer (2008) 'Breaking the rings of forest corruption: steps towards better forest governance' *Forests, Trees and Livelihoods*, 18: 103-131

81 See the Forests Act 1953/1999. See also: <http://www.redd-monitor.org/2012/04/26/news-from-guyana-two-articles-about-guyana-by-janette-bulkan-in-the-commonwealth-forestry-association-newsletter/>

this is due to the vested interests of the members of the GFC Board, which is composed to a large extent of representatives of government departments and agencies, some of whom are themselves connected to the logging industry.<sup>82</sup> These close connections between regulators and the industry might explain the undisclosed nature of the selection criteria for new concession areas;<sup>83</sup> the award of harvesting concessions without open competition; the renewal of concession contracts without audits;<sup>84</sup> and the renegotiation of large contracts (e.g. the Barama-contract) without public oversight.<sup>85</sup>

The ability of the public to monitor the operation of the GFC in general has been made difficult by the lack of annual reports, which are to be tabled for the National Assembly every year. Not until November 2013 were the reports from the period 2005-2012 brought forward, disclosing questionable conduct by the GFC during this period.<sup>86</sup>

### **Need for legal and policy reforms**

Unjust laws and unjust application of law open the door to corrupt and illegal practices. Guyana scores poorly in most international indices on quality of governance, with weak rule of law, corruption in all areas of government, inefficient bureaucratic and regulatory frameworks all noted as problematic factors.<sup>87</sup> The negotiation of an LAS under the VPA thus offers an unprecedented opportunity to overview the operating systems of the GFC. An urgent starting point under the VPA would be the existing Guyana Legality Assurance System (GLAS), which currently does not have a definition for legality.<sup>88</sup>

Effective multi-stakeholder discussions on the FLEGT-VPA must include serious deliberations and consensus on specific areas for legal and policy reforms necessary to address the above legality and sustainability problems in the forest sector in Guyana. The APA, for example, has long maintained that the 2006 Amerindian Act requires remedial reforms to bring it into line with Guyana's international obligations to uphold indigenous peoples' rights, including their rights to lands, territories and resources. This position is backed by UN human rights bodies (see Section 1, land rights). The need for reform of the Amerindian Act is also now identified by the IPC as a necessary pre-condition for sustainable forest policies, yet this vital matter is not yet a topic of discussion in Guyana's FLEGT-VPA negotiations with the EU. Nor is it recorded in Guyana's FLEGT meeting and workshop reports, despite the fact that it has been raised by participants and presenters on a number of occasions.<sup>89</sup>

Other legislative issues that require serious discussion relate to the 2009 Forest Act, the legality of which is questioned by independent review.<sup>90</sup> This Act is complex and restrictive on question

82 Ibid

83 Bulkan and Palmer, 2006. *Timber tag: the currency of illegal and forest corruption in Guiana Shield countries*. <http://www.illegal-logging.info/content/timber-tags-currency-illegal-logging-and-forest-corruption-guiana-shield-countries>

84 Bulkan and Palmer (2008) 'Breaking the rings of forest corruption: steps towards better forest governance'. In *Forests, Trees and Livelihoods, Vol 18*

85 Bulkan 2012. See REDD-monitor April 2012: <http://www.redd-monitor.org/2012/04/26/news-from-guyana-two-articles-about-guyana-by-janette-bulkan-in-the-commonwealth-forestry-association-newsletter/>

86 Ram, 11th January 2014: <http://www.chrisram.net/>

87 In: *The Heritage Foundation's 2010 Index of Economic Freedom and The Global Competitiveness Report 2009-2010* by the World Economic Forum

88 Numerous defects in the draft GLAS have been raised by consultancy firm, Efeca, in its May 2011 report, (as reported in Stabroek News, 12 October 2011, *US report could help enhance Guyana's forestry*; and GFA Consulting Group's scoping report on independent forest monitoring, released on 16 December 2011 (source: Stabroek News item, 24 December 2011, *Assessment finds several weaknesses in forestry commission practice*).

89 For example, the IPC public acknowledgement that there are flaws in the Amerindian Act that need to be looked at as part of the FLEGT process made at the 22nd Chatham House meeting on Illegal Logging in July 2013, does not appear in the final summary record of the meeting: [http://www.chathamhouse.org/sites/default/files/public/Research/Energy,%20Environment%20and%20Development/0713il\\_summary.pdf](http://www.chathamhouse.org/sites/default/files/public/Research/Energy,%20Environment%20and%20Development/0713il_summary.pdf)

90 Consultancy firm Efeca noted in its May 2011 report, that the GFC's pretence that the Forests Act 2009 was valid law was misleading. In legal terms, the Forests Act (cap. 67:01) continues to be the 1953 Act as amended to 1997.

of Amerindian use and access rights in state forests and areas sold as leases and concessions to third parties. Unlike an earlier 2004 Draft Forest Act that was widely consulted in Guyana, the latter much revised (and weakened) version approved by the National Assembly in 2009 was not the subject of community consultations. Most Amerindian Villages are largely unaware of the status of this law or how it affects their rights and interests.

### **Need for serious treatment of substantive issues and concerns**

Despite much evidence of forest tenure problems and conflicts, non-compliance with legal standards and legal and governance obstacles to sustainable forestry, the GFC appears to be reluctant to enable frank and open discussion on these issues. When APA asks about how these problems would be addressed under the FLEGT process in Guyana, these queries are usually brushed off and no real answers have yet been provided by the GFC (similar marginalisation of rights and tenure matters is reported in GFC meetings on FLEGT held in Region 9 in January 2014). Very worrying is the failure of the NTWG to record APA's interventions on land rights and governance problems in the minutes of the indigenous peoples' constituency group.

Unfortunately, local and international organisations that have put forward views and queries about Guyana's FLEGT process have been challenged and attacked in the government-run press, creating an atmosphere of intimidation that is not conducive to transparent and open multi-stakeholder discussions.<sup>91</sup>

## **Conclusions and recommendations**

In order to secure progress, there is a need for a change in the multi-stakeholder arrangements to ensure reception of questioning and dissenting views and serious treatment of community concerns. Progress will not be secured as long as vital issues of land tenure, governance and illegality in the conduct of business are swept under the carpet. If the FLEGT process in Guyana can grasp and seek solutions to complex issues affecting the timber trade, and if it can also recognize that legislative changes are essential to protecting indigenous rights then it offers real potential to do lasting good in the forest sector.

Crucially, to enable a successful outcome in the Guyana FLEGT-VPA, APA recommends the following steps in order to strengthen the VPA process:

1. The process needs to meet all requirements of a good consultation process (see minimum requirements of good faith and inclusive FLEGT consultation in Box 12, above).
2. Amerindian and other participants in the VPA consultations must be given the space to elaborate on their concerns and to provide feedback to their constituency within a reasonable time. Additionally, the process must be free of undue GFC and government influence to ensure transparency and representation. It is recommended, for example, that the Chair of the NTWG has to be independent.

91 For evidence of unreasoned and overzealous attacks on APA and rebuttals of FERN and FPP and comments on the VPA process in the Guyana Chronicle newspaper, see , for example, Persaud, P (2013) *International experts on Guyana's EU FLEGT process should apply caution*, Guyana Chronicle, 17 May 2013 <http://guyanachronicle.com/international-experts-on-guyanas-eu-flegt-process-should-apply-caution/>

3. The government and EU must include international and customary law provisions in the legality definition, including effective protections of land rights and FPIC.
4. Consultations must take into account legality gaps and inconsistencies as part of the development of the final legality definition and for the effective design, implementation and monitoring of a credible legality assurance system.

## Annex

# Statement by the Tosaos, Councillors and Community members of the Upper Mazaruni

26 October 2011

Warwata, Upper Mazaruni

On this special day, Tosaos, Councillors and Community members from Waramadong, Warawata, Phillipai, Ominaik, Jawalla, Chinaweng and Kako have met to share our concerns in relation to the situation and problems that our peoples are facing in the Upper Mazaruni.

We are deeply concerned about projects and mining concessions being granted in the lands that are currently under the case in the High Court of Guyana, without informing the communities and not consulting to the proper authorities. As Toshao Norma Thomas from Warawata stated “we need to stand firm and let our voices be heard because no consultation was done.” We condemn the lack of respect to our land rights in this region. We urge the government and its different agencies to respect our rights to our lands and territories according to the 1959 boundaries.

Our communities are facing the negative impacts of what the government is calling “development” of our lands. Through the mining activities, many of which have been granted to foreigners and coastal persons. As stated by a leader “the women – adult and children - are being kidnapped and even males have been abused sexually by the coastal miners.” Also other impacts include the contamination of our rivers where miners are disposing waste into the waters of the rivers where we bathe, fish and even drink our water. “I was born in this land, the same as my ancestors, and coast landers should never take advantage over us and this should not be allowed any more”.

In the government’s proposed “development”, Guyana is asking Village Councils to approve their Low Carbon Development Strategy which hasn’t been properly consulted with our communities, in our language and according to our traditions. We are very concerned that the LCDS and it’s lack of consultation will result in proposed actions that will undermine our fundamental rights as indigenous peoples, specially with regards to our lands and resources.

It has also come to our attention that roads are being built close to our territory. We have demanded information to the authorities about these roads since we have not been consulted nor informed about their construction, as time goes by, the roads get closer to our communities and we know of cases where bandits use these roads to carry out their crimes, exposing farmers from satellite villages and even miners present in the region to these crimes.

In information that recently appeared in different national and international media, we have found out about the possible construction of the “Kurupung Hydro-project” formerly known as the Upper Mazaruni Dam. We are aware of its effects and consequences and all our communities strongly oppose to this project as our elders did in the 70s. As stated by one village leader: 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”

We have come together as Toshias and Councillors in the district and say NO to government-proposed projects. Our right to self-determination must be respected and it is up to us to determine the development that we want in our territory. Furthermore, we demand that our right to free, prior and informed consent is properly implemented, so that our children and their grandchildren can enjoy the lands that we have inherited from our ancestors.

Finally, we would like to call upon the government of Guyana, local organisations, political parties other governments, multilateral institutions, international organisations that our rights as indigenous peoples must be recognised and respected, as we fear that this situation may reach a point of no return with immeasurable impacts on our peoples, our territory and resources.





**Amerindian  
Peoples  
Association**



**Forest  
Peoples  
Programme**