



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 9 OF THE CONVENTION**

**Information provided by the Government of Guyana  
on the implementation of the concluding observations  
of the Committee on the Elimination of Racial Discrimination\***

[8 May 2008]

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\* For the concluding observations adopted by the Committee, see CERD/C/GUY/CO/14; for the initial to fourteenth reports of Guyana submitted in one document, see CERD/C/472/Add.1.

## **I. STATE PARTY'S RESPONSE TO CERD/C/GUY/CO/14, PARAGRAPH 10**

**(10.) The Committee notes that the Amerindian Act of 2006 systematically refers to the indigenous peoples of Guyana as “Amerindians”. (Art.2)**

**The Committee recommends that the State party, in consultation with all indigenous communities concerned, clarify whether “Amerindians” is the preferred term of these communities, that it consider the criteria laid down in article 1 of the International Labour Convention (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, as well as in the Committee's general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention, in defining indigenous peoples, and that it recognize the specific rights and entitlements accorded to indigenous peoples under international law.**

1. The Government reminds the Committee on the Elimination of Racial Discrimination (“the Committee”) that Amerindians have the same fundamental rights and freedoms as all citizens of Guyana and enjoy equal protection of the law. These rights and freedoms include freedom from discrimination, equality, rights to life, rights to liberty, rights to property, freedom from slavery, etc. Amerindians equally with all other citizens of Guyana have the rights set out in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (“the Convention”).
2. The Amerindian Act creates a regime of additional or special rights for Amerindians in addition to the rights that they already have under national law. The rights set out in the Amerindian Act apply only to Amerindians. The entire Act is a special measure discriminating in favour of Amerindians, in compliance with article 1, paragraph 4, of the Convention. The Act builds on the rights of Amerindian individuals by creating a regime that gives legal recognition to their communal way of life and protects their right to live in accordance with their traditional collective structures. It also establishes a procedure for settling lands claimed by Amerindians. The purposes of the Act are to protect collective rights, settle land claims and provide for a system of good governance.
3. There has been extensive consultation on the Act in its draft form and the Government accepted the majority of the recommendations submitted by representatives of the various communities. The Government also gave priority to the submissions of the communities over other interested groups.
4. The Government reiterates its response to an earlier and similar question put to it at the time of the presentation of its report in 2006:

The Amerindian Act guarantees the rights of all Amerindians to refer to themselves as indigenous if they wish. Secondly there was no consensus among all or even the majority of the 68,000 plus Amerindians for a change from “Amerindian” to “indigenous”. Many communities were opposed to such a change. Other communities and one Amerindian non governmental organization (NGO) objected to the term “indigenous” as being equally foreign to them and made other suggestions.

The Act caters for all of the Amerindian communities by giving them the right to decide for themselves whether they wish to refer to themselves as “indigenous”, “Amerindian”, “first peoples”, “aboriginal”, “native”, “Akawaio”, “Arekuna”, “Atorad”, “Carib”, “Arawaks”, “Lokono”, “Macushi”, “Patamona”, “WaiWai”, “Warrau”, or “Wapishiana.”

5. It should also be noted that during extensive consultations with Amerindian communities (before the draft Bill was produced and thereafter as well) a number of communities indicated that they were told by Amerindian NGOs, and in particular the Amerindian People’s Association (APA), that if they did not change their name from “Amerindian” to “Indigenous” they would not benefit under international law. This is definitely not the case. Of significance is the fact that several elected Amerindian leaders indicated at the Public Hearings, called by the Special Select Committee of the Parliament, that having realized that they were misled they preferred to have the word “Amerindian” remain and the option to use any other preferred word.
6. The Government also notes that apart from the Guyana Organisation of Indigenous Peoples, these NGOs have eschewed the use of the term indigenous in favour of Amerindian, for example, the Amerindian Peoples Association, the Amerindian Action Movement of Guyana, the National Amerindian Development Foundation. It should also be noted that when a regional group of Toshias registered their own NGO, they unanimously chose the name “Amerindian Toshias Area Council.”
7. The Amerindian Act, which gives individuals and communities the right to name themselves according to their own wishes, has entered into force in February 2006. Since then there has been no request for the word “Amerindian” to be removed from the Act and replaced with “Indigenous.” Descendants of Guyana’s first inhabitants continue to refer to themselves as Indigenous and Amerindian. Other members of the Guyanese population continue to refer to them in the same way.
8. The Government was very concerned by the position taken by certain Amerindian organizations, as seen in their list of recommendations, that even some Amerindians should not be considered as “indigenous”. The Government rejects any attempt to take away from Amerindians and their descendants the right to be indigenous or to suggest that Amerindians of mixed parentage are to be regarded as inferior.
9. As the Committee is aware Guyana is a very ethnically mixed and a fragile multi-ethnic society. Ethnic tensions were created and exacerbated by colonial governments and subsequently by foreign governments during the Cold War. Guyana has had a long struggle from 1964 to 1992 to restore democracy and has suffered pre- and post-election violence for several decades. The 2006 national and regional elections were the most peaceful in three decades.
10. Unlike Australia, New Zealand, Canada, the United States of America or other countries in Latin America, Guyana has no dominant settler population descended from the former

colonial powers. The bulk of the population are descendants of victims of colonialism who were brought forcibly to Guyana as slaves or under conditions of extreme servitude.

11. All Guyanese consider themselves to be indigenous to Guyana and the Government is concerned that the repeated attempts by the NGOs to exclude others is racially divisive. The question of who counts as indigenous to Guyana and who does not is a very sensitive question and very significant for all Guyanese, but particularly those who are descendants of displaced peoples such as descendants of African Guyanese or any other group exercising their right to define themselves as indigenous.

12. It is illegitimate for any government of the day or for any ethnic group to dictate that certain groups may not regard themselves as indigenous to Guyana. Any such question has to be debated publicly with the full participation of all sections of society and with the intention of reaching a national consensus, and probably even by referendum. The Government of Guyana sees its role and responsibility as one which promotes understanding among the races and does not seek to elevate one group above others or to separate it from other ethnic groups.

13. The Government considers that to use the term “indigenous” to exclude other ethnic groups is, in the particular context of Guyana, extremely insensitive and may increase ethnic insecurities. The Government has an obligation to discourage anything which would tend towards strengthening ethnic insecurities.

14. The Government respectfully urges the Committee to take into account the multi-ethnic nature of Guyanese society, and to consider the views of the Amerindian communities and accept that while Amerindians are certainly indigenous to Guyana and recognized as such, the use of the term “indigenous” is applied also to other ethnic groups and cannot be used exclusively for Amerindian peoples. However, nothing prevents Amerindians from referring to themselves as Indigenous.

## **II. STATE PARTY’S RESPONSE TO CERD/C/GUY/CO/14, PARAGRAPH 14**

**(14.) While noting that the Constitutional Amendment Act of 2000 establishing the Ethnic Relations Commission does not require the representation of any particular ethnic group on the Commission, the Committee is nevertheless concerned about the absence of any indigenous representatives on that Commission. (Art.5 (c))**

**The Committee recommends that the State party ensure that the ethnic composition of the Ethnic Relations Commission be as inclusive as possible, and that the representatives of indigenous communities be consulted, and their informed consent sought, in any decision-making processes directly affecting their rights and interests, in accordance with the Committee’s general recommendation No. 23 (1997) on political and public life.**

15. The Constitutional Reform process, which commenced in 1995 to 1997 and then recommenced in 1999 to 2002, provided for the enforceability of the human rights section of the Constitution and a further mechanism for their implementation and oversight by providing for the establishment of five Constitutional Commissions: Human Rights; Women and Gender Equality; Rights of the Child; Indigenous Peoples; Ethnic Relations. The Human Rights

Commission is an umbrella commission; and members of the four other commissions, the President and the Leader of the Opposition would then have to agree to name the Chairperson.

16. In addition, the Constitution went further and provided for a Standing Committee of the Parliament to appoint members of the commissions. The composition of this Committee is based on proportionality of seats in Parliament; thus the Committee in the 9<sup>th</sup> parliament (2006-2011) is comprised of a chairperson from the Government side and five Government MPs, and four MPs from the opposition parties in the House. The Parliamentary Standing Committee after consultations which are catered for by procedures must seek and win the National Assembly's approval with a two third vote for the list of entities and/or nominees for each of the Commission.

17. It is worthy to note that the President has no nominee on the first four commissions and can only name the chairman of the Human Rights Commission in consultation with the Leader of the Opposition.

18. The composition of the Ethnic Relations Commission (ERC) as stated in the Constitution is as follows: article 212B (1) The Ethnic Relations Commission shall consist of –

- (a) “Not less than five nor more than fifteen members nominated by entities, by a consensual mechanism determined by the National Assembly, including entities, representative of religious bodies, the labour movement, the private sector, youth and women, after the entities are determined by the votes of not less than two-thirds of all elected members of the National Assembly;
- (b) A member who shall be a nominee, without the right to vote, chosen by and from each of the following commissions to be established under this Constitution, Women and Gender Equality Commission, Commission for the Rights of the Child and Human Rights Commission.”

19. As can be seen above, the composition of the ERC is not a combination of people representing various ethnic or racial groupings nor in the constitutional reform process lead by the Parliamentary Constitutional Reform Commission was it ever intended to be that way; rather it comprises representatives from a broad cross-section of entities from civil society – Christian, Hindu, Islam, Labour, Business, Women and Youth – whose membership include all ethnic groups and who are expected to offer objectives oversight on ethnic issues/insecurities and discrimination.

20. The Constitutional Reform Commission recognized the special status of Amerindian peoples and created a special Constitutional body, the Indigenous Peoples Commission (IPC), to protect and enshrine their interests. No other ethnic group in Guyana has been accorded this recognition and status, and the Government of Guyana urges the Committee to recognize this advancement. The ICP will also include a member not only from the ERC but from the other human rights commissions as well.

21. In addition, the constitutional provision for the IPC allows for three representatives (one of whom must be a woman) to be elected by the National Toshias Council and two to be elected (one of whom must be a woman) from the Amerindian organizations. The Parliamentary

Committee has no selection or discretion in these nominees, it must use the names received from these bodies.

22. In fact in the 9<sup>th</sup> Parliament (post 2006 elections), the Parliamentary Committee has already approached the Amerindian organizations which have made their submission and is awaiting the election of the nominees from the Triennial Toshias Meeting scheduled for October 2007.

### **III. STATE PARTY'S RESPONSE TO CERD/C/GUY/CO/14, PARAGRAPH 15**

**(15.) The Committee notes with deep concern that, under the Amerindian Act (2006), decisions taken by the Village Councils of Indigenous communities concerning, inter alia, scientific research and large scale mining on their lands, as well as taxation, are subject to approval and/or gazetting by the competent Minister, and that indigenous communities without any land title ("untitled communities") are also not entitled to a Village Council (Art. 5 (c))**

**The Committee urges the State party to remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act and from any other legislation. In particular, it urges the State party to recognize and support the establishment of Village councils or other appropriate institutions in all indigenous communities, vested with the powers necessary for the self-administration and the control of the use, management and conservation of traditional lands and resources.**

23. The Government wishes to reiterate the arguments set forth at the time of its presentation in 2006 before the Committee as there appears to be some misunderstanding in regards to the Amerindian Act and the legal system of Guyana.

24. The Amerindian Act of 2006 recognizes both titled and untitled communities (communities with and without titled land). However, while communities without legal title have traditional rights as specified in the Amerindian Act, they do not have the level of rights as the titled communities. Logically, there must be a distinction between the two since boundaries must be determined before title is issued. In the case of untitled communities boundaries are not yet determined. However, the Committee may wish to note that the number of untitled communities has reduced significantly since the titling process has accelerated. In the last three years, Amerindian titled lands have more than doubled, moving from approximately 6 per cent to approximately 14 per cent of Guyana's territory. In February 2004, the WaiWai people who number just fewer than 200 persons were granted title to more than 2200 square miles of land. An additional 19 communities have received land titles while 6 have received extensions to their titled lands and the titling process continues. As recent as September 2007, six more communities received their titles and two more will be done in the coming months. There remain 17 communities to be titled and of this amount 16 have requested their lands to be titled.

25. With respect to the establishment of "Village Councils" or "appropriate institutions," all communities have these institutions and these are recognized by the Government.

26. In some cases Amerindian communities own land and in some cases they do not. Where they own land, they possess certain rights (defined below) which go with land ownership. In

addition the Amerindian Act gives those communities certain rights over and above the normal rights of ownership. In cases where communities do not own land the Amerindian Act and the Constitution protect their collective rights to occupy and use the land.

27. Section 57 of the Act states:

“Nothing in this Act, shall except where expressly stated, be construed to prejudice or alter any traditional right over State lands and State forests.....”

28. “Traditional right” is defined as “any right or privilege, in existence at the date of the commencement of this Act, which is owned legally or by custom by an Amerindian village or Community and which is exercised sustainably in accordance with the spiritual relationship which the Amerindian village or community has with the land, but it does not include a traditional mining privilege.”

29. The State is entitled to dispose of its resources as it sees fit and in the national interest provided that it does not interfere with the rights held by Amerindian communities or any other citizens over these lands.

30. Furthermore the Amerindian Act accepts that Amerindians who are already occupying lands may have a right to be recognized as the owners of those lands. How are these lands to be identified? To do so some objective criteria has been developed to:

(a) identify those groups who are entitled to claim lands and distinguish them from other groups on State lands who are not so entitled;

(b) identify the area of State lands which is already owned by Amerindian communities under legal title and therefore not open to claim by other communities.

31. The above must be done before an additional title(s) is/are issued. Notwithstanding the traditional rights to State lands, the Government wants all communities to have titled lands, hence the detailed procedure set out in the Act to grant titled lands to communities (see section 59 of the Amerindian Act). In addition, there is also a procedure to grant extensions to communities that already have title but may be in great need for an extension of the area covered by the title due to population pressure (section 60 of the Amerindian Act.).

32. The Government had the option to keep the procedure as policy but opted for it to be law. This demonstrates the seriousness of the Government’s commitment in addressing Amerindian land issues. As members of the Committee will be aware many countries impose a high evidential burden on native or aboriginal peoples to prove that they own land. It should be noted that unlike some countries where such peoples have to prove their relationship with the land dating back to the acquisition of sovereignty before legal recognition is granted, in Guyana this is merely 25 years.

33. It should be further noted that the amount of land titled to Amerindian communities has almost doubled in the last three years and represents approximately 14 per cent of the country’s total patrimony and, as pointed out earlier, the process of titling is ongoing. It is incorrect to say that the communities without title fall outside of the protection provided by the Amerindian Act. As pointed out above, all of their traditional rights are protected and there is a procedure

for these communities to claim land based on their traditions, customs and spiritual relationship with the land they claim.

34. Communities who do not have legal title to the land they occupy are further protected in the Amerindian Act which gives legal recognition to the Councils they have established. Therefore they are not denied the right to establish their Village/Community Councils nor are they denied the right to have a representative to the National Toshias Council – a misconception the Committee seems to have. This is substantiated in the following sections of the Amerindian Act:

86. The functions of a Community Council are –

a. to exercise in relation to the Amerindian community the functions of a Village Council other than those functions which relate to village lands;

b. to make an application for communal ownership of land in accordance with part IV of the Act on behalf of the Amerindian community provided that the Amerindian community meets the criteria for application.

87. A Community Council has authority over the members of the Amerindian community and may regulate the exercise of traditional rights over State land.

88. Elections of a community council shall be conducted in accordance with Part II.

89. The Toshias of a Community council is ex-officio a member of the National Toshias Council.

35. The following sections set out the criteria for granting title to communities and extensions to titled communities.

**Extension of titled lands**

“59 (1) A Village may, in accordance with subsection (2) apply in writing to the Minister for a grant of State lands as an extension to its village lands and the application shall include –

- (a) the name of the village;
- (b) the number of persons in the Village;
- (c) the area of land which the village already owns;
- (d) the reason for the application;
- (e) a description of the area; and
- (f) a copy of a resolution passed by two-thirds of the General Meeting, which authorizes the making of the application”.

**Grants of land to communities without titled land**

“60 (1) An Amerindian community may apply in writing to the Minister for a grant of land provided –

- (a) it has been in existence for the last 25 years;
- (b) at the time of the application and for the immediately preceding five years, it comprised at least one hundred and fifty persons

60 (2) An application made under subsection (1) shall include –

- (a) the name of the Amerindian community;



- (b) the number of persons in the Amerindian community;
- (c) the reason for the application;
- (d) a description of the area requested; and
- (e) a resolution authorizing the application and passed by at least two thirds of the adult members of the Amerindian community.

36. In addition the Amerindian Act requires the Minister to take into account the customs and traditions of the Amerindian community, their use of the land, the nature of the relationship which they have with the land. In fact the extent to which the community has a physical, traditional cultural association with or spiritual attachment to the land must be taken into account in any decision.

37. The Committee will be aware that this provision reflects the most recent jurisprudence of the Inter-American court on Human Rights.

#### **Why District Councils cannot hold title to land?**

38. The Amerindian Village Council is the executive authority for a village, whilst a District council is a coordinating body for three or more villages. The latter is only established by the Minister at the request of three or more village councils and the Act has clear criteria for such establishment. The role of the District Council is not to compete with Village Councils to hold land but to give Village Councils a formal mechanism of cooperating on matters of common interest. If Village Councils want to join together and hold land they can do so.

39. The suggestion to have District Councils hold title to lands came from Amerindian NGOs but did not receive the support from the communities when the matter was further discussed at the regional consultations on the Amerindian Bill. Individual communities do not want to have one block of land for several communities and administered by a District Council, since this will ensure a concentration of power and may hinder decision-making on village issues as interests may vary. The trend at the moment is for satellite communities of the larger communities holding a common title to land to request the delinking from the larger community and have their own titled land.

40. This phenomenon contradicts the proposal of some Amerindian NGOs and in the specific case of Karasabai, Rupununi, the NGOs sought to force the Government into overriding the wishes of the community on this matter. In most of these cases the satellite communities claim that the “mother” community is not addressing their interests hence the need for their own Council and separate land.

#### **Involvement of communities in decision-making relating to land**

41. Concerning the involvement of Amerindian communities in making decisions related to land titling, the Act contains a detailed procedure for titling of communities. Amerindian communities are fully involved in this process and have been given a legal right to produce such evidence and supporting statements that they believe are appropriate and relevant to their case. For example, the Act specifically allows oral testimony and drawing made by the community.

42. As it is presently done, an application is submitted to the Minister and negotiations are held with the particular community and other interested parties. This procedure has worked well so far, resulting in the titling of 80 communities and the extension of title for 3 of them in the last two years alone. This brings the total number of communities with titled lands to 83 and increased the land owned communally by Amerindian communities by more than 60 per cent.

43. Concerning the establishment of Village Councils, in both communities (titled and untitled) provision is already made for these communities to be governed by Councils. However, there is a legal distinction between the two: one is called a Community Council (where community does not have communally titled land) and the other a Village Council (where land is titled). The Act provides for recognition of the Community Councils which was not the case previously. It also provides for the leaders of the Community Councils to be on the National Toshias Council with equal voting rights.

44. It is therefore impossible to remove the distinction between the titled and untitled communities. It is very clear that one has title (ownership) to the land they occupy and use, and the other does not. The Amerindian Act sets out very clear procedures for untitled communities to become titled if they so wish.

45. Further it should be noted that not all Amerindian communities are desirous of communal lands, some are in the process of acquiring individual lands.

46. More importantly, Amerindians in Guyana do not live on reservations, special enclaves or restricted settlements as in some other countries; they like all other Guyanese are free to live in any part of the country and this is especially true for the younger generation, and thus, in some cases, based on their mobility, those new areas have lands already belonging to other Guyanese. To remove the distinction between titled and untitled land is basically saying that wherever Amerindians live is considered their land. This recommendation if implemented can be the occasion for claims of racial discrimination and recipe for ethnic conflict.

47. A case in point is the recent debate in Parliament (July 2007) on an opposition motion calling for the establishment of an African Lands Commission to address the claims for ancestral lands belonging to the freed Africans after the abolition of slavery, which illustrates how divisive and emotive this issue could become.

#### **IV. STATE PARTY'S RESPONSE TO CERD/C/GUY/CO/14, PARAGRAPH 16**

**(16.) The Committee is deeply concerned about the lack of legal recognition of the rights of ownership and possession of indigenous communities over the lands which they traditionally occupy and about the State party's practice of granting land titles excluding bodies of waters and subsoil resources to indigenous communities on the basis of numerical and other criteria not necessary in accordance with the traditions of indigenous communities concerned, thereby depriving untitled and ineligible communities of rights to lands they traditionally occupy. (Art. 5 (d) (v))**

**The Committee urges the State party to recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy. Including water and subsoil resources, and to safeguard their right to use lands not exclusively occupied by them, to which they have**

**traditionally had access for their subsistence, in accordance with the Committee's general recommendation No. 23 (1997) on political and public life and taking into account ILO Convention No. 169 on Indigenous and Tribal Peoples. It also urges the State party, 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.**

48. The Government wishes to reiterate its responses made at the time of the presentation of its initial to fourteenth periodic reports that there is no limitation on the control that Amerindians have over the lands that they own.

49. The Government of Guyana recognizes and protects the rights of Amerindian communities to own, develop and control lands for which they have legal title. In addition, the Government has enacted legislation which recognizes the traditional rights of all Amerindian communities, both titled and untitled. Sub-soil right, as is the case of many other countries, remain in the domain of the State. However, unlike many other countries and indeed other Guyanese communities, Amerindian communities have a veto over small and medium scale mining on their titled land, which are the types of mining that have proven to be destructive, and have exclusive rights on the forest resources. These provisions are included in the 2006 Amerindian Act.

50. It should be noted that since the passage of this Act, many communities have themselves entered into mining and logging agreements with residents and non-residents. In fact, some communities who granted such permissions encountered difficulties, resulting in the Government hosting a forum to assist the communities with developing template Agreements that will benefit the communities.

51. It should be emphasized that no Amerindian community has been denied access/control of waterways, or sources of water in their lands or contiguous to their land.

52. In terms of demarcating Amerindian lands, the Government for the last 10 years has consistently included in the national budget a sum for demarcation of lands. This process is proceeding smoothly and the allocation for 2007 is G\$46 M (US\$230,00). More than 75 per cent of communities with titled lands have been demarcated and the process is ongoing. A similar allocation will be included in the 2008 budget as an additional nine communities have received land titles in 2007 and several more are expected to be titled in 2008.

53. Concerning the procedure to address land claims, this is included in the Amerindian Act of 2006 and it is under this provision that the recent land titles were issued. It should be noted that all of the land titles issued, were only issued after agreements were reached with the various communities.

54. The Committee will be aware that in some countries native or aboriginal peoples are given a lesser title or prohibited from having a legal title over the lands which is set aside for their exclusive use. This is not the case in Guyana. The title issued by the State to the Amerindian

Council means that they hold the land absolutely and forever on behalf of the Amerindian community. That title is treated as private property (albeit communal) and given the full protection of the Constitution.

55. Section 7 (1) of the Act states:

In granting permission to enter village lands, or to carry out any research or study, a Village council may attach reasonable conditions to its permission including restriction on access to sacred sites, private homes and other areas of village lands.

56. Thus there is no “limitation on indigenous peoples’ control of their lands” in this provision. On the contrary, it gives the Village Council the authority to put restriction on access to certain areas by persons to whom permission is granted.

57. The Committee is asked not to take this subsection out of context but to consider the rest of the section in order to understand the provision. Section 7(2) provides that the council may revoke the permission if the person breaches any condition of the permission. This is a restatement of the common law position. The section then makes it a criminal offence for any person to remain in village lands once his permission has been revoked. Far from limiting control, the provision actually provides that the State will act to enforce the Council’s decision. This provision gives the community greater protection than other sections of society have.

58. Section 46 and 47 (1) read as follows:

46. (1) A Village Council may grant leases of Village lands provided that –

- (a) the total amount of land leased does not exceed ten percent of village lands;
- (b) the maximum term of a lease is fifty years;
- (c) the lease is granted at a market rent or above;
- (d) the purpose of the lease is for agriculture, tourism or other productive and sustainable use of the land, which is consistent with the Village’s cultural attachment to the land and provided that it is the best interests of the Village;
- (e) the Village Council obtains the advice and consents required under section 47.

(2) The following conditions are implied in every lease granted under this section:

- (a) a right to re-enter and determine the lease if the lessee is in breach of any covenant of the lease;
- (b) a prohibition against subletting or assigning.

(3) A lease shall not be extended or renewed.

(4) A lease shall not be granted for residential purposes.

(5) The provisions of any other written law conferring security of tenure, restrictions on rent increases or other protection for tenants are excluded from any lease granted under this Act.

(6) The Village Council shall -

- (a) notify the Minister when a lease is granted; and
- (b) provide the Minister with a copy of the lease and any subsequent amendments.

47. (1) Before granting or amending a lease a Village council shall obtain the advice of the Minister.

59. The Committee will be aware that most Amerindians, like other aboriginal peoples, do not regards land as a commodity to be bought or sold. Most Amerindians claim that they have a sacred relationship with land and that it is the foundation of their life and their culture. They believe that they hold their land in trust from their fore-parents for their descendants and often describe themselves as belonging to the land rather than owning it. Section 46 is not a limitation on Amerindian control of land but protects the very basis of the Amerindian relations with land. At the same time the section accommodates requests from certain communities for greater flexibility.

60. The contents of **sections 46 and 47** came directly from the Amerindian communities during the consultation. Some community leaders, especially those who spoke of the need for business investment in their communities, requested that they be allowed to lease land, others saw lands as a resource that should be kept for future generations and not leased by any means.

61. The Government was also advised by Osvaldo Kreimer (a well known international consultant) that leases should not be considered because of the experiences of other countries but that if there were to be leases, the Amerindian Act should contain measures to protect the community. It is for this reason that section 45 (1) (a) (10 per cent limitation on leases) was included so that communities will always have 90 per cent of their land intact. If the Committee examines the provision of section 46, it will see that these are all intended to protect the community from losing its land or from being exploited by unscrupulous operators.

62. For example, the provisions at sections 46 (1) (b) and 46 (3) are included so that no lease can contain an “automatic renewal” clause. Moreover, since changes will occur over a 50-year period, the law protects the community in the sense that if they so desire they can renegotiate a new lease at the end of the period.

63. **Section 46 (4)** prevents persons from applying for leases for residential purposes since, as said by some Toshaos on the consultation of the draft Bill, conflict may arise in the community if some persons are living on communal lands under one regime and others with leased land under another regime. As stated previously all Amerindian communities are based on collective ownership. In addition, all Guyanese are free to apply for leases outside of Amerindian titled lands so that Amerindians who wish to break away from their traditional culture are free to do so without damaging the collective culture of the community.

64. **Section 47 (1)** has been included at the request for the communities. In fact, the draft Bill required that the Minister approves of the lease. This was because of the frequent experience of the Ministry of Amerindian Affairs where communities granted leases for activities such as logging without the knowledge of the Ministry, but when they found themselves in trouble they sought the Minister’s assistance to find a solution. On many occasions the damage was already done. However, the provision was subsequently changed when some leaders prompted by Amerindian NGOs objected to “approval” and instead suggested “advice.”

65. **Section 50** is an addition to the existing mining law and therefore the Committee will need to understand section 50. Under national law, all minerals are owned by the State. The State has the sole right to authorize mining and has the power to grant mining permits over all lands irrespective of who owns them.

66. **Section 48 and 49** of the Amerindian Act remove this system in so far as it applies to Amerindians and gives Amerindian a veto over all mining on their lands whether this is small, medium or large scale. These sections provide for Amerindians to be given full information about mining activities. Section 49 also provided that if an Amerindian community gives its consent to mining there must be a legal agreement which contains a series of provisions to protect the Amerindian community. In the case where an Amerindian village agrees to have such mining, a minimum of at least 7 per cent of all tribute to be paid to the community is provided for in the law. Several communities are already involved in small and medium scale mining, albeit, in some cases without the knowledge of the Government.

48. (1) A miner who wishes to carry out mining activities on Village lands or in any river, creek, stream or other source of water within the boundaries of Village lands shall –

(a) obtain any necessary permissions and comply with the requirements of the applicable written laws;

(b) make available to the Village any information which the Village council or Village reasonable requests;

(c) give the Village Council a written summary of the proposed mining activities including information on –

(i) the identity of each person who is involved;

(ii) a non-technical summary of the mining activities;

(iii) the site where the mining activities will be carried out;

(iv) the length of time the mining activities are expected to take;

(v) the likely impact of the activities on the Village and the Village lands;

(vi) any other matters which the Village Council on behalf of the Village requests and which are reasonably relevant;

(d) attend any consultations which the Village Council or Village requests;

(e) negotiate with the Village Council on behalf of the Village in good faith all relevant issues;

(f) subject to section 51 reach agreement with the Village council on the amount of tribute to be paid; and

(g) obtain the consent of at least two-thirds of those present and entitled to vote a Village general meeting.

(2) The Guyana Geology and Mines Commission may facilitate the consultations to be held under subsection (1) but may not take part in any negotiations.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable to the penalties prescribed in paragraph (d) of the First Schedule.

49. (1) After the village has given its consent under section 48, the Village Council, acting on behalf of the Village, shall enter into a written agreement with the miner.

(2) An agreement made under subsection (1) contains the following implied terms -

(a) subject to paragraph (b) the miner shall offer employment to residents at market rates;

(b) the miner shall not offer employment to non-residents unless residents with the required skills are unavailable;

(c) the miner shall purchase all food and materials from the Village if these are available at reasonably competitive prices;

(d) the miner shall take all reasonable steps to avoid –

(i) damage to the environment;

(ii) pollution of ground water and surface water;

(iii) interference with agriculture;

(iv) damage to or disruption of flora and fauna;

(v) disruption of residents' normal activities;

(e) the miner, his employees and agents shall comply with the rules made by the Village Council under section 14.

(3) If the Village so requires, the miner and the village shall include in the agreement –

(a) a protocol regulating the behaviour of the miner and his employees and agents, including any restrictions on the use of alcohol and the carrying of firearms;

(b) requirements for reporting to the Village Council;

(c) an environmental protection programme;

(d) a waste disposal plan;

(e) a mechanism for assessing and paying compensation;

(f) a mechanism for identifying and resolving conflict;

(g) a health programme including providing medical supplies to health workers for use by the Village; and

(h) support for education in the village including an employee education programme and financial contributions to the Village school and library.

67. No other ethnic group in Guyana has this protection. The Government considers that it is necessary because of the particular vulnerability of Amerindians to pressure from outsiders.

68. However, there may be an occasion where it is in the public interest for the State to have access to its minerals or to authorize another entity to exploit those minerals. In that case, section 50 provides that both the Minister of Amerindian Affairs and the Minister of Mining must declare the mining to be in the public interest.

69. However, two points must be noted – first this applies only to large scale mining which is extremely rare in Guyana. The second point is that the communities may challenge this decision in court and the court has the power to overrule the Ministers' decisions. In addition the Ministers must put in place the protections set out in section 50 of the Act which states as follows:

50. (1) If a Village refuses its consent in respect of large scale mining, a miner may carry out the mining activities if –

- (a) the Minister with responsibility for mining and the Minister of Amerindian Affairs declare that the mining activities are in the public interest;
- (b) subject to section 51 (29 and 3), the Minister with responsibility for mining in consultation with the Minister of Amerindian Affairs determines the fee and the tribute to be paid by the miner to the Village; and
- (c) the miner gives the Minister with responsibility for mining a written undertaking that he will –
  - (i) comply with the rules made by the Village council;
  - (ii) require his employees and agents to comply with the rules made by the Village Council; and
  - (iii) promptly pay fair compensation for any damage caused by his mining activities to Village lands or property owned by residents.

(2) No mining shall take place for a period of sixty days from the declaration made by the Minister of Amerindian Affairs and the Minister with responsibility for mining, during which time the Village shall have the right to require the miner to enter into negotiations and the Village and the miner shall negotiate in good faith with a view to reaching agreement before mining commences upon the expiry of the sixty days period.

(3) If the miner and the Village fail to reach agreement under subsection 50(2) the Minister;

- (a) shall require the miner to enter into an agreement with the Minister on behalf of the Village which contains the provisions in section 49(2); and
- (b) may require the miner to enter into an agreement with the Minister on behalf of the Village covering the items specified in section 49(3).

70. As can be seen above, section 50 deals with the large scale mining and the refusal of community consent when mining is declared in the public interest. It should be noted that fundamental human rights are held by all people equally. However, this section gives Amerindian villages a right which no other section of Guyanese society has. This right must be limited to what is justifiably necessary to protect Amerindians but it cannot give Amerindians rights to the detriment of others. All States have a right and an obligation to act in public interest and may rely on the concept of eminent domain to authorize interference with property rights.

71. In Canada for example, aboriginal title may be infringed for compelling and substantial legislative objectives provided there is compensation and consultation. Section 50 is a stronger protection because it sets out the procedure for negotiation, not merely consultation. The State is only allowed to act if the negotiations fail and the State is required to enter into an agreement with the miner to protect the community. Furthermore as seen above if there is a situation where the Government declares mining in the public interest and the Amerindian village refuses its consent, there is still the provision that a percentage of royalties must go to the village in question.



### **Sub-soil rights**

72. Further there is no international convention or law that requires any Government to transfer “sub-soil rights and bodies of water” to indigenous or any other people. It should be noted that no country in South America has done so nor any country in the Western Hemisphere. However, despite this the Act provides for veto powers to titled communities over small and medium scale mining and benefit sharing if mineral resources are exploited. Access to water has never been denied or restricted.

73. The Committee should also be made aware that Guyana does not have a homogenous group of indigenous peoples and as such their traditions vary as do their languages and customs. It will be difficult to have criteria that will suit each individual community. It should be noted also that the communities were satisfied with the criteria contained in the Amerindian Act.

74. An interesting dilemma has been broached by the Committee maybe inadvertently in relation to democracy and the voice of the people, and whose or which voice does a government respond to?

75. There are at present four Amerindian NGOs in existence which represent a relatively small number of Amerindians – and in most cases not entire communities – whose leadership is also based in the capital city, Georgetown. In contrast to the 100 elected Toshias in the National Toshias Council and the 191 Amerindian communities who participated in the consultations on the draft Amerindian Act and who all made various amendments. In some cases, the NGOs did not share the same views as the communities or their elected representatives.

76. From a Government perspective and in recognition of good democratic governance, the Government could not ignore the voice of the community leaders and communities. For the most fundamental principle of democracy is grounded in the voice of the people. The Government has no dilemma; the Committee does not have the opportunity to hear that larger voice and therefore understandably responds to the issues raised by small well financed NGOs.

77. Before it be misconstrued, the Government has involved these same NGOs in all the deliberations and they participate in all activities in relation to policy, representational and other issues relating to Amerindian people and their welfare and development.

### **V. STATE PARTY’S RESPONSE TO CERD/C/GUY/CO/14, PARAGRAPH 19**

**19. “The Committee is deeply concerned that despite the State party’s efforts mentioned in paragraph 6 above, the average life expectancy among indigenous peoples is low and that they are reportedly disproportionately affected by malaria and environmental pollution , in particular mercury and bacterial contamination of rivers caused by mining activities in areas inhabited by indigenous peoples. (Art. 5 (e) (iv))**

**The Committee urges the State party to ensure the availability of adequate medical treatment in hinterland areas, in particular those inhabited by indigenous peoples, by increasing the number of skilled doctors and of adequate health facilities in these areas, by intensifying the training of health personnel from indigenous communities, and by allocating sufficient funds to that effect. Furthermore, it**

**recommends that the State party undertake environmental impact assessments and seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities.**

### **Life expectancy**

78. The Government recognizes that concerted efforts must be made to increase the life expectancy of Guyanese in general, and Amerindians in particular.

79. The Government urges the Committee to take note of the fact that the Amerindian population has increased from 40,343 in 1991 to 68,819 in 2002 (the latest year for which census data is available). It is the fastest growing population group in Guyana and presently represents 9 per cent of Guyana's population in comparison to 6 per cent 15 years ago.

80. There is no doubt that this increase resulted from improvements in the socio-economic conditions, in particular access to health care and services. The reduction of infant mortality by 50 per cent within the same time period and improved access to health care are the main contributors to this growth.

81. The average life expectancy of Guyana stands at approximately 63 years of age, with females living longer to 67. This is in keeping with global trends in relation to female longevity. This is of concern to the Government of Guyana and greater efforts are being made to strengthen the areas of non-communicable diseases and lifestyle changes to improve our people's life expectancy. The Government has received funding to wage with NGOs a very robust campaign in the fight HIV/AIDS and sexually transmitted diseases (STD).

### **Health care**

82. To this end, notwithstanding the difficult terrain where most Amerindian people reside and the challenges associated with access, the Government continues to improve the health facilities in these areas. The provision of doctors to these areas has proven to be challenging.

83. However, the number of doctors in the hinterland, where most Amerindian people live, has also increased. In addition, Government is training more than 300 doctors in Cuba of whom more than 20 are Amerindian. The first batch is expected to return to serve the country in 2009. This will significantly improve the health services offered to the Amerindian communities. Several other training programmes for health care workers are also ongoing.

84. Health centres or health posts have been constructed in almost every Amerindian village and are manned by locally trained personnel known as community health workers (CHWs). These are selected by their communities for training by the Ministry of Health as CHWs and return to serve their communities as paid health practitioners.

85. In cases where the health personnel at the hospital or the health post are unable to deal with the case at hand, medical evacuations are available to airlift persons to the city and the Ministry of Amerindian Affairs provides transportation for their return to the communities. While in Georgetown, the Ministry also provides meals and accommodation for the person accompanying the patient. Of course there are times when these persons are so far away that

they do not get to the health facility on time. It is for this reason that several outboard engines and boats have been provided to communities where river transportation is used.

86. At the moment a new hospital is being constructed in one of the regions (Lethem) of Guyana (as the population has outgrown the original one) and this will benefit approximately 25 per cent of the country's indigenous peoples. The same is happening in Mabaruma where a second larger hospital is also being reconstructed.

### **Malaria**

87. With respect to malaria, through the provision of treated bed nets to all Amerindian and hinterland families, the incidence of malaria has reduced by more than 50 per cent.

88. The government records (Ministry of Health) show a significant decrease in positive new malaria cases in 2006 compared to 2005 in the regions where malaria is prevalent as

Region 1	-	11,512 in 2005; 4,698 in 2006;
Region 7	-	8,882 in 2005; 5,431 in 2006;
Region 8	-	7,942 in 2005; 6,421 in 2006;
Region 9	-	7,117 in 2005; 3,357 in 2006;
Region 10	-	2,572 in 2005; 626 in 2006.

89. For the whole country, positive new cases declined to 21,064 in 2006 compared with 38,984 in 2005. The decline in positive malaria cases is reportedly due to interventions of the National Malaria Programme, and the Global Fund Malaria Project in Regions 7 and 8, two major mining areas.

90. The National Malaria Programme specifically targets all hinterland communities in regions where malaria is endemic, while the Global Fund Malaria Project targets all communities in Regions 7 and 8. Under the RAVREDA project of the National Malaria Programme, the Ministry of Health, GGMX and the Guyana Gold and Diamond Miners Association signed a Memorandum of Understanding for a Malaria intervention programme for miners. Miners are also being made aware of their legal responsibility for the reclamation of mined out areas, including filling of mined out pits where this is practical.

91. It should be noted that social statistics although disaggregated along geographic, sex and age lines do comprise ethnicity. The Government is trying to implement more strident data collection systems in the State sector.

92. According to the Guyana Millennium Development Goals 2007 Report:

- poverty levels at the poorest quintile in national consumption reduced from 29 per cent (1993) to 19 per cent (1999)
- whilst population living below \$1USD per day fell from 43 per cent (1993) to 35 per cent (1999).
- Prevalence of underweight children under 5 years of age the figure fell from 20.6 per cent (1995) to 7 per cent (2005).
- Maternal mortality rate per 100,000 live births reduced from 140.1 (1991) to 113.0 (2006)
- Proportion of births attended by skilled personnel rose from 85.6 per cent (2000) to 97.6 per cent (2006)

- Prevalence and death rates associated with malaria 11.5 per cent (2000) (24,108 cases from 209,197 samples examined) to 18.5 per cent (2005) (38,984 cases from 210,429 samples examined) mainly in the interior areas due to opening up of new areas for mining, forestry and population expansion and lack of compliance and drug resistance.

### **Impact of mining**

93. As mentioned before, Amerindian communities have veto power over small and medium scale mining which is equivalent to informed consent. Environmental impact assessments (EIA) are also provided for in the Amerindian and Environmental Protection Agency Acts. All large scale mining activities require an EIA before mining commences. Except for one community that consented to have large scale mining on part of their titled land, no large scale mining is done on Amerindian lands.

94. Approximately 80 per cent of the Amerindian population are not affected by mining activities since no mining takes place on their titled land or in areas close to their titled land. In 1995 the Government of Guyana, following complaints from some communities of the negative impact they were experiencing as a result of small and medium scale mining, instituted a policy of no mining on Amerindian titled lands without the community's agreement. This policy is not law under the new Amerindian Act.

95. There is a particular region (Mazaruni) in Guyana that is rich in minerals, where mining has caused considerable discomfort to communities. While the mining may not have been done on their titled land it was upstream and the effects were considerable. The Minister of Mining has visited Amerindian communities in the area and imposed restrictions on activities in the area in response to requests by the communities. While mining continues in this area, the Geology and Mines Commission in collaboration with the Ministry of Amerindian Affairs conducted training of Mines Rangers that were selected by the various communities. These rangers are now employed to ensure that the mining regulations are followed. Interestingly, while the Government imposed a closure on mining on Amerindian titled lands and the rivers that flow through them, three of the very communities that complained to the Government which resulted in the closure, issued permits for several dredges to operate in the area. These dredges are operating at the moment since the village councils of the communities indicated that the community is assisted with the revenues generated.

96. Amerindian communities are fully entitled to take legal action to protect themselves from mining. They have unrestricted access to the court to obtain injunctions to stop activities that are or may be harmful to the environment. Before mining commences, Amerindian communities are entitled to take part fully in the EIA including the screening of a project, the scoping of the EIA, attending public meetings, obtaining full written information including copies of the final EIA and with a right of appeal to the Environmental Appeals Tribunal and the court of appeal if they are dissatisfied with the result.

97. In the case of a community which does not own land the mining permits automatically exclude any land which is occupied or used by Amerindians. However some Amerindians are not fully settled peoples and will periodically move their farms. The Guyana Geology and Mines Commission (GGMC) therefore does not always have accurate information on where

Amerindians communities are and this has resulted in permits being issued when they should not be. The GGMC has had to cancel such permits. In 2000 the former Commissioner of GGMC agreed to use sketches and drawings from the communities showing where they lived and what lands they occupied in an attempt to avoid future problems. However, only a few communities have submitted such documents.

### **Water**

98. The Government has recently commissioned a Hinterland Water Strategy and several communities stand to benefit. Work has already commenced in some communities. In addition, more than 25 communities have benefitted from the construction of wells in different parts of the country. It should be noted that where water supply systems have been installed the communities are not required to pay for the service as is the case for other Guyanese.

99. In addition, it should be noted that the Mining Regulations make provisions for reserving some identified creeks for drinking water.

### **Forest resources**

100. Amerindian villages have exclusive rights to their forest resources. Any logging on village lands can only be done with the permission of the community. Indeed, several communities have entered into logging agreements which were grossly deficient. Since they are not required to consult the Ministry of Amerindian Affairs, it was only when problems arose that they sought the involvement of the Ministry. This situation has improved now as several communities have sought the assistance of the Ministry in providing legal advice on Agreements and background information on the investor. Training was also provided to a number of communities. The new Amerindian Act now requires a non-resident to inform the Guyana Forestry Commission and the Ministry of their intention to log in an Amerindian village.

101. There are some untitled communities that are located within logging concessions. It should be noted that the issuance of many of these concessions was before the present Government took office. Since these concessions were legally granted negotiations must take place with their owners. The Ministry of Amerindian Affairs has in the last three years successfully negotiated with some of the concessionaires to relinquish land that some communities (Campbelltown, Arukamai, Weruni, Kamwatta, Micobie, Great Falls, Malali and Muritaro) requested to be titled. These communities have since been titled.

### **Pollution**

102. The statement referring to “excessive” and “widespread pollution” is general and needs to be specific.

103. “Environmental pollution” is defined by the Environmental Protection Act as “pollution of the natural environment of any contaminant” while “contaminant” is describes as “any solid, liquid, gas, smell, sound, vibration, radiation, heat or combination of them resulting directly or indirectly from human activities that may cause an adverse or harmful effect”. Studies done under the CIDA funded Guyana Environmental Capacity Development (Mining) Project, GENCAPD, showed that mercury occurs naturally in the soil in mining and non.-mining pristine areas, and that mercury in river sediments was related not only to mining, but also

could result from other activities that lead to erosion, such as slash and burn agriculture. Mercury levels were shown to be equivalent in land soils in all areas tested, whether mining or pristine areas, associated with clays in the organic layer where humus is present, independent of gold mining activities on land.

104. Notwithstanding the above, the Mining (Amendment) Regulations 2005 for environmental management, under the Mining Act, make detailed provisions for mercury use and handling in small and medium scale gold mining, for the management of tailings discharges from mining operations and specify stipulated discharge limits for turbidity and total suspended solids. Miners are being made aware of these requirements, they are provided guidance for tailings management, and provisions of the regulations are being progressively enforced by the Guyana Geology and Mines Commission (GGMC). For tailings management, in addition to the use of tailings ponds and impoundments to settle tailings water, recycling of this water is advocated by GGMC. Recycling has the double benefits of greatly reducing or eliminating discharges of tailings water and reducing the amount of water used. In addition, GGMC has started testing the application of flocculants to turbid tailings water that is difficult to settle because of suspended clay particles. GGMC is continuing this test work in the field to enhance the settling of turbid waters.

**AnnexI**

1. **Hansard**, Guyana parliament, Thursday October 20, 2005, pages 18-95.
2. **Hansard**, Guyana Parliament, Thursday February 16, 2006, pages 2-19.
3. Speech by the Hon. Carolyn Rodrigues, Minister of Amerindian Affairs, M.P. on the Amerindian Bill, Bill No. 13 of 2005, National Assembly of the Parliament of Guyana, October 20, 2005.
4. About the Ministry of Amerindian Affairs, and its Programmes, 2007.
5. About the Amerindians of Guyana, 2007.
6. Remarks by the Hon. Carolyn Rodrigues, M.P., on the Occasion of the Opening of the Building to house the Ministry of Amerindian Affairs, March 2005.

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