



**University of Oklahoma College of Law  
International Human Rights Clinic  
The United States of America**

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Report on the Co-operative Republic of Guyana to the 21<sup>st</sup> Session of the Universal Periodic Review, Human Rights Council, January – February 2015

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**Executive Summary.** The International Human Rights Clinic of the University Of Oklahoma College Of Law (IHRC-OU) submits the following report to the 21<sup>st</sup> Session of the Universal Periodic Review, Human Rights Council. This report concerns Amerindian Communities of Guyana and surveys Guyana's compliance with certain human rights obligations. This report focuses on the selected areas of environmental degradation (Forestry, Mining, and Land Titling), health, and education. The purpose of this report is to provide a balanced view of Amerindian concerns in Guyana and recommend measures to address those concerns. The IHRC-OU notes the expressions of commitment made by Guyana to continue to develop and improve the protection of Amerindian Communities.

### **I. Environmental Degradation A. Forestry. Normative and Institutional Frameworks:**

**International Provisions:** Guyana is a state party to the Convention on Biological Diversity since 1994 by ratification.

**Domestic Undertakings:** The Low Carbon Development Strategy of 2009 aims to achieve environmentally sustainable social and economic development as well as provide a model for other developing nations to pursue a low carbon development path. It provides international funding through Guyana's partnership with Norway as an incentive and consideration for developing through an environmentally sustainable approach. Guyana has implemented legislation to protect and maintain land with the Iwokrama Act (Iwokrama Forest) and the Amerindian Act (Konoshen area in the Southern Rupuni). These acts recognize the interrelated aspects of maintaining the forest and Amerindian communities.

**Human Rights on the Ground:** The Tashoes and village councils lack the training and resources to be able to research these programs fully, so there may only be the appearance of Amerindian acceptance. The Forestry Training Center seeks to educate village leaders in laws and management of forestry, however this program lacks funding and poor infrastructure makes it difficult to implement in remote villages. The Village Council may have dominion over their titled lands, but lack the capacity to administer and contract meaningfully with forestry businesses. Logging companies that lease State land concessions or lease directly from the village take advantage of the inexperience in management of the Village Council concerning these matters. Additionally, lack of infrastructure in the interior regions, where most logging takes place, makes it difficult for the Forestry Commission to monitor these types of violations including illegal timber harvesting, trespassing, and hunting on Amerindian land.

#### **Recommendations:**

- Increase capacity building for the Tashoes and Village Councils through increased funding of the Forestry Training Center.
- Decrease turnover rates for those in the monitoring component of the Forestry Commission to increase accountability and decrease corruption in illegal timber sourcing.
- Increase efforts to train villages to be receptive of eco-tourism by engaging with the model villages like Surama to teach villages to be environmentally sustainable while also creating sustainable economic development.
- Increase protection for lands adjacent to titled lands that may have concession availability through legislation in the Forests Act and increasing the monitoring component of the Forestry Commission.

### **B. Mining. Normative and Institutional Frameworks:**

**International Provisions:** In the UPR Working Group 2010 report, Guyana examined the recommendation to ratify ILO Convention No. 169, dealing with the rights of Amerindian and tribal peoples. In 2011, Guyana voluntarily committed itself to consult and report regarding the

ratification of ILO Convention No. 169 within one year's time. To date, however, Guyana has not ratified the convention.

**Domestic Undertakings:** The Ministry of Amerindian Affairs (MOAA) exists to act as a social, political, and cultural voice for the Amerindian people. The MOAA acts as an important check on the power of the Guyana Geology and Mines Commission (GGMC). The GGMC administers mining on public lands and claims no authority over private lands, such as those titled to Amerindians. If land is titled, the GGMC claims no concessions can be granted without consent of the local village leader (Toshao), the village counsel, and the MOAA. If there is a title decision pending on land sought for a mining concession the GGMC is obligated by law to accept the concession application, but it claims it will place a hold on its final decision until a titling decision is reached.

**Human Rights on the Ground:** The Amerindian populations have no subsurface mineral rights and no rights to waterways or the land that immediately surrounds them. Adding to the difficulties of the Amerindian peoples, the High Court is giving effect to concessions granted prior to title awarded through the Amerindian Act, irrespective of the fact that the Amerindian presence on those traditional lands predates the granted concessions.

Three particular incidents have raised the attention of the Committee on the Elimination of Racial Discrimination (CERD) involving the Kako and Isseneru peoples. In August of 2008 the High Court ruled against the Isseneru people, in favor of a non-indigenous miner, holding that the concession commenced prior to the community obtaining title under the Amerindian Act. The High Court enjoined the community from interfering with mining operations. In January of 2013 the High Court again ruled against the Isseneru people, holding that the non-indigenous miner acquired the mining concession before the Amerindian Act went into force. The High Court has similarly ruled against the Kako people in September of 2012, issuing a restraining order to prevent the village counsel from blocking the passage of a water dredge and other mining equipment.

Mining affects many aspects of Amerindian people's lives including polluting the water, removing forests and lands used for hunting and gathering, and in some cases, sexual abuse and exploitation of local women by mining workers. Currently the GGMC provides for a one-kilometer buffer zone between Amerindian lands and mining concessions.

#### **Recommendations:**

- Implement a policy of recognizing Amerindian titled land rights over mining concessions regardless of whether the mining concession was granted prior to title awarded under the Amerindian Act.
- Increase the number of enforcement personnel on the ground in the interior, and train those personnel specifically to search for signs of environmental degradation and sexual abuses by mining workers within Amerindian communities. If possible the GGMC should keep a continuous oversight presence at all large mining operations to monitor for compliance.
- Conduct a study to best determine the appropriate size of buffer zones between Amerindian titled lands and mining concessions. If need be, enlarge the mandated buffer zones to comply with the study.
- Consider removing the override power of the Minister of Mines to authorize large-scale mining deemed to be in the nation's interest without consent of the local Amerindian population.
- Emphasize that all aspects of mining on Amerindian lands are respectful of the rights of indigenous peoples, in accordance with international standards and not just domestic law.

- Take concrete steps to establish mitigation measures, including benefit sharing and compensation, for any impacts on Amerindian lands, in accordance with international standards.

### **C. Land Titling. Normative and Institutional Frameworks:**

International Provisions: Guyana asserts that the Amerindian Act of 2006 is in compliance with various international provisions, specifically the UNDRIP and ILO Convention 169. The Government contends that the 2006 Act comports with international standards by granting title of traditional land to Amerindian Communities and recognizing the exclusive authority of the Amerindian Communities over their titled lands, including the subsurface minerals.

Domestic Undertakings: In 2013, the Government of Guyana and the United Nations Development Programme (UNDP) signed the Amerindian Titling and Demarcation Plan. As part of the agreement, US\$10.7 million dollars will be used to title the traditional lands of the Amerindian populations who currently reside on their traditional lands but do not hold title within the next three years.

**Human Rights on the Ground:** Although Guyana has made great strides in transferring title to Amerindian villages, Guyana has failed to meet international standards dictating certain protections of Amerindian land rights. First, titled Amerindian villages rarely are able to enjoy all their land rights. First, land tenure of Amerindian Villages is threatened by the doctrine of “prior rights” that has been used to permit mining concessions on titled land creating land use conflicts. Second, the titling process fails to recognize the traditional Amerindian lands which oftentimes results in Amerindian villages receiving title to only a fraction of their traditional land. Third, Guyana refuses to extend Amerindian villages land rights for untitled land, even if it is land traditionally used and occupied by Amerindian people.

### **Recommendations:**

- Direct Guyana’s judiciary to adopt the common law doctrine of aboriginal title to ensure that untitled Amerindian Communities are afforded the same rights of titled Amerindian villages, including the right of informed consent and to control the use of the land.
- Review and rule on the existing Amerindian land claims and extension requests by 2015 to ensure all Amerindian communities in Guyana have legal title to their traditional lands in according with the Article 15 and 15 (2) of Convention No. 169.
- Abstain from granting any future concessions on titled Amerindian land, and any land that is identified in an existing Amerindian title or extension application without the free, informed, and prior consent of the Amerindian communities.
- Rescind any concessions on Amerindian titled land that were granted prior to the Amerindian Act of 2006 to ensure the Amerindian villages are able to fully exercise their right to control the use of their titled land and its natural resources.

### **II. Health. Normative and Institutional Frameworks:**

International Provisions: In the UPR Working Group 2010 Report, Guyana examined and supported the recommendation to ratify the Convention on the Rights of Persons with Disabilities. Although it signed the Convention in April 2007, Guyana has yet to ratify it. In March 2006, the Committee on the Elimination of Racial Discrimination’s Concluding Observations urged Guyana to ensure availability of adequate medical treatment in Amerindian areas, in particular those inhabited by Amerindians, by: (i) increasing the number of skilled doctors and adequate facilities in the area, (ii) intensifying the training of health personnel from Amerindian Communities, and (iii) allocating sufficient funds to that effort.

Domestic Undertakings: In the UPR Working Group 2010 Report, Guyana supported the recommendations that it (i) work towards promoting the right to water for its citizens; (ii) strengthen measures aimed at reducing hunger and promoting food security; and (iii) increase health services in rural areas. Guyana completed new boreholes, erected elevated water tanks, and started the Secure Livelihood Program in the Amerindian Communities. Guyana also focused on primary care in Amerindian Communities by erecting health huts. Additionally, Guyana passed the Persons with Disabilities Act in 2010.

**Human Rights on the Ground:** Although efforts are being made to provide adequate and equal healthcare to Amerindian Communities, major challenges persist. The geography, difficult terrain, and lack of resources, skilled professionals, and accurate disaggregated data are among the key challenges. Many Amerindians must travel long distances, often only by air or boat, to reach adequate facilities. For example, women often must travel to Georgetown to give birth. Additionally, efforts to increase medical services have been hindered by the lack of resources, such as water and human capital. For example, the Santa Mission Reservation, one of the closest Communities to the coast and Georgetown, has approximately 120 people and one health hut with a single health worker. Additionally, the facility does not have running water or a doctor. In some Communities, relatively advanced medical facilities and equipment exist but remain unused because of the lack of human capital; thus, they must rely on outreach services and mobile teams.

The HIV/AIDS prevalence rate declined significantly in recent years, and Malaria is endemic in Guyana. Again, statistics do not show the full picture, and the Amerindians are most susceptible to measurement error. Due to lack of infrastructure and resources, many drugs and facilities may be out-of-reach for Amerindian Communities. As a result, the majority of malaria infections occur in the hinterland among the Amerindian population. Additionally, lack of contraception and awareness leads the Amerindian population to have the highest rate of cervical cancer among any ethnic group in Guyana.

#### **Recommendations:**

- Implement measures to disaggregate data and ensure statistical accuracy so that healthcare needs and progress of healthcare programs may be identified and tracked.
- Increase efforts and incentives to secure and retain skilled health care professionals in the Amerindian Communities.
- Increase funding for Amerindian water programs to reduce the discrepancy between the hinterland and coastal regions.
- Emphasize and focus Guyana's HIV/AIDS and preventative efforts for malaria on populations residing in the Amerindian Communities.
- Focus on decreasing under-one mortality and increasing under-one vaccination rates in the Amerindian Communities.
- Institute programs specifically aimed at increasing malaria awareness and preventative measures among Amerindian Communities.
- Decrease gaps in human resources among Amerindian regions, where the majority of Amerindians reside, by training people from the interior so they can return home to work.

#### **III. Education, Normative and Institutional Frameworks:**

International Provisions: In the UPR Working Group 2010 report, Guyana examined the recommendation of prohibiting corporal punishment by law in all institutions, including schools. This recommendation is in accordance with Article 19 of the Convention on the Rights of the

Child (CRC). Additionally, in the Committee on the Rights of the Child's last review of Guyana in 2013, the Committee expressed concern with Guyana's failed efforts to legally prohibit corporal punishment in schools and in the family, the low quality of education offered to Guyanese children, the shortage in trained teachers, and the high dropout rates of students in Guyanese schools.

Domestic Undertakings: In February of 2013, the Parliament of Guyana formed a Special Select Committee to determine the attitude of Guyanese people towards corporal punishment and its possible abolition. The Committee's findings were inconclusive, reflecting mixed feelings among Guyanese people towards the legality of corporal punishment. Guyana has made no further progress with this initiative. Concerning the quality of education, the State Party's 2008-2012 Education Strategic Plan set goals and strategies for Guyana to accomplish lower dropout rates, retain better educators, and improve the Guyanese educational system. Currently, no information is available to reflect the Plan's success or objectives to create future Plans.

**Human Rights on the Ground:** No laws exist in Guyana prohibiting corporal punishment; therefore, its practice remains prevalent in homes and schools. Concerning the quality of education in the Amerindian Communities, the percentage of qualified and trained teachers in the Amerindian Communities has increased from about 35% in 2004 to almost 47% in 2012. A major reason for the deficiency of qualified educators is the lack of secondary schools in the Amerindian region. To become qualified, students must attend secondary school, often forcing them to leave their home community. Many times, when students leave, they do not return home, depriving the Amerindian Communities of educators. Furthermore, there is a need for more educational opportunities for the Amerindian children. The GoG creates the curriculum and administers national assessments. Based on these tests, the highest graded students go on to secondary school through scholarships from the MOAA. Non-qualifying students can continue to attend their home primary schools, where local teachers attempt to further their education. This burdens the Amerindian educators from tending to their primary school duties, and keeps the older children from receiving a quality secondary education.

**Recommendations:**

- Pass and implement a comprehensive law banning all corporal punishment in accordance with Article 19 of the Convention on the Rights of the Child.
- Invest in programs to incentivize qualified educators to return to the Amerindian Communities to teach at primary schools.
- Continue to invest money in building and renovating current schools throughout the Amerindian region, as well as providing new technologies to these schools such as solar power and computers.
- Invest in increasing accessibility to secondary schools for students in the Amerindian Communities by bringing in teachers qualified for secondary level education.