07 July 2008

Mr. Torsten Schackel
Acting Secretary
Committee on the Elimination of Racial Discrimination
UNOG-OHCHR
1211 Geneva 10
Switzerland

Re: Request for consideration of the situation of indigenous peoples in the Republic of Guyana under the early warning and urgent action procedure (Seventy third session of the Committee on the Elimination of Racial Discrimination).

Dear Mr. Schakkel:

I. INTRODUCTION

1. The Amerindian Peoples Association of Guyana and the Forest Peoples Programme (“the APA/FPP”) have the honour of again communicating with the Committee on the Elimination of Racial Discrimination (“the Committee”) with regard to the situation of indigenous peoples in the Republic of Guyana (“Guyana” or “the State”). This present communication provides comments on the ‘follow-up report’ submitted by Guyana; reiterates the APA/FPP’s previous requests that the Committee considers the situation of indigenous peoples in Guyana under its early warning and urgent action procedure and; requests that Committee adopts a decision under this procedure at its 73rd session (specific requests are set forth in paragraph 36 infra).

2. The APA/FPP have submitted three reports to the Committee concerning the human rights situation of indigenous peoples in Guyana, all requesting that the Committee consider this situation under its early warning and urgent action procedure.1 At its 68th session, the Committee adopted concluding observations that detail serious deficiencies in Guyana’s observance of its human rights obligations pertaining to indigenous peoples. It requested at that time that Guyana provide additional information within one year on the implementation of the recommendations set forth in paragraphs 15, 16 and 19 of the concluding observations.2

3. Paragraph 15 of the Committee’s concluding observations addresses the powers of indigenous Village Councils as set forth in the 2006 Amerindian Act and that law’s discriminatory distinction between titled and untitled indigenous communities. Paragraph 16 concerns serious deficiencies with respect to the recognition and protection of indigenous peoples’ rights to own and control their traditional lands, territories and resources. Finally, paragraph 19 highlights severe health problems suffered by indigenous peoples in relation to extractive industries and recommends that the State ensure the availability of adequate health

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1 See http://www.forestpeoples.org/documents/s_c_america/guyana_cerd_ua_jan06_eng.pdf and; the reports of 10 January 2007 and 31 January 2008 set forth in the Annex 1 hereto.
services in indigenous areas. This paragraph also recommends that the State ensures that impact assessments are conducted and that it “seek[s] 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.”

4. Guyana failed to provide the additional information requested by the Committee within the specified time. Therefore, at its 71st session, the Committee communicated with Guyana to reiterate its request that the State submit additional information with respect to the serious issues addressed in the 2006 concluding observations. This letter concluded by stating, given the information available to the Committee “and the absence of any response from your Government, please note, that failing receipt of the information requested by 30 November 2007, the Committee may decide to consider the relevant issues under its early warning and urgent action procedure at its 72nd session.” In May 2008, Guyana submitted the requested information, which is commented on herein.

II. COMMENTS ON GUYANA’S ADDITIONAL INFORMATION

5. In general, the additional information submitted by Guyana is largely a repetition of the information presented in relation to the list of issues adopted by the Committee in 2006. The report also fails to adequately address the urgent issues identified by the Committee in its concluding observations and betrays a series of fundamental misconstructions of the rights of indigenous peoples that severely undermine the effective exercise and enjoyment of those rights. These misconstructions also lie at the heart of the Committee’s observations and recommendations. As discussed below, the State’s report is largely dismissive of the Committee’s views and explicitly or implicitly rejects the Committee’s important recommendations. Among other things, Guyana argues that the Committee fails to understand Guyana’s laws, claims that the Committee has been misled, and cites various provisions of Guyana law to support its argument that the Committee’s recommendations are misplaced or unfounded.

A. Indigenous Peoples’ Rights are Inherent and Permanent Rights

6. Guyana’s report states that indigenous persons have the same rights as all Guyanese citizens and that they also benefit from an additional, special rights regime that is set forth in the 2006 Amerindian Act. According to Guyana, the Amerindian Act “is a special measure discriminating in favour of Amerindians and is a special measure within Article 1 paragraph 4 of the Convention.” In relation to that law’s provisions pertaining to mining, the State further asserts that the Act “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.”\(^9\) These statements both contain fundamental misconstructions of the rights of indigenous peoples.

7. First, indigenous peoples’ rights are inherent and are not ‘given’ by the State, nor are they dependent on the good will of the State for their existence. This denial of inherent rights – evidenced by the failure of the *Amerindian Act* to enumerate any specific rights – is a recurrent problem in Guyana’s law and policy pertaining to indigenous peoples. Second, the Committee has previously cautioned against confusing special measures with recognition and protection of indigenous peoples’ rights, rights which stand independent of the special measures paradigm. In its 2007 review of New Zealand, for example, the Committee observed that “historical treaty settlements have been categorized [by the state] as special measures for the adequate development and protection of Maori.”\(^10\) The Committee refuted this erroneous assertion by emphasizing “the distinction to be drawn between special and temporary measures for the advancement of ethnic groups on the one hand and permanent rights of indigenous peoples on the other hand.”\(^11\) Respectfully, this point also requires emphasis in the case of Guyana.

**B. ‘Amerindian’ or ‘Indigenous’?**

8. Guyana’s report contains considerable argument about why the State must use the term ‘Amerindian’ to refer to indigenous peoples. According to the State, this includes protecting a supposed international right of all Guyanese to call themselves indigenous, and ensuring that Afro-Guyanese are not denied the right to pursue their “ancestral rights” because they would not be able to define themselves as ‘indigenous’.\(^12\) The logic employed by the State in this respect is obscure: among other things, it confuses the legal understanding of the term ‘indigenous’ with colloquial usage and, as demonstrated by a number of cases before the Inter-American Commission and Court of Human Rights, there is no bar to persons or communities of African descent seeking and securing protection for their ancestral property and other rights because they are not defined as indigenous.\(^13\)

9. As explained in its current report to the Committee, the State’s assertions are also contradicted by its own internal practice. In particular, the report states that “The Constitution 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 has been accorded this recognition and status and the Government of Guyana urges the Committee to recognize this advancement.”\(^14\) The establishment of this Commission is indeed a large step in the right direction. However, since its establishment by law in 2001\(^15\) and the nomination of its members by indigenous peoples in 2003, it has yet to be formally constituted and has not held a single meeting. Additionally, this begs the question: if the Constitution can sanction a body called the Indigenous Peoples Commission, which is, as the State itself explains, specifically designated as a body for Amerindian peoples only, why cannot the *Amerindian Act* be called the Indigenous Peoples Act and refer to Amerindian peoples as indigenous peoples?

10. While many more points could be made about the State’s contentions about the use of ‘indigenous’ or ‘Amerindian’ (and its unfounded and unsubstantiated allegations), the APA/FPP

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\(^9\) Id. at p. 20.
\(^11\) Id.
\(^12\) Comments of Guyana, at p. 3.
\(^14\) Comments of Guyana, at p. 5.
\(^15\) Constitution (Amendment), Act No. 1 of 2001, Articles 212J and 212T of the Constitution.
recall that the Committee simply recommended in 2006 that Guyana consults with indigenous peoples to clarify if the term ‘Amerindian’ or ‘indigenous’ is preferred. Guyana’s current report to the Committee expresses the need to take similar measures, stating that this issue “has to be debated publicly with full participation from all sectors of society and with the intention of reaching a national consensus and probably even a referendum.”\(^{16}\) To date, however, the State has failed to either consult with indigenous peoples or hold a public debate. Additionally, while such a national discussion may be important, the APA/FPP again highlights the fact that, as the State itself explains in its report, the Constitution, which was enacted by the National Assembly and supported by the people of Guyana, already endorses legally defining ‘Amerindians’ as the indigenous peoples of Guyana. This in no way prejudices the rights of other Guyanese citizens under the Constitution and laws, nor does it prejudice their ability to refer to themselves as ‘indigenous’ to Guyana should they so choose.

C. Paragraph 15 of the Concluding Observations

11. Paragraph 15 of the 2006 concluding observations addresses the powers of indigenous Village Councils as set forth in the *Amerindian Act* and that law’s discriminatory distinction between titled and untitled indigenous communities. The State’s comments with respect to these issues mostly repeat its statements made in 2006 and argue, *inter alia*, that the Committee has misunderstood Guyanese law. In making this argument, Guyana explicitly and implicitly rejects the Committee’s crucial recommendations. Moreover, Guyana’s comments do not accurately reflect the content of the *Amerindian Act* and erroneously claim that this Act is consistent with the most recent jurisprudence of the Inter-American Court of Human Rights. Last, the State’s comments simply fail to address the Committee’s recommendation pertaining to the veto powers over Village Council decisions that are vested in the Minister by the Act.

12. Guyana’s comments do not indicate any willingness to give effect to the Committee’s recommendation to remove the discriminatory distinction between titled and untitled communities in the *Amerindian Act*. On the contrary, the State goes to some length to justify this distinction and to argue that the Committee has failed to understand the Act. Once again, Guyana’s view that indigenous peoples’ rights derive from the State, rather than being inherent, lies at the heart of this issue. Indigenous peoples’ forms of governance and ownership rights to their traditional territories predate the State and are internationally protected rights. Guyana’s is obligated to regularise, respect and protect these rights, but it is not the source of these rights.

13. Guyana’s comments betray this fundamental misconstruction and assign different rights to titled and untitled communities, denying ownership and other rights to untitled communities, solely on the basis of the State’s failure to regularise and secure their rights. This view is stated explicitly in the State’s report to the Committee, which says that: “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.”\(^{17}\) Crucially, this distinction between titled and untitled communities exists precisely because of Guyana’s long-standing omission to regularise and secure indigenous peoples’ rights and, moreover, runs contrary to established international law concerning the inherent nature of those rights.

14. Guyana also argues that while titled communities have Village Councils, untitled communities may establish a ‘community council’ and, therefore, this distinction is not significant.\(^ {18}\) It cites section 86 of the *Amerindian Act* to support of its argument, yet fails to note that section 85 of the Act provides that “The Minister may by order recognise as a Community

\(^{16}\) *Id.* at p. 3.
\(^{17}\) *Id.* at p. 6.
\(^{18}\) *Id.* p. 8.
Council, a council which was established by an Amerindian Community no later than 31st December 2003." This provision requires a) ministerial sanction, by order, of a ‘community council’ before it is recognised and b) that said council must have existed prior to 31 December 2003. Additionally, these ‘community councils’ do not, as the State itself explains, hold the same level of rights as those of titled communities. In particular, pursuant to sections 86(a) and 87 of the Amerindian Act, quoted by the State in its report, their rights extend only to regulating the conduct of ‘traditional rights’. For this reason, they are denied the powers held by village councils pertaining to, inter alia, consent to research or studies (secs. 5-7); mining (secs. 48-53); logging (secs. 54-6); protected areas (sec. 58); and non-consensual removal of indigenous artefacts (sec. 78(1)).

15. Guyana further seeks to justify the Amerindian Act by erroneously asserting that this law is consistent with the most recent jurisprudence of the Inter-American Court of Human Rights. However, the Court’s jurisprudence repeatedly affirms that indigenous peoples’ property rights derive from their communal tenure systems and customary laws, not the state, and that states are obligated to equally protect these rights and to ensure that they are secured and protected in law and fact. The most recent case of the Saramaka People v. Suriname holds that indigenous peoples also have ownership rights in and to all natural resources traditionally used by them. It further holds that the right to property must be read conjunctively with the right to self-determination, by virtue of which indigenous and tribal peoples may “freely pursue their economic, social and cultural development,” and may “freely dispose of their natural wealth and resources.”

16. Consistent with this interpretation, the Court explicitly ordered that legislative recognition of the Saramaka people’s territorial rights must include recognition of “their right to manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system.” The Court thus affirms that, in order to freely determine, pursue and enjoy their own development, indigenous peoples have the right, effectuated through their own institutions, to make decisions about how best to use their territory; that they have a right to effectively control, own, manage and distribute their natural

19 Id. p. 10.
20 See inter alia Indigenous Community Yakye Axa v. Paraguay. June 17, 2005, I/A Court H.R., Ser C No. 125; Mayagna (Sumo) Awas Tingni Community Case, August 31, 2001, I/A Court H.R., Ser C No 79; and Sawhoyamaxa Indigenous Community v. Paraguay, 29 March 2006. Ser C No. 146, para. 248 and, at para. 128 (holding that “1) traditional possession of their lands by indigenous people has equivalent effects to those of a state-granted full property title; [and] 2) traditional possession entitles indigenous people to demand official recognition and registration of property title”).
22 Id. at para. 93.
23 Id. at para. 194 and 214(7). See also UN Declaration on the Rights of Indigenous Peoples (hereinafter “UNDRIP”), Art. 26(2) (providing that “indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired”).
24 See UNDRIP, Article 4 (providing that “indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions”). The Inter-American Court has also highlighted the importance of the preservation of indigenous and tribal peoples’ communal structures and modes of self-governance in Plan de Sánchez Massacre, Reparations. 19 Nov. 2004, Ser C No 105, para. 85.
25 Each of these terms has a specific meaning and describes rights and powers vested in indigenous peoples in relation to their territories. ‘Control’, for instance, can be defined as the power to “exercise authoritative or dominating influence over” a thing, in this case, traditional territory.
wealth and resources without outside interference.\footnote{Saramaka People v. Suriname, November 28, 2007, I/A Court H.R., Ser C No. 172, at para. 115 (stating that “the State’s legal framework merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference”).} The Amerindian Act clearly falls considerably short of these standards.

17. Irrespective of the nature of the law with regard to these issues, Guyana emphatically rejects the Committee’s recommendation concerning the removal of the discriminatory distinction between titled and untitled communities. It unambiguously states in its current report that it is “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.”\footnote{Comments of Guyana, at p. 11.} This rejection of a critical fundament of the rights of indigenous peoples both demands and compels urgent international oversight and scrutiny.

18. Guyana does not directly reject the Committee’s recommendation concerning the powers of Village Councils and the ministerial veto powers entrenched in the Amerindian Act, it simply chooses not to respond in any meaningful way to this recommendation. Nor does it provide any information about whether it intends to implement the Committee’s recommendation. It contends, for instance, that there are no limitations on indigenous peoples’ right to control their lands, but, rather, that this right is protected under the Amerindian Act.\footnote{Id. p. 13.} To support these contentions, Guyana cites Article 7(1) of the Amerindian Act, which concerns the conduct of research or studies in indigenous titled lands – no such provision applies to untitled communities (see also paragraph 30 infra concerning mining). While this provision does clearly state that the Village Council may give or withhold permission for such research or studies, the State fails to mention that Section 5(3) requires that the Minister must give permission in addition to the Village Council. The effect and most likely the intent is that Village Councils may not employ and collaborate with non-members to conduct research or studies unless the Minister first grants permission.

19. The Village Councils clearly do not have the right to control access to their lands as the Minister holds a veto power over who may conduct research therein, including where that research has been commissioned by the Village Councils themselves. The APA/FPP emphasise that the right to decide who enters a person’s property and the conditions thereof is a normal function of property rights and applies to all Guyanese.\footnote{The same is also the case with respect to Sections 46-7 of the Amerindian Act concerning leases, which is quoted on p. 14 of the Comments of Guyana.} However, all Guyanese do not have to obtain permission from a Minister to commission studies or research on their property, nor is there a reasonable and objective reason for this limitation in the case of indigenous peoples.

D. Paragraph 16 of the Committee’ Concluding Observations

20. Paragraph 16 concerns serious deficiencies with respect to the recognition and protection of indigenous peoples’ rights to own and control their traditional lands, territories and resources. As noted above, these deficiencies are chiefly grounded in Guyana’s refusal to recognize and respect indigenous peoples’ inherent rights to own and control their traditional lands and territories. This refusal is firmly entrenched in the Amerindian Act, which fails to enumerate any rights that could form the basis for a territorial regularisation procedure and vests ultimate authority in the Minister with respect to which lands shall be held by Village Councils. Because no rights are specified, this procedure is essentially arbitrary and discretionary, a conclusion
recognized in the Committee’s recommendation on this point.\textsuperscript{30} The Act also denies indigenous peoples their right to own and control their territories, rather than lands, as only single villages may hold title, and denies indigenous people's right to juridical personality as only individual villages are recognised for the purposes of holding and exercising rights. The denial by states of indigenous people’s collective juridical personality was rejected by the Inter-American Court of Human Rights in November 2007.\textsuperscript{31}

21. In its report to the Committee, Guyana erroneously asserts that 80 indigenous communities have received title in the past two years and the total number of communities holding title is now 83 (out of 130 communities). These 83 titled communities received title in the period 1976-2008, not in the past two years. The amount of land held by these communities is approximately half of what was recommended in the report of the Government’s 1969 Amerindian Lands Commission and, moreover, this report records that indigenous peoples asserted rights to almost double the area ultimately recommended by the Lands Commission.

22. The number of communities holding title is not by itself an accurate indicator of whether Guyana has complied with its international obligations, including as expressed in the Committee’s recommendation on this point. In most cases, the titles issued to date bear little resemblance to the full or even partial extent of “the lands which [indigenous peoples] traditionally occupy or use…”\textsuperscript{32} or their “traditional collective land tenure system[s].”\textsuperscript{33} These titles were determined arbitrarily and in the vast majority of cases without any prior discussion with the communities themselves. The 74 communities that received title between 1976 and 1991 were simply handed title deeds without any prior consultation. For the most part, they have the same titles today.

23. Guyana has done nothing to amend the Amerindian Act to correct these deficiencies. The Act continues to vest absolute discretion in the Minister with respect to decisions about title, and such decisions continue to be divorced from any consideration of indigenous peoples’ international guaranteed property rights. It is in this context that the State’s claims about indigenous ‘agreement’ to recent title grants or extensions should be assessed.\textsuperscript{34} These communities must ‘negotiate’ with the State about the extent of their title, knowing that the Minister can, and often does, reject their requests for title, and that the Minister has sole and final discretion on these matters. Some communities have been told that they must revise their title requests because they are ‘too big’ or their request is rejected because the area is ‘bigger than Barbados’ (166 square miles).\textsuperscript{35} This is not negotiation: there is no credible semblance of equality of bargaining power in this procedure, nor is the Minister’s discretion constrained by mutually understood, fair and transparent standards. The State’s claims about a right to judicial recourse to challenge the Minister must also be viewed in this light; because there are no actionable limits on the Minister’s discretion, on what basis will a judge assess the validity or propriety of the Minister’s decisions?

\textsuperscript{30} Concluding observations of the Committee on the Elimination of Racial Discrimination: Guyana, 04/04/2006, at para. 16 (recommend that Guyana “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”).


\textsuperscript{32} Concluding observations of the Committee on the Elimination of Racial Discrimination: Guyana, 04/04/2006, at para. 16.


\textsuperscript{34} Comments of Guyana, p. 13.

\textsuperscript{35} See Annex 1 hereto, para. 6 and associated footnotes.
24. To conclude this section, Guyana has not provided any information that it intends to give effect to the Committee’s recommendation. Instead, it has argued that the Committee does not understand its laws and that the Committee’s recommendation is unfounded. In the meantime, indigenous peoples continue to suffer irreparable harm as their territorial rights are disregarded, undermining their cultural integrity and well being.36

E. Paragraph 19 of the Committee’s Concluding Observations

25. Paragraph 19 of the Committee’s concluding observations highlights severe health problems suffered by indigenous peoples in relation to extractive industries and recommends that the State ensure the availability of adequate health services in indigenous areas. It also recommends that the State ensures that impact assessments are conducted and seeks “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.”

26. There is no extant evidence that the State has taken any meaningful steps to implement these vitally important recommendations. To the contrary, the State again appears to argue that the Committee’s recommendations are unfounded and that the Committee has not fully appreciated its legislative regime. The State’s arguments however, mischaracterise the nature of Guyanese law pertaining to mining and, as discussed below, run counter to well-established international human rights law, including as it is reflected in the Committee’s recommendations.

27. First, the State asserts that under Guyana law all minerals vest in the State. Indeed, Section 6 of the 1989 Mining Act states that “Subject to the other provisions of this Part, all minerals within the lands of Guyana shall vest in the State.” On this basis, the State excludes subsoil minerals from indigenous land titles. However, Section 8 of the Mining Act provides that, as an exception to the general principle of State ownership of minerals, that persons holding title issued prior to 1903 have the right to own, mine and dispose of base minerals found in those lands (not including gold, silver, precious stones and petroleum). This provision was highlighted and discussed with the Committee in 2006. Indigenous peoples’ title to lands, territories and resources traditionally occupied and used predates 1903 – indeed it can be traced to pre-colonial times. Therefore, applying the principles of non-discrimination and equal protection, indigenous peoples must also be recognized as owners of at least base minerals within their traditional lands and territories and this must be reflected in the Amerindian Act and title deeds.37

28. Guyana argues that there is no convention or law that requires governments to “transfer” subsoil rights or bodies of water to indigenous peoples.38 This is incorrect because such rights vest in indigenous peoples by virtue of traditional tenure and custom and are an integral part of their natural wealth and resources. This principle has been affirmed by the Inter-American Court of Human Rights, which holds that state declarations of ownership over the subsoil or other

36 Indigenous Community Yakye Axa v. Paraguay. June 17, 2005, I/A Court H.R., Ser C No. 125, at para. 149 (referring to, inter alia, para. 131, which states that “this Court has underlined that the close relationship of indigenous peoples with the land must be acknowledged and understood as the fundamental basis for their culture, spiritual life, wholeness, economic survival, and preservation and transmission to future generations”).

37 See inter alia, S.J. Anaya, Indigenous Peoples’ Participatory Rights in Relation to Decisions about Natural Resource Extraction. The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources. 22 Arizona Journal of Int’l and Comp Law 8, 2005, at 10, (stating that “Pursuant to the norm of non-discrimination, however, indigenous peoples must not be denied subsurface and mineral rights where such rights are otherwise accorded landowners”). Available at: http://www.law.arizona.edu/journals/aiicl/AJICL2005/vol221/vol221.htm

38 Comments of Guyana, at p. 20.
resources do not bar indigenous peoples’ subsoil and other resource rights where indigenous peoples can show that they have traditionally used such resources.  

29. Second, as discussed above, there are substantial areas of traditionally owned indigenous lands that are presently excluded from indigenous land titles and some 40 villages remain without any title at all. Rivers, creeks and streams are also excluded from indigenous titled areas. Subsoil rights are excluded from all of these areas and the provisions of the *Amerindian Act* that extend certain procedural and other rights to indigenous peoples (see below) only apply to titled communities. These limitations substantially undermine the State’s arguments about the protections provided by the *Amerindian Act*.

30. Third, Guyana argues that the *Amerindian Act* (Sec. 48-9) grants indigenous peoples the right to consent to all forms of mining, and although this right to consent may be voided by Ministerial decision in the case of large-scale mining (Sec. 50), this is nonetheless consistent with the principle of eminent domain, by virtue of which the State may take or impair property rights in the public interest. The State cites these provisions to support its contention that indigenous peoples suffer from no limitation on their right to control their lands. This and related contentions, however, are manifestly ill-conceived. In the first place, consent is restricted only to titled lands and may, as the State itself explains, be voided by the Minister in the case of large-scale mining. This grants indigenous peoples a right to say yes to large-scale mining in their titled lands, but not a right to say no: consent, by definition, must include both options.

31. Turning to the public interest argument, while it is the case that the right to property normally may be restricted in the public interest in both national and international law, the powers of states in this respect are not unbounded. There is considerable jurisprudence in the United Nations and regional human rights systems about the requirements that must be met for restrictions to human rights to be considered legitimate. A simple declaration of that a restriction is in the public interest is insufficient; restrictions, *inter alia*, must be proportional and necessary, “strictly necessary” in the case of indigenous peoples. The majoritarian biases inherent in a public interest test must also be appreciated and the compelling public interest of protecting the rights of indigenous peoples must fully considered and weighed. Additionally, the Human Rights Committee and this Committee both apply strict standards of scrutiny to

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39 *Saramaka People v. Suriname*, November 28, 2007, I/A Court H.R., Ser C No. 172, para. 120-22, at 122 (concluding that “the natural resources found on and within indigenous and tribal people’s territories that are protected under Article 21 are those natural resources traditionally used and necessary for the very survival, development and continuation of such people’s way of life”). Suriname’s 1987 Constitution vests ownership of all natural resources in the state.

40 Comments of Guyana, p. 16-20.

41 *See inter alia* Sporrong & Lonnroth v. Sweden, Eur. Court H. R., 23 Sept. 1982; *Hatton v. United Kingdom*, Eur. Court H. R., 8 July 2003; and *Case of Ricardo Canese*. August 31, 2004, I/A Court H.R., Ser C No. 111; and *Indigenous Community Yakye Axa v. Paraguay*. June 17, 2005, I/A Court H.R., Ser C No. 125, at para. 145 (explaining that “The necessity of legally established restrictions will depend on whether they are geared toward satisfying an imperative public interest; it is insufficient to prove, for example, that the law fulfills a useful or timely purpose. Proportionality is based on the restriction being closely adjusted to the attainment of a legitimate objective, interfering as little as possible with the effective exercise of the restricted right. Finally, for the restrictions to be compatible with the Convention, they must be justified by collective objectives that, because of their importance, clearly prevail over the necessity of full enjoyment of the restricted right”).

42 Article 46(2) of the UNDRIP provides in pertinent part that “… Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.”

43 *Young, James and Webster*, Eur. Court H. R., 13 Aug. 1981, at §63 (explaining that “Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position”).

restrictions to indigenous peoples’ rights and both have explicitly rejected the application of a ‘margin of appreciation’ in such cases.\textsuperscript{45} Moreover, the right to free, prior and informed consent vested in indigenous peoples – repeatedly upheld by this Committee and affirmed in the UN Declaration on the Rights of Indigenous Peoples – acts as a specific limitation on eminent domain powers. This right is a function of indigenous peoples’ right to self-determination rather than solely an attribute of property rights.

32. It is important to recall also that, while Guyana excludes large-scale mining from the scope of the right to consent, the Inter-American Court of Human Rights has explicitly held that states must obtain indigenous peoples’ consent in relation to any large-scale investment or development, including extractive projects, which may affect indigenous peoples’ traditional territories. According to the Court, “regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent, according to their customs and traditions.”\textsuperscript{46} The Court reached this conclusion after an extensive review of international law pertaining to indigenous peoples’ property rights and held that consent is one the preconditions that must be satisfied before the state can legitimately restrict those property rights.\textsuperscript{47} The Court cited the Committee’s jurisprudence and the UN Declaration on the Rights of Indigenous Peoples to support its ruling on this point.\textsuperscript{48} The \textit{Amerindian Act} and Guyana’s arguments in favour of that law are therefore inconsistent with international human rights law, including its obligations under the Convention on the Elimination of All Forms of Racial Discrimination.

III. CONCLUSION AND REQUEST

33. Guyana’s report to the Committee provides no indication that the State is even considering giving effect to any of the Committee’s recommendations, including those highlighted for follow-up action. For instance, despite the Committee’s recommendation that it be repealed, Article 142(2)(b)(i) of Guyana’s Constitution continues to permit the taking of the “property of the Amerindians of Guyana for the purpose of its care, protection or management…”, a legal impediment that applies to no other Guyanese citizen or ethnic group. Rather than explain the measures it has adopted to implement the Committee’s recommendations, Guyana goes to some length to refute the validity of those recommendations. In some cases, Guyana explicitly states that it will not implement the recommendations. Guyana’s arguments are not persuasive and stand in stark contrast its obligations under the Convention and international human rights law generally.

34. Indigenous peoples in Guyana continue to suffer from institutionalised discrimination, discrimination that is highly prejudicial and undermines their collective identity, well-being and survival as distinct peoples. The State not only tolerates this discrimination, it is actively defending and promoting it. The result is ongoing and intensifying irreparable harm to indigenous peoples, who, by the State’s own estimates, comprise around 9-10 percent of the national population.

35. In light of the gravity and enduring nature of the situation affecting indigenous peoples in Guyana, the APA/FPP respectfully requests that the Committee considers this situation under its early warning and urgent action procedure at its 73\textsuperscript{rd} session. The APA/FPP observes that the

\textsuperscript{46} Saramaka People \textit{vs.} Suriname, November 28, 2007, I/A Court H.R., Ser C No. 172, at para. 134.
\textsuperscript{47} Id. para. 128-58.
\textsuperscript{48} Id. para. 131, 136 and 138.
situation in Guyana is fully consistent with a number of the early warning and urgent action indicators identified by the Committee in August 2007, including the following:

a. Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;

c. Adoption of new discriminatory legislation;

h. Encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources.

i. Polluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups.49

36. The APA/FPP therefore respectfully requests that:

a) The Committee adopts a decision under its early warning and urgent action procedure again expressing its deep concern about the Amerindian Act and Guyana’s acts and omissions pursuant thereto, and highlighting the areas in which amendments are required in order to bring the Act into compliance with the Convention; and,

b) in line with the Committee’s 2007 Guidelines for the Use of the Early Warning and Urgent Action Procedure,50 the APA/FPP further request that the Committee recommends that:

i) the World Bank, the Inter-American Development Bank, Global Environment Facility, UN Funds and Agencies, and bilateral donors refrain from supporting projects that may affect indigenous peoples’ right to own their lands, territories and resources until such time as indigenous peoples’ rights to own and control their traditional lands, territories and resources and their right to free, prior and informed consent are enshrined in law and protected in practice in a manner that is consistent with Guyana’s international obligations;

ii) that the Permanent Forum on Indigenous Issues initiates a dialogue with the World Bank and Inter-American Development Bank with respect to implementation of the preceding recommendation; and,

iii) that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the right to food communicate with Guyana with regard to the situation of indigenous peoples and seek its agreement to conduct an on-site visit.


50 Id. at p. 4-5, para. 14(c).
IV. ANNEX 1:

31 January 2008

Ms. Nathalie Prouvez
Secretary
Committee on the Elimination of Racial Discrimination
UNOG-OHCHR
1211 Geneva 10
Switzerland

RE: Request for consideration of the situation of indigenous peoples in the Republic of Guyana under the early warning and urgent action procedure (Seventy second session of the Committee on the Elimination of Racial Discrimination).

Dear Ms. Prouvez:

I. Introduction

1. The Amerindian Peoples Association of Guyana and the Forest Peoples Programme ("the APA/FPP") have the honour of again communicating with the Committee on the Elimination of Racial Discrimination ("the Committee") with regard to the situation of indigenous peoples in the Republic of Guyana ("Guyana" or "the State"). This present communication reiterates the APA/FPP’s previous requests that the Committee considers the situation of indigenous peoples in Guyana under its early warning and urgent action procedure, and that it adopts a decision under this procedure at its 72nd session.

2. On 20 January 2006, the APA/FPP submitted a report to the Committee concerning the human rights situation of indigenous peoples in Guyana and requested that the Committee consider that situation under its early warning and urgent action procedure. At its 68th session, the Committee adopted concluding observations that detail serious deficiencies in Guyana’s observance of its human rights obligations pertaining to indigenous peoples. It also requested that Guyana provide additional information within one year on the implementation of the recommendations set forth in paragraphs 15, 16 and 19 of the concluding observations. Guyana failed to provide this additional information within the specified time.

3. The APA/FPP provided a short update report to the Committee on 10 January 2007 – this information remains valid today and is hereby reiterated and incorporated. That report explains that Guyana had failed to take any steps to give effect to or otherwise implement the Committee’s recommendations. Indeed, the Government’s position, as expressed by the Minister of Amerindian Affairs, was largely dismissive of the Committee’s views and in some cases the State

1 http://www.forestpeoples.org/documents/s_c_america/guyana_cerd_ua_jan06_eng.pdf
3 See Letter of the Chair of the Committee on the Elimination of Racial Discrimination to the Permanent Mission of Guyana, Follow-Up Procedure, 24 August 2007, p.1 (explaining that “By letter of 10 April 2007, the Coordinator on follow-up of the Committee, Mr. Morten Kjaerum, reminded Guyana of this request for information which unfortunately has yet to be received”). Available at: http://www2.ohchr.org/english/bodies/cedh/docs/LetterGuyana24Aug07.pdf
4 See Annex D.
overtly rejected some of its recommendations. It further explains that Guyana has persisted with or initiated a series of discriminatory acts and omissions that directly contradict the Committee’s recommendations. Finally, the 2007 report repeated the APA/FPP’s previous request that the Committee considers Guyana under its early warning and urgent action procedure.

4. Most recently, at its 71st session, the Committee communicated with Guyana to reiterate its request that the State submit additional information with respect to the serious issues addressed in the Committee’s concluding observations. This letter concluded by stating that given the information available to the Committee “and the absence of any response from your Government, please note, that failing receipt of the information requested by 30 November 2007, the Committee may decide to consider the relevant issues under its early warning and urgent action procedure at its 72nd session.”

II. Guyana continues to disregard the Committee’s recommendations and perpetuate its pattern of long-standing and systematic discrimination against indigenous peoples

5. There is no evidence publicly available at this time to indicate that Guyana intends to implement any of the Committee’s important and urgently needed recommendations. For example, there is no indication that the State is considering to amend Article 142(2)(b)(i) of the Constitution, an article which openly discriminates against indigenous peoples’ by authorizing the compulsory taking of indigenous peoples’ property without compensation “for the purpose of its care, protection and management.” Guyana has not amended the 2006 Amerindian Act, nor has it publicly discussed any amendments nor introduced a bill in the National Assembly towards that end, and nor has it otherwise removed the discriminatory treatment of indigenous peoples’ property rights in that law. To the contrary, the State persists with implementation of the Amerindian Act, including those provisions identified as discriminatory by the Committee in 2006.

6. For example, with regard to paragraph 16 of the Committee’s 2006 concluding observations, which identifies serious deficiencies in the recognition and protection of indigenous peoples’ rights to own and control their traditional lands, territories and resources, Guyana continues to apply numerical and other conditions not in accordance with indigenous peoples’ traditions and to unilaterally determine the areas to which title shall be granted. The Ministry of Amerindian Affairs routinely rejects request for title (or extension of title for communities that already hold title) on the basis that the area is ‘too big’ or ‘larger that Barbados’. These title grants are thus largely divorced from any meaningful understanding of the rights of indigenous peoples, including the continuity and sustainability of their traditional land tenure systems and resource management practices. In persisting with its land titling programme established by the Amerindian Act, Guyana is explicitly rejecting the Committee’s recommendations and disregarding indigenous peoples’ internationally guaranteed rights.

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5 See, for instance, Annex D, Additional information presented in accordance with the request of the Committee on the Elimination of Racial Discrimination, (CERD/C/GUY/CO/14, para. 28), APA/FPP, 10 January 2006, para. 8 and 13.
7 Id. at p. 2.
8 UN Doc. CERD/C/GUY/CO/14, at para. 17.
9 See, Annex A, B and C containing letters referring to the land titling process including two authored by the present Minister of Amerindian Affairs.
10 See, Annex B (referring to the Committee’s recommendations and asking why the Government is not acting consistently).
7. There remain no vested rights to lands and resources in the *Amerindian Act* and all titles are considered grants by the State rather than regularization of pre-existing and inherent rights. The State also continues to discriminate against indigenous peoples by denying them their right to the subsoil of their territories and the bodies of water therein. Nothing has changed since the Committee issued its observations two years ago.

8. Indigenous land titles in Guyana may also be granted only to individual villages rather than to groups of villages that have traditionally associated or otherwise chosen to freely associate and nor can they be granted to indigenous peoples as peoples. This denies indigenous peoples in Guyana their right to juridical personality as well as undermines the vast majority of the rights set forth in the United Nations Declaration on the Rights of Indigenous Peoples, rights which vest in peoples rather than in communities alone. With regard to the former, it is important to note that the Inter-American Court of Human Rights recently held that Suriname has violated the right to juridical personality recognized in Article 3 of the American Convention on Human Rights precisely because its laws deny indigenous and tribal peoples the right to own communal property as self-determining and distinct peoples. In particular, the Court stated that it “considers that the right to have their juridical personality recognized by the State is one of the special measures owed to indigenous and tribal groups in order to ensure that they are able to use and enjoy their territory in accordance with their own traditions.”

9. Paragraph 15 of the Committee’s concluding observations addresses the powers of indigenous Village Councils as set forth in the *Amerindian Act* and that law’s discriminatory distinction between titled and untitled indigenous communities. As noted above, Guyana has not amended the Amerindian Act nor has the Government discussed any amendments or introduced a bill in the National Assembly towards that end. Moreover, the Minister of Amerindian Affairs has rejected the Committee’s recommendations and defended the Government’s position with regard to the distinction between titled and untitled communities in Act and stated that the distinction “cannot” be removed.

10. Paragraph 19 of the Committee’s concluding observations highlights severe health problems suffered by indigenous peoples in relation to extractive industries and recommends that the State ensure the availability of adequate health services in indigenous areas. It also recommends that the State ensures that impact assessments are conducted and seeks “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.”

11. There is no extant evidence that the State has taken any meaningful steps to implement the Committee’s recommendations contained in paragraph 19. To the contrary, the State appears to be intent on increasing the level of resource extraction in areas predominately inhabited by indigenous peoples. Similarly, we have not received any information or any indication that the State has or is planning to implement any special measures to ensure that indigenous peoples can access adequate health care or any other services on a non-discriminatory basis.

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12 *Id.* at para. 172 (and also explaining, at para. 174, that “the State must establish, in consultation with the Saramaka people and fully respecting their traditions and customs, the judicial and administrative conditions necessary to ensure the recognition of their juridical personality, with the aim of guaranteeing them the use and enjoyment of their territory in accordance with their communal property system, as well as the rights to access to justice and equality before the law”).

13 See, Annex D, *Additional information presented in accordance with the request of the Committee on the Elimination of Racial Discrimination, (CERD/C/GUY/CO/14, para. 28)*, APA/FPP, 10 January 2006, at para. 13 and Annex D.
III.  Urgent Action is required to avoid further irreparable harm to indigenous peoples

12.  Both Guyana’s failure to implement the Committee’s recommendations and its acts and omissions that directly contravene those recommendations, in particular as related to the implementation of the 2006 Amerindian Act, perpetuate and exacerbate entrenched and systematic racial discrimination, the same discrimination that has characterized Guyana’s treatment of indigenous peoples for many decades.  This long-standing pattern of systematic racial discrimination, greatly bolstered by the recent enactment and ongoing implementation of the Amerindian Act, has caused, is causing, and will continue to cause, irreparable harm to indigenous peoples, and demands urgent international attention.

13.  As the Committee concluded in March 2006, Guyana’s Amerindian Act discriminates against indigenous peoples in multiple ways.  Racial discrimination is particularly evident in relation to the lack of recognition of and protection for indigenous peoples’ rights to own and control their lands, territories and resources traditionally owned or otherwise occupied and used.  Failure to fully recognize and protect these rights threatens indigenous peoples’ survival as distinct cultural and political entities in violation of their internationally guaranteed rights.  Even where indigenous property rights are in part protected by legal title, these rights are subject to limitations that do not apply to non-indigenous private property holders, and indigenous peoples are denied title over their subsoil resources and waters.  Discrimination is also present in constitutional provisions on property rights that only apply to indigenous peoples.

14.  The failure to adequately recognize indigenous peoples’ property rights should also be viewed in light of the severe negative impacts suffered by them as a result of resource exploitation operations on and around their traditional lands and territories.  Some of these operations have caused irreparable harm which is further amplified by substantially deficient and discriminatory access to health care.  Additional operations are authorized by the State on a regular basis.

15.  Guyana’s ongoing failure to adequately recognize and secure indigenous property rights arising from customary law and its failure to meaningfully guarantee rights to participate in and consent to decisions will ensure that indigenous peoples continue to suffer severe violations of their rights in relation to resource exploitation.  To this should be added the threat of forcible relocation and involuntary takings of indigenous lands, neither of which are prohibited in Guyanese law, draft or extant.  The Constitution in fact authorizes discriminatory takings of indigenous lands.  This also applies in the case of the establishment of protected areas, which disproportionately affect indigenous peoples and their traditional lands.

16.  Discrimination against indigenous peoples is additionally evident in overly broad and undemocratic provisions in the Amerindian Act that permit numerous arbitrary interferences with, and in some case negation of, indigenous peoples’ rights to self-determination and autonomous self-government within the framework of the Guyanese state.  In almost every case, there are no attendant due process rights or the right of appeal.  The majority of these powers are not applied to non-indigenous local government bodies.

17.  In light of the gravity and enduring nature of the situation affecting indigenous peoples in Guyana, the APA/FPP respectfully request that the Committee consider this situation under its early warning and urgent action procedure at its 72nd session.  These organisations observe that the situation in Guyana is fully consistent with a number of the early warning and urgent action indicators identified by the Committee in August 2007, including the following:
a. Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;

b. Adoption of new discriminatory legislation;

c. Encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources.

d. Polluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups.14

18. Specifically, the APA/FPP therefore respectfully request that:

c) The Committee adopts a decision under its early warning and urgent action procedure again expressing its deep concern about the *Amerindian Act* and Guyana’s acts and omissions pursuant thereto and highlighting the areas in which amendments are required in order to bring the *Act* into compliance with the Convention; and,

d) in line with the Committee’s 2007 *Guidelines for the Use of the Early Warning and Urgent Action Procedure*,15 the APA/FPP further request that the Committee recommends that:

j) the World Bank, the Inter-American Development Bank, Global Environment Facility, and bilateral donors refrain from supporting projects that may affect indigenous peoples’ right to own their lands, territories and resources until such time as indigenous peoples’ rights to own and control their traditional lands, territories and resources and their right to free, prior and informed consent are enshrined in law and protected in practice in a manner that is consistent with Guyana’s international obligations;

ii) that the Permanent Forum on Indigenous Issues initiates a dialogue with the World Bank and Inter-American Development Bank with respect to implementation of the preceding recommendation; and,

iii) that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the right to food communicate with Guyana with regard to the situation of indigenous peoples and seek its agreement to conduct an on-site visit.

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Annex A:

Consultations were held and agreements reached with every Amerindian community which received an Absolute Land Grant  
Stabroek News - Friday, September 14th 2007

Dear Editor,

I hasten to refer to an article carried in the Stabroek News of September 12, 2007, captioned 'AFC calls for improvements in hinterland areas.' Referring to comments made by Martin Cheong of the Alliance for Change (AFC) the article stated as follows: "Meanwhile, the party labelled as 'distasteful' the unilateral powers which it said the Amerindian Affairs minister has used to grant land to communities by 'her own whims and fancies.' The communities of Micobie and Isseneru can attest to this." Not only is this statement by the AFC totally false, but it also accuses the Minister of being a dictator, which is far from the truth.

Unlike what obtained in the past, consultations have been held and agreements have been reached with every single community that has received Absolute Land Grants from the PPP/C Government. In the last four years the government has more than doubled the amount of land owned by Amerindians, bringing the total to approximately 14% of Guyana's territory. In addition a procedure to deal with land claims has been included in the Amerindian Act of 2006. This is the truth. In the case of Micobie, the community submitted a request to the Minister which was reasonable. They subsequently received an Absolute Grant for the same amount of land they requested. In the case of Isseneru, almost two (2) years ago they requested an area measuring approximately 1000 square miles of land. The national patrimony is 83,000 square miles and there are more than 125 Amerindian communities, in addition to the many other non-Amerindian communities. As such, it is impossible to grant a community of less than 350 persons an area of 1000 square miles of land. This position was explained to the Toshao and the villagers. When a new council came to office, the original request was reviewed and they adjusted the area requested to approximately 160 square miles (nearly the size of Barbados). This request was accepted by the ministry, hence the issuance of the Absolute Grant for 160 square miles on September 5, 2007.

I wish to re-emphasize that all of the communal lands granted to Amerindian communities by this Government were only granted after there were consultations and Agreements with the villages and not by the "whims and fancies" of the Minister. Unilateralism is therefore out of the question. The AFC should therefore get its facts straight before making wild statements.

Yours faithfully,

Carolyn Rodrigues  
Minister of Amerindian Affairs
Dear Editor,
Please permit me to respond to a letter by the Minister of Amerindian Affairs captioned "Consultations were held and agreements reached with every Amerindian community which received an Absolute Land Grant (07.09/14) in reply to an AFC press statement. I find it most revealing that the Minister in attempting to set the record straight at the same time accused the AFC of "making wild statements". This led to some incredible revelations regarding her and her government's modus operandi of issuing land titles to Amerindian communities.
It is shocking to learn of the reasons used to deny Indigenous peoples and communities the full right to their traditional lands and resources. Can the Minister explain why "it is impossible to grant a community (Isseneru) of less than 350 persons an area of 1000 square miles of land?" Did not the present government grant approximately 2000 square miles to the Wai Wais whose population is about 200? Yet, the Minister takes pride in her handiwork that the community of Isseneru which considers 1000 square miles as their traditional lands must accept a miserly "160 square miles (nearly the size of Barbados)" or a mere 16 percent of what they believe to be theirs. Are Amerindian communities to now accept that the criterion that the Minister and government use to grant titles is whether the land in question has some relation to the size of Barbados?
The AFC holds strongly to the view that land title procedures should be designed to regularize pre-existing rights of indigenous peoples and communities. Therefore, if the procedure is to be equitable the law must recognize and specify rights that could form the basis for delimitation, demarcation and titling of indigenous peoples' lands, territories and resources. Intrinsic in all this must be recognition and protection of indigenous peoples' communal property rights that arise from and are grounded in traditional ownership systems including indigenous peoples' customary laws.
The AFC urges the government to implement the recommendations of the United Nations Committee on the Elimination of Racial Discrimination (CERD) arising from its concluding observations on Guyana in 2006, in particular CERD's call for Guyana "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 used by them, to which they have traditionally had access for their subsistence."
Idle boasts of a procedure to deal with land claims in the Amerindian Act of 2006 is not enough. All that is provided for in the Act is an unfair procedure for applying for title or extension of title that results in a decision determined solely and - in the absence of enumerated criteria in the form of rights - arbitrarily by the Minister of Amerindian Affairs. These are the trappings of a "dictator" to use your term.

Yours faithfully,

Martin Cheong

Editor's note: We are sending a copy of this letter to the Minister of Amerindian Affairs Caroline Rodrigues for any comments she may wish to make.
Annex C:

The procedure and the requirements for granting Amerindian communities titled lands are clearly set out in the Act
Stabroek News - Thursday, October 11th 2007

Dear Editor,
Thank you for affording me the opportunity to respond to a letter from Martin Cheong captioned "What criteria are used to determine the size of Amerindian grants?" (07.10.05). Since such negative and shallow utterances can mislead the public, I thank you for the opportunity to provide a response.

Concerning the criteria, I wish to note that the procedure and the requirements for granting Amerindian communities titled lands are stated clearly in the Amerindian Act of 2006. Indeed, these were considered by a Select Committee of Parliament which comprised opposition members. Moreover, such procedures are very rare in law since governments prefer to have policies that can be easily manipulated rather than enact laws. The government of Guyana opted to ensure that once and for all Amerindian communities are clear on how land claims can be settled. I should also point out that in many countries once a land claim is determined by the government the decision is final. In Guyana the communities have another option if they are displeased with the decision. Fortunately for Guyana, and unlike Mr Cheong, the Amerindian communities and the majority of the leaders see cooperation and mutual respect as a means of settling land claims. It is for this reason that we have been able to settle 19 land claims and have also addressed 6 extensions of land already titled, resulting in the doubling of Amerindian lands in just 4 years. In all of these cases there were mutual agreements. If that is "dictatorship" then Mr. Cheong has compiled his own dictionary. I should also note that prior to this government, there was absolutely no consultation with Amerindian communities on lands to be titled. Today this is a pre-requisite to granting lands. Our indigenous brothers and sisters in other parts of the world could only dream of such developments.

Mr Cheong questions why a request for 1000 square miles of land could not be approved for Isseneru. Well the answer is simple; Guyana has a total land mass of 83,000 square miles and there are over 125 Amerindian communities which comprise about 9.2% of the population. If 1000 square miles is granted to each community it is clear what the math will be. I therefore submit that such a question is not only irrational but shows that wisdom has eluded Mr Cheong.

Concerning the land granted to Kanashen (Gunns), this area was described in the now repealed 1951 Amerindian Act as belonging to the said named community. How the area was determined back then is not clear but the community always regarded the area as belonging to them, since in 1977 the government placed the description in law. The PPP/Civic Government, responding to the request from the community granted title to the community and for this we have no apology to make.

Yours faithfully,

Carolyn Rodrigues
Minister of Amerindian Affairs
10 January 2007

Ms. Nathalie Prouvez, Secretary
Committee on the Elimination of Racial Discrimination
UNOG-OHCHR
1211 Geneva 10,
Switzerland

RE: Additional information presented in accordance with the request of the Committee on the Elimination of Racial Discrimination, (CERD/C/GUY/CO/14, para. 28)

Dear Ms. Prouvez:

1. The Amerindian Peoples Association of Guyana and the Forest Peoples Programme have the honour of again communicating with the Committee on the Elimination of Racial Discrimination (“the Committee”) with regard to the situation of indigenous peoples in the Republic of Guyana (“Guyana” or “the State”).

2. On 20 January 2006, we submitted a report to the Committee concerning the human rights situation of indigenous peoples in Guyana, which focused primarily on the then-Amerindian Bill of 2005. This report, which requested that the Committee consider Guyana under its Urgent Action and Early Warning procedure, was considered along with the Guyana’s periodic report at the Committee’s 68th session.66

3. At its 68th session, the Committee adopted concluding observations (CERD/C/GUY/CO/14), which detailed serious deficiencies in Guyana’s implementation and observance of its human rights obligations pertaining to indigenous peoples. The Committee, inter alia, requested that the State provide additional information within one year on the implementation of its recommendations set forth in paragraphs 15, 16 and 19, pursuant to Article 9 of the Convention on the Elimination of All Forms of Racial Discrimination (“the Convention”) and Article 65 of the Committee’s rules of procedure.67

4. Paragraph 15 of the Committee’s concluding observations addresses the powers of indigenous Village Councils as set forth in the Amerindian Act and that law’s discriminatory distinction between titled and untitled indigenous communities.

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66 Guyana submitted its initial to fourteenth periodic reports, due from 1978 to 2004, in one document (CERD/C/472/Add.1).
Paragraph 16 concerns serious deficiencies with respect to the recognition and protection of indigenous peoples’ rights to own and control their traditional lands, territories and resources. Finally, paragraph 19 highlights severe health problems suffered by indigenous peoples in relation to extractive industries and recommends that the State ensure the availability of adequate health services in indigenous areas. This paragraph also recommends that the State ensure that impact assessments are conducted 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.”

5. This short report provides information on the implementation of the abovementioned paragraphs of the Committee’s concluding observations, as well as information on the general situation in Guyana as it affects the rights of indigenous peoples. It concludes with a reiteration of our previous request that the Committee consider Guyana under its Urgent Action and Early Warning procedure and that it issue a decision under this procedure at its 70th session.

I. The Amerindian Act 2006

6. The Amerindian Bill 2005 was enacted into law by Guyana’s National Assembly on 16 February 2006. In fact, the Government used its majority in that body to enact the legislation over the objections of the opposition parties, who voted against the Bill, and over the vocal objections of indigenous peoples. The Bill was signed into law by the President on 14 March 2006 a few days prior to the public release of the Committee’s concluding observations.

7. Since that time, the Act has not been reviewed by the National Assembly or the Government and no amendments have been proposed by the Government. To the contrary, the State is actively promoting the Act and has used financial support from the Inter-American Development Bank to conduct village level trainings on its implementation. According to the Minister of Amerindian Affairs, the intent of the training workshops on the Amerindian Act was to ‘educate Amerindians about their rights’.

II. Implementation of the Committee’s Recommendations

A. General Implementation

8. To the best of our knowledge, Guyana has not taken any steps to give effect to or to otherwise implement the Committee’s concluding observations and recommendations. Indeed, the Government’s position, as expressed by the Minister of Amerindian Affairs, has been largely dismissive of the Committee’s views. In this respect, the Minister is reported in the press as stating that

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68 See, Annex A.
69 See, Annex C.
71 See, Annexes B and E.
she had attended the committee meeting in Geneva, along with Human Services Minister Bibi Shadick to defend the country’s reports, answer a number of questions and offer clarifications based on complaints that were made to the committee by local NGO, the Amerindian Peoples' Association (APA). She said the meeting went well although given the questions that were asked, it appeared that the committee had been misled.72

9. A Guyana Government News Agency release is somewhat more diplomatic, stating that “According to Minister Rodrigues, there were several questions based on misrepresentations made by the APA in the form of complaints to the UN’s CERD;” and quoting the Minister as follows: “We clarified a number of these misrepresentations to the Committee and let them know what the Act is really intended to do because if they are not aware of that, they can be misled.”73

10. The point that we wish to stress here is that the above statements are the only official, public statements made by a Government representative in connection with the Committee’s observations and recommendations. Neither adequately addresses the substance of the recommendations made by the Committee nor do they explain what the Government intends to do to implement those recommendations or even that it is considering whether or how to implement them.

11. There is no evidence publicly available that the Government intends to implement any of the Committee’s important recommendations. For example, there is no indication that the State is considering amending or will amend Article 142(2)(b)(i) of the Constitution, which openly discriminates against indigenous peoples’ by authorizing the compulsory taking of indigenous peoples’ property without compensation “for the purpose of its care, protection and management,” or otherwise remove discriminatory treatment of indigenous peoples’ property rights in the Amerindian Act.74 Nor is there any indication that the State intends to provide for indigenous peoples’ participation in the Ethnic Relations Committee.75

**B. Paragraph 15 of the Committee’s Concluding Observations**

12. Paragraph 15 of the Committee’s concluding observations states that

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.

72 See Annex C for full text.
73 See, Annex D for full text.
74 *Concluding observations of the Committee on the Elimination of Racial Discrimination: Guyana*, at para. 17.
75 *Id.* para. 14.
13. As noted above, Guyana has not amended the Amerindian Act nor has the Government discussed any amendments or introduced a bill in the National Assembly towards that end. To the contrary, as also noted above, the State is presently actively promoting implementation of the Act irrespective of the Committee’s recommendations. Moreover, the Minister of Amerindian Affairs continues to defend the Government’s position with regard to the distinction between titled and untitled communities in Act. In a Government press release, she states that removing the discriminatory distinction cannot be done because “titled communities simply mean that you have title to your community and untitled communities mean that you do not have title to your community.” However, while these are named differently, there are provisions in the Amerindian Act, for untitled communities to become titled. She pointed out that the separation is necessary as Amerindians live all across the country. “If we say it is the same, then it means wherever Amerindians are living, the lands belong to them,” she said, noting that this will result in conflict. 76

14. This statement demonstrates that the State is opposed to implementing the Committee’s above quoted recommendation. It also demonstrates either a refusal to recognize and respect indigenous peoples’ rights to own and control their traditionally owned lands, territories and resources or a fundamental misunderstanding of this right. Given the Committee’s clear recommendation on this point – as well as abundant international and comparative jurisprudence – it may be presumed that the obstacle lies in the former rather than the latter explanation.

C. Paragraph 16 of the Committee’s Concluding Observations

15. Paragraph 16 of the Committee’s concluding observations states that

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 necessarily 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 77 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.

76 Annex D.
77 CERD, General Recommendation No. 23: Indigenous peoples, at para. 5.
16. The Amerindian Act continues to provide the basis for issuing titles to indigenous communities and the offending provisions identified by the Committee remain in force. The State also continues to discriminate against indigenous peoples by denying them their right to the subsoil of their territories and the bodies of water therein. Nothing has changed since the Committee issued its observations one year ago.

17. In 2006, the State granted title to two indigenous communities and extended the existing titled area of another. However, following the Amerindian Act, the extent of these titles was determined unilaterally by the State without reference to indigenous peoples’ right to own the lands and resources they traditionally occupy and without reference to their customary land tenure systems or customary laws. There remain no vested rights to lands and resources in the Amerindian Act and all titles are considered grants by the State rather than regularization of pre-existing and inherent rights.

18. With the two titles issued in 2006, 85 out of approximately 131 indigenous communities now hold title. This leaves 46 communities without any form of title or protection for their lands and subject to the discriminatory limitations contained in the Amerindian Act. Moreover, all of these titles were arbitrarily determined and large areas of traditional lands belonging to both titled and untitled communities have yet to be regularized and protected. Pursuant to the Amerindian Act, these communities are also denied access to remedies with which to assert their rights and challenge decisions of the Minister that disregard those rights.

D. Paragraph 19 of the Committee’s Concluding Observations

19. Paragraph 19 of the Committee’s concluding observations states that

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.

20. There is no extant evidence that the State has taken any meaningful steps to implement the Committee’s recommendations contained in paragraph 19. To the contrary, the State appears to be intent on increasing the level of resource extraction in areas predominately inhabited by indigenous peoples. For instance, the Guyana Geology and Mines Commission has approved a road building budget of $800 million Guyana dollars for 2007, up from $140 million in 2006.79

78 See Annex E.
79 See, Annex G.
21. Small- and medium-scale miners, who declared record levels of production in 2006, were also granted a second year-long grace period from regulations prohibiting the discharge of sediment-laden waste water into rivers and creeks used by indigenous communities.\(^\text{80}\)

22. A multinational mining company has also been granted permission to expand gold exploration operations on indigenous lands in Region 1 (the Tassawini project, Stratagold and Newmont Mining),\(^\text{81}\) two multinationals (BHP Billiton and Goldstone Resources) are conducting bauxite exploration work in the traditional territory of the Patamona people that could affect at least 8 indigenous communities,\(^\text{82}\) and mining of all kinds continues unabated in other areas.\(^\text{83}\) Logging operations continue to negatively affect indigenous peoples, despite compelling evidence that even the State derives little benefit from the forestry sector.\(^\text{84}\)

23. Similarly, we have not received any information or any indication that the State has or is planning to implement any special measures to ensure that indigenous peoples can access adequate health care or any other services on a non-discriminatory basis.

III. Guyana has disregarded a communication from the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people concerning the Amerindian Act

24. The 2006 Report of the UN Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous People observes that the Special Rapporteur sent a formal communication to Guyana raising concerns about the Amerindian Act.\(^\text{85}\) This communication raised concerns about Guyana’s failure to recognize indigenous peoples’ property rights, about the powers of the Minister vis-à-vis indigenous Village Councils, and the failure of the law to make reference to the Indigenous Peoples Commission (established by Art. 212 of the amended Constitution, but yet to be made operational). The Special Rapporteur concluded by noting that he “regrets not having received a reply from the Government of Guyana at the time of this writing.”\(^\text{86}\)

IV. Additional Information

25. Akawaio Indigenous communities on the Middle Mazaruni River have been requesting title to their lands for decades. Despite these requests, the only response received from the State to date has been a rejection of their title request as being ‘too big’ and an instruction that they present a more realistic request. While these requests have been disregarded, the State has issued numerous small- and medium-scale mining permits with devastating effects on their environment, health and ability to

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\(^{80}\) See, Annex J.

\(^{81}\) \textit{Id.} See, also, \url{http://www.minesite.com/companies/comp_single/company/stratagold-corp.html}

\(^{82}\) See, \url{http://www.goldstoneresources.com/cntpage.php?PageId=3} and; \url{http://www.iii.co.uk/news/?type=afxnews&articleid=5866867&action=article}

\(^{83}\) Annex J.

\(^{84}\) See, Annex H.


\(^{86}\) \textit{Id.} at para. 45.
lead a dignified existence. A striking example of this is the indigenous community of Isseneru in the Middle Mazaruni, which has no titled lands and is located within the boundaries of a mining district. The members of this community have constantly complained that miners continually pollute the river and streams from which they use water for domestic purposes and take fish for their daily sustenance. Their complaints have not been addressed by the Guyana Geology and Mines Commission nor by the Ministry of Amerindian Affairs.

26. Mercury contamination is a serious health hazard that will affect generations to come. The results of a World Wildlife Fund-Guianas survey of mercury contamination in humans in 2000 showed

no one sampled in Isseneru has a concentration of mercury considered to be safe or even normal. The most salient determinant factor for the elevated Hg levels in Isseneru in the study was diet. In Isseneru the average consumption of indigenous fish was 3-4 times per week.  

V. Conclusion and Requests

27. As the Committee concluded in March 2006, Guyana’s Amerindian Act discriminates against indigenous peoples in multiple ways. Racial discrimination is particularly evident in relation to the lack of recognition of and protection for indigenous peoples’ rights to own and control their lands, territories and resources traditionally owned or otherwise occupied and used. Failure to fully recognize and protect these rights threatens indigenous peoples’ survival as distinct cultural and political entities in violation of their internationally guaranteed rights. Even where indigenous property rights are in part protected by legal title, these rights are subject to limitations that do not apply to non-indigenous private property holders, and indigenous peoples are denied title over their subsoil resources and waters. Discrimination is also present in Constitutional provisions on property rights that only apply to indigenous peoples.

28. The failure to adequately recognize indigenous peoples’ property rights should also be viewed in light of the severe negative impacts suffered by them as a result of resource exploitation operations on and around their traditional lands and territories. Some of these operations have caused irreparable harm which is further amplified by substantially deficient and discriminatory access to health care. Additional operations are authorized by the State on a regular basis and it has yet again granted an exemption from regulations that prohibit pollution by small-scale miners in areas fundamental to the exercise of indigenous peoples’ subsistence rights and well-being.

29. Guyana’s ongoing failure to adequately recognize and secure indigenous property rights arising from customary law and its failure to meaningfully guarantee rights to participate in and consent to decisions will ensure that indigenous peoples continue to suffer severe violations of their rights in relation to resource exploitation. To this should be added the threat of forcible relocation and involuntary takings of indigenous lands, neither of which are prohibited in Guyanese law, draft or extant. The Constitution in fact authorizes discriminatory takings of indigenous lands. This

also applies in the case of the establishment of protected areas, which disproportionately affect indigenous peoples and their traditional lands.

30. Discrimination against indigenous peoples is additionally evident in overly broad and undemocratic provisions in the Amerindian Act that permit numerous arbitrary interferences with, and in some case negation of, indigenous peoples’ rights to self-determination and autonomous self-government within the framework of the Guyanese state. In almost every case, there are no attendant due process rights or the right of appeal. The majority of these powers are not applied to non-indigenous local government bodies.

31. We therefore respectfully request that:

   e) The Committee adopt a decision under its Urgent Action procedure again expressing its concern about the Amerindian Act and, so as to assist Guyana to avoid further serious violations of indigenous peoples’ rights, highlight the areas in which amendments are required in order to bring the Act into compliance with the Convention; and,

   f) That the Committee request that the Secretary General of the United Nations bring the situation in Guyana to the attention of UN agencies, funds and programmes, including the Inter-American Development Bank in connection with the Guyana Protected Areas System project, and request them to take appropriate measures to assist Guyana to adequately guarantee and protect the rights of indigenous peoples.

The Government used its majority vote in the House yesterday to pass a historic new Amerindian bill despite concerns by the opposition which did not give support to the enactment of the new legislation.

The Amerindian Bill 2005 had its third reading more than a decade after the process for the revision of the laws was initiated to replace the commonly-described archaic and paternalistic provisions of the 1976 Act. Although there were few sparks in the debate of new amendments to the new bill, lingering reservations over the name of the bill and the autonomy given to village councils were cited and there were complaints about the functioning of the select committee that was responsible for examining and reviewing the bill.

At the end of two years of consultations the new bill had been tabled in the House last year and sent to a committee after a debate. Minister of Amerindian Affairs Carolyn Rodrigues moved for the adoption of the bill yesterday after she told the House that 30 clauses were amended, although opposition speakers felt that the changes that were made were not fundamental. However, Rodrigues said that the name of the bill and the administration of village council elections were the only two issues of contention at the committee level, and government won the vote on both occasions. On the former issue, Rodrigues noted the calls for the bill to be called the "indigenous people's bill," she referred to her arguments in the House during last year's debate and explained that since there was uncertainty about the term internationally, the government took the decision to retain the use of the word Amerindian. Nonetheless, there is nothing to prevent persons from using the term indigenous to describe themselves under the new laws.

As regards village council elections, Rodrigues added that the opposition had felt that the Guyana Elections Commission (GECOM) was the responsible authority for administering elections in the villages. However, she said that the government felt that since there had been little difficulty in having the regional administration manage the elections it would maintain the status quo. Rodrigues was pleased with the work of the committee, including the contributions from the opposition members, and with the changes that were effected to the bill.

PNCR MP Vincent Alexander, who also served on the committee, said that the minister had omitted to mention disagreements by opposition members with some of the provisos of the bill, issues that were not put to a vote. He noted that his participation on the committee was his first exposure to select committee work, and he noted that his party had gone into the process with reservations given its previous experience with the outcome of such ventures. In this regard, he noted the two contentious issues cited by the minister and he said the party did not get the results it was looking for from the committee.

On the name of the bill he said that the impression given most of the times was that the views of the people would determine what was included in the bill, but that was not what occurred in this respect. He said there was evidence that the overwhelming majority view during consultations was in favour of using the term "indigenous", and he said it was unfortunate that wisdom did not prevail as the committee was forced to call a vote. Similarly, he said that the opposition lost the vote on the question of administering village council elections, although they firmly believed that GECOM was the responsible body. Beyond these two issues, Alexander said that there were other issues of great concern. He said these included the autonomy of councils (he said there were doubts that the issue was properly addressed) and he added that the opposition had hoped to see councils have greater fiscal autonomy and a greater role for the National Toshaos Council as a regulatory body.

GAP/WPA MP Shirley Melville told the House that she was unable to participate, as she would have liked in the committee because she was not given sufficient advance notice of the meetings so that she could travel from her home in the Rupununi, in Region Nine. "I feel deprived of making decisions on behalf of the people," she declared, adding that if an MP could not be consulted or have enough time it was questionable that all efforts were made to consult with the people. "How can you convince our people that they were meaningful?" she said, later adding, "...After so much consultations how can three votes describe what the name of the bill should be?" She said the Minister cast the deciding vote following the deadlock of the government and opposition sides on the issue. Melville said the indigenous people had a lot of catching up to do in the way of increasing their participation in the mainstream development of the country, but she was nonetheless confident of overcoming the obstacles, including making the changes to the amendments that she felt were thrust on the people.

Meanwhile, GAP/WPA MP Sheila Holder said that while the minister seemed to genuinely believe that she was doing what is best for the people, the three indigenous rights groups, the Amerindian Peoples Association, the Guyanese Organisation of Indigenous Peoples (GOIP) and The Amerindian Action Movement of Guyana (TAAMOG), also seemed firm in their rejection of provisions of the bill.

On Wednesday, in a joint statement, the groups said that they were disappointed that the bill was presented to the House in virtually the same manner as when it was first tabled. They maintained their criticism of the bill's treatment of communities' rights over lands, traditional territories and resources. They said the bill failed to recognise and specify any rights that could form the basis for the demarcation and titling of lands. They also held to the claims that the bill failed to adequately provide for unti tled communities and sub-surface rights, among other concerns (the Minister would maintain that provisions dealing with these issues were in the bill, while she noted that sub-surface rights were rare internationally).

As a result of the concerns that were raised, Holder questioned whether the members of the House felt obliged to please Amerindian communities. She said the political environment did not seem conducive to resolving the disagreements over the bill and she said it would have been wise to delay the debate to adequately address the concerns of the indigenous people in an appropriate environment.

Rodrigues' defence of the bill was supported by Health Minister Dr. Leslie Ramsammy who said that the bill had benefited from a number of compromises at the level of the select committee. "We may not have a bill that everybody wants but there were a lot of compromises," he said, while affirming the positive experience he had seen with committee work.


Shortly before it was announced by President Bharrat Jagdeo that Carolyn Rodrigues would remain the Minister of Amerindian Affairs, she told the huge crowd that flocked the Umana Yana on Friday for the launching of Amerindian Heritage Month 2006, that the ministry planned to have to a nationwide campaign to educate the Amerindian people about their rights.

The launch which was attended by President Jagdeo, Opposition Leader Robert Corbin, members of the diplomatic community and ministers of government, among others, has become an annual event since 1995 when a bill was passed for September to be designated Amerindian Heritage Month. This year the theme is 'Succeeding in the Quest for Progress' and the Heritage Village is Annai in Region 9.
The gathering, which was significantly smaller than the one last year, was entertained with a number of Amerindian songs rendered by the hinterland students. The first verse of the National Anthem was sung in a native Amerindian language.

Dr Desrey Fox, the curator of the Walter Roth Museum, plans to translate the entire National Anthem and the Pledge into all nine Amerindian languages.

Rodrigues in her address said that in February this year the Amerindian Act had been passed in Parliament and signed by the president in March, and that communities had already started implementing its provisions.

The minister gave the assurance that her ministry would have land issues affecting Amerindians sorted out as soon as possible. "Some Amerindian communities have already received titles to their lands. Over 13% or 11,205 square miles is the amount of land owned by the Amerindiansâ€”more than double [that]in years gone by."

Highlighting some of accomplishments of the Ministry of Amerindian Affairs, Rodrigues said that the Suddie hostel in Region 2 had been completed about four months ago to cater for those persons accompanying the injured from the interior. She added that the hostels at Port Kaituma and Moruca should be completed later this month.

Rodrigues informed the gathering that Sheleza Reid, a hinterland student had placed third at the recently concluded CSEC examinations. She had gained ten grade ones and one grade two, and was a product of the Anna Regina Secondary School.

In terms of further improving education, she stated that the St Cuthbert's school would be completed later this year. According to Rodrigues, improving communities was a necessity, and that was why the ministry continued to provide radio sets and outboard engines. Some communities, she continued, such as Santa Rosa and Annai had also benefited from the installation of telephones by GT&T.

Meanwhile the president in his speech said that Rodrigues would continue to act as the Minister of Amerindian Affairs since he was very impressed with her work.

Highlighting some of the things that would be done for the Amerindian people in the coming years, he announced that by 2008 the ferry stelling would be upgraded. "At present we are building a boat for Orealla and the Demerara River so that people can get transportation facilities..." The head of state added that efforts would be made to give Amerindian children the same educational opportunities as the rest of the country enjoyed. In closing he said, "I hope that Guyana can take the lesson of their Amerindian brothers and sisters - that is to work together".

Following the launching people congregated outside the Umana Yana to view or buy the craft, paintings, sculpture, jewellery and food which were on display. Among the activities scheduled for the rest of the month are an exhibition and sale of arts and craft and Amerindian dishes from September 1-6 at the Umana Yana; Heritage Day. Celebrations at Annai on the 10th, a fund-raising dinner on the 22nd at the Guyana Pegasus and a Cultural Extravaganza on the 30th at the National Cultural Centre to close off activities.

Annex C – ‘UN body raps Guyana over inequalities faced by indigenous population - also notes positive areas’, Stabroek News, 10 April 2006

The UN Committee on the Elimination of Racial Discrimination (CERD) has criticised Guyana for deficient policies in protecting the rights of and addressing inequalities among the indigenous population, including the new Amerindian Act passed earlier this year.
The committee's observations were issued on March 21, 2006, a little over two weeks after Guyana turned in its periodic reports covering the years between 1978 and 2004. Guyana's report has been overdue for 26 years.

While the committee's report was critical on a number of issues, it also noted some positive efforts in areas such as employment, housing, health and education that impacted on the indigenous population.

The CERD is composed of 18 independent experts who are nominated and elected by countries that have ratified the Convention on the Elimination of All Forms of Racial Discrimination.

Minister of Amerindian Affairs Carolyn Rodrigues said she had attended the committee meeting in Geneva, along with Human Services Minister Bibi Shadick to defend the country's reports, answer a number of questions and offer clarifications based on complaints that were made to the committee by local NGO, the Amerindian Peoples' Association (APA). She said the meeting went well although given the questions that were asked, it appeared that the committee had been misled.

Minister Rodrigues subsequently responded to some of the issues raised in a statement issued by the Government Information Agency (GINA).

In a statement issued last week, the APA said the committee's deep concern over various provisions in the new Amerindian Act vindicated its own criticisms of the legislation. "We hope the government will now make the necessary changes in order to give effective protection to our rights," the group stated.

It noted it had recommended that the National Assembly delay enactment of the Bill until after the CERD session because the CERD convention is incorporated in the constitution. "If CERD found the Bill to be substandard, questions would be raised about its constitutionality," the APA said.

The committee said it had difficulty assessing the country's reports, as there were no disaggregated statistical data on the number and economic situation of the indigenous peoples.

**Inequalities**

Based on the reports it reviewed, one of the committee's chief criticisms was the absence of a national strategy to address inequalities faced by members of the indigenous population in the enjoyments of their rights under the Convention. Indeed, it noted that the state had adopted several measures aimed at improving the situation of indigenous people in fields such as employment, housing and education. But the absence of a development strategy was considered to be of great concern.

The committee recommended that the government should adopt a comprehensive strategy or action plan that will provide for special measures to allow indigenous people the full and equal enjoyment of human rights and fundamental freedoms. It said adequate funds ought to be allocated as well.

The enactment of a new Amerindian Act has been one of the major milestones for the indigenous population. However, it has been the subject of a lot of criticism by indigenous peoples' NGOs and other groups since its draft.

The committee also had deep concerns about a number of the provisions in the new Act. It said there was a lack of legal recognition of the rights, ownership and possession of
indigenous communities over the lands, which they traditionally occupy. It was also concerned about the government's practice of granting land titles excluding bodies of waters and subsoil resources to indigenous communities on the basis of criteria that may not be in accordance with the traditions of the indigenous people involved. It said this could deprive untitled and ineligible communities from rights they traditionally had.

As a result, the committee urged government to recognise and protect the rights of all indigenous communities to own, develop and control the lands that they traditionally occupy, including water and subsoil resources as well as their traditional access to other areas, which they rely on, for sustenance.

The distinction drawn between titled and untitled communities in the new Act was another area in need of correction, according to the committee. But Minister Rodrigues said this could not be done because "titled communities simply mean that you have title to your community and untitled communities mean that you do not have title to your community."

However, while these are named differently, there are provisions in the Amerindian Act, for untitled communities to become titled. She pointed out that the separation is necessary as Amerindians live all across the country. "If we say it is the same, then it means wherever Amerindians are living, the lands belong to them," she said.

The minister said that during the deliberations at the Select Committee level, there were no criticisms about this aspect of the Bill.

The Act also caters for a village council to administrate village affairs, although they are subject to approval and gazetting by the minister.

However, the committee urged government to recognise 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.

However, Rodrigues told GINA that it was felt in some cases the village councils had too much power, in the sections for instance where they are expected to make their own rules and also enforce them.

The description of the indigenous people as "Amerindians" in the new Amerindian Act, a contentious point during the debate on the new legislation, was also another area of concern in the committee's report. It recommended that government, in consultation with all concerned indigenous communities ought to clarify whether "Amerindians" is the preferred term of these areas. Also, it urged that government should consider the criteria laid down in ILO conventions as well as CERD's own advisories in defining indigenous peoples, and that it recognise the specific rights and entitlement accorded to indigenous peoples under international law.

Another item of concern in the report is the extensive exception to the protection of property in Article 142 (2)(b)(i) of the Constitution, which authorises the compulsory taking of property of Amerindians without compensation "for the purpose of its care, protection, management or any right, title or interest held by any person in or over any lands situated in an Amerindian District, Area or Village established under the Amerindian Act for the purpose of effecting the termination or transfer thereof for the benefit of an Amerindian community." The committee recommended that government 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.
It also recommended that the government confine the taking of indigenous property to cases where it is strictly necessary, following consultation with communities concerned, with a view to securing their informed consent and giving adequate compensation where property is compulsorily acquired by the state.

The absence of statistical data on the representation of ethnic minorities, including indigenous women in public offices and government positions was also listed as an item of concern. On this latter point, the committee also urged government to ensure that all ethnic minorities have adequate opportunities to participate in public affairs at all levels, including both parliament and government.

It noted the establishment of the Ethnic Relations Commission (ERC) and acknowledged that it did not require representation of any particular ethnic group. But it said the absence of indigenous representatives on the commission was a concern and it recommended that the ERC be as inclusive as possible and that representatives of indigenous communities be consulted in the decision-making processes that affect their rights directly.

Further, regarding the ERC, the committee noted that only a few complaints about acts of racial discrimination have been brought before it and none before the courts. Government explained that this could be, in part, attributed to the high burden of proof required in judicial proceedings and difficulties securing witnesses. As a result, the committee recommended that the government consider sharing the burden of proof in civil and administrative proceedings once the commission of an act of racial discrimination has been sufficiently substantiated by the complainant. It added that government should allocate funds for witness protection programmes in such cases.

Low secondary school and university attendance by indigenous children and students was another area of deep concern as well as the reports about the lack of qualified teachers, textbooks and classrooms in areas predominantly inhabited by Amerindians. The committee urged that there be equal quality of teaching for indigenous children and adolescents as well as an increase in school and university attendance. It also called for intensified training and incentives for hinterland teachers as well as the construction of schools in these areas. The provision of culturally appropriate textbooks, including in indigenous languages, in schools with indigenous pupils and an increase in the outreach of scholarship programmes were also recommended.

**Ethnic balance**

The committee also noted the government’s special recruitment measures for the armed forces and the police in favour of indigenous people and other applicants from hinterland areas. The committee also deemed the composition of the armed forces and the police in particular, which are predominantly recruited from the Afro-Guyanese population, a concern. It recommended intensified efforts to ensure balanced ethnic representation in the composition of the groups and it suggested the implementation of proposals contained in the Disciplined Forces Commission report as a solution. The commission was charged with, among other things, addressing the imbalance in the forces, and the committee suggested extending special recruitment policies to all under-represented ethnic groups, especially Indo-Guyanese, and by providing incentives for members of under-represented ethnic groups to join the forces.

Although it found much to criticize, the committee’s report also included a brief look at positive aspects of the country’s efforts.

The committee included its appreciation for the efforts made by the government to extend the public health system to remote hinterland areas through community health centres, health huts, special incentives to doctors deployed to hinterland areas and a system to airlift patients to hospitals in emergency cases.
However, it said too that despite these efforts the average life expectancy among indigenous peoples is low and they are reportedly disproportionately affected by malaria and environmental pollution, in particular mercury and bacterial contamination of rivers as a result of mining activities. The committee recommended the training of health personnel from indigenous communities to increase the number of skilled doctors. In response, the minister said that while the situation is not ideal it has been tremendously improved taking into consideration the remote locations of Amerindian communities. Nevertheless, she said, the government has been making efforts to deploy doctors and medexes to Amerindian communities.

She noted that if there are no doctors or medexes in most villages there are at least community health workers, many indigenous to the communities, and employed by the government.

The committee welcomed information on the high literacy rate of the population as well as efforts by the government to increase the number of secondary schools in the hinterland areas. The minister said it is obvious that Amerindians are now better equipped with educational facilities, resources and opportunities. It was only under this administration that Secondary Schools have been built in all Amerindian-dominated regions - Regions One (Barima/Waini), Seven (Cuyuni/Mazaruni), Eight (Potaro/Siparuni) and Nine (Upper Takutu/Upper Essequibo). Prior to 1992, there was only one secondary school in Region One at Mabaruma and one at Bartica.

The committee commended the government for the ratification of most of the core UN human rights treaties and that the international convention on the Elimination of All Forms of Racial Discrimination can be directly applied in the country’s courts. At the same time, it noted the lack of information on the practical application of criminal and other legislation aimed at eliminating racial discrimination, including the Racial Discrimination Act (1997), the Prevention of Discrimination Act (1997) and Article 149 of the Constitution. In this regard, the committee urged that government monitors and ensures the effective implementation of all legal provisions aimed at eliminating racial discrimination and provides an update in its next report.

In its general review the committee also said it was concerned about the existing ethnic tensions in Guyana, saying they constitute an impediment to inter-cultural recognition and the construction of an inclusive and politically pluralist society.


Amerindian Affairs Minister Carolyn Rodrigues today commented on a story in the March 26 edition of the Kaieteur News titled “UN body critical of Amerindian Act.”

The report which was based on a release from the Amerindian People’s Association (APA), Minister Rodrigues said, “Is an attempt to mislead Guyanese and more particularly, Amerindians.”

According to her the report emanated from a recent meeting of the United Nations Committee on the Elimination of all Forms of Discrimination (CERD).

Guyana had presented its report and was represented by Minister of Human Services and Social Security Bibi Shadick and herself. The APA was also represented, she said.

According to Minister Rodrigues, there were several questions based on misrepresentations made by the APA in the form of complaints to the UN’s CERD.
“We clarified a number of these misrepresentations to the Committee and let them know what the Act is really intended to do because if they are not aware of that, they can be misguided,” she said.

Land remains a contentious area for the APA as it is pressing to remove the distinction between titled and untitled communities.

But the Minister said that this cannot be done because “titled communities simply mean that you have title to your community and untitled communities mean that you do not have title to your community.”

However, while these are named differently, there are provisions in the Amerindian Act, for untitled communities to become titled.

She pointed out that the separation is necessary as Amerindians live all across the country. “If we say it is the same, then it means wherever Amerindians are living, the lands belong to them,” she said, noting that this will result in conflict.

The Minister further reported that during the deliberations at the Select Committee level, there were no criticisms about this aspect of the Bill as everyone, including the Opposition People’s National Congress Reform realised the difficulties.

The APA release said that the organisation in its reviews observed that the new Amerindian Act requires village councils to obtain Ministerial approval for a range of internal decisions, and consequently recommended that the Act be amended to ensure that village councils and other indigenous institutions are ‘vested with the powers necessary for the self-administration and the control of the use, management and conservation of traditional lands and resources.

However, Minister Rodrigues said that it was also felt that in some cases the Village Councils had too much power, in the sections for instance where they are expected to make their own rules and also enforce them.

The Minister also responded to claims of discrimination in health care and education. She noted that while the situation is not ideal it has been tremendously improved taking into consideration the remote locations of Amerindian communities.

Nevertheless, she said, the Government has been making efforts to deploy doctors and mededes to Amerindian communities.

She noted, that if there are not doctors or mededes in most villages, there are at least Community Health Workers, many indigenous to the communities, and employed by the Government.

As regard education, the Minister said it is obvious that Amerindians are now better equipped with educational facilities, resources and opportunities.

It was only under this administration that Secondary Schools have been built in all Amerindian dominated regions - Regions One (Barima/Waini), Seven (Cuyuni/Mazaruni), Eight (Potaro/Siparuni) and Nine (Upper Takutu/Upper Essequibo). Prior to 1992, there was only one secondary school in Region One at Mabaruma and one at Bartica.

Today there are two secondary schools in Region One – Santa Rosa and Mabaruma. The Port Kaituma Community High School has been converted to a secondary school.
Waramadong Secondary school, Upper Mazaruni is serving students of that region and another secondary school is under construction in the Bartica sub-region to cater for students in the outlying areas.

Students of secondary school age in Region Eight have access to Mahdia and Paramakatoi secondary schools. There are also secondary schools at Aishalton, Annai and St. Ignatius with dormitories in Region Nine.


Following the passage of the new Amerindian Bill in Parliament on February 16, and President Bharrat Jagdeo's assent in early March, several Amerindian villages have been making use of the document, the Government Information Agency (GINA) reported.

Minister of Amerindian Affairs Carolyn Rodrigues recently confirmed that the Act was used by all village councils during village elections in approximately 100 Amerindian communities countrywide.

"We have sent copies to all of the communities and now we are also making sure that other prominent persons in the communities other than the council, such as the AREOs (assistant regional executive officers), the medexes and the headmasters, that they also have a copy of it," the minister is quoted by GINA as saying.

According to Rodrigues, government has observed that owing to the clarity of the document a number of village councils have since been using it to assist them in carrying out their duties.

"That is what it is intended for. For instance, whereby now persons, non-residents, move into communities and cause problems, they don't want to remove, before we had nothing to deal with that, now the council can go to the Act and see that they are in authority to evict those persons," she explained.

However these persons would be given an opportunity to be heard before any action is taken.

"And if they do not abide with the rules of the council, then they would have to move."

The new Act is also being utilised to resolve land issues in the communities, GINA reported. They are at present engaged in formulating their rules in accordance with the legislation, with sections of the Act stipulating these and providing for fines to be attached should laws be broken.

According to Rodrigues, the villages are now in a better position with the document being available for them to peruse.

The minister noted, however, that government plans to conduct a countrywide exercise, possibly in another few months, to educate the councils and the communities about their rights as they relate to the legislation. She stated though that the exercise would depend on "how things are going in Guyana."

In the new legislation, several duties previously under the purview of the Minister of Amerindian Affairs have been transferred to the village councils to carry out instead, in an effort to ensure that the villages are more autonomous.

One of the duties relates to permission for entry and access into the communities. She also observed, GINA further said, that the ministry has offered advice to villages in such cases and "altogether the Act is proving to be very helpful to the communities."
And regarding criticisms of the new legislation, the Amerindian Affairs Minister said, "The general feeling is that people supported it."


President Bharrat Jagdeo handed over two land titles and one extension to Amerindian communities last week, telling them his government was to serve not to rule over them.

Cabinet approved titles to Kaburi in Region Seven (Cuyuni/Mazaruni) for 42 square miles and Fairview in Region Eight (Potaro/Siparuni) for 82 square miles.

The extension of 62 miles was granted to Annai in Region Nine (Upper Takutu/Upper Essequibo), the Government Information Agency (GINA) reported.

This increases Annai, the largest Amerindian community in the North Rupununi with some 1,700 persons, to 247 square miles, GINA stated.

Jagdeo said he knew "how dear land issues" were to the Amerindians as they have been "custodians (of) these lands for time immemorial."

Also at the handing over ceremony at the Office of the President was Minister of Amerindian Affairs, Carolyn Rodrigues.

She thanked representatives of Iwokrama International Centre, Toolsie Persaud Limited (TPL), and the North Rupununi District Development Board as well as the Toshaos and communities for their mutual respect and dedication as their cooperation ensured that the process was successful.

Fairview is located within the Iwokrama rainforest and Kaburi is inside a TPL logging concession. Rodrigues said since 1992 land titles to Amerindian communities have increased from 74 to 85.


The Guyana Gold and Diamond Miners Association (GG&DMA) is looking at the maintenance of roads, training of designated miners to diagnose malaria, and the establishment of a radio base for co-ordination of communication among miners.

These developments were aired at the GG&DMA's last bi-monthly meeting held at the association's headquarters on Quamina Street.

GG&DMA secretary Edward Shields told miners that the Guyana Geology and Mines Commission (GGMC) had approved a budget of $800M for road improvement in 2007. It is a significant move from zero to $140M plus in 2006 to $800M next year, the secretary said.

The funds, said Shields, come from miners' rental fees of which GGMC will take 25% and that amounts to some $300M while the remainder of the funds are taken from royalty payments.

The second issue surrounding roads pertains to those maintained and built up by timber companies. Enquiries, Shields told the miners, revealed there was no such thing as a private road. No one can stop another from using a road. However there is a road protocol, which says that if one is maintaining a road that person would have some authority but blocking of roads with trucks "must be made a thing of the past."
He said it was really timber industry vehicles that contributed to the destruction of roads. He asked, "How could mining transportation compare to big trucks with skidders...?"

**Exploitation by foreigners**

Shields then turned his attention to what he referred to as the exploitation of the mining industry by foreigners and noted that some 100 Chinese were found in the interior unknown to the government. He said this in the context of locals having a hard time acquiring permits. Shields said too that the Amerindians do not talk about how they are being exploited in the timber industry.

The processing of work permits, said Shields, has been known to take some 7, 8, 9 or 10 months and still sometimes miners were not able to get their permits. However, he said, following a meeting with the Minister of Home Affairs, Clement Rohee and the Permanent Secretary of the Ministry, Angela Johnson a new policy has been implemented. According to this new arrangement, he said, "from the day one applies for a permit to the day it is actually received should not be longer than two weeks."

With regard to penalties for persons found without permits, he said those who are already in the industry would not be asked to leave and should seek to find out why no permit had been issued. However for those miners who have no evidence of a permit to show, the law would apply. This new policy, he informed his colleagues, was implemented only a week ago.

**Security**

Turing to the burning issue of security, Shields said two documents on the issue have been prepared dealing firstly with miners’ personal security and, secondly, better policing. For instance it was noted that police stations established years ago in areas that are now less busy than they once were should be shifted to areas like Oranapai - the scene of several big robberies recently.

He mentioned also a meeting scheduled with Acting Commissioner of Police Henry Greene on November 19. He said it was hoped that miners could work together with the police for better security.

In relation to health, the secretary stated that a Memorandum of Under-standing (MOU) was signed with the Ministry of Health and PAHO on malaria which states that miners can designate workers who will be trained to diagnose the disease using smears among other relevant techniques.

Miners will get free medicine and impregnated nets though these would be assigned to dredge owners and are not supposed to be brought into Georgetown. Miners are however asked to provide the logistics to move the items. Companies, he said, could work with the Ministry to look after their individual camps. The date for training of camp personnel however is yet to be finalized while the source of the equipment for diagnosis is yet to be cleared up.

Vice-President of the GG&DMA Norman Mclean mentioned that in addition to resuscitating monthly meetings with the Commissioner of Police and miners in the hinterland to share information on security and intelligence gathering, efforts are being made for the association's members to co-ordinate communication with the setting up of a radio base, possibly at the GG&DMA's Quamina Street office. (Christopher Yaw)

**Annex H -- Country getting a pittance from Asian forestry companies –Bulkan - monitoring agency 'weak' Stabroek News, 13 November 2006**
Asian transnational companies are taking advantage of loopholes in the current forestry laws without much profit accruing to the country and the forestry commission is unable to properly monitor the sector.

This is the view of researcher Janette Bulkan, who gave a presentation entitled 'Plunder without Profit' at the Cara Lodge on Thursday. The lecture, hosted by the Guyana Citizens' Initiative, looked at the state of Guyana's forestry sector and the extent to which Asian multinational corporations harvest and export logs, sometimes in breach of local laws and international best practices.

In 'Plunder without Profit', Bulkan stated that none of the seven key recommendations of Nigel Sizer's paper 'Profit without Plunder' done ten years ago have been taken up. Using social, economic and environmental indicators, Bulkan has determined that the forestry sector has retrogressed. She said that the forestry sector in 2006 is an enclave sector, supplying unprocessed logs to Asia.

According to Bulkan, Guyana's trees should be left standing since the country earns amounts to US$4.50 - "less than a towel ($1,000)," she said. She added that in Guyana there is a lack of understanding and appreciation for best practices in the industry.

Giving her recommendations at the end of the talk, Bulkan said that there is need for oversight from the Select Committees of the National Assembly and also from Civil Society, the Bank of Guyana, the Guyana Revenue Autho-rity (GRA) and Go-Invest.

She said too that the Central Bank and Go-Invest need to work with the Guyana Forestry Commission (GFC) on rationalizing resource access and export taxes, plus incentives for the local adding of value.

Bulkan recommended that the government swiftly pass the Forestry Act which has been in draft form since 1996. She said that if the Government could pass the Cricket World Cup Sunset Legislation in a matter of days then she wondered why it was the draft act couldn't be passed after ten years. She suggested that it might be in some sectors' best interest that the draft act not be passed into law. Bulkan said that were the updated legislation in place, Barama Company Limited would not have been able to harvest outside of its 1.6 million hectares of concession as it currently does.

She said that there is need for an independent Board for the GFC so that the body's mission statement could be applied.

According to Bulkan, there was a weak regulatory agency in the GFC, noting that there was a shortage of trained and motivated staff. She said too that there was a shortage of equipment, few bar code readers and limited routine monitoring.

Bulkan is of the view that reforms spoken of a decade ago have been abandoned or not implemented and that penalties are not enforced on major companies like Barama. She said too that transnational corporations and local collaborators behave like pirates and abuse FDI arrangements.

According to Bulkan, for Guyana to return to a reform agenda for the sector, it requires Civil Society to construct more coherent and persuasive economic arguments, work with the National Assembly to increase transparency and accountability of the Government and coordinate with anti-corruption agencies to bring equity to business incentives.

Consolidation
She said that national enterprises and multinational corporations must support best practices, engage in value-adding processes, seek independent step-wise forest certification and routinely apply legal verification.
Bulkan's research has led her to conclude that there is consolidation of the richer and more pristine State Forests (and Amerindian lands) into a few hands but without increasing national benefit. She found that 38 large-scale concessions by 2005 controlled 80 percent of State Production Forests, which is 35% of all State Forests.

She said that of the 38 large-scale concessions held by 14 companies, five of them are known Asian companies. She said too that the Asian companies directly or indirectly control an additional undisclosed amount of smaller concessions and titled Amerindian forests. This consolidation through sub-letting is in contravention of the Forests Act 1953 and specific terms of concessions, she argued.

Bulkan's research found that the small scale logging sector provides 75% of employment while Barama with a concession covering 26 percent of all production forests in 2005 employed 300 Guyanese workers or 2 percent of all forestry sector employment.

Bulkan added that although Barama is exempt from all duties and taxes; it does not pay 2% export tax. According to Bulkan, Barama owed US$70,000 in 2% export tax. She said that when the company was asked if it had paid up, the answer was that they were in discussions with the Office of the President. She said that in the past Barama published disaggregated information where it was possible to discern what should have been paid on exports. She said that the company has ceased this and only makes available aggregated information.

She noted that Chinese company Jaling was given permission to cut bulletwood, a protected species. She contended that the majority of logs on the log market at Port Kaituma were of bulletwood. She said that she was on the ground in Port Kaituma and spoke to workers of this company who all complained about the conditions under which they work. Jaling has come under fire for not starting up its sawmill as promised while all the time exporting logs. It has since said that it was test marketing these logs though no figures have been given on how many logs per species were exported.

Bulkan said that to circumvent a partial ban on the export of locust and crabwood logs, some log exporters list their logs as mixed hardwood. She said that 19,000 cubic metres of locust logs felled in 2005 were unaccounted for and have been exported in this manner. She said that as a result, locust and purpleheart are scarce locally.

She alleged that US$3M per month from 15,000 cubic metres of logs exported is lost through transfer pricing monthly.

Some months ago, Barama's Managing Director Girwar Lalaram said that even though it has not turned a profit in its 15 years of operation it still contributes to Guyana's economy and aims to do more of this.

Lalaram had said that the company will further contribute to the economy through the sale of its certified forest products. Lalaram said that the third party arrangement that Barama has with small concessionaires is of mutual benefit.

Questioned on the preponderance of log exports as against downstream activities, Lalaram said that the company concentrated first on lesser known species and it was only because they found new markets. He said that the development of Buck Hall is expected to utilize many of the logs harvested in the new certified compartments four and five of the company's giant concession.

Barama was certified by the Forest Stewardship Council after a long process of auditing administered by SGS-Qualifor, the agency FSC appointed to carry out the certification. Officials from SGS-Qualifor are due in the country soon to again engage with Barama. Bulkan
and other concerned citizens under the aegis of the Guyana Citizens' Initiative will engage them on Barama's activities.

**Annex J -- PM upbeat over prospecting for oil, bauxite, uranium. GGMC to drill in north west**, Stabroek News, 30 November 2006

While commending small and medium-sized producers on record gold declarations this year, Prime Minister Samuel Hinds has warned that mining must be carried out in a sustainable way and he also voiced optimism over prospecting for iron, bauxite, uranium and oil.

Small and medium-sized miners declared a production level of 161,283 ounces of gold at the end of October and Hinds, who also has responsibility for this sector, in a statement, said he was heartened by the output.

"Prospecting at a number of large-scale gold properties continues to yield exciting results amongst which are Aurora, Tassawini, Million Mountain and an underground extension at OMAI," Hinds stated.

"Government wants the mining sector, particularly the small and medium-scale miners, to be successful, to be profitable, and to make money â€¦ Most costs occur from lost time when not all that is required for production is available. More predictable, reliable and convenient transportation would be a boost," the statement added.

In this vein, Hinds indicated that government will continue to support the development and improvement of roads and other infrastructure in mining areas.

Small and medium scale miners were granted a further year's grace period to prepare for the enforcement of laws forbidding the discharge of muddy waters into the waterways of the communities in which they operated. There had been many complaints about this over the years.

Hinds in the statement said he is pleased with improvements to date since a number of miners have been bringing their operations into compliance and noted too that GGMC expects to collaborate with a medium-scale miner in the North West District in demonstrating safe ways of tunnel-mining at medium scale.

He also expressed satisfaction regarding the progress being made to find and delineate economic bodies of other materials - iron ore, bauxite, uranium and manganese.

He said GGMC is working with ESSAR Steel of India for the rapid evaluation of known showings of various potential iron-ore bodies in Guyana and re-evaluation of potential manganese ores. ESSAR Steel, the statement said, is beginning construction of a large steel mill in Trinidad which would facilitate productive iron or manganese ore bodies in Guyana.

The Prime Minister said too that BHP Billiton in an agreement with Goldstone Resources is advancing its evaluation of the Pakaraima laterites as a source of bauxite feed to an alumina plant. Together with the geophysical reconnaissance programmes of two groups pursuing uranium ore and interests expressed by others, the Prime Minister said too that there has also been a new interest in industrial minerals - sands, clays and dimension stone for cutting into tiles.

**Oil and gas**

Describing the prospects for oil and gas as "tantalizingly exciting", the PM said that Guyana looks forward to drilling in any offshore areas that might be assigned to it by the United Nations Convention on the Law of the Sea (UNCLOS) tribunal which is addressing a matter brought before it by Guyana. He noted too that arrangements will be put in place shortly for
a medium-sized Trinidadian Operator to drill a number of wells in the coastal area of Demerara and Berbice and in the Takatu Basin in the Rupununi. "GGMC itself is to drill at three places of historical reports of gas emissions in the North West, which may well be originating from the decay of recently buried vegetation, but which may also have a petroleum origin", the statement added.