The insecure tenure of Amerindians in Guyana

Drafted by J R Palmer and Janette Bulkan
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Dear colleagues,

The insecure tenure of Amerindians in Guyana

Although the government of Guyana always stresses how much more protected are the Amerindians of that country compared with elsewhere in South America (French Guiana, Suriname or Roraima State in Brazil), the insecurity of the land tenure is never pointed out. The power of the government, through the National Constitution 1980 (last amended 2003), to dispossess the Amerindians is never mentioned.

This account of the positive and negative features of tenure in respect of Amerindians in Guyana contains relevant extracts from laws and the National Constitution, and is accompanied by a selected chronology.

This commentary should be more relevant now (January 2011) in the context of the Readiness Preparation Plan (R-PP) for the World Bank Forest Carbon Partnership Facility's scheme for Reductions in Emissions from Deforestation and forest Degradation (REDD), related to the UN Framework Convention on Climate Change; and to the Low Carbon Development Strategy (LCDS) of the President of Guyana.

Through the LCDS Multi-Stakeholder Consultations Steering Committee on 23 June 2009, the President decided that the traditional rotational agriculture of Amerindian subsistence farming did not constitute either deforestation or forest degradation. It is unclear what is the effect of this decision on the rights or abilities of Amerindian communities to participate in REDD projects and to receive REDD income for reductions in carbon emissions. The status of the Amerindian communities which do not have titled Amerindian Village Lands and who reside inside State Forest boundaries is particularly uncertain.

Cautionary note

Our notes on the insecure tenure of Amerindians in Guyana were first drafted in February 2009, unfortunately without knowledge of the information note by Fergus Mackay (WRM Forest Peoples Programme (FPP), Moreton-in-Marsh, UK) on "Indigenous peoples' rights and reduced emissions from reduced deforestation and degradation: the case of the Saramaka People v. Suriname", 01 March 2009.

Fergus MacKay points out that Belize and Guyana alone among the American continental states south of the USA border are not members of the Inter-American Commission on Human Rights or parties to the American Convention on Human Rights 1969, and have not accepted the jurisdiction of the Inter-American Court of Human Rights. Decisions and interpretations by the Inter-American Court in the case of the Saramaka People v. Suriname (November 2007) could strengthen the tenure of Amerindians in Guyana, if taken up into the law of Guyana. The Saramaka case would provide a stronger negotiating position for Amerindians in Guyana. However, the Amerindians would still need to organise themselves more effectively to take advantage of that stronger position.

The WRM Forest Peoples Programme has a long history of support for Amerindians in the Guiana Shield counties with respect to land tenure and mineral mining issues. The FPP deals with the fundamental issues of conflict between the legal approach used in Guyana and the approaches to human and resource access rights in international conventions. FPP makes special reference to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), a convention which Guyana ratified in March 1977.

We touch only briefly on such issues, in order to avoid overlap with the FPP. In this commentary, we mostly take the legal stance of the Government of Guyana as a given, while recognising the persistent problems which that stance causes.

[Our comments on direct quotations are included within square brackets]

1. Early legal history

1.1 Guyana is quite peculiar among tropical countries which were colonised by Europeans. Contacts between Amerindians and Dutch traders seeking tropical forest products from the late 1500s included a tradition of the Europeans giving presents to the Amerindians in order to allow establishment of the trading posts and depots. The Dutch West India Company (WIC) formalised the giving of presents in the 1700s as a system of protection of the coastal plantations from raiding and for securing a hinterland police force which would help to suppress revolts by African slaves and to capture escaping slaves. The triennial presents declined in the 1820s and ceased when slavery was abolished in 1838.

1.2 No formal treaties between the Dutch and Amerindians were recorded until 1778, late in the period of Dutch control. There was no formal polity to represent the 30+ Amerindian ethnic groups, most of whom were semi-nomadic and did not compete for land with the incoming colonists and their slaves. Although the early Dutch trading posts were located among the Amerindian settlements upriver, away from the swampy coast land, the early Dutch colonists were unable to adapt their temperate-zone annual cropping systems to the infertility of the inland tropical soils and the rampant growth of weeds. These early plantations were soon abandoned and the colonist farmers moved north to the coast where Dutch hydraulic skills enabled the marshes and swamps to be drained and the underlying fertile clays reclaimed through the immense hand labour of imported African slaves. Amerindians chose not to live permanently in these wet lands, so there was no history of warfare between the Europeans and the Amerindians. Hence also there were no peace treaties and no formal declarations of assumption of European sovereignty. There were, however, a few formal acknowledgements of prior Amerindian possession of the land although not an acknowledgement of prior Native Title. However, there was a recognition by the Amerindians themselves of such rights.

1.3 WIC's instructions to its trading officers ("postholders") before 1700 provided for land to be granted to incoming settlers, but such grants should not be to the detriment of the Amerindians. By 1784, WIC decreed that Amerindians must be given land in "full and free ownership", with such land selected by the Governor. Complaints to the colonial government about lands leased to colonists are recorded from Amerindians from (at least) 1815, 1827, 1831, 1837. The Creek Bill of 1838 recognised Amerindian usufruct rights over Crown land, and the then Governor (Henry Light) appeared to confirm that the Amerindians were possessors *de facto* of the soil.

1.4 The belief that the politically unorganised Amerindians needed protection from rapacious colonists and settlers induced the Dutch in the 1700s to institute the post of Protector of the Indians. This post conveyed little power for implementation and was replaced in 1838 by the revenue-generating Superintendents of Rivers and Creeks. The Amerindians substantially retreated inland from contact with European colonists after the end of the present-giving system in 1838; with the formal ending of slavery, there was no need for an Amerindian militia to help prevent escape of slaves and the recapture of those who did escape. Activities of prospectors for gold maintained the flow of Amerindian complaints about dispossession of land. Usufruct rights in forest were again confirmed by the Governor in 1871, when the notional (ineffective) responsibilities of the Superintendents of Rivers and Creeks for Amerindian welfare were abolished.

2. Reservation and de-reservation of Amerindian areas by *ex-gratia* Government land titling

2.1 Recognition by the Amerindians of the suzerainty of British rule in the northwest of Guyana, in their testimony to the Guiana-Venezuela Boundary Commission in the 1890s, was followed by the Aboriginal Indians Protection Ordinance of 1902. The Ordinance created ten Amerindian districts or reserves; total of 862 square miles / 0.223 million hectares (Mha). It was intended to protect the Amerindians from adverse contacts with gold miners. These lands were still considered as Crown Land, but non-Amerindians had only very limited and brief access to the lands. The post of Protector of Indians was created to administer the operation of this Ordinance.

2.2 The Mining Regulations 1905 contained in section 199 the important provision – "All land occupied or used by the Aboriginal Indians, and all land necessary for the quiet enjoyment by the Aboriginal Indians of any Indian settlement, shall be deemed to be lawfully occupied by them". This provision has been passed down through revisions of mining law. The current Cap 65:01 Mining Act 1989, Article 111, has very similar language – "All land occupied or used by the Amerindian communities and all land necessary for the quiet enjoyment by the Amerindians of any Amerindian settlement, shall be deemed to be lawfully occupied by them".

2.3 A second version of the Aboriginal Indians Protection Ordinance was passed in 1910, with a much broader scope. Amerindians were now expected to live in the reservations and needed permission to be away from them, or would lose their special rights as Amerindians. Elaborate measures were prescribed to protect Amerindians from exploitation when employed outside the reservations. Conforming to the then dominant European view of the Amerindians as "wards of the State", the 1910 Ordinance recognised that Amerindians were easily cheated of their rights and property by coastlanders, and provided for the Protector of Indians to take possession of Amerindian property and to sell/dispose of it without the consent of the Amerindian owner (Article 17); see also sections 4.16 – 4.19 below.

2.4 Usufruct rights of Amerindians were again confirmed in a series of Regulations under the Aboriginal Indians Protection Ordinance 1910 (or Crown Lands Ordinance 1887 or 1903?) in 1922, apparently similar or identical to those of 1838 and 1887.

2.5 In addition to the 10 Amerindian reserves in 1902, 4 more areas were reserved between 1904 and 1945-6, totalling 4,956 square miles / 1.284 Mha. The last of these, the whole water catchment of the Upper Mazaruni, in 1945-6 was by far the largest at 4,500 square miles / 1.165 Mha. This reserve was advised to protect 12 villages from encroaching gold and diamond miners, as the lower and middle catchments of the Mazaruni had already been declared as Mining Districts in the 1930s. Diamonds were found in the Upper Mazaruni in 1959 and 1500 square miles / 0.388 Mha were de-reserved from the then Upper Mazaruni Amerindian District in October 1959 and declared a Mining District. A small part of that de-reserved area was restored to the Amerindians in 1991.

2.6 The 1910 Ordinance was replaced by the Amerindian Act, Cap. 58 (Ordinance number 22 of 1951), but with much the same protective view of the Amerindians as "wards of the State", even though their projected decline and disappearance through disease had begun to be reversed by public health measures. The 1951 Act provided for Amerindian Districts, Areas and Villages. Ten Amerindian Districts were formed in 1953, with a total area of 6,000 square miles / 1.554 Mha. Eight of these Districts were identical to eight of the 14 Amerindian reserves constituted between 1902 and 1946; the Moruca reserve with 309 square miles became the North West District with 705 square miles, but the Upper Pomeroon reserve with 262 square miles was reduced to the Pomeroon District with 155 square miles. Wakapau reserve became Wakapau Village and retained its 18 square miles. Three reserves (Ituribisi with 65 square miles, Vlissengen with 1.5 square miles and Muritaro with 0.25 square miles) were simply de-reserved (Pierre 1993, table on page 131).

2.7 In the same year 1953, the Forests Act confirmed that the forest law was not intended to "prejudice, alter, or affect any right or privilege heretofore legally possessed, exercised or enjoyed

by any Amerindian in Guyana" (Article 37). Provision in that Article for defining those rights and privileges has apparently never been exercised, and that proviso was extinguished in the Second Schedule of the Amerindian Act 2006. If questions were to be raised about those rights and privileges, presumably one would need to read across to article 11 in the Mining Act 1989; see paragraph 2.2 above.

2.8 Between 1953 and 1966, under the Amerindian Act 1951, 9 Amerindian Villages were newly reserved. Sand Creek was reduced from a District to a Village in 1959 but retained its area. Karasabai District lost 8 of its 208 square miles in 1960 but gained a separate Karasabai Village with 80 square miles. The 3.5 square miles of Annai Village were increased to 71 square miles in 1963 (from Pierre 1963, table on page 131).

2.9 We do not have access to the British Guiana Government Orders to show why areas changed or why there were switches from District to Village status. What is evident from the period leading up to independence from British colonial rule in 1966 is an increasing Amerindian awareness of the need to have greater land security. The Ordinances from 1902 and 1910 and the Amerindian Act 1951 restricted access by non-Amerindians to the designated lands but gave the Amerindians no security of tenure to their segregated areas.

2.10 It seems likely that the British colonial government expected the Amerindians to die out, based on perceptions of declines amongst Australian aborigines, and on the findings of a 1943-48 field survey of the social decline and poor livelihoods of the then-remaining 15,000 Amerindians (report by P. Storer Peberdy, 1948, although Peberdy also noted that the Amerindians requested unanimously that their people be given more equitable and competitive economic opportunities and to be better able to share in the material rewards [of development]; Pierre 1993:109 reference). This expectation may have been the main reason for not extending the reservation programme before the end of colonial rule in 1966. A second reason was the expectation of expanding and diversifying the agrarian economy of Guyana before and after Independence, to provide a basis for economic self-sufficiency, and hence the need for access to large areas of land unencumbered by tenure rights. A third reason was the increasing belief that confining indigenous peoples to reservations was a worse option than encouraging their integration (and perhaps submergence) into the dominant cultures and societies – in this case, those of the African and East Indian Guyanese. This policy of integration was indeed written into the Independence Agreement of 1965.

2.11 The post-1945 political awakening in the British colonies in the 1950s and 60s included the emergence of a small group of politically conscious Amerindians, led by Stephen Campbell (Pierre 1993, reference). During the pre-Independence conferences, Campbell arranged for a legal opinion on "The fundamental rights of the Amerindian communities in an independent British Guiana" (B. Bathurst and P. G. Clough, Lincoln's Inn, London, 6 November 1963; reproduced as appendix D in Pierre 1993, reference). This legal opinion is important for drawing attention to the lacks of safeguards for Amerindian communities outside the Districts, Areas and Villages designated under the Amerindian Act 1951. It is surprising now (but perhaps not then) to find that this legal opinion did not refer to the ILO Convention 107 on indigenous and tribal populations 1957: article 11 – "The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised" – even though the UK Government did not ratify this Convention.

2.12 At least the 1963 legal opinion led on to recognition of the need for Amerindian land security, as shown by annex C of the report of the British Guiana Independence Conference, 1965. This in turn developed into annex C of the 1965 Independence Agreement and required the independent government to provide legal ownership or rights of occupancy for Amerindians over ''areas and reservations or parts thereof where any tribe or community of Amerindians is now ordinarily resident or settled and other legal rights, such as rights of passage, in respect of any other lands they now by tradition or custom *de facto* enjoy freedoms and permissions corresponding to rights of that nature. In this context, it is intended that legal ownership shall

comprise all rights normally attaching to such ownership" (Annex C, Section L, of the 1965 Independence Agreement; Letwiniuk 1996:51). The Amerindian Lands Commission (ALC) was constituted in 1967, after Independence in May 1966, and reported in August 1969. The ALC recommended areas for (mostly) communal land title which were much less in total area than those claimed by the Amerindians in the 128 communities contacted during 1967-9.

Post-Independence land titling for Amerindians

2.13 Partly because the report of the ALC was issued only a few months after the brief Rupununi rebellion, in which some Amerindians were involved, the government paid little attention to Amerindian issues for some years. However, after Amerindian leaders in the same year signed a pledge of allegiance, the government gave assurance of early settlement of land claims. At the second conference of Amerindian leaders a year later, in 1970, their land claims were estimated to cover 43,000 square miles / 11.137 Mha or more than half the country. At the third such conference in 1971, the Prime Minister gave assurance that surveys for boundary demarcation had begun but there was a shortage of surveyors. Only the boundaries of Orealla Village Lands were surveyed and monumented (in 1976) and then no more boundary surveys were carried out until 2001. The Orealla boundaries, including long cut lines, exhausted the funds for demarcation.

2.14 Ten years after Independence, the 1951 Amerindian Act was amended in 1976 to grant Village Lands title to 64 of the communities. As recommended by the ALC, Amerindians in mining areas were given Amerindian Districts for a degree of self-government but not communal title to the land. The Upper Mazaruni was again excluded, this time because of the government intention to build a hydropower dam.

2.15 Land titling has continued intermittently, with Ministry of Amerindian Affairs (MoAA) claiming in December 2008 to have granted title [since 1976] to 97 communities, with 42 still untitled; thus, an increase of 11 on the 128 communities contacted by the ALC during 1966-69. However, the President claimed separately in December 2008 that there were 155 Amerindian communities, 16 more than the MoAA.

2.16 During 13 hinterland community consultations in June-July 2009 on the President's Low Carbon Development Strategy, a variety of Presidential and Ministerial statements were made about titling of Amerindian lands and demarcations. It is not clear from the Press reports or the LCDS meeting reports as posted on the LCDS website if this variety was due to mis-understanding by the reporters of what was being said, or if the apex of government was itself unclear about the difference between the paper process of the *ex-gratia* awards of Amerindian Village Land titles and the physical demarcation and monumentation of the boundaries of the titled areas. It should be noted that the Amerindian Act 2006 does not use the word 'demarcation'.

Cost of land titling for Amerindians

2.17 In one statement, the Minister for Amerindian Affairs (MoAA) was reported to have said at Kamarang in Region 7 on 12 July 2009 that "demarcation of 60 Amerindian lands was completed over the last couple of years" (consultation report on LCDS website; see http://www.lcds.gov.gy/images/stories/Documents/Consultation%20report%20-%20Kamarang.pdf). This contradicts the Presidential and Ministerial statements that demarcation is slow and costly;

► "high costs associated with the cadastral surveys", Minister Pauline Sukhai, report duplicated by Guyana Chronicle on 29 and 30 July 2009;
► "it takes G$ 30-40 million to demarcate a community", President Bharrat Jagdeo in Guyana Chronicle on 28 July 2009;

► "about G$ 40 million [US$ 200,000] is needed to complete the legal processes for a single community", President Bharrat Jagdeo in Guyana Chronicle on 29 July 2009;
► "the cost of demarcation has increased over the years: a review of some of the cost revealed that it cost less than G$ 10 million [US$ 50,000] to demarcate the boundaries of an Amerindian village before 2005. The current costs are now estimated as high as G$ 35 million [US$ 175,000] for demarcation of a single village in a few cases", MoAA 31 August 2009;
► "the approach undertaken by the government of Guyana has seen an aggressive demarcation programme and an annual provision of a total sum of fifty million dollars (US$50m) for the exercise", MoAA 31 August 2009 - [at US$ 175,000 for one community, this sum would provide for annual demarcation of 285 communities. If "US$50m" is a mis-typing of GS$50m, then the amount is enough for between one and two demarcations per year. Neither figure accords with the Government claims].
►The President's Office of Climate Change continues to refer to land demarcation, as did the Minister of Finance in his 2011 budget presentation on 18 January 2011, section 4.5 on page 19 of the Minister's printed presentation, accessible through www.gina.gov.gy.

Survey/demarcation/monumentation of titled Amerindian Village Lands

2.18 Article 63 (1) in the Amerindian Act (Cap. 29:01 of 2006) states 'If an application is approved [,] title shall be granted under the State Lands Act'. The State Lands Act (Cap. 62:01 of 1972) does not refer to 'demarcation', nor do the associated State Lands Regulations of 1973. Section 18 (1) of those Regulations require land grants to be surveyed: '. . . no grant or lease shall be made for any tract of State land . . . unless the tract to be granted . . . has been surveyed by a surveyor of the Department [now the Guyana Lands and Surveys Commission]'.

2.19 It seems that neither the President nor the Ministers are aware of a provision in Section 19 (2) of the Regulations of 1973 to the State Lands Act 1972, which appears to be highly relevant:

"The Commissioner [of the Guyana Lands and Surveys Commission] may waive survey or direct that only a partial survey shall be made where the application is for a licence in respect of a tract of land bounded by creeks or other well-defined limits or the boundaries of which are otherwise well-marked . ."

2.20 As the President, Ministers and government agencies have repeatedly noted, with only one major exception (Orealla Village) the boundaries of Amerindian lands are natural creeks or topographic ridges; see the report of the Amerindian Lands Commission 1969, the revision of the Amerindian Act 1951 in 1976 (Schedule of village boundaries on pages 19-33) and the report by Peter Copeland and Craig Forcese of the Canadian Lawyers Association for International Human Rights, August 1994. In the great majority of villages, the boundaries are rivers and creeks. So, according to Section 19 (2) of the State Lands Regulations 1973 it would appear that no surveys are required for Amerindian Village Lands, as no notice appears to have been published by the Commissioner of Lands and Surveys to order such survey for any titled Amerindian Village. It is possible that the Amerindians and their representative associations are also unaware of this Section 19 (2). Possibly it will be mentioned in the court case of the ten villages in the Upper Mazaruni which has been pending for the past 11 years but will be re-started in February 2011?

2.21 It follows that, if no physical on-the-ground survey is required for creek-bounded tracts of land, Section 21 of the State Lands Regulations 1973 and Article 19 of the Land Surveyors Act (Cap. 97:01 of 1953) also do not apply to such lands; these two paragraphs deal with the placing of durable boundary marks of branded hardwood, iron, stone or concrete.

2.22 If the interpretation of Section 19 (2) of the State Lands Regulations 1973 is correct, then the repeated claims of the President that demarcation of Amerindian lands is very expensive should be challenged. Such a challenge could result in a significant saving of money to the Norwegian tax payer, under the Norway-Guyana MoU of 09 November 2009. The Government of

Guyana has proposed to use USD 12 million of Norwegian funds for such work: "Gov't proposes US$12M Amerindian land titling, demarcation project" Stabroek News news item, Sunday 02 January 2011, http://www.stabroeknews.com/2011/news/stories/01/02/gov%e2%80%99t-proposes-us12m-amerindian-land-titling-demarcation-project/.

Amerindian requests pending for first land titling and extensions

2.23 Reported Presidential and Ministerial statements also differed on the number of community requests for first title and the requests for extension of title due to the need for more land for subsistence agriculture to support the demographic increase; according to the 2002 census, the Amerindians collectively have a much higher rate of demographic increase than the African Guyanese and East Indian Guyanese, and now comprise 9.1 per cent of the national population. The most consistent information was reported from Minister Pauline Sukhai in December 2008:

► 64 communities had been titled by 1992;
► 97 communities had been titled by December 2008;
► 66 of the 97 communities have been demarcated (although it is unclear if this means both ground-surveyed and monumented);
► 17 communities have applied for extensions to their titled areas (since what date ?);
► 8 communities have had their applications approved for extensions (since what date ?).

2.24 In an attempt to reduce the confusion, the Ministry of Amerindian Affairs issued on 31 August 2009 a document "Amerindian land status 2009" – www.lcds.gov.gy/images/stories/Documents/Status%20of%20Amerindian%20lands%20.-%202009.pdf

[paper titles were issued after amendment of the Amerindian Act 1951 in 1976, to 64 communities, of which only the boundaries of Orealla were actually surveyed and demarcated]

► Another 10 communities were titled in 1991. All the 64 + 10 communities have natural boundaries, without cut lines, with the exception of Orealla which has long cut-line boundaries.
► Between 1992 and 2008, 22 more communities were given paper titles.
► an estimated 60 Amerindian villages have received "approval for demarcation of boundaries and the grant of title" from "an annual provision of fifty million dollars (US$50m) for the exercise."; [see comments on section 2.17 above].

[This implies that 64+10+22=96 minus 60 = 36 titled Amerindian Villages were awaiting demarcation and monumentation in August 2009. However, this document also says -]

► 62 titled Amerindian Villages have been demarcated, 6 Villages have natural boundaries.
► demarcation of 9 titled Amerindian Villages is in progress in 2009.
► demarcation of 25 titled Amerindian Villages is pending, of which 7 have been scheduled, 7 have not been scheduled, 7 (text) or 10 (table) in the Upper Mazaruni are in dispute in court, and 1 is missing (another discrepancy between text and table).
► out of the 96 titled Amerindian Villages, 17 have asked for extension of area; of which 8 have been approved (but only 7 are listed in the table) and 9 are pending.
► 40 "satellite communities" are listed in the MoAA document. Satellite community is not a category defined in the Amerindian Act 2006 but in this document it indicates a community which has an elected councillor who is a member of the Amerindian Village Council. [In some cases, these were temporary garden or farming settlements, but have become larger and more permanent.]
► 11 communities are eligible for titling (have been inhabited for 25 years or more, and have had at least 150 inhabitants for at least the last 5 years [Article 60 (1) of the Amerindian Act 2006], of which 6 communities have applied for titling.

► 21 communities were established before 2003 and have mainly Amerindian inhabitants. [In this document they are called "Amerindian Settlements", which is also a category not defined in the Amerindian Act 2006 but is mentioned without definition in Article 111 of the Mining Act 1989, a descendant of section 199 in the Mining Regulations 1905; see section 2.2 above. These 21 communities may become eligible for titling in future. This list by no means is inclusive of Amerindian untitled and ineligible communities. Notably, Amerindian communities in swampy areas in the North West District, where the family house are built on the river levees, may extend for long distances and have difficulty in social cohesion simply because of the long travel time when paddling in dugout canoes.]
► 10 communities of mixed ethnicity are mentioned as a group [but the communities are not listed by name. Such communities could be eligible for titling if/when inhabited for more than 25 years and if/when the number of community members has been at least 150 for at least the last 5 years.]

2.25 Although this MoAA document was some improvement on the confused Government numbers issued in June-August 2009, there were still inconsistencies in the text of the document and between text and tables. It is not possible to match completely the communities named in this document with the 128 names in the report of the Amerindian Lands Commission (ALC) 1969. Some villages omitted during the 1967-9 ALC consultations (possibly because of inaccessibility or because they were deemed to be more Mixed ethnicity than Amerindian) appear in this MoAA document. Some ALC-named communities are not in this August 2009 document; communities may have been abandoned or changed their names since the 1960s. This should not be surprising, given the low ecological carrying capacity of the infertile hinterland soils and the consequent need for semi-nomadic farming at subsistence level.

2.26 A revised version of the August 2009 summary on Amerindian land titling was included as Appendix V of the third version of the LCDS in May 2010 (http://www.lcds.gov.gy/images/stories/Documents/Low%20Carbon%20Development%20Strategy%20-%20May%202010.pdf) . This version lists:
► 97 titled Villages.
► 70 demarcated Villages, 15 applications for demarcation, 11 Villages not demarcated (including the 10 in the Upper Mazaruni court case).
► 27 applications for extension of titled lands.
► 8 applications approved for extension of titled lands.
Note that there are still inconsistencies with previous information supplied by the Ministry of Amerindian Affairs, concerning demarcation and extensions.
► 36 satellite villages; omits 5 which were on the August 2009 list.
► 11 untitled Amerindian communities; includes 1 listed as an Amerindian settlement in August 2009, and excludes 1 which had been listed in August 2009.
► 20 Amerindian Settlements.

2.27 With particular relevance to counting for REDD and the President's Low Carbon Development Strategy (LCDS), these official counts may omit the smaller untitled communities. Their lack of formal tenure makes them vulnerable to Government actions. This was perceived at the time of the legal opinion delivered in 1963 (see section 2.11 above) and is the subject of current concern by the Forest Peoples Programme. If the communities or settlements are on State Forest land they are technically squatters, even though if they were in occupation in May 1966 they are eligible for titling under annex C of the Independence Agreement; presumably that Agreement applies even if such communities have had less than 150 Amerindian inhabitants during the last 5 years. No minimum limits on size or longevity of the community were mentioned in the Independence Agreement 1965.

Customary usufruct rights of Amerindians

2.28 Article 37 of the Forests Act 1953 stated "Nothing in this Act shall be construed to prejudice, alter, or affect any right or privilege heretofore legally possessed, exercised, or enjoyed

by any Amerindian in Guyana: provided that the Minister from time to time by publication in the Gazette may make any regulations to him seeming meet defining the privileges and rights to be enjoyed by Amerindians in relation to the State forests." [No such regulations were ever developed, and this Article 37 was rescinded when the Amerindian Act 2006 was enacted].

2.29 The 1872 caution against licensing of timber cutting grants which might interfere with Amerindians (see attached chronology) was repeated in the 1999 procedure manual of the Guyana Forestry Commission (GFC) for applications for State Forest Exploratory Permits. These Permits should not be issued over lands used or claimed by Amerindians. Unfortunately, the GFC ignores its own procedure; see sections 4.1 and 4.7 - 4.9 below.

2.30 Similarly, the "quiet enjoyment" provision in Article 111 of the Mining Act 1989 does not seem to prevent the issue of mining concessions over land claimed by Amerindians but not titled to them: "For the purposes of this Act, all land occupied or used by Amerindian communities and all land necessary for the quiet enjoyment by the Amerindians of any Amerindian settlements, shall be deemed to be lawfully occupied by them".

3. Revision of the Amerindian Act 1951

3.1 Revision of the Amerindian Act 1951 was started in 1994 but progress was sluggish, even with Canadian legal assistance in 1994-6. Community consultations began again in 2003 but the Government accepted only half of the recommendations compiled in 2005. A new version of the Amerindian Act became law in 2006, although through an administrative oversight it was not activated until November 2010: "A windfall for the Amerindian communities, Stabroek News Editorial, Monday 08 November 2010, http://www.stabroeknews.com/2010/opinion/editorial/11/08/a-windfall-for-the-amerindian-communities/. This 2006 version gives the Amerindian community and village councils substantially more authority for self-government, but has not been followed up sufficiently with interpretation and culturally appropriate training for development and operation of village by-laws. Consequently, most Amerindians are unaware of what they can and should do for themselves, and continue to be liable to depredation by coastlanders and foreigners who are more aware of this and other laws.

3.2 The Amerindian Act 2006 still make village by-laws subject to Ministerial approval (Article 81), with no criteria prescribed to guide Ministerial decisions. The same discretionary power is also given to the Minister (but in effect to Cabinet and the President) with respect to applications for titled Amerindian Village Lands, and only vague criteria in Article 62 (2): "In making a decision the Minister shall take into account all information obtained in the investigation [prescribed in Article 61] and consider the extent to which the Amerindian Village or Community has demonstrated a physical traditional cultural association with or spiritual attachment to the land requested." However, there is no power in this law for the government to change the boundaries of Village Lands once they have been titled; but see the provision in the National Constitution (amended 2003) in sections 4.16 – 4.19 below.

3.3 In practice, the Minister may negotiate boundaries with the community during the application process. For example, the community of Isseneru with ~350 inhabitants applied in 2005 for Village Lands of 1000 square miles / 25,911 ha. This claim was refused by MoAA Minister Caroline Rodrigues on the grounds that it was too big. Isseneru received title in 2007 to 160 square miles / 4146 ha; Stabroek News 14 September 2007. The Minister's logic was challenged, on the grounds that she had already issued titled to Konashen Amerindian District, 2000 square miles / 51822 ha) for less than 200 inhabitants; Stabroek News 05 October 2007. The Minister did not respond.

3.4 No subsidiary Regulations have been developed for the Amerindian Act 2006. The then Minister agreed with us in August 2006 that Regulations would be helpful to clarify some of the

more convoluted wording but she said that funds were not available to develop Regulations at that time.

3.5 The need for appropriate interpretation of the unnecessarily complex language of the Amerindian Act 2006, and for training in the development and application of village by-laws, was shown by the predatory logging of the Amerindian Village Lands of Akawini and Santa Monica by the Malaysian-owned logger Barama Company Limited in 2005-7, through a "bad-faith" logging agreement with the Village Councils; such agreements are void under the Amerindian Act, Article 55 (1) (d), but the Minister declined to take action against the Asian logger and its front company (IWPI).

3.7 A somewhat simplified version of the Act was issued in 2008 without formal legal status but again only in English, not in any of the nine Amerindian languages.

3.8 Although the Government recognises that forest and mining laws may need amendment to match REDD requirements for international standards, there do not seem to be proposals to amend the Amerindian Act 2006.

4. Legal safeguards for Amerindians in statute law and the National Constitution

Forestry

4.1 Article 37 of the Forests Act 1953: the forest law was not intended to "prejudice, alter, or affect any right or privilege heretofore legally possessed, exercised or enjoyed by any Amerindian in Guyana". The Forests Act does not itself define such rights or privileges, and this Article was rescinded by Schedule 2 of the Amerindian Act 2006. The revised Forest Bill 2009 was passed by the National Assembly in early 2009 but has not received Presidential assent and so is not law. This Forest Bill 2009 restricts Amerindian rights of access to and usufruct in State Forests, and so would impact severely on the non-titled Amerindian farming communities located in State Forests.

4.2 Clause 63 in the draft Forests Act 2004 has not been reproduced in the revised Forest Bill 2009. That clause provided in 2004 -
"63(1) For the purposes of this Act, all lands in State forests occupied or used by Amerindian communities and all land necessary for the quiet enjoyment by the Amerindians of any Amerindian settlement, are deemed to be lawfully occupied by them.
"63 (2) Nothing in this Act shall be construed to prejudice, alter, or affect any right or privilege heretofore legally possessed, exercised or enjoyed by any Amerindian in Guyana."

4.3 This clause, in one form or another, has been in natural resources legislation in Guyana since 1838. The 2004 draft Forests Act 2004, based on Article 111 in the Mining Act 1989 (section 4.11 below), is strongly worded and could be construed as saving traditional rights even in granted State forests.

4.4 In its place, the revised Forests Bill 2009 (which has notably complex structure) offers a more conditional test for Amerindian access to State Forests -
"5 (2) A person may, in relation to a State forest, exercise or perform any right, power, duty or privilege –
"(e) held by any Amerindian Village or Community under sustainable non commercial practices immediately before the commencement of this Act, if the right, power, duty, or privilege (as the case may be) is exercised or performed sustainably in accordance with the spiritual relationship of the group with the land".

4.5 The Government can designate State Land as State Forest without a formal public settlement process for recognising, assessing and (if appropriate) compensating for extinction of traditional rights and customs; Article 3 in the Forests Act 1953. State Land includes all the land

claimed by Amerindians but not so far given to them as titled Amerindian Village Lands. The power of Article 3 was used in the original designation of State Forests over ~7.7 Mha in 1953 (Proclamation number 28 of 1953), and in the southward expansion of a further ~6.0 Mha in 1997. Note that forest reserve settlement processes are the norm in most tropical countries, and was and is the norm in India from which the Forest Department of British Guiana was created in 1926.

4.6 Amerindian claims presented to the Amerindian Lands Commission during 1967-9 cover almost 50 per cent of the land area of Guyana, three times the area presently covered by titled Amerindian Village Lands.

4.7 With respect to the no-harvest State Forest Exploratory Permits (SFEPs) introduced in 1997 by amendment to the Forests Act 1953, the 1999 procedural manual of the Guyana Forestry Commission (GFC) specifies that SFEPs should not be allocated in areas subject to Amerindian claims. These claims, at least those extracted from the 1969 report of the ALC and clarified by the Copeland & Forcese study of "Errors and oversights on maps of Amerindian Lands" (1994), were digitised by the Guyana Integrated Natural Resources Information System (GINRIS) project funded by GTZ in the second half of the 1990s. The GINRIS GIS is available in all four of the land-related government agencies, including the GFC. For consistency with the 1993 policy on forest concessions, the same safeguard should apply to all kinds of concessions, not just to SFEPs.

4.8 The GFC does not actually avoid allocating concessions over Amerindian claimed land, as evidenced by the award of SFEP 01/2007 to Sherwood Forrest, a group including the WWF Guianas coordinator for Guyana and a former Technical Cooperation Officer of the UK Department for International Development. SFEP 01/2007 is located between the Corentyne and Essequibo rivers and is adjacent to the conservation concession 02/2000 held by Conservation International.

4.9 The GFC actively facilitates "bad faith" agreements drafted by Asian-owned loggers with Amerindian communities; this is contrary to the Amerindian Act 2006, Article 55 (1) (d). Examples of Karlam, Timber World and IWPI during 2005-7.

4.10 Although the GFC has no mandate for direct control of forests on titled Amerindian Village Lands, it exerts indirect control through its licensing of chainsaw mills and permits for removing timber out of the titled lands into other State or private lands.

Mining

4.11 Article 111 of the Mining Act 1989 almost reproduces the words of section 199 of the Mining Regulation 1905: "All land occupied or used by the Aboriginal Indians, and all land necessary for the quiet enjoyment by the Aboriginal Indians of any Indian settlement, shall be deemed to be lawfully occupied by them"; see section 2.2 above.

National Constitution 1980/2003

4.12 The preamble to the National Constitution 1980 states "We, the Guyanese people . . . value the special place in our nation of the Indigenous Peoples and recognise their right as citizens to land and security and to their promulgation of policies for their communities;"

4.13 Article 149 (G) of the National Constitution 1980, amendment number 10 of 2003: "Indigenous peoples shall have the right to the protection, preservation and promulgation of their languages, cultural heritage and way of life". This Article appears to be derived from the 1966 International Covenant on Economic, Social and Cultural Rights under the

United Nations Office of the High Commissioner for Human Rights, which Guyana ratified in May 1977.

4.14 Article 212 (S) of the National Constitution 1980, amendment number 5 of 2001, provides for the creation of the Indigenous Peoples' Commission, with a mandate to "establish mechanisms to enhance the status of indigenous peoples and to respond to their legitimate demands and needs". Article 212 (T) details the policy-type functions of this Commission, which appear to complement the more operational functions of the National Toshaus Council which are specified in Article 41 of the Amerindian Act 2006. The Commission was finally constituted in September 2010: "Swearing in of the Indigenous Peoples Commission 'a good day for the country' – President", Guyana Chronicle top story, Thursday 16 September 2010, http://www.guyanachronicleonline.com/site/index.php?view=article&catid=4%3Atop-story&id=18687%3Aswearing-in-of-indigenous-peoples-commission-a-good-day-for-the-country-president&tmpl=component&print=1&page=&option=com_content&Itemid=8.

4.15 On paper, then, the statute laws and National Constitution provide significant generalised assurances for the traditional land and resource access rights of the Amerindians. Rights to sub-surface minerals and to water have never been admitted, although fishing rights were admitted explicitly until 1922. In titled Amerindian Village Lands, the community can block proposals for small-scale and medium-scale mining, but cannot prevent large-scale mining if the Minister of Amerindian Affairs and the Minister responsible for mining "declare that the mining activities are in the public interest" (Article 50 (1) (a) of the Amerindian Act 2006).

[the unwritten political philosophy of 'Democratic Centralism' overrides valid legislation and regulations at the direction of Cabinet officers, on the grounds that implementing the law would not be in the public interest. No criteria have ever been provided for what that overriding public interest might be.]

Expropriation

4.16 Article 8 (2) (b) (1) of the Independence Constitution 1966 provided a guarantee against government expropriation of private property except in accordance with a written law and with prompt payment of adequate compensation. The same guarantee was repeated in the National Constitution 1980, Article 142 (1): "No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except by or under the authority of a written law and where provision applying to that taking of possession or acquisition is made by a written law requiring the prompt payment of adequate compensation".

4.17 However, that assurance is qualified in Article 142 (2), which may also have been inserted in the 2003 amendments: "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding paragraph . . . (b) to the extent that the law in question makes provision for the taking of possession or acquisition of – (i) property of Amerindians of Guyana for the purpose of its care, protection and management . . ." This Article 142 (2) is a direct descendant of the patronal Article 17 of the Aboriginal Indians Protection Ordinance 1910, mentioned in section 2.3 above and allowing sale/disposition of such property without the consent of the Amerindian owner . Article 142 (2) is also related to Articles 3 and 20A in the Amerindian Act 1951.

4.18 In other words, the Government of Guyana can dispossess Amerindians (but no other ethnic groups of citizens) without their agreement and without prompt payment of adequate compensation.

4.19 Tara Letwiniuk (1996) AThe Amerindian Act: discussion and suggested revisions@. Canadian Lawyers Association for International Human Rights for GOIP / National Amerindian Council - commented on these expropriation clauses on pages 57-8 of her report –

"First, it is unclear that the power to modify the acreage of titled land by Ministerial Order under s.3 [of the Amerindian Act 1951 as amended 1976] is consistent with the vesting of title in the Council flowing from s.20A. In this regard, the deletion of lands by administrative fiat contemplated by s.3 would appear to run counter not only to principles of freehold ownership but also the prohibition on uncompensated appropriation of property found in Article 142 of the Constitution of Guyana. Similarly, the circumstances set out in s.20A (4) permitting the Minister to expropriate Amerindian lands without paying compensation do not conform to the exceptions to Article 142 envisaged by the Constitution." [that was written in 1996 and so pre-dates the addition to the Constitution of Article 142 (2) quoted above, which circumvents Miss Letwiniuk's objections]

"Further, the inclusion of these ss.3 and 20A extraordinary expropriatory powers in a statute pertaining solely to Amerindians might be characterized as discriminatory vis à vis the property rights of Amerindians. In this regard, neither the State Lands Act nor the Acquisition Act set out analogous powers of expropriation.

"It is likely, therefore, that the ss.3 and 20A powers contravene those Articles of the Constitution of Guyana prohibiting discrimination. Moreover, the expropriatory regime under the Amerindian Act [1951/1976] might well violate Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination [CERD], a convention Guyana has ratified [in March 1977]. In addition, the inclusion of this expropriatory regime in the Amerindian Act [1951/1976] might be viewed as running counter [to] the guarantee of equality before the law found in Article 26 of the International Covenant on Civil and Political Rights [which Guyana ratified in May 1977].

"Finally, where grants to the titled land provided under the Amerindian Act have been issued under the State Lands Act, it seems unlikely that the expropriatory powers contemplated by the Amerindian Act [1951/1976] remain operable".

These expropriatory powers were removed to the National Constitution by amendment number 10 in 2003 and so do not appear in the Amerindian Act 2006.

Discrimination

4.20 Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1966, ratified by Guyana in February 1977) states –

"In compliance with the fundamental obligations laid down under article 2 of this Convention, state parties undertake to prohibit and to eliminate racial discrimination in all forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights . . . (v) The right to own property alone as well as in association with others" [from footnote on page 57 of the Letwiniuk report].

This convention is listed in the Fourth Schedule of the National Constitution and referenced by Article 154A added in 2003, and so subsequent to the Letwiniuk report.

The Articles of the National Constitution prohibiting discrimination include –

Article 149 (D) (1), amendment number 10 of 2003 – "The State shall not deny to any person equality before the law or equal protection and benefit of the law.

Article 149 (D) (3), amendment number 10 of 2003 – "equality includes the full and equal enjoyment of all rights and freedoms guaranteed by or under this Constitution or any other law".

Article 154 (A), amendment number 10 of 2003 – explicitly provides entitlement to the rights listed in the eight international human rights conventions which Guyana has ratified, listed in

> the Fourth Schedule to the Constitution. Section (3) qualifies these rights: "The State shall, having regard to the socio-cultural level of development of the society, take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the rights provided for . . ."

The National Constitution 1980, amendment number 11 of 2000, provides for an Ethnic Relations Commission in Articles 212 (A) – 212 (F), with numerous anti-discriminatory functions in Article 212 (D).

Right to information

4.21 Two articles in the National Constitution 1980 are relevant to the acknowledgement of FPIC in the Guyana Forestry Commission's REDD Preparation Proposal (FCPF/R-PP, second draft April 2010) and in the President's LCDS (third draft May 2010); FPIC is the right to free, prior and informed consent. These documents state in several places that FPIC will be applied to proposals and projects involving Amerindian communities.

> Article 13 – "The principal objective of the political system of the State is to establish an inclusionary democracy by providing increasing opportunities for the participation of citizens, and their organisations in the management and decision-making processes of the State, with particular emphasis on those areas of decision-making that directly affect their well-being".

> Article 146 (1) – "Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his own correspondence".

4.22 Guyana signed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007, which covers many of the elements of ILO Convention 169 of 1989 and which mentions FPIC in five places. The most directly relevant to R-PP and LCDS is Article 19 – "States shall consult and cooperate in good faith with the indigenous peoples through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them".

4.23 During 2009-2011, Amerindians and some of their representative organisations have protested about late delivery or non-delivery of FCPF- and LCDS-related documents, government-sponsored interference with Amerindian training events, and insufficient information to allow meaningful discussion and decision-making about the R-PP and LCDS according to Amerindian cultural norms. Some of these complaints are recorded in the accounts of the hinterland consultations on LCDS in 2009, others are published in the independent Press. The Forest Peoples Programme expressed concern about "engineered consent" in the form of Government announcements about Amerindian consent, without having respected Amerindian norms for discussion and decision-making.

Other relevant Articles in the National Constitution

4.24 Three other Articles in the National Constitution 1980 could perhaps be applied unfavourably to the Amerindians, although probably these Articles could not be held to be justiciable:

> Article 18 – "Land is for social use and must go to the tiller". [It is unclear if the fallow land in traditional rotational agriculture practised by Amerindians would be recognised as being in social use].

Article 36 – "The well-being for the nation depends upon preserving clean air, fertile soils, pure water and the rich diversity of plants, animals and eco-systems".

Article 149J (2), amendment number 10 of 2003 – "The State shall protect the environment, for the benefit of present and future generations, through reasonable legislative and other measures designed to –

(a) prevent pollution and ecological degradation;
(b) promote conservation; and
(c) secure sustainable development and use of natural resources while promoting justifiable economic and social development".

5. Considerations in the National Development Strategy, chapter 22: Amerindians (October 1996)

5.1 Much of this 43-page chapter is concerned with land security for Amerindians; see http://www.guyana.org/NDS/chap22.htm . In addition to rehearsing the history during colonial and post-colonial times, the National Development Strategy (NDS) considered Native Title. It concluded (page 6) that "In sum, the laws and regulations that continue to exist in Guyana right now suggest that the Government of Guyana has never explicitly extinguished Amerindian aboriginal title at Common Law".

5.2 Specific objectives with regard to land in this chapter 22 of the NDS were:

"a. Completion of the land-issuing and demarcation process set in motion by the Amerindian Lands Commission.

"b. Clarification of the legal status of Amerindian lands.

"c. The participation of Amerindians in the process of identification and demarcation of lands.

"d. Establishing mechanisms for consultation, regulation and monitoring whenever Amerindian rights (usufruct or other) may be threatened.

"e. Bringing to bear on policies and programmes more insight into Amerindian land-use practices and knowledge about the land as an intrinsic part of the Amerindian world view.

"f. Examination of different systems that guarantee Amerindian rights to the land traditionally used by the different tribal groups in Guyana through agreements between Amerindian communities and/or their mandated representative organizations and the Government of Guyana and, if this examination results in findings that are at odds with current policies, replace some provisions of the Amerindian Act."

5.3 As in other aspects of the NDS, the Party-in-Power and Government agencies have not explicitly addressed these objectives since they were formulated in 1996. The Amerindian Act 2006, replacing the 1951 Act, only deals partly with issues (a) and (d).

6. Political representation of Amerindians

6.1 Amerindians comprised some 9.5 per cent of the population of 751,000 at the 2002 national census, and their titled Amerindian Village Lands comprised 13.9 per cent of the land area (MoAA estimate in December 2008). They live in 138 communities (MoAA July 2009) or 155

communities according to the President (but this may include other hinterland settlements and large mining camps?). Either number is recognised to be less than the real number.

6.2 A reform of the composition of the uni-cameral National Assembly in 2001 may have reduced the number of Amerindian members. All members are appointed by the Leaders of the political Parties, not by direct constituency elections. Consequently their loyalty is to the Party Leader. Thus the Amerindians do not, and have not since before Independence in 1966, acted together as a political force. A factor discouraging or preventing unity amongst Amerindian members was the passage of the Recall Act 2008, which allows the leaders of political parties to dismiss any member of his/her party from a seat in the National Assembly. This effectively prevents members from voting outside the party's position on any subject.

6.3 Four national-level NGOs representing Amerindians are:

► Amerindian Peoples Association (APA), the largest of these NGOs;
► Guyanese Organisation of Indigenous Peoples (GOIP), the oldest of these NGOs;
► The Amerindian Action Movement of Guyana (TAAMOG), originally funded by the Malaysian logger Barama;
► National Amerindian Development Foundation (NADF).

The last three NGOs have very few members. There are also a few very small regional Amerindian NGOs, but now no non-government umbrella association.

7. ILO Convention 169 relevant to Norway's interest in support for REDD

7.1 Guyana has not signed ILO Convention 169 – Indigenous and Tribal People, 1989 – but Norway ratified in June 1990. Parts of Articles 7, 14 and 15 (quoted below) appear to be especially relevant to externally-generated proposals for changes in the lands and livelihoods of indigenous peoples. It would seem to be consistent with Norway's policies towards developing countries for aid to be conditioned (or qualified) by reference to these Articles. The power in the National Constitution of Guyana to dispossess Amerindians should be a cause for concern.

Article 7 in ILO Convention 169

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

Article 14 in ILO Convention 169

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15 in ILO Convention 169

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

Although UNDRIP 2007 has in some respects replaced ILO Convention 169, UNDRIP is a Declaration and so non-justiciable while ILO 169 is justiciable.

References are either in the accompanying chronology or can be supplied on request.

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