

GUYANA

May 2012



GENERAL COMMENTS

The Forest Act of 2009

Claims of Unconstitutionality – Some experts question the constitutionality of the Forest Act of 2009 on the basis that it fails to comply with preexisting legislative procedures. According to the Constitution the President has 21 days to authorize bills. In the case of the Forest Act 2009, the president took 628 days after the passage in the National Assembly, thus making it unconstitutional. There are no formal unconstitutionality complains (Written comments by Bulkan, Palmer, and Ram).

Critiques of the Forest Act – Some critics argue that the Forest Act of 2009 is structurally complex and is written in a language that local communities are unable to understand it, and as a consequence are unable to implement their rights and fulfill their obligations under this Act. The Forest Act is also criticized for delegating most of the decision-making powers to the Guyana Forestry Commission (GFC), which lessens democratic oversight and does not provide for an appeals procedure (Written comments by Bulkan, Griffiths, and Palmer).

Amerindian Act

Title Amerindian Village Land vs. Customary Amerindian Land – The rights of communities described under the Amerindian Village Land tenure regime apply only to Amerindian communities that have obtained a title to their land. Customary landowners that do not have a title and those whose title is inadequate (without effective recognition and protections under the law) do not enjoy any of the rights described in this section. They are “technically squatters, without rights irrespective of length of residence” (Cotula and James 2009, 40). As a consequence, forest and mining concessions and other state interventions may be allowed over untitled customary forest lands without communities free, prior and informed consent. The United Nations Committee on the Elimination of Racial Discrimination, when reviewing Guyana’s obligations under this convention, noted with deep concern this distinction between titled and untitled Amerindian land (Committee on the Elimination of Racial

Discrimination (CERD) 2006; Written comments by Bulkan, Griffiths, and Palmer).

Obtaining an Amerindian Land Titles is Not Easy – The procedures established by the Amerindian Act of 2006 to grant titles for Amerindian Land can be cumbersome and are heavily criticized. Some of the most prominent criticisms leveled against the Amerindian Act include: a) lack of a transparent titling and demarcation procedures; b) a lack of objective criteria on demarcation boundaries and subsequent discretionary powers of the Minister of Amerindian Affairs on this matter; and c) that the right to appeal Ministerial decisions is reserved for the High Court alone, which, as demonstrated by the Upper Mazaruni Land Rights case which lasted for 12 years, is notoriously slow and costly (Written comments by Bulkan, Griffiths, and Palmer).

Amerindian Rights vs. Mining rights – Amerindians do not possess any rights to sub-surface minerals on titled land (Section 50, Amerindian Act, 2006; Art. 110-114, Mining Act, 1989). Also, mining is often undertaken by non-Amerindians on lands that lack any form of title and are claimed by Amerindian communities. As a consequence, many prospecting licenses have been issued within Amerindian Land without any meaningful consultation or compensation. This has affected Amerindian communities in many ways including irreversible environmental damage and the destruction of sacred site and other areas of cultural significance (CERD, 2006).

Violation of Guyana's International Human Rights Obligations – Amerindian Peoples Association of Guyana (APAG) has argued that the Amerindian Act of 2006 contravenes international law, in particular the UN Convention on the Elimination of All forms of Racial Discrimination, in its treatment of land and natural resources. The APAG has argued this case on the basis that the Act: a) does not recognize Indigenous Peoples' rights to lands, territories and resources and procedures for resolving land issues are arbitrary and unfair, b) does not allow untitled indigenous communities to hold and exercise rights, c) does not include rivers and other bodies of water in Indigenous Titles, d) discriminates with regard to ownership of subsoil resources, e) provides that a title may only be held by individual villages and denies territorial rights and rights of freedom of association, f) makes ineligible some indigenous communities who wish hold titles, and g) does not prohibit forcible relocation or compulsory takings (APAG 2006).

1.0 | Community Forest Management Agreement (CFMA)

	Rating	Rationale
General Description		The purpose of a Community Forest Management Agreement (CFMA) "is to provide communities with a means of acquiring clear and secure rights to manage and benefit from their local forests on a sustainable basis in order to help meet local needs, stimulate income generation and economic development, and enhance environmental stability. The Commission may (...) grant a community group a forest management agreement by entering into a legally binding agreement with the group concerned authorising that group to occupy a specified area of State forest and manage that area in accordance with the agreement" (Section 1(2)(3), Forest Act, 2009). As a result of the failure to implement Forest Act regulations, CFMAs cannot yet be implemented in practice.
Legal documents consulted:		Section 11, Forests Act 2009 (entered in force in October 2010); State Land Act, 1910 (1997)
Legislation confers rights to:	Community groups	"'Community group' means persons living within and having strong ties to the community and includes: (a) a registered community forestry organization; (b) a registered society as defined by section 2 of the Cooperative Societies Act; or (c) a registered society as defined by section 2 of the Friendly Societies Act"(Section 11(1), Forest Act, 2009). Community groups not registered and are not allowed to enter into a Community Forest Management Agreement.
Access	1	"The Commission may (...) grant the [community] group a community forest management agreement by entering into an agreement with the group concerned authorising that group to occupy a specified area of State forest and manage that area in accordance with the agreement" (Section 11(3), Forest Act, 2009).
Withdraw (NFTP)	case by case	Future CFMAs and regulations may grant communities withdrawal rights, but at present the Forest Act does not state that communities have the right to withdraw forest resources under the terms of a CFMA (Sections 11(3) and 81, Forest Act, 2009).
Withdraw (Timber)	case by case	
Management	2	"The Commission may (...) grant the [community] group a community forest management agreement by entering into an agreement with the group concerned authorising that group to occupy a specified area of State forest and manage that area in accordance with the agreement" (Section 11(3), Forest Act 2009). Management rights granted to communities will be elaborated upon in future regulations.
Exclusion	case by case	Future CFMAs and regulations may grant communities withdrawal rights, but at present the Forest Act does not state that communities have the right to withdraw
Alienation (Lease)	case by case	
Alienation (Collateral)	case by case	

Alienation (Sale)	case by case	forest resources under the terms of a CFMA (Sections 11(3) and 81, Forest Act, 2009).
Extinguishability	1	Suspension, amendment, and revocation of State Forest Authorizations (including CFMAs) are described in Section 18 of the Forest Act of 2009. The reasons for this include: offence against or breach of the Forest Act; or inability to comply with a State Forest Authorization, any applicable Forest Management Plan, or any applicable Annual Operations Plan. This section also establishes the due process to be followed when extinguishing rights.
Duration of Rights (Years)	Limited	"Unless sooner surrendered or revoked under this Act, a community forest management agreement expires on the earlier of (a) the expiry date specified in the agreement; or (b) the second anniversary of its granting" (Section 11(5), Forest Act, 2009).
General Comments	Part 2 of the Forest Act provides for 5 types of State Forest Authorizations: concessions, exploratory permits, use permits, CFMAs, and afforestation agreements. Future regulations will address matters such as the form and content of applications, qualifications, restrictions, criteria, and conditions for each type of authorization, including CFMAs (Section 81, Forest Act, 2009). Without such regulations it is not possible to implement this tenure regime.	

2.0 | Amerindian Village Land

	Rating	Rationale
General Description		The President of Guyana, under a special power of the State Lands Act, may issue land titles to Amerindian communities. By doing so he or she transfers ownership of the land from the State to an Amerindian community. Amerindians own the land collectively and for an unlimited period of time. Once title is transferred to an Amerindian community, the community owns the forest resources therein. There are certain limitations to the ownership rights of Amerindian communities. Their titles do not include rivers and river banks or mineral resources. Amerindian communities can veto mining activities on their land, but in the case of large-scale mining projects the State has the power to override the veto in the public's interest. Communities are not allowed to dispose of land (Section 44, Amerindian Act, 2006), and no more than 10 percent of the land can be leased to outsiders for a term no greater than 50 years (Section 46, Amerindian Act, 2006). Titles may be revoked in the public interest, or if Amerindians transfer rights to their titled lands or parts thereof. Amerindian communities without tenure on state land are technically squatters, without rights irrespective of length of residence (Adapted from Cotula and James, 2009). The Amerindian Act of 2006 sets up the procedural framework by which Amerindian communities may obtain titles to the land (Sections 59-64, Amerindian Act, 2006). The procedures are complex and the Minister of Amerindian Affairs has high degree of discretion in the process.

Legal documents consulted:	Amerindian Act of 2006 (entered in force 2010); State Land Act of 1910(1997); Guyanese Constitution of 1980 (2001)	
Legislation confers rights to:	Amerindian communities in existence for more than 25 years and comprised of at least 150 persons	Section 60 of the Amerindian Act defines an Amerindian community as "a group of Amerindians organised as a traditional community with a common culture and occupying or using the State lands which they have traditionally occupied or used... 'Village or Amerindian Village' means a group of Amerindians occupying or using Village lands; 'Village lands' means lands owned communally by a Village under title granted to a Village Council to hold for the benefit of the Village" (Section 2, Amerindian Act, 2006). The stipulation that Amerindian Communities must be comprised of 150 persons or more excludes many customary Amerindian communities and was judged to be discriminatory by the UN Committee for the Elimination of Racial Discrimination (CERD) (Written comments by Griffiths; CERD 2006).
Access	1	Members of the village are allowed to enter Village Land. All other people must apply for and obtain permission from the Village Council. This rule applies to all people with the exception of those entering the Village lands to conduct official business for the Government; who are acting under the authority of any written law; or who are otherwise lawfully authorized (Sections 5-9, Amerindian Act, 2006).
Withdraw (NTFP)	2	Once a title is transferred to an Amerindian community the community owns the forest resources therein (Guyana Government Information Agency 2005, 15). The Village must, however, comply with any legal obligations imposed by other laws related to the use of resources from State Forests (Section 55(3), Amerindian Act, 2006). Residents of the Village are required to obtain permission from the Village Council in order to use forest resources (Section 54(1), Amerindian Act, 2006). Non-residents need 2/3 approval at the Village General Meeting in order to access and use forest resources (Section 55, Amerindian Act, 2006). Amerindian communities have the right to set up their own protected areas if they wish, provided they comply with the requirements of any written laws governing such areas (Section 58, Amerindian Act, 2006).
Withdraw (Timber)	2	Once a title is transferred to an Amerindian community the community owns the forest resources therein (Guyana Government Information Agency 2005), 15.) The Village must, however, comply with any legal obligations imposed by other laws related to the use of resources from State Forests (Section 55(3), Amerindian Act, 2006). Residents of the Village are required to obtain permission from the Village Council in order to use forest resources (Section 54(1), Amerindian Act, 2006). Non-residents need a 2/3 approval at the Village General Meeting in order to access and use forest produce (Section 55, Amerindian Act (2006)). Amerindian communities have the right to set up their own protected areas if they wish, provided they comply with the requirements of

		any written laws governing such areas (Section 58, Amerindian Act, 2006). In practice, there are instances where third parties have approached Amerindian communities for timber above and beyond the legal limits, and as a consequence many timber stocks on Amerindian Lands are heavily depleted (Written comments by Macqueen).
Management	2	The Village Council is the body responsible for the administration and management of Amerindian Village Land. The Amerindian Act transfers many rights to Amerindian communities via their Village Councils. This even includes the right to make their own rules on how the land is to be used and the right to collect taxes. In order to do so the rules must comply with the Constitution and any relevant national laws, and the community must obtain the approval of the Minister of Amerindian Affairs as well as 2/3 of the members of the Village (Sections 13-15, Amerindian Act, 2006). The Village Council has several functions including management and regulation of the use and occupation of Village Lands and promotion of the sustainable use, protection and conservation of Village Lands and the resources on those lands (Section 13, Amerindian Act, 2006). The Village Council can be held accountable at the Village General Meeting, which is composed of all adult residents of the village (Section 34, Amerindian Act, 2006).
Exclusion	0	Amerindian communities cannot exclude mining activities on their land. A community has the right to veto these activities, but in the case of large-scale mining projects the State has the power to override the veto in the public interest (Section 50, Amerindian Act, 2006). Other than the members of the village, all other people must apply for and obtain permission from the Village Council. This rule applies to all people with the exception of those entering the Village Lands to conduct official business for the Government; who are acting under the authority of any written law; or are otherwise lawfully authorized (Sections 5-9, Amerindian Act, 2006).
Alienation (Lease)	1	"A Village Council may grant leases of Village lands provided (a) the total amount of land leased does not exceed ten percent of Village lands; (b) the maximum term of a lease is fifty years; (c) the lease is granted at a market rent or above; (d) the purpose of the lease is for agriculture, tourism or other productive and sustainable use of the land, which is consistent with the Village's cultural attachment to the land and provided that it is in the best interests of the Village; and (e) the Village Council obtains the advice and consents required under section 47" (Section 46 (l), Amerindian Act, 2006). "The following conditions are implied in every lease granted under this section: (a) a right to re-enter and determine the lease if the lessee is in breach of any covenant of the lease; (b) a prohibition against subletting or assigning. A lease shall not be extended or renewed. A lease shall not be granted for residential purposes. The provisions of any

		other written law conferring security of tenure, restrictions on rent increases or other protection for tenants are excluded from any lease granted under this Act" (Section 46 (II), Amerindian Act, 2006). The Village Council is required to consult with the Minister of Amerindian Affairs and the Village General Meeting (Section 47, Amerindian Act, 2006). The Village Council may also grant mining leases under specific conditions (Sections 48-53, Amerindian Act, 2006).
Alienation (Collateral)	0	"A Village Council shall not dispose or attempt to dispose of any interest, right, or title in Village lands except as provided in this Act [i.e. through leases]" (Art (44(1), Amerindian Act, 2006).
Alienation (Sale)	0	
Extinguishability	1	"No property of any description shall be compulsory taken possession of, and no interest in or right over property of any description shall be compulsory acquired, except by or under the authority of a written law" [sic] (Art. 142(a), Guyanese Constitution, 1980 (2001)). The Constitution also requires compensation for expropriated property and guarantees the person compensated access to the High Court (Art. 142(1), Guyanese Constitution, 1980 (2001)). The Constitution states: "Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of [the above guarantees of compensation and appeal] to the extent that the law in question makes provision for the taking of possession or acquisition of: (i) property of the Amerindians of Guyana for the purpose of its care, protection and 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" (Art. 142(b)(i), Guyanese Constitution, 1980 (2001)).
Duration of Rights (Years)	Unlimited	Land titles are granted for an unlimited period of time. Amerindians own the land collectively, for an unlimited period of time (Guyana Government Information Agency 2005, 8-10). Amerindian land cannot be expropriated by the State (Art. 142(b)(i), Guyanese Constitution, 1980 (2001)).