



ALL THAT GLITTERS:

GOLD MINING IN GUYANA

THE FAILURE OF GOVERNMENT OVERSIGHT
AND THE HUMAN RIGHTS
OF AMERINDIAN COMMUNITIES

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CONTENTS

Table of Acronyms	iii
EXECUTIVE SUMMARY	iv
Background	iv
Gold Mining’s Harmful Environmental, Health, and Social Effects	iv
The Regime Regulating Mining	v
Regulations	v
Structural Impediments to Effective Oversight.....	vi
Guyana’s Obligations Under International Law	vii
Recommendations to the Government of Guyana.....	viii
Recommendations to the International Community	ix
INTRODUCTION	1
Chapter 1: BACKGROUND ON GUYANA AND ITS GOLD MINING INDUSTRY	2
I. Guyana: People, History, and Government	2
II. Gold Mining Industry	4
A. Mining in the Economy	4
B. Government Oversight	5
C. Amerindian Communities.....	7
D. Special International Human Rights Protections Owed to the Amerindians as Indigenous People.....	8
Chapter 2: METHODOLOGY	10
Chapter 3: THE EFFECTS OF GOLD MINING ON AMERINDIAN COMMUNITIES.....	11
I. Environmental and Health Effects	11
A. Sediment.....	11
B. Mercury.....	13
C. Sandbars.....	15
D. Deforestation and Degradation of Soil Quality.....	16
E. Mosquito Infestation and Malaria	16
II. Social Effects.....	17
A. Prostitution	18
B. Trafficking in Persons	18
C. Rape.....	19
Chapter 4: ANALYSIS AND CRITIQUE OF GOVERNMENT REGULATION OF MINING	21
I. Relevant Law	21
A. Mining Act and Regulations.....	21
B. Gold Board Act.....	22
C. Amerindian Act.....	22

II. Mining-Related Laws and Enforcement Regime.....	23
A. Property Rights Regime	23
1. Organization and Coordination Problems	23
2. Subordination of Surface Activity and Rights to Mining.....	24
3. Rights of Amerindians	26
B. Environmental Protection	27
1. Water Rights	27
2. Use of Poisonous Substances in Mines.....	29
3. Education.....	30
4. Environmental Plans and Bonds.....	30
C. Enforcement.....	32
1. Mines Officers.....	32
2. The Guyana Gold Board.....	33
D. Regulation of Small , Medium , and Large Scale Mining	35
1. Introduction.....	35
2. Problems with Small Scale Operations	37
III. Structural Impediments to the Government of Guyana’s Effectiveness as Regulator.....	38
A. Political Impediments within the Central Government	39
B. Weaknesses of Judicial System.....	39
C. Physical Impediments to Mining Regulation.....	41
D. International Role in Mining Regulations.....	44
Chapter 5: GUYANA’S MINING-RELATED OBLIGATIONS UNDER INTERNATIONAL LAW	46
I. General Principles of International Law – Direct Violations and Due Diligence	46
A. Right to the Highest Attainable Standard of Health	47
1. Safe and Adequate Supply of Water	48
2. Combating Disease.....	50
3. Displacement and Health	51
B. Right to Security of Property	51
C. Right to Enjoyment of Culture.....	54
D. Right to Security of Person.....	55
RECOMMENDATIONS	57
I. Recommendations to the Government of Guyana.....	57
II. Recommendations to the International Community.....	60
Acknowledgments	61

TABLE OF ACRONYMS

American Convention on Human Rights	ACHR
Amazon Cooperation Treaty	ACT
Amerindian Peoples Association	APA
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW
Committee on the Elimination of All Forms of Racial Discrimination	CERD
Committee on Economic, Social and Cultural Rights	CESCR
Convention on the Rights of the Child	CRC
Environmental Protection Agency	EPA
Economic Recovery Program	ERP
Foreign direct investment	FDI
Gross domestic product	GDP
Guyana: Environmental Development Project	GENCAPD
Guyana Forestry Commission	GFC
Guyana Gold Board	GGB
Guyana Gold and Diamond Miners Association	GGDMA
Guyana Geology and Mines Commission	GGMC
Guyana Government Information Agency	GINA
Government of Guyana	GOG
Guyana Organization of Indigenous Peoples	GOIP
Co-Operative Republic of Guyana	Guyana
Highly Indebted Poor Country	HIPC
United Nations Human Rights Committee	HRC
Inter-American Court of Human Rights	IACHR
International Covenant on Civil and Political Rights	ICCPR
International Convention on the Elimination of All Forms of Racial Discrimination	ICERD
International Covenant on Economic, Social, and Cultural Rights	ICESCR
International Financial Institution	IFI
International Labor Organization Convention 169	ILO 169
International Monetary Fund	IMF
Ministry of Amerindian Affairs	MAA
Mining Act's implementing regulations	Mining Regulations
Non-governmental organization	NGO
Organization of American States	OAS
People's National Congress	PNC
People's Progressive Party	PPP
Social Impact Amelioration Programme	SIMAP
The Amerindian Action Movement of Guyana	TAAMOG
Trafficking in persons	TIP
Mining (Amendment) Regulations, 2005	2005 Regulations

EXECUTIVE SUMMARY

This report documents the failure of Guyanese mining regulations to prevent severe human rights abuses and devastating damage to the natural environment and the communities in which Amerindians live. Analysis of mining laws and regulations, administrative structures established to oversee mining activities, and the way small and medium scale mining operations are conducted in Guyana's interior demonstrate that the laws leave large gaps in regulation, deprive people of critical rights over the lands they occupy, and misallocate resources and responsibilities. Weaknesses in the Guyanese political and judicial systems as well as resource constraints and geographical difficulties further tilt the playing field against effective regulation of mining. Guyana's continued neglect of the serious human rights issues surrounding mining activities gives rise to violations of international law, including the special human rights protections owed to Amerindian communities as indigenous peoples. This report proposes a series of reforms that Guyana can and should implement to protect the rights of Amerindians, preserve its natural resources, and meet its international legal obligations.

BACKGROUND

The Co-Operative Republic of Guyana (Guyana) is a small country located on the northern Atlantic Coast of South America with a population of approximately 750,000 people. While the majority of the population came from Africa and India as slaves or indentured servants, 7% to 8% are of indigenous, or Amerindian, origin. Amerindians live primarily in scattered communities in the interior of Guyana where they often constitute the majority of the population. Poverty, inadequate education, and poor health care affect Amerindians more than any other segment of Guyana's population.

Historically, sugar cane constituted the driving force behind the Guyanese economy, but more recently, gold and diamonds have assumed a significant and increasing place in Guyana's gross domestic product (GDP) and its exports. The nation has turned to extraction of primary resources like timber, minerals, and metals from its largely forested interior to boost an economy that has suffered greatly from falling worldwide sugar prices.

Because gold mining takes place almost exclusively in the country's interior, where the majority of the population is indigenous, Amerindians are disproportionately impacted by the negative effects of this industry. The government's unwillingness to recognize Amerindian land rights, the detrimental impact of gold mining on the health of rivers, and Amerindian communities' poverty and dependence on subsistence agriculture all exacerbate the particular vulnerability of Amerindians to the negative impacts of gold mining on human health, society, and environment.

As indigenous peoples, Amerindians are accorded special protections under international law, which the Guyanese government has failed to uphold in the context of gold mining. These protections include the right to cultural integrity, to ownership and control of their traditional lands and territories, and to prior consultation before any resource extraction takes place on these lands. International bodies, such as the United Nations Human Rights Committee (HRC) and the Committee on Economic, Social and Cultural Rights (CESCR), have indicated the special protections that indigenous communities should receive.

GOLD MINING'S HARMFUL ENVIRONMENTAL, HEALTH, AND SOCIAL EFFECTS

Medium and small scale gold mining as currently practiced and regulated inflict severe environmental, health, and social damage on the areas and people near mining operations. The prevalence of corruption in the mining oversight process reduces the government's capacity to enforce the Mining Regulations and other policies for mitigating these effects. In almost all cases, Amerindians are disproportionately affected.

Firsthand observation and interviews with government officials, non-governmental organization (NGO) workers, Amerindians, and miners revealed five large scale environmental and health effects of mining in the interior of Guyana: 1) drastic increases in the sediment content of river water, 2) increased levels of mercury in river water, 3) creation of artificial sandbars in rivers, 4) deforestation and degradation of land fertility, and 5) mosquito infestation and malaria.

A full-scale investigation into the social effects of mining in Amerindian communities was beyond the scope of this report, but interviews with participants involved in mining, Amerindian community members, and government officials strongly suggested that mining is correlated with increased prostitution, HIV-infection rates, violence against women, and international and domestic trafficking in persons (TIP).

THE REGIME REGULATING MINING

The analysis of Guyana's mining regulatory regime is based on three sets of legal documents from the Guyanese government, observations and interviews conducted with various government officials and miners in Guyana, and additional research on major structural factors that influence the implementation of the mining regime. Relevant law includes: 1) the Mining Act and its accompanying Regulations, 2) the Guyana Gold Board Act, and 3) the Amerindian Act, including the proposed new draft of the Act. A study of these acts has shown that their poor design and implementation constitute a significant factor in the problems currently facing Amerindians.

REGULATIONS

On the subject of the Mining Regulations, this report concludes that: 1) Guyana's property rights regime places too heavy a priority on subsurface mineral rights, fails to coordinate land uses, and impermissibly restricts the rights of Amerindians; 2) while the 2005 Regulations effect a marked improvement over the previous regulatory regime, they have yet to be fully implemented and contain deficiencies that will impede their efficacy; 3) the current mining regulatory structure is unenforceable and contributes to high levels of corruption and poor revenue collection; and 4) small scale mining as practiced in Guyana poses especially high risks to Amerindians and their natural environment.

Property Rights Regime. Guyanese law gives the government a virtually unlimited right to the minerals in the ground and gives subsurface rights priority over surface rights. While it is not uncommon for a government to retain subsurface rights for land within its territory, Guyanese government policies extend the rights of miners holding licenses excessively, often placing the rights of miners to access subsurface minerals ahead of the rights of surface holders and of environmental concerns. There has also been a lack of coordination with other agencies – particularly the Guyana Forestry Commission (GFC) – regarding appropriate land uses. The failure of the government to place stricter and more specific regulations on mining activities leads to environmental damage, interference with the land use rights of Amerindians and other property holders, and a haphazard pastiche of mining claims and permits that has become increasingly difficult to regulate.

Environmental Regulations. The recent amendments to the Mining Regulations represent an important advance in environmental protection, but these amendments, which were finally published in the Official Gazette in March 2005 after two years in regulatory limbo, have yet to be fully implemented. Furthermore, the 2005 Regulations themselves fail to regulate meaningfully the use of mercury – a highly toxic substance employed in nearly every small and medium scale mine – and do not hold miners responsible for a significant part of the damage they may do to the natural environment or communities in which their mines are located.

Enforcement. In general, the current mining regulatory system in Guyana relies too heavily on the work of mines officers, leading to under-enforcement and corruption. At the time this report was researched, a mere eleven mines officers enforced the regulations for the thousands of mining operations in the country.

While additional staff in Georgetown helps organize paperwork, the structure of Guyana Geology and Mines Commission (GGMC) places the vast majority of the inspection and administration tasks in the hands of these mines officers. The low wages and heavy responsibilities of mines officers render them highly susceptible to corruption, and our research suggests that corruption has been practiced. The laws and regulations confer great power over miners on mines officers, but the mines officers' government-paid wages amount to approximately US\$270 monthly. This monthly wage barely supports the cost of living and is less than the value of one ounce of gold, which ranges between US\$400 and US\$575. In Mahdia, one of the country's main mining regions, miners, town officials, and community members reported that mines officers often abuse their discretion in enforcing the laws to extract money from miners. The current structure of the Mining Act and Regulations provides ample opportunity for abuse by mines officers. In addition, the tasks for which mines officers are responsible are so numerous and time consuming that completion of even a fraction of their assignments is impossible. Furthermore, mine operators find it relatively easy to circumvent many of the tactics mines officers have for monitoring activities and enforcing the law.

The enforcement problem is evidenced by the fact that an estimated 30% to 80% of gold revenue escapes the country without being taxed. This loss probably results largely from the underreporting of income from medium and small scale operations. Structural weakness of the overall mining regime causes the government to receive a very small portion of revenue generated from activities that strip the country of its natural resources. This is due in large part to the ineffectiveness of the government's methods of calculating and collecting revenues as well as poor enforcement. Stronger anti-smuggling measures would control illegal and unregulated mining and would therefore better protect Amerindians and others from the negative effects of mining.

Oversight of Small, Medium, and Large Scale Mining Operations. While the current Mining Regulations contain relatively few provisions dealing with large scale operations, the government and international groups heavily monitored Omai, the one large scale mining operation in Guyana, since a major cyanide spill in 1995. In comparison, the regulation of medium and small scale mining is significantly more lax. Furthermore, since the overwhelming majority of mining operations in Guyana are small scale, problems with these operations overshadow the regulatory problems of medium scale operations. The sheer number of small scale operations makes them difficult to monitor; this problem is exacerbated by the fact that the government places few controls on where a miner can locate his small scale claim and imposes generally less stringent regulatory and enforcement measures on small scale mines. As a result, miners tend to prefer to run their mines as small scale operations rather than medium scale operations, and the mining regime does little to ensure that what are effectively medium scale mining operations do not operate under small scale licenses. The 2005 amendments to the Mining Regulations place more stringent regulations on medium and large scale operations than on small scale operations, further increasing the incentive for miners to attain small scale classification. Overall, the Mining Act and Regulations provide inadequate regulation of small scale operations, which further undermines the poor enforcement capabilities of mines officers. Problems with enforcement are related to the poor design of the Mining Regulations and the lack of attention paid to small scale operations.

STRUCTURAL IMPEDIMENTS TO EFFECTIVE OVERSIGHT

In addition to problems with the regulatory design, there are major structural impediments that prevent the Guyanese government from adequately regulating mining in the interior. These include: 1) politically driven divisions within the central government that impede action generally, 2) failure of the judicial system adequately to enforce the laws currently in existence, 3) issues related to border control and Guyana's relationships with its neighbors, and 4) international pressures on the government. Internal divisions combined with dependence on foreign funds largely restrict the potential actions of the Guyanese government.

Political Climate. Guyana's political climate has been heavily influenced by issues of race, and the country has a history of political tension and occasional violence. The polarized nature of party politics has resulted in a "winner-take-all concept" where "[m]ost members of parliament are directly dependent upon and responsible to the political party that chooses them, and not to the people whom they profess to represent."¹ This structural problem has led to a perception that whichever political party controls the presidency also controls the other branches of government, without regard to judicial independence or democratic representation. These tensions seem to have reduced the capacity of the government to make progress on the reform of mining regulation.

Judicial System. Even when the government passes new laws, their effectiveness and legitimacy are reduced by the failure of the judicial system to reach decisions in a timely fashion. In general, courts suffer from corruption, disorganization, geographical limitations on access to justice, and a significant backlog of cases. This means that few people in the interior (and in the country as a whole) can rely on the courts to settle disputes.

Regulation of Borders. The government has failed to regulate its borders, which has led to an influx of miners from the neighboring Brazilian states of Pará and Roraima. Guyana currently has virtually no capacity to regulate its land borders, so large numbers of miners operate entirely illegally and without even the slightest modicum of official oversight. If the government does not take actions to address this border problem, even the most stringent mining regulations will not ameliorate the current problems with pollution and smuggling.

International Influences. Finally, foreign powers and foreign funds play prominent roles in the actions taken by the government. Western governments and international financial institutions (IFIs) have all invested significant amounts of money in development aid to Guyana and exert significant influence over government actions. Private companies in many of these countries also have significant financial interests in Guyana's forestry and mining industries and are likely to influence government policy.

GUYANA'S OBLIGATIONS UNDER INTERNATIONAL LAW

Guyana's action and inaction in the field of mining constitute possible violations of the rights of its citizens in general and its indigenous inhabitants in particular under international treaty law. Such violations further constitute Guyana's failure to adhere to the provisions of its own Constitution, which incorporates several major international human rights treaties by reference. This report's chapter on international law identifies relevant provisions of the human rights treaties to which Guyana has acceded and discusses how the government's actions in relation to mining may result in violations of Guyana's international human rights obligations. Specifically, Guyana's overt acts and preventable institutional failures violate the internationally recognized rights of the Amerindians to: 1) the highest attainable standard of health, including the right to adequate and safe water, 2) security of property, 3) enjoyment of culture, and 4) security of person.

The Guyanese government has endangered the health of Amerindians by failing to supply adequate and safe water, employing policies that encourage rather than combat the spread of disease, and displacing indigenous peoples, who have a symbiotic relationship with the land. Guyana has violated Amerindians' property rights by recklessly promoting the development of the extractive industry, by granting mining licenses on territory claimed by Amerindians and whose title is still under adjudication, and by enacting legislation that discriminatorily disadvantages Amerindians' ability to own and use land. In addition, the right of Amerindians to enjoy their culture is violated by a combination of mining, logging, inadequate protection

¹ Jimmy Carter, President Jimmy Carter Visits Guyana, *Aug. 11-13, 2004* (August 19, 2004), available at <http://www.cartercenter.org/doc1802.htm> (last visited Oct. 17, 2005) [hereinafter Carter Visits Guyana].

of property rights to traditional lands, and the ineffectiveness of legal remedies. Finally, the right of Amerindians, particularly women, to personal security is threatened by the government's failure to protect them from mining-related violence. Various interviewees mentioned the frequency of violence against Amerindian women as a result of unregulated mining activity in the interior. If, as was indicated in interviews, police turn a blind eye to violations of women's rights and the current judicial system is unable to provide women with legal protection against violations by miners of the right to security of person, the state is liable for neglecting to exercise due diligence to prevent and punish incidents of sexual violence.

RECOMMENDATIONS TO THE GOVERNMENT OF GUYANA

1. *Fully implement the newly published Mining Regulations on environmental protection.* The 2005 Regulations are an improvement over the previous regulations, but they need to be fully implemented and enforced.
2. *Provide Amerindians and other surface rights users with greater rights and control over their land.* Amerindians should be granted title to the land they use and occupy in order to give them more control over the way their lands are used. In addition, they should be given an unconditional right to exclude miners from conducting mining activities on their land.
3. *Limit or eliminate small scale mining operations.* GGMC should provide for regulations that prevent miners from leasing several contiguous small scale plots and operating essentially at a medium scale level while still being categorized as small scale mines and enjoying the more lax rules applicable to that status.
4. *Provide stricter regulations on equipment as a complement for regulations on mining practices.* Equipment is easier to regulate than mining practices, so current limitations on activity could be supplemented by stricter controls on equipment, thereby boosting the enforcement capacity of the government.
5. *Limit locations where mining operations can take place.* Currently, there is no oversight and organization mechanism for the placement of mining plots, particularly small scale claims. By designating certain areas as ones on which miners are allowed to mine, the government can 1) limit the inevitable environmental damage of mining operations by isolating operations to particular areas and 2) reduce the burden on mines officers by giving them less territory to cover. We recommend the following specific limitations, but others may be appropriate as well:
 - a. Within the current regulatory regime, coordinate surface and subsurface rights with the GFC and private landholders, including Amerindian communities;
 - b. Develop principles for determining which areas should be opened for mining;
 - c. Coordinate with the National Protected Areas System;
 - d. Take into account environmental concerns and the location of communities;
 - e. Allow mineral extraction only in areas of rich mineral deposits.
6. *Increase the number of mines officers and increase cooperation with Amerindian communities to identify violators.* In general, GGMC needs to increase the number of mines officers and provide them with better resources for carrying out their functions.
7. *Increase the number and powers of Amerindian rangers.* GGMC's program to train Amerindians as mining rangers is promising. GGMC should train and employ more rangers and give them the same powers as mines officers, including the power to enforce the mining code and collect environmental data.
8. *Change revenue structure to a flat rate rather than a royalty percentage.* Instead of taking a royalty percentage of gold at the end of the year, the government should require miners to pay an increased amount of rent

that correlates to the average amount of gold collected for a claim of a particular size/scale. This will capture revenue currently lost through smuggling, thereby providing GGMC with much-needed funds for enforcement and educational activities.

9. *Promote the education of Amerindians and miners regarding safety in handling hazardous materials.* In order to be effective, educators will need to hold more training sessions in the interior and may actually have to travel onto mining claims and conduct on-site training.
10. *Require adequate environmental bonds by miners of all scales.* The 2005 amendments to the Mining Regulations incorporate this principle, but the amounts of the bonds are not sufficiently high to provide an incentive against environmental destruction.
11. *Establish additional health facilities in Amerindian territory to deal with mounting levels of mining-related diseases, such as HIV and malaria.* These efforts should include educational campaigns to inform Amerindians of the healthcare options available to them and ways to avoid transmission of mining-related diseases.
12. *Extend an invitation to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to examine the human rights situation in gold mining areas located in or near Amerindian territory.* The Special Rapporteur should be given free access to mining-affected areas. Additionally, the Special Rapporteur should have the opportunity to consult with groups that represent Amerindian communities.
13. *Ensure that pending cases involving land claims by Amerindians in mining regions be duly processed in the judicial and administrative system without further delay.* Many mining-affected Amerindian communities do not have title to their lands or only have title to a portion of the lands that they actually occupy and use. Any unresolved claims of this nature should be resolved before mining activity is permitted to continue in these areas.
14. *Ratify International Labor Organization Convention 169 (ILO 169) and the American Convention on Human Rights (ACHR).* These conventions provide important human rights protections of particular significance for Amerindians, and ratification of these treaties would demonstrate good faith on the part of Guyana in its efforts to fulfill the human rights protections owed to its indigenous inhabitants.

RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

1. *Urge the government of Guyana as well as corporations involved in mining in Amerindian territory to comply with international human rights obligations.*
2. *Recognize the systemic challenges to protecting the human rights of Guyanese Amerindians posed by gold mining and use its leverage to combat them.*
3. *Send the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to investigate the situation of Guyanese Amerindians affected by gold mining.*
4. *Facilitate the further development of international law norms that protect indigenous peoples and promote corporate accountability for human rights abuses.*
5. *Assist the Guyanese government in implementing a stronger regulatory system for gold mining that will respect, protect, and promote the rights of Amerindians.*
6. *IFIs should provide financial and technical assistance to promote the implementation of regulatory reform to strengthen Guyana's adherence to its human rights obligations.*

INTRODUCTION

This report aims to help the government of Guyana and the Guyanese people, particularly those of indigenous origin, ensure that small and medium scale gold mining operations are run in a way that respects the rights of people living near them, safeguards the natural environment, and provides maximum benefit to the Guyanese nation. The International Human Rights Clinic at Harvard Law School's Human Rights Program, which sponsored the investigation that led to this document, hopes that its analysis will contribute to frank and productive discussion among all those concerned with gold mining in Guyana and to improvements in government policy and regulatory practice that will benefit all Guyanese.

The report's centerpiece is a detailed analysis and critique of the regulatory regime governing the gold mining industry. This appears to be the first in-depth study of that subject published in either the United States or Guyana. The critique rests on an assessment of the environmental and human effects of small and medium scale gold mining. The report also includes an evaluation of the Guyanese government's compliance with its international legal obligations in relation to the oversight of mining. Throughout, the report devotes special attention to the relationship between gold mining operations and Amerindian communities, which are both particularly vulnerable in Guyana and subject to special protections under international law as indigenous peoples.

The report focuses on medium and small scale mining operations. At publication, there were no large scale mines, and until it closed in 2005, there was only one large scale gold mining operation in Guyana: the Omai Gold Mine.² Omai differed from smaller scale operations in several respects. At Omai, gold was excavated from the bedrock

instead of from the soil. Omai's facilities were spread over several acres and included large settling ponds and disposal sites for pulverized rock. In the key step of amalgamating gold, Omai employed cyanide rather than the mercury that small and medium scale miners use. Finally, the technology the Omai mine used to extract gold was much more sophisticated than that used by smaller scale miners. Problems associated with Omai have also received significant attention, and thus medium and small scale mining operations are the primary concern of this report.

The first chapter of this report provides readers unfamiliar with Guyana and its gold mining industry with essential background information. Chapter 2 explains the research project that led to the report, including the methods used to collect the information on which the report is based. Chapter 3 describes how small and medium scale gold mining as currently practiced damages the environment and negatively affects human health and social relations. Chapter 4 dissects the Guyanese government's system for regulating mining and identifies broader structural problems in governance that undermine effective regulation. The government of Guyana, by acceding to international human rights treaties, has obligated itself to ensure a range of human rights for all Guyanese; Chapter 5 describes these and identifies areas in which the government has been failing to comply with these obligations. The report concludes with recommendations on how the government of Guyana can reform its oversight of mining to ensure that mining operations respect the national environment and the rights of Amerindians and others living nearby, while providing maximum economic benefits to miners and to Guyana as a whole.

² See Cambior, Omai Mine, <http://www.cambior.com/servlet/dispatcherservlet?selectedContentID=1055&lang=2&action=2> (last visited Apr. 10, 2006) [hereinafter Cambior].

CHAPTER 1: BACKGROUND ON GUYANA AND ITS GOLD MINING INDUSTRY

This chapter provides background on Guyana's peoples, history, and government. The first part summarizes the country's history, including the population's origins, and government structure. The second describes the place of gold mining in the national economy and introduces the government bodies that regulate it.

I. GUYANA: PEOPLE, HISTORY, AND GOVERNMENT

The Co-Operative Republic of Guyana (Guyana) is a small country located on the northern Atlantic Coast of South America with a population of approximately 750,000 people.³ It is bordered by Venezuela to the west, Brazil to the south, and Suriname to the east, and is divided into ten regions for administrative purposes.⁴

Prior to the arrival of Europeans, Guyana was already inhabited by nine distinct indigenous groups, the Arawaks, Akawaio, Arecuna, Macushi, Warrau, Wapisiana, Wai Wai, Patamona, and Carib, now known collectively as Amerindians. They named the area Guiana, or land of many waters.⁵ Holland settled the territory of modern Guyana in the late sixteenth century; it remained in control until Great Britain took the area in 1796. In 1815, Great Britain consolidated the colonies of Essequibo, Demerara, and Berbice into British Guiana. Slavery was abolished in

³ Central Intelligence Agency, *Guyana*, in WORLD FACTBOOK, available at <http://www.cia.gov/cia/publications/factbook/geos/gu.html#Intro> (last visited Aug. 30, 2005) [hereinafter WORLD FACTBOOK].

⁴ United States Department of State, Background Note: Guyana (2005), available at <http://www.state.gov/r/pa/ei/bgn/1984.htm> (last visited Oct. 17, 2005) [hereinafter Background Note].

⁵ *Id.*

1834, at which point the British began importing thousands of indentured laborers to work on sugarcane plantations. The majority of workers came from India, but Portugal and China were also sources of large numbers. The inflow of indentured servants ceased in 1917 when the British ended indentured servitude.⁶

Guyana suffers from grave tensions between its two largest ethnic groups, Afro-Guyanese, most of whom descended from former slaves, and Indo-Guyanese, mainly descended from former indentured servants. The two groups have clashed – sometimes violently – over political and economic power since independence.⁷ Although the Amerindian population constitutes only 7% to 8% of the total population of Guyana,⁸ it constitutes a majority in the sparsely populated interior tropical forests.⁹ Ninety percent of the country's total population lives in the coastal regions.¹⁰

The interior of the country is still largely undeveloped, and travel takes place more easily by water than by road. Of Guyana's 7,970 kilometers

⁶ *Id.*

⁷ WORLD BANK, GUYANA DEVELOPMENT POLICY REVIEW: THE CHALLENGES OF GOVERNANCE AND GROWTH 1 (2003) available at [http://wbln0018.worldbank.org/lac/lacinfoclient.nsf/8d6661f6799ea8a48525673900537f95/cebc23773c62ea5085256dff005b754c/\\$FILE/Guyana%20Development%20Policy%20Review_full.pdf#search='world%20bank%20guyana%20challenges%20of%20governance%20and%20growth'](http://wbln0018.worldbank.org/lac/lacinfoclient.nsf/8d6661f6799ea8a48525673900537f95/cebc23773c62ea5085256dff005b754c/$FILE/Guyana%20Development%20Policy%20Review_full.pdf#search='world%20bank%20guyana%20challenges%20of%20governance%20and%20growth') (last visited June 21, 2005). [hereinafter WORLD BANK]

⁸ See WORLD FACTBOOK, *supra* note 3 (citing 7% figure); WORLD BANK, *supra* note 7, at 1 (placing proportion at 8%).

⁹ Rainforest Foundation, Background Information on Guyana, available at <http://www.rainforestfoundation.org/1guyanaback> (last visited Sept. 27, 2005). See also Library of Congress, A Country Study: Guyana, (research complete 1992), available at <http://lcweb2.loc.gov/frd/cs/gytoc.html> (last visited Oct. 17, 2005).

¹⁰ Background Note, *supra* note 4.

of highways, only 590 kilometers are paved.¹¹ In the hinterland regions, where the majority of mining activity takes place, “[t]he distance from the Capital results in prices of foods and other commodities being several times higher than similar items on the coast,” and “[t]he high transportation costs of commodities coming out of the hinterland also result in these goods being uncompetitive in the Capital.”¹²

Guyana gained its independence from the United Kingdom in 1966 but did not become a democracy until the 1985 death of dictator Forbes Burnham. Burnham’s successor, Desmond Hoyte, reversed Burnham’s protectionist, nominally socialist policies by opening the economy and reinstating freedom of the press and assembly.¹³ In 1992, Cheddi Jagan was elected president, and his wife, Janet Jagan, was elected to replace him at his death in 1997. Jagan was followed by the current president, Bharrat Jagdeo, who is now serving his second term. Prime Minister Samuel Hinds has served in his position since Cheddi Jagan’s administration.¹⁴

The government of Guyana has executive, legislative, and judicial branches. The executive consists of a president, who serves as head of both state and government; a prime minister; and ministers in charge of various cabinet departments. Guyana’s ten administrative regions each have a regional council.¹⁵ Village or city councils oversee local government.¹⁶

The executive branch has the most influence of the three branches in the area of mining. Subsurface rights (both mineral and petroleum)

are vested in the state. The prime minister currently serves a dual role as the minister of mines. Also influencing the regulation of mining and its impacts on Amerindian communities are a number of executive branch ministries and other entities, including the Guyana Geology and Mines Commission (GGMC), the Guyana Gold Board (GGB), the Environmental Protection Agency (EPA), and the Ministry of Amerindian Affairs (MAA).

The legislative function is performed by a National Assembly of 65 deputies. Twelve are elected from the ten administrative regions of the country, while the remaining 53 are elected directly from party lists by proportion of the national vote.¹⁷ The National Assembly can oust the president, prime minister, and cabinet by a vote of no confidence.¹⁸ Ministries are involved in the development of new legislation: most bills are sponsored by the government, and ministries originate many proposals for new laws or amendments.¹⁹

Political tension and occasional violence can interfere with the functioning of political mechanisms and government infrastructure. Polarized party politics have resulted in a winner-take-all mentality. “Most members of parliament are directly dependent upon and responsible to the political party that chooses them, and not to the people whom they profess to represent.”²⁰

¹¹ WORLD FACTBOOK, *supra* note 3.

¹² Guyana Government Information Agency (GINA), General Information of the Amerindian Population, *available at* <http://www.gina.gov.gy/natprofile/geninfoap.html> (last visited Mar. 12, 2005).

¹³ Background Note, *supra* note 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ FACTSET RESEARCH SYSTEMS INC., ECONOMIST INTELLIGENCE UNIT (EIU) COUNTRYDATA, GUYANA COUNTRY REPORT, FEBRUARY 2005, at 4 (2005) [hereinafter EIU]; *available at* <http://www.factset.com> (last visited Oct. 17, 2005).

¹⁸ Constitution of the Co-Operative Republic of Guyana, § 106(6) [hereinafter Guyana Constitution].

¹⁹ Parliament of the Co-Operative Republic of Guyana, *Legislative Procedure*, in GUYANA PARLIAMENT GUIDE, *available at* <http://www.parliament.gov.gy/legislative.htm> (last visited June 21, 2005).

²⁰ Carter Visits Guyana, *supra* note 1.

Guyana is a common law country with a three-tiered judicial system.²¹ The lowest courts are the Magistrate Courts. The highest court is the Court of Appeal, which hears a limited number of cases on appeal from the middle-level High Court.²² The Constitution charges the National Assembly with determining the number of High Court judges and appointing them to office.²³ Currently, there are twelve High Court judges.²⁴ The president has the power to appoint justices to the Court of Appeal.²⁵ Judges are constitutionally required to “exercise their functions independently of the control and direction of any other person or authority; and shall be free and independent from political, executive and any other form of direction and control.”²⁶ Independence is further assured in the text of the Constitution by the requirement that the courts be “administratively autonomous and . . . funded by a direct charge upon the Consolidated Fund.”²⁷ Judges may only be removed from office for inability or failure to perform the function of office, or for misbehavior.²⁸ Some cases begin at the High Court, whereas other matters start in the Magistrate Courts and can be appealed to the High Court. The country is divided into twenty-one judicial districts for the purposes of the Magistrate Courts; however, according to Roxanne George, a High Court judge, there are

only eighteen magistrates.²⁹ They have primary jurisdiction over family matters, criminal trials, and other private disputes such as contract or tort claims.

II. GOLD MINING INDUSTRY

A. MINING IN THE ECONOMY

Guyana is a country with diverse natural resources and an adult literacy rate of 98.8%.³⁰ Gross domestic product (GDP) per capita is approximately US\$3,800, taking into account differences in prices between Guyana and the United States,³¹ but comes to only US\$1,000 at market exchange rates.³² Guyana’s most important economic activities are mining, which accounts for 11% of GDP, and agriculture, which contributes 29% to GDP.³³ Gold was the leading export in 2003, at a value of US\$130.9 million, closely followed by sugar at US\$129.2 million.³⁴ Despite Guyana’s natural resources and its population’s generally high level of education, the country has incurred a very high level of foreign debt,³⁵ and 35% of its population lives below the

²¹ The Guyanese legal system is based primarily on English common law, “with certain admixtures of Roman-Dutch law.” Central Intelligence Agency, *Field Listing – Legal System – Guyana* entry, in WORLD FACTBOOK, available at <http://www.cia.gov/cia/publications/factbook/fields/2100.html> (last visited Jan. 10, 2006).

²² Guyana Constitution, *supra* note 18, § 133.

²³ *Id.* § 124.

²⁴ Interview with Roxanne George, High Court judge, in Georgetown, Guy. (Oct. 28, 2005) [hereinafter George Interview II].

²⁵ Guyana Constitution, *supra* note 18, § 127.

²⁶ *Id.* §§ 122, 124, 125.

²⁷ *Id.*

²⁸ *Id.* § 197(3).

²⁹ George Interview II, *supra* note 24.

³⁰ WORLD FACTBOOK, *supra* note 3.

³¹ *Id.* (estimating per capita GDP in 2004 to be US\$3,800 at purchasing power parity).

³² In other words, due to differences in prices and costs, a Guyanese resident with a yearly income of US\$1,000 – the GDP per capita – can buy an amount of goods that would be worth US\$3,800 in the United States. *See* WORLD BANK, *supra* note 7, at 66 (reporting 2002 GDP as US\$717 million); WORLD FACTBOOK, *supra* note 3 (estimating population in July 2005 at 765,283).

³³ EIU, *supra* note 17, at 5.

³⁴ *Id.* The Economist Intelligence Unit projects that gold production will fall sharply in 2005, however, with the closure of the Omai gold mine, which currently accounts for two-thirds of Guyana’s gold production. *Id.* at 18.

³⁵ Background Note, *supra* note 4.

national poverty line.³⁶ Pressure on Guyana to expand its economy has drawn into the country a multitude of international organizations, including the Inter-American Development Bank, the World Bank, the Canadian International Development Agency, and the U.S. Agency for International Development. In 1999, Guyana received approximately US\$400 million in debt relief under the World Bank/International Monetary Fund (IMF) Highly Indebted Poor Country (HIPC) program.³⁷

A key focus of economic reforms since 1989 has been the intensification of natural resources extraction in the interior. According to non-governmental organizations (NGOs) such as the Rainforest Foundation, “[t]o ease its great burden of debt, Guyana’s government has increasingly turned to the practice of granting mining and forestry concessions to multinational companies.”³⁸ A recent World Bank report identified mining as a key potential source of economic growth and recommended that the government encourage greater private investment in mining, including of gold.³⁹ Economic reform efforts may be hampered, however, by the large amount of gold that is smuggled across the border to avoid taxes and royalties.⁴⁰

³⁶ UNITED NATIONS DEVELOPMENT PROGRAMME, 2004 HUMAN DEVELOPMENT REPORT, at 148 (2004).

³⁷ EIU, *supra* note 17, at 9. *See also* International Monetary Fund, Press Release No. 99/17, Guyana to Receive Over US\$400 Million in Debt Relief, May 14, 1999, *available at* <http://www.imf.org/external/np/sec/pr/1999/pr9917.htm> (last visited Apr. 10, 2006).

³⁸ Rainforest Foundation, *supra* note 9.

³⁹ WORLD BANK, *supra* note 7, at v (listing areas of Guyana’s economic regime which impede private sector investment and encouraging improvements by the Guyanese government).

⁴⁰ *See* Interview with Anantiram Balram, financial officer, GGB, in Georgetown, Guy., Jan. 12, 2005 (estimating that only two-thirds of gold mined in Guyana is sold through the GGB) [hereinafter Balram Interview]. In 2000 the general manager of the GGB estimated that the government was “losing between

B. GOVERNMENT OVERSIGHT

A variety of government entities are involved in regulating the gold mining industry. The GGB is a marketing board that serves as the country’s sole official buyer of gold. The EPA has the authority to impose the requirement of completing an Environmental Impact Assessment upon holders of medium scale mining permits and large scale mining licenses, but not small scale permit holders.⁴¹ The MAA consults on aspects of mining that affect Amerindians.

As the government agency responsible for managing the mineral and petroleum sectors, GGMC has the most direct control over mining operations. Headed by a commissioner, it administers the Mining Act and Mining Regulations to promote mining as a source of development for Guyana. The Geological Surveys and Mines Department established GGMC in 1979, and it now operates as a semi-autonomous corporate body owned by the government.⁴² Its responsibilities include creating opportunities for rapid economic development in the mineral sector, providing the public with prospecting information about economically valuable mineral prospects, and regulating all activities in the mineral sector. It also provides technical assistance and advice in mining, mineral processing, and marketing of mineral resources. GGMC enforces the conditions of a variety of mining licenses, permits, and concessions and collects revenues under the Mining Act and its implementing regulations. GGMC reports to the Minister of Mines, currently Prime Minister

\$100M to \$200M in revenue annually.” Sharon Lall, *Gold Jewelry Smuggling May Be Linked to Narcotics Trade*, GUYANA CHRONICLE, Sept. 13, 2000, *available at* http://www.guyanachronicle.com/ARCHIVES/archiv_e%2013-09-00.html (last visited June 21, 2005).

⁴¹ Interview with Rosemary Benjamin-Noble, legal advisor, GGMC, in Georgetown, Guy. (Oct. 27, 2005) [hereinafter Benjamin-Noble Interview II].

⁴² Interview with Rosemary Benjamin-Noble, legal advisor, GGMC, in Georgetown, Guy. (Jan. 13, 2005) [hereinafter Benjamin-Noble Interview].

Samuel Hinds.⁴³ GGMC is self-financed and pays the salaries of its employees, including mines officers, out of taxes collected on mined minerals.⁴⁴

GGMC processes all applications for mineral properties in Guyana. Miners must apply first for prospecting licenses and then for mining licenses. GGMC also determines which areas of the country are open to mining exploration. There are currently six mining districts: Berbice, Potaro, Mazaruni, Cuyuni, the Northwest District, and Rupununi. GGMC divides mining operations into three categories based on scale: 1) small scale for areas of up to 1,500 by 800 feet for a land claim or up to one mile of a navigable river for a river claim; 2) medium scale, for areas between 150 and 1200 acres; 3) and large scale claims.⁴⁵ The only large scale gold mine in Guyana, Omai, ceased operations in the third quarter of 2005⁴⁶ although more large scale mines are expected in the future.⁴⁷ small scale mining claims make up the overwhelming majority of mining claims in Guyana; there is no limit on how many small scale

claims one permit-holder may acquire.⁴⁸ Medium scale claims are reserved for Guyanese miners; the number of active medium scale miners may be a small fraction of the number of total mines.⁴⁹

⁴³ See GINA, New Mining Legislation by January 2006, Aug. 22, 2005, available at <http://www.gina.gov.gy/archive/daily/b050822.html> (last visited Apr. 16, 2006).

⁴⁴ Interview with Linton Butters, acting chief mines officer, GGMC, in Georgetown, Guy. (Oct. 24, 2005) [hereinafter Butters Interview].

⁴⁵ GGMC, Mineral Licenses, available at <http://www.sdn.org.gy/ggmc/mineral.html> (last visited Oct. 11, 2005) [hereinafter GGMC Website]. New regulations have been promulgated that define the mining scales by volume of excavated material; it is unclear how the two definitions will interact.

⁴⁶ Cambior, *supra* note 2. The Omai mine was a source of controversy over the environmental impacts of the mining industry in 1995 as a result of an enormous spill of three billion liters cyanide-laced tailings into the Essequibo River. See WORLD BANK, *supra* note 7, at 49.

⁴⁷ Interview with Robeson Benn, commissioner, GGMC, in Georgetown, Guy. (Oct. 25, 2005) [hereinafter Benn Interview II].

⁴⁸ Interview with mining expert, Guyana EPA, in Georgetown, Guy. (Jan. 14, 2005) [hereinafter EPA Mining Expert Interview].

⁴⁹ EPA estimates put the number of medium scale mines at around ten in early 2005. *Id.* Land Management Officer Adele Butts said that that number is “grossly inaccurate” though she admits GGMC does not know the actual number of active medium scale mines since GGMC does not check for mining activity, only that taxes are paid on claims. Telephone Interview with Adele Butts, land management officer, GGMC (May 19, 2006). Given that 2,513 medium scale permits had been granted as of 2003, only a small percentage of permitted claims is actually mined at any one time. See GGMC Website, *supra* note 45.

C. AMERINDIAN COMMUNITIES

Gold mining has especially severe effects on Guyana's indigenous peoples, who are known to the Guyanese as Amerindians. Most Amerindian communities are located in the interior, mainly in administrative regions One, Seven, Eight, and Nine, where the majority of small and medium scale mining occurs.⁵⁰ This geographic distribution has made Amerindians particularly sensitive to the environmental, health, and social harms caused by mining. Furthermore, more than 90% of Amerindians live below the poverty line,⁵¹ increasing their susceptibility to abusive labor practices and prostitution in mining areas. Amerindians depend on subsistence agriculture as a means of survival. Such practices are also a cultural way of life. The environmental degradation and physical encroachment onto Amerindian territory caused by gold mining reduces their ability to support this tradition.⁵²

Minimal or nonexistent land rights contribute to Amerindians' vulnerability. According to the Guyanese government's Indigenous Peoples Development Plan, there are approximately 131 Amerindian communities in the forested areas of Guyana, only 76 of which possess legally recognized title to their lands.⁵³ Even those communities that do possess legally recognized title to their lands do not, however, possess subsurface mineral rights, and this has been a

source of conflict among Amerindian communities, the government, and miners.

Another source of conflict between Amerindian communities and the mining industry is the damage gold and diamond mining inflicts on Guyana's rivers. Amerindians use the rivers for food, transportation, communication, and sanitation (bathing, laundering, etc.). Some villages can only be reached by canoe. Thus, rivers are a mainstay of traditional Amerindian life, but mining threatens to make them unfit for human use.

The government regulates Amerindian communities principally through the MAA and the Amerindian Act, a law that, until its amendment in February 2006,⁵⁴ had existed substantially unchanged since 1951. Each village is headed by an elected leader known as the *toushao* (translated as "captain"); these arrangements are recognized by the Guyanese government to some degree. In matters related to the impact of mining on Amerindian communities, the MAA consults with GGMC and serves as a liaison between communities and GGMC.

Many Amerindians, however, believe the MAA fails to represent their interests adequately. As a result, the non-governmental Amerindian Peoples Association (APA), Guyana Organization of Indigenous Peoples (GOIP), and The Amerindian Action Movement of Guyana (TAAMOG) were created and now advocate vigorously on the Amerindians' behalf.⁵⁵ These groups have drawn attention to the damage mining has wrought in Amerindian villages and criticized the

⁵⁰ For more information on Amerindian population distribution, see GINA, National Profile: The Amerindian Population, available at <http://www.gina.gov.gy/natprofile/geninfoap.html> (last visited June 29, 2005).

⁵¹ WORLD BANK, GUYANA DEVELOPMENT POLICY REVIEW: THE CHALLENGES OF GOVERNANCE AND GROWTH 16 (2003).

⁵² Group Interview with residents in Campbelltown, Guy. (Jan. 20, 2005) [hereinafter Campbelltown Residents Interview]; Group Interview with residents in Kamaru (Oct. 27, 2005).

⁵³ WORLD BANK, GUYANA PROTECTED AREAS SYSTEM PROJECT, INDIGENOUS PEOPLES DEVELOPMENT PLAN 1 (2004).

⁵⁴ E-mail from Martin Cheong, Amerindian Peoples Association (APA), to Jonathan Kaufman (Apr. 27, 2006).

⁵⁵ The APA also conducts extensive programs in the interior, serving as a primary conduit for information about government policies and programs to Amerindian communities, as well as conveying the Amerindian communities' views to the national government. A new NGO, the National Amerindian Development Foundation, has recently appeared on the scene.

government's ineffective protection of the environment, land rights, health, and bodily integrity of their inhabitants.⁵⁶

D. SPECIAL INTERNATIONAL HUMAN RIGHTS PROTECTIONS OWED TO THE AMERINDIANS AS INDIGENOUS PEOPLES

Indigenous peoples should be afforded special rights protections as communities and as individuals. Guyanese Amerindians are indigenous peoples, and Guyana has a corresponding obligation to respect, protect, and promote their rights. Indigenous rights protections include the right to cultural integrity, to own and control their traditional lands and territories, and to prior consultation before any resource extraction takes place on these lands.

Numerous scholars and sources of international law recognize the special rights owed to indigenous peoples. As James Anaya recently noted, the international human rights regime recognizes indigenous peoples as special subjects of concern, and “[a] discrete body of international human rights law upholding the collective rights of indigenous peoples has emerged and is rapidly developing.”⁵⁷ This body of law has been codified

in the International Labor Organization Convention 169 (ILO 169),⁵⁸ two Draft Declarations on the Rights of Indigenous Peoples (one from the United Nations⁵⁹ and the other from the Organization of American States (OAS)⁶⁰), and a number of important decisions from the Inter-American Court of Human Rights (IACHR) and treaty bodies, including the Human Rights Committee (HRC)⁶¹ and the Committee on

⁵⁸ *Convention concerning Indigenous and Tribal Peoples in Independent Countries*, Sept. 5, 1991, 169 I.L.O. 1989 [hereinafter ILO 169].

⁵⁹ *Draft United Nations Declaration on the Rights of Indigenous Peoples, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, U.N. ESCOR, 46th Sess., art. 26, ¶ 105, U.N. Doc. E/CN.4/Sub.2/1994/45 (1994) [hereinafter Draft U.N. Declaration].

⁶⁰ Proposed American Declaration on the Rights of Indigenous Peoples, art. 18, approved by the Inter-American Commission on Human Rights at its 133rd session on February 26, 1997, in OEA/Ser L/V/II.95.doc.7, rev. 1997 [hereinafter Proposed American Declaration].

⁶¹ The HRC is the treaty body that monitors States Parties' compliance with the International Covenant on Civil and Political Rights (ICCPR). HRC accepts reports from signatories to the ICCPR on the progress they have made toward compliance with the provisions of the convention and hears individuals' complaints against their own countries on violations of the rights guaranteed therein. The decisions of HRC, along with the General Comments and Concluding Observations on States Parties' reports, constitute the body of jurisprudence that can be used to interpret the obligations imposed by the ICCPR. Guyana has ratified the ICCPR and incorporated it by reference into its Constitution. Status of Ratification: International Covenant on Civil and Political Rights, as of 6 December 2006, available at <http://www.ohchr.org/english/countries/ratification/4.htm> (last visited March 4, 2007). See *Ominayak, Chief of the Lubicon Lake Band v. Canada*, U.N. Hum. Rts. Comm., 38th Session, U.N. Doc. CCPR/C/38/D/167/1984. (1990); *Lämsman v. Finland*, U.N. Hum. Rts. Comm., 52nd Session, U.N. Doc. CCPR/C/52/D/511/1992 (1994); U.N. Hum. Rts. Comm., 58th Session, U.N. Doc. CCPR/C/58/D/671/1995 (1996).

⁵⁶ However, due to the paternalistic orientation of the Guyanese government toward the Amerindians and the attack of these organizations on the politically sensitive issue of gold mining, the government treats APA and the other Amerindian organizations like rival political parties rather than legitimate expressions of civil society.

⁵⁷ S. James Anaya and Robert A. Williams, *The Protection of Indigenous Peoples' Rights over Lands and Natural Resources Under the Inter-American Human Rights System*. 14 HARV. HUM. RTS. J. 33 (2001) (citing S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (1996); Siegfried Wiessner, *The Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis*, 12 HARV. HUM. RTS. J. 57 (1999); Robert A. Williams, Jr., *Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World*, 1990 DUKE L.J. 660 (1990); W. Michael Reisman, *Protecting Indigenous Rights in International Adjudication*, 89 AM. J. INT'L L. 350 (1995)) [hereinafter Anaya and Williams].

Economic, Social and Cultural Rights (CESCR).⁶² Having ratified the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), Guyana has should act consistently with the findings and recommendations of these treaty bodies.⁶³

A recent submission before the United Nations Committee on the Elimination of All Forms of Racial Discrimination (CERD) by the APA and the U.K.-based Forest Peoples Programme highlights the extent to which the Guyanese government is failing to uphold these rights, despite the incorporation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁶⁴ and other international human rights treaties into the Guyanese constitution:

This discrimination is particularly evident in connection with Guyana's failure to adequately recognize, guarantee and protect indigenous peoples' rights to own and control their traditional lands and territories. Resource exploitation operations pose a major threat to many indigenous peoples and are often authorized and undertaken with little regard for their rights and wellbeing. In some cases, indigenous peoples and their traditional lands have suffered irreparable harm. The negative impact of these operations is greatly amplified by discrimination in access to health care and education.⁶⁵

Given the special nature of the rights accorded to indigenous peoples, Guyana's continued failure to respect, protect, and promote the rights of Amerindians is particularly grave. Chapter 5, "Guyana's Mining-Related Obligations under International Law," provides a more detailed analysis of the special protections owed by the Guyanese government to Amerindians in the context of gold mining.

⁶² Guyana has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). Status of Ratification: International Covenant on Economic, Social, and Cultural Rights, as of 3 November 2004, at <http://www.ohchr.org/english/law/cescr-ratify.htm> (last visited Feb. 27, 2007). The CESCR has expounded on the importance of providing special protection for indigenous groups. *See, e.g.*, General Comment No. 14 ¶ 27, U.N. ESCOR, 22nd Session, U.N. Doc. E/C.12/2000/4 (May 12, 2000); General Comment No. 15 ¶ 16, U.N. ESCOR, 29th Session, U.N. Doc. E/C.12/2002/11 (Nov. 20, 2002).

⁶³ Some prominent scholars also posit the cumulative body of international law "constitutes customary international law, which should inform any assessment of indigenous peoples' rights over lands and natural resources." Anaya and Williams, *supra* note 57, at 37.

⁶⁴ Guyana has ratified the ICERD, Mar. 7, 1966, 5 I.L.M. 352, 660 U.N.T.S. 195, and incorporated it and five other major United Nations human rights conventions into Article 149 of its Constitution. United Nations Office of the High Commissioner of Human Rights, Treaty Body Database: Ratifications and Reservations, <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet> (last visited Mar. 5, 2007); Guyana Constitution, *supra* note 18, art. 149.

⁶⁵ APA and Forest Peoples Programme, Request for Adoption of a Decision under the Urgent Action/Early Warning Procedure in Connection with the Imminent Adoption of Racially Discriminatory Legislation by the Republic of Guyana and Comments on Guyana's State Party Report (CERD/C/446/Add.1), submitted Jan. 20, 2006, available at http://www.forestpeoples.org/documents/law_hr/bases/law_hr.shtml (last visited Feb. 12, 2007).

CHAPTER 2: METHODOLOGY

This report's findings and analysis rest on information gathered by a research team from the International Human Rights Clinic of Harvard Law School's Human Rights Program during a three-week field mission to Guyana in January 2005 and another ten-day trip to Guyana in October 2005. Additional work was completed in the United States between September 2004 and March 2007. In Guyana, the team interviewed approximately forty government officials, NGO staff members, mining industry representatives, individual miners, Amerindian leaders, and Guyanese citizens. It also gathered hundreds of pages of promulgated and draft laws and regulations and other primary sources. Researchers observed the effects of mining firsthand by inspecting mines and surrounding areas. The team also examined international treaties and declarations, the jurisprudence of international courts and United Nations treaty committees, academic monographs and journal articles, newspaper and magazine stories, and websites on Guyana, indigenous rights, and mining.

In September 2004, the research team began conducting background research and contacting Guyanese students and faculty at Harvard who recommended research methods and contacts for the first field mission. The team made contact with the APA, the most prominent organization involved in Amerindian issues in Guyana, to obtain its help in contacting Amerindians in Guyana. The team considered it essential to hear from Amerindians themselves on how mining affected them and appreciated that cultural and logistical obstacles would make it difficult for the team to connect to Amerindians directly. APA agreed to help arrange visits in January 2005 to Amerindian communities.

THE JANUARY 2005 RESEARCH TRIP

The January 2005 field mission provided the bulk of the information on which this report is based. Researchers collected documents, visited mining sites, and interviewed representatives of government agencies, NGOs, and the mining industry. Interviews with government officials from the GGMC, Guyana Forestry Commission (GFC), High Court, GGB, Guyana EPA, and Guyana Police Force illuminated the national and local

enforcement mechanisms relating to mining and miners, as well as the operating methods of the industry itself. Representatives of organizations outside the government – the Guyana Human Rights Association, Social Impact Amelioration Program (SIMAP), the Guyana Gold and Diamond Miners Association (GGDMA), TAAMOG, GOIP, and APA – provided information on the effects of mining on Amerindians and the programs instituted by the government and by NGOs to mitigate the environmental and social effects of mining.

During a three-day field visit to the Mahdia area, an important gold mining area in Guyana's interior, researchers saw firsthand and heard direct reports of how the actual practice of mining differs from that envisioned by the governmental regulatory framework. Our researchers inspected mines and interviewed mine managers and owners as well as individual miners. Our research team also interviewed residents and leaders of the nearby Amerindian village of Campbelltown and a member of the Mahdia police force.

After returning to the United States, the researchers synthesized the information obtained through interviews, analyzed primary documents and secondary discussions of conditions in Guyana, and researched international jurisprudence on the government's obligations under international law.

THE OCTOBER 2005 FOLLOW-UP TRIP

In October 2005, a research team returned to Guyana to update the research to reflect changes that had occurred in the mining sector since the recent promulgation of environmental regulations (2005 Regulations.) The team spoke with governmental officials, NGO leaders, and the executive director of the GGDMA regarding their views on the new regulations and on the preliminary findings and recommendations of the previous team. Some members of the team also visited the Upper Mazaruni to make firsthand observations.

CHAPTER 3: THE EFFECTS OF GOLD MINING ON AMERINDIAN COMMUNITIES

Small and medium scale gold mining has well-documented deleterious effects on the environmental, health, and social conditions in Guyanese communities. Amerindians, who still face discriminatory treatment under Guyanese law and in Guyanese society, whose settlements are often situated in remote areas where the vast majority of mining occurs, and for whom education, health care, and social support is less available than for Guyanese living near the coast and in the major cities, suffer a more severe impact from mining than other segments of the population. This chapter describes how small and medium scale mining degrades the environment, causes health crises, and produces particular hardship to women in Amerindian communities located in mining areas.

I. ENVIRONMENTAL AND HEALTH EFFECTS

Firsthand observation and interviews with government officials, NGO workers, Amerindians, and miners revealed five large scale environmental and health effects of mining in the interior of Guyana: 1) drastic increases in the sediment content of river water,⁶⁶ 2) increased levels of mercury in river water,⁶⁷ 3) creation of artificial sandbars in rivers,⁶⁸ 4) deforestation and

⁶⁶ EPA Mining Expert Interview, *supra* note 48; Interview with Peter Persaud, TAAMOG, in Georgetown, Guy. (Jan. 11, 2005) [hereinafter Peter Persaud Interview]; Interview with Daphne Wilkie, in Mahdia, Guy. (Jan. 20, 2005) [hereinafter Wilkie Interview].

⁶⁷ Campbelltown Residents Interview *supra* note 52; EPA Mining Expert Interview, *supra* note 48.

⁶⁸ Jannette Forte, *Impact of the Gold Industry on the Indigenous Peoples of Guyana*, 27-28 *TRANSITION* 71, 84 (1998).

degradation of land fertility,⁶⁹ and 5) mosquito infestation and malaria.⁷⁰ These five phenomena seem to be present both in the Mahdia area and in the Upper Mazaruni region,⁷¹ two of the most important mining areas in the country. Since the same regulatory regimes and industry practices are in effect throughout the entire country, and since mining tends to take place in Guyana in close proximity to indigenous rainforest and riverine communities, these same phenomena are likely to occur in many other mining areas as well.

A. SEDIMENT

The vast majority of current gold mining in Guyana is undertaken by small or medium scale land operations.⁷² Unlike large scale miners, small and medium scale miners do not excavate gold from the bedrock. Instead, they operate in pits that extend deep into a substratum of soil that is generally a mixture of sand and clay. Using power dredges, they typically pump creek water through a high-pressure hose that “washes” the sides of the pit, sending a slurry of gold-bearing mud into a series of pipes. The slurry then passes over a series of sluice

⁶⁹ Campbelltown Residents Interview, *supra* note 52; Wilkie Interview, *supra* note 66; Authors’ observations, Campbelltown, Guy. (Jan. 20, 2005).

⁷⁰ Wilkie Interview, *supra* note 66; Campbelltown Residents Interview, *supra* note 52; Interviews with miners, in Mahdia area, Guy. (Jan. 20, 2005) [hereinafter Miner Interview or Miner Interviews].

⁷¹ Interview with Rohini Kerrett-Persaud, program coordinator, SIMAP, in Georgetown, Guy. (Jan. 13, 2005) [hereinafter Kerrett-Persaud Interview].

⁷² See, e.g., EPA Mining Expert Interview, *supra* note 48. According to one study, while a majority of gold produced in Guyana was extracted by the operations of the single large scale mine, Omai, there were approximately 15,000 small and medium scale claims registered in the 1990s. UPPER MAZARUNI DISTRICT COUNCIL, AMERINDIAN PEOPLES ASSOCIATION OF GUYANA, & FOREST PEOPLES PROGRAMME, MAZULINGOK: INDIGENOUS PEOPLES, LAND RIGHTS AND MINING IN THE UPPER MAZARUNI 40 (1999) [hereinafter MAZULINGOK]; Butters Interview, *see supra* note 44.

boxes, at which point the heavier components – including the gold – settle out and are trapped on a ridged mat. The remaining mud, known as “tailings,” is allowed to escape; unless mitigating measures are taken, it generally returns to the creek from which the water came in the first place.⁷³

Slurry passes over the sifting boxes and then trickles back into the creeks continuously during the hours that a pump is in operation – at a typical mining operation, from 6 a.m. until 6 p.m. every day.⁷⁴ This process results in a vast increase in the quantity of saprolite – fine particles of sediment that do not settle out – suspended in the creeks on which mining operations are located.⁷⁵ According to a mining and forestry expert in the Environmental Management Division of the EPA, “These are the guys who just wash everything into the river, they don’t have a settling pond. They just wash away the topsoil.”⁷⁶ He also noted that medium scale miners used most of the same methods as the small scale

miners, but that small scale operations vastly outnumbered medium scale ones.⁷⁷

Many have noted the visible effects of increased sedimentation in the creeks. Abdool Rahim and Rohini Persaud-Kerrett, the executive director and programme coordinator, respectively, of the NGO SIMAP say that the effects are so severe that any visitor to Mahdia or the Upper Mazaruni would immediately notice. Water from rainforest creeks is naturally tea-colored – so-called “black water” – but when disturbances cause increases in the amount of sediment suspended in the water, it becomes yellowish and opaque.⁷⁸ Amerindian school teacher Daphne Wilkie, who has taught in Mahdia for seventeen years, says that all the creeks in the Mahdia area but one have become yellowish and milky in color due to the increased sediments.⁷⁹

The members of the research team who visited the Upper Mazaruni in October 2005 noted this phenomenon as well. From the air, mining sites could be easily identified, and the rivers adjacent to them were nearly always bright orange or yellow in color, as opposed to the black color of the unpolluted streams. During a trip down the Mazaruni River, the group moved from an undisturbed area of the river where the water was dark and translucent to mining regions where the water was milky, orange, and almost opaque.

⁷³ Miner Interviews, *supra* note 70; Authors’ observations, Mahdia area, Guy. (Jan. 20, 2005).

⁷⁴ Miner Interviews, *supra* note 70.

⁷⁵ EPA Mining Expert Interview, *supra* note 48. A primary effect of small scale mining sites in Zimbabwe, too, is “siltation of the river and dams across it, deterioration in water quality . . . reduction of conveyance and storage capacities of rivers and dams.” Dennis S.M. Shoko and Marcello M. Veiga, “Information about the Project Sites in Zimbabwe,” Global Mercury Project, Project EG/GLO/01/G34: Removal of Barriers to Introduction of Cleaner Artisanal Gold Mining and Extraction Technologies, Jan. 2004, at 18, *available at* <http://www.unites.uqam.ca/gmf/intranet/gmp/files/doc/gmp/zimbabwe/Information%20about%20ASM%20in%20Zimbabwe%20Shoko%20and%20Veiga.pdf> (last visited Oct. 17, 2005).

⁷⁶ EPA Mining Expert Interview, *supra* note 48. According to Jack Morgan, then one of the most senior executives of GGMC, the methods employed in medium scale mining are similar to those of small scale mining, just on a larger scale. Aside from the size of individual claims, the primary difference between the two lies at the claim-staking stage; establishing a medium scale claim is a much more formal and involved process that is subject to stricter regulation. Interview with Jack Morgan, then chief mines officer, GGMC, in Georgetown, Guy. (Jan. 15, 2005) [hereinafter Morgan Interview].

⁷⁷ EPA Mining Expert Interview, *supra* note 48.

⁷⁸ Kerrett-Persaud Interview, *supra* note 71; Interview with Abdool Rahim, executive director, SIMAP, in Georgetown, Guy. (Jan. 13, 2005) [hereinafter Rahim Interview].

⁷⁹ Wilkie Interview, *supra* note 66. While in Mahdia, we personally observed creeks with the telltale yellowish color. At the time, however, all of Guyana was being affected by unseasonable rains, so it is impossible to identify mining as the sole cause of the observed phenomenon. Mining can also cause turbidity, however. Jerry R. Miller et al., *Mercury Contamination of Alluvial Sediments within the Essequibo and Mazaruni River Basins, Guyana*, WATER, AIR, & SOIL POLLUTION 148, 156 (2003) (stating that water turbidity “was extremely high at the time of sampling [conducted for his study] as a result of upstream mining activities”).

The main effect of this development is, unsurprisingly, to make water in the creeks on which mining takes place unusable for most domestic purposes, including drinking, bathing, and washing clothes. Morris Thomas, the captain, or *toushao*, of Campbelltown, says that all the streams in the area have become too polluted for their daily uses except for one creek that has been designated as the source of drinking water for all of Mahdia. According to Thomas, the district originally reserved this creek for use by the Amerindian community alone, but due to the scarcity of potable water in the area, non-Amerindian Mahdia residents have taken to entering the village without permission to use the pump.⁸⁰ This has led to friction between the Amerindian and non-Amerindian communities. Now, Thomas reports, even the one designated creek is too dirty to drink, forcing the villagers to rely entirely on collected rainwater.⁸¹ An Amerindian employee of the GFC confirmed that similar developments have taken place in and around her home village, a remote settlement in the Upper Mazaruni region close to the Venezuelan border.⁸² The EPA mining expert and Campbelltown residents further state that aquatic life suffers from the murkiness of the water, leading to water that is, as the expert called it, “just dead.”⁸³

According to the expert, one relatively simple way to reduce the saprolite problem is to build a tailings dam, thereby creating a settling pond in which the majority of the solid tailings separate from the waste water. In this way, the water that is eventually returned to the creek (or recycled for use in the pits) is much cleaner.⁸⁴ GGMC and EPA both promote

the use of settling ponds by small scale miners to the extent that they are able,⁸⁵ and the expert says that GGMC once had to shut down all mining operations in the Konawaruk area near Mahdia to force them to build tailings dams to cut down on the appalling destruction they were causing to local creeks. He also described a similar situation that occurred at Groete Creek, closer to Georgetown, but Jack Morgan, then chief mines officer for GGMC and one of the Commission’s most senior executives, denied that GGMC has ever had to shut down mines to stave off environmental disaster.⁸⁶

Whether or not GGMC sometimes shuts down mines in environmental emergencies, miners pay off mines officers to overlook violations of the Mining Regulations as a matter of course. As the general manager of one mining camp near Mahdia said when asked if there is a way to get around fines imposed by mines officers, “In Guyana, there’s always a way to get around them.”⁸⁷ One former miner indicated that miners might pay a standard bribe of one ounce of gold⁸⁸ to get a mines officer to ignore a tailings dumping problem.

B. MERCURY

Sediment is not the only by-product of mining that washes into the rivers and affects people’s health. After gold-bearing slurry has been washed over the sifting boxes, what remains in the ridged mats is a mixture of a dark substance referred to as “black sand” and gold dust. To separate the gold from the black sand, small and medium scale miners typically pour mercury into the box and spread it over all the trapped material. The mercury amalgamates the gold into larger nodules, and the black sand is

⁸⁰ Normally, it is required to obtain the permission of the *toushao* of an Amerindian village before one can enter or use its resources.

⁸¹ Interview with Morris Thomas, *toushao* of Campbelltown, in Campbelltown, Guy. (Jan. 20, 2005) [hereinafter Thomas Interview].

⁸² Interview with GFC employee, in Georgetown, Guy. (Jan. 10, 2005).

⁸³ EPA Mining Expert Interview, *supra* note 48; Campbelltown Residents Interview, *supra* note 52.

⁸⁴ EPA Mining Expert Interview, *supra* note 48.

⁸⁵ *Id.*; Miner Interviews, *supra* note 70; Morgan Interview, *supra* note 76.

⁸⁶ Morgan Interview, *supra* note 76.

⁸⁷ Interview with general manager, mining camp, in Mahdia area, Guy. (Jan. 20, 2005).

⁸⁸ In June 2005, one ounce of gold was worth approximately US\$440 on the world market. Gold Price, Gold Price History, *available at* <http://goldprice.org/gold-price-history.html> (last visited Apr. 10, 2006) [hereinafter Gold Price Website].

discarded. Finally, the gold-mercury amalgam is heated to burn off the mercury, leaving only the pure gold.⁸⁹ Cyanide can be used in place of mercury in a similar process known as “leaching”; according to miners in the Mahdia area, cyanide is much more expensive than mercury and therefore less widely used.

Mercury as used in the mining industry in Guyana is a hazard to the health of all who are exposed to it for extended periods of time. As mercury accumulates in the body, it causes irreversible and sometimes deadly nerve damage; it can also be a source of serious birth defects. Campbelltown residents reported many cases of mysterious skin rashes, which they attributed to mercury concentrations in the water.⁹⁰ Other symptoms of mercury poisoning include uncontrolled shaking, muscle wasting, and childhood deformity.⁹¹ There are three points in the mining process at which miners and local residents alike are exposed to the dangerous substance.

First, miners are exposed to it when using it to amalgamate the gold in the sifting boxes. Edward Shields, executive director of the GGDMA, said that despite efforts to educate them, miners in Guyana are often unaware of the dangers of physical contact with mercury.⁹² Miners in the Mahdia area, at least, seemed generally ignorant of the risks; one miner even described drinking the toxic substance for a laugh. “No one ever got hurt from touching quicksilver!” he said when asked if he worried about the health consequences of repeated exposure.⁹³

Second, when miners want to remove the mercury from the gold amalgam, they burn it; this vapor is highly toxic. The same miners who were ignorant of the dangers of touching mercury were aware of the consequences of breathing in mercury fumes; they described turning away or “holding our noses” during the burning process.⁹⁴ If nothing is done to capture the fumes, however, they are released into the atmosphere, from which they eventually precipitate with rain and enter bodies of water. Between 55% and 85% of the mercury released enters the environment in this way.⁹⁵ Unlike other pollutants, mercury tends to settle to the bottom of rivers quickly and is therefore not flushed out of the ecosystem. Instead, it is consumed by organisms and enters the food web, eventually concentrating in the bodies of larger fish.⁹⁶ According to the EPA mining expert, “The miners don’t get affected as much as the Amerindians . . . because mercury accumulates in fish, and the Amerindians eat the fish. Miners don’t eat the fish because they are flying in chicken from Georgetown.”⁹⁷ Retorts can be built easily and inexpensively⁹⁸ to trap the

⁸⁹ Miner Interviews, *supra* note 70.

⁹⁰ Campbelltown Residents Interview, *supra* note 52.

⁹¹ Natural Resources Defense Council, Mercury Contamination in Fish: A Guide to Staying Healthy and Fighting Back, *available at* <http://www.nrdc.org/health/effects/mercury/effects.asp> (last visited Apr. 16, 2006).

⁹² Interview with Edward Shields, executive director, GGDMA, in Georgetown, Guy. (Jan. 19, 2005) [hereinafter Shields Interview].

⁹³ Miner Interview, *supra* note 70.

⁹⁴ *Id.*

⁹⁵ Miller et al., *supra* note 79, at 140.

⁹⁶ According to the EPA mining expert, EPA environmental testing indicates that approximately 60% of the carnivorous fish in mining areas contain levels of mercury exceeding World Health Organization limits for safe consumption. EPA Mining Expert Interview, *supra* note 48. Miller and his colleagues, too, cite studies funded by CANMET and the World Wildlife Foundation indicating that carnivorous fish in the Potaro and Mazaruni rivers exceed the WHO safe consumption level for mercury. Miller et al., *supra* note 79, at 147.

⁹⁷ EPA Mining Expert Interview, *supra* note 48.

⁹⁸ Retorts are extremely simple in terms of technology and materials; they can be constructed from nothing more than a chamber for distilling attached to a galvanized iron pipe whose open end is placed in a glass of water. The gold-mercury amalgam is placed in the distilling chamber, which is then heated to boil off the mercury. Mercury vapor passes through the pipe and condenses in the water, leaving the pure gold behind in the chamber. *See* Schumacher Center for Technology and Development, Technical Note: A Simple Retort, *available at* http://www.itdg.org/docs/technical_information_service/mercury_retort.pdf (last

mercury fumes and recondense them into usable mercury, but according to one mine owner in Mahdia, around half the operations do not own retorts, and many miners are not aware of their existence and availability.⁹⁹ Shields said, however, that it is more cost effective for a miner to use a retort since the mercury can be recovered and used again.¹⁰⁰

Finally, some of the mercury used in amalgamating the gold is washed into creeks along with the rest of the tailings. Miners try to recover the mercury remaining in the sifting boxes since it can be reused if it has not combined with gold, but Mahdia miners reported that some of it inevitably escapes into the environment.¹⁰¹ Daphne Wilkie, the Mahdia schoolteacher, said that the Amerindians formerly fished in the nearby creeks, but that this was no longer possible due to the pollution and the mercury concentrations.¹⁰²

C. SANDBARS

Most mining in Guyana today takes place on land, but until recently, a large percentage of operations

visited June 27, 2005) (explaining how to build a simple retort).

⁹⁹ Miner Interview, *supra* note 70.

¹⁰⁰ Interview with Edward Shields, executive director, GGDMA, in Georgetown, Guy. (Oct. 28, 2005) [hereinafter Shields Interview II].

¹⁰¹ Miner Interviews, *supra* note 70. Mercury-laden mine sediments are often flushed directly into river water despite statutory prohibition. Miller et al., *supra* note 79, at 159. Studies have found significantly elevated levels of mercury in the soil and water, as well as in blood and tissue samples located 100 kilometers downstream from mining sites in Brazil where mercury amalgamation is practiced. *Id.* at 142. However, since upland soils in tropical rainforests naturally have a higher level of mercury than the global mean, these results are only partially explainable as the direct results of mercury release from mining activities. Widespread deforestation – often associated with mining activity – leads to faster erosion of upland soils into the rainforest rivers and may often be a primary source of elevated levels of mercury in aquatic systems. *Id.*

¹⁰² Wilkie Interview, *supra* note 66.

were actually river dredges – large houseboats equipped with a dredge motor that sucked sediment from the bed of a river or creek, passed the slurry over a sifting box, and dumped the tailings at another spot in the river. The focus of mining activity has switched to land dredging mostly because, according to Jack Morgan, then chief mines officer of GGMC, the rivers have been “mined out.” Morgan explained that with currently prevailing mining technology in Guyana, it is no longer profitable to dredge the rivers. Since some Brazilian mining operations have begun to bring new technology that promises a higher recovery rate of gold,¹⁰³ however, it may become profitable for river dredges to mine the tailings left behind by previous dredging operations. Morgan expected to see a resurgence of river mining in the near future.¹⁰⁴

Both river dredging and land dredging create artificial sandbars and sandbanks in the rivers. River dredges gather mud that was originally spread across a river bed and eject it in large piles that often break the surface of the river. Land dredges, which tend to operate adjacent to the rivers for the convenient water supply, dump tailings onto river banks, extending the banks far out into the river and creating artificial shallows. Missile dredges do both of these things: they cut deeply into riverbanks and leave sandbars behind them.¹⁰⁵ Besides changing the natural flow of the river and thereby causing potential losses of river life, the sandbars block river navigation by canoe, one of the main traditional methods of long-distance travel for Amerindians in the interior and often the only way to reach remote communities.¹⁰⁶

¹⁰³ Current Guyanese operations are capable of extracting 30% to 40% of the gold that exists in the sediments they process. New innovations in the amalgamation process may raise the gold recovery rate to 70%. Morgan Interview, *supra* note 76.

¹⁰⁴ *Id.*

¹⁰⁵ MAZULINGOK, *supra* note 72, at 51.

¹⁰⁶ *Id.* While the team was visiting the Upper Mazaruni in October 2005, they traveled down the Mazaruni by dugout canoe with an Amerindian mining ranger. During the trip, they observed many sandbars associated

D. DEFORESTATION AND DEGRADATION OF SOIL QUALITY

All land mining operations require the cutting of forests to make way for the mine pit, processing facilities, tailings heaps, settling ponds, and access roads. Furthermore, although there are limits on the size of individual small scale mining claims, there are no limits on the number of adjacent small scale parcels to which a miner may stake claim, thereby allowing for economies of scale that encourage miners to mine areas that require them to clear vast, contiguous tracts of forest.¹⁰⁷

The October 2005 research team observed extensive deforested scars dotting the rainforest during the hour-long flight from Georgetown to the Upper Mazaruni. Our observations of sites in the Mahdia area confirmed that the areas around mines resemble a moonscape of barren, mounded sand and mud. Since small scale miners typically wash the topsoil away in order to get to the gold-bearing clayey soil underneath, and the vast scattered heaps of discarded tailings are also composed primarily of

with current and former mining sites – some at least thirty years old judging by the technology and state of decay of the abandoned mining dredges. They also observed several sandbars that were in the process of being created by mining operations. Near one old mining operation, the canoe became mired in a hidden sand bank that extended from the bank of the river where mining had taken place to a point more than two-thirds of the distance across to the opposite shore.

The team accompanied the ranger on a site visit on which the ranger reprimanded miners for dumping tailings directly into the river. The mine foreman responded that it was necessary for him to create an artificial sandbar because he had nowhere else to dump his tailings. Once his first pit was mined out, he planned to move the tailings pipes onto the sandbar and to fill his original mine pit with the tailings of any subsequent excavations.

When the group asked Robeson Benn, the commissioner of GGMC, about the impact of these artificial sandbars on riverine ecology and transport, he flatly denied any connection between sandbars and mining, despite the numerous interviews, reports, and firsthand accounts to the contrary. Benn Interview II, *supra* note 47.

¹⁰⁷ Morgan Interview, *supra* note 76.

sand and clay, the sites of former mines are quite infertile and incapable of supporting regenerated rainforest.¹⁰⁸ According to the EPA mining expert, rehabilitation, when it takes place, is very slow and expensive, requiring the planting of hardy grasses to begin the process of restoring the nutrient content of the denuded soil.¹⁰⁹

One of the consequences of deforestation in the vicinity of mining operations is that hunting has become increasingly difficult for Amerindians. While consumer goods are more and more widely available in Amerindian communities, hunting and fishing still constitute an important source of food. According to Emmanuel Francis, a resident of Campbelltown, most the animals have fled since mining boomed in Mahdia;¹¹⁰ Daphne Wilkie also described how difficult it had become to hunt in the area.¹¹¹ In a study of mercury contamination in the Essequibo and Mazaruni river basins, a group of scientists asserted that deforestation associated with mining may also lead to greater erosion of mercury-laden soils into the rivers,¹¹² which would be another source for the mercury poisoning of the rivers described in Section B of this Part. Presumably, greater erosion also leads to the increased turbidity described in Section A of this Part.

E. MOSQUITO INFESTATION AND MALARIA

Mining operations divert creeks and turn segments of them into stationary ponds. When one mining

¹⁰⁸ EPA Mining Expert Interview, *supra* note 48. While in Mahdia, we observed the mountains of tailings left behind when mining pits are filled in and operations shift to another sector of a given claim. The tailings heaps were entirely devoid of any plant life.

¹⁰⁹ *Id.*

¹¹⁰ Campbelltown Residents Interview, *supra* note 52.

¹¹¹ Wilkie Interview, *supra* note 66. See also Interview with Lawrence Anselmo, former head of the APA, in Georgetown, Guy. (Oct. 27, 2005) [hereinafter Anselmo Interview].

¹¹² Miller et al., *supra* note 79, at 159.

pit has been mined out, it is often allowed to flood with creek and rain water to make drawing water for use in the next, adjacent pit more convenient and efficient.¹¹³ When mining activity ceases in an area, miners often neglect to fill in the pits they leave behind, allowing them to fill up with rain water. One of the cumulative environmental effects of mining, therefore, is to create numerous new bodies of standing water, which become breeding grounds for mosquitoes.

“We hadn’t so much of malaria before,” said Daphne Wilkie.¹¹⁴ She explained that with the upswing in mining, malaria and typhoid (which is often communicated through contaminated water) have become rampant in Mahdia.¹¹⁵ Historically, there were two strains of malaria that existed in this part of Guyana, but in recent years, a new strain from Brazil has made its appearance, requiring new treatments and new medications.¹¹⁶ Malaria is rampant among miners – most miners we interviewed said they had contracted malaria several times since arriving in Mahdia. They reported that the incidence in Mahdia is much worse than elsewhere in Guyana.¹¹⁷ The Amerindians in Campbelltown, too, have noted the surge in malaria cases – in particular, cases where one person is suffering from more than one strain of malaria simultaneously.¹¹⁸

The people who are hit the hardest are Amerindians in forest communities and the residents of remote mining camps. Kerrett-Persaud, the programme coordinator at SIMAP, reported that health facilities in Amerindian villages are sometimes overwhelmed, and the caregivers in the village ordinarily do not know for which strain of malaria to give medication.¹¹⁹ Quinine tablets are available at no charge at the public hospital in Mahdia, so the

miners, who live close to Mahdia or come to visit regularly, have access to treatment.¹²⁰ People who live farther from the landing, however, are affected more severely than either the residents of Campbelltown or the Mahdia miners because they have no means of visiting the hospital.

II. SOCIAL EFFECTS

Mining in Guyana has had widespread negative social effects in Amerindian communities. Comments from government officials, NGO employees, and Amerindians themselves indicate that the intrusion of mining into the otherwise isolated areas where Amerindians live has exacerbated the disruptions associated with the collision of traditional ways of life and modern Western culture. The results may include rising rates of alcoholism, unemployment, and single-parent families; these symptoms of societal transition, are, however, beyond the purview of this report. Instead, we focus on one discrete set of effects of the interaction of miners and Amerindians in and around mining settlements and camps: prostitution, trafficking in persons (TIP), and violence against women.

In every region where mining occurs, commercial and social centers known as “landings” coalesce. At these landings, consumer goods, accommodations, and entertainment are all available for miners returning from the backcountry with gold and other precious, tradable minerals.¹²¹ According to Rosemary Benjamin-Noble, the GGMC legal advisor, GGMC nominally administers landings in the interior.¹²² Due to the remoteness of most of

¹¹³ Miner Interviews, *supra* note 70.

¹¹⁴ Wilkie Interview, *supra* note 66.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Miner Interviews, *supra* note 70.

¹¹⁸ Campbelltown Residents Interview, *supra* note 52.

¹¹⁹ Kerrett-Persaud Interview, *supra* note 71.

¹²⁰ Miner Interviews, *supra* note 70.

¹²¹ Benjamin-Noble Interview, *supra* note 42; Authors’ observations, Mahdia, Guy. (Jan. 2005). Benjamin-Noble indicated, however, that legal jurisdiction over the landings was still unclear, and that she had been attempting to ascertain the true nature of authority in those communities. Her comments, therefore, seemed to suggest that GGMC has taken over administration of landings in the absence of a formal grant of authority.

¹²² See Benjamin-Noble Interview, *supra* note 42. This may generally be the case, but our observations seem to

the landings and mining camps, transportation in and out can be quite difficult, posing problems for law enforcement.

A. PROSTITUTION

The mining camps are generally staffed by coastland men, who are either single or have left their families behind in the coastal settlements, and by Amerindians, who leave their villages to find temporary work.¹²³ Miners in the Mahdia area report that they typically work for six to eight weeks without breaks; when the mining operation is close enough to town, they may occasionally go to town in the evenings. When the operation is further out in the rainforest, they may only come into Mahdia once every several weeks. In this environment characterized by large numbers of single men with raw gold in their pockets, drugs and prostitution are common.¹²⁴ While many – perhaps most – of the prostitutes in Mahdia and other mining areas are coastland women who are drawn to the landings as a means of making money, a fair number of them are women and girls from local Amerindian villages.¹²⁵ The social impact of the prostitution of

indicate that Mahdia, which was originally just a landing, has outgrown that status and acquired its own regional government.

¹²³ Miner Interviews, *supra* note 70; interview with Corporal Cranston Daw, Mahdia Police Force, in Mahdia, Guy. (Jan. 19, 2005) [hereinafter Daw Interview].

¹²⁴ Interview with Officer, Western Embassy, Georgetown, Guy. (Jan. 11, 2005) [hereinafter Officer Interview]; Daw Interview, *supra* note 123; Rohini Kerrett-Persaud confirmed that the same is true of Kamarang in the Upper Mazaruni, as well. Kerrett-Persaud Interview, *supra* note 71.

¹²⁵ Kerrett-Persaud Interview, *supra* note 71. Jannette Forte states that the all the girls leaving Kamarang Primary School in 1991 reported wanting to do something “in support of mining” – a thinly veiled reference to prostitution. Forte, *supra* note 68, at 82. Jack Morgan recognized the destructive influence of prostitution on Amerindian communities and asserted, “When we hear women are going out [from Amerindian villages] to the landings to get involved in prostitution, we take action against that [W]e call the police in.” Morgan Interview, *supra* note 76. Roxanne George, a

Amerindian women is felt keenly in the communities they leave behind. For example, the exposure of Amerindian women to sexually transmitted diseases, particularly HIV,¹²⁶ means that these devastating diseases are eventually introduced into the relatively insular society of the village, a situation that may easily overcome the capacities of the rudimentary health care facilities available in the hinterlands.

B. TRAFFICKING IN PERSONS (TIP)

A significant number of women in Guyana are forced into prostitution through trafficking. They are kidnapped or lured through deception to mining areas and prevented by poverty or violence (actual or threatened) from leaving prostitution and returning to their communities.

In 2004, Guyana was included on the U.S. list of nations with a significant incidence of TIP that had failed to take action to combat the problem.¹²⁷

High Court judge, and Corporal Cranston Daw of the Mahdia police force, however, stated that anti-prostitution laws are almost never enforced in Guyana, and that prostitutes are generally left free to ply their trade. Interview with Roxanne George, High Court judge, Georgetown, Guy. (Jan. 7, 2005) [hereinafter George Interview]; Daw Interview, *supra* note 123.

¹²⁶ Forte remarks on the elevated HIV rates among interior workers, noting that there is a marked lack of HIV education among both miners and interior youth. Forte, *supra* note 68, at 82. According to Mike McCormack, director, Guyana Human Rights Commission, at 2.5% of the population, Guyana’s HIV rate is the second worst in the hemisphere, behind only Haiti. Interview with Mike McCormack, Guyana Human Rights Commission, in Georgetown, Guy. (Jan. 10, 2005) [hereinafter McCormack Interview].

¹²⁷ U.S. DEPARTMENT OF JUSTICE, TRAFFICKING IN PERSONS REPORT 238 (2004), *available at* <http://www.state.gov/g/tip/rls/tiprpt/2004/> (last visited Oct. 17, 2005). In 2005, Guyana responded to pressure by the United States regarding this issue and passed a law designed to address the trafficking issue, moving it from the tier of countries with a significant incidence of trafficking in persons that had failed to take action (tier 3) into the tier of countries (tier 2) that have

According to an officer at the embassy of a Western nation in Georgetown, young women are taken from their homes and brought to towns and cities, where they are forced into prostitution.¹²⁸ They generally cannot escape because transportation back home is either non-existent or too expensive for them to afford.¹²⁹ According to the officer, mining areas are particularly attractive destinations for traffickers, both because of the composition of the population there and because of the ease of escaping prosecution; the light police enforcement, difficulty of transportation, transience of communities, and weakness of underlying social structures all make it very difficult to track down and catch TIP culprits in the interior.¹³⁰ Jack Morgan, who was one of the people chosen to coordinate anti-TIP efforts as part of Guyana's reaction to its inclusion on the U.S. TIP list, affirmed that "mining areas are most targeted for these activities."¹³¹

Amerindians' involvement in the trafficking problem, both as traffickers and victims, seems to stem from their proximity to mining areas,

begun to address TIP within their borders. However, the embassy official indicated that the Guyanese government has not taken any steps to enforce the trafficking law. Officer Interview, *supra* note 124. See also U.S. DEPARTMENT OF JUSTICE, TRAFFICKING IN PERSONS REPORT (2005), available at <http://www.state.gov/g/tip/rls/tiprpt/2005/> (last visited Mar. 6, 2007). According to the most recent report on trafficking in persons, "Guyana is a country of origin, transit, and destination for young women and children trafficked for the purposes of sexual and labor exploitation Much of this trafficking takes place in remote areas of the interior, or involves Amerindian girls from the interior trafficked to coastal areas to engage in prostitution and involuntary domestic servitude." The report also indicates that Guyana has been slow to enforce its anti-trafficking law. U.S. DEPARTMENT OF JUSTICE, TRAFFICKING IN PERSONS REPORT (2006), available at <http://www.state.gov/g/tip/rls/tiprpt/2006/> (last visited Mar. 6, 2007).

¹²⁸ Officer Interview, *supra* note 124.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Morgan Interview, *supra* note 76.

combined with their relative poverty and the lack of economic opportunities in their communities. Jack Morgan reported visiting the mining area of Derima, where he uncovered the case of an Amerindian woman who had taken advantage of the confidence of her fellow villagers to lure girls away from her home village with promises of lucrative jobs. She brought the girls to work in her store at the landing, and then forced them to prostitute themselves in order to pay for their room and board.¹³²

C. RAPE

Another troubling consequence of the growing interactions between miners and Amerindians in the interior is sexual violence perpetrated by coastlanders against Amerindian women. Jannette Forte noted that the Jawalla police force in the Upper Mazaruni has reported many instances of rape of Amerindian girls by miners.¹³³ Cranston Daw, a corporal in the Guyana Police Force stationed in Mahdia, reported that Amerindian men in Mahdia try to avoid working with the coastlanders on mining operations because the latter have a reputation for entering Amerindian villages without permission and having sex with Amerindian women. Corporal Daw further explained that when Amerindian men are away from their villages working at the mines, coastland miners have been known to enter the villages and rape their wives. "The Amerindian women are too timid," he said, "so lots of times they don't even report it. Instead, they just move away."¹³⁴

Police investigation and prosecution of rape cases also appears to be inadequate. A 1999 report by Amerindian groups and the Forest Peoples Programme found that in the Upper Mazaruni

¹³² *Id.* According to Mike McCormack of the Guyana Human Rights Association, much of the trafficking that takes place in Amerindian communities happens with the complicity of local residents. He said that Mahdia is a particularly major center for trafficking in persons. McCormack Interview, *supra* note 126.

¹³³ Forte, *supra* note 68, at 82.

¹³⁴ Daw Interview, *supra* note 123.

region, a major mining center, “[f]requent acts of sexual abuses, including rape, perpetrated against Amerindian women occur without investigation.”¹³⁵ Roxanne George, a High Court judge and former director of public prosecution, stated that the lack of female constables and the slowness of formal justice in the interior leads to underreporting of rape and the failure to prosecute effectively in the cases in which rape is reported.¹³⁶ International human rights law obligates states to investigate and prosecute every known case of rape, and Guyana appears to be failing in this obligation.

¹³⁵ MAZULINGOK, *supra* note 72, at 4.

¹³⁶ George Interview, *supra* note 125.

CHAPTER 4: ANALYSIS AND CRITIQUE OF GOVERNMENT REGULATION OF MINING

This chapter provides a comprehensive analysis of the current regulatory regime for mining operations in Guyana. It reveals that the poor design and implementation of the relevant laws are key causes of gold mining's harmful effects on Amerindians and that improvements in the regulatory regime could benefit all Guyanese citizens. This critique draws on three sets of legal documents from the Guyanese government, direct observations, interviews conducted with government officials and miners in Guyana, and secondary sources. Relevant law includes the Mining Act¹³⁷ and its implementing regulations,¹³⁸ including the 2005 Regulations¹³⁹ and a new set of draft regulations (Draft Regulations); the Guyana Gold Board Act; and the Amerindian Act, including the proposed new draft. Part I introduces the relevant laws; Part II dissects the regulatory regime for mining; and Part III explains structural flaws in Guyana's governance that contribute to the ineffectiveness of government oversight of gold mining.

I. RELEVANT LAW

A. MINING ACT AND REGULATIONS

The Mining Act of 1989 and its accompanying regulations (Mining Regulations) provide primarily for the administration of prospecting permits and mining licenses for mining operations. The Act's purpose is "to make provisions with respect to prospecting for and mining of metals, minerals and precious stones, for regulating their conveyance and

¹³⁷ Mining Act, 1989 (Guy.).

¹³⁸ Mining Regulations, 1973 (Guy.).

¹³⁹ Mining (Amendment) Regulations, 2005 (Guy.).

for matters connected therewith."¹⁴⁰ They classify mines operations into three different sizes: small, medium, and large scale. In practice, the overwhelming majority of currently operating mining operations in Guyana are small scale.¹⁴¹ The Omai mine was the only large scale mine in Guyana, although two more large scale mines are slated to open in the coming years.¹⁴² About ten were medium scale as of October 2005, and the rest of the mines in Guyana are small scale.

Until recently, the Mining Regulations contained few provisions aimed at mitigating the effects of mining activities on Amerindians and the environment. A new set of amendments to the Mining Regulations was proposed in 2003 and enacted in 2005; according to the chief mines officer of GGMC, they were supposed to be fully implemented by the end of 2005.¹⁴³ These amendments primarily address environmental issues, including the regulation of poisonous substances and the reduction of water pollution. They ignore, however, some major environmental problems associated with mining and do little to improve the living conditions for miners or to protect Amerindians. They also fail to address major structural issues in the administration of mining, including problems with enforceability and corruption that undermine any serious regulatory effort.

¹⁴⁰ Mining Act, 1989.

¹⁴¹ Butters Interview, *supra* note 44 (reporting that in 2004, there were 9,062 small mines, and that about 500 more were added in 2005).

¹⁴² Benn Interview II, *supra* note 47. According to Martin Cheong, Romanex Guyana Exploration Ltd., a subsidiary of international giant Vanessa Ventures, has a permit to mine in the Marudi Mountains; other large scale operations are still in the prospecting stage, and Omai may reopen on a limited basis in order to mine gold deposits that have been made profitable by the skyrocketing price of gold. Email from Martin Cheong, *supra* note 54.

¹⁴³ Telephone Interview with Rosemary Benjamin-Noble, legal advisor, GGMC (Sept. 22, 2005) [hereinafter Benjamin-Noble Telephone Interview]; Benjamin-Noble Interview II, *supra* note 41; Butters Interview, *supra* note 44; and Shields Interview II, *supra* note 100.

The Draft Regulations do provide detailed requirements for mining procedures that, if implemented, may mitigate the environmental and social harm caused by gold mining. However, given the lack of political will to impose additional constraints on miners – Linton Butters, acting chief mines officer, told the team that visited Guyana in October 2005 that the new monitoring provisions might be disregarded if the mining industry disapproved¹⁴⁴ – it may be a very long time before the procedures detailed in the 2005 Regulations are implemented.

B. GOLD BOARD ACT

The GGB was established by the Gold Board Act in 1981 and began operating in 1983.¹⁴⁵ Its primary function is to purchase all gold produced in Guyana and to sell the majority of it on the international market, setting aside a small fraction for sale to domestic jewelers.¹⁴⁶ The Guyanese government created the GGB to ensure the capture of the government's due share of mining royalties by preventing the sale of gold on the black market. The status of the GGB as an entity independent of GGMC is unclear. Although GGB is technically

separate from GGMC, it is housed within the same building as GGMC.¹⁴⁷

While the GGB is the only body that can legally purchase unprocessed gold in Guyana, the provisions of the Gold Board Act do little to ensure enforcement of this requirement. The GGB pays the London Fixed Rate for the gold as an incentive for miners to sell to it and thereby ensure government capture of royalty and tax revenues.¹⁴⁸ Despite this effort, a number of miners choose to circumvent the GGB by selling their gold directly abroad in order to avoid paying royalties and taxes. It is unclear how much revenue is lost from the smuggling of gold, but it is probable that significant amounts of gold are smuggled across the borders.¹⁴⁹

C. AMERINDIAN ACT

The Amerindian Act primarily establishes the governing bodies of Amerindians and sets forth the rights of Amerindians regarding land tenure. These rights are relevant to mining because mining operations are often conducted on or near land occupied by Amerindians and because Amerindian communities who have titled land sometimes grant mining rights to miners in return for a fee. While the old Amerindian Act does not cover these arrangements, the newly amended Amerindian Act addresses the terms of these agreements explicitly. Proponents of these provisions argue that the new provisions will help the Amerindians negotiate more beneficial (and enforceable) agreements with miners, but the new Act also disempowers

¹⁴⁴ Butters Interview, *supra* note 44.

¹⁴⁵ Gold Board Act, 1981, § 3 (Guy.).

¹⁴⁶ According to GGB Financial Manager Anantiram Balram, most of the gold bought by GGB is exported for sale; it is sent to an international brokerage company called Mitsui with offices in Sydney, Hong Kong, Tokyo, London, and New York City. Proceeds from the sale of gold abroad are returned to Guyana in the form of U.S. dollars; thus, GGB is a significant source of foreign currency for the Guyanese Ministry of Finance. In fact, GGB's theoretical monopoly on gold is so complete that under Section 7(2) of the Gold Board Act, private persons cannot legally hold raw gold in their home as an investment; they must bring it in and sell it to GGB. This policy is part of GGB's efforts to end smuggling. Jewelers, however, may hold gold for their professional use, and Guyanese persons are permitted to own gold jewelry. Balram expressed the opinion that although jewelers buy some of their gold from GGB, they are still buying most of their gold from the black market. Balram Interview, *supra* note 40.

¹⁴⁷ When asked whether GGB is part of GGMC, its Financial Manager, Anantiram Balram, responded “[y]es, but in terms of paperwork and the Constitution, no.” He also expressed the view that GGB helps GGMC in several significant ways, most notably by ensuring that the government manages to collect at least some of the revenues from illegal mining (i.e., mining that GGMC has failed to regulate). Balram Interview, *supra* note 40.

¹⁴⁸ The London Fixed Rate is the standard international price for gold.

¹⁴⁹ Benn Interview II, *supra* note 47 (estimating that miners produce three times as much gold as they declare).

Amerindians by giving authority to the minister of mines to veto communities' contractual arrangements and to override the vote of a supermajority of an Amerindian community to reject proposals for large-scale mining if the government has determined that it is in the public interest for the mining operation to take place on Amerindian lands.¹⁵⁰

II. MINING-RELATED LAWS AND ENFORCEMENT REGIME

This Part analyzes the provisions of the acts and regulations described in Part I. Each subsection considers both the flaws in these laws and regulations and the government's difficulties in enforcing them. It also considers any potential effects of recent revisions to the laws or regulations.

A. PROPERTY RIGHTS REGIME

Under Guyanese law, the state has almost unlimited title to subsurface minerals, and its decisions as to the disposal of these minerals take precedence over most surface rights. According to Section 6 of the Mining Act, "all minerals within the lands of Guyana shall vest in the state."¹⁵¹ The state reserves the right to grant mining licenses or permits to enter on private lands granted after 1903 or government lands in order to "search or mine for, take and appropriate, any minerals."¹⁵² Lands granted after 1903 do not come with a right to the minerals beneath the surface,¹⁵³ which means that, subject to

certain restrictions, the government can legally grant a miner the right to mine on most private property in Guyana.¹⁵⁴ In addition, the government retains complete discretion over which land can be mined and who mines it.

While it is not uncommon for a government to retain subsurface rights for land within its territory, the policies of the Guyanese government give mine license-holders excessive entitlement to extract minerals, often placing the rights of miners ahead of those of surface holders and above environmental concerns. There is also a lack of coordination with other agencies – particularly the GFC – regarding appropriate land uses. The failure of the government to place stricter and more specific regulations on mining activities leads to environmental damage, interference with the rights of property holders and Amerindians, and a haphazard patchwork of mining claims and permits that has become increasingly difficult to regulate. The invasive nature of gold mining means that granting miners access to subsurface minerals results in significant interference with the use of the land by owners and occupiers. In addition, the virtual irreversibility of the effects of mining leads to a significant and near-permanent degradation and devaluation of the land.

1. ORGANIZATION AND COORDINATION PROBLEMS

While it is important for the government to have the power to determine where and how mining is carried out, the almost unlimited discretion of the Minister of Mines¹⁵⁵ under the Mining Act and Mining Regulations to administer mining claims not only causes uncertainty and confusion, thereby threatening the ability of the government to

¹⁵⁰ Interview with Fergus MacKay, Coordinator, Forest Peoples Programme, in Georgetown, Guy. (Oct. 21, 2005).

¹⁵¹ Mining Act, 1989, § 7.

¹⁵² Mining Act, 1989, § 7.(1)-7.(2). The owner of private lands granted before the passing of the Mining Ordinance of 1903 retains the right to precious metals on his land but not to precious stones. These owners still need to obtain a mining permit to extract precious metals from their land, however, and must pay the government royalties on whatever they extract. *Id.* § 8.(1), 8.(5), 8.(3).

¹⁵³ *Id.* § 9.

¹⁵⁴ "The Minister may by order direct that prospecting or mining for any mineral specified therein shall be carried out throughout Guyana, or in any area specified in the order, only by the Government, by a public corporation, or by a corporate body in which controlling interest vests in the State or in any agency on behalf of the State." *Id.* § 10.

¹⁵⁵ The prime minister has held this portfolio since Guyana's independence.

administer provisions of the law properly, but also accords little respect to the rights of surface users and owners. Better planning on the part of the government can help to avoid a number of these problems without reducing the government's mining revenue.

The discretion given to the government to issue and revoke claims opens the door to a number of problems. Broad governmental discretion creates uncertainty when both miners and property holders possess only very limited protections against government action to divest them of their rights. In addition, the failure of the government to provide an integrated plan for the granting of mining licenses leads to a haphazard placement of mining claims, causing unnecessary environmental damage. The scattershot location of claims makes it particularly difficult for the few mines officers to inspect mine operations regularly and to detect illegal mines. Haphazard claim placement also increases conflicts between miners, which must be settled by these same officers.¹⁵⁶ The number of disputes could be reduced and the administration of mining made smoother if the Mining Regulations set out a policy regarding appropriate locations for mining activities and required greater coordination with property holders and government agencies.

2. SUBORDINATION OF SURFACE ACTIVITY AND RIGHTS TO MINING

The Mining Act and Mining Regulations give near-absolute precedence to the rights of miners over the rights of surface users. While the government may have good reasons for reserving control over subsurface rights, its approach fails to balance the rights of occupiers and property owners to use and enjoy their land with the benefits of mining.

The minimal protections provided by the Mining Regulations to holders of surface rights are overshadowed and often trumped by the rights of miners. "Lawful occupiers," such as

Amerindians,¹⁵⁷ are granted even fewer protections than property owners. Sections 81, 84, and 85 of the Mining Act set out the few restrictions on the activities of miners. For example, miners are not allowed to operate within two hundred meters distance from towns, villages, public works, or occupied buildings,¹⁵⁸ and fifty meters distance from cultivated fields¹⁵⁹ – a very small buffer. Furthermore, the Mining Regulations provide little protection for water sources near these fields or buildings.¹⁶⁰

The government gives miners not only subsurface rights but also extensive surface rights, which encroach on the rights of property owners and lawful occupiers granted elsewhere in the Mining Regulations. In addition to granting miners a right to access subsurface minerals, the Mining Regulations confer on a license-holder the right to "the use and enjoyment of the surface included within the boundary lines of the claim."¹⁶¹ The miner does not have a right to exclude all people from the claim,¹⁶² but the activities of the miner are

¹⁵⁷ "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 settlement, shall be deemed to be lawfully occupied by them." Mining Act, 1989, § 112.

¹⁵⁸ *Id.* § 81.(1)(a). The team that visited the Upper Mazaruni in October 2005 observed this rule in action in the Akawaio village of Kamaru. Just across the Mazaruni River – 200 meters – from Kamaru is a small scale mining operation, and the noise of the dredge disturbs village life all day and sometimes late into the night. Furthermore, the effluent from the mine's tailings pipe makes the river at Kamaru unfit for most uses.

¹⁵⁹ *Id.* § 81.(1)(b).

¹⁶⁰ Under the new regulations, mining and quarrying activities are prohibited within twenty feet of the low tide mark of all river banks save for dredge access. Mining (Amendment) Regulations, 2005, § 251(1)(a). Also prohibited are dry mining and excavation in watersheds without the commissioner's permission. *Id.* § 251(3). These rules do not, however, seem to rule out disposal of tailings near rivers.

¹⁶¹ Mining Regulations, 1973, § 23.

¹⁶² Miners must allow people who are 1) passing through the claim to access other land, 2) "duly authorized to cut

¹⁵⁶ See *infra*, Section 4.II.C for a further discussion of enforcement problems.

almost certain to interfere with the ability of owners or occupiers to benefit from the resources on the land.¹⁶³ While certain surface rights are necessary for the miners to carry out their mining operations, the Mining Regulations place few restrictions on the activities of miners once the mining license has been granted.

Under the Mining Regulations, miners can and do severely restrict the lawful occupier's use of the land, which leads to environmental degradation and reduced access to necessities like food and water. Under Section 84, a lawful occupier retains a right to graze cattle and cultivate land on a mining claim granted within the territory he lawfully occupies – but only as long as his activities do not interfere with the prospecting or mining in the area. This occupier also must obtain permission from the miner to erect buildings within the claim. While the holder of a mining or prospecting license is under a duty to act reasonably with regard to the lawful occupier,¹⁶⁴ this guidance is vague and unlikely to be enforced. Though Section 83.(4) provides that mining operations shall not interfere with fishing or navigation of lawful occupiers,¹⁶⁵ such interference is permitted if the miner gives prior notice in writing to GGMC. The ability of GGMC to abrogate these limited protections severely compromises lawful occupiers' ability to prevent the contamination of their creeks and rivers. Essentially, the Regulations allow for all property rights of a legal occupier to be erased without any notice or consultation simply as the result of an administrative transaction between a miner and GGMC.

timber or take produce," or 3) lessees with approval by the commissioner in writing. These rights are "to convey across such land any machinery, equipment, materials or stores required for mining purposes, and to construct any road, railway, tramway or cableway and to erect and maintain any pipe-line, telegraph, telephone or transmission line or other contrivance in such manner and on such conditions as the Commissioner may approve." *Id.*

¹⁶³ *Id.*

¹⁶⁴ Mining Act, 1989, § 84.(3).

¹⁶⁵ *Id.* § 83.(4).

A property owner who suffers damage as a result of mining operations is entitled to compensation only under limited circumstances. Section 85.(1) of the Mining Act provides for the payment of "fair and reasonable compensation to the holder of any right, title or interest in or over that parcel of land in accordance with his right, title or interest."¹⁶⁶ This provision may not provide protection for lawful occupiers.¹⁶⁷ Furthermore, collection of any compensation would be hindered by the courts' ineffectiveness.¹⁶⁸ When asked whether a property owner who suffers normal damage – for example, if a mine necessitates the destruction of a building or a home – will receive any compensation, the legal advisor of GGMC said, "only rarely."¹⁶⁹

The invasive nature of mining operations and the permanence of the damage caused make the effects of mining's supremacy over surface rights in Guyana particularly severe. As discussed above, mining activity in Guyana generally involves clear-cutting of rainforest and leaves behind lasting landscapes of barren sand and clay. Even if efforts were made to retain a certain portion of topsoil for later replanting, the nutrients in the soil would probably be washed away before they could be replaced.¹⁷⁰ The rainforest is a delicate ecosystem, and even in places where trees have been destroyed naturally by fire, it can take hundreds of years for trees to return.¹⁷¹

In practice, the limited rights granted to property owners and lawful occupiers have led to significant environmental damage. The nature of the rights granted to miners gives them wide discretion over

¹⁶⁶ *Id.* § 85.(1).

¹⁶⁷ It is not completely clear what sort of a compensable interest a lawful occupier might have. We read this statute to apply only to those with title to land, but that is not necessarily the case in every example.

¹⁶⁸ See *infra* Section 4.III.B.

¹⁶⁹ Benjamin-Noble Interview II, *supra* note 41.

¹⁷⁰ EPA Mining Expert Interview, *supra* note 48.

¹⁷¹ See INTERNATIONAL TROPICAL TIMBER COUNCIL, ACHIEVING THE ITTO OBJECTIVE 2000 AND SUSTAINABLE FOREST MANAGEMENT IN GUYANA – REPORT OF THE DIAGNOSTIC MISSION 10 (2003).

the use of land in which they have little interest other than for its subsurface resources. They have no vested interest in minimizing environmental impact, and as a result, they often fail to mitigate the harmful effects of their activities. Granting more rights to owners and lawful occupiers would help ensure that the people who do have vested interests in preserving the natural environment are empowered to protect it.

3. RIGHTS OF AMERINDIANS

The Amerindian Act also confers few rights on Amerindians to exclude miners from their titled land and even fewer on those who only hold the status of lawful occupiers. The government has also failed to address the claims of Amerindians to titles for land they have occupied for centuries.¹⁷² The combination of these factors constitutes a severe violation of the rights of Amerindians and leaves them in a vulnerable position in comparison to miners.

A number of Amerindian communities have filed suit against the Guyanese government over title to their land. These cases have stalled for years in the courts, and the government has made no real effort to respond to these long-pending cases, either through the court system or through other channels.¹⁷³ In the meantime, the government has permitted miners to prospect and mine on disputed lands, such that by the time the land disputes are resolved, the lands in question may no longer be fit for use by the Amerindian communities claiming them.¹⁷⁴ The government has failed to conduct accurate surveys of land in the interior in order to determine which pieces of land are being contested so they can be barred from prospecting, and it has refused to rely on detailed and accurate maps created by communities in coordination with the

APA.¹⁷⁵ The failure to conduct this evaluation only exacerbates the conflicts between Amerindians and predominantly small scale miners who seek claim licenses for lands to which Amerindians assert title. Considering the irreversibility of much of the harm caused by mining operations, the failure of the government to address concerns of Amerindians may cause serious injury to these communities.

The government also fails to provide adequate protections for Amerindian communities with titled land. The current Amerindian Act provides:

Notwithstanding anything to the contrary in this Act, no title (including any rights of management or control, other than those as may be conferred by rules or regulations made under this Act) to—

rivers and all lands sixty-six feet landwards from the mean-low water mark;

minerals or mining rights in or over any land;

shall be deemed to have been transferred to, or vested in a Council.¹⁷⁶

Rights to exclude miners from their titled land are, therefore, unclear.

The 2006 Amerindian Act reduces Amerindian communities' control over their lands yet further. Section 48 provides that a miner must obtain permission from two thirds of the residents of an Amerindian community if he wishes to carry out mining activities on community lands or nearby water sources.¹⁷⁷ Under Section 50, however, the minister of mines can grant large scale mining permits on those lands if he determines that it

¹⁷² Interview with Martin Cheong, program coordinator, APA, in Georgetown, Guy. (Oct. 21, 2005) [hereinafter Cheong Interview].

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Interview with Kid James, program assistant, APA, in Georgetown, Guy., January 6, 2005.

¹⁷⁶ Amerindian Act, 1976, § 22(2)(a) and (b) (Guy.).

¹⁷⁷ Amerindian Act, 2006 (Guy.).

would be in the public interest, even if the community has vetoed the proposal.¹⁷⁸ This provision significantly undercuts the powers granted to the community under Section 48.

The Mining Act and Mining Regulations provide Amerindians with some mining rights not granted to non-Amerindians, but these rights do not ameliorate any of the problems above and do little to benefit Amerindians and their communities. For example, Section 111 of the Mining Act specifies that the enactment of the Mining Act should not affect the previously existing rights of Amerindians.¹⁷⁹ The Act does not, however, specify what these rights are and provides that they do not apply to any land already subject to a license.¹⁸⁰

B. ENVIRONMENTAL PROTECTION

The Mining Regulations currently in force fail to protect the environment adequately from the effects of mining operations. While certain restrictions are placed on the use of poisonous substances and the pollution of water sources with sediment, overall, there is little expectation that miners should take responsibility for harms they cause to the environment. The 2005 Regulations provide greater environmental protection, but they were only enacted in April 2005 – more than two years after they were first proposed – and have yet to be fully implemented.¹⁸¹ The 2005 Regulations hold miners responsible for all damage to the environment that occurs as a result of “normal mining activities carried on in the area where his operation is legally permitted.”¹⁸² While a mine operator will be able to

reduce his liability by demonstrating that there was already damage to the environment when the miner started operations,¹⁸³ the burden will be on the operator to prove such pre-existing damage. The 2005 Regulations, however, do not spell out exactly what this “responsibility” entails. Furthermore, it is unclear whether this responsibility applies to the small scale miners, who constitute the vast majority of the mining population.

1. WATER RIGHTS

According to the current Mining Regulations, miners can hold claims on any water-course that is non-navigable. Only dredging concessions or river locations can include the bed of a navigable river.¹⁸⁴ Navigability is to be determined by the commissioner of GGMC or by a mines officer.¹⁸⁵

Until the passage of the 2005 Regulations, the Mining Regulations barely addressed the subject of water quality.¹⁸⁶ There were prohibitions on some misuses of water-courses, but these restrictions were inadequate to prevent unnecessary environmental damage. Regulation 59 prohibits the flooding of any concession or water damage to “any road, railway, trail or other means of access necessarily used by others,”¹⁸⁷ and Regulation 61 prohibits the use of a natural water-course as a part of a water-race.¹⁸⁸ While water can be drawn from the creek

¹⁷⁸ *Id.* § 50.

¹⁷⁹ Mining Act, 1989, § 111.

¹⁸⁰ *Id.* § 114.

¹⁸¹ Benjamin-Noble Telephone Interview, *supra* note 143; Benjamin-Noble Interview II, *supra* note 41; Butters Interview, *supra* note 44; Shields Interview, *supra* note 92.

¹⁸² Mining (Amendment) Regulations, 2005, § 244. On the face of it, this provision should apply to all miners. However, Robeson Benn asserted that these provisions do not apply to small scale miners. Benn Interview II, *supra* note 47.

¹⁸³ Mining (Amendment) Regulations, 2005, § 243.

¹⁸⁴ Mining Regulations, 1973, § 55.

¹⁸⁵ *Id.* § 56.

¹⁸⁶ *Id.* § 58.

¹⁸⁷ *Id.* § 59.

¹⁸⁸ A water-race is “an artificial channel built to transport water and use its energy,” Lake and Water Word Glossary, North American Lake Management Society, *available at* http://www.nalms.org/glossary/lkword_r.htm (last visited Apr. 14, 2006). A race is used in mining to bring water from a water source to a mining site to wash the gold-bearing mud; it can also be used to sluice tailings back into a stream or river. *See, e.g.*, New Zealand Goldmining and Goldfields, *available at* <http://www.uniquelynz.com/nzgold.htm> (last visited Apr. 14, 2006).

or river at certain points, no creek can form a part of the water-race itself.¹⁸⁹ Furthermore, under Regulations 107 and 108, mines officers could reserve creeks for drinking water purposes only,¹⁹⁰ and anyone who willfully or negligently contaminated a source of drinking water, such as a well, reservoir, or designated creek, would be subject to a fine of 15,000 Guyanese dollars (approximately US\$75).¹⁹¹ The severe environmental harm caused by mining to creeks and rivers in the past several years (and the resultant harm to humans dependent upon these ecosystems), however, shows that these regulations were ineffective in preventing water pollution. Nearly complete lack of specificity and comprehensiveness in the pre-2005 regulations and widespread failures in enforcement demonstrated the need for further action against water pollution by miners.

The 2005 Regulations, which contain important advances on water regulation, represent some action though gaps in protection remain. Regulation 240 provides for sorely needed controls on the amount of sediment that may be released into creeks and rivers. The regulation provides that the GGMC commissioner may limit the number of dredges and the methods of mining permissible in a given area based on the amount and effects of tailings discharges in that area.¹⁹² At the request of the commissioner, mines officers or mining operators can be empowered to make determinations on the controls necessary based on soil samples.¹⁹³ Both land and river operators are now required to discharge tailings into a tailings pond instead of dumping directly into rivers. Discharge from these ponds is not allowed to exceed the limits stipulated in Regulation 240(3)(b). If an operator exceeds these limits, he has twenty-four hours to rectify the problem, after which a mines officer is required to

place a cease work order on the offending operation.¹⁹⁴ In addition, mining operators are required to keep a daily record of sediment levels and to cease operations if levels exceed the specified limits.¹⁹⁵

Given that the only regulation in force directly related to disposal of mining waste is Regulation 64, which indicates that the proper way to dispose of tailings is to channel them into a nearby creek or river,¹⁹⁶ these provisions in the 2005 Regulations represent an improvement over the 1973 regulatory scheme for disposal of tailings and monitoring of water quality. In some ways, though, they create new enforcement problems and fail to solve existing ones. For example, it is unrealistic to expect mining operators to keep accurate records of sediment levels in their wastewater, and it is a near impossible task for mines officers to monitor the operations of miners adequately. Once sediment reaches creeks and rivers, it is very difficult to trace its source, so regular monitoring of individual mining operations remains the best way to discover violations. Finally, even armed with cease work orders, it is likely to be very difficult for mines officers to force operators to desist from violating the law.

In addition, it should be remembered that until the 2005 Regulations are fully implemented, the 1973 Regulations are still in effect.¹⁹⁷ The currently

¹⁸⁹ Mining Regulations, 1973, § 61.

¹⁹⁰ *Id.* § 107.

¹⁹¹ *Id.* § 108. This fine is hardly a deterrent to gold miners given that US\$75 is worth less than a quarter ounce of gold. Gold Price Website, *supra* note 88.

¹⁹² Mining (Amendment) Regulations 2005, § 240(1)(a).

¹⁹³ *Id.* § 240(1)(b).

¹⁹⁴ *Id.* § 240(3)(e).

¹⁹⁵ *Id.* § 240(4). If a mines officer finds an operator to be in violation of the specifications on more than three separate occasions, the mines officer is to immediately issue a cease work order for no less than fourteen days and must employ the services of a “duly qualified person to rectify the resulting damage.” A breach of this regulation can result in a fine of 25,000 Guyanese dollars (US\$125) and imprisonment of up to one month. *Id.* § 240(5).

¹⁹⁶ Mining Regulations, 1973, § 64.

¹⁹⁷ Linton Butters told the team that visited Guyana in October 2005 that the 2005 Regulations were not yet in force because the necessary administrative procedures and forms had not yet been made available. Butters Interview, *supra* note 44. Butters later reported that the 2005 Regulations would be fully implemented by October of 2006. *See* Telephone Interview with Linton

prevailing method of tailings disposal leads to pollution of creeks, negatively impacting aquatic and human life.¹⁹⁸ The environmental effects of tailings disposal are quite significant, and appropriate protection of creeks requires more specific regulation than Regulation 64 provides and more realistic enforcement provisions than those contained in the 2005 Regulations.

2. USE OF POISONOUS SUBSTANCES IN MINES

While the use of poisonous substances in mines, the containment and release of contaminated water, the protection from cyanide and mercury fumes, and the wearing of protective gear have always been subjects of regulation, the 2005 Regulations have added much-needed specificity and created enforcement mechanisms that were previously lacking. The Mining Regulations now limit the use of mercury to small and medium scale operations¹⁹⁹ and impose fines for violations.²⁰⁰ More detailed requirements are set out for the storage and use of mercury,²⁰¹ and provisions are made for the clean-up of polluted areas when so ordered by a mines

officer.²⁰² The Mining Regulations have also become more specific on the means to effect mining safety, e.g., they now require the use of a retort, which protects the environment and the health of miners by trapping the mercury vapor produced when gold amalgam is burned to obtain pure gold.²⁰³ The amendments have also added stringent enforcement and penalty provisions, like the proscription that repeated breaches of the mercury guidelines will lead to increasingly severe punishment.²⁰⁴

The 2005 Regulations also provide for more extensive regulation of cyanide, including a requirement that small, medium, and large scale mine operators acquire a permit to use cyanide. While they provide much needed clarification regarding the use of both cyanide and mercury, they regulate cyanide more heavily than mercury.²⁰⁵ The disparate treatment is questionable considering the fact that mercury is used so much more than cyanide in Guyanese mining; in fact, to date, only Omai is known to have used cyanide in its mining processes.²⁰⁶ While some medium scale operations are considering the use of cyanide,²⁰⁷ it is unlikely that the chemical will be used by small scale miners in the near future. Thus, while the widespread use of mercury by miners would increase the demand

Butters, acting chief mines officer, GGMC, (May 24, 2006) [hereinafter Butters Telephone Interview].

¹⁹⁸ Mining Regulations, 1973, § 64. Interestingly, despite the officially published rules, hand-written notes observed by the January research team on then-Chief Mines Officer Jack Morgan's copy of the Mining Regulations indicated that this policy has been reversed or was at least no longer official practice at GGMC. According to these revisions, the regulation stated, "The natural channel of the river or creek shall be considered as a public tail race, and all claim-holders shall (not) be entitled to, and ~~if required by a mines officer,~~ shall (not) turn their tail water into the river or creek at the end of their claims, (except with permission of the Commissioner)." These notes are, however, not completely legible and do not indicate when the regulations were amended.

¹⁹⁹ Mining (Amendment) Regulations, 2005, § 127.(2)(a)(i).

²⁰⁰ *Id.* § 127.(8).

²⁰¹ Mercury must be stored under a head of water or in an airtight receptacle. Persons handling mercury must use approved gloves and respirators. *Id.* § 127.(4)-(5).

²⁰² *Id.* § 127.(2)(b), (7). Confusingly, the Draft Mining Regulations do not mention retorts, although they do deal with the use of poisonous substances in mines. The only restriction on the vaporization of mercury contained in this document is a provision requiring mines operators to give notice and take due care that people in the vicinity are not exposed to mercury vapors. Draft Mining Regulations, 2005, § 166.

²⁰³ This requirement, however, is not explicitly subject to enforcement action as are the provisions of § 127 of the 2005 Regulations.

²⁰⁴ See Mining (Amendment) Regulations, 2005, § 127.(8).

²⁰⁵ For example, the 2005 Regulations require that mining operations of all sizes obtain cyanide permits while requiring no such permits for mercury. Mining (Amendment) Regulations, 2005, §§ 230-235.

²⁰⁶ EPA Mining Expert Interview, *supra* note 48.

²⁰⁷ *Id.*

for and difficulty of administering mercury permits, the need for them is significantly greater.²⁰⁸

3. EDUCATION

There has long been a great need for education about effective and safe mining techniques, and the 2005 Regulations represent a positive step toward creating an educated mining population. The Mining Regulations now hold that:

[t]he Commission, the Agency, the Mining Associations and Educational Training Institutions shall in accordance with curricula approved by the Commission together or individually provide training and certification courses for miners on the proper use of mercury and cyanide, and the environmental hazards associated with such use in mining activities.²⁰⁹

To communicate their message effectively, educators need to implement a regular program of training sessions in the interior and should travel to mining claims and conduct on-site training. These education programs should also target residents of the interior, including Amerindians, who may be negatively affected by mining operations even if they are not themselves miners. In particular, education on the dangers of mercury poisoning would be a suitable and needed subject for early training efforts. In addition, GGMC should widely distribute the Code of Practice that is required by the 2005 Regulations in order to help educate

miners on the appropriate procedures for handling mercury and cyanide.²¹⁰

4. ENVIRONMENTAL PLANS AND BONDS

The 2005 Regulations require all mine operators to submit a reclamation plan and a bond to help ensure that they rehabilitate mining sites after using them, which in theory should help ensure the restoration of mined lands. Requirements, however, differ between small scale operations and medium and large scale operations. In general, the regulations for small scale operations are less stringent than those for medium and large scale operations.

The 2005 Regulations mandate that upon application for a mining license or permit, medium and large scale mine operators must submit an Environmental Management Plan for a period of three to five years in accordance with the Code of Practice for Environmental Mining.²¹¹ In addition, the 2005 Regulations require all mine operators to submit reclamation and closure plans as well as contingency and response plans. The reclamation and closure plans should include measures for filling in mining pits and replanting, as well as restoring water-courses.²¹² The contingency and response plans should include measures for responding to spills of cyanide, fuel, and other poisonous or hazardous substances.²¹³ The EPA, in conjunction with GGMC, is responsible for reviewing these plans and monitoring mining operations, but as the EPA has no field officers, they delegate the supervision of small scale operations to GGMC.²¹⁴

²⁰⁸ The 2005 Regulations do require mine operators for all scales of mining to record “the quantities of cyanide and other poisonous substances received and issued,” Mining (Amendment) Regulations, 2005, § 132.(1), which should be “available at all times for inspection by a mines officer,” *id.* § 132.(2), but the accuracy of these records is difficult to determine, and the recording system is probably less effective than a permitting process.

²⁰⁹ *Id.* § 236.

²¹⁰ *Id.* § 237.

²¹¹ *Id.* § 226. Section 248 requires the commission to publish a Code of Practice for Environmental Mining, which will specify requirements for environmental management of mining operations. This Code is to be published within eighteen months of the enactment of these regulations. At the time of writing, no such Code was available.

²¹² Mining (Amendment) Regulations, 2005, § 227.

²¹³ *Id.* § 228.

²¹⁴ Telephone Interview with Eliza Florendo, chief, environmental division, EPA (May 19, 2006). Florendo

In practice, the EPA rarely investigates or settles environmental problems connected with mining.²¹⁵

Although the 2005 Regulations set out some requirements for small scale miners to provide similar plans, the requirements are much less stringent and not subject to review by the EPA.²¹⁶ Every small scale miner is required to submit a clean-up plan for each proposed mining site in the event of a waste or toxic chemicals spill. The 2005 Regulations do not, however, specify what information should be included in such a plan, apart from requiring that “the clean-up plan shall take the form of a check list provided by the Commission to the small scale miner.”²¹⁷ The meaning of this phrase is unclear because it does not indicate what information in addition to the checklist the miner is expected to provide.

The 2005 Regulations require medium and large scale miners to lodge environmental bonds for their mining activities,²¹⁸ but they provide no guidelines for determining the amounts of the bonds and leave a considerable amount of discretion in determining the appropriate amount.²¹⁹ This regulation would be more effective if the amount of the bond were correlated with the costs of clean-up as estimated in the mining plans operators are required to submit before commencing operations.

did say, however, that if EPA receives a complaint that GGMC has not dealt adequately with an environmental problem, it can send officers to the site to speak with miners and settle the dispute.

²¹⁵ Interview with Eliza Florendo, chief, Environmental Division, EPA, in Georgetown, Guy. (Oct. 27, 2005) [hereinafter Florendo Interview]. Florendo estimated that EPA became involved in just 5 complaints last year.

²¹⁶ *Id.*

²¹⁷ Mining (Amendment) Regulations, 2005, § 239.(1).

²¹⁸ The 2005 Regulations require the operator of a medium or large scale operation to lodge an environmental bond with the Commissioner in an amount determined by the Commissioner, to be used towards the restoration of a mining area to the satisfaction of the Commissioner. Mining (Amendment) Regulations, 2005, § 225.(1).

²¹⁹ *Id.* § 225.(1).

Every operator of a small scale mine is now required to pay a reclamation bond of 25,000 Guyanese dollars for a claim “disturbed by mining.”²²⁰ The bond is to be returned once the obligations to restore have been fulfilled.²²¹ While the requirement of such a bond is a step in the right direction, the amount – about US\$125 – is very small compared to the damage that is likely to be incurred by mining operations. This sum is unlikely to be adequate for the restoration of a mining claim even in the absence of unexpected environmental damage. Furthermore, conversations with the commissioner of GGMC revealed that, in practice, GGMC may not be serious about collecting this bond.²²² The head counsel of GGMC admitted that US\$125 would not cover the actual costs of reclamation; consequently, the government may have to subsidize the clean-up of environmental damage caused by small mines.²²³ But with no guarantee that the government will provide the necessary subsidies or that clean-up will be performed in a timely or complete manner, the costs of land rehabilitation and the physical and social consequences of environmental damage are likely to fall disproportionately on Amerindians in mining areas.

The amount miners will forfeit in case their operations necessitate a clean-up should be significantly increased if it is to serve as an incentive for them to employ more environmentally sound practices. The miner should be required to submit a restoration plan including an estimate of both the expected restoration costs and the costs of clean-up in the case of unexpected environmental damage. The environmental bond required should be set at an amount at least as high as the expected costs. In order to simplify enforcement, GGMC should set a high bond amount that can be reduced if a miner can show to the satisfaction of the commissioner that he can clean up the potential damage for less

²²⁰ *Id.* § 238.(1).

²²¹ *Id.* § 238.(2).

²²² Benn Interview II, *supra* note 47 (maintaining that there is “no bond for small scale ‘mines’ until confronted with statutory language mandating environmental bonds).

²²³ Benjamin-Noble Interview II, *supra* note 41.

money than the initial amount of the bond. This bond may also be partially refunded if miners demonstrate that they are following environmentally sound mining procedures. Under this plan, enforcement would be easier because the miner has an incentive to undertake environmentally sound practices and to show to the Commission that he is capable of restoring the mining site in an efficient manner.

C. ENFORCEMENT

Systemic problems make it impossible for the government to enforce even the existing, inadequate laws and regulations relevant to mining. The Mining Regulations are enforceable by two institutions at different stages of the process. First, the mines officers of GGMC have a staggering checklist of enforcement and monitoring duties in the field. Second, the GGB plays a potentially significant role in assuring that gold mining activities occur in a transparent and regulated manner by serving as the only legitimate ultimate purchaser for all gold produced in Guyana.

These two enforcement bodies, however, have proved inadequate to the task of regulating mining activities in the country. The mines officers are overwhelmed by the mountain of administrative duties for which they are responsible, cowed by the formidable bureaucratic hurdles they face in carrying out their mandate, and defeated by the immensity of the territory each has to cover. The GGB, in turn, has no staff to perform enforcement duties and is instead limited to offering what it hopes is an attractive price for gold. The theory is that miners will dispose of their gold through official channels if they will earn market rates selling their gold to the GGB, but this theory is flawed because taxes are assessed against all gold sold into the GGB, thereby reducing the miners' returns by 5-6%. Furthermore, due to the fact that the traveling to Georgetown to process gold is expensive and ready cash is in short supply in the hinterlands, it often pays for miners to sell their gold illegally. Unfortunately, due to its severely limited presence in the hinterlands where most mining takes place, an alarming percentage of the gold produced leaves the country through illegal means.

1. MINES OFFICERS

The current system relies too heavily on the work of mines officers, leading to under-enforcement and corruption. As of October 2005, there were only eleven mines officers in charge of administering all of the mining operations in the entire country.²²⁴ While additional staff in Georgetown helps with paperwork, the current structure of GGMC places the vast majority of the inspection and administration tasks in the hands of the eleven mines officers. Mines officers are overwhelmed, spread so thin that operators can probably violate environmental and reporting regulations for much of the time without fear of being caught. Their low wages, combined with a lack of supervision in the field, are a strong incentive for corruption.²²⁵ Miners in Mahdia alleged that mines officers often extract money from miners in exchange for overlooking violations of the Mining Act and Mining Regulations.²²⁶

The tasks of mines officers in Guyana fall roughly into five categories: 1) issuing and monitoring prospecting and mining licenses, 2) enforcing environmental and health regulations, 3) registering workers, 4) settling disputes, and 5) collecting revenues. For more detailed information on the overextension of mines officers, see the box on

²²⁴ According to Linton Butters, GGMC may hire five new mines officers in the near future. Butters Interview, *supra* note 44. However, when the October team asked Commissioner Benn about this proposition, he replied, "I think they are underworked as it is." Benn Interview II, *supra* note 47.

²²⁵ Shields Interview II, *supra* note 100. According to Linton Butters, GGMC pays monthly salaries of 50,659 Guyanese dollars to mines officers, 84,213 Guyanese dollars to senior mines officers, and 94,672 Guyanese dollars to the deputy chief. It is planning to designate some of the eleven field officers as "Assistant Mines Officers"; they will receive a monthly salary of 46,107 Guyanese dollars. This means that the majority of the mines officers in Guyana will be making approximately \$250 in U.S. dollars. Given that gold has been selling in the US\$600 to \$700 range in the past few years, this modest salary hardly serves as an effective deterrent to corruption. Butters Telephone Interview, *supra* note 197.

²²⁶ Miner Interviews, *supra* note 70.

page 34, “Why is Enforcement of Mining Regulations so Problematic?”

2. THE GUYANA GOLD BOARD (GGB)

The methods employed by the GGB for calculating and collecting revenues due are arguably even less efficient than those attributed to GGMC under the Mining Regulations, and actual enforcement is poor.

The GGB is the only legal purchaser or seller of unprocessed gold in Guyana, with the exception of dealers licensed by the GGB and jewelers. The Gold Board Act requires all persons with gold in their possession, whether they are producers or not, to sell their gold to this board or to one of its licensed dealers within 28 days of obtaining the gold.²²⁷

Miners are required to submit worksheets documenting their gold production; these worksheets are issued by GGMC and give miners permission to sell their gold to the GGB.²²⁸ If a miner comes in without a worksheet, the GGB “will still buy the gold.” As described by Anantiram Balram, financial officer of the GGB, “[w]e’re flexible. . . . [W]e just want the gold in the legal stream . . . and not smuggled out. . . . Once the gold is here, it cannot leave; they [miners] have to sell it.”²²⁹ Miners who try to sell gold without a worksheet are given a permit from either Balram’s or the general manager’s office. When this happens, GGMC is notified that the seller is an unlicensed miner; in theory, GGMC will then require the miner to apply for a license and report to them from then on.²³⁰ Balram also pointed out

that a high number of the miners selling their gold to the GGB are unregistered as a consequence of the high levels of illegal mining taking place in Guyana: “[w]e have quite a few that mine illegally; they have no lease, no permission.”²³¹

The GGB is located in Georgetown and has no field presence. It relies upon GGMC to assist it with any enforcement actions it initiates, which are few. The GGB’s main strategy is to provide the best gold price in the country; the GGB believes that this tactic renders its statutory mandate self-enforcing.²³² It is empowered by the Gold Board Act to set the price of gold, and it does so by offering miners the London fix price for the *sale* of gold (not the buying price) as expressed in U.S. dollars per ounce.²³³

Royalties and taxes are collected at the same time that the miner sells his gold to the GGB. The GGB relies on incentives rather than enforcement to bring gold into the legal market. “Because we’re

²²⁷ Gold Board Act, 1981, §§ 6, 7.

²²⁸ These are the same worksheets checked by mines officers in the field when verifying that gold declaration (as recorded on the sheet) matches actual gold production (what is shown to mines officers and what is found when they suspect under-declaration and search the mining camp).

²²⁹ Balram Interview, *supra* note 40.

²³⁰ According to Balram, no one ever comes in without paperwork more than once, but he offered no statistics to clarify whether this observation is the result of unregistered miners not making the mistake of selling to

the GGB and getting caught more than once, or if they subsequently register and continue selling to the GGB with official permissions. *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ Gold Board Act, 1981, § 5.

Why Is Enforcement of Mining Regulations so Problematic in Guyana?

Mines officers are overworked, underpaid, and under-supported. The Mining Regulations place such a heavy burden on mines officers to monitor and enforce compliance that they have become virtually unenforceable. Below is a list of the regulatory responsibilities of mines officers, along with some statistics that illustrate the unrealistic expectations placed upon them.[†]

1. Issue prospecting licenses to qualified applicants.
2. Obtain notice stating location of each claim to be filed.
3. Verify each applicant's claim through physical inspection.
4. Deliver relevant paperwork to GGMC headquarters in Georgetown.
5. Enforce and monitor obligation of claimholders to maintain sanitary conditions on their claims, mainly through on-site inspections.
6. Set aside areas for hygiene purposes.
7. Designate suitable areas for depositing trash.
8. Mark graveyards.
9. Reserve creeks for drinking water.
10. Ensure claimholders keep their claims free of standing water.
11. Inspect mines and machinery to ensure safety.
12. Issue cease-work orders for dangerous infractions.
13. Register any non-Amerindian person working on a claim, either during on-site visits or at GGMC offices.
14. Inspect all workers on every claim for proof of registration.
15. Administer punishment (fines and up to 2 years imprisonment) to unregistered laborers.
16. Keep records of all registered people; be prepared to provide these details to the Commissioner upon request.
17. Collate monthly lists of tributors working each claim.
18. Monitor bookkeeping required of each claimholder regarding employees and the wages they earn.
19. Remove any person from a claim if deemed necessary; fine any person who obstructs such removals.
20. Fine any person who refuses to produce a valid prospecting license, claim license, or mining privilege.
21. Decide disputes relating to the issuance of mining licenses.
22. Preside over procedures for resolution of disputes regarding mining licenses, including written complaints, replies, and administrative hearings.
23. Examine witnesses and documentary evidence.
24. Issue written opinions for all such disputes.
25. Inspect daily records maintained by claimholders of gold, valuable minerals, and precious stones mined.
26. Require claimholders to produce all gold, valuable minerals, or precious stones recorded on their books.
27. Search claims for gold, valuable minerals, or precious stones mined when the mines officer believes that claimholders have misrepresented the quantity mined in their records.
28. Ensure there is no unauthorized dealing in gold; regulate the interactions of traders and claimholders.
29. Receive reports from each claimholder of the amount of gold that he has sold and collect the appropriate sums in royalties.
30. Give a receipt for the amount of royalties paid.
31. Request gold traders to produce the amount of gold they possess; punish traders if the amount of gold they produce does not match the amount of gold recorded in their books.
32. Seize gold from any unauthorized person dealing in gold, minerals, or precious stones.

Mining in Guyana^{††}

Total Number of Mines in Guyana: **~10,000**

Total Land Area of Guyana: **76,004 mi²**

Total number of mines officers: **11**

Number of field officers employed by GGB: **0**

Monthly salary of mines officer: **US\$266.62**

[†] Mining Regulations, 1973 (Guy.); Mining (Amendment) Regulations, 2005 (Guy.).

^{††} Interview with Linton Butters, Acting Chief Mines Officer, GGMC, in Georgetown, Guy. (Oct. 24, 2005); Central Intelligence Agency, *Guyana*, in *WORLD FACTBOOK*, available at <http://www.cia.gov/cia/publications/factbook/geos/gu.html#Intro> (last visited Aug. 30, 2005); Butters Interview; Interview with Anantiram Bahram, Financial Officer, Guyana Gold Board, in Georgetown, Guy. (Jan. 12, 2005); Telephone Interview with Linton Butters, Acting Chief Mines Officer, GGMC (May 24, 2006).

offering the best prices, we hope the miners will come here.”²³⁴

This strategy is only partially effective. Balram acknowledged that “[t]here are people who come to the mining areas and will buy gold illegally there.”²³⁵ The reasons miners sell to smugglers are many. If smugglers’ costs are less than the 5% royalty and 2% tax that the GGB charges gold sellers, then they may be able to pay a higher price than the GGB. Geography may be another factor: because the GGB has no field offices, miners must make the costly trip to Georgetown to sell to it unless they can find a GGB-licensed dealer in the interior. Furthermore, saving up gold for a periodic trip to Georgetown, rather than selling it to smugglers who presumably visit at least the major mining areas frequently, exposes a miner to the risk that his gold will be stolen. Additionally, for miners who find themselves in debt, smugglers may offer cash in exchange for anticipated gold yield, a service the GGB cannot provide.

Dealers licensed by the GGB are the only other legal buyers of gold in Guyana. According to Balram, as of January 2005, there were fewer than ten licensed dealers, but acquiring a license was not difficult and there was no limitation on the number of dealers the GGB could license. Applicants had to provide personal information, a business plan, references, proof of sufficient funds, and testimony to the GGB that they were “good people.”²³⁶ Licensed dealers may buy gold in the interior, which facilitates the legal sale of gold.²³⁷ Once they buy the gold from miners, most dealers (all but one) sell the gold to the GGB. They are also required to make declarations to the GGB every two weeks and collect royalties and taxes, which they must then pay to the GGB. The GGB monitors the dealers by spot-checking their premises and reviewing the worksheets recording the amount of gold bought and sold to ensure that the right amount of gold is presented. The GGB handles such investigations

²³⁴ Balram Interview, *supra* note 40.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

itself for dealers based in Georgetown but depends upon GGMC’s already-overstretched mines officers to check dealers based in the field. The GGB has only occasionally revoked licenses as a result of persistent failure or refusal to declare accurately the amount of gold purchased. Usually, it permits dealers to rectify discrepancies.²³⁸

A large proportion of the gold mined in Guyana is smuggled out of the country, depriving the government of royalty and tax revenue.²³⁹ In 2004, gold production as declared to the GGB and its licensed dealers reached 116,000 ounces. Balram, however, estimates that this represents only two-thirds of total production,²⁴⁰ meaning that one third of all gold produced in Guyana is sold illegally.²⁴¹ In one recent incident, authorities caught a smuggler attempting to carry twenty-five pounds of gold to Suriname illegally.²⁴² The GGB also suspects licensed dealers of “acquiring the gold and not declaring the true quantities,” then selling to smugglers, but Balram admits that the agency lacks the investigative capacity to verify such suspicions.²⁴³

D. REGULATION OF SMALL, MEDIUM, AND LARGE SCALE MINING

1. INTRODUCTION

The Mining Act and Regulations fail to provide for adequate regulation of small scale operations, which

²³⁸ *Id.*

²³⁹ Benn Interview II, *supra* note 47 (stating that “They produce three times as much [gold] as they declare.”).

²⁴⁰ Balram Interview, *supra* note 40. A 2001 newspaper article estimated that smuggling was far more common, placing the proportion of production that was smuggled at 80%. Matt Falloon, *Gold Mining: An Industry on the Verge of Crisis?*, STABROEK NEWS, May 6, 2001, available at <http://www.landofsixpeoples.com/gynewsjs.htm> (last visited June 27, 2005).

²⁴¹ Balram Interview, *supra* note 40.

²⁴² *Id.*

²⁴³ *Id.*

further undermines the already limited enforcement capabilities of mines officers. Problems with enforcement are related to the poor design of the Mining Regulations and the lack of attention paid to small scale operations.

Since the overwhelming majority of mining operations in Guyana are small scale,²⁴⁴ problems with these operations overshadow the regulatory problems of medium and large scale operations. The sheer number and geographical remoteness of small scale operations makes them difficult to track, and this problem is exacerbated by the fact that the government places few controls on where a miner can locate his small scale claim.

The mining regime also does little to ensure that miners who should be classified as medium scale are not able to circumvent the Mining Regulations by staking out a number of contiguous small scale plots that they can work together. By strengthening the regulatory regime on medium and large scale operations while leaving small scale operations relatively unregulated, the 2005 Regulations, as described above under the subsection on Environmental Protection, only give miners stronger incentives to group small scale claims instead of officially registering medium scale claims.

The Mining Act places relatively stringent controls on large scale mining compared to medium and small scale operations.²⁴⁵ While the current Mining

Regulations contain few provisions dealing with large scale operations, the one large scale mining operation in Guyana, Omai, suffered a major cyanide spill in 1995 and was heavily monitored by the Guyanese government and international groups until it closed.²⁴⁶

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- (b) the applicant has adequate financial resources and technical and industrial competence and experience to carry on effective mining operations, *id.* § 46.(1)(b);
 - (c) the applicant is able and willing to comply with the conditions on which the license is proposed to be granted, *id.* § 46.(1)(c);
 - (d) the applicant's proposals for the employment and training of citizens of Guyana are satisfactory, *id.* § 46.(1)(d) (1989);
 - (e) the applicant's proposals with respect to the procurement of goods and services obtainable within Guyana are satisfactory, *id.* § 46.(1)(e);
 - (f) the exercise of any option given to the State under section 31(2) has been completed or arrangements have been made for that purpose, *id.* § 46.(1)(f); and
 - (g) if the applicant is in default, special circumstances exist which justify the granting of the license notwithstanding the default, *id.* § 46.(1)(g).

The license must specify: the date the license was granted and the period for which it is granted; the parcel or parcels to which it relates; the mineral to which it relates; the conditions subject to which it is granted; and anything else the Commission wishes to include. *Id.* § 47. Specific conditions may include the duty that the licensee supply minerals to the country, *id.* § 47.(2), or conditions with respect to "the processing, disposal or sale of minerals which may be mined." *Id.* § 47.(3). The 2005 Regulations would place specific conditions on the processing of minerals.

²⁴⁶ EPA Mining Expert Interview, *supra* note 48.

²⁴⁴ *Id.*

²⁴⁵ While large scale mining regulations place fewer restrictions on who can be granted a license than do medium and small scale regulations (i.e., whether a Guyanese citizen needs to be in control), Mining Act, 1989, § 26, they provide greater restrictions on the qualifications of the applicant and require that the applicant demonstrate that the mining operation will benefit Guyana and Guyanese citizens. For example, Section 46.(1) requires that the applicant demonstrate to GGMC the following things:

- (a) the proposals of the applicant would ensure the most efficient and optimal use of mineral resources concerned, *id.* § 46.(1)(a);

2. PROBLEMS WITH SMALL SCALE OPERATIONS

The differences in regulation of medium and small scale operations have two related effects: 1) the more lax regulations for small scale operations lead miners to prefer small over medium scale operations, even when a medium scale operation would otherwise be a more appropriate choice, and 2) the very laxity that causes this preference leads to greater environmental damage and a number of enforcement problems.

Under the older Mining Regulations, the primary differences between the medium and small scale regulatory regimes relate to the procedures for locating claims and assigning mining permits. While the procedures for acquiring prospecting permits are the same on both scales, procedures for acquiring claims for small scale operations are different. A small scale miner can locate a claim and begin working it before sending in an application to GGMC.²⁴⁷ A medium scale miner must locate a claim on a map in the GGMC office before undertaking mining activities.²⁴⁸ It must also obtain a site survey from a “duly qualified surveyor” before a medium scale permit will be granted²⁴⁹ although no survey is required if the boundaries can be adequately determined from the GGMC office in Georgetown.²⁵⁰ If someone other than a GGMC surveyor conducts this survey, then the original diagram and a duplicate must be filed with GGMC.²⁵¹ There is no such survey requirement for a small scale operation.

In addition to giving miners an incentive to choose small scale claims over medium scale permits, the different treatment makes it much more difficult to control the activities of small scale miners. The miner is responsible for locating the claim himself; he can initiate mining activities before he has filed and before he has received confirmation on his

claim. This is likely to lead to the haphazard placement of claims, possibly without regard to restrictions in the Mining Regulations.

The Draft Regulations attempt to deal with the likelihood of claim disputes inherent in this situation by prescribing periods of notice. For medium scale operations, the commissioner is required to publish a notice in the Gazette announcing his intentions to grant a permit, and the public has twenty-one days to object or dispute the permit before the permit is issued.²⁵² For small scale operations, the notice must be published for just one week, both in the Gazette and in a newspaper with national circulation.²⁵³ A potential objector has fourteen days from the date of publication to file his opposition to the proposed action. These methods of giving notice are inadequate and unfair to surface rights holders – particularly, isolated communities like Amerindian villages – and they seem likely to lead to an increase in the number of land disputes between miners and people with alternate claims to occupation and use of the land.

The gap in oversight created by the procedures regarding small scale operations also increases the likelihood that preventable environmental damage will occur. GGMC may reject an application for both types of claims if it discovers problems with the claim location or the applicant, but such a rejection is likely to be costly to miners who have already begun to work their claim. As a result, GGMC will probably face more resistance from miners if it chooses to reject an application at this later stage than it would if the decision were made before miners had incurred significant costs. Even if GGMC determines that the location is inappropriate and rejects the application, the time delay means that significant damage may have already occurred. To resolve this problem, the government should require all miners to locate their claims on a map in the GGMC office before they are allowed to undertake mining activities. This would give GGMC officials a greater ability to

²⁴⁷ Mining Act, 1989, § 60.(2).

²⁴⁸ *Id.* § 60.(1); Morgan Interview, *supra* note 76.

²⁴⁹ Mining Regulations, 1973, § 75.(1).

²⁵⁰ *Id.* § 76.

²⁵¹ *Id.* § 75.(2).

²⁵² Draft Mining Regulations, § 46.

²⁵³ *Id.* § 72.(2)(a).

organize the location of claims according to their priorities, and remove one of the incentives for miners to choose small scale over medium scale operations.

The 2005 Regulations attempt to address previous regulatory failures in two ways: 1) they place stricter environmental requirements on medium and large scale operations than on small scale operations and 2) they provide definitions of small, medium, and large scale operations according to amount excavated per day rather than size of plot.

Several of the provisions specified in the 2005 Regulations provide for stricter regulation of medium scale mines than small scale mines.²⁵⁴ These differences are described in detail in the Environmental Protection section, but in general they require medium scale miners to: 1) lodge larger environmental bonds, 2) create more extensive environmental impact, reclamation, and emergency clean-up plans, and 3) submit to monitoring by the EPA. All of these differences give miners a greater incentive to seek small scale classification, which increases the need for the system to ensure that the medium scale rules are not inappropriately circumvented. This tension can be reduced by increasing the restrictions on small scale mining operations. Alternatively, a classification regime can be instituted (and enforced) that requires miners with larger operations to obtain medium scale rather than small scale permits.

As for mining-type definitions, the 2005 Regulations provide more clarity than the old regulations, but they do not specifically address the problem of miners circumventing the medium scale rules by applying for multiple small scale plots.²⁵⁵

²⁵⁴ See *supra* Section 4.II.B.

²⁵⁵ Accordingly, a “small scale mine,” which is subject to a claim, includes all mines that excavate more than 20 cubic meters but less than 200 cubic meters of material per day; a “medium scale mine,” which is subject to a mining permit, covers all mines that excavate more than 200 cubic meters but less than 1,000 cubic meters of material per day; and a “large scale mine,” which is subject to a mining license, includes all mines that excavate in excess of 1,000 cubic meters of material per day. Mining (Amendment) Regulations, 2005, § 2.

GGMC, furthermore, has signaled its unwillingness to prevent miners from creating de facto medium scale mines by stringing together contiguous small claims.²⁵⁶ Therefore, even though substantive regulations – as opposed to mere definitions – would help to enforce the distinctions between mining scales and ensure that mining operations are appropriately regulated according to their actual scale, there seems little hope that GGMC will take real steps to prevent this sort of abuse.

III. STRUCTURAL IMPEDIMENTS TO THE GOVERNMENT OF GUYANA’S EFFECTIVENESS AS REGULATOR

In addition to the Mining Regulations, other structural features of the Guyanese government play a role in preventing the effective control of the gold mining industry. This Part explores several such features and their relationship to mining regulation, beginning with the internal and politically driven divisions within the central Guyanese government that impede action generally. Next, we turn to the weaknesses of the judicial system and its inability to assist in the enforcement of the Mining Regulations. Third, we consider physical impediments to the enforcement of the Mining Regulations, including the logistical difficulties inherent in monitoring the deep rainforest, border control issues, and Guyana’s relationship with Brazil. Finally, we look at political impediments, with a focus on the role that international funders play in putting pressure on the government to liberalize the mining industry. Although some of these issues touch on much larger discussions, we present only those aspects that are relevant to our inquiry into the regulation of the mining industry.

²⁵⁶ See Benn Interview II, *supra* note 47 (insisting that small scale mining is part of the Guyanese porkknocker tradition and should not be limited in this way).

A. POLITICAL IMPEDIMENTS WITHIN THE CENTRAL GOVERNMENT

The role of race in Guyanese politics has been criticized as hindering the country's political development. According to the U.S. Department of State, "[r]ace and ideology have been the dominant political influences in Guyana. Since the split of the multiracial People's Progressive Party (PPP) in 1955, politics has been based more on ethnicity than on ideology."²⁵⁷ Political parties are largely split along racial lines; the vast majority of Indo-Guyanese citizens support the PPP while the majority of Afro-Guyanese traditionally supports the People's National Congress (PNC). Considerations of racial distribution have inhibited the pursuit of policies that could enhance general social and economic development, as the political pressure to prioritize racial considerations (and the advantages of doing so) has redirected the focus of elected officials. "Voting is primarily along ethnic lines, and ethnic tensions represent a very real threat to the political and economic stability of Guyana."²⁵⁸ The racial separation is pervasive and permeates state structures, not only in the ethnic composition of political parties, but also in the organs of state power, such as the army and police. According to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, "[t]he various barriers – human, psychological, social and cultural – thrown up as a result of this polarization in Guyana have not merely distorted all aspects and forms of 'living together', but have also perpetuated and reinforced a state of economic and social underdevelopment, to the detriment of the entire society, in a country

that possesses extraordinary natural, human and intellectual resources."²⁵⁹

As Amerindians constitute only 8% of Guyana's population but are the chief occupants of a majority of the country's territory, their concerns with mining are unlikely to gain much traction with the major parties. Instead, uncontrolled mining may be a win-win situation for both the PPP and the PNC; the PPP may find stricter regulation to be unpopular with mine owners, who are stereotypically Indo-Guyanese, whereas the PNC may not want to impose restrictions on the activities of mine workers, who are predominately Afro-Guyanese.

B. WEAKNESSES OF JUDICIAL SYSTEM

Due to a number of problems, the judicial system provides an inadequate forum for the enforcement of the Mining Regulations. Not only is the system slow to act, with actions taking as many as ten years to be heard,²⁶⁰ but the courts often fail to keep written records. Additionally, it is extremely difficult for potential litigants in mining-related disputes to reach judges, since courts tend to be located in coastal urban centers far from remote mining areas in the interior.²⁶¹ Finally, domestic and international observers have criticized the judiciary as corrupt, unable to enforce judgments and lacking independence from the political branches.²⁶²

²⁵⁷ Background Note, *supra* note 4.

²⁵⁸ USAID Congressional Presentation FY 1997, Development Assistance to Guyana, *available at* <http://www.usaid.gov/pubs/cp97/countries/gy.htm> (last visited Oct. 17, 2005). *See also* EIU, *supra* note 17 ("Mutual suspicion between the [PPP] government and the opposition People's National Congress-Reform (PNC-R) is strong and will impede agreements on electoral reforms.").

²⁵⁹ Doudou Diene (Special Rapporteur), *Racism, Racial Discrimination, Xenophobia and all forms of Discrimination*, U.N. ESCOR, 60th Sess., Agenda Item 6, at 10-11, U.N. Doc. E/CN.4/2004/18/Add.1 (2004).

²⁶⁰ Benjamin-Noble Interview, *supra* note 42.

²⁶¹ According to Roxanne George, it can take days for people to travel overland to the towns where judges sit. George Interview, *supra* note 125.

²⁶² U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *Guyana Human Rights, in 2002 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES* (2003), *available at* <http://www.nationbynation.com/Guyana/Human.html>

Guyanese courts' slowness of action poses a major barrier to the enforcement of the Mining Regulations. According to Roxanne George, a High Court judge, "cases are very backlogged."²⁶³ She attributes this problem to a number of factors. There is a high volume of cases and too few judges.²⁶⁴ Judges cannot refuse to hear a case, and all appeals must be heard as well.²⁶⁵ Further, there is not yet any option to plea bargain in criminal trials, although settlement is available in civil and administrative matters.²⁶⁶ Judges also often fail to record their opinions or other crucial information about a case – a problem because lack of records means that courts have to go through a lengthy and duplicative process of re-gathering information.²⁶⁷

These problems directly affect the enforcement of the Mining Regulations because mines officers are not permitted to fine in the field and therefore have to rely on judicial and quasi-judicial procedures to impose financial penalties on violators.²⁶⁸ The current procedure is cumbersome and inefficient. The mines officer recommends proceedings to GGMC, presumably some time after observing the triggering violation, since mines officers report in to GGMC headquarters only once every two to three months.²⁶⁹ Once the mines officer makes his recommendation, GGMC will initiate an enforcement action in the courts.²⁷⁰ What happens

most of the time, according to Rosemary Benjamin-Noble, legal advisor for GGMC, is that the person will choose to settle with GGMC rather than go to court because of the time and expense involved in going through the courts.²⁷¹ Here, the inefficiency of the courts undermines the timely, regularized, and impartial enforcement of the Mining Regulations. It also provides space for corruption on the part of mines officers and incentives to flout the Mining Regulations on the part of miners.

Even if the courts had the capacity to process mining claims, the difficulty inhabitants of the interior face in reaching judges poses yet another serious barrier to enforcement. According to Judge George, "[t]he courts' physical location is not conducive to where the [mining and Amerindian] population is."²⁷² In the rural areas, "people count distance by how long it takes to walk there."²⁷³ Although the province of Essequibo has its own High Court, because it is located on the coast, it is still too far from the areas where mining occurs to be conveniently accessible. In fact, "some matters still come to [Georgetown] because it is cheaper to fly to Georgetown than to the Essequibo court."²⁷⁴ Magistrate courts, which visit the more populated areas of the interior on a rotating schedule, do provide some service to the hinterlands. Even with this limited degree of access, however, potential litigants still have tremendous difficulty seeing a case through to resolution.²⁷⁵

(last visited Oct. 17, 2005) [hereinafter COUNTRY REPORTS (2003)].

²⁶³ George Interview, *supra* note 125. Benjamin-Noble, too, stated that "there is a serious backlog in the courts." Benjamin-Noble Interview, *supra* note 42.

²⁶⁴ George Interview, *supra* note 125.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ Accurate records are also necessary for an effective appeals process and for judicial precedent that Guyana, a common law jurisdiction, needs to develop its legal system.

²⁶⁸ Benjamin-Noble Interview, *supra* note 42.

²⁶⁹ *Id.*

²⁷⁰ *Id.* Linton Butters said, however, these actions were being dealt with directly by GGMC and were no longer taken to court. Butters Interview, *supra* note 44. This

may raise questions of judicial propriety and separation of powers.

²⁷¹ Benjamin-Noble Interview, *supra* note 42.

²⁷² George Interview, *supra* note 125.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ As Judge George describes, if the offence has been committed in the interior, the case still has to be filed in Georgetown, and then the Georgetown court must transfer the case to the correct magisterial district. Once this has taken place, the litigants have to wait for the magistrate court to travel to the predetermined area nearest them. The magistrate court, however, only stays in that area for one to two weeks, so if the action has not been completed at the time of departure, the litigants must wait for the next rotation to continue proceedings.

Other problems with the courts as an enforcement mechanism are widespread accusations of corruption among judges, inability to enforce determinations, and a general lack of independence from the elected branches. These criticisms come from both domestic and international sources. The Guyana Bar Association Conference has noted that inadequate separation of powers in Guyana gives the government an inappropriate level of influence over judges.²⁷⁶ Complaints about the lack of professional standards in the judiciary have come from as high as Desiree Bernard, the former chancellor of the judiciary, who has stressed the need for codes of conduct in the Guyanese legal establishment.²⁷⁷ According to the U.S. State Department, “The judiciary, although constitutionally independent, was inefficient and

Id. According to the U.S. State Department, “[t]he inefficiency of the judicial system undermined due process. Trial postponements were granted routinely to both the defence and the prosecution.” U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, *Guyana, in 2003 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2004)*, available at

<http://www.state.gov/g/drl/rls/hrrpt/2003/27901.htm> (last visited Oct. 17, 2005) (“Delays and inefficiency characterized the judicial process. Delays in judicial proceedings were caused by shortages of trained court personnel and magistrates, inadequate resources, postponements at the request of the defense or prosecution, occasional alleged acts of bribery, poor tracking of cases, and the slowness of police in preparing cases for trial.”). As a result of this logistical inefficiency and since mines officers do not have the authority to issue fines on the spot without consulting a court, defendants have plenty of time to disappear before proceedings can be initiated. George Interview, *supra* note 125. Apparently this is a particularly serious problem with rape prosecutions, which can take up to two years to complete at the magisterial level, because rape is a bailable offense and defendants have a tendency to disappear over the border to escape judgment.

²⁷⁶ NORTH-SOUTH INSTITUTE, *AMERINDIANS AND MINING IN GUYANA* 21 (2002) (citing the *Stabroek News*, Nov. 26, 2000).

²⁷⁷ Guyana News and Information, June 2003 Guyana Monthly Update, available at <http://www.guyana.org/Update/june2003.html> (last visited Oct. 17, 2005).

often appeared subject to the influence of the executive branch. . . . [L]aw enforcement officials and prominent lawyers questioned the independence of the judiciary and accused the Government of intervening in certain cases.”²⁷⁸

This problem extends to potential corruption among prosecutors in low-level criminal trials, the sort most likely to take place in mining areas. Judge George pointed out that Guyana does not have enough lawyers to serve as prosecutors in all criminal matters, so the police prosecute at the level of magistrate courts.²⁷⁹ There is apparently no requirement that such police prosecutors be trained although some are.²⁸⁰ According to Judge George, some of them are good and others are not; clearly, the potential for corruption on the very local level is high, particularly given the already shaky reputation of the Guyanese police for violent treatment of suspects and extrajudicial killings.²⁸¹ The U.S. State Department points out another facet of this problem in its Country Report, noting that “[t]here were reports that police who served as prosecutors in lower magistrate courts were reluctant to prosecute police accused of abuses.”²⁸² Although it is outside the scope of this report to document actual instances of corruption on the part of judges or prosecutors, abundant evidence suggests that the courts do not presently provide a viable forum for the vindication of mining-related claims or the enforcement of the Mining Regulations.

C. PHYSICAL IMPEDIMENTS TO MINING REGULATION

The inescapable realities of Guyanese geography undermine the prospects for enforcement of the current regulatory regime governing mining. The most significant issues among them are the logistical challenges of monitoring undeveloped rainforest,

²⁷⁸ COUNTRY REPORTS (2003), *supra* note 262.

²⁷⁹ George Interview, *supra* note 125.

²⁸⁰ *Id.*

²⁸¹ AMNESTY INTERNATIONAL, *COUNTRY REPORT FOR GUYANA* (2004).

²⁸² COUNTRY REPORTS (2003), *supra* note 262.

border control issues, and immigration of miners from Brazil.²⁸³

The difficulty of monitoring the Guyanese rainforest is a major impediment to effective regulation of the mining industry that the Mining Regulations generally fail to take into account. As noted above, the Mining Regulations place a great deal of responsibility with GGMC's small corps of mines officers, who are charged with undertaking six-week to three-month tours rotating through different mining districts.²⁸⁴ Although the police and army have a limited presence in the interior,

²⁸³ According to Section 158 of the regulations, any person working on a claim who is not an Amerindian must be registered as a laborer by GGMC at the nearest registration office. Under Section 161, a person can be registered in Georgetown or in the mining districts by any person appointed by the minister as a registering officer. In practice, the mines officers have performed this function. Any person who works as a laborer without being registered or who fails to present a valid certificate of registration is liable to be fined and imprisoned for two years. Mining Regulations, 1973, § 160. The regulations were amended in 1984 to allow for imprisonment as a penalty for the violation of this rule, and the change was hand-written into Jack Morgan's copy of the regulations. Amerindians do not need to take out a certificate of registration, nor do they need to enter into an employment contract in order to work on mining claims.

Although the 1973 version of the Mining Regulations does not describe the registration procedures for foreign workers, Jack Morgan stated that foreign workers must obtain documents from the Ministry of Health in Georgetown in order to register properly. Morgan Interview, *supra* note 76. Considering the large numbers of Brazilian miners working in Guyana who cross the porous land border into Guyana from Brazil, it is unlikely that many of these workers would make a trip to Georgetown in order to obtain the documents necessary for registration. If this is the case, then either these foreign workers are operating without registration or mines officers are issuing registration without requiring the necessary documentation. In either case, the rules are not currently being enforced. This failure relates to a more significant problem that the government of Guyana has with control over its borders. This problem will be further discussed below.

²⁸⁴ Benjamin-Noble Interview, *supra* note 42.

according to Judge George, they "lack the capacity" to monitor effectively because their stations are not well placed for such activity.²⁸⁵ Mines officers travel through the interior by foot or by all-terrain vehicles to implement the Mining Regulations; conditions for such travel are often difficult, and officers are often required to camp overnight in the forest when journeys between mining camps take more than one day. Rosemary Benjamin-Noble described the interior as "hostile, in terms of terrain."²⁸⁶ Because GGMC permits prospecting and mining within an exceptionally large area of territory, nearly all of which is covered by unbroken rainforest, the challenge of monitoring such far-flung mining operations on foot is enormous. As Jack Morgan, then chief mines officer, noted, "Guyana is so vast and the mining areas are so wide, it is not always possible for mining officers to find all the dredges."²⁸⁷ Mines officers aim to inspect each mining site at least two times per year, but "when a man moves around, you have no means of monitoring him."²⁸⁸ Given the long periods of time that each mining operation likely enjoys without GGMC observation, these logistical barriers to enforcement offer broad opportunities for miners to flout even the most basic of the Mining Regulations.²⁸⁹

Border security and immigration of Brazilian miners, both laborers and mines operators, are two other major impediments to the effective regulation of mining. The inability to control the borders with Brazil is directly correlated with mining because a large percentage of the illegal migrants enter Guyana to mine for gold. Undocumented and illegal mining operations may be more destructive than registered operations because their workers and activities are not subject to regulation by the government. Since they are forced to move around frequently to avoid detection, they may have fewer

²⁸⁵ George Interview, *supra* note 125.

²⁸⁶ Benjamin-Noble Interview, *supra* note 42.

²⁸⁷ Morgan Interview, *supra* note 76.

²⁸⁸ *Id.*

²⁸⁹ Benjamin-Noble Interview, *supra* note 42. As Benjamin-Noble pointed out, "with less mining officers in the field, miners are more likely to risk it."

incentives than legal miners to respect Amerindian rights and community preferences and to abide by even the rudimentary environmental restrictions Guyana places on mining operations.

The ease with which persons can illegally cross the Guyanese border permits thousands of Brazilian gold miners, also known as *garimpeiros*, to cross into Guyana at will. Combined with the inability of GGMC to monitor the interior thoroughly, very few of these Brazilian miners ever register with GGMC, nor are their mining activities officially sanctioned, taxed, or regulated. According to Jack Morgan, Brazilian miners are most likely to flout the Mining Regulations, and “in some cases, [GGMC has] trouble finding . . . the Brazilians, they are the most problematic.”²⁹⁰ Numerous people interviewed for this report reiterated the facts that lead to these logical conclusions. Judge George pointed out that there are many Brazilians crossing the border, and that is causing “a big impact in mining.”²⁹¹ Morgan explained that GGMC has been “having major problems with Brazilians sneaking through borders,” and hiding from mines officers.²⁹² Mines officers cannot arrive in border areas inconspicuously; they are forced to travel by air. Illegal Brazilian miners are tipped off by the telltale sound and sight of the aircraft and can either hide their illegal operations or slip back across the border.²⁹³ Mike McCormack of the Guyana Human Rights Association pointed out that the influx of miners from Brazil is now beyond the capacity of the government to control, particularly because of roads entering Regions Seven and Eight that the government has no way to patrol. At best, the government can only do periodic sweeps of mining

camps, which is not sustainable.²⁹⁴ External sources corroborate these observations: “Guyana has a large informal market. According to the Economist Intelligence Unit, ‘The gold and diamond industries have been prey in recent years to extensive smuggling, which has distorted the official production figures.’ In addition, ‘There are also several hundred Brazilian *garimpeiros* (informal gold miners) operating in Guyana.”²⁹⁵

It is very difficult to monitor the long borders that Guyana shares with Brazil, Suriname, and Venezuela²⁹⁶ from a logistical standpoint, and this problem is exacerbated by a lack of guards at border stations. An anonymous interviewee illustrated this problem by relating a trip to Brazil through the border town of Lethem, where he was forced to wait for hours on one side of the border before he could find the border officials to stamp his passport and allow him to pass.²⁹⁷ While he waited, many Guyanese and Brazilians simply passed through the unstaffed official checkpoint. Several interviewees also observed that the riverbed forming the border in one location constitutes an easy, unmonitored crossing point between Brazil and Guyana during the dry season. Judge George and other interviewees pointed out that there is not a lot of respect for borders, and it is very normal for people to cross borders “informally,” meaning illegally.²⁹⁸ The “borders of Guyana are so porous” that illegal immigrants, especially Brazilian miners, can get in at many points either on foot or by boat.²⁹⁹

Morgan indicated that “a political decision was made that we [GGMC] need to ease off [on

²⁹⁰ Morgan Interview, *supra* note 76. However, Morgan also indicated that Brazilian miners bring with them superior mining technology that increases the capacity of Guyanese miners to maximize the yield of any given mining operation. GGMC has granted mining permits to two illegal Brazilian diamond mining dredges in the State Mining Reserve in the Upper Mazaruni in order to take advantage of this superior technology.

²⁹¹ George Interview, *supra* note 125.

²⁹² Morgan Interview, *supra* note 76.

²⁹³ *Id.*

²⁹⁴ McCormack Interview, *supra* note 126.

²⁹⁵ Heritage Foundation, Index of Economic Freedom 2005: Guyana, available at <http://www.heritage.org/research/features/index/count ry.cfm?id=Guyana> (last visited Oct. 17, 2005).

²⁹⁶ Guyana’s borders are 1,119 kilometers long with Brazil, 600 kilometers long with Suriname, and 743 kilometers long with Venezuela. WORLD FACTBOOK, *supra* note 3.

²⁹⁷ Officer Interview, *supra* note 124.

²⁹⁸ George Interview, *supra* note 125.

²⁹⁹ Morgan Interview, *supra* note 76.

working hard to deport Brazilians],” out of a fear that harsh enforcement of immigration laws would be reciprocated against the many Guyanese emigrants in Brazil.³⁰⁰ As a result, the Guyanese government not only faces tremendous physical barriers to the effective monitoring of the interior for the enforcement of the Mining Regulations, but also may suffer from a lack of political will.

D. INTERNATIONAL ROLE IN MINING REGULATION

Guyana is subject to a tremendous degree of international funding pressure; its high amount of foreign debt and IMF Economic Recovery Plan obligations push it to develop in externally prescribed ways. “In 1988, the Government of Guyana (GOG) had no choice but to accept the IMF-sponsored Economic Recovery Program (ERP).”³⁰¹ Eighteen years later, the country remains “heavily dependent on foreign aid,”³⁰² and the current GDP per capita is US\$3,900.³⁰³ “According to the Economist Intelligence Unit, ‘Improvements in macroeconomic policy and greater political stability soon encouraged inflows of foreign direct investment (FDI), with the gold sector receiving the main share.’”³⁰⁴ Several interviewees pointed out

anonymously that mining is disastrous for the Guyanese environment and that the marginal amount of revenue gold mining provides to the government hardly outweighs its costs.³⁰⁵ Foreign interests, however, continue to place a heavy emphasis on primary resource extraction as the key to Guyanese economic development while failing to assist meaningfully in government efforts to improve regulation of such industries.³⁰⁶

The World Bank has been heavily involved in the Guyanese gold mining industry, most notably with the Omai gold mine, the largest open-pit gold mine in Latin America. The mine opened in 1991 as a result of new IMF and World Bank ERP-mandated policies encouraging foreign investment.³⁰⁷ Omai, a joint venture of two Canadian mining companies, Cambior and Golden Star (the Guyanese

³⁰⁰ *Id.* The October team received confirmation on this point from the head of the EPA’s Environmental Division and from the GGDMA. Florendo Interview, *supra* note 215. Shields Interview, *supra* note 92. The need for Guyana to make concessions in order to protect its own emigrants is actually significant, due to the extremely high rate of migration of Guyanese nationals. It is estimated that there are more Guyanese living abroad than within the country, and according to the U.S. Department of State, Guyanese emigration to the United States has remained steady at between 1.5-2% since 2002. *See* Background Note, *supra* note 4.

³⁰¹ Using the purchasing power parity measure. CIA World Factbook, Rank Order – GDP per Capita, Guyana, *available at* <http://www.cia.gov/cia/publications/factbook/rankorder/2004rank.html> (last visited Mar. 23, 2006).

³⁰² Heritage Foundation (2005), *see supra* note 295.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ Note that the Omai mine accounted for between two-thirds and three-fourths of reported gold production (and therefore revenue) since beginning operations in 1991. Since at least a third of gold production is not reported and Omai closed before the end of 2005, revenues to the Guyanese government may drop to negligible levels if the government does not improve its revenue collection mechanisms and reduce smuggling.

³⁰⁶ The Canadian International Development Agency recently began a six-year, CAD3.75 million Guyana: Environmental Development Project (GENCAPD) “to develop environmental expertise in several of the key institutions involved with the mining sector in Guyana and to develop a regulatory framework that will promote the sustainable development of Guyana’s mineral resources.” The project was initiated in 1998, but was extended to 2005 in 2003. “The University of Guyana has taken over the training originally delivered by GENCAPD.” However, the EPA expert stated that GENCAPD has accomplished little in practice thus far, due to the barriers to enforcement described in this report. EPA Mining Expert Interview, *supra* note 48; *cf.* Natural Resources Canada, Applied Projects, *available at* http://www.nrcan-rncan.gc.ca/sd-dd/internat/projects_e.html (last visited Mar. 23, 2006); NATURAL RESOURCES CANADA, *International Scene, in CANADIAN MINERALS YEARBOOK*, 6.1, 6.5 (2003), *available at* <http://www.nrcan.gc.ca/mms/cmy/content/2003/07.pdf> (last visited Oct. 17, 2005).

³⁰⁷ Background Note, *see supra* note 4.

government also owned a small percentage), was the subject of international concern in 1995 when a tailings dam burst, allowing 1.2 billion liters of cyanide and heavy metal-laced sludge to escape into the Omai River, a tributary of the Essequibo. “The spill was the largest of four that had already occurred in 1995.”³⁰⁸ Since the spill, Omai continued to be immensely profitable for the country. In 2003, it accounted for two-thirds of all reported gold production; however, due to the exhaustion of the gold deposit on which it was located, Omai closed down all operations in Guyana at the end of 2005.³⁰⁹

By 1996, international pressure forced the Guyanese government to establish an EPA with regulatory oversight over Omai, but, as discussed above, the EPA lacks authority to regulate small scale mines, which form the majority of gold mines.

Such international monetary and economic policy pressures are an important background issue to consider when evaluating the regulation of mining and outlining recommendations for attaining the goal of increasing enforcement and sustainability. Not only do these funders have an enormous amount of influence over Guyanese policy due to the country’s continuing dependence upon foreign aid, but they also are the most likely source of the assistance necessary to reform the current regulatory framework.

³⁰⁸ WORLD BANK FINANCED PROJECTS IN EXTRACTIVE INDUSTRIES: A CASE STUDY COMPILATION 5-6, *available at* www.tebtebba.org/tebtebba_files/susdev/mining/eir/wbfinancedprojects.pdf (last visited Mar. 6, 2007).

³⁰⁹ *See* Cambior, *supra* note 2.

CHAPTER 5: GUYANA'S MINING-RELATED OBLIGATIONS UNDER INTERNATIONAL LAW

Guyana's action and inaction in the field of mining constitute possible violations of the rights of its citizens in general and its indigenous inhabitants in particular under international treaty law. By the terms of a recent amendment to the Guyanese Constitution, international human rights law is treated as Guyanese constitutional law; these violations, therefore, are violations of Guyana's domestic law as well.³¹⁰ This chapter identifies

³¹⁰ In 2003, Guyana amended Article 149 of its Constitution with text mandating that the interpretation of the fundamental rights provisions in the Constitution "shall pay due regard to international law, international conventions, covenants and charters bearing on human rights." In doing so, according to Roxanne George, a Guyanese High Court judge, Guyana has effectively incorporated the treaties to which it has acceded into national law. George Interview II, *supra* note 24. Therefore, any violations of these treaties now constitute breaches of domestic law as well. This view of the constitutional amendment was also expressed by Desiree Bernard, Guyana's Chancellor of the Judiciary at the time, in an address to the Guyana Bar Association. *Local Judiciary Should Be Guided by Human Rights Treaties – Chancellor Bernard*, STABROEK NEWS, Nov. 14, 2004. Guyana has ratified and acceded to six major United Nations human rights conventions: the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 [hereinafter ICCPR], the International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195, 5 I.L.M. 352 [hereinafter ICERD], the International Covenant on Economic, Social, and Cultural Rights, Dec. 19, 1966, 999 U.N.T.S. 3 [hereinafter ICESCR], the Convention on the Elimination of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 14 [hereinafter CEDAW], the Convention Against Torture, Dec. 10, 1984, 1249 U.N.T.S. 13 [hereinafter CAT], and the Convention on the Rights of the Child, Nov. 20 1989, 1577 U.N.T.S. 3 [hereinafter CRC]. See Office of the High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, available at

relevant provisions of the human rights treaties to which Guyana has acceded and discusses how the government's actions in relation to mining may result in violations of Guyana's international (and domestic) human rights obligations, particularly those owed to indigenous peoples.

I. GENERAL PRINCIPLES OF INTERNATIONAL LAW – DIRECT VIOLATIONS AND DUE DILIGENCE

Under international law, a state is responsible for more than just the human rights abuses that it or its officers have directly perpetrated. If the state is capable of preventing an abuse or investigating and punishing it after it occurred, but fails through lack of due diligence, it may also violate its international legal obligations. As identified in this chapter, many of the Guyanese government's violations of international human rights law arise from its failure to protect the rights of people under its jurisdiction from violation by private parties.

While in general, states are held responsible for individual rights violations only as directed under international treaties and conventions, the IACHR – the judicial body that hears cases of human rights violations pursuant to the American Convention on Human Rights (ACHR) – has announced the due diligence requirement as a general principle of international law. In the *Velásquez Rodríguez* Case, the Court declared that "[i]n effect, an illicit act violating human rights that initially is not directly attributable to a state, for example, because it is the work of an individual or because the author of the transgression has not been identified, could result in

<http://www.unhchr.ch/pdf/report.pdf> (last visited June 9, 2005).

Guyana has registered one declaration in relation to ICERD, insisting that it will not interpret the language of the Convention to impose any substantive obligations or procedural requirements beyond the limits set by the Constitution of Guyana. Now that the Constitution itself contains the guarantees of the Convention, it is unclear how this declaration will affect Guyana's obligations.

the international responsibility of the state, not for this act in and of itself but for lack of due diligence to prevent the violation or to address it in the terms required by the convention.”³¹¹

Some multilateral conventions contemplate that states will be legally responsible for failing to prevent individuals from committing rights violations; they do this by imposing express obligations on those states to regulate private conduct. For example, the ICERD directs states to “prohibit and bring to an end” racial discrimination by “any persons, groups, or organizations.”³¹² Furthermore, the Committee on the Elimination of All Forms of Discrimination against Women held in its General Recommendation 19 on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), “Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”³¹³ Similarly, the ICESCR has been interpreted to create an “obligation to *protect* [that] requires States to take measures that prevent third parties from interfering” with certain rights.³¹⁴

³¹¹ *Velásquez Rodríguez* Case, Inter-Am. C.H.R. 35, O.A.S./ser./L/V/III19, doc.13 (1988), para. 172. While Guyana has not ratified the ACHR and does not accept the Court’s jurisdiction, the pronouncements of the Court are one source of evidence of the state of international law in general.

³¹² ICERD, *supra* note 310, art. 2(1)(d).

³¹³ General Recommendation No. 19, CEDAW Comm., 11th Session (1992), *available at* <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (last visited Oct. 17, 2005). These general recommendations are in existence for all of the United Nations human rights treaties, including the ICESCR, ICCPR, and ICERD, and they expound on the relationship between the convention and various crosscutting themes. They also give concrete guidelines on the application of convention provisions in specific situations and are thus useful for interpreting the import of the convention.

³¹⁴ *See, e.g.*, General Comment No. 14, *supra* note 62, ¶ 33.

Guyana’s overt acts and preventable institutional failures violate the internationally recognized rights of the Amerindians to:

- the highest attainable standard of health, including the right to adequate and safe water,
- security of property,
- enjoyment of culture, and
- security of person.

A. RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

Taken together, Articles 11 and 12 of the ICESCR guarantee a minimum standard of living and mandate that states provide the “highest attainable standard of health.”³¹⁵ This includes “the fundamental right of everyone to be free from hunger”;³¹⁶ the obligation of the state to take appropriate measures to “improve methods of production, conservation, and distribution” of

³¹⁵ It is worth noting that these requirements, while not easily attainable for a developing nation, are not merely aspirational. Under Article 2(1) of the ICESCR, States are held to a standard of “progressive realization,” a concept that requires states to be constantly improving the status of their compliance with obligations while recognizing that most countries do not have the resources to comply fully. General Comment No. 3, U.N. ESCOR, 5th Session, U.N. Doc. E/1991/23 (Dec. 14, 1990) indicates that each state must meet “minimum essential levels of each of the rights” within the constraints of state resources. For each of the areas mentioned, we will describe the minimum, or core levels of each right and assess the degree to which Guyana’s policies and actions meaningfully address those obligations, taking into account the limited financial and human resources of the state.

While there may often be an argument that a state’s failure to improve in each of these areas is a function of its limited resources, there is a strong presumption that policies effecting a retrogression on a guaranteed right violate that right. *Id.* ¶ 9. Retrogressive measures can only be justified in the face of absolute state necessity.

³¹⁶ ICESCR, *supra* note 310, art. 11, ¶ 1.

food;³¹⁷ and the necessity of taking steps toward “[t]he provision for . . . the healthy development of the child,”³¹⁸ “[t]he prevention, treatment, and control of . . . diseases,”³¹⁹ and “the improvement of environmental and industrial hygiene.”³²⁰ Similarly, Article 24 of the Convention on the Rights of the Child (CRC) creates a right to health that includes “diminish[ing] infant and child mortality”³²¹ and “combat[ing] disease and malnutrition . . . through the provision of . . . clean drinking water.”³²² CEDAW specifically targets workplace safety for women,³²³ health care access discrimination,³²⁴ and disadvantaged rural women.³²⁵ The CESCR in its General Comment No. 14 on the right to health points out that this right includes special protections for indigenous peoples.³²⁶ The CESCR continues that violations can stem from “the failure to enact or enforce law to prevent the pollution of water, air, and soil by extractive . . . industries.”³²⁷

³¹⁷ *Id.* ¶ 2(a).

³¹⁸ *Id.*, art. 12, ¶ 2(a).

³¹⁹ *Id.* ¶ 2(c).

³²⁰ *Id.* ¶ 2(b).

³²¹ CRC, *supra* note 310, art. 24, ¶ 2(a). Article 4 of the CRC holds that States Parties are held to a progressive realization standard similar to that of the ICESCR on economic and social rights: “With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.” The right to health falls within this category of rights.

³²² *Id.* ¶ 2(c).

³²³ CEDAW, *supra* note 310, art. 11(1)(e) (requiring assurance of health and safety for women in the workplace, with particular emphasis on reproductive function).

³²⁴ *Id.*, art. 12(1).

³²⁵ *Id.*, art. 14(b).

³²⁶ General Comment No. 14, *supra* note 62, ¶ 27.

³²⁷ *Id.* ¶ 51; *see also id.* ¶ 11 (discussing the importance of environmental conditions in assessing the right to health, and the need for community participation in decision-making), ¶ 36, ¶ 49 (discussing the need for national

This section will argue that through its stance on mining, Guyana violates indigenous peoples’ right to health in three ways: it fails to supply adequate and safe water; its policies encourage the spread of disease rather than combating it; and to the extent that mining displaces indigenous peoples and makes their traditional environment unusable, it causes negative health effects.

1. SAFE AND ADEQUATE SUPPLY OF WATER

International conventions that address economic and social rights, including those of women and children, indicate that the right to water is part of the basic right to life and health. General Comment No. 15 of the CESCR asserts that: “The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living. . . . The right to water is also inextricably related to the right to the highest attainable standard of health.”³²⁸ CEDAW requires the state to ensure that women “enjoy adequate living conditions, particularly in relation to . . . water supply,”³²⁹ while CRC mandates that a State Party take appropriate measures to “combat disease and malnutrition . . . through the provision of adequate nutritious food and clean drinking water.”³³⁰ While there are many normative components to the right to water, the CESCR has identified a few core obligations that constitute the “minimum essential levels”³³¹ of rights that every State is required to provide within the constraints of its resources. Of these obligations, Guyana violates the most basic one: ensuring a *minimum essential amount of safe water*.³³²

policies, including those “aimed at reducing and eliminating pollution”).

³²⁸ General Comment No. 15, *supra* note 62, ¶ 3, U.N. ESCOR, 29th Session, U.N. Doc. E/C.12/2002/11 (Nov. 20, 2002).

³²⁹ *See* CEDAW, *supra* note 310, art. 14(2).

³³⁰ *See* CRC, *supra* note 310, art. 24, ¶ 2.

³³¹ U.N. ESCOR General Comment No. 15, *supra* note 62, ¶ 37.

³³² *Id.*

Despite the formal existence of environmental safeguards in the form of the EPA and 2005 Regulations, Guyana is so lacking in measures to coordinate and plan the location of mining claims and incentives for mines officers to enforce existing restrictions that miners are able to arrange their operations with near-total impunity.³³³ Unfortunately for residents of the interior, this means that miners are likely to dig pits very close to streams and rivers, since this placement makes it easy for them to secure the continuous supply of water needed to mine, and there is almost no regulatory penalty for the damage they may cause. In 1999, an airline pilot took photographs documenting widespread discoloration of rivers and creeks in mining areas.³³⁴ In October 2005, the research team that visited the Upper Mazaruni made similar observations. This phenomenon of water discoloration indicates increased turbidity and is a function of the sediment and pollution deposited in the water by mining operations.³³⁵ Campbelltown residents in the Mahdia area reported that all creeks but one have become muddied and therefore unusable for household tasks, and that even the one they use for washing is no longer potable.³³⁶ The locals have been forced to rely on rainwater to supply their drinking needs.³³⁷

The requirement of ensuring a minimum amount of water specifies that the water must be “sufficient and safe for personal and domestic use to prevent disease.”³³⁸ The muddied creeks typical of mining areas raise grave concerns precisely because the

sediment makes the water undrinkable, thereby failing the sufficiency portion of the requirement. In addition to that, the content of mercury and other pollutants makes the water unhealthy, thereby failing the portion of the requirement that involves safety to prevent disease. Campbelltown and Kamaru residents have reported rashes, skin disorders, and dysentery from using polluted creek water;³³⁹ mercury is also known to cause childhood deformity, uncontrolled shaking, and muscle wasting.³⁴⁰

In addition to describing generally applicable provisions, the CESCR recognizes that indigenous people are peculiarly vulnerable to the effects of water pollution in many places: “Indigenous peoples’ access to water on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver, and control their access to water.”³⁴¹ In Guyana there is a complete lack of any regulatory regime recognizing the downstream effects of pollutants released into creeks. Since, as in Guyana, indigenous people are often the only permanent residents of areas in which mining takes place, in the absence of regulations and control structures enabling them to prevent pollution originating from upstream sources, they will inevitably suffer the brunt of the ill effects of the industry. Furthermore, enforcement of pollution controls is nearly nonexistent due to the insufficiency of formal environmental regulation and the inability of the few mines officers in the country to oversee the execution of the legal measures that do exist to constrain polluting mining practices.³⁴² By failing to adopt the minimum practical regulatory measures

³³³ See *supra* Chapter 4 for a detailed analysis of how the Mining Act and Regulations, as well as the administrative structure of the Guyanese government, are inadequate to protect the environment and Amerindians, and for practical recommendations on ways to improve the current state of regulation.

³³⁴ See Bert Wilkinson, *Environment-Guyana: Wildcat Miners Polluting Many Rivers*, INTERPRESS SERVICE, Feb. 18, 1999.

³³⁵ Cheong Interview, *supra* note 172; EPA Mining Expert Interview, *supra* note 48.

³³⁶ Thomas Interview, *supra* note 81.

³³⁷ *Id.*

³³⁸ General Comment No. 15, *supra* note 62, ¶ 37(a).

³³⁹ Thomas Interview, *supra* note 81. The October team received confirmation that polluted creek water has caused a plethora of health problems. Informal conversations with residents of Kamaru during their visit to the Upper Mazaruni, and with Amerindian participants in a seminar on land rights sponsored by APA, in Georgetown, Guy. (Oct. 22, 2005).

³⁴⁰ Wilkinson, *supra* note 334.

³⁴¹ General Comment No. 15, *supra* note 62, ¶ 16(d).

³⁴² See *supra* Chapter 4 for details.

within its means to prevent these harms, thereby allowing mining operations to foul creeks in mining areas, the government of Guyana has abdicated its responsibilities to its citizens and fails to ensure a minimum essential amount of safe water for Amerindians in particular.³⁴³

2. COMBATING DISEASE

Guyana has committed itself to supporting the basic right to health by combating disease. The CESCR interprets Article 12 of the ICESCR as imposing a core obligation to combat and control epidemics,³⁴⁴ and it points out that improving “environmental and industrial hygiene”³⁴⁵ includes the obligation to develop preventive measures with respect to occupational accidents and disease.³⁴⁶ Article 24 of CRC also requires States Parties to take steps toward combating disease and malnutrition. On a regional basis, Guyana has signed onto the Amazon Cooperation Treaty (ACT),³⁴⁷ giving it the obligation to coordinate health services with other

Amazon countries, to improve sanitary conditions, and to work on methods for combating epidemics.³⁴⁸

By failing to control pollution and industry, as well as not adopting policies to control the malaria epidemic in mining areas – indeed, by promoting uncontrolled mining operations that leave behind artificial bodies of standing water – Guyana has defaulted on its obligations to combat disease and improve environmental hygiene.³⁴⁹ While Guyana does provide anti-malarial medications free of charge at clinics in the interior, it undercuts these efforts by actively adopting policies that have likely exacerbated the spread of the disease. Due to the inadequacy and lack of specificity of mining regulations requiring rehabilitation of mining sites and the incapacity or unwillingness of the mining establishment as currently structured to enforce any environmental standards on mines, Guyana’s policy of rapid and uncontrolled development of the mining industry has led to the proliferation of mosquitoes and a concomitant explosive increase in cases of malaria. In short, Guyana has failed to meet its ICESCR obligation to protect the right to health of Amerindians and those in the interior from the harmful health impacts of mining activities. Similarly, the failed regulatory scheme indicates that Guyana has not met its obligation to progressively realize the right to health as required by the CRC and the ICESCR.³⁵⁰

³⁴³ General Comment No. 15, *supra* note 62, ¶ 44 outlines the obligations on the part of governments to *respect, protect, and fulfill* the right to adequate and safe water. This omission of the Guyanese government to regulate falls under the second of these categories.

³⁴⁴ General Comment No. 14, *supra* note 62, ¶ 16, ¶ 44(c).

³⁴⁵ ICESCR, *supra* note 310, art. 12(2)(b).

³⁴⁶ General Comment No. 14, *supra* note 62, ¶ 15.

³⁴⁷ The ACT, officially the Treaty for Amazonian Cooperation, between Bolivia, Brazil, Colombia, Ecuador, Guyana, Suriname, and Venezuela, July 3, 1978, 17 I.L.M. 1045, is an agreement between seven South American nations whose territory includes a portion of the Amazon basin rainforest to coordinate their development policies. Although it is not clear whether or not there has been a formal accession process to the ACT, Guyana sends representatives to the meetings of member states of the treaty and has advocated an active Amazon Cooperation Treaty Organization to implement the objectives of the Treaty. *See* Guyana Information Agency, “ACTO Meeting Calls for Closer Collaboration among Member States,” September 30, 2004, *available at* <http://www.gina.gov.gy/archive/daily/b040930.html> (last visited Apr. 10, 2005). This conduct would seem to indicate that Guyana considers itself a full member of the treaty.

³⁴⁸ Article 8 of the treaty reads: “The Contracting Parties decide to promote coordination of the present health services in their respective Amazonian territories and to take other appropriate measures to improve the sanitary conditions in the region and perfect methods for preventing and combating epidemics.”

³⁴⁹ General Comment No. 14, *supra* note 62, ¶ 51 (“Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons . . . from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations.”), ¶ 36 (discussing need for national policy).

³⁵⁰ According to the CESCR, “there is a strong presumption that retrogressive measures taken in relation

Perhaps even more troubling, Mahdia area residents report the appearance of a new strain of malaria from Brazil.³⁵¹ If this is the case, then Guyana's disastrous health policies may well be contributing to the international spread of disease to areas in which it had not existed before. This is a clear indication that Guyana has failed even in its modest obligation under ACT Article 8 to coordinate health services in Amazon regions with adjacent territories and to work to perfect methods for preventing epidemics.

3. DISPLACEMENT AND HEALTH

The CESCR recognizes a special connection between indigenous people's land tenure and their physical health: "development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health."³⁵² It also imposes a core obligation on states to formulate a national public health strategy that gives particular attention to vulnerable and marginalized groups.³⁵³

It follows that when Guyanese health policies lead to the displacement of indigenous people and therefore negatively affect their health, Guyana is failing to provide the minimum essential level of health to which it is committed. As implemented, Guyana's mining laws and policies almost ensure the displacement of indigenous peoples. The 2006 Amerindian Act³⁵⁴ explicitly authorizes the Minister responsible for mines to override a community's veto on the grant of a large scale mining license on their titled land if he determines that the license grant is in the public interest. This policy seems not to take into account Guyana's health obligations to

to the right to health are not permissible." General Comment No. 14, *supra* note 62, ¶ 32.

³⁵¹ Wilkie Interview, *supra* note 66; Kerrett-Persaud Interview, *supra* note 71.

³⁵² General Comment No. 14, *supra* note 62, ¶ 27.

³⁵³ *Id.* ¶ 43(f).

³⁵⁴ Amerindian Act, 2006.

indigenous people, however, since the opening of a mine in the middle of tribal land is sure to cause displacement. Furthermore, the pollution of creeks, the decimation of the forest, the destruction of wildlife, and the rampant malarial epidemic are all phenomena that would tend to require Amerindians to leave their traditional territory for mining landings and coastal cities. GGMC Commissioner Robeson Benn, then Chief Mines Officer Jack Morgan, SIMAP Programme Coordinator Rohini Kerrett-Persaud, and Corporal Cranston Daw all described in detail the deterioration in mental and physical health many Amerindians undergo when displaced from their land and relocated to cities, towns, and landings: to name a few examples, surges in alcoholism, break-up of families and the attendant mental and physical effects on children, and communication of sexually transmitted diseases, particularly HIV.³⁵⁵ The fact that it has adopted the above-mentioned disastrous policies and has empowered mining officials to displace Amerindians when they determine that advancing the industry is in the public interest indicates that Guyana has taken active steps to distance itself from compliance with the obligation to take vulnerable minorities into account in formulating its health strategies.

B. RIGHT TO SECURITY OF PROPERTY

The right to own property and the concomitant right to be free from arbitrary deprivation of property are enshrined in ICERD, the ACHR, and the American Declaration on the Rights and Duties of Man. Guyana has violated Amerindians' property rights in two ways: by recklessly promoting the development of the extractive industry and by granting mining licenses on territory claimed by Amerindians and whose title is still under adjudication. It has also enacted legislation that discriminatorily disadvantages Amerindians' ability to own and use land.

³⁵⁵ Interview with Robeson Benn, commissioner, GGMC, in Georgetown, Guy. (Jan. 15, 2005); Morgan Interview, *supra* note 76; Kerrett-Persaud Interview, *supra* note 71; Daw Interview, *supra* note 123.

ICERD mandates that States Parties undertake to prevent discrimination and guarantee to everyone “[t]he right to own property alone and in association with others.”³⁵⁶ The issue of property is not straightforward, since in Guyana, subsurface minerals are the property of the state. To some extent, the right of indigenous people to exclude outsiders and to control their own territory has been balanced against the right of the State to access or license others to access its own subsurface property. Guiding principles, however, can be found in CERD’s Concluding Observations on Suriname.³⁵⁷ The committee asserts that even when minerals that lie under indigenous-held land are the property of the state, their use must be carried out consistent with the rights of the indigenous people. Thus, minerals may not be extracted on Amerindian land without complying with Amerindians’ other substantive rights, including the rights discussed in this chapter.

Guyana may violate Article 8 of the American Declaration of the Rights and Duties of Man by depriving Amerindians of the right to own property and not to leave their chosen place of residence except by their own will. All members of the OAS are signatories to the Declaration, including Guyana. Article 8 of the Declaration posits: 1) a right to residence, 2) a right to freedom of movement, and 3) a right not to leave except by one’s own will. The Inter-American Commission for Human Rights, by the terms of the OAS Charter and the Statute of the Inter-American Commission for Human Rights, is given the task of interpreting the provisions of the Declaration when disputes arise between a State Party and its citizens.³⁵⁸

In 1985, the Commission found that Brazil violated the Article 8 rights of the Yanomami Indians when it opened up their formerly isolated territory to

build a highway and extract mineral resources, thereby leading to the disintegration and destruction of traditional communities, loss of traditional agricultural land, and effective forced relocation of the indigenous inhabitants.³⁵⁹ Guyanese Amerindians seem to be incurring the same costs as the Yanomami as a result of active government measures to open Amerindian lands to the environmentally destructive forces of unchecked mining. For example, in addition to the destruction caused by the health consequences of mining as described above, according to Rohini Kerrett-Persaud of SIMAP, communities have had to disband or move because of water pollution. Therefore, the Amerindians may be experiencing Article 8 violations because of the failure to implement effective regulation to check the disastrous effects of mining.

Interviews with both government-affiliated NGO workers and government officials indicated a lack of concern about this phenomenon. In fact, they believe it is indigenous people’s traditional lifestyle that induces them to shift residence often. In response to questions about Amerindians’ tendency to move when resources become scarce, Kerrett-Persaud said, “Moving is easy for them; it’s their way of life,”³⁶⁰ while Rosemary Benjamin-Noble of the GGMC said, “I call them ‘itinerant.’”³⁶¹ If these attitudes translate into recurrent failure to institute mitigating measures on the part of the government, then to the extent that opening indigenous lands to mining in Guyana leads to the destruction of traditional communities and the relocation of inhabitants, Guyana’s policies may represent a neglect of due diligence that violates Article 8 of the Declaration.

Guyana’s actions and omissions may also constitute a violation of Amerindians’ right to security of property pursuant to Article 23 of the Declaration. While there is no Commission jurisprudence on Article 23 as of yet, the ACHR posits a right to “use

³⁵⁶ See ICERD, *supra* note 310, art. 5(b)(v).

³⁵⁷ CERD, Concluding Observations: Suriname, 64th Session, CERD/C/64/CO/9, Apr. 28, 2004.

³⁵⁸ OAS CHARTER, 119 U.N.T.S. 3, art. 106; STATUTE OF THE INTER-AMERICAN COMMISSION FOR HUMAN RIGHTS, O.A.S. Res. 447 (IX-0/79), O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80, vol. 1, at 88, arts. 1(2)(b), 20.

³⁵⁹ Case 7615, Inter-Am.C.H.R., Report No. 12/85, OEA/Ser.L/V/II.66., doc. 12 (1985).

³⁶⁰ Kerrett-Persaud Interview, *supra* note 71.

³⁶¹ Benjamin-Noble Interview II, *supra* note 41.

and enjoyment” of property and adds the concept of arbitrary deprivation. It requires that property may only be confiscated for reasons of “public utility or social interest,” and even then only if just compensation is given.³⁶² The IACHR, which is the tribunal that has been vested with the power to adjudicate disputes arising under the ACHR, has ruled that indigenous people may have property rights in land to which they do not have official title.³⁶³ In the *Awes Tingni* Case, Nicaragua had granted mineral exploration and development rights to companies on lands that certain indigenous groups claimed as their traditional territory and were in the process of claiming through an official land titling process.³⁶⁴ The Court held that a country violates the right of indigenous people to hold property when it grants resource extraction rights to outsiders on land claimed by the indigenous people if that country has failed to provide an effective land demarcation scheme for indigenous people. Furthermore, the Court held, this rule is as true for property that is communally held as for individually titled land.³⁶⁵ Analogously, by not providing such an effective land demarcation scheme and granting mining rights to outsiders on territories claimed by Amerindians, Guyana violates the “use and enjoyment” right posited under ACHR.

Although Guyana is not a signatory to the ACHR and therefore is not bound by IACHR jurisprudence, *Awes Tingni* provides persuasive authority on the right to property as covering *use* as well as *ownership* in interpreting Article 23 of the Declaration in this case. While the Court makes mention of the Convention’s choice of the words

“use and enjoyment of property” instead of the Declaration’s reference to *ownership* of “private property,” its analysis fleshes out the complex and interdependent relationship between the two concepts. It characterizes the violation of the Mayagna community’s rights primarily as one of ownership: by causing uncertainty in the complainants’ property ownership rights, Nicaragua made use and enjoyment rights unclear. By granting extraction licenses to industries while those rights were still unclear, it compromised indigenous people’s future ability to own property that might meet their physical and cultural needs. The situation in Guyana is similar in that the Guyanese land demarcation process has been stalled for decades, and the government continues to grant mining rights on lands to which indigenous communities have attempted to claim communal title. Through its continuing inaction on indigenous claims for new titles and extensions, the Guyanese government blocks the exercise of indigenous people’s right to use and enjoy their own property. And by issuing mineral extraction licenses to outsiders, it both perpetrates a taking of land that might be allocated to indigenous people if the titling process were in fact effective and degrades the ability of that land to sustain the indigenous people who may one day gain title to it.

While Guyana’s licensing decisions and inaction on titling seem to breach Amerindians’ property rights, the administrative structure of the property regime runs afoul of the protections against discrimination in CERD. In this Convention, States Parties, recognizing the historical disadvantages, abuses, and deprivations to which indigenous people have often been subjected and also taking into account the challenges indigenous people may face in adapting to and maintaining their own way of life in the modern world, promise to take active steps to ensure that indigenous people have the right and capacity to control and develop their traditional lands in the ways they see fit.³⁶⁶ Guyana, however, has not instituted schemes to enable indigenous people to exercise land tenure. Instead, it has

³⁶² ACHR, O.A.S.T.S. No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21 re. 1 (1979), art. 21(2).

³⁶³ Guyana, as a non-signatory to the ACHR, does not appear before the IACHR. The authority of the jurisprudence of the Court is, however, likely to be highly persuasive in interpreting the Declaration, if for no other reason than that the Commission also makes recommendations under the ACHR for countries that have acceded to that Convention; it then has the option to refer such cases to the IACHR itself.

³⁶⁴ *Mayagna (Sumo) Awes Tingni v. Nicaragua*, IACHR, Aug. 31, 2001, ¶ 2.

³⁶⁵ *Id.* ¶¶ 142-155.

³⁶⁶ See CERD General Recommendation No. 23, 51st Session, Comm. on the Elimination of Racial Discrimination, U.N. Doc. A/52/18, Annex V (1997).

enacted legislation that actively discriminates against Amerindians by making their property rights less secure and absolute than those of other Guyanese citizens. The Amerindian Act precludes village councils from exercising community title over “rivers and all lands sixty-six feet landwards from the mean-low water mark,”³⁶⁷ thereby weakening communities’ ability to exclude outsiders from territory that runs right through their titled land. The 2006 Amerindian Act would allow the minister responsible for mines to override the decision of a community not to allow a miner to carry out mining activities on community lands.³⁶⁸

These provisions weakening Amerindian property rights have no parallel for non-Amerindians and have a discriminatory effect on Amerindians’ ability to hold property. For example, there is no law prohibiting private citizens or organizations from holding land on riverbanks and excluding outsiders, whereas the above-mentioned provision of the Amerindian Act prevents Amerindian communities from exercising title to those important lands. While the law remains silent on the minister’s authority to override the objections of non-Amerindian private property owners to the granting of mining concessions on their holdings, the Guyanese government has seen fit to single out Amerindian land title for preemption in the “public interest” without any discussion of the payment of compensation. This disparate treatment is paternalistic and blatantly discriminatory, and therefore violates the equal protection guarantees of CERD.

C. RIGHT TO ENJOYMENT OF CULTURE

The ICCPR requires each State Party to guarantee the right of all inhabitants to maintain and enjoy

their own culture.³⁶⁹ Since Guyana has ratified the ICCPR and incorporated the covenant into its own constitution, the provisions of the covenant now have the force of domestic law. In its Concluding Observations on Guyana’s 2000 ICCPR compliance report, the HRC voiced concerns that mining and the delay in land demarcation was negatively impacting Amerindians’ cultural rights:

The Committee . . . is concerned that members of the indigenous Amerindian minority do not enjoy fully the right to equality before the law. It is particularly concerned that the right of Amerindians to enjoy their own culture is threatened by logging, mining and delays in the demarcation of their traditional lands, that in some cases insufficient land is demarcated to enable them to pursue their traditional economic activities and that there appears to be no effective means to enable members of Amerindian communities to enforce their rights under Article 27.³⁷⁰

This section will analyze the ICCPR-guaranteed right to culture and the ways in which Guyanese mining policies give rise to governmental responsibility for violations of this right, especially in light of the widely recognized links between indigenous peoples’ land and their culture.

The guarantee of the right to enjoy one’s own culture has been fleshed out in HRC jurisprudence. In particular, the case of *Ominayak, Chief of the Lubicon Lake Band v. Canada*³⁷¹ established that the Article 27 right to enjoyment of culture includes the right to engage in the economic and social activities

³⁶⁷ Amerindian Act, 1984, § 20A(2).

³⁶⁸ Amerindian Act, 2006. The current Amerindian Act contains no analogous provision, but according to Mike McCormack, the executive director of the Guyana Human Rights Association, GGMC has consistently acted as if it had been explicitly granted that power. McCormack Interview, *supra* note 126.

³⁶⁹ See ICCPR, art. 27.

³⁷⁰ U.N. Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Guyana*, U.N. Doc. CCPR/C/79/Add.121 (Apr. 25, 2000).

³⁷¹ U.N. Hum. Rts. Comm., 38th Session, U.N. Doc. CCPR/C/38/D/167/1984. (1990).

of the community in question. In that case, Canada was found to have violated the Article 27 rights of a Native American group by allowing the province of Alberta to license gas and oil exploration on native land. Two subsequent cases, *Länsman v. Finland*,³⁷² have developed four further rules on this aspect of cultural rights. First, regulations on economic activities, which are normally entirely left to state discretion and are not subject to international scrutiny, can trigger the right to culture if the activity regulated is an essential component of the culture.³⁷³ Second, the obligation is triggered only if the impact on the activity in question is significantly great.³⁷⁴ Third, when a state action may affect a minority's Article 27 rights, there must be a consultation process in which the minority will have a chance to present its objections.³⁷⁵ Finally, the state must weigh the interests of minorities against the economic interests of the state as a whole in making its decision.³⁷⁶

HRC has also explicitly recognized that indigenous people's ways of life are often intimately connected to the land on which they live. In *Kitok v. Sweden*,³⁷⁷ HRC reasoned that the right to enjoy their culture might "consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority."³⁷⁸

³⁷² U.N. Hum. Rts. Comm., 52nd Session, U.N. Doc. CCPR/C/52/D/511/1992 (1994); U.N. Hum. Rts. Comm., 58th Session, U.N. Doc. CCPR/C/58/D/671/1995 (1996).

³⁷³ U.N. Hum. Rts. Comm. (1996), *supra* note 372.

³⁷⁴ *Id.* In this case, the infringement on Sami people's right to maintain their traditional reindeer herding way of life was not considered significant enough to trigger the Article 27 obligation.

³⁷⁵ U.N. Hum. Rts. Comm. (1994), *supra* note 372.

³⁷⁶ *Id.* In this case, HRC found that Finland's consultation and balancing process had been adequate to protect the complainants' Article 27 rights.

³⁷⁷ 33rd Session, Hum. Rts. Comm., CCPR/C/33/D/197/1985 (1988).

³⁷⁸ Quoted in ICCPR General Recommendation No. 23, 50th Session, Hum. Rts. Comm., U.N. Doc. CCPR/C/21/Rev.1/Add.5.

One way in which the effects of mining might directly deny Guyanese Amerindians the right to enjoy their culture lies in the fact that mining activities and the ecological disturbance and destruction that accompany them drive away animals and clear the rivers of aquatic life. Amerindians in Campbelltown attested that the high level of resource extraction in the Mahdia area made it necessary for their hunters to range further and further from the village to find meat. If hunting and fishing constitute essential components of Amerindian cultural identity, the pattern of decisions on the part of the state consistently to grant mining permits that compromise Amerindians' ability to participate in these activities without first consulting with the impacted communities could be a failure of its Article 27 obligations.

Furthermore, the connection between property and culture for indigenous peoples seems to indicate that Guyana's violations of Amerindians' right to property may also constitute an infringement of the right to enjoy their culture *per se* that would trigger the *Länsman* balancing test, at least to the extent that the deprivation of effective land tenure makes the exercise of traditional cultural activities impossible. For example, the inability of Amerindians to control the mining use of the rivers that run through their territory might make travel and fishing by traditional canoe impossible, thereby endangering many cultural practices and constituting a violation of the ICCPR Article 27 right to enjoy one's own culture.

D. RIGHT TO SECURITY OF PERSON

ICERD contains a list of rights to which all states must guarantee inhabitants equal access and protection.³⁷⁹ Article 5(b) designates the right to security of person from bodily harm, "either by government officials or by any individual, group, or institution,"³⁸⁰ as one of those rights. The Inter-American Convention on the Prevention,

³⁷⁹ ICERD, *supra* note 310, art. 5.

³⁸⁰ *Id.* art. 5(b).

Punishment, and Eradication of Violence against Women – the one non-United Nations human rights treaty that Guyana has incorporated into its Constitution – asserts women’s right to a “simple and prompt recourse to a competent court for protection” against rights violations.³⁸¹ It imposes duties on States Parties to establish legal procedures and administrative mechanisms for ensuring that women can receive a timely hearing and fair remedies for violations of their rights.³⁸² CEDAW has also been interpreted to hold states responsible when they “fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.”³⁸³ Together, these provisions seem to obligate a State Party to ensure that the national police force and judiciary actually investigate crimes, enforce the law, and provide remedies, and that they do so on a non-discriminatory basis.

Various respondents, from Mike McCormack at the Guyana Human Rights Association to Corporal Cranston Daw of the Guyana Police Force in Mahdia, mentioned the frequency of violence against Amerindian women. We heard many stories of rape and sexual assault perpetrated by coastland miners against Amerindian women; Corporal Daw said that many of these assaults went unreported due to the “timidity” of Amerindian women,³⁸⁴ while an embassy officer gave an alternate explanation: that Guyanese police rarely investigate allegations of violence of any sort in the communities and are often bought off.³⁸⁵ Roxanne George, a judge on the High Court of Guyana, explained that the ability of magistrates in the interior to prosecute the incidences of sexual violence cases arising from mining activity that *are* reported is hampered by the lack of female constables who could more effectively deal with sensitive issues; the great distance of the magistrates

from remote Amerindian villages; and the slowness of the court system, which can take two years or more to address such matters.³⁸⁶ Judge George explained that a major practical problem with this long delay is that by the time a magistrate manages to hear a sexual violence case involving a miner, it is highly likely that the accused will have already left the area to return to the coast or to move on to another mining zone.³⁸⁷ Furthermore, according to the embassy officer, the Guyanese government had failed to take any steps to combat the problem of trafficking in women – a practice to which Amerindian women and girls from hinterlands villages seem to be particularly susceptible – until the United States put pressure on the Guyanese government in 2004.

If it is indeed true that Guyanese police and the government in Georgetown turn a blind eye to violence against Amerindian women, then the Guyanese government is failing in its ICERD obligation to provide equal security of person to all its citizens. Since the judicial system, as it is currently set up, seems particularly unable to provide women with legal protection against violations by miners of the right to security of person, the state is liable under CEDAW for failure to exercise due diligence on incidents of sexual violence.

³⁸¹ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, 33 I.L.M. 1534 (1994), art. 4(g).

³⁸² *Id.* art. 7(f) and (g).

³⁸³ See General Recommendation No. 19, CEDAW Comm. (1992).

³⁸⁴ Daw Interview, *supra* note 123.

³⁸⁵ Officer Interview, *see supra* note 124.

³⁸⁶ George Interview, *supra* note 125.

³⁸⁷ This also seems to indicate that suspects in sexual violence incidents are not generally detained pending trial, or else they manage to make bail and leave town in the interim. Whichever is the case, there are certainly indications that the Guyanese police do not take seriously the threat sexual offenders pose to interior communities.

RECOMMENDATIONS

I. RECOMMENDATIONS TO THE GOVERNMENT OF GUYANA

Based on the findings of this report, we recommend that the government of Guyana take the following steps to improve the efficiency and effectiveness of its regulation of mining and to achieve consistency with applicable international human rights law. The government's international partners, including bilateral donors and international organizations, should support it in implementing these recommendations. Guyanese and international NGOs should monitor the government's policies and may be able to support the government in improving them. Nevertheless, the responsibility to regulate the mining sector in compliance with domestic and international law ultimately lies with the government of Guyana.

1. *Fully implement the amended 2005 Mining Regulations on environmental protection.* These regulations are an improvement over the old regulations, but they cannot be enforced until they are fully implemented. This should be given high priority and accomplished in the short term.
2. *Provide Amerindians and other surface rights users with greater rights and control over their land.* This is a short-term solution and should be implemented immediately. Amerindians should be granted title to the land they currently occupy in order to give them more control over the way their lands are used. In addition, they should be given an unconditional right to exclude miners from conducting mining activities on their land. Giving greater rights to Amerindians will allow them to protect themselves from environmental damage caused by mining and will give them a vested interest in preserving that land for future use. GGMC should also establish a system through which Amerindians can notify mines officers of environmental damage caused by mining ventures. This could be done through a rangers program, as described in Recommendation Six, or directly through the communities.
3. *Limit or eliminate small scale mining operations.* As described in Chapter 4 small scale operations are more difficult to regulate and are generally less efficient and more destructive than medium and large scale operations. The 1973 Mining Regulations for small scale mining led to disorganization in the staking of mining claims, which made it difficult for mines officers to identify illegal miners and increased the likelihood of disputes between miners. The 2005 Regulations have only further increased the regulatory distinction between small scale operations on the one hand and medium and large scale operations on the other. In the near term, GGMC should enact regulations that prevent small scale miners from leasing several contiguous plots and operating at what should be considered a medium scale level while evading the rules applicable to medium scale miners. While the amended definitions for the various scales of mining operations provided in the 2005 Regulations may close this loophole, the implications of these definitions are not clearly set out in the Regulations themselves and should be made more explicit. To add to the confusion, the 2005 Regulations revert to the old method of using area of excavation to define mining scales, albeit with adjusted numbers. GGMC should also provide miners with incentives to choose medium scale classification over small scale classification when that would reflect the realities of the mining operation. In the long term, the government should work to bring all mining activities under the oversight of a properly empowered and resourced EPA.
4. *Provide stricter regulations on mining equipment and mining chemicals as a complement to regulations on mining practices.* Equipment is easier to regulate than mining practices and therefore such regulation should be more easily enforced than the current regulations on activities. In the long term, the government should enforce a prohibition on missile dredges and require older technologies to be phased out within a certain number of years. This may force the miners who employ the least environmentally sound equipment and practices to cease operations, but the government can subsidize the process to ameliorate the impact on the industry. For example, the government can provide miners

with environmental upgrades to mining equipment at a discount or for free. In the short term, inexpensive retorts should be distributed free of charge to mitigate the environmental effects of mercury.

5. *Limit locations where mining operations can take place.* The placement of mining claims, particularly small scale claims, is currently highly disorganized. By delineating more narrowly the areas where miners are allowed to mine, the government can: 1) limit the inevitable environmental damage of mining operations by isolating operations to particular areas, and 2) reduce the burden on mines officers by giving them less territory to cover. This type of limitation would also make it easier for mines officers to locate illegal mining activity. The current Mining Regulations allow miners with prospecting permits access to most areas in the interior, so a mines officer cannot identify illegal miners simply by their presence in a given area. If mining is restricted from all but designated areas, then mines officers can punish miners automatically based on their presence in an illegal area.

In the short term, the government should limit new mineral extraction licenses to areas of rich mineral deposits and smaller Amerindian populations. This is likely to increase overall efficiency and will be beneficial both to miners and the government, since it will lead to increased revenues.

We recommend the following long-term actions:

- a. Within the current regulatory regime, coordinate surface and subsurface rights with the GFC and private land holders, including Amerindian communities;
- b. Develop principles for determining which places should be opened for mining;
- c. Coordinate mining district designation with the National Protected Areas System;
- d. Take into account environmental concerns and the location of communities.

6. *Increase the number of mines officers and increase cooperation with Amerindian communities to identify violators.* In general, GGMC needs to immediately increase the number of mines officers and provide them with better resources for carrying out their functions. This might include an office in each mining district with a clerical staff to handle paperwork in addition to an increase in the number of field officers. An increase in salary for mines officers will also make them less subject to corruption and increase the number of qualified individuals interested in the position. While the 2005 Regulations place greater restrictions on the disposal of tailings from mining operations, it is unrealistic to expect mines officers effectively to carry out all their enforcement powers and responsibilities. Even with increased resources, certain problems will be nearly impossible to regulate properly without increasing the capacity of communities in the interior to help with monitoring. In the long term, building this capacity within Amerindian communities is probably the most effective way to handle these problems, particularly with regard to water pollution and border regulation. Amerindians living in the vicinity of mining operations have a much better ability to identify violations, provided they are given proper equipment and training. In addition, Amerindians are in a better position to discover illegal mining operations along the borders.
7. *Increase the number and powers of Amerindian rangers.* GGMC's program to train Amerindians as mining rangers is promising. GGMC should give immediate priority to training and employing more rangers and give them the same powers as mines officers, including the power to enforce the mining code and collect environmental data. Rangers would be accountable informally to their communities, which presumably would favor stricter enforcement of mining laws than currently is possible. They also would be accountable formally to GGMC, their employer, and in the long term, if oversight is given to the EPA, rangers should report jointly to the EPA and GGMC.
8. *Change revenue structure to a flat rate rather than a royalty percentage.* This reform can be carried out

immediately. Instead of taking a royalty percentage of gold at the end of the year, the government should require miners to pay an increased amount of rent that correlates to the average amount of gold collected for a claim of a particular size/scale. The plan can be adjusted to decrease the burden on start-up operations to account for higher initial operating costs while holding more established operations to higher fees. A flat rate fee would reduce the amount of monitoring required of mines officers and would provide incentives to miners to choose higher-yield claims. It would also allow the GGB to increase the amount of gold it obtains. Since royalties or taxes would not be imposed at the time of sale, people would be more likely to sell to the GGB at the true London fix price. This would increase the accuracy of estimates on gold collection and would also give the government greater access to foreign currency.

9. *Promote the education of Amerindians and miners regarding safety in handling hazardous materials.* In order for education to be effective, educators will need to hold more training sessions in the interior and may need to travel onto mining claims and conduct on-site training in order to communicate their message effectively. These education programs should also be targeted at residents of the interior, such as Amerindians, who may be negatively affected by mining operations even if they are not themselves miners. In particular, education on the dangers of mercury poisoning would be a suitable and fairly urgent focus for early training efforts. In addition, GGMC should widely promulgate the Code of Practice described in amended Regulation 237 in order to help educate miners on the appropriate procedures for handling mercury and cyanide.³⁸⁸
10. *Require adequate environmental bonds by miners on all scales.* The 2005 Regulations incorporate the principle of environmental bonds, but the amount of the bonds is too low. The amount miners will forfeit in case of a clean-up should

be significantly increased and should be set at an amount at least as high as the expected costs if it is to serve as an incentive for them to employ more environmentally sound practices. As the regulations stand now, since the current bond amount is lower than the cost of clean-up, it is cheaper for miners to neglect clean-up and simply forfeit the bond. In the long term, miners should be trained in environmental damage mitigation strategies. In the short term, a regulatory scheme should be implemented whereby all miners would be required to submit a restoration plan including an estimate of both the expected restoration costs and the costs of clean up in the case of unexpected environmental damage. In order to simplify enforcement, GGMC should set a high bond amount that can be reduced if a miner can show to the satisfaction of the Commissioner that he can clean up the potential damage for less money than the initial amount of the bond. This bond may also be partially refunded if miners demonstrate that they are following environmentally sound mining procedures. Under this plan, enforcement should be easier because the miner has an incentive to undertake environmentally sound practices and to show GGMC that he is capable of restoring the mining site in an efficient manner. Taking this one step farther, the GGB could offer a higher sale price for gold purchased from miners who can prove that their operations are carried out in an environmentally and socially sustainable manner.

11. *Establish additional health facilities in Amerindian territory to deal with mounting levels of mining-related diseases such as HIV and malaria.* These efforts should include educational campaigns to inform Amerindians of the healthcare options available to them and ways to avoid transmission of mining-related diseases.
12. *Extend an invitation to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to examine the human rights situation in gold mining areas located in or near Amerindian territory.* The Special Rapporteur should be given free access to mining-affected areas. Additionally, the Special Rapporteur should have the opportunity to

³⁸⁸ Mining (Amendment) Regulations, 2005, § 237.

consult with groups that represent Amerindian communities.

13. *Ensure that pending cases involving land claims by Amerindians in mining regions be duly processed in the judicial and administrative system without further delay.* Many mining-affected Amerindian communities do not have title to their lands or only have title to a portion of the lands that they actually occupy and use. Any unresolved claims of this nature should be resolved before mining activity is permitted to continue in these areas.
14. *Ratify ILO 169 and the ACHR.* These conventions provide important human rights protections of particular significance for Amerindians, and ratification of these treaties would demonstrate good faith on the part of Guyana in its efforts to respect, protect, and promote the special human rights protections owed to its indigenous inhabitants.

II. RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

1. *Urge the government of Guyana as well as corporations involved in mining in Amerindian territory to comply with international human rights obligations.*
2. *Recognize the systemic challenges to protecting the human rights of Guyanese Amerindians posed by gold mining and use its leverage to combat them.*
3. *Send the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to investigate the situation of Guyanese Amerindians affected by gold mining.*
4. *Facilitate the further development of international law norms that protect indigenous peoples and promote corporate accountability for human rights abuses.*
5. *Assist the Guyanese government in implementing a stronger regulatory system for gold mining that will respect, protect, and promote the rights of Amerindians.*
6. *International financial institutions (IFIs) should provide financial and technical assistance to promote the implementation of regulatory reform to strengthen Guyana's adherence to its human rights obligations.*

Such assistance should be bolstered by a commitment to ensure that future, externally funded development projects in Guyana do not encourage or permit environmentally or socially destructive gold mining practices. The orientation of IFI policies regarding Guyana's economic development should reflect this commitment by prioritizing the well being of indigenous peoples. Economic development projects should not create perverse incentives to weaken environmental regulation and human rights protection.

The domestic and international recommendations set forth above can be enacted in both the short term and the long term. None is prohibitively expensive, and the domestic recommendations would tend to increase the revenue Guyana will collect from mining in the long run. Most important, these recommendations will help to mitigate the negative impacts of the industry, ensuring the protection of more Guyanese citizens – particularly, Amerindians – while enabling the country as a whole to reap its benefits in safety and health.

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