

‘Original lords of the soil’? The erosion of Amerindian territorial rights in Guyana

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ABSTRACT

The consequences of State claims to, and controls over, the territories of Guyana’s Indigenous Peoples (Amerindians) are traced through successive Dutch and British colonial to post-Independence governments. From the mid-eighteenth century, a numerically small sugar plantocracy wielded influence within local government and ensured that colonial policy served its interests which were located on the coastland. Hinterland policies extended the capitalist approach to natural resources extraction and favoured the dominance of the small stratum of monied interests over the majority of Crown licences for forestry, mining and ranching, issued over claimed Indigenous lands. The colonial government’s approach to Amerindians was protectionist, but their land rights were not settled in law. Authoritarian post-Independence governments have used the discretionary power in the inherited legislative framework to expand the numbers of, and areas covered by, logging and mining licences. The State is aided by the lack of a reservation process for forests and/or a settlement process to determine and settle pre-existing customary rights of Indigenous Peoples, twin processes that were instituted in the majority of British colonies. Indigenous rights and privileges on their customary lands have been steadily eroded in law, policy and practice. Amerindians receive few economic benefits from natural resources operations on either their legally titled communal lands or customary lands.

KEY WORDS

Indigenous Peoples, land rights, sovereignty, natural resources, Guyana

INTRODUCTION

This article examines the treatment of Indigenous sovereignty and property in Guyana, formerly a Dutch, then British, colony located on the north coast of South America. In a seminal article titled ‘The Amerindians of Guyana: original lords of the soil’, the historian Mary Noel Menezes (1988) recorded the claims to their territories asserted by Indigenous Peoples (Amerindians) that survive in the historical record. By the time the British acquired the Guiana colonies from the Dutch in 1803, the Amerindians were reconciled to European claims to sovereignty. However, Amerindian opposition to the granting by British colonial officials of licences over their territories to wood cutters and gold miners confirmed that, just like seventeenth century English burghers, they did not conflate European sovereignty with rights over Amerindian property. This paper addresses the contested claims to sovereignty and property in the colonial period and the unsettled claims to Indigenous property in present-day Guyana.

In his analyses of the history and justifications of European colonial expansion, the historian John Weaver noted:

‘There is a distinction between property interests and sovereignty that is critical to all efforts to understand British and American frontier history. Property interests pertain to private law, and its subject matter is interests; sovereignty, in contrast, relates to public law, and its subject matter is the arrogation of power to make rules. Sovereignty became one culture's mechanism for perfecting the conquest of another culture...’ (Weaver 2006, 139).

For Europeans, confirmation of the territorially defined state as the basic unit for rule making – sovereignty – at the international level is usually dated from the Treaty of Westphalia of 1648. That concept had developed over millennia of large settled populations accustomed to hierarchies. By the seventeenth century, however, the nascent middle classes in Europe were consolidating their property rights against royal claims. Those rights of subjects, won in the Old World, were disregarded in territories like Guyana that lacked hierarchical polities.

On their side, the Guiana Amerindians claimed both sovereignty and property. By the 1580s when rival European ships began to be sighted with increasing frequency off their shores, the Amerindians were aware of Spanish depredations in the Caribbean islands and on the mainland further west and responded with strategic support of the North European interlopers. Indigenous Peoples¹ had a clear sense of their territorial boundaries, correlated with language, which they defended against others. However, their environment was too infertile to build up large settled populations so Amerindians developed polities mainly for inter-nation raiding.

As early Dutch interest was in trade, not colonial possession, outright conquest of the Amerindians was not contemplated. Later Dutch assertions of sovereignty were to fend off rival European powers and to lay claim to rule making over the expanding settler colonies. The British, in turn, would claim to have inherited that sovereignty as a result of conquest and extended their territorial reach gradually over the course of the nineteenth century.

I show how the initially casual assertion of colonial sovereignty became formalized in a European sense, how the Indigenous economy was variably affected by European colonization for most of this period, and how the Indigenous rights intrinsic to Native title were eroded when the colonial, later independent, State wanted formal control over natural resources. Defence of Indigenous rights was occasionally made by sympathetic colonists and by the colonial administrators in The Netherlands and later, Britain, but as in other colonies the local colonial government could and did simply ignore the inconvenient instructions. In spite of missionary-based teaching of the English language, the voices of individual Amerindians rarely figure in the colonial record. Only just before Independence did an Amerindian leader emerge to plead for the legal recognition of Indigenous rights.²

I trace the evolution of the institutions, legal framework and policies in the colonial period that together have facilitated the maintenance into the present of central

¹ In this paper, the term ‘Indigenous Peoples’ is capitalised, following international best practice, as exemplified by its usage by the United Nations Permanent Forum on Indigenous Issues, to accord respect equivalent to the naming of other ethnicities.

² Stephen Campbell, first Amerindian Member of the Legislative Assembly. See Bulkan 2013a.

authority and the dominance of mining and forestry over Indigenous rights. I show how the independent governments since 1966 have further attenuated Indigenous rights over their customary lands.

The use of 'settlement' as a synonym for 'community' does appear in some of the quoted text. However, in this article, the word 'settlement' is used in the legal sense of a government representative examining Indigenous claims to land and then either extinguishing or recording or regulating them (Troup 1940, 130). 'Unsettled' claims are those claims not addressed by government. Indigenous claims that were admitted by colonial government were termed 'rights', later 'privileges' – exercised on State-claimed lands. 'Rights' were accorded legal recognition whereas privileges were issued at the discretion of colonial officials.³ Debates about rights versus privileges in India in the 1860s and 1870s were well reported and would likely have influenced official thinking in British Guiana. In India, 'the colonial state argued that forest use had been based on the agreement of the raja and therefore was a privilege rather than a right, and since the colonial government was the successor to the rajas, it now had the prerogative to extinguish these privileges where it saw fit' (Ribbentrop 1990, 97 in Springate-Baginski and Blaikie 2007, 32).

Increasingly over the course of the twentieth century, through a long series of resistance movements and legal actions, Indigenous Peoples began to assert their Aboriginal, Indigenous or Native title. Native title is the inherent proprietary right of Indigenous Peoples to their customary lands, which are territories that were under continued use and occupation by particular Indigenous groups long before European contact (Yarrow 2010).⁴

Globally Dutch and British colonial policy generally recognized Indigenous property rights, even as colonial administrators progressively extinguished or attenuated those rights to accommodate natural resources extraction or European settler populations. The notable exceptions of Australia and British Columbia where Britain assumed both sovereignty and property in land in disregard of Native title are well known as a result of many publications on landmark court actions brought by Indigenous persons or groups. The cases of the former British Caribbean colonies of Guyana and Belize are lesser known.

I examine the consequences of the asymmetrical power between the government based on the narrow coastal plain on the one hand and the Amerindians in the hinterland on the other hand. I make the case that Amerindians remain effectively marginalized in political and economic terms and I discuss the territorial insecurity and environmental consequences that flow from marginalization. I show that Amerindian claims to untitled lands are ancestral, cultural and spiritual, but also Lockean. Across the New World, Indigenous Peoples too mixed their labour with the soil to produce crops which in a short space of time after European contact were cultivated globally – cassava, maize, potatoes,

³ 'Thereafter, any practice that is permitted in a Central Forest Reserve is exercised *as a revocable privilege and not as a right*' (Gordon 1955, 330).

⁴ Continued use does not mean continuous use. Agricultural fields and hunting areas in forests may be rested for months or years for natural recovery after cropping but are still deemed to be in continued use.

tomatoes, pepper and pineapples, among others.⁵ In the Guiana Shield forests, Amerindian farming technologies both mimicked the biodiversity of the tropical rainforest and protected and enriched the thin fragile soils (Hammond 2005). I argue that the colonial and post-colonial refusal to acknowledge Amerindian livelihood strategies within their claimed territories as ‘labour’ in the Lockean sense was self-serving as it both justified the appropriation of Amerindian lands and advanced the colonial project of assimilation. This article complements the significant body of work on the socio-economic and cultural displacement of Amerindians by the dominant settler/creole coastland society of Guyana (Henfrey 1964; Jackson 2012).

VISIBLE FORESTS, INVISIBLE FOREST OWNERS

Out of 21 million hectares (Mha) of total national territory, about 85 per cent (or 17.8 Mha) are declared publicly owned lands administered by the Government (Guyana Forestry Commission and INDUFOR 2013, 13). The majority of those lands are forested and a large part is under Indigenous customary claims (Government of Guyana 1969). Consequently, government decisions relating to State (public) Forests have direct impacts on the 80,000 Amerindians who are the majority populations of the forested hinterland. The terms ‘African’, ‘Amerindian’, ‘East Indian’, and ‘Mixed’ are both the legal terms used in the decennial censuses of Guyana, and the self-ascriptions with widest social acceptance.

Nine distinct Amerindian/Indigenous Peoples survived the direct and indirect onslaughts of colonialism in Guyana — six Carib-speaking (Akawaio, Arekuna, Karinya, Makushi, Patamona and Wai Wai), two Arawakan-speaking (Lokono Arawak and Wapishana) and the isolate Warao people (Bulkan 2009). Eight of the nine peoples, Patamona excepting, straddle the international borders – with Suriname to the east, Brazil to the south and south west and Venezuela to the west. Amerindians comprised nine per cent of the national population in the 2002 decennial census.⁶

The account by Sir Walter Raleigh of his 1594 expedition is the first in English to mention the forests of the Guiana Shield, the ancient terrain of northern South America bordering the Caribbean Sea and stretching from the northern estuary of the Amazon river in Brazil to the eastern estuary of the Orinoco river in Venezuela.

‘... the woods are so thick 200 miles together upon the rivers of such entrance, as a mouse cannot sit in a boat unhit from the bank’ (Raleigh 1848).

As in Australia, a constant theme in colonial accounts was of empty lands (*terra nullius*), devoid of a sovereign, lacking organised polities and allegedly no settled

⁵ I am grateful to the anonymous reviewer for emphasising this critical point.

⁶ Amerindians are the fastest growing ethnic group. In July 2014, the Government released only the national and regional population figures in the 2012 census, but not the ethnic composition. The combined population of hinterland Regions 1, 7, 8 and 9 in 2012 was 81,623, used here as a proxy for the total Amerindian population.

property rights.⁷ Three hundred years after Raleigh, B.R. Wood, the first Conservator of Forests, would remark on the unencumbered⁸ pristine forests: 'This Colony starts with a clean sheet. The bulk of its forests are untouched, and no interests are vested in them (Wood 1926, 2).

Until Independence in 1966, the forests were less exploited or changed than their counterparts in other colonized tropical countries. The contrast between the highly fertile coastal swamps, after empoldering, and the naturally infertile hinterland soils led to the intense colonial focus on the coastland and the neglect of the interior. The declining population of Indigenous Amerindians through European diseases and consequent social disruption until the 1960s facilitated the neglect. In addition, the explicit and *de facto* colonial government policies towards Amerindians and their rights led to the situation of uncertain unsettled ownership and claims at Independence. Failures to grapple with these issues in a timely and strategic manner have led to the current (2015) contested landscape, where a demographically increasing Amerindian population is hemmed in by often unsuitable and constricting land boundaries on their titled communal lands and by overlays of Government-issued mining and logging concessions on their claimed customary lands.

With the Amerindians marginalised both politically and in demographic terms, and with their property rights reduced to 'privileges' on State-claimed forests, the latter, occasionally rich in commercially desirable products, had no sustained articulate human or institutional defenders during the colonial period (Bulkan and Palmer 2009). The forests were effectively open to anyone who could pay the licence fees for natural resources exploitation, with only occasional recorded protests and expressions of concern. The legacy of the coastlander belief that 'da wood cain't done' (that is, that the forests are inexhaustible) continues today in the casual awards of huge areas to loggers for private gain and little benefit to the Amerindians or to national taxes (Bulkan 2014a). For forest-dependent Indigenous and Local Peoples, the State-sanctioned presence of non-Indigenous loggers and miners and the consequent forest and riverine degradation of their customary lands continue to underline their insecure tenure and lack of autonomy.

INDIGENOUS LAND MANAGEMENT AND USE

Indigenous land management was, and remains, largely invisible to outsiders. Amerindians in the Guiana Shield countries had no written languages up to the time of Contact so traditions of natural resources management were transmitted orally between generations, in songs and stories and dances and by children observing the practices of the tribal elders (Steward 1948). The Indigenous Peoples had a clear understanding of the boundaries of their territories and developed inter-nation rituals through which relations with outsiders were conducted and ownership rights recognised (Fock 1958). The

⁷ 'Terra nullius has two different meanings, usually conflated. It means both a country without a sovereign recognized by European authorities and a territory where nobody owns any land at all, where no tenure of any sort existed. "In things properly no ones," Grotius observed, "two things are occupable, the lordship and the ownership"' (Reynolds 1996, 12).

⁸ Unencumbered only because of the non-recognition of the property rights of the Indigenous Peoples.

dependence of the Amerindians on the natural world is shown from the shell middens in the lower reaches of the rivers and the great range of artifacts derived from forest products which were recorded and collected by early and contemporary ethnographers and archaeologists (Williams 1985; Plew 2009).

The extremely ancient soils of the Guiana Shield have not been rejuvenated by volcanism or marine transgression and so have had their plant nutrients mostly washed away by the millennia of tropical rains (Gibbs and Barron 1993). Without massive quantities of synthetic fertilisers and pesticides, these soils cannot support continuous cropping. Amerindian land use has therefore been mainly long-fallow rotational agriculture able to sustain only small communities that follow a semi-nomadic existence (Hills 1968). The presence of human occupation is indicated by groves of waterside bamboo, datable pottery sherds (ceramic fragments) in the soil, and petroglyphs (Plew 2005). Amerindian farmers were and continue to be selective in their farming areas, naturally preferring the more fertile piedmont soils, river banks (rejuvenated by occasional flooding), and bush islands in the southern savannahs. The locations of former farms and fruit orchards are well remembered and, with burial sites, are important markers when claiming tenure over customary lands.

In the colonial period, the hard and heavy tree species characteristic of the Guiana Shield forests could not be transported far by dragging logs over pole tramways ('grey-stick' logging), so waterside forests were depleted first (Vieira 1980). Amerindian complaints about the destructive nature of uncontrolled forest harvesting were documented from 1815 onwards and may have been directed primarily at the selective felling of purpleheart (*Peltogyne venosa*) and crabwood (*Carapa guianensis*) trees (Menezes 1988, 355). Purpleheart is an easily sawn, highly coloured and semi-durable timber which grows in clusters or groves known locally as 'reefs'. Mature trees stand above the general forest canopy and are easily spotted during the drier season because of the mass of pink flowers. The bark of purpleheart can be detached from the wood by hammering and levering. Long cylinders of bark can be closed by stitching with forest lianes at bow and stern to form light and durable canoes known as woodskins. Crabwood also is easily sawn and is a semi-durable member of the mahogany family. Oil from the seeds of crabwood trees is important for Amerindian soaps and preservatives. The seeds are also important in the diets of rodents which are hunted by Amerindians. Although a wide range of specific uses of trees and other forest products by Amerindians was known to the European colonists (Im Thurn 1883), there were no specific measures to conserve particular species until late in the colonial period. The ethnographic accounts summarised by John Gillin (1948) and Paul Kirchoff (1948) document the wide range of forest products which supported the Amerindian way of life. However, without external markets as demand pullers, the Amerindians' ecological footprint on the forest was very small. Perversely, the ecologically appropriate land management strategies counted against the Amerindian owners in a Western land tenure model that rewarded land conversion or natural resources extraction on a commercial scale.

COLONIAL GOVERNANCE

The first Guiana colony grew out of trading posts established from the early 1600s by Dutch traders. This stretch of the north coast of South America was a no-man's land

claimed by both Spain and Portugal but settled by neither. The Dutch posts outlasted those of rival northern European claimants and in 1621 the States-General of the Republic of the United Netherlands issued a charter to the Dutch West India Company (WIC), a Crown-licensed monopolistic trading company, granting exclusive authority over the colony. The Treaty of Munster in 1648 recognised Dutch sovereignty over the Guiana colonies. However not until the cession to Great Britain in 1803 was sovereignty formalised in the sense understood by European colonial powers, and confirmed by the Treaty of London in 1814. In 1831 under English rule, the three colonies were combined into British Guiana.

There were Dutch proscriptions in the WIC Charter against seizure of Indigenous land.⁹ The first Dutch settlers also needed the acquiescence of the customary Amerindian owners to their fledgling outposts as well as foodstuffs and non-timber forest products (NTFPs, especially annatto¹⁰) in exchange for European trade goods and Amerindian labour. As the Dutch had never formally subdued their Indigenous hosts, but rather had negotiated treaties of alliance and friendship with the larger tribal groupings (Menezes 1988), their later assertions of both State sovereignty and property were incidental and informal, not conforming to any of the four prevailing European norms: the right of discovery (in the case of *terra nullius*), Papal Bull, the right of conquest, or the surrender of sovereignty by treaty (Weaver 2006, 135).

By the end of the eighteenth century, the private planters had acquired the final say in colonial fiscal matters, an unusual arrangement which they retained during succeeding British rule. This meant that while the Crown legislated for the colony, private individuals who, predictably, were more concerned with profit and whose sugar cane plantations were all located on the coast, controlled the colony's budget. The plantocracy's view of hinterland policies was largely that those should in no way draw labour or resources away from coastal plantations.

In terms of property rights, the change in sovereignty as a result of warfare between European powers did not affect private land ownership. In contrast Amerindian property rights had already been largely discounted by the Dutch, and would continue to be so treated by the British.

The economic dominance of sugar, involving no more than three per cent of Guyana's area – all on the coastland – but the great bulk of commercial activity (including employment) and government focus continued after Independence. That coastal hegemony shaped the casual attention that was given to settling Indigenous rights and natural resources policy.

PROGRESSIVE CURTAILMENT OF INDIGENOUS SOVEREIGNTY

Although the first Dutch posts were located among the Amerindian communities upriver, away from the swampy coastland and roving enemy warships, the pioneer Dutch

⁹ Articles in the Octrois of the WIC, 3 June 1621, articles II and XLV, FO 420/27B p. 27 in National Archives UK, referenced in footnote 88 in Arif Bulkan 2011.

¹⁰ Benjamin 1992. In the seventeenth century, annatto (*Bixa orellana*) used for colouring in cheese making was the most important trade item from Guiana. Its preparation by Amerindian women was labour-intensive and monotonous. 100 barrels weighing 270 pounds each were exported in the 1670s.

colonists did not understand the ecological need to adapt their temperate-zone annual arable cropping systems to the infertility of the hinterland tropical soils and the rampant growth of weeds. From the 1720s those early plantations with declining productivity were progressively abandoned and the colonist farmers moved north to the coast, and especially after the 1763 Berbice slave rebellion.¹¹ Dutch hydraulic skills enabled the coastal marshes and swamps to be empoldered and drained and the underlying fertile clays reclaimed through the immense manual labour of imported African slaves (Rodney 1981, 2-3). Flood irrigation renewed soil fertility. Over the course of the eighteenth century, the number and extent of the plantations expanded in the three colonies as sea defences were erected to protect the coastlands that lay two metres below sea level at high tide. In 1746 WIC's local Director General, Laurens Storm van 's Gravesande opened up land in Demerara to any nationality, resulting in English planters from the Windward Islands of the Caribbean reportedly comprising a majority over the Dutch by 1760 (Smith 1962, 16-17).

As the Dutch consolidated their colonial presence, political dominance followed closely on the heels of economic control, with commensurate negative implications for Amerindian sovereignty. The Dutch exploited Indigenous rivalries for control over the trade in European goods to build alliances through trade with favoured Indigenous Peoples. The Dutch also consolidated a system of Amerindian slavery and resisted challenges from rival Europeans from without and rebellious slaves from within. The Dutch colonists gradually acquired the experience, authority and the tangible and intangible trappings that legitimized their assumption of sovereignty. That first assumption of sovereignty and later of property were creeping but their cumulative impact resulted in the displacement of Amerindians as 'original lords of the soil' (Menezes 1988). There were a few formal acknowledgements of prior Amerindian possession of the land although not an acknowledgement of prior Native title as understood by the Indigenous Peoples themselves: 'British and American governments normally accepted the theory of native property interests but set about assessing how much was occupied in terms of standards of usage and improvement familiar to the colonizers. Then governments exerted power through sovereign acts to acquire or expunge whatever native title had been conceded to the indigenous peoples' (Weaver 2006, 134). From equal trading partners, Amerindians were relegated to the status of a subject population.¹²

Justificatory theory

The power held by the coastland-focused private sector in the colony through the successive periods of Dutch and British rule helps to explain the relative lack of attention to the colony's hinterland – both to Indigenous Peoples and what were termed 'Crown Lands,' the forests that were declared to be Crown property in disregard of the rights of

¹¹ In 1721, Laurens Van Heeve started the first movement towards the coast away from Fort Kyk-over-al, constructed in 1616 close to the confluence of the Mazaruni and Cuyuni Rivers with the Essequibo.

¹² For a parallel process in Canada, see Fisher 1992.

the Indigenous owners. The anthropologist Rivière argued that sovereignty was an unintended outcome of chance events in the 1830s. He described the 1904 arbitration of the colony's southern boundary with Brazil as the result of 'absent-minded imperialism' (Rivière 1995).

Focusing on the 'neo-Europes' with large settler populations, Weaver detailed how squatters, speculators and missionaries served, often inadvertently, as the shock troops of imperialism, paving the way for the declaration of sovereignty. Only a European power, and not an Indigenous Nation, could issue land grants as paper titles to non-Indigenous Peoples. Indigenous land rights were gradually limited to 'improved' areas, that is, areas under arable cultivation, in the European sense. As Weaver explained, 'imperial authorities upheld a theory that indigenous peoples could enjoy interests in particular tracts, but the theory imposed a Eurocentric requirement that they had to occupy the territory in ways that colonizing newcomers recognized. This monopoly on evaluation allowed colonizers to trim or deny meaningful interests to first peoples' (Weaver 2006, 135).

The seventeenth century philosopher, John Locke, had famously formulated the doctrine of 'improvement' to justify private property claims in the New World. Locke argued that when people mixed labour with something else, 'that [mixing] excludes the common right of other Men ... hath fixed my Property in them' (Macpherson 1999, 18).

Yet long before the colonial project was underway, European States recognized the individual property rights of the nobility over considerable areas of forests in Europe set aside for hunting — areas that were 'unimproved' unlike the managed territories of Indigenous Peoples which were being appropriated. The European predilection to see land as 'improved' only if cultivated according to European norms underlay their unwillingness to acknowledge the extensive land use strategies of Indigenous Peoples. For Europeans, it was important to have a visual claim marker, which meant they were incapable of comprehending a symmetry between Native Title claims and a forested landscape, and certainly of assigning any title or property to any such place.

In the colonies, that notion of 'improvement', to be carried out by slaves or renters, not necessarily by the employees of the concession holder, underlay the terms of forestry and mining concessions granted by colonial governments. In other words, the pattern of absentee plantation owners on the coastland was mirrored by the absentee concession holders in the hinterland, a *rentier* tradition that persists in the present.

From trading partners to colonial subjects

In the period before the general collapse of Amerindian societies in the eighteenth century through spread of European diseases, Amerindian involvement in the emerging colonial society was critical. Their supply of food (cassava bread, fish, bushmeat and other items) and services were critical for the survival of the early colonist families. Their influence extended to early adoption by the Europeans of canoes, hammocks, medicines, roof thatching even as the Amerindians themselves were increasingly drawn into the web of capitalist relations of production.

The terms of engagement changed gradually, with Amerindians losing both sovereignty and property to the Dutch. Centuries later, the French philosopher, Foucault, would lay out the disciplinary modes through which 'subjects' are created and come to acquiesce in their oppression, indeed to accept it as part of the natural order (Burchell et

al. 1991). Over time Amerindians were outnumbered by the African slave population and their status in the colonial order diminished.

As in Africa, there was also inter-Amerindian slave raiding, from as early as 1645, to capture slaves for sale to the Dutch (Benjamin 1992). 'Red' (Amerindian) slaves were employed in the cultivation and processing of the cassava tuber (*Manihot esculenta* Crantz) into bread, and in fishing to provision the plantations. While the number of Amerindian slaves paled in comparison with enslaved Africans, the Dutch also traded in 'Red' slaves with the Antillean islands, Suriname and Brazil. Four Amerindian nations were exempted from slavery in Guyana – the Arawaks, Caribs, Warao and Akawaio – and Amerindian slavery was formally abolished in 1793 (Whitehead 1988). The chief use of Amerindian allies during the two centuries of African slavery (1630s to 1833) was as a *cordon sanitaire* to serve as a deterrent to any contemplation of escape, to capture runaway slaves and put down slave insurrections if and when the need arose (Menezes 1979b).

During the long governorship of WIC local Director General van 's Gravesande (1743-1772), a policy of triennial 'presents' and annual allowances to the Amerindians was instituted. That terminology obscured the true nature of the exchange which was payment for services rendered. Those Amerindian leaders who could be counted on to mobilize their fellow tribesmen for bush expeditions were courted and ceremoniously recognized as *uilen* (or owls) and presented with embossed, silver-tipped staves of office and silver collars (Whitehead 1988, 151). European metal tools like axeheads, cutlasses, knives, fishhooks and firearms transformed the Indigenous mode of production, fomented inter-tribal raids for 'Red' slaves and ensured the extirpation of Maroon (escaped African slaves) communities in Guyana. (Rose 1989). The antipathy that endured for a long time between Amerindians and Africans can be traced back to this origin.

In spite of their reduced circumstances, there are accounts of Amerindian resistance to Dutch orders. In 1762, for example, they refused to join with the Dutch on the Berbice River in attacking an encampment of runaway slaves, reportedly because the Dutch appeared to expect the Amerindians alone to engage in combat against rebels armed with muskets (Cameron 2007, 45-46). Amerindian allies would simply disappear into the bush if they felt pressured and Amerindian workers were considered unreliable because of their lack of interest in the monotony of plantation work.¹³

Following the abolition of slavery in 1833 the Combined Court discontinued the practice of giving presents to the Amerindians, thereby attenuating the special relationship between coloniser and Indigenous Peoples that had cemented during the Dutch colonial period. Amerindians were reportedly incensed, even declaring that they would ally with rebellious African slaves in the future, instead of with the Whites. Rev. J. Hynes relayed the Amerindian view: 'the Whites have done them no service; the country is theirs, they have their own laws and wish not the Whites to govern them' (Menezes 1973).

But the balance of power was no longer in the Amerindians' favour. Those Amerindians who had resettled near to coastal plantations drifted back to the vast interior. Amerindians were thus both the original forest peoples and consigned to that ascription

¹³ '5. Indians have no incentive to labour as the lavish abundance of Nature supplies all their wants' (Menezes 1979a, 186-188).

by a colonial system of production based on an ethnic division of labour: African, later East Indian, labour on the coastal plantations and Amerindian labour in the hinterland wood-cutting, balata extraction and ranching leases.

The decennial censuses from 1851 to 1881 estimated the Indigenous population as around 8,000 out of a national population of 250,000, an acknowledged underestimate as only settled communities close to the coast were counted (Menezes 1977, 41-42). That estimate remained the same in the 1891 census, a time when the prevailing views were both racist and fatalistic, regarding Amerindian extinction as inevitable: 'The Aborigines number on the schedules 7,476 ... To the total population this is 4 per cent. The Registrar-General gives 10,000 more of this race to be wandering about the interior of the colony... This race is of little or no social value and their early extinction must be looked upon as inevitable in spite of the sentimental regret of Missionaries' (Rowland 1891).

COLONIAL CONTROLS OVER FORESTS

The WIC charter provided for grants¹⁴ to be made to lands, forest products and minerals (Ramsahoye 1966). Before 1700 Dutch land grants to settlers in rivers and creeks west of the Essequibo and on its islands contained provisos that the granting of land should not be to the detriment of the Amerindians and that settlers were not 'to injure the Indians dwelling there' (Menezes 1988, 354). Between 1746 and 1770 all the land along the banks of the Demerara River, the third Guiana colony, came under grants, after which further land grants were made along the east and west coasts (da Costa 1994, 43-44). The Dutch trading posts evolved into control posts for regulation of trade in forest products moving downriver from the hinterland to the coastal plantations and for export, and for prevention of escaped African slaves moving upriver (Benjamin 1992). The Dutch postholders were also important intermediaries in exchanging European metal goods for forest products. As elsewhere, the Amerindians readily appreciated the value of steel tools compared with traditional stone hammers and axes. In 1784 the WIC decreed that Amerindians must be given land selected by the Governor in 'full and free ownership'. In practice, prior Indigenous rights to territories were mostly not recognised when agricultural land grants, and later, woodcutting and mining licences, were granted to local elites or immigrant English planters from the West Indies (Rodway 1893).

Controls on forest use were mainly through trade procedures, enforced at the choke points – coastal administrative centres, riverine locations and ports. Restrictions on tree felling, through licensing, were first recorded in the 1740s and appear to be related to the generation of tax revenues rather than tree or forest conservation. At least on paper, controls were strict. Ordinances were passed in 1741, 1750, 1775, 1788 and 1792 that prohibited the felling of timber without the express permission of the Governor. A 'Warning' issued by the colonial government in 1750 stipulated that wood could only be cut under permit, with monetary penalties and confiscation of produce set for violation, including the imprisonment of African or Amerindian slaves associated with the deed until the payment of the fine.¹⁵ The 1775 statute required that the exact quantity and

¹⁴ A grant was the term used to describe a lease of Crown land.

¹⁵ 'Warning. Each and everyone, whoever he might be, is herewith warned, and prohibited from felling wood or having wood felled on the grounds belonging to the Honourable Colony, under whatever pretext it might be, without being provided with a

quality of the wood be stated in the grant; anything outside that was subject to confiscation. By 1788 it was also unlawful to export wood from Berbice. The legislation notwithstanding, the colony had a problem with the illegal harvesting and export of timber, especially on the Corentyne River — the eastern boundary with Dutch Guiana — well into the British period. Amerindian objections to the seizing of their timber and leasing of their lands to outsiders were disregarded.¹⁶ By the mid-eighteenth century the Indigenous peoples were powerless to challenge Dutch, later British, claims of sovereignty over the near hinterland, expressed *inter alia* in the imposition of rules and taxes.

British rule from 1803

As noted above, British colonial policies relating to the forested hinterland were largely shaped by the plantocracy, resulting in a pattern of elite domination over the developing forestry, mining and ranching industries. Active measures, including Crown Lands regulations, were instituted to prevent the establishment of freed African communities in the interior, to restrict access to licences to Crown Lands, and to tax gold mining heavily.

The British continued the Dutch practice of issuing grants on request, mentioning the location (river/creek), the products to be exploited, the duration and the taxes to be paid, including royalty. Ordinance number 6 of 1838 appointed Superintendents of Rivers and Creeks to replace the postholders. Superintendents had authority to issue timber harvesting licences to what were unmapped and uncontrolled areas. Harvesting of timber and other forest products was therefore controlled during the 1700s - late 1800s through grants and leases with few obligations other than payment of nominal royalties. This practice ignored pre-existing Amerindian land rights.

The Crown Lands regulations from the 1860s were designed to prevent the freed Africans from acquiring grants themselves and restricted their role to serving as a reserve pool of labour on the coastlands. As the historian Brian Moore explained, the planters 'fear[ing] a drain of local labour resources and increased wages' used their control over the colony's budget to effectively prevent the ex-slaves from obtaining licences to settle in the hinterland. 'A few hundred [free Africans] did opt to squat along the rivers in the hinterland, but they were ferreted out by the superintendents of rivers and creeks. Furthermore, the price of Crown lands was progressively raised to prevent the Creoles [ex-slaves] from settling or working in the interior. Set in 1839 at \$4.80 per acre for a

permit from His Honour, the Governor; on penalty that those who are found to have felled any wood or have it felled without being provided with such a permit, shall forfeit a fine of 25 guilders over and above the confiscation of the wood felled; and the slaves or Indians who are caught in the act of felling any wood shall be taken prisoner, and not be delivered again until the fixed fine shall have been paid. [16 January 1750]' [NA: CO116/68; trs. Ineke Velzing,]

¹⁶ See the following sections in Menezes 1979a: '24. The Indians object to the curtailment of their wood-cutting rights' (1859), pp. 201-2012; '27. The Amerindian chief Kanimapoo objects to the seizure of their timber' (1870), pp. 203-205; '1. Indians object to the leasing of their land' (1815), p. 206; '3. Petition of the Accaway Nation to the Governor regarding their rights of land ownership' (1827), p. 207; '6. Indians visit the Governor with complaints against the encroachment on their land' (1855), pp. 208-209.

minimum parcel of 100 acres, it was raised to \$10 per acre in 1861' (Moore 2009, 142). Forty years later, the 1909 *Handbook of British Guiana* confirmed that 'the area of tracts sold outright is ordinarily limited to from 25 to 100 acres' (Bayley 1909, 245-6), meaning that land prices were out of reach of the majority of the colony's population.

For the former African slaves, the hinterland held out a promise of riches and independence from coastal oppressions. But the majority were permitted to work only as hired labourers of elite grant holders in logging, 'balata bleeding'¹⁷ or gold- and diamond-prospecting ventures. 'If lucky, they could earn decent sums of money from these occupations. But they were relatively few and the physical dangers were very great' (Moore 2009, 147).

In 1861, Crown Lands Ordinance No. 14 empowered the Governor to issue wood-cutting licences (under section 17), for up to five years and to areas between 125 ha to 417 ha (300 to 1,000 acres).¹⁸ Other Regulations covered balata bleeding in detail. The licences to cut wood or occupy Crown lands both 'included a restriction on a sub-division or sub-letting of the licensee's interest except with the special permission of the Governor' (Ramsahoye 1966, 126), further constraining any independent role in the hinterland industries by the colony's working class. Later regulation provided for royalty payments on forest produce extracted for trade — but not for domestic non-commercial use — and minimum squared log size.¹⁹

The land grants followed the former Dutch pattern of parallelograms running back from river banks. An account by Vincent Roth, published posthumously, of the years 1909-1913 spent as a Land Officer on the Demerara River details his systematic inspections of the boundaries of wood cutting grants along the Demerara River and its tributaries, detention of forest products being transported without permits, and subsequent prosecution for infringement of Crown Land regulations. Licences holders had to cut and maintain boundary lines except where natural features served as boundaries, no small task in swampy terrain where secondary growth flourished. Large-and small-scale operations were coterminous in the same areas: a timber train operated from Wismar on the Demerara River to Rockstone on the Essequibo River; big logs were extracted from the Sprostons' grants on the Essequibo River; balata bleeders were licensed and regulated to and from their epic journeys in the deep interior of the country: 'we found that a balata boat of Thom and Cameron had arrived from the upper Essequibo with about forty bleeders and some ten thousand odd pounds of balata' (Bennett 2003, 119-166). Parallel Regulations were enacted in the other natural resources sectors.

GOLD MINING

¹⁷ cap. 69: 07, 1903, in *The Laws of Guyana*. The Guiana Shield does not have the natural rubber (*Hevea brasiliensis*) of the Amazon basin but it does have the bulletwood (*Manilkara bidentata*) whose balata latex was used in vast amounts for proofing submarine telegraph cables. Government was not slow to pass legislation and regulations, with associated revenue taxes, on this valuable product; which is now mostly a curiosity, its uses having been substituted by cheaper and more controlled polymers derived from petroleum.

¹⁸ Those small-scale licences were the precursors of the State Forest Permissions (SFPs) issued from 1982.

¹⁹ Squared by adze for efficient packing of exports.

On the Indigenous side, gold mining and trade in gold items long preceded the Contact with Europeans. The trade in gold, ‘green stone’ pendants and beads – valued ceremonial items – was carried out via epic canoe voyages that linked the mainland with the Caribbean islands (Dreyfus 1983-84; Forte 1999).

The discovery of gold fields in the far northwest in the 1850s triggered the first gold rush. In 1855, Amerindians from the Pomeroon River District petitioned the government that they be not dispossessed of their land by the white gold seekers (Menezes 1988, 357). Traveling in the North West District in 1857, Daniel Blair recorded the Carib Amerindian reaction to the invasion: ‘we have been informed here that the Carabisce on the Cuyuni having heard of the Venezuelans “digging money” have abandoned their settlements and retired deeper into the country fearing imprisonment’ (Blair 1980). A series of subsequent gold ‘shouts’ (rushes) from the 1880s, initially concentrated in the Essequibo River and its tributaries, brought mining operations into Amerindian traditional territories. As on the coast, those operations were under the control of a small monied class: ‘Mining Regulations, including exclusive access to vast expanses of land and royalty concessions, were crafted to attract and to benefit foreign conglomerates or individuals’ (Josiah 2011, 49) and Amerindian customary lands were carved up into Mining Districts.

AMERINDIAN RIGHTS TO PRIVILEGES ON CROWN LANDS

The underlying Native title held by the Indigenous Peoples in direct line from the pre-Contact populations was sometimes acknowledged in Guyana’s colonial literature but, as noted earlier, was narrowly defined by colonial governments. From the Dutch period on there was a progressive curtailment of those rights to ‘privileges’ on Crown lands. Amerindians reacted with alarm to the expansion of colonial land grants and in 1827, Akawaio Amerindians on the Demerara River petitioned the Governor about land leasing. They asked for ‘the guarantee in future of their right to the occupancy of the soil of their Ancestors’ as well as compensation for Amerindian land leased to non-Amerindians (Menezes 1988, 355). In response, Governor Benjamin D’Urban protested that the government had not dispossessed Amerindians of their territory. But the practice of issuing land grants did not stop. The ‘Creek Bill’ of 1838 recognised Amerindian usufruct rights over Crown land: ‘exempting Amerindians either singly or as a “tribe” from the requirement to obtain from the Governor a “licence of occupancy, [to] enter upon, or reside upon, or build upon, or cultivate any land in this Colony belonging to the Crown, or upon [interior] land ... the property of private individuals”’ (quoted in Benjamin and Pierre 1995).

Following the abolition of slavery and the ending of Apprenticeship in 1838,²⁰ Governor Henry Light told the Court of Policy in December 1838 that the government were ‘possessors *de facto* of the soil’ and that Amerindians would have to apply for grants of Crown Land and pay prescribed fees to ensure their claimed territories against leases being granted to non-Amerindians (Menezes 1988, 356).

²⁰ The abolition of slavery from 1833 did not mean freedom for African slaves who were required to continue to work for their former masters without pay for 45 hours a week, for between four to six years. ‘Apprenticeship’, resisted as slavery under another name, ended in August 1838.

The 1861, 1871 and 1873 Crown Land Ordinances and Regulations confirmed expanding colonial control over natural resources (Taylor 1955). Customary rights were defined as for subsistence, non-commercial use. Amerindians were not allowed to cut timber for anyone else not in possession of a licence (Bulkan and Bulkan 2006). This restriction ignored pre-existing Native title and the former freedom that Amerindians had exercised to trade in all forest products. The admitted Amerindians rights were essentially those of usufruct: they could occupy ungranted and unlicensed Crown Lands in any part of the Colony for residence. They could, without permission, cut palm leaves or trees to be turned into dugout canoes, but not trees above 40 cm. diameter at breast height (DBH), or to be converted into shingles, staves nor charcoal, nor could they tap bulletwood trees without permission (Government of Guyana 1969, 20-22). A petition of an Amerindian named Kanimapoo in 1870 registered his complaint about being prohibited from cutting large trees even when there were no woodcutting grants (see Note 16). The 1887 Crown Lands Ordinance and Regulations imposed a further restriction on Amerindians – permitting cultivation only in those areas of Crown Lands that had been ‘previously cleared and cultivated’ by a licensed woodcutter (Benjamin and Pierre 1995). The restrictions on Amerindians were progressively tightened: ‘The balata industry was also closed to Amerindians. Under clause 8 of the Amerindian Regulations of 1904, they were banned from bleeding balata or rubber on Crown lands or on their own reservations’ (Rodney 1981, 96).

Yet Amerindians were the backbone of the forestry industry, supplying both traditional ecological knowledge and labour. ‘It was estimated that some 1,500 men were employed in felling timber in 1895, the majority being Amerindians receiving piecework pay at three to five cents per cubic foot cut and squared’ (Rodney 1981, 96-7). In 1947, P. Storer Peberdy, who had been appointed Amerindian Welfare Officer in 1943, and who had spent approximately five years traveling over 3,000 miles of trails and waterways and visiting a hundred Amerindian communities, recommended that the colonial government abolish the 1910 reservations (discussed later) and in their place demarcate three major land areas to be selected by Amerindians: in the North West, Mazaruni-Potaro and Rupununi Districts for Amerindian businesses - sawmilling in the North West and balata extraction in Rupununi. In Peberdy’s words: ‘All credit is due to the Amerindian people for having provided, and continuing to provide, three major hinterland industries, namely cattle, timber and balata, with a unique and competent labour force’ (Peberdy 1948, 8). Peberdy’s recommendations to support autonomous Amerindian development, repeated in later official documents, including by S.G. Knapp, Canadian Indian Affairs Officer, (1965), were not taken up.

AMERINDIAN RESERVATIONS

The ever-expanding gold frontier provided the British with a major impetus to settle the western border with Venezuela. The colonial government buttressed its claim by citing the long-standing alliance and friendship of the region’s Indigenous Peoples, which had begun with their predecessors, the Dutch. The Amerindians who gave testimony to the Guiana-Venezuela Boundary Commission in the 1890s recognised the suzerainty of British rule in the northwest of Guyana, while insisting on their land rights (Burr 1897). However those rights were circumscribed during the colonial period as described above; subsequent legislation fixed their status as wards of the State (Bulkan and Bulkan 2008).

The Amerindian Indian Protection Ordinance (AIPO) of 1902 created only ten Amerindian Districts and reservations totalled 179,000 ha or less than one per cent of the colony's land area of 21 Mha. These areas were still considered as Crown Land but on paper non-Amerindians had only very limited and brief access to them. The post of Protector of Indians was created to administer the operation of this Ordinance. Half of the Reservations were within a few miles of the coastal villages, 'while the other half were quite remote' (Government of Guyana 1969, 11).

The Mining Ordinance No. 1 of 1903 safeguarded Amerindian privileges on all Crown lands: 'All land occupied or used by the Aboriginal Indians, and all land necessary for the quiet enjoyment by the Aboriginal Indians of any Indian Settlement, shall be deemed to be lawfully occupied by them' (section 173), repeated in the Mining Regulations of 1905 (section 199). However, section 200 of the 1905 Regulations denied their right to the mineral resources of the land. The 'right to quiet enjoyment' provision has been passed down through revisions of mining law to the current Mining Act 1989.²¹ However, the Guyana Geology and Mines Commission (GGMC), miners, Amerindians, and the judiciary almost wholly ignore this provision (Bulkan 2013b).

A second broader version of the AIPO was issued in 1910. It empowered the Governor to decree any unoccupied Crown lands as a reservation, alter boundaries, or de-reserve areas (section 4). Amerindians were now expected to live in the reservations and needed permission to be away from them, or would lose their special rights as Amerindians (sections 11, 15) but could be moved on/off reservation by the Governor or moved to another district (section 10).

Usufruct rights of Amerindians were again confirmed in a series of Regulations under the Crown Lands Ordinance in 1922, apparently similar or identical to those of 1838 and 1887.

Four more areas were reserved between 1904 and 1945-6, totalling 1.3 Mha. The last of these, the whole water catchment of the Upper Mazaruni, in 1945-6, was by far the largest at 1.2 Mha. Altogether Amerindian reserves totalled 1.5 Mha or 7 per cent of Guyana's territory, at a time when the total Amerindian population was estimated at 15,500 persons (Peberdy 1948, 17-18). The Upper Mazaruni reserve was constituted to protect 12 villages from encroaching gold and diamond miners, as the lower and middle catchments of the Mazaruni had already been declared as Mining Districts in the 1930s. However when diamonds were found in the Upper Mazaruni Amerindian District in 1959, 0.4 Mha of that 1.2 Mha District were de-reserved and declared a Mining District in October 1959.

In Peberdy's assessment, the reservations had been inappropriately sited: 'Amerindian reservations ... in most cases suffer from being located across public highways – creeks and rivers, it is true – but highways nevertheless' (Peberdy 1948, 35). Over the course of the twentieth century, Amerindians adopted the nomenclature of 'reservation' to describe their communities but did not necessarily live within the officially declared areas. In spite of the stated intent of the Ordinances to protect Amerindian populations, Peberdy detailed the drastic reduction of hinterland colonial

²¹ 'All land occupied or used by the Amerindian communities and all land necessary for the quiet enjoyment by the Amerindians of any Amerindian settlement, shall be deemed to be lawfully occupied by them' (Cap 65:01 Mining Act 1989, section 111).

officers between 1911 and 1931 in the North West Districts even though the Indigenous population in the same Districts had increased by 25 per cent (Peberdy 1948, 38). Consequently, he noted that 'non-enforcement of the Ordinance has been mainly due to the shortage of Protective staff, uncertainty as to whom the Ordinance applies, and to some extent lack of co-operation and sympathy on the part of Amerindians' leading to the 'laissez-faire' [*laissez faire*] application of Amerindian policy (Peberdy 1948, 29).

The AIPO was replaced by the 1951 Amerindian Act which provided for Amerindian Districts, Areas and Villages. Ten Amerindian Districts were formed in 1953, with a total area of 1.5 Mha.²² Amerindian land rights were thus insecure at the end of the colonial period: no legal property titles were issued to the Amerindian Districts, Areas and Villages. I do not have access to the British Guiana Government Orders to show why areas changed or why there were switches from District to Village status. What is evident from the period leading up to independence in 1966 is an increasing Amerindian awareness of the need to have greater land security. The Ordinances from 1902 and 1910 and the Amerindian Act 1951 on paper restricted access by non-Amerindians to the designated lands but gave the Amerindians no security of tenure to their segregated areas.

ABSENCE OF FOREST RESERVATION OR SETTLEMENT PROCEDURES

In parallel, the colonial State failed to institute procedures for the protection of areas representative of the distinct forest types of the Guiana Shield. The term 'forest reservation' describes 'the setting aside of areas for permanent maintenance under forest. Nothing short of permanency of tenure will secure the necessary continuity of management over long periods of time or justify expenditure on the demarcation, protection, and management of a forest. In order to ensure this, a definite procedure is generally laid down by law whereby areas may be set aside permanently as forest and may receive legal protection. The procedure should, where necessary, provide for the settlement of rights ...' (Troup 1940, 117).

Troup suggested that the explanation for the lack of a reservation system in the colonies of British Guiana and British Honduras lay in the concentration of populations on the coastal strips, the small Indigenous populations and the vast forests that comprised the majority land areas in both countries (Troup 1940, 409). In 1938 British Guiana was 87 per cent forested, of which 0.1 Mha (0.6 per cent) was in forest reserves. The corresponding figures for British Honduras was 90 per cent forest and 0.06 Mha (2.8 per cent) in forest reserves (Troup 1940, 120). In contrast, the forests of the island of Tobago were placed under strict protection from the time that territory was acquired in 1763 (Grove 1996) and reserve forest areas were being gazetted in Jamaica, the Leeward and Windward Islands into the twentieth century. Forest reservations were also declared in the French (Ribot 2001) and other European colonial territories (Barton 2002; Adams 2003).

A Forestry Branch was first set up within the British Guiana Department of Lands and Mines (DLM) in 1908 and a Forest Department (FD), based on the Indian Forest Service (IFS), was established in 1925. However, while the IFS was the second senior of

²² A small part of that de-reserved area was restored in 1991 when communal land titles were granted to ten Amerindian communities for parts of their claimed customary lands.

the All-India government departments and had high status, British Guiana's FD was institutionally marginal. Forest revenue administration was already under DLM control, where it remained until 1960, except for the period from 1927 to 1931. The administrative placing of a Forestry Department within the DLM defined the government's approach to forestry as subsidiary to gold and diamond mining. All natural resources were in turn secondary to sugar cultivation and processing. 'This was the beginning of that peculiar situation which persisted until 1948 where the Forestry Branch and later the Forest Department did basic technical and advisory work while the actual administration of the forests and forest industry was controlled by another agency of Government' (Welch 1975).

The short-lived Forest Ordinance Number 29 (1927-31) for protection and control of forest products had included provision for the legal constitution of forest reserves in a Permanent Forest Estate (PFE). After 1931, the administration of forests was back to the *status quo ante* in which Crown licences were issued for mining, forestry and ranching by the Department of Lands and Mines, not by the FD.

The unsuitable legislation and administrative arrangements for forests – in which the Forest Department lacked administrative control over Crown Forests – continued from the 1930s into the 1950s. Conservator W A Gordon, who was also a barrister and later the author of the first major textbook on tropical forest law (Gordon 1955), drafted the 1953 Forests Act. The Forests Act did not include a reservation process or a settlement process to enquire into customary rights, as had been formalised in most of the British Empire. In Guyana 2.8 Mha were decreed without public consultation to be Crown Forests under Forest Department control simultaneously with the passage of the Forests Act in 1953 (Proclamation 21/53, under section 3 of the Act), but the PFE of forest reserves was not advanced. Indeed, the intended Bartica-Kaburi reserve of 1931 was abandoned and not revived.

The twin lack of a reservation process (for forests) and a settlement process (for customary land owners) mean that the State possesses discretionary power over the disposition of State-claimed lands, without need for recourse to what would be termed today a multi-stakeholder process, not even with the Amerindian rights holders. The Forests Act 1953/1977 made no provision for public consultation prior to an Order issued by the responsible Minister declaring that a bounded area of Crown Land shall be State Forest, excluding only named Village Districts and freehold titled land within that boundary, nor for appeal after the declaration of the Order. As noted elsewhere, 'Amerindian customary land, which is not under statutory communal title, can be and mostly is swept up into State Forests. Amerindian communities generally do not know this, because the legal Proclamations and Orders for declaration of State Forest are not easily accessible, and most communities do not have community offices, let alone filing systems' (Bulkan 2014b).

The lack of a reservation process lasted until the passage of the Protected Areas Act in 2011. However, as no Regulations have been published under that Act, nothing has changed. The Government of Guyana thus has had no legislative constraints from the time of Independence in decisions on declarations or allocations of State Forests. In 1997 a Ministerial Order extended the State Forests south of the fourth parallel to the Brazilian border by 4.6 Mha, increasing the total State Forest area to 13.7 Mha, or two-thirds of national territory. The declared intention at that time was for the southern forests to be

conserved for biodiversity and habitat conservation (Stabroek News 2007). That did not happen. By 2013 the State Forests covered 60 per cent, State Lands 19 per cent and Protected Areas five per cent only (1 Mha) of national territory (Guyana Forestry Commission and Indufor 2013, 13). Logging and mining concessions have steadily expanded in the hinterland in the absence of implementation of the nominal national policy of integrated land use planning (Government of Guyana 1996, 2000). This uncontrolled expansion has negative implications for the customary owners, Amerindians, and the forests themselves.

SLIPPAGES BETWEEN INDIGENOUS RIGHTS AND PRIVILEGES AND THE STATE'S TERRITORIAL AMBITIONS

Pre-Independence commitments

As noted above, Amerindians were fearful about the potential consequences of the Crown's failure to acknowledge their land rights. They had accepted British sovereignty as a lesser evil than the enslaving Spanish to the west and the Brazilians to the south. At the same time they insisted on their property rights and expressed their concerns over the possibility of dispossession. One of the few surviving expressions of their position was a translation by the Rev. James Williams of an address prepared by Makushi leaders for presentation to the Governor of British Guiana who was expected to visit the southern Rupununi District in 1913.

'We, Makuchi people, rejoice at your coming ... because you come as the Representative of our King.... You understand while we discuss these things, these are our very own lands...to be at this place is our happiness... We have heard that in a country away yonder they were as chased ones: after they dug a railway, they drove them away, new people came into their country. This here is our country, we remain under the King of England. We ask you to consider this matter ... so that this, our country, may remain ours. Therefore we would urge that we be not troubled. We want our fields. We want to hunt... and we want our walking places (i.e. space of country where we may roam). It has long been a benefit for Governor and peoples, that we who knew caused to stand the white peoples who did not know (i.e. as guides, and in similar services). Our tribesmen brought down balata milk [latex], our tribesmen wove the hammocks we sold. ... May God help you while you work.

We are your Excellency's Servants.

(signed) John Bull Chimarupan and others' (Williams 1936).

The post-1945 political movements for independence in the British colonies in the 1950s and 60s included the emergence of a small group of politically conscious Amerindians, led by Stephen Campbell (Pierre 1993). Campbell was the first Amerindian elected to the Legislative Council and during the pre-Independence conferences, he arranged for a legal opinion on 'The fundamental rights of the Amerindian communities

in an independent British Guiana'.²³ That legal opinion was important for drawing attention to the lack of safeguards for Amerindian communities outside the Districts, Areas and Villages designated under the Amerindian Act 1951.

Amerindians feared that their situation would be even more precarious under rule by either of the ethnic African or East Indian political parties that had fomented communal violence in 1962-64 (Premdas 1995). The 1963 legal opinion led on to recognition of the need for Amerindian land security, as shown by annex C of the report of the British Guiana Independence Conference, 1965. This in turn developed into annex C of the 1965 Independence Agreement and required the independent government to provide legal ownership or rights of occupancy for Amerindians over –

‘areas and reservations or parts thereof where any tribe or community of Amerindians is now ordinarily resident or settled and other legal rights, such as rights of passage, in respect of any other lands they now by tradition or custom *de facto* enjoy freedoms and permissions corresponding to rights of that nature. In this context, it is intended that legal ownership shall comprise all rights normally attaching to such ownership’.²⁴

However, the requirement appeared to be open-ended, with no time-bound indicators of compliance or any mechanism for monitoring, reporting or verification to any ‘affected or interested’ rights-holder grouping.

It was left to the independent Amerindian NGOs and their supporters to issue reminders and updates on government’s record of compliance with the terms of the Agreement. The settlement of Amerindian land rights has been held hostage to the divisive coastlander communal politics from the late 1950s, the tradition of authoritarianism of the two ethnic political parties which sequentially have held power since Independence and who have used their management control over the public forests for their own benefit (Bulkan 2014a). In the ensuing half-century, the commitment to settle Amerindian land rights set out in the 1965 Independence Agreement has been only partly fulfilled.

Post-Independence to 1991

The Amerindian Lands Commission (ALC) was constituted in 1967, after Independence in May 1966, and reported in August 1969. It was tasked with visiting all Amerindian reservations and communities and to gather information *inter alia* on areas claimed and occupied, overlapping claims, extent of arable lands, livelihood strategies, health and population. The Amerindian population had more than doubled since the Peberdy survey of 1943-47 and surpassed 32,000 in the 1970 decennial census. In its 1969 Report, the ALC recorded the widespread conviction of their inherent land rights expressed by Amerindians: ‘Amerindians themselves have reminded us that they are the first peoples of Guyana. Representations by them and by others have disclosed that a belief exists among Amerindians that they own lands within areas they refer to as Reservations whether these lands were declared reservations or not’ (Government of Guyana 1969, 47).

The ALC recommended tenure to about 6 Mha, about half of the 11 Mha in total requested by the Amerindians in the 128 communities contacted during 1967-9. The ALC

²³ B. Bathurst and P. G. Clough, Lincoln’s Inn, London, 6 November 1963; reproduced as appendix D in Pierre 1993.

²⁴ Annex C, section L, of the 1965 Independence Agreement, in Letwiniuk 1996, 51.

recommendations were apparently based on a concept of sustainable land use as European-style annual arable cropping in fixed fields. The total area recommended by the ALC was some 28 per cent of the land area of Guyana, justified on account of the poor Guiana Shield soils and the paucity of fish and game. Consequently, Indigenous groups have been ecologically constrained to semi-nomadic farming and unable to form sustainable population centres (Rivière 1984), a point acknowledged in the ALC Report (Government of Guyana 1969, 47).

Partly because the ALC Report was issued only a few months after the brief Rupununi rebellion in January 1969, in which a very few Amerindians were involved, the government paid little attention to Amerindian land issues for some years. However, after Amerindian leaders in 1971 signed a pledge of allegiance, the Government gave assurance of early settlement of land claims. At the third conference of Amerindian leaders in 1971, the Prime Minister gave assurance that surveys for boundary demarcation had begun but there was a shortage of surveyors. In 1976, 65 Amerindian communities were granted communal title to 1.2 Mha over some of their customary lands. Ten additional land title certificates were granted to the Upper Mazaruni villages in 1991, the year preceding the first 'free and fair' national elections since 1964. In the tradition of patronage politics, the State makes *ex gratia* awards of land titles to Amerindians, and does not explicitly recognize pre-existing Indigenous or Native title.

THE TREATMENT OF INDIGENOUS ISSUES IN NATIONAL LAW AND POLICIES

There are two main strands in the decisions of successive post-Independence governments over the hinterland forests: firstly, to use the power over concession allocation in State Lands and State Forests to consolidate and expand the ruling Party's reach, and secondly, to secure the votes of the demographically important Amerindian population (Bulkan 2014a, 2014b). The Constitution and natural resource legislation facilitate executive authority to expand government's control over both Amerindian peoples and the hinterland, a great deal of the latter being Amerindian customary lands. The ruling Party has simultaneously expanded its economic and power base through the award of natural resources concessions to foreign and non-Amerindian companies while ignoring its commitment to settling Amerindian land rights under the Independence Agreement and resisting integrated land use planning.

From Independence until the introduction of an IMF-supervised Structural Adjustment Program (SAP) in 1989, there was a severe contraction in foreign direct investment (FDI) in the natural resources sectors. The operations of the multinational bauxite companies, Alcoa and Reynolds were nationalized in the early 1970s. Logging and gold mining were carried out on a small scale, principally by nationals, some incorporated as companies, others as individual operations. Under the SAP, however, Asian transnational loggers and Canadian gold mining companies began to negotiate secret FDI contracts for large concessions that overlay Amerindian customary lands. Amerindian NGOs and civil society groups, supported by international rights-based NGOs, raised concerns at the ease with which such unbalanced deals were concluded, in disregard of national law (Colchester 1994).

In addition to the protections in national law, outlined below, the State is a signatory to the UN Convention on the Elimination of All Forms of Racial Discrimination (UN-CERD, 1965), the UN International Covenants on Civil and Political Rights (1966, ratified 1977), Economic, Social and Cultural Rights (1966, ratified 1977). Guyana endorsed the UN Declaration on the Rights of Indigenous Peoples (2007), which enjoins States Parties to observe a range of human rights and other safeguards related to Indigenous Peoples. However, there is a considerable gap between commitments and actions.

Constitutional provisions relating to Amerindians

The Preamble of Guyana's revised 2003 Constitution states: 'We, the Guyanese people ... value the special place in our nation of the Indigenous Peoples and recognise their right as citizens to land and security...' (Government of Guyana 2003).²⁵ On paper, the statute laws and National Constitution provide significant generalised assurances for the traditional land and resource access rights of the Amerindians. However, Amerindian rights to sub-surface minerals and to stretches of river have never been admitted, although fishing rights were admitted explicitly until 1922. The Amerindian Peoples Association and the UK-based Forest Peoples Programme through petitions to UN-CERD have challenged the lack of rights to these resources, most recently in February 2013. The Government of Guyana has rejected recommendations from UN-CERD, most recently in 2008.

Article 8 (2) (b) (1) of the Independence Constitution 1966 provided a guarantee against government expropriation of private property except in accordance with a written law and with prompt payment of adequate compensation. The same guarantee was repeated in the National Constitution 1980/2003, Article 142 (1). However, that assurance is qualified in Article 142 (2), which was added to the Constitution through amendment number 10 of 2003: 'Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding paragraph . . . (b) to the extent that the law in question makes provision for the taking of possession or acquisition of – (i) property of Amerindians of Guyana for the purpose of its care, protection and management . . . ' This Article 142 (2) is a direct descendant of the patronal Article 17 of the Aboriginal Indians Protection Ordinance 1910, that allowed the sale/disposition of such property without the consent of the Amerindian owner. No other ethnic group is singled out for similar discriminatory treatment.

National Development Strategy (NDS)

In 1995, acceding to donor pressure, the Government of Guyana instituted a three-year moratorium on new foreign and local large-scale logging concessions, and signed an agreement with the UK Overseas Development Administration to strengthen the Guyana Forestry Commission (GFC), including developing a capacity for policy and legal reform. There was complementary support from the Carter Center, USA, for the multi-stakeholder process over several years that resulted in the *National Development Strategy*

²⁵ Other safeguards of Indigenous rights are listed in Articles 142(2)(1)(i), 149 (6)(c), and 212 S and T.

1996 (NDS) that outlined a social contract for sustainable development and provided a non-partisan road map (Government of Guyana 1996). However President Cheddi Jagan, who had championed the NDS, died two months after its launch in 1997. The NDS was shelved until a much-reduced version was issued (without public consultation) in 2001 (Government of Guyana 2000). Even this version of the NDS was set aside, and never developed into an action plan.

The Amerindian Chapter (22) in the NDS 1996 was cross-referenced with the chapters on natural resources extraction. It recommended the settlement of Amerindian land rights and recognition that untitled Amerindian communities, located on customary lands, were also on lands 'lawfully occupied' as set out in the Mining Act 1989, and therefore eligible to be covered by the protections for Indigenous communities in that Act. Chapter 22 further recommended that Amerindian communal land title needed to include the sections of rivers that flowed through their titled lands, in order to forestall and/or regulate the award of river or riverbank mining licences in those areas. In the revised NDS of 2000, the sections detailing Amerindian rights on customary lands and to river sections were excised.

The short-lived integrated land use planning (ILUP) project

A key objective of both the *National Development Strategy* of 1996 and the *National Forest Policy Statement* of 1997²⁶ was the establishment of an integrated land use planning system (ILUP). In 1996, President Jagan invited the World Resources Institute (WRI) to study and make recommendations on the forestry resources of Guyana, following a similar project in Suriname (Sizer and Rice 1995). Nigel Sizer carried out the WRI study and his report drew attention to the 'lack of government capacity, conflicting institutional mandates, and outdated laws' relating to land use (Sizer 1996, 13). Sizer pointed out that 'Guyana has no comprehensive laws on land-use planning, monitoring, and enforcement. Instead, much sectoral law and many institutions have evolved, creating conflicts and overlaps in jurisdiction' (ibid.). He recommended 'reform of land allocation and land use planning: Arguably the highest priority for the government as it seeks economic benefits from forest resources is the need to clarify national land-use planning' (ibid., 15). Sizer's analysis drew extensively from a 1995 Report on Land Use authored by Andrew Bishop, at the time Guyana's National Coordinator of Land Use Planning. Bishop was shortly thereafter appointed by the President to serve as Commissioner of the Guyana Lands and Surveys Commission (GLSC), thereby *prima facie* ideally placed to rectify the lack of a national land use plan.

Initially the ruling Party supported the idea and the German government provided funding for a Natural Resources Management Planning (NRMP) project from 1994 to 2004. The resulting Guyana Integrated Natural Resources Information Service (GINRIS) project funded GIS equipment, staff training and participatory development of an inter-agency collaborative mechanism for information sharing and decision-making. GINRIS was envisaged as a semi-autonomous service that would act as the repository of all land information data. It was meant to serve as the inter-agency mechanism that would develop and implement land use policies, and those policies included explicit protections

²⁶ The National Forest Policy of October 1997, section B, sub-section 1 (a) states that 'The designation of State Forests shall be based on a comprehensive review of land use policy'.

of Amerindian rights and privileges on State Lands and State Forests. Other aims included coordination of staff training and ensuring compatibility of GIS systems. A Board managed GINRIS with representatives from all the relevant government institutions. NRMP paid for GIS training and the setting up of GIS systems in the State agencies. NRMP also funded the salaries of two or three staff members assigned to GINRIS and who were housed in the GLSC. During the NRMP-funded phase of GINRIS a land use-planning manual was produced for (coastal) Region 3²⁷ but was never tested by the regulatory agencies. The GLSC also had a special series on Amerindian maps.

GINRIS functioned only for as long as the NRMP coordinated the project. When German Government funding ended in 2004, the Government abandoned GINRIS, meant to operationalize national land use planning, *after* it had been put in place. No reason was ever given for the dismantling. As hitherto, decisions on allocation of large forestry or mining concessions, or indeed of any other large-scale investment, continued to be made by the Cabinet. For example Cabinet, not Go-Invest, the responsible agency, negotiated the secret foreign direct investment agreements of the transnational loggers, Barama Company and Bai Shan Lin (Bulkan 2014a). Any system of land use planning that would involve inter-agency sharing of information, and facilitate a transparent and rational process of decision-making, could facilitate efficient subsidiarity in decision-making,²⁸ which is not how governments had operated. As a result there are no transparent procedures for negotiating and formalizing priorities between competing land uses (Amerindian rights versus mining versus forestry). The abandoning of GINRIS has impacted negatively on Amerindian communities and all national territory.

Land rights under the Amerindian Act

An Amerindian community holding a communal resource title under part VI of the Amerindian Act (cap. 29:01 of 2006) can restrict access by outsiders EXCEPT persons ‘conducting official business for the Government or who is acting under the authority of any written law or is otherwise lawfully authorised’ (section 8). A communally-titled Village may have its refusal to consent to large-scale mining of Village lands negated if ‘the Minister with responsibility for mining and the Minister [for Amerindian Affairs] declare that the mining activities are in the public interest’ (section 50 (1)). As in other similar sections in the Laws of Guyana, there are no public criteria for what is ‘in the public interest’. There is no appeal process against the decision of the Ministers. All sub-surface minerals and all water resources and a 20 m width of river bank are all retained under government control; they cannot be included in communally titled Amerindian Village Lands (AVLs) but the GGMC can award mining concessions for the river bank between the boundary of an AVL and the water, as well as for the river itself. The justification for retaining State control of the river bank was/is to allow free passage along river banks, since earliest colonial times. The Governments of Guyana have seen no anomaly in allowing mining to destroy a river bank while prohibiting Amerindian communal ownership.

²⁷ In 1980 Guyana was divided into 10 administrative Regions, replacing the colonial division of 3 counties (Essequibo, Demerara and Berbice).

²⁸ Subsidiarity is an organizing principle which enjoins that matters ought to be handled by the smallest, lowest or least centralized competent authority.

Amerindian rights on State Forests

The Forests Act of 1953 confirmed that the forest law was not intended to ‘prejudice, alter, or affect any right or privilege heretofore legally possessed, exercised or enjoyed by any Amerindian in Guyana’ (section 37). Provision in that section for defining those rights and privileges was apparently never exercised, and that proviso was extinguished in the Second Schedule of the Amerindian Act 2006 and in the Forests Act of 2009. Section 5/2/e of the latter limits the exercise or performance of ‘any right, power, duty or privilege ... held by any Amerindian Village or Community under sustainable non commercial practices immediately before the commencement of this Act, if the right, power, duty, or privilege (as the case may be) is exercised or performed sustainably in accordance with the spiritual relationship of the group with the land’.

The Forests Act of 2009 restricts Amerindian rights of access to and usufruct in State Forests, and so could impact severely on the non-titled Amerindian farming communities located in State Forests. Successive post-colonial governments have first ignored, then extinguished, Amerindian rights and privileges by extending the State Forests by fiat, and then issuing forest concessions, without enquiring into, and settling, Amerindian customary rights.

The non-application of forest law or policy relating to Amerindian rights and privileges

The Forests (Amendment) (Exploratory Permits) Act 1996 was a major addition to the Forests Act of 1953, achieved under the DFID Support Project 1996-2002. In order to forestall precipitate decision-making at senior political level, the SFEP was intended as a pre-condition for the award of large concessions (Timber Sales Agreement, TSA) to forestall further ‘give-aways’ of large-scale concessions to transnational loggers. SFEP were seen as a step-wise measure towards the achievement of sustainable forest management (SFM): to improve the rationality and quality of bids for large-scale concessions and to provide the GFC with more and better pre-investment data. In practice, the government has ignored the requirement set out in the accompanying Manual of Procedures (1999) to avoid areas subject to Amerindian land claims.

However, SFEPs have since been awarded with no reference to the safeguards for Amerindians in the Manual of Procedures. The discretionary award of large-scale concessions intensified from the mid-1990s (Bulkan 2014a).

In 2014, a revised version of the ‘GFC Code of Practice’ for holders of large-scale logging concessions included the requirement that ‘the concessionaire is duly bounded [bound] to recognize the legal customary and individual rights of the Amerindian people of Guyana’,²⁹ but without any further explanatory details.

The violations of Amerindian rights by logging companies have included the removal of communities from waterside property desired by a transnational company, destruction of areas customarily used, not fairly compensating for use of their traditional ecological knowledge of forests, and inequitable contracts for removal of desirable log species from titled Amerindian Village Lands (Whiteman 2004; Bulkan 2014a). In the case of the Malaysian transnational, Samling Global Inc., through its local subsidiary

²⁹ ‘Annexe V: General terms and conditions relative to TSA/WCL Agreements’ in GFC 2014, 195.

Barama Company Ltd., its illegal logging of the Amerindian Village Lands of Akawini and St Monica contributed to the suspension in 2007 of its certificate of responsible forest stewardship issued by the Forest Stewardship Council, the premium voluntary third-party certification scheme. The erosion of Amerindian rights in State Forests continue. Aside from a brief period of interest in certification by Samling/Barama (2003-2007), the Asian loggers who dominate logging and log trading in Guyana are not interested in corporate social responsibility or independent certification schemes which include criteria on safeguarding Indigenous Peoples' rights.

Logging on Amerindian titled lands

The GFC does not disclose data on the extent and intensity of commercial logging on titled communal Amerindian Village Lands (AVLs), although the data that do exist and informed opinion confirm that it is unregulated and unsustainable (Bulkan and Palmer 2008). Any logs or lumber transported outside the boundaries of a titled Amerindian village are required to have 'Private' timber tags issued by the GFC affixed on them and the species, amount and provenance declared on GFC-issued Removal Permits. Hence the GFC has quantitative data on forest outturn from AVLs. However, the GFC only publishes aggregated national totals of logs and lumber; but never any information of species logged or forest source. Generally, all Guyanese small-scale loggers do no marketing and are price-takers, logging only against an advance from an outside buyer who sets the price. The following are some of the variants of small- and large-scale logging on Amerindian titled lands.

- Small-scale logging by Amerindians with legal rights in a particular Village; sometimes self-financed, more often with 'backing' (financial support) from a downstream buyer. Amerindian chainsaw loggers from other villages can be contracted to work in these operations.
- Small-or large-scale logging by Amerindian logger from another village contracted to work for a non-Amerindian 'bossman' with written or unwritten contract to log in named titled village. Non-Amerindian loggers are also employed in those operations.
- Guyanese and non-Guyanese loggers working for large-scale logger on titled Amerindian land through a sub-contract to a front company.

There is a brisk illegal trade in 'Private' [Amerindian] log tags and Removal Permits by Amerindian Councillors / Village Council so as to 'pass' or legalise logs or lumber illegally harvested from State Forests and vice versa.

In August 2006, the GFC shared with its Board the disaggregated figures on log and lumber production removed from AVLs. Since then, no equivalent data have been released. That data presented in Table 1 provide evidence of selective logging, with a focus on two species only. Bulletwood (*Manilkara bidentata*) is a nationally protected and keystone species, while Government policy since 2000 has prohibited the export of Crabwood (*Carapa guianensis*) logs. 17 percent of all logs and 45 percent of all commercially sold lumber produced in July 2006 as recorded by the GFC were allegedly cut and removed from AVLs. The GFC undoubtedly has records of the specific AVLs in which that timber was cut or whose timber tags were used to legalise timber illegally cut elsewhere, but has not released them. Even if all of the timber declared was not cut on

AVLs, but only legalized through use of Amerindian timber tags, my research confirmed a trend for piratical cut-and-run operations, and general under-declaration of volumes of timber, including by Asian loggers, on AVLs (Bulkan 2014a).

The Commissioner of Forests has said that permission to log bulletwood on State forest concessions is given on a case-by-case basis by the GFC. The GFC does not have legal authority over logging of any species on AVLs, but the data in Table 1 suggest that GFC removal permits were issued for bulletwood logs and lumber shipped from AVLs.

Table 1 Production in cubic metres by species on State Forests and Amerindian Village Lands: Logs and Primary Lumber - July 2006

Species	Logs			Lumber		
	State Forests	Amerindian Village Lands	Total logs	State Forests	Amerindian Village Lands	Total lumber
Bulletwood	175	533	708	1	111	112
Crabwood	246	760	1006	53	14	67
Total - all species	20573	4068	24640	2589	2145	4735
% of total		17			45	

Source: GFC 2006

Disregard of safeguards for Amerindians in resurgent gold mining sector

Of the 12.6 Mha of gazetted State Forests, 6.9 Mha are currently under forest concession and approximately 5 Mha of forest are under partly overlapping mining licences. Gold mining intensified in step with the increases in price to an annualised average US \$1,668 per troy ounce of gold on the London bullion market in 2012. In Guyana, declared gold production increased by 68 per cent between 2008 and 2012 (from 260,000 in 2008 to 363,000 in 2011 and to 458,000 troy oz in 2013). As nearly all of the mining is carried out using the same crude hydraulic methods, the environmental impacts have been severe.

The ‘quiet enjoyment’ clause in Section 111 of the Mining Act 1989³⁰ should have been a deterrent to the GGMC issuing small-scale mining claim licences or medium-scale mining permits unless a due diligence check had determined that there was no Amerindian traditional occupation or customary resource use in each requested area. There was some observance of Amerindian rights during the period when GINRIS was functional. The Government allegedly adopted the following administrative policy in 1997 ‘in response to Amerindians expressions of concern about the uncontrolled impacts of mining on their lands and livelihoods: There have been criticisms of the GGMC

³⁰ See note 21.

entering into agreements for mineral prospecting and other developments over Amerindian lands without reference to the Amerindians living there. Government had apparently decided that recognised Amerindian lands would stand exempted from any survey, prospecting or mineral agreements unless the agreement of the Captain and Council for the proposal is obtained by the GGMC in writing' (Colchester et al. 2002, 20). However, even during GINRIS, the GGMC continued to issue concessions over customary Amerindian lands without the knowledge of the Amerindian communities and without attention to the 'quiet enjoyment' clause of the Mining Act.

The widespread non-compliance by mining outfits with environmental regulations has resulted in environmental devastation: chief among these are the turbidity and siltation of rivers and mercury methylation leading to contaminated fish in waters flowing through AVLs. The cumulative effects of high impact hydraulic mining on the rivers that form the living arteries of community life result in: the increasing transmission of the water-borne diseases including typhoid; increases in malaria; malnutrition because of the loss of fish protein and fat; the inflationary effects of the mining economy; and the weakening of traditional governance structures. The miners move on when an area is worked out, but the effects of mercury and other forms of environmental pollution have a long and insidious life (Bulkan 2013b).

In 1997, six Akawaio and Arekuna Amerindian Villages launched a court action in the High Court against the Government of Guyana. The petition sought recognition of their rights to their customary lands as recognized until the 1959 de-reservation and since then under mining claims. 18 years later, the trial is still on going while gold mining has expanded and intensified. In other Court actions brought by other Amerindian villages, High Court judges have ruled against Amerindian Villages and in favour of mining operations on their traditional lands including Santa Mission in 2008, Arau Village in 2009, Kako and Isseneru Villages in 2013. Meanwhile mining licences have increased in-between AVLs and along the rivers that flow through AVLs. The Amerindian Act 2006 then prevents Amerindian Village Councils from obtaining title to their customary lands because miners have secured a proprietary interest.

A further defence against damage by mining should be the requirements for an environmental permit (EP) for every mine operation, backed by an environmental impact assessment (EIA) (Environmental Protection Act 1996, section 11 and Schedule 4, item 9). This section 11 requires an environmental permit for any project which may significantly affect the environment. The schedule lists the 'extraction and conversion of mineral resources' as such a project. In other words, all mining concessions should be associated with EIAs and EPs because all mining has a significant effect on the environment, at the level of hydraulic mining technology used in Guyana. There is no record that the GGMC has enforced such requirements for small- or medium-scale mining. All 15,000 small-scale mining claim licences, 1,100 medium-scale mining permits and 12,000 river dredges registered in 2011 were out of compliance (Conservation International et al. 2013).

PATRONAGE POLITICS IN THE SILENCING OF AMERINDIANS

As in the colonial period, Amerindian protests have been ineffective because of their lack of unified leadership on the one hand and the success of the ruling Party in co-opting their leaders and in dispensing patronage (Bulkan 2014b). Guyana was never a populous

colony. Since at Independence in 1966 the national population was less than half a million, with fewer than 40,000 Amerindians spread out over the interior, a coastal focus by government could be justified on the grounds of efficiency. Almost 50 years later, global demand for gold, and timber logs has provided increased opportunities for State cronyism with transnational companies in the Amerindian hinterland. At the same time, the disregard of legal protections have led to a steady erosion of Amerindian rights on their customary lands.

Since the 1992 elections, the East Indian-dominated government has granted communal title to an additional 22 Amerindian villages. In total, 96 Amerindian villages have been awarded communal tenure under the *ex gratia* terms of the Amerindian Acts of 1951, 1976 and 2006 to an estimated 3.3 Mha (15 per cent) of national territory, of which an estimated 2.5 Mha are forested (Guyana Forestry Commission and INDUFOR 2013). However, between 42 and 58 Amerindian communities still lack legal communal title.³¹

The security provided by the legal communal titles is weakened by a number of factors including: the constitutional provision for Amerindian expropriation; government's non-compliance with the Independence Agreement and non-recognition of inherent Indigenous or Native title; the non-inclusion in the land title of riverbank sections within Indigenous lands; denial of requests for a contiguous District in place of individual village titles; the failure to cancel wrongly-issued mining concessions before award of village title; and the erosion of Amerindian customary rights over State Forests. The Amerindian Peoples Association, and others have documented these issues (Dooley and Griffiths 2014).

By 2014 the Amerindian population had grown four-fold since the mid-1940s to over 80,000 persons. The delays occasioned by the State's non-compliance with its commitment in the Independence Agreement to settle Indigenous land rights have allowed the expansion of logging and mining concessions on Amerindian claimed customary lands. The negative externalities that result from the expanding and uncontrolled logging and mining sectors are disproportionately borne by Amerindian communities. Meanwhile the Guyana government's strategy is to dispense patronage – in financial grants, solar panels – to communities in the hope of securing Amerindian votes. Amerindian votes are essential to the continued electoral success of the ruling political party, and public display of the count at each place of poll has the perverse effect of undermining the intention of a secret ballot. Consequently entire villages have been told by Government Ministers that they would be rewarded or disciplined in line with their political choices at the ballot box (Electoral Assistance Bureau 2007, 2012). Unsurprisingly, Amerindian communities are increasingly divided and their leaders co-opted or vilified by Government.

CONCLUSION

I have shown the straight line that runs from the colonial to the post-colonial disregard of Amerindian sovereignty ('autonomy' in the modern period) and property. The extension of the southern boundary may have resulted from 'absent-minded imperialism' (Rivière 1995); certainly that element of casualness characterised imperial failure to institute a

³¹ Government statements vary on the total number of untitled Amerindian communities.

reservation process (for forests) and/or a settlement process (for Indigenous rights). The result was a bequest of unchecked discretionary powers to the serial authoritarian post-Independence governments. Indigenous rights and the fate of the forest are the casualties of those failures.

The legislative and judicial processes that have led to increasing recognition of Native Title in the neo-Europes or former settler colonies have not occurred in Guyana. Protection for Amerindian rights on their customary lands is not enforced or has eroded in national laws and policies in the 40 years since Independence. Instead, rising global demand for minerals (especially gold) and high-value timbers have encouraged the Government to issue increasing numbers and expanding areas of concessions to non-Indigenous companies, disregarding Amerindian long-standing customary claims to the same territories.

However, the effects of outward migration of the two main ethnic groups in the coastland versus Amerindian demographic increase now place the Amerindians in an electorally key position. If Amerindians were to unite to represent their interests, it would be an opportune time to use their swing votes to demand practical action on their national and international legal rights, including to secure tenure and enabling conditions for inter-generational sustainable livelihoods.

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