

THE NEW

AMERINDIAN ACT



**WHAT WILL IT DO FOR
AMERINDIANS?**

INTRODUCTION

There is broad consensus that the 1951 Amerindian Act Cap:29:01 is outdated and does not address the needs of Amerindian communities. The Government of Guyana shares the same view and began the process to revise the Act approximately three (3) years ago. Adequate financial and other resources were provided to ensure that the communities participate fully in this exercise. Consultations were held throughout Guyana on what new laws should be enacted in the interest of Amerindian development. Virtually, every Amerindian community provided recommendations and these were all carefully considered by Government. A draft new Amerindian Act was prepared on the basis of the communities' submissions. The draft Act was then taken to the communities and all Tshaos were invited to further meetings to submit their communities' recommendations (if any). Other interested stakeholders were also invited to participate. The Government accepted the majority of the recommendations offered by the Amerindian communities.

It should be noted that communities made a wide variety of recommendations. Some of these could not be accepted because they were

unconstitutional or because they did not have broad community support.

In early August 2005, the Amerindian Bill (new Amerindian Act) was presented in Parliament and was subsequently debated on the 20th October 2005. It will now be considered by a Parliamentary Select Committee.

There has been some amount of misunderstanding and misinformation about the contents of the new Amerindian Act. This booklet provides the answers to questions that many people have asked and also includes additional information on what is in the Amerindian Bill.

I encourage all Guyanese and in particular Amerindians to read this booklet so that not only would they increase their knowledge but more importantly, be informed of their rights under the new law.

Carolyn Rodrigues
Minister of Amerindian Affairs
28th October, 2005

1. What is the purpose of the new Amerindian Act?

The new Amerindian Act will ADD to the rights Amerindians already have. Let us look at what these are before we look at the new Amerindian Act itself:

The Constitution protects the fundamental rights and freedoms of Amerindians:

- (1) Right to life
- (2) Right to liberty
- (3) Protection against slavery and forced labour
- (4) Protection from inhumane treatment
- (5) Protection from having your property taken away
- (6) Freedom of expression
- (7) Freedom of conscience
- (8) Freedom of assembly and association
- (9) Freedom of movement
- (10) Freedom from discrimination
- (11) Right to be protected by the law
- (12) Protection of culture

All Guyanese have these rights. Amerindians have these rights because they are citizens of Guyana.

Let us look at a specific example relating to culture:

Amerindians are free to practice their own culture. For example, Amerindians can set up their own schools and can always speak their own language. Many individuals speak their own language in meetings even during interaction with the President and Prime Minister.

Amerindians also have rights under other laws.

For example:

- a traditional privilege to do artesanal mining (mining with spade and battel) is included in the Mining Act
- traditional rights over water included in the Water and Sewerage Act
- rights over forests and forest products in the Forests Act
- rights over lands in the Iwokrama protected area in the Iwokrama Act
- rights over lands in the Kaieteur National Park in the Kaieteur National Park Amendment Act

Other Guyanese do not have these rights. Amerindians have them because they have special recognition in law as Amerindians.

2. Does the new Amerindian Act comply with international law?

Yes

In preparing the new Amerindian Act, the Government of Guyana has considered the State's obligations under customary international law and international treaties. The Government has paid particular attention to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESR) and the Convention on Biological Diversity (CBD), including Article 8(j) regarding protection of traditional knowledge.

Although ILO 169 and the American Convention on Human Rights are not binding on Guyana, their provisions have also been considered. The UN draft Declaration on the Rights of Indigenous Peoples and the draft Inter-American Declaration on the Rights of Indigenous Peoples are political statements which have not yet been accepted by

States and are not legally binding. Nevertheless, these drafts contain many good principles and the relevant provisions of the new Amerindian Act are fully consistent with them.

The Government has also carefully considered other international legal developments which are not binding but which would have the effect of promoting the rights of Amerindians, such as cases from the Inter-American Court of Human Rights. For example, the new Amerindian Act will require the Minister to take into account the spiritual relationship which an Amerindian community has with the land when making a decision about land titling. This takes into account a recent judgment of the Inter-American Court of Human Rights in a case even though it is not binding on Guyana.

The Government has also considered legislation from other jurisdictions taking into account differences in legal systems, history and social and cultural factors.

From studies conducted for the Government, it was found that the new Amerindian Act meets international standards and gives Amerindians greater rights and powers than in other countries.

3. Why are we changing the old Amerindian Act?

The OLD Amerindian Act, which is commonly referred to as the 1951 Act (Cap 29:01) is completely out of date and patronising. In other words, the old Act is not relevant to what happens in Amerindian communities today and many communities have asked for it to be revised.

Secondly, the National Assembly promised to have the old Act revised and the Government is honouring that commitment.

4. What will the new Amerindian Act achieve?

The new Amerindian Act does a number of things but the two main important achievements are:

- (a) it sets up a procedure for land claims to be settled
- (b) it transfers power from the Government to Amerindian Communities and Village Councils so that Amerindians can make their own decisions about how they want to develop.

5. Why is it still called the “Amerindian Act” and not “Indigenous Peoples Act?”

“Indigenous Peoples” is a very wide term that means different things to different people. Everybody has a right under international law to define themselves as “indigenous.” In addition, the Government looked at many international definitions and found that some of them include not only Amerindians but also other sections of the Guyanese community.

Some people suggest that we define “indigenous” so it only applies to Amerindians but then it means that other Guyanese would no longer be able to call themselves indigenous and this would breach the principle set by international law.

All people have a right to call themselves “indigenous peoples” if they want. Indeed, earlier this year a French delegation made a presentation to the United Nations Working Group on Indigenous Peoples in Geneva as the indigenous peoples of France.

6. Can Amerindians call themselves “indigenous?”

Yes. Guyana will continue to honour national and international law standards by which Amerindians are legally

free to name themselves as they please, for example, native peoples, aboriginal peoples, tribal peoples, indigenous peoples, Arecuna, Akawaio, Arawak, Carib, Macushi, Patamona, Wai Wai, Warau, Wapishiana, Aturad. The new Act emphasises this in Section 3 (2).

7. Does using the word “Amerindian” prevent Amerindians from benefiting from international law?

ABSOLUTELY NOT.

During the consultations on the Amerindian Act, many people said they were told to ask for the name to be changed from “Amerindian” to “Indigenous” or else they would not benefit from international law. **THIS IS NOT TRUE.** Amerindians have rights under international law whether the Act calls them “Amerindian” or something else. The aborigines of Australia, the Inuit of the Arctic, the native Indians of North America, the Maori of New Zealand, the Adivasi of India and so on do not lose their rights under international law, just because they have a different name in their country’s laws.

8. Does the new Amerindian Act protect Amerindian land rights?

YES. In fact, the new Act, unlike the old Act, removes the Minister’s authority over Amerindian titled land. As such the Minister no longer has the power to reduce the size of Amerindian titled lands or to take away Amerindian titled land.

9. What exactly is land title?

Land title is a document. It is issued by the President under a special power in the State Lands Act. It transfers ownership of the land from the State to the Amerindian Community. So Amerindian communities will own the land

collectively. This is very important. Many States do not recognise collective rights but Guyana does.

The title is **absolute**. This means that the conditions in the old Amerindian Act do not apply.

The title is **forever**. This means that the Amerindian community owns that land for as long as the community exists.

The land titles are protected by the Constitution against being taken away by the Government.

It should be noted that in Brazil, Amerindians are not allowed to own land. They are only given rights to use the land.

10. How can Amerindian communities get land?

Many communities that already have titles want extension of their land while others that have no title to their land want title to the land they occupy and use. The new Amerindian Act will therefore, set up a legal procedure. The community will now have to submit a written application and provide some other basic information on why they want the land, how they will use it and so on. If they already have a title, they will also have to demarcate their existing titled lands.

The Minister is required to carry out an investigation within 6 months of the request, which would involve discussions with the community. Once the investigation is completed, the Minister has to make a decision within 6 months.

If the Minister approves the application the title will be granted. If the Minister does not approve the application, the community can appeal to the Court and challenge the Minister's decision.

It should be noted that Government is already following this procedure and several communities have received titles and extensions to their land.

For example, in the period 2004 to 2005, titles were granted to:

- (1) Konashen
- (2) Baramita
- (3) Wiruni
- (4) Malali
- (5) Muritaro
- (6) Great Falls
- (7) Extension to Orealla

Recently, Government approved the titling of:

- (1) Arukamai
- (2) Campbelltown
- (3) Micobie

and extensions for

- (1) Tapakuma
- (2) Kabakaburi
- (3) Kamwatta.

The total area of land granted to the above communities is more than 3,500 square miles.

These communities wrote to the Minister requesting the land. The request was approved by the Minister, endorsed by Cabinet and then the President gave the communities their land titles.

11. Why is it important to have titled lands demarcated?

Demarcation is another word for surveying or marking out boundaries. All over the world native or aboriginal peoples have been fighting to get their Governments to demarcate. In Brazil and Nicaragua the Inter-American Court on Human Rights has insisted that these States demarcate Amerindian lands. The court says that the State has a duty to demarcate. Guyana will therefore, comply with international standards.

Many Amerindian communities have suffered greatly because their lands are not demarcated, especially when miners and loggers encroach. They need to be able to show miners and other people where their boundaries are so they can protect their lands.

Some people have told Amerindian communities that if they demarcate they will not get any more land. This is NOT true and very irresponsible because the community suffers if their lands are not demarcated. Demarcation is necessary to see what a community has before an extension can be granted. In some cases a community might be asking for a piece of land that already belongs to another community or two communities might be claiming the same land.

12. What about sub-surface rights?

All sub-surface rights are held by the State. So, the State owns all the minerals in Guyana. All over the world the State retains ownership of minerals. However, the new Amerindian Act has two very important rights for Amerindian communities.

- (1) Amerindians have a traditional privilege to mine – this privilege is now expressly recognised in the new Amerindian Act. No other group in Guyana has this right.

- (2) Amerindians have a veto over mining on their titled lands except if there is a large-scale project in the public interest. Other Guyanese do not have this right.

And in many other countries these rights do not exist. For example, Brazil does not give Amerindians any right to mine or to say “no” to mining on their lands. We will look at this in more detail below in the section on mining.

13. Mining

Anybody who wants to do any mining activity on titled lands has to get consent from the Amerindian community. So, although Amerindian communities do not own minerals they will control access. They can negotiate with the miner and attach the conditions they want.

The new Amerindian Act recognises that Amerindian communities can be at a disadvantage when dealing with mining companies. So the new Act says that the miner has to give the community all the information they need. The miner also has to negotiate in good faith. If he does not he is guilty of an offence.

The new Amerindian Act protects Amerindian communities further by making sure that the communities will get benefits from the mining. For example, the miner has to pay a tribute of at least 7% (seven percent) of the value of the minerals he takes from the land. He cannot force the Amerindian community to agree to less.

The miner also has to offer employment to the community residents before he brings in people from outside. And he has to offer to buy food and materials from the community. The community is not bound to take up the jobs or sell anything but the miner is bound to give them the first chance to do so.

The Amerindian community can also add more conditions if they wish. For example they can ask for contributions to the school or health centre. It is their choice.

It is very important that Amerindian communities get proper legal advice from competent lawyers when they are making legal agreements.

14. But what if the Amerindian community does not want mining?

The answer is simple.

Small - scale mining: if the Amerindian community refuses its consent to mining that is the end of the matter – no small-scale mining can take place.

Medium - scale mining: if the Amerindian community refuses its consent to mining that is the end of the matter – no medium - scale mining can take place.

Large - scale mining: if the Amerindian community refuses its consent to mining that is the end of the matter UNLESS the Minister of Amerindian Affairs and the Minister responsible for mining declare that the mining is in the public interest and therefore, should go ahead. If the Amerindian community disagrees with the Ministers' declaration that the mining is in the public interest they can appeal to the court.

Whether or not the community agrees to large - scale mining, a tribute must be paid to the community.

NOTE: The miner has to comply with all environmental laws, employment laws and any other laws.

All across South America, mining can go ahead without the community's consent. Guyana is therefore, giving stronger protection to Amerindian communities.

15. What about the environmental damage caused by mining?

Mining can be a very destructive activity if it is not done properly. There is general protection in law for the environment as well as some specific protection for Amerindians in the new Amerindian Act.

Let us look first at what already exists.

Under the Environmental Protection Act (EPA) any project that might have a significant impact on the environment has to have an Environmental Impact Assessment (EIA). Amerindians, like all citizens of Guyana, can take part in all stages of the EIA if they want to. Amerindians can take part in:

- (1) screening the project to see if it needs an EIA
- (2) scoping the EIA to make sure it addresses the issues they think are important
- (3) attending public meetings and asking for answers to the problems they think will occur.

Amerindians also have access to the documents. They are entitled to a copy of the documents sent in by the miner and to the final EIA. The time limits for consultation and participation and the provisions for public notice were deliberately drafted to give Amerindians a fair opportunity to take part.

Under the EPA Amerindians can apply to court for an injunction to stop mining activity which is damaging the environment. They can also ask the court for damages (i.e. compensation) for the harm they have suffered.

The new Amerindian Act will give Amerindian communities more protection. The miner will have to enter into an agreement with the Amerindian community to make sure he takes

reasonable steps to avoid damage to the environment, to avoid polluting water supplies, to avoid damaging or disrupting flora or fauna. If he breaches this agreement the Amerindian community can sue him for damages.

There have been problems with the behaviour of some miners in Amerindian communities. The new Amerindian Act will give the Village Council the right to make legal rules governing how miners must behave when they are in the village. If the miner or his employees break the rules the Village Council will have the legal right to fine them under the new Amerindian Act. This is covered in more detail in Section 24.

16. What rights do Amerindians have to the forests?

Once title is transferred to an Amerindian community the community OWNS the forest resources.

Many communities have had arrangements with logging companies and sold them their timber. Some communities have benefitted and some have made bad deals. It depends on the community.

Under the new Amerindian Act, the Amerindian community will continue to own the forest. The community will have a right to decide who can use the forest. If they want, the community can ask the Guyana Forestry Commission (GFC) for help in negotiating the agreement. But the community does not have to ask GFC for help if they do not want to.

The GFC will have a duty to monitor the forest operations if it is a commercial venture. They will also have to comply with the Village Council rules if they come into titled land.

17. Are Amerindian rights still respected in Protected Areas?

YES.

Titled land that is lands owned by an Amerindian community: the State CANNOT establish protected areas over titled lands unless the Amerindian community freely gives its consent.

Untitled lands that is lands which Amerindian communities occupy or use but do not own: the State CANNOT set up protected areas which restrict Amerindian rights or privileges to use or occupy that land unless the Amerindian community freely gives its consent.

This means that if the Government wants to set up a protected area they cannot do it on Amerindian land. If they set up a protected area on State land they cannot stop Amerindians from doing their traditional activities such as hunting and fishing.

The new Amerindian Act will also give Amerindian communities a new right to be consulted about management of protected areas.

NOTE: The two established protected areas already protect Amerindian rights.

Iwokrama – Amerindian rights, privileges and usage are expressly protected in the Iwokrama International Centre for Rain Forest Conservation and Development Act.

Kaieteur National Park – after representations from the people of Chenapau, the Government passed new legislation to protect the rights of Amerindian communities in the Kaieteur National Park.

NOTE:

- (1) **The Government cannot take away Amerindian land to set up protected areas.**
- (2) **The Government cannot force Amerindians to leave their land to set up protected areas.**

18. What about Community protection of their environment?

Many Amerindian communities wish to protect their lands from environmental damage. Under the new Amerindian Act, **Amerindian communities will have the right to set up their own protected areas if they wish.** Some communities have already said this is what they want to do, for example, Konashen. Most communities recognise that they must use their lands sustainably or their culture will disappear and their children and their grandchildren will suffer.

19. Will Amerindians have control of their land?

Yes, Amerindian communities can control what happens with their lands as long as they comply with the Constitution and any national laws that are relevant.

Let us look at some specifics:

What about access to the village:

Under the old Amerindian Act (cap 29:01) anybody who wanted to visit the village had to get permission from the Minister. This requirement will be removed in the new Amerindian Act. It will be up to the Village Council only to decide who comes in and who is sent away. It is now the responsibility of the Amerindian community to control who comes into the village.

Some communities have expressed concern about this because they say, they might not know who a person is or if he is a criminal or a troublemaker. However Amerindian

communities can always request the Ministry of Amerindian Affairs to do a background check if they want.

Persons on official business of the Government will not require permission from the Village Council but they are required to inform the Village Council of the nature of their visit and how long they would stay in the village. They also have to comply with Village Council rules. For example, the Regional Executive Officer coming to pay salaries, the Medex doing outreach visits, the Regional Chairman to discuss community issues, the Ministers to discuss issues affecting the communities.

What about scientific research on the community's titled lands?

Anybody who wants to conduct research on Amerindian lands must get permission from the Village Council and the Minister of Amerindian Affairs. This means that Amerindian communities can decide if they want people on their land and especially if they want to share their knowledge with them. There are many cases of researchers taking traditional knowledge and using it for their own profit. This is known as biopiracy.

Under international law all biodiversity belongs to the State and the State is responsible for deciding who has access and on what terms. Therefore under the new Amerindian Act, researchers must also get the normal legal permissions required under national law e.g. permission from the Environmental Protection Agency.

20. And what about transfer of power to Village Councils?

As mentioned above, there are a number of areas in which the Village Council or Amerindian Community can make their own decisions. There is also one other very important provision. The draft Amerindian Act will give the Village Councils the right to make their own legal rules on how the land is used.

The Village Council will also have the power to enforce those rules and fine offenders.

21. Who receives the fine?

Under the new Amerindian Act the Village Council receives the fine which is to be used for the benefit of the community. In the old Act, the fines were paid to the Government.

22. What rules can the Village Council make?

There is a long list of items in the new Amerindian Act. But when it is passed Village Councils will basically have the power to make rules as follows:

- (a) Identity – they can decide who is a member of the Community, who is a resident, who can vote etc.
- (b) Land – the community decides who can occupy what land, what use can be made, for how long etc. Traditional rules on hunting and fishing and farming and so on can now become law.
- (c). Culture – the community decides what areas are of cultural or spiritual significance, who has access and on what terms. Also, what is intellectual property and who controls it and how it can be shared.
- (d) Development – the community decides how they will develop, what projects they will have on water, infrastructure, energy, etc.
- (e) Taxation – the Village Council has the power to raise taxes.

23. To whom do these rules apply?

The rules apply to anybody who is in an Amerindian Village. It applies to members of the community, to residents and to anybody who happens to be in the Village, whether they are

Amerindian or not. So all researchers, or miners or business people will have to obey these rules.

24. What happens if somebody breaks the rules?

These are legal rules. The new Amerindian Act will give the Village Councils the power to make laws.

If somebody breaks a rule, the Village Council could impose a fine. If he does not pay the fine, he could go to jail.

25. What happens if somebody feels the Village Council acted unfairly?

They can appeal to the Court.

26. Suppose the Village Council makes inappropriate rules?

Some Village Councils have tried to make rules which are not appropriate. The new Amerindian Act will have some protection against this. The new Amerindian Act says that all rules must comply with the Constitution and national laws.

27. Who approves the rules?

The Village Council
The Community
The Minister of Amerindian Affairs

28. Why does the Minister have to approve the rules?

Under the Constitution only Parliament can make laws. In this case the Parliament is delegating the authority to the Village Council to make rules and since the Village Council does not report to Parliament and the Minister does, the Minister is therefore held accountable. In addition, it is necessary that

the rules comply with the Constitution and national laws and the Minister is responsible for checking that this is so.

In any democratic system there are checks and balances on power.

29. What happens if the Minister does not approve a rule?

The Minister should inform the community why the rule was not approved and help the Village Council to make it compatible with national laws.

Of importance is the fact that as long as the rule does not violate the Constitution or national law, the Minister should approve it. If the Minister refuses, the Village Council can challenge the Minister in Court.

30. Does the new Amerindian Act provide for the establishment of District Councils?

Yes. Three or more communities can ask the Minister to establish a District Council.

31. Who can be nominated to be a Toshao or Councillor?

Any Amerindian resident in a community who is 18 years and over.

32. What is the term of office for the Village Council?

The term of office will now be three (3) years. The previous Act had two years.

33. Would there be auditing of the Village Councils accounts?

YES. The Village Council is responsible for making sure that the community's finances and assets are properly managed. An audit is normally carried out every year but this may not be necessary for all communities. The new Act will provide for an audit to be done at least once in the term of Village Council. However, there may be cases where it is necessary to have more than one audit during the term of office, for example, larger communities with more revenue. **NOTE:** The Minister does not carry out the audit. It is done by an independent auditor.

34. If people in the community feel that the Village Council is not doing its job, can they ask for an investigation, to be done?

YES. If a Community General Meeting (CGM) is held and more than 50% of the persons present requests an investigation, the Minister **must** order an investigation.

If less than 51% of the residents present at the CGM request an investigation, the Minister **may** order an investigation. This depends on the nature of the complaint.

Note: The Village Council and the Toshao have to act in the best interest of the community at all times. There must be no conflict of interest between their duties to the communities and their loyalties elsewhere.

35. Will the new Amerindian Act empower Amerindian communities?

YES. When the new Amerindian Act becomes law, Amerindians will have greater power and control over their lives.

(Footnotes)

¹ *The Government is also mindful of the need to ensure that the Amerindian Act does not conflict with its other international obligations including, in relation to Amerindian intellectual property and the Agreement on Trade Related Aspects of Intellectual Property.*

WHAT AMERINDIANS SAY ABOUT THE BILL

The Amerindian Bill 2005 was debated in the National Assembly on Thursday, October 20 and was to be sent to Special Select Committee. It was tabled on August 4. However, some Amerindian organisations that are purporting to be representing Amerindians in Guyana are misrepresenting the Bill.

The Government Information Agency visited two Amerindian communities Santa Mission, Region Three and St. Cuthbert's, Region Four to get the views of community representatives of the Bill and on Amerindian Organisations' concerns. Here is what they had to say.

John Simon

My community could work with that. The Village Council has more power now to see that the overall affairs of the community would benefit. When we had our council's meeting about the Act, we may have (had) one or two (who did not agree) but the majority is in full agreement. I think the various Amerindian groupings are causing a problem. (But) they did not discuss anything to get our opinion . . . if we agree. "Since my reign as Captain, they only visit when they have a fund-raising activity and not really to keep meetings on a regular basis about their proposals for Amerindian communities. So we seldom see them around here."



James Andrews



"The Act is more accurate now. They have not been accurate in what they are saying."

can you know that it is insufficient or inadequate? By demarcation you know the size you have and as your population grows you have reason for extension as there must be a reason for something.”

Joyleen Samuels



“I do not fully understand the Act but I believe the Minister must have a say because you see when we have a problem is to the Minister we go to get a solution to our problem.”

Orlando Schuman



“I don’t think generally people have a problem with the Act. It has provisions for mining, logging. It’s protective.”

Clive Patterson



“I was at the beginning of this process because I did not know anything about this even though I was a Toshao before nothing much was heard. We had a workshop because we were the ones like facilitators to go out and explain to the people. I think that five years was a lot of time and a lot of work was done. They had seen it very fitting that getting people from the community to explain as best as they can back to the community exactly what was taking place. They have drawn representatives from each community and not only that they had follow ups where I think lawyers and the Minister went back to the community also where in the community were able to ask questions and queries ... I am pleased with the Act. Other residents were given that opportunity to make their recommendations. I know the government is trying its very best we are now a developing a country and I personally feel that the government is doing as much as they can.”

Carlton Williams

“The old Act was somewhat inadequate and certain things were not relevant. (The new one is more widespread. There is only one thing



that I did not agree with it's a simple thing though but still... the naming of a captain to call him a Toshao the word Toshao came from one Amerindian tribe I would have preferred an English word that is accepted by everybody. That is the only thing. But I think it could work it would be a better than the first one.

We have them in Georgetown, they come up here sometimes but they do not make any contribution to the community. They just carry a name. They probably don't even have an agenda. When Amerindians are in difficulty they do not go to you. You don't see the cause they represent. “

Leonard Patterson



“I did not really follow it up but I am sure that it is something good as many people made their contributions. I am concentrating with family and different things at this time.”

Leyland Clenkian

“Some people who are far away from the villages may not fully understand what goes on currently. It's not to say that I do not like the people in these organisations but I wonder if they are quite sincere being so distant? Looking at it, I initially thought that it may not be adequate. But second thought told me there must be a balance of power. I don't think the Village Councils themselves can have a monopoly of power. So I think it balances the power of the Minister and the Village Council, if not perfectly, quite well... There must be uniformity in something. If you don't demarcate something how





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