



# OUR LAND, OUR LIFE

**A Participatory Assessment of the Land Tenure Situation  
of Indigenous Peoples in Guyana**

**Report for Regions 1, 2, 7, 8 & 9**

Amerindian Peoples Association  
Forest Peoples Programme and Rainforest Foundation US



# OUR LAND, OUR LIFE: A Participatory Assessment of the Land Tenure Situation of Indigenous Peoples in Guyana

## Report for Regions 1, 2, 7, 8 & 9

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# CONTENTS

<b>LESSONS LEARNED FROM THE LAND TENURE ASSESSMENTS</b>	<b>4</b>
<b>KEY FINDINGS</b>	<b>5</b>
Failure to recognize collective territories	5
Inadequate recognition of customary lands	6
Demarcation errors	7
Mapping problems	9
Land conflicts	10
Lack of clarity of title	10
<b>KEY RECOMMENDATIONS</b>	<b>11</b>
<b>LAND TENURE ASSESSMENT RESULTS AT-A-GLANCE</b>	<b>14</b>
<b>DETAILED RECOMMENDATIONS</b>	<b>15</b>
Main recommendation 1	15
Main recommendation 2	20
Main recommendation 3	24
Main recommendation 4	26

# LESSONS LEARNED FROM THE LAND TENURE ASSESSMENTS

From 2012 through 2020, the Amerindian Peoples Association, in collaboration with local researchers, conducted land tenure assessments across Regions 1, 2, 7, 8, and 9. The researchers utilized participatory research methods to collect information about indigenous land rights in Guyana, and the results of these studies have been published in a series of detailed reports<sup>1</sup>. This report summarizes the key findings from this series of land tenure assessments as well as the key recommendations coming from indigenous communities regarding steps the government can take to ensure security of tenure.

The **Key Findings** point to a number of concerns regarding tenure security across all regions. These include:

- The failure to recognize collective territories
- The inadequate recognition of customary lands
- Demarcation errors
- Map problems
- Land conflicts
- Lack of clarity of title

The **Key Recommendations** that follow are gathered from village and regional leaders, elders and other knowledge holders, and include the voices of women and youth. Specifically, indigenous peoples across the country recommended:

- Revising the Amerindian Act to bring it in line with international standards for protection of indigenous peoples' rights
- Improving the land titling process to better protect indigenous land rights
- Addressing land conflicts by respecting the right to effective participation and free, prior, and informed consent
- Correcting mapping errors.

The researchers and authors of this series of studies hope that this report will inform government policies—including revision of the Amerindian Act, land titling, and allocation of natural resource-extractive concessions—so they better respect and protect indigenous peoples' rights.

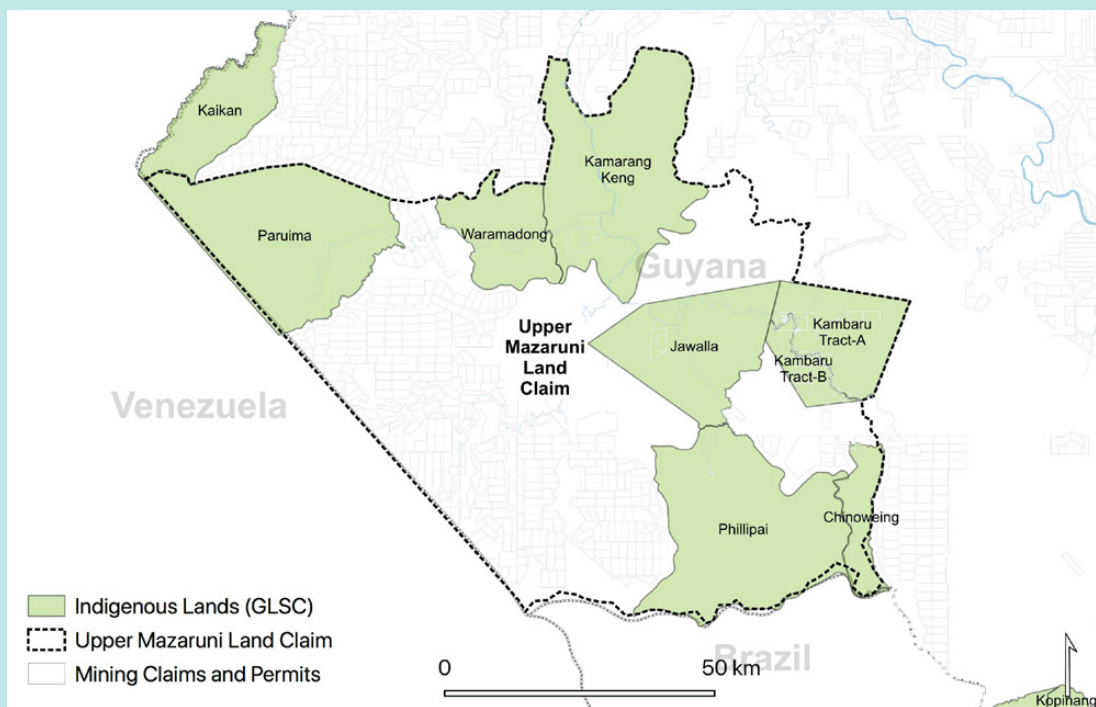
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<sup>1</sup> APA and FPP (2016), *Wow-Rorah, Wa-Kakoh; Na'Na Nonori, Na'Na Emamiri; Ca Hota, Ma Taho; Our Land, Our Life: A Participatory Assessment of the Land Tenure Situation of Indigenous Peoples in Guyana: Report for Region 1 and Region 2*, [www.forestpeoples.org/sites/fpp/files/publication/2016/12/Ita-study.pdf](http://www.forestpeoples.org/sites/fpp/files/publication/2016/12/Ita-study.pdf); APA, FPP, and RFUS (2018), *Ina Pata, Ko'Mangnàtok Yeselu; Our Land, Our Life: A Participatory Assessment of the Land Tenure Situation of Indigenous Peoples in Guyana: Report for Region 8*, [www.forestpeoples.org/sites/default/files/documents/Our%20Land%2C%20Our%20Life.pdf](http://www.forestpeoples.org/sites/default/files/documents/Our%20Land%2C%20Our%20Life.pdf); APA, FPP, and RFUS (2019), *Ina Nono, Ina Uko'manto', Eina Pata, Eina Komantok; Our Land, Our Life: A Participatory Assessment of the Land Tenure Situation of Indigenous Peoples in Guyana: Report for Region 7*, <https://apaguyana.com/wp-content/uploads/2019/09/LTA-R7-Report-Final.pdf>. The report for Region 9 is forthcoming.

# KEY FINDINGS

The land tenure assessments (“LTAs”) that have been conducted in Regions 1, 2, 7, 8, and 9<sup>2</sup> demonstrate that there is widespread land tenure insecurity among indigenous communities in Guyana. This is so even though many indigenous villages have land titles. In fact, ***the vast majority of titled indigenous villages in Guyana – at least 76 out of 85 titled villages<sup>3</sup> visited by the LTA researchers<sup>4</sup> – reported explicitly that they are dissatisfied with their titles.*** The following key findings explain the land tenure situation in Guyana and point out a number of areas of concern:

***Failure to recognize collective territories: There is a lack of legal recognition for titles held collectively by several villages.*** Indigenous peoples’ traditional land tenure systems can involve collective ownership and management of lands and resources shared by several villages. This was the reason that villages in the Northwest, the Mazaruni, Pakaraimas, and Rupununi wrote to the Amerindian Lands Commission (“ALC”) in the late 1960s to request that the government grant them collective territorial title. Their requests were all denied. The ALC did acknowledge the importance of some form of joint governance, however, and recommended the formation of state-controlled districts to control unallocated lands and to represent the common interests of the villages and others, such as miners, within the district<sup>5</sup>.



**Map 1.** Villages in the Upper Mazaruni continue to seek collective title as a district over their shared Akawaio and Arecuna territory. They are awaiting a decision of the High Court to a case they filed in 1998 arguing that they have a constitutional right to the legal recognition of territorial title.

<sup>2</sup> Several villages in Regions 1 and 2 chose not to participate in the land tenure assessments, and the teams were unable to include Kanashen in the Region 9 LTA as a result of budgetary constraints.

<sup>3</sup> As a result of the COVID-19 pandemic, the results from the Region 9 LTA are not complete at this time, as the researchers have been unable to visit all the villages to validate information gathered. However, preliminary results suggest that at least 21 out of 26 titled villages in the South Rupununi (including satellite communities, comprising 49 total communities) are dissatisfied with their existing title. In addition, the editors of this report are aware that since the Region 7 LTA report has been published, two villages, Tassarene and Kangeruma, have received their titles, but are dissatisfied with those titles.

<sup>4</sup> The LTA researchers visited 85 titled villages in Regions 1, 2, 7, 8, and 9. There were five titled villages in Regions 1 and 2 that did not wish to participate in the Land Tenure Assessment, and the LTA team was unable to visit Kanashen as part of this assessment.

<sup>5</sup> See Report by the Amerindian Lands Commission (1969), Amerindian Lands Commission, Guyana (hereinafter cited as “ALC Report”) at paras 170-172.

Many villages continued to seek collective title even after receiving individual titles in 1976. Villages in the Middle Mazaruni submitted a request for collective title in 1993. Six villages in Moruca formed the Moruca Land Council in 1997 to map their lands and submitted a joint territorial land claim to the government in 2002. Six villages in the Upper Mazaruni filed a court case in 1998, claiming a Constitutional right to legal recognition of this collective form of property ownership (see Map 1). That case is still pending a decision in the High Court as of the date of writing. More recently, in the past few years, villages in the North Pakaraimas have agreed to start the process of claiming a collective title over their territory. Today, only the eight villages in Karasabai District hold title collectively as a district, and the villages report that they are happy that their territorial title has been recognized by the government.

The failure to recognize joint territorial titles violates the right of indigenous peoples to their customary forms of land tenure<sup>6</sup>. The fragmentation of territories into individual villages has also led to some inter-village conflicts over traditionally shared resource use areas. It is in recognition of the problems caused by this failure to recognize shared titles that villages in the North Pakaraimas have revitalized their call for collective title and that villages in the South Rupununi made inter-village shared resource agreements.

***Inadequate recognition of customary lands: Most villages' titled lands do not correspond to—and are often smaller in area than—their traditional lands, with 77 out of 85 titled villages<sup>7</sup> reporting that their titles do not secure their customary lands.*** The pattern of issuing titles to areas smaller than a village's traditional lands again stems from the Amerindian Lands Commission investigations, which elders report were not conducted in a participatory manner and did not accurately describe the traditional lands and tenure systems of indigenous peoples. For close to thirty villages, the ALC reported that the land requests were “excessive and beyond the ability of the residents to develop and administer the area”<sup>8</sup>.

The root of this issue is both the government's failure to respect indigenous peoples' inherent rights to their traditional lands—as also evidenced by the failure to recognize collective territorial titles—as well as a colonial and paternalistic belief that the government knows what is best for indigenous communities. These beliefs manifested in the ALC's assessments of the ability of communities to manage any lands issued as title and determinations of the titles that would be “adequate for subsistence and development needs of the residents”<sup>9</sup>. This same attitude has persisted over the decades, and several villages report that their title or extension requests had been rejected by the Ministry of Amerindian Affairs for being “too big” or that they had been told by the Ministry to revise their request for a smaller area of land.

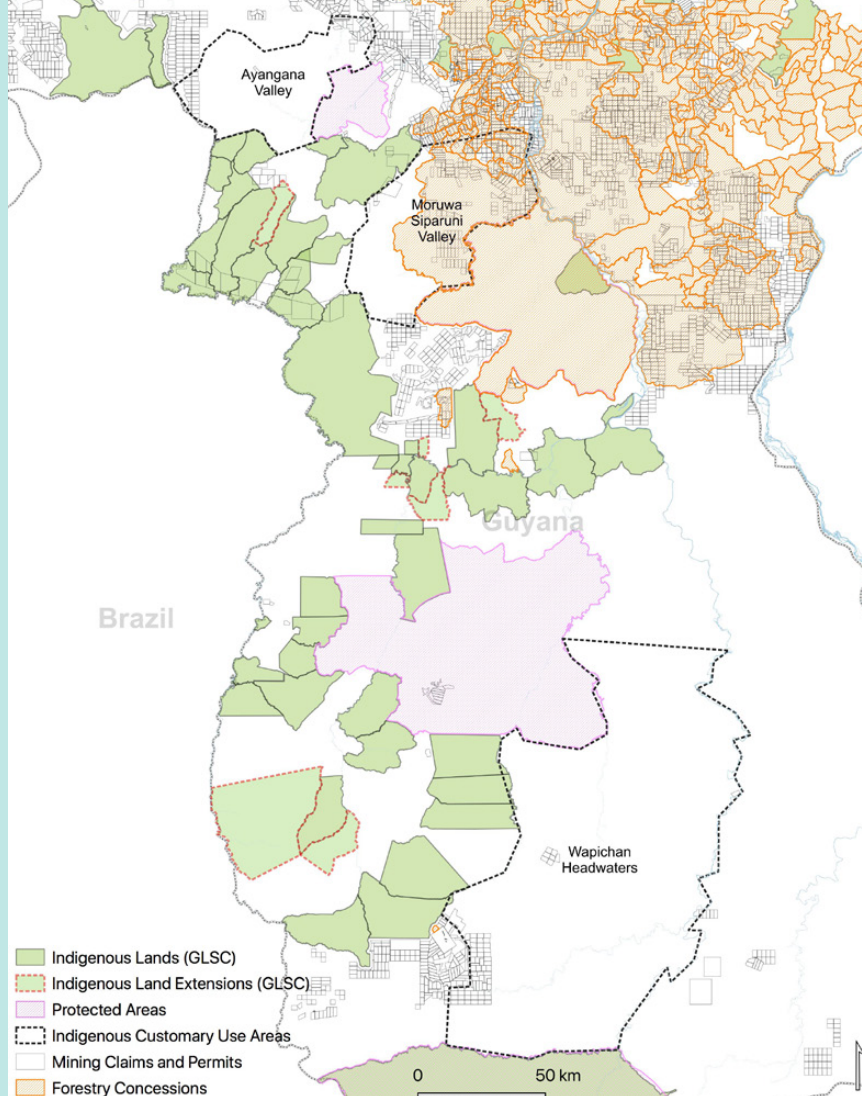
<sup>6</sup> See UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, 2 October 2007, A/RES/61/295 (hereinafter cited as “UNDRIP”) at Art. 26; UNCESCR (2015), *Concluding observations on the combined second to fourth periodic reports of Guyana*, E/C.12/GUY/CO/2-4 (hereinafter cited as “CESCR CO 2015”) at para 14(a)

<sup>7</sup> A few villages either report they were satisfied with their titles or did not report about their satisfaction with their titles but did report that their titles did not secure their customary lands.

<sup>8</sup> See, e.g., ALC Report sections on Achiwib, Sawariwau, Nappi, Massara, Annai, Toka, Yakarinta, Kanapang, Itabac, Kurukabaru, Kopinang, Waipa, Monkey Mountain, Kaibarupai, Mahdia-Kangaruma, Tumatumari, St. Monica Mission, Kabakaburi, Santa Rosa, Kokerite-Barama (St. Columba's Mission), Hotakwai, Hobodia, St. Francis, Kwabanna, Little Kanaballi, Waropoka, Kurutuku.

<sup>9</sup> The ALC did in some instances recommend titles larger than what the community reportedly requested for the same reason that it considered that the larger area was necessary for the community's subsistence and development. It should be noted, as well, that many village elders who can still remember the ALC commented that the areas reportedly requested in the ALC Report may not correspond to actual areas of customary lands, because the ALC did not engage in proper processes to ensure that those areas were determined in accordance with participatory processes.





**Map 2.** There are large portions of traditional lands that are not secured by title but that are important to indigenous peoples for spiritual and hunting, fishing, gathering, and farming purposes, such as the Ayangana Valley, Moruwa Sipuruni Valley, and Wapichan Headwaters. There are already numerous mining and logging concessions that are threatening these areas.

The inadequacy of village titles demonstrates a failure to protect indigenous peoples' land rights as required under international human rights law<sup>10</sup>. Practically, the lack of title has meant that village councils have less authority to control and manage those parts of their lands. As a result, indigenous peoples have had their cultural and spiritual sites and farming, hunting, fishing, or gathering grounds encroached upon, damaged, and restricted from their access and management (see Map 2). This also means indigenous peoples are not able to protect effectively the natural resources, including forests, in their lands. Titled lands experience fewer such conflicts, although villages also report significant disputes inside titled lands, often as a result of inadequate titling processes, as will be discussed further below.

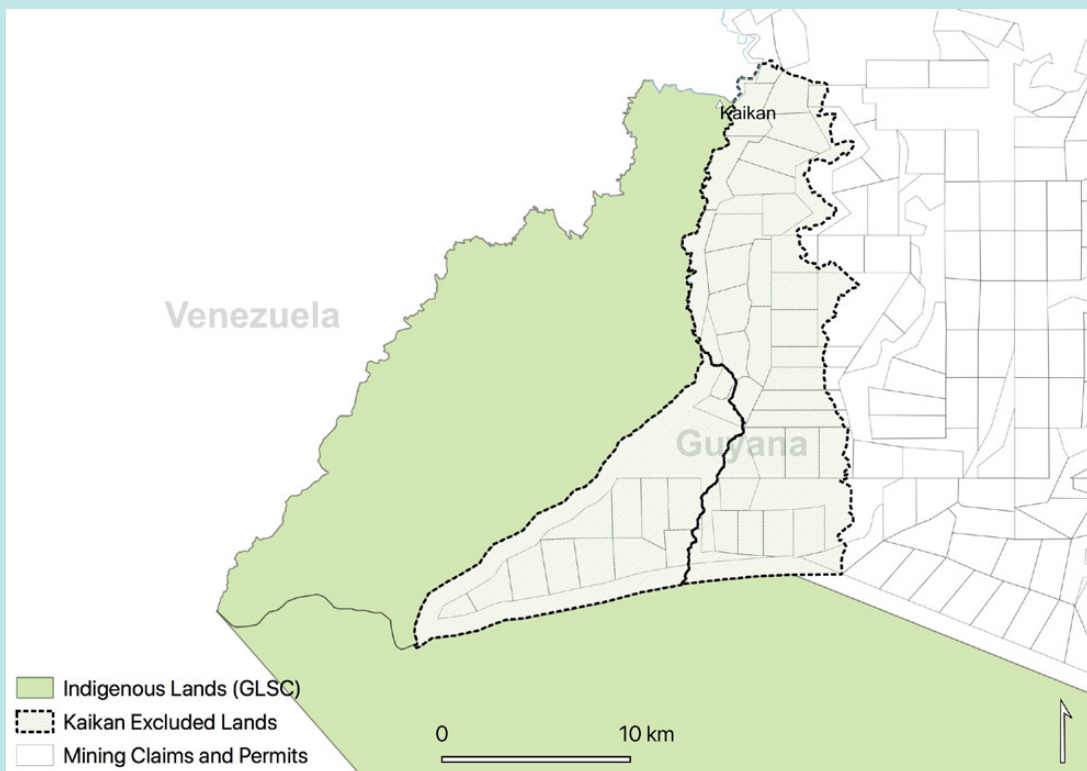
**Demarcation errors:** *The majority of demarcated villages report errors in how their lands were demarcated.* At least 35 out of 68 demarcated villages have complained that there are errors in the demarcation of their title boundary, that is, in the physical marking of their title by cut lines and placed boundary markers on the ground. 10 villages report that they are unsure whether the demarcation accurately follows their title description. Several villages report being unclear as to whether the demarcation of their title is accurate because they do not have their title plans to compare or do not have access to technical experts who can assist in reading the maps. At least 41 villages report dissatisfaction with their demarcation, even if they do not report any errors in the demarcation, because they felt that the demarcation exercise was not properly explained or conducted.

<sup>10</sup> See, e.g., UNDRIP, Art. 26; UNCESCR (2015), Concluding observations on the combined second to fourth periodic reports of Guyana, E/C.12/GUY/CO/2-4 (hereinafter cited as "CESCR CO 2015") at para 14; UNCERD (2006), *Concluding observations of the Committee on the Elimination of Racial Discrimination: GUYANA*, CERD/C/GUY/CO/14 (hereinafter cited as "CERD CO 2006") at para 16.

The errors and confusion caused by demarcation exercises result in part from the failure to involve community participation, government surveyors being unwilling to walk the entirety of village title boundaries, as well as the incompleteness of the government database of place names. For example, Mashabo Village reports that the government confused two creeks and thus demarcated their boundary in such a way as to cut out the piece of land between the two creeks. The village believes that this error would not have been made had the government sought information from the village in doing the demarcation.

Demarcation errors have caused or exacerbated conflicts and confusion resulting from inadequate land titles. Some errors have caused inter-village conflicts. For example, a demarcation error caused the headwaters of Puwa River to be marked out of Kanapang's title and into Kurukabaru's. This has caused some conflict around resource and land use, although villagers have tried to resolve this conflict by reminding one another that they understand their lands to belong to a shared territory. In other villages, it is unclear who may vote in village elections because only those living inside village boundaries are included in voter lists.

More problematic is that demarcation errors have left village councils uncertain about the geographic extent of their authority under the Amerindian Act, particularly when the errors result in the exclusion of important resource areas from the village's title. For example, the Amerindian Act requires loggers and small- and medium-scale miners to obtain permission from a village prior to working inside titled lands. The village of Sebai in Region 1 reports that its demarcation cut out a portion of its lands, and that this had caused a logging company to move onto village lands, because the company either thought or chose to believe that the demarcated line was the correct boundary line with the village.



**Map 3.** Confusion of the names of two rivers in Kaikan has resulted in the incorrect exclusion of a significant portion of the village's title from government maps. This error has contributed to conflicts with miners in that part of the village's lands and significant damage to the village's resource areas by mining activity.



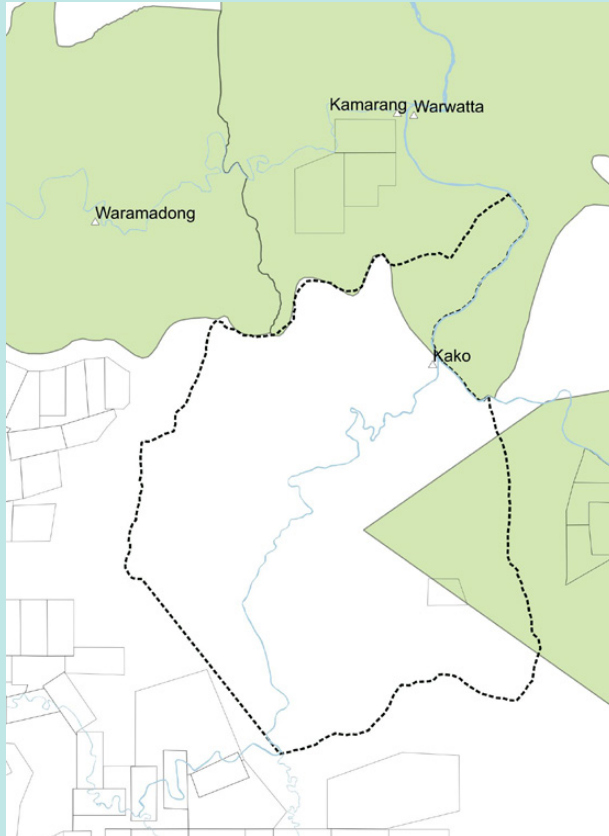
**Mapping problems:** Villages report errors in government maps or that maps produced by different government agencies contain discrepancies. Villages report that the lack of proper information regarding indigenous place names in particular has caused significant mapping errors. For example, Kaikan Village reports that the government had confused the names of two rivers on their maps, meaning that their title boundary, which follows one of those rivers, is shown incorrectly on government maps. This has led to the exclusion of roughly one-third of the village's title from government maps of its titled land (see Map 3). Miners working on concessions in that portion of the village's title have not respected the village's authority and have blocked residents from utilizing traditional trails to access their resource areas. Mining activity in that area has also caused significant damage to important farming grounds and areas the village had considered had significant eco-tourism potential. In the case of Arau Village, the village's title plan does not match its title description, and the GLSC later admitted to an error in the plan after sending an officer with local guides to verify the title boundaries (see Map 4).

In addition, there are numerous instances in which villages have found that maps held by various government agencies, such as the Guyana Geology or Mines Commission ("GGMC") or Guyana Forestry Commission ("GFC"), show different title boundaries than the title plans they hold. As one particularly egregious example, Kako Village is entirely missing on the latest database of indigenous titled villages provided to the researchers by the Guyana Lands and Surveys Commission ("GLSC") (see Map 5). The village also does not appear on GGMC's maps. This

means the GGMC has issued mining concessions in Kako's titled lands possibly without knowing that the village exists and without considering the impact of the mining on the village, as required by the Amerindian Act. It has also undermined the ability of the village to exercise its authority under the Amerindian Act to deny consent to small- and medium-scale mining operations in its titled lands.



**Map 4.** The title plan of Arau Village excludes the southern portion of its title, resulting in confusion over the geographic extent of the village's authority and numerous conflicts with miners operating in that area of the village's titled lands.



**Map 5.** Kako Village has title, granted in 1991. However, the village is missing from government maps, contributing to or resulting in the granting of numerous mining concessions in its title and conflicts with miners operating in the village's lands.

**Land conflicts:** *The majority of indigenous communities, 88 out of 108 visited, report having faced conflicts over land and resources on their customary lands, including 73 villages reporting conflicts inside titled lands.* A significant number of land and resource conflicts reported have been with persons or companies doing natural resource extraction, specifically, mining or logging. However, there have also been conflicts over the seeking or issuance of agricultural leases, as well as persons entering village lands without permission to conduct activities such as tourism or fishing. In addition, some villages also report conflicts with protected areas, which have not only prevented villages from obtaining title over certain parts of their customary lands but are restricting the ability of indigenous peoples to practice their traditional activities inside their customary lands in the protected area (see Map 6). Examples include residents of Chenapou being told they cannot take traditional trails through Kaieteur National Park to hunt and fish; residents of Santa Rosa being told they cannot practice traditional turtle hunting or fishing in Shell Beach Protected Area; and residents of Sand Creek being told they could not cut lumber from the Kanuku Mountains Protected Area to build houses.

In some instances, these land conflicts have escalated into confrontations in which villagers report being threatened and blocked from accessing traditional hunting or gathering grounds. In one particularly appalling case, miners in Karisparu threatened an elder of the village, Mamai Lucille Williams, to move so they could mine on her property, and when she refused, destroyed her house.

**Lack of clarity of title:** *The issuance of titles with ‘save and except’ clauses and other lack of clarity in title boundaries has compounded many land and resource conflicts.* Most often, conflicts inside titled lands arise from logging or mining concessions being granted inside the title without any consultation with or the consent of the village. These conflicts are exacerbated when the extent of the village's title is unclear, as when there are mapping inconsistencies and errors (see above). Notably, most village titles granted after 2006 have a “save and except” clause in the title that excludes “lands legally held” from the title area. This clause has been used by miners to deny the village rights over the area if the miner obtained their concession before the village got its title.

# KEY RECOMMENDATIONS

The researchers conducting these Land Tenure Assessments have consistently heard the same recommendations from the villages they visit. The recommendations are for changes in law and policy that can help address the problems with security of tenure described above. They are in line with international human rights law and echo recommendations previously made to the government of Guyana by international human rights treaty bodies<sup>11</sup>. These include the following:

## ***Revise the Amerindian Act to ensure respect for indigenous peoples' rights to our lands and territories and our right to FPIC.***

A few specific recommendations for a revised Act include:

- Allow villages in a district to hold shared collective title, should they choose to do so
- Ensure land titles correspond to customary lands
- Ensure respect for effective participation and free, prior and informed consent (“FPIC”), including:
  - Requiring participation in decision-making and FPIC prior to granting forestry and mining concessions
  - Removing the discriminatory provision in the current law that allows for the government to approve large-scale mining activity even where a village has refused their consent to it
  - Requiring participation in decision-making and FPIC for all proposed laws, policies, projects, or activities that may have significant impacts on indigenous rights, including the establishment of protected areas, hydro-dam or hydro power projects, the low carbon development strategy, etc.

## ***Improve the land titling process to ensure that:***

- Title and extension applications are processed in a timely and efficient manner
- The consideration of applications takes relevant factors and sources of information as described in international human rights law and standards (such as oral statements or sketches by community members describing their lands and their relationship therewith, or information from archaeologists or anthropologists) into consideration
- The legal effect of absolute grants and certificates of title is clarified
- There are appropriate remedies for rights violations or other errors in the process, such as where a village believes a titling decision was made arbitrarily or there are errors in its demarcation
- Prior to titling, there will be a fair and rights-respecting process to address third party interests

<sup>11</sup> See, e.g., CERD CO 2006; CESCR CO 2015; and UNCEDAW (2019), *Concluding observations on the ninth periodic report of Guyana*, CEDAW/C/GUY/CO/9 (hereinafter “CEDAW CO 2019”)



- The land titling process follows the Guideline for Amerindian Land Titling in Guyana (“ALT Guideline”)<sup>12</sup>, which had been collaboratively developed under the Guyana REDD+ Investment Fund-supported Amerindian Land Titling (“ALT”) Project<sup>13</sup> by a Representative Platform comprised of government and indigenous community representatives. The purpose in establishing the Representative Platform and publishing the ALT Guideline was three-fold: (i) to guide stakeholder engagement processes; (ii) to outline a clear process for delimitation, demarcation, and titling of indigenous lands; and (iii) to develop grievance and dispute resolution mechanisms to address conflicts related to indigenous land titling<sup>14</sup>.

***Resolve and prevent land conflicts by:***

- Cancelling and revoking concessions and protected areas granted over indigenous customary lands without the affected community’s/ies’ FPIC and granting that land back to the control of the community/ies
- Ceasing to grant concessions or other interests on indigenous customary lands (e.g., titled lands and lands claimed in title or extension applications) without FPIC

***Correcting mapping errors, including:***

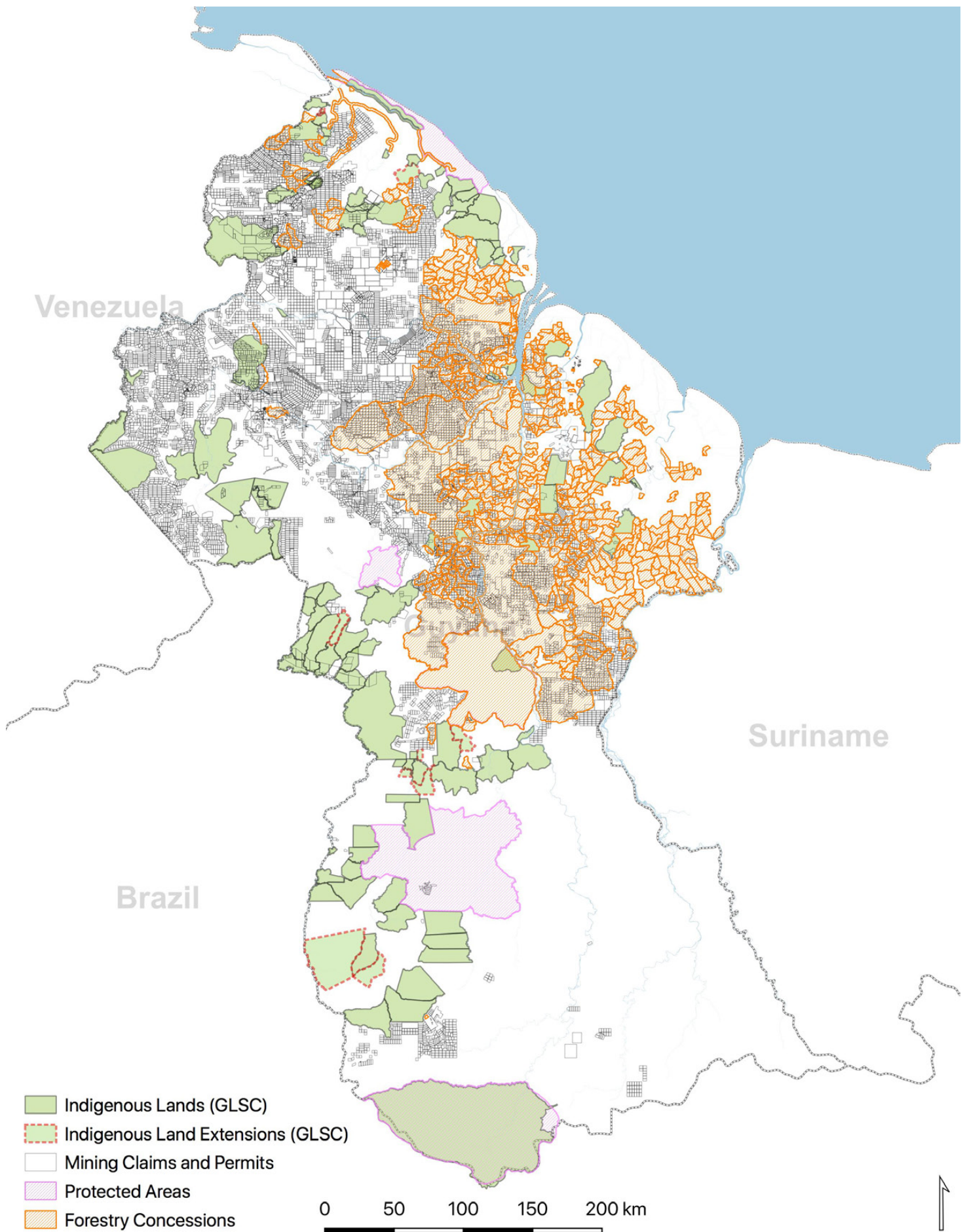
- Correcting errors in village title demarcations
- Updating government mapping databases with corrected information about village titles and place names, based on local knowledge and indigenous-produced maps, such as the APA mapping database
- Ensuring that all government agencies and offices are using the same, correct information about village titled lands

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<sup>12</sup> A Guideline for Amerindian Land Titling in Guyana, approved by the Amerindian Land Titling Project Board (6 April 2017), available at: <https://www.gy.undp.org/content/dam/guyana/docs/GOVPOV/Guideline-for-Amerindian-Land-Titling-in-Guyana.pdf> (hereinafter cited as “ALT Guideline”)

<sup>13</sup> The ALT Project began in 2013 with the purpose of facilitating the indigenous land titling process in Guyana. The Amerindian Act legally obligates the government of Guyana to investigate applications for and issue, where the criteria in the Act are met, titles for indigenous communities. The government had previously found high costs to be a barrier to meeting this legal obligation, and the ALT Project allocated funding from the Guyana REDD+ Investment Fund to address those costs.

<sup>14</sup> ALT Guideline at Pg. 2



**Map 6.** Map of Guyana showing indigenous lands, mining and forestry concessions, and protected areas.

# LAND TENURE ASSESSMENT RESULTS AT-A-GLANCE

85

Villages with Title



4

Satisfied with Title



76

Dissatisfied with Title

Villages with Land Conflicts

73

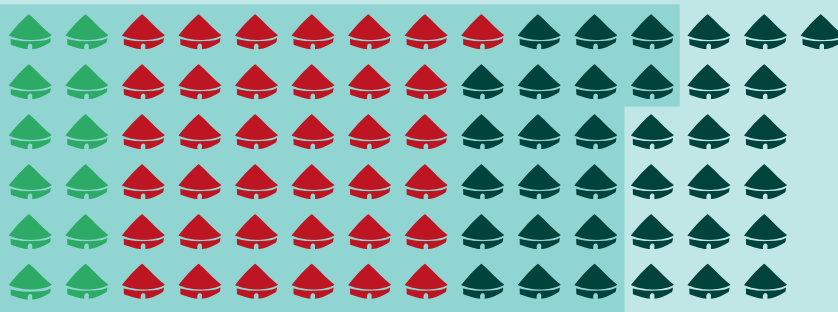
Villages with Conflicts in TITLED LANDS

79

Villages with Conflicts in UNTITLED LANDS

68

Villages with Demarcated Boundaries



12

Satisfied with Demarcation



41

Dissatisfied with Demarcation



20

Reporting demarcation is correct



20

Reporting that they are unsure if demarcation is correct



20

Reporting demarcation is wrong

61

Villages part of Amerindian Land Titling (ALT) Project



28

Activities Completed



66

Activities Incomplete



11

Activities Not Consented to or Requested



# DETAILED RECOMMENDATIONS

The Land Tenure Assessment reports for each region describe in more detail many of the land tenure security issues summarized in the Key Findings section of this report. This report presents the recommendations that have been consistently raised by district and village leaders, elders, other knowledge holders, and other community members. It also aims to provide a more detailed analysis of how adopting these recommendations would help in preventing and resolving the issues identified, as well as ideas for what changes in law, policy, and practice are needed to implement these recommendations.

Researchers identified four main recommendations, each with specific accompanying recommendations.

## ***Main recommendation 1: Revise the Amerindian Act to ensure respect for indigenous peoples' rights to our lands and territories and our right to FPIC.***

The Amerindian Act 2006 is the primary legislation that governs indigenous peoples' rights in Guyana. As such, it provides the legal framework within which indigenous peoples' rights to land are recognized and protected. Human rights treaty bodies have pointed out, however, that there are important deficiencies in the Amerindian Act and have recommended revisions to bring the Act in line with international norms and standards. Broadly, these recommendations urge the government to ensure that the Act recognizes and protects the rights of all indigenous peoples to own, develop, manage, and use their traditional lands<sup>15</sup>.

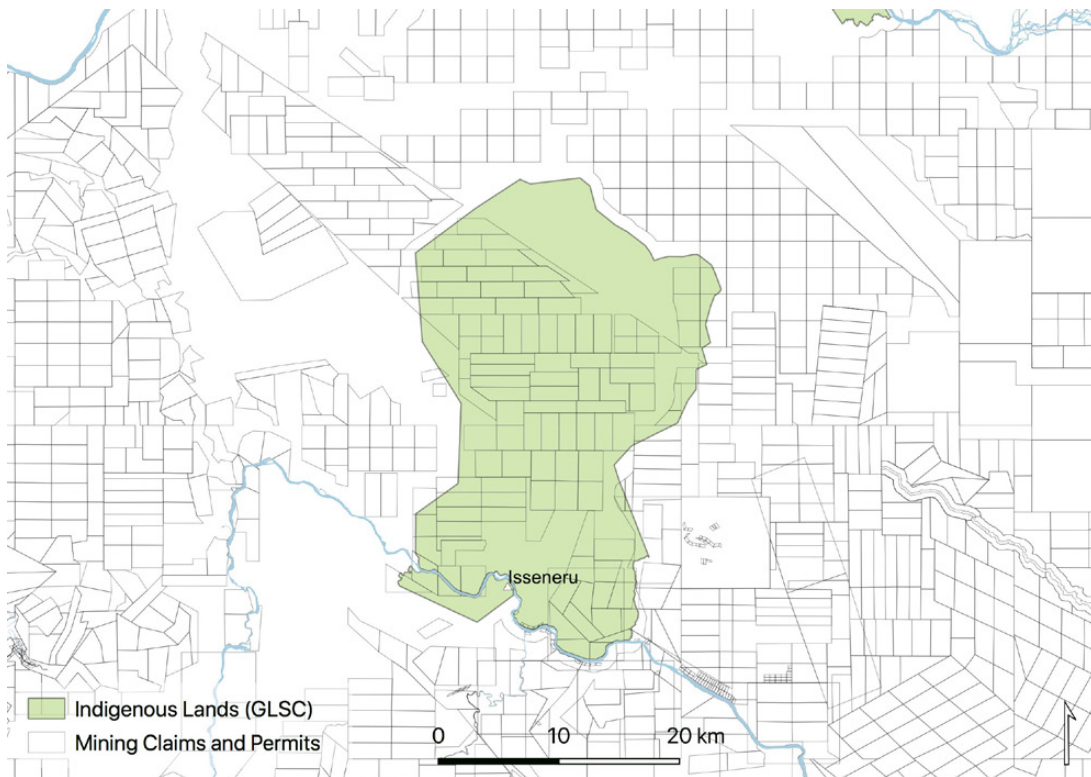
To implement this recommendation, the government should allocate funding to draft a revised bill on indigenous rights and engage in consultations with indigenous communities on that draft bill.

Specifically, in order to be brought in line with international human rights norms and standards, a revised Act should:

*Recognize territorial titles held collectively by villages in a district.* The failure of the existing Amerindian Act to allow for joint titles has been specifically pointed out by international human rights bodies as an infringement on indigenous peoples' rights that should be addressed in a revised Act.<sup>16</sup> Revising the Act such that villages could choose to hold title jointly would resolve the issue over which the villages in the Upper Mazaruni have taken the government to court. It would also mean that other groups of villages that had been denied requests for joint title in the past could now apply again for those district-level titles. This includes villages in the Northwest (Region 1); Middle Mazaruni (Region 7); North Pakaraimas (Region 8); and South Rupununi (Region 9).

<sup>15</sup> See, e.g., CERD CO 2006 at para 15 (recommending that the government "remove the discriminatory distinction between titled and untitled communities... In particular [...] to recognize and support the establishment of Village Councils or other appropriate institutions in all indigenous communities, vested with the powers necessary for the self-administration and the control of the use, management and conservation of traditional lands and resources"); CESCR CO 2015 at para 15 (recommending that the government "revise the Amerindian Act 2006 and other relevant laws with a view to ensuring, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, that the Amerindian people's rights to their lands, territories and resources are fully recognized and protected and that their free, prior and informed consent is obtained in respect of the adoption of any legislation, policy and/or project affecting their lands or territories and other resources"); CEDAW CO 2019 at para 44(b) (recommending that the government "[a]mend the Amerindian Act (2006) and other relevant laws, using a gender-sensitive approach, with a view to ensuring that the rights of Amerindian communities to their lands, territories and resources are fully recognized and protected, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples").

<sup>16</sup> CESCR CO 2015 at para 14(a).



**Map 7.** Mining concessions granted by GGMC cover almost the entire territory of Isseneru.

- *What revisions would such a recommendation require?* Accepting this recommendation would require amending the Act so that both village and district councils (or other form of representative body chosen by the indigenous peoples) are bodies that can hold title to lands. Land held by a village title would be held collectively by the village, whereas lands held under a district title would be held jointly by the constituent villages within the district and governed by the district council. Implementing this recommendation would require corresponding amendments to allow villages to apply for title jointly.

*Ensure land titles correspond to customary lands.* International human rights bodies have noted the “limitation of indigenous communities with land titles to manage and control resources within their territories”<sup>17</sup>, as well as the lack of protection for communities without land title or with pending title applications<sup>18</sup>. Part of the reason for the limited control that even titled indigenous communities have over their resources is that their titles do not correspond to the full extent of their customary lands, and many resources used by the community are located in untitled lands. A second reason for this lack of control over resources is that indigenous title does not include title to water or subsoil resources (see next recommendation). Implementing this recommendation would resolve a significant reason that the majority of villages are dissatisfied with their titles by giving indigenous communities legal recognition and authority over the full extent of their customary lands, in accordance with international human rights law and the recommendations of human rights treaty bodies.

- *What revisions would such a recommendation require?* A revised Amerindian Act would need to include provisions in what is currently Part VI on grants of title and extension of title to ensure that there is a clear process for determining the boundaries of customary village lands (more detailed recommendations on this can be found in the following set of recommendations on the titling process).

<sup>17</sup> CESCR CO 2015 at para 14(c).

<sup>18</sup> CESCR CO 2015 at para 14(d).

*Recognize the right of indigenous peoples to the water and subsoil resources on their lands.* Recognition and protection of the right of indigenous peoples “to own, develop and control the lands which they traditionally occupy, including water and subsoil resources...” (emphasis added) has been explicitly recommended to the government by human rights treaty bodies. Such protection would resolve many of the land and resource conflicts indigenous communities have reported, particularly those related to mining and fishing in their lands.

- What revisions would such a recommendation require? This recommendation suggests the need to amend the Amerindian Act to specify that the subsoil and water resources inside indigenous titled areas are included within those titles, and that this provision prevails over conflicting provisions in other laws that may reserve mineral rights to the government.



**Image 1.** Destruction of river bank caused by four Hydraulic dredges (Draggas) by third parties on titled Amerindian Village of Micobie.



*Ensure respect for effective participation and FPIC.* The right of indigenous peoples to effective participation and free, prior, and informed consent is an important safeguard for guaranteeing other substantive rights. The UN Committee on the Elimination of Racial Discrimination (“CERD”), for example, recommended that the government “undertake environmental impact assessments and seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities”<sup>20</sup>, and the UN Committee on Economic, Social, and Cultural Rights (“CESCR”) recommended that the government ensure that indigenous peoples’ “free, prior and informed consent is obtained in respect of the adoption of any legislation, policy and/or project affecting their lands or territories and other resources”<sup>21</sup>.

Ensuring that indigenous peoples have a guaranteed right to participate in decision-making on laws, policies, or projects that may impact their rights, including in their untitled customary lands, would help prevent land and resource conflicts in indigenous lands. For example, seeking FPIC prior to the granting of mining and logging concessions in indigenous peoples’ customary, including untitled, lands, as well as prior to the commencement of mining or logging activity, would avoid conflicts over mining and logging activities happening in indigenous communities. The GGMC has been observed, for example, to “grant[] mining concessions superposing over indigenous territories, even after the land request legal and administrative process has begun”<sup>22</sup>. This suggests that at the very minimum, the GGMC, GFC, and GLSC should refrain from issuing any new concessions or leases in lands that have been applied for as indigenous titled lands.



**Image 2.** Amaila falls, the site for a proposed hydropower facility on the Kuribrong river.

<sup>20</sup> CERD CO 2006 at para 19

<sup>21</sup> CESCR CO 2015 at para 15

<sup>22</sup> Camacho-Nassar, Carlos, *Mid-term Evaluation of the Amerindian Land Titling Project in Guyana*, December 2016, available at [http://www.guyanareddfund.org/images/stories/pdf/ALT\\_Mid-Term\\_Evaluation\\_Report.pdf](http://www.guyanareddfund.org/images/stories/pdf/ALT_Mid-Term_Evaluation_Report.pdf) (hereinafter cited as “ALT Midterm Evaluation”) at p 10

The Amerindian Act does already include some measure of respect for FPIC, requiring that non-village residents obtain the consent of the village in order to conduct forestry or small- or medium-scale mining activities on titled village lands. However, this limits indigenous peoples' right to participation and FPIC to titled lands, which is problematic when titled lands do not correspond to customary lands. The Amerindian Act also does not include protection for the rights to participation and FPIC more generally, for example, in the context of decision-making on projects such as the building of hydropower dams or the adoption of policies such as the low carbon development strategy. In addition, the Amerindian Act currently contains a notable limitation on the right to FPIC, allowing for the government to approve large-scale mining activity in titled village lands even where a village has refused consent to the mining, as long as that mining activity is deemed to be in the public interest<sup>23</sup>.

Importantly, a few court cases have suggested that these provisions requiring village consent for small- and medium-scale mining activity in titled lands do not apply to miners who obtained their concessions prior to the village obtaining its title<sup>24</sup>. The UN CESCR specifically expressed its concern about these court rulings and recommended that "the interpretation and implementation of the Amerindian Act 2006 and other relevant laws take into account the United Nations Declaration on the Rights of Indigenous Peoples"<sup>25</sup>.

— *What revisions would such a recommendation require?* Revising the Amerindian Act to protect indigenous peoples' right to effective participation in decision-making would require adding a provision that requires that indigenous peoples are consulted and provided with the opportunity to participate in making decisions around the drafting or planning, adoption, and implementation of new laws, administrative measures, policies, programmes, projects, and other activities that may affect them and their rights. The provision should specify that this right applies regardless of whether any of those projects or activities are happening on or would affect indigenous titled or untitled, customary land. The revised Act would also require a deletion of the section in the current Act that allows the government to override a village's refusal of consent to large-scale mining.

In addition to those changes, the revised law would need a corresponding provision to define a method for determining the extent of untitled customary land (this can be done, for example, by using title applications as a proxy for untitled customary lands until such time as the application is processed) and for determining when laws, administrative measures, policies, programmes, projects, or other activities may impact indigenous peoples and require their participation and consent. Finally, the revision in the Act would need to ensure that decision-making and FPIC processes are undertaken in accordance with the customs of each indigenous community<sup>26</sup>.

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<sup>23</sup> The Amerindian Act, Cap 29:01, at Sec. 50

<sup>24</sup> The High Court of Guyana noted that mining licences convey property rights on the licence holder and that mining licences existing prior to the Village's title are excluded from indigenous title by the "save and except" clause. Moreover, regardless of the existence of "save and except" clauses, mining permits granted prior to the entry into force of the Amerindian Act are not subject to the mining provisions of the Amerindian Act, which require miners operating in Amerindian Village lands to obtain permission from the Village. In the matter of an application by Joan Avahnelle Chang, No. 136-M, High Court of the Supreme Court of Judicature, Decision of Diana Insanally, 17 January 2013 at pp 14-16. See also In the matter of an application by Daniel Dazell, No. 158-M, High Court of the Supreme Court of Judicature, Judgment of Ian Chang (3 March 2009) at p 17; In the Matter of an Application by Wayne Vieira (hereinafter Vieira 2013), No. 2-M, High Court of the Supreme Court of Judicature, Decision of Chief Justice Ian Chang, 17 May 2013 at pp 27-28

<sup>25</sup> CESCR CO 2015 at paras 16-17

<sup>26</sup> This was also a recommendation of the ALT Midterm Evaluation: "[P]revious to the FPIC process, local authorities should be consulted with the aim to agree a pertinent local consultation strategy". ALT Midterm Evaluation at p 14.

**Main recommendation 2: Improve the land titling process to ensure that it achieves the end result of protecting indigenous peoples' land rights.**

International human rights law recognizes that indigenous peoples' rights to their lands are inherent; in order to protect those rights, governments have an obligation to legally recognize those lands. This means that the titling process should ensure that the titles indigenous peoples receive correspond to their traditional lands. Doing this requires that the government "establish adequate procedures [and] define clear and just criteria to resolve land claims by indigenous communities within the domestic judicial system while taking due account of relevant indigenous customary laws"<sup>27</sup>.

To implement this recommendation, the government should fully implement and follow the ALT Guideline, including by adopting them into regulations under a revised Amerindian Act. Many of the complaints that the Land Tenure Assessment researchers heard about the land titling process are issues that had been considered and were addressed in the drafting and adoption of the ALT Guideline. These include complaints around not having the titling and demarcation processes explained properly; lack of proper consultation and consent to the final titles granted or demarcation maps prepared; and failure to address third party interests overlapping their lands in the process. In addition, the ALT Guideline includes provisions for the operationalization of the Grievance Redress Mechanism, which could help address complaints about the titling process early on.

Specific recommendations in relation to the land titling process include:

*Title and extension applications should be processed in a timely and efficient manner.* This was a particular recommendation from the UN CESCR to "make the title granting process easily accessible for the Amerindian communities and more time efficient"<sup>28</sup>. Out of 53 villages visited by LTA researchers that have applied for title or extension to title, only 6 report having received them, and 2 of those villages are continuing to apply because the extensions they received did not correspond to the customary lands they sought to protect. Many villages report having first applied for title decades ago and still having no formal responses from the government regarding the timeline for processing their applications. Numerous villages recall having to resubmit applications for title and extension because they had been informed that the Ministry lost or misplaced their applications. The ALT Project, which was specifically funded for the purpose of advancing indigenous land titling in Guyana, began in 2013 but to date has not even completed a third of its planned actions<sup>29</sup>.

- What should the Government do to implement this recommendation? Acting on this recommendation primarily requires a change in the practice of how land titling processes are completed. It would require all agencies who have a role to play in this process (e.g., Ministry of Amerindian Affairs, GLSC, GGMC, GFC) to dedicate time and personnel to the process and ensure that they follow the procedures set out in the ALT Guideline. In addition, the Amerindian Act should be revised to require that the Ministry complete its investigation of title and extension applications within a reasonable period of time. It should similarly require that once the Minister has approved title, the title documents must be issued within a reasonable period of time.

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<sup>27</sup> CERD CO 2006 at para 16

<sup>28</sup> CESCR CO 2015 at para 17(a)

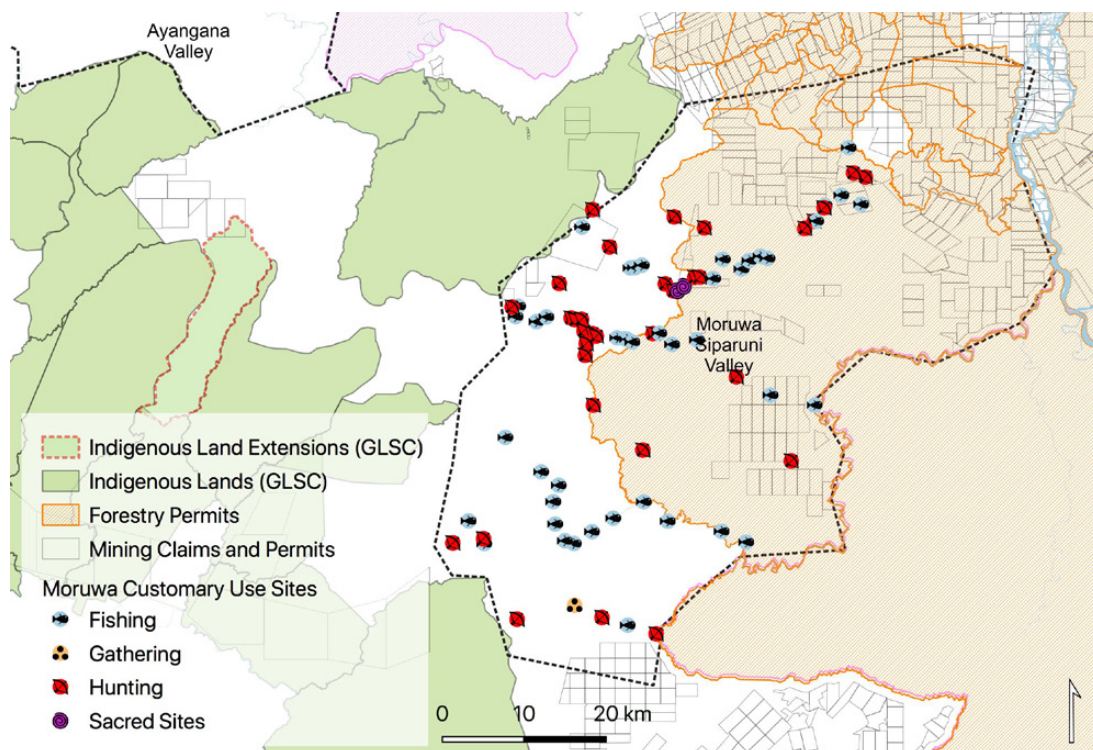
<sup>29</sup> This metric of "planned actions" refers to the planned outcomes of the project, namely, the issuance of absolute grants of title or certificates of title (following a demarcation). It does not refer to the intermediary actions, such as investigation of title applications, that are required in the titling process.



*Relevant factors for the determination of the existence of customary land tenure, as described in international human rights law and standards, should be used to make titling decision.* International human rights bodies have noted with concern that there is an “absence of clear criteria” for the titling of indigenous lands<sup>30</sup>. The ALT Project Midterm Review similarly recommended that the investigation of the title application provide the “social, political, legal and cultural justification of the land grant”<sup>31</sup>. Instead, currently, the Amerindian Act leaves the Minister with almost complete discretion in deciding whether or not to grant title.

The Amerindian Act does require investigations of title applications to gather information regarding the use and occupation of the village and the nature of the community’s relationship to the land<sup>32</sup>. However, it leaves to the Minister’s discretion whether or not to accept evidence from the community in the form of oral statements; historical documentation; or reports from anthropologists or archaeologists<sup>33</sup>. Ironically, two of the criteria that the Amerindian Act requires for indigenous land titling are unrelated to indigenous customary tenure – they require communities applying for title to prove that they have been in existence for 25 years and have a population of at least 150<sup>34</sup>.

The determination of whether or not communities receive title should be based on whether or not the indigenous community can demonstrate customary ownership, occupation, and use of the land (see Map 7). As such, oral testimonies; historical documentation; anthropological or archaeological reports would all be relevant and should be accepted where the community seeks to present such evidence as part of their title application, whereas the fact that a community cannot prove existence beyond 25 years or has a population below 150 should not be a determining factor. For example, the communities of Father’s Beach and Moruwa have populations that do not meet the requirement to apply for title.



**Map 8.** The Moruwa Sipuruni Valley is an important cultural and spiritual area for the Patamona people, including numerous fishing, hunting, gathering, and sacred sites.

<sup>30</sup> CESCR CO 2015 at para 14(b).

<sup>31</sup> ALT Midterm Evaluation at p 12.

<sup>32</sup> Amerindian Act at Sec. 61(2).

<sup>33</sup> Amerindian Act at Sec. 61(3).

<sup>34</sup> Amerindian Act at Sec. 60(1).

- What should the Government do to implement this recommendation? Implementing this recommendation could start by ensuring that the Ministry follows the ALT Guideline in investigating title applications. It would also require a revision to the Amerindian Act that ensures the Minister follows a prescribed process in making their decision and that removes the Minister's unlimited discretion to reject requested title areas arbitrarily without even providing the rationale for such rejection.

*Where the Minister decides to reject a village's application, the Ministry must negotiate with the village to agree on the final title that will be approved.* This recommendation is important to emphasize because only one village recalls having had a meeting with the Ministry to finalize and accept their title, while the vast majority of villages report not having agreed to the final title that was granted to them and that this title did not match the areas over which they requested legal recognition. Where it is not possible for a title application to be granted as requested, the Minister must explain why such a grant is not possible to the village and agree with the village on amendments to the request to ensure that title grants are protecting the full extent of an indigenous community's traditional lands as much as possible.

- What should the Government do to implement this recommendation? This recommendation already forms part of the ALT Guideline<sup>35</sup>, which should be followed and incorporated into regulations. In addition to following the ALT Guideline, effective implementation of this recommendation requires revision of the Amerindian Act such that the Minister not have unfettered discretion to reject title applications arbitrarily (see previous recommendation). Where the Minister does not believe that the requested title reflects the indigenous community's traditional lands, the Act should require the Minister to provide the reasons for that belief and initiate a negotiations process with the village.

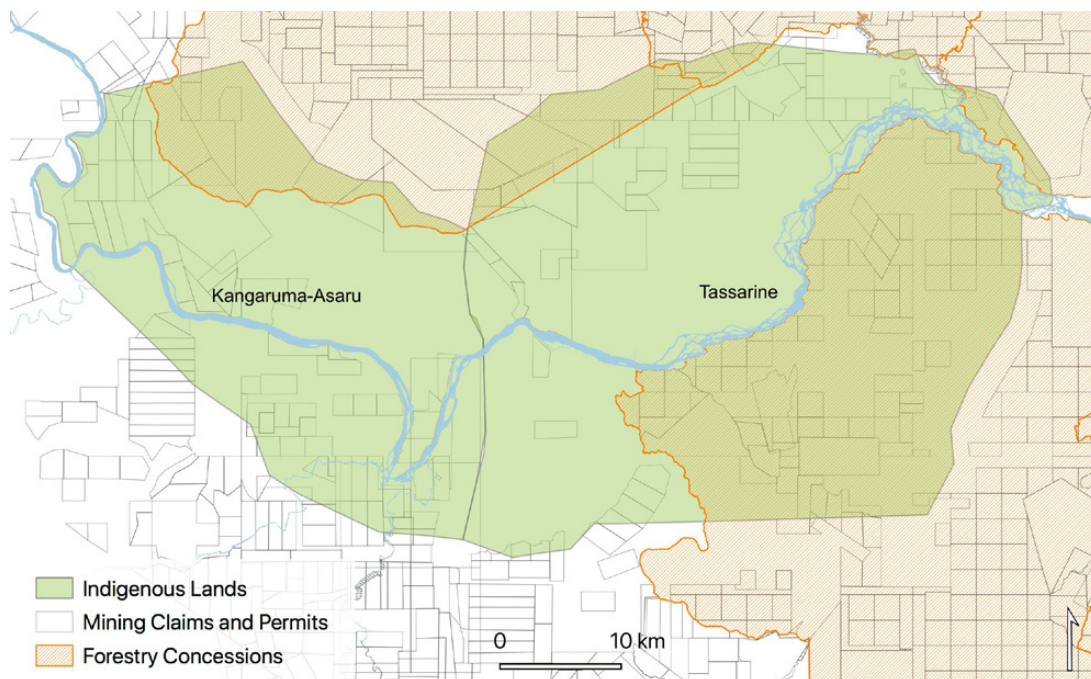
*During the investigation of the title application, there should be a fair process to address third party interests affecting the indigenous community's land.* This recommendation is crucial to ensuring that indigenous titles are not burdened with concessions that render the titles effectively worthless. One semi-successful example of this happening is when the GFC did not renew the forestry concession for Barama Logging Company after it expired in 2016. The concession had significantly overlapped the titles of Kokerite and Chinese Landing Villages. The removal of the concession from indigenous titled lands is an important step (although it should have happened when the villages first obtained title)<sup>36</sup>. This recommendation closely relates to the need to require effective participation and FPIC in making decisions to grant concessions in the first instance<sup>37</sup>. This recommendation is crucial to ensuring that indigenous titles are not burdened with concessions that render the titles effectively worthless.

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<sup>35</sup> See ALT Guideline at p 14, paras 40(2) and 44.

<sup>36</sup> It is unclear whether those same concession areas that overlapped the village titles were later reallocated to other logging companies. If they were, such reissuance of the concessions was done without consultation with the villages that the government knew had a land title conflict with Barama. See "Barama concessions to be split 4 ways as Govt re-allocating to varied parties", INEWS GUYANA, 30 December 2016, available at <https://www.inewsguyana.com/barama-concessions-to-be-split-4-ways-as-govt-re-allocating-to-varied-parties/>.

<sup>37</sup> See also, ALT Midterm Evaluation at p 10 (recommending that "Permissions for mining in indigenous lands should respect the FPIC and all social and environmental safeguards").



**Map 9.** Map of Kangaruma and Tassarine, two villages which are burdened with numerous mining and forestry concessions inside their titled lands.

- What should the Government do to implement this recommendation? The first step in addressing this recommendation is ensuring that the GGMC, GFC, and GLSC do not issue any new mining concessions, forestry concessions, or leases in land that is subject to a title application. To address concessions, leases, or other interests that already exist, the Government should follow the ALT Guideline and engage in a process of consultation with the third-party rights holders, and consider cancelling, relocating, or not renewing such rights or interests while ensuring that the rights of third parties are respected<sup>38</sup>.

*The demarcation process should be done with village residents who know the land and should involve the participation of neighbouring villages.* The ALT Midterm Evaluation recommended that “Demarcation should be always done walking the perimeter with the indigenous authorities... The boundaries demarcation cannot be done without the presence of the neighbour’s representatives and all conflicts need an in-situ agreement”<sup>39</sup>. The lack of effective participation in decision-making from the village and neighbouring communities has led to numerous demarcation errors and disputes that could have been avoided. For example, residents of Monkey Mountain report that the demarcation of their title mistook one set of waterfalls for the waterfalls mentioned in their title description, thus cutting off a portion of their title in which 56 households live. Another example is that a boundary dispute between Kato and Kurukabaru Villages is in part the result of demarcation exercises that did not involve both communities and resulting claims that parts of one village’s title were demarcated into the title of the other.

- What should the Government do to implement this recommendation? This recommendation could be implemented by following the ALT Guideline, which require the demarcation team to agree with the village the names of places to be demarcated, invite neighbouring villages to observe the demarcation, invite members of the village to join the team, and obtain a final endorsement of the cadastral survey following the demarcation exercise<sup>40</sup>.

<sup>38</sup> See ALT Guideline at p 12, paras 12-13.

<sup>39</sup> ALT Midterm Evaluation at p 12.

<sup>40</sup> ALT Guideline at pp 16-17, para 49(h)-(l).



*There should be a revision in the law to clarify the legal effect of absolute grants and certificates of title.* The Amerindian Act does not specify the actual process for issuing title, instead dictating that once approved, title shall be granted under the State Lands Act, which does not provide for demarcation or the issuance of certificates of title. The laws in Guyana provide little clarity regarding the legal effect of an error in demarcation and a discrepancy between the area of land protected by an absolute grant and the area of land protected by a certificate of title. This is deeply concerning to at least 35 villages who report errors in the demarcation of their titles. An effective Grievance Redress Mechanism could help address this concern, as could ensuring a village's participation and consent in the titling and demarcation process (see above recommendation). However, legal clarity would be helpful in ensuring that an incorrect demarcation or a mapping error does not deprive a village of its legal title.

- *What should the Government do to implement this recommendation?* This recommendation could be implemented through a revised Amerindian Act. The Act could specify the legal effect of the absolute grant and certificate of title, for example, stating that where an absolute grant and certificate of title are inconsistent with one another, any doubt as to the existence of title is resolved in favour of the village.

**Main recommendation 3: Resolve and prevent land conflicts by cancelling and revoking concessions and protected areas granted on indigenous peoples' lands without their FPIC and refraining from granting the same without FPIC.**

International human rights bodies have noted with concern that there were a “broad range of exceptions that allow mining and logging activities by external investors without the free, prior and informed consent of the affected indigenous peoples”<sup>41</sup> and that there was an “absence of effective legal remedies by which indigenous peoples may seek and obtain restitution of their lands that are held by third parties”<sup>42</sup>. For mining and logging activities, it is the lack of protections for untitled lands and the protection of mining interests granted prior to the issuance of indigenous title that currently cause the most land and resource conflicts.

In the case of protected areas, there are no legal mechanisms by which indigenous peoples can seek revocation of those parts of the protected areas that overlap their traditional lands and to instead obtain title over that area. With the exception of Kanashen, every protected area in Guyana overlaps traditional indigenous lands without recognizing the indigenous peoples' ownership of the land, creating situations where indigenous peoples are restricted from performing customary activities inside those areas.

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<sup>41</sup> CESCR CO 2015 at para 14(e).

<sup>42</sup> CESCR CO 2015 at para 14(f).

Shell Beach Protected Area has prevented Father's Beach and Almond Beach from obtaining title and Santa Rosa Village from receiving an extension to their title. Residents of other villages report not having been consulted about the boundaries of the park and being restricted from carrying out traditional activities, such as crabbing or harvesting turtle eggs, inside the park. Similar situations are happening with Kaieteur National Park and restrictions on Patamona people's traditional activities; Iwokrama International Centre and Forest and restrictions on traditional Patamona and Macushi activities; and the Kanuku Mountains Protected Area and restrictions on traditional Macushi and Wapichan activities. Importantly, many of these protected areas are important not just for indigenous peoples' subsistence and livelihood activities, but they contain important spiritual and cultural sites. Kaieteur Waterfall, for instance, is sacred to the Patamona people, while the Kanuku Mountains are an important resting place for Wapichan *marunao nao* (shaman).



**Image 3.** Kaieteur National Park, a sacred place of the Patamona people.

- *What should the Government do to implement this recommendation?* The ALT Guideline already suggest that the government should address third party rights or interests in the land titling process, and that it should, where possible, consider cancelling, relocating, or not renewing concessions that had been granted in indigenous peoples' customary lands without FPIC. Proper implementation of this recommendation could require revision of the Amerindian Act to explicitly provide for a process of cancelling, relocating, or not renewing concessions that had been granted in indigenous peoples' lands without their FPIC, as well as a process for revoking parts of protected areas that had been created over indigenous lands without consent.

**Main recommendation 4: Correct errors in village title grants, demarcations, and government agency maps.**

*Correct errors in village titles.* Several villages have refused demarcation until their title reflects the full extent of their traditional lands. They are rejecting the notion that land rights are a discretionary privilege granted by the state and instead asserting the state's obligation to legally recognize their inherent rights. The ALT Midterm Evaluation noted that accepting the requests from communities to process their applications as "corrections" to their title as opposed to "new requests" is "very important; it represents a vindication of indigenous peoples and also a conflict prevention strategy"<sup>43</sup>.

- What should the Government do to implement this recommendation? The Ministry should formally write to the villages who have requested that their titles be corrected (Chenapau, Arau, Kaikan, Kambaru/Omanaik) to inform them that the Ministry is willing to correct their title applications; to let them know what information the Ministry currently has on file for the village; to request the village to either confirm that the information the Ministry has is accurate or to provide updated information to the Ministry; and to inform the village of the next steps in the titling process.

*Correct errors in village title demarcations.* Numerous villages have indicated that they felt that there were errors in their title demarcations or that they were unclear what area precisely was demarcated (see recommendation above on the proper conduct of demarcation exercises). Some villages, however, provided to the LTA research teams very detailed knowledge of the errors in the demarcations and where the demarcation deviated from their title description.

- What should the Government do to implement this recommendation? The GLSC should write to every village and provide them with a process for obtaining a copy of the cadastral plan that is currently on file with the GLSC. It should inform villages that where they have identified errors in the demarcation, the village should reply to the GLSC and let it know where the error is. The GLSC should allow villages to independently hire a surveyor to conduct a correct survey of the village's title, and, once verified by the GLSC, update the cadastral survey of the village's title, along with its certificate of title. Where villages choose not to, or do not have the resources to, hire surveyors, the GLSC should provide surveyors to conduct the corrected survey and demarcation, following the protocol in the ALT Guideline. The Land Tenure Assessment reports already provide details regarding the demarcation errors in several villages and should be used as a reference in preparing to make these corrections.

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<sup>43</sup> ALT Midterm Evaluation at p 11



*Update government mapping databases with correct information about village titles.* Villages report that maps they have seen from the GLSC, the GGMC, and GFC have errors in them compared to their title descriptions. They also do not have correct information regarding the areas that villages have applied for as title or extension to title.

- *What should the Government do to implement this recommendation?* The Ministry should ensure that the latest applications and maps of title areas applied for should be provided to the GLSC, and the GLSC should ensure that it updates its database of village title and proposed title areas. The GLSC should ensure that this information is passed to the GGMC and GFC, and the GGMC and GFC should regularly request any updates from the GLSC. These government databases of indigenous village titles, proposed titles, and concession areas must be accessible for indigenous communities and civil society to review. The Ministry should review the Land Tenure Assessment reports and write a letter to the villages who have provided detailed complaints regarding errors in government maps to verify and address the complaints.