*Office of*

**MINISTER OF PARLIAMENTARY AFFAIRS AND GOVERNANCE**

14th July 2022

Madame Verene Shepherd
Chair
Committee on the Elimination of Racial Discrimination
Office of the High Commissioner for Human Rights
Geneva
Switzerland

Dear Madam,

**Re: Information received under the CERD's Early Warning and Urgent Action Procedure**

I write regarding the subject at reference, and regarding the Committee's letters dated 17th May 2018, 14th December 2018, and 29th April 2022.

**Issues raised in correspondence:**

In the letter dated 17th May 2018, signed by former Chair Noureddine Amir, the Committee indicated that during its 95th Session on the Elimination of Racial Discrimination, information from non-governmental organisatons regarding "*the situation of the Akawaio Indigenous villages of Tassarene and Kangaruma and of the Wapichan people of the South Rupununi in Guyana*" was considered.

Further, in the letter dated 14th December 2018, signed by former Chair Noureddine Amir, the Committee indicated that during its 97th Session on the Elimination of Racial Discrimination, information relating to "*the mining project on Marudi Mountain and its impact on the Wapichan indigenous people, in Guyana*" was considered.

Additionally, in your letter dated 29th April 2022, you indicate that during its 106th Session, *"the Committee on the Elimination of Racial Discrimination, considered information received under its Early Warning and Urgent Action Procedure, related to the "situation of the Chinese Landing and the Wapichan indigenous peoples."*

**Commitment of the Government of Guyana to the rights of Amerindian Guyanese**

It is apposite for the Government of Guyana to assert its commitment to the recognition and protection of the rights of Amerindian Guyanese and the development of Amerindian communities, titled or untitled.

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This commitment has, and, continues, to manifest itself in fundamental policies and programmes to protect the Amerindian/indigenous peoples of Guyana and their special place in Guyana as its first peoples. This commitment has included the establishment of a Ministry of Amerindian Affairs in 1992 which has continued to grow and expand to the present, the promulgation of the 2006 **Amerindian Act, Chapter 20:01, Laws of Guyana**, (copy attached[1]), and the granting of titles, autonomy, and mining rights to various Amerindian Villages.

Guyana has developed a unique model of communal land titling and ownership which emerged over 3 years of consultation with every village/community of Amerindian /indigenous peoples, and their elected village leaders[2] across the country; the National Toshoas Council[3] and the Amerindian/Indigenous NGOs; the appointment of a Parliamentary Special Select Committee on the Amerindian Bill which held hearings and its final unanimous passage through the Legislature and its enactment in 2006.

This unique model of land ownership by indigenous/Amerindian peoples has placed Guyana in the legal forefront globally on the land rights of indigenous peoples.

Through the Amerindian Act 2006, developed as described above in consultation with all Amerindian/indigenous communities, titled and untitled, the Government of Guyana changed the law to provide for the legal personality of an Amerindian community to be recognised without any requirement for registration or other legal formality.

History of Amerindian land titling

Amerindians, Guyana's first inhabitants, had long sought to have their rights to land recognized. Following the Amerindian Lands Commission Report of 1969, an amendment was enacted in 1976 to the 1951 Amerindian Act which provided for the granting of lands to Amerindian communities.

In the same year sixty-four (64) Amerindian communities received legal recognition to the lands they use and occupy. In 1991, an additional ten (10) communities were granted under the State Lands Act through the issuance of Absolute Grants. This brought the total percentage of lands owned by Amerindians to almost 6% of Guyana's land mass.

Additional problems arose due to the absence of physical surveys, since many communities disagreed with the descriptions in the 1951 amended Amerindian Act as being unrelated to the reality on the ground. This resulted in many communities requesting demarcation, and in some cases, extension to their communities' legally recognized boundaries.

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[1] We have noticed that some NGOS use the 1976 amended version of the 1951 Amerindian Act which was repealed in 2006 with the enactment of the Amerindian Act

[2] Part 111 of the Amerindian Act provides for the election every 3 years of the Toshoas and Amerindian Village Councils. This section also addressed the governance of the Amerindian Communities. This section also provides from Community Councils.

[3] Part 1V, provides for the National Toshoas Council, its conference every 3 years to elect its executive from among the leaders of the 200 villages and the functions and powers of the NTC in between elections.

With the change of government after the first free and fair elections in 28 years in October 1992, the Government of Guyana, established the first Ministry of Amerindian Affairs headed by a Minister who was Amerindian.

As a result of the lack of consultations with these Amerindian Communities before the descriptions of the areas were finalized, many considered the areas legally recognised via the Absolute Grants to be inadequate. In three villages---Sawarinau, Arau and a portion of Jawalla--the communities were located outside of these areas.

In 1995, in an attempt to address Amerindian land claims, the Government formulated a policy after consultation with Amerindian Toshaos (elected leaders) at a Meeting held at Paramakatoi, Region 8. A two-phased approach was designed and agreed as follows:

(1) Demarcation of the existing seventy four (74) legally recognized (titled) Amerindian communities.

(2) Addressing extensions of titled communities and the request for titles by those communities without legally recognized lands.

The decision to carry out demarcations of each community was a very important intervention to the entire process of tiled lands and land rights for indigenous communities. Demarcation (surveys) in consultation with the communities and carried out with their participation would result in communities having maps of their lands and physically marked boundaries which they were in agreement with. This would enable the communities to adequately address encroachment issues.

In 1996 the demarcation process commenced.

The Government recognized that there was need for a legislative instrument which would address the issue of Amerindian rights and land rights. The consultative process with the Amerindian communities on a new Amerindian Act driven by the communities and their organizations began in 2003 and took 3 years. This process included consultations with all Amerindian communities, their organizations, and other stakeholders on the development of guiding principles for the drafting of the new legislation, the actual draft and many redrafts. The draft bill was subjected to additional scrutiny by a Parliamentary Special Select Committee.

The rejection of the colonial 1951 Amerindian Act and its subsequent repeal in 2006 with the **enactment of the new Amerindian Act was a milestone for Amerindian land rights, not only in Guyana, but in the western hemisphere**

The new Amerindian Act included a comprehensive procedure and criteria to address Amerindian land claims. These are outlined in **Part VI** of the Amerindian Act 2006.

Unlike many other countries that require Indigenous people to show their ancestral connection with the particular piece of land being claimed, the Government of Guyana agreed that there needed to be less complicated criteria. **As such, communities requesting titled lands are only**

**required to show their use and occupation of the land being requested for at least 25 years and secondly the population must be at least one hundred and fifty (150) persons for the five (5) years preceding the application.**

The land claims mechanism in the Amerindian Act 2006 is intended to settle outstanding Amerindian land claims so that all communities will have title to land. Title decisions are to be made on the basis of occupation, use, custom, tradition, and the community's cultural attachment to and spiritual relationship with the land.

The enactment of the Amerindian Act 2006 led to titling of 97 titles covering 134[4] communities. The percentage of Guyana's land mass owned by Amerindian communities increased from approximately 6.5% in 1991 to over 14% in 2012. With new titles and extensions of lands in issued in 2021 and 2022, almost 16% of the land mass is communally owned by Amerindian/indigenous communities. The Amerindian communities are the second largest landowners after the State.

In all of these cases, communities were requested to submit a description of the area requested and in-depth consultations were held before titles were granted.

The land titles are all collective and absolute. All Amerindian lands are owned collectively by the whole community (technically called a "Village") and administered through a Village Council which is elected every two years by the community. The Village Council is a recognised legal entity. The Village Council also has the power to make law i.e. rules which are legally binding on everyone within the Village lands whether or not they are members of the Amerindian community. Communities with title therefore control what happens on their lands.

It should be emphasized that the Village Councils and the National Toshaos Council are both provided for in the 2006 Amerindian Act and given legal status. (see footnotes # 2 and # 3)

Grants are based on the principle of occupation from "time in memorial". The second manner in which Amerindians have received land is via the granting of a certificate of tile and in that title there can be seen recorded the words "save and except lands legally held".

It should be emphasized that issue of sub-surface rights is exclusive to the state and no one owns such rights except with the express permission of the state in accordance the relevant laws and regulations.

Mining concessions and leases convey rights in the nature of immovable property. The relationship between the State and the miner with a claim or license is similar to that between landlord and tenant with additional rights in the nature of profits a prendre.
A Prospecting permit, as opposed to a Mining claim or license, does not create an interest in land. Therefore, such a permit does not make the permission holder a land holder within the

[4] It should also be pointed out that a title may include satellite communities that are part of the Amerindian linguistic group in that Village Titled Land. These satellite communities have community councils and a community councilor on the Village Council.

meaning of the condition" save and except lands legally held" which is contained in titles issued to Amerindian Communities and Villages.

As a result of the Land Registration Act of Cap 5:02, the Certificate of Title and Grants are given subject to the overriding interests in land that have not been extinguished or negated because the Title or Grant were conferred on the Amerindians. In the event those rights were extinguished a Motion may be invoked by the Miner for a breach of the constitutional right to protection of property which is enjoyed by the Miners. Thus, although the Village Council do hold in trust the Certificate of Title for the Amerindian Community, the lands held by legal title are excepted and are not subjected to that Title but are rather an overriding interest.

However, cognizance must be taken of the role of the Guyana Geology and Mines Commission which is also as a result of the Amerindian Act 2006 obligated to protect the rights of the Amerindians when considering granting a claim or lease in land whether held under Title by the Amerindian community or not. This simply means that the procedures set out in the Amerindian Act must be complied with, that is, section 48.

The Amerindian Act, following all the consultations, was drafted in such a way to ensure that the State continues as it has done historically, to retain control and rights over the mineral substratum. It also was constrained to recognize and uphold Article 142 of the Guyana Constitution which guarantees protection against deprivation of property.

Finally, any subsequent claims that are granted to Miners, occupational interest, leases or licenses, once they have been obtained in compliance with the Amerindian Act 2006 will germinate into a legal interest that is independent of the Amerindian Title or Grant.

The courts' rulings on the cases which have been referred to in these correspondence illustrate the complexity of land issues, and in particular Amerindian land issues, and, overriding interests that existed before the enactment of the Amerindian Act.

The rulings also do not support the contention of the submitting parties to the Committee nor the Committee's conclusion in paragraph 3 of the March 2013 correspondence to the State Party that

> *"the Committee has received information that the High Court of Guyana, has in several recent cases, applied the legislation, and in so doing , upheld the interests of miners while denying any right of the Isseneru and Kako indigenous peoples to prevent mining on its titled land".*

In fact the rulings quoted provide some important interpretations of the Mining Act and the Amerindian Act and reinforced compliance with the Amerindian Act by the GGMC, the miners and the Amerindian Village Councils.

The court cases for instance with regard to the villages of Kato and Isseneru were not ones in which the Government of Guyana or any of the relevant sectoral ministries/agencies denied the villages' decision-making rights.

The issue of egress and ingress through Amerindian lands must be delicately balanced to protect Amerindian rights and also the rights of other Guyanese. This was necessary considering the passage of Amerindians from one village passing through a second village. This resulted in S9 of the Amerindian Act which states as follows:

9 (1) *A person lawfully travelling through Village Lands shall comply with the rules made by the Village Council under Section 14.*

*(2) A Village Council and any residents of a village shall not obstruct the lawful passage of any person through Village Lands.*

The above section ensures that legitimate movement through the titled Amerindian lands and or waterways is not unreasonably withheld. To expect otherwise would be create a conundrum for public safety[5] and freedom of movement for all Guyana's citizens.

As stated in Section 9(1), the Village has the authority to make rules for persons lawfully travelling through Village Lands. This is not meant to obstruct lawful travelers but to ensure that while passing through the Village they follow the rules in relation to that passage.

However, it should be pointed out that although sub-soil rights, as is the case of most other countries, remain in the domain of the State, unlike many other countries, S48 and S49 of the Amerindian Act provides Amerindian Village members as a collective, a veto over small and medium-scale mining on their titled land. This right to veto is not given to any other group of Guyanese.

These types of mining, small and medium-scale, have proven to be most frequently engaged in by Amerindian miners and small non-Amerindian miners.

The role of the Village Councils to enforce the relevant sections of the Amerindian Act and to ensure full consultation and discussion with the members of the community prior to decision making on whether they will allow mining on village lands is critical to a structured and fair relationship between the communities and the miners. One that the latter must respect and comply with or the GGMC will not issue a permit to prospect or a license to mine.

The Amerindian Act provides and enshrines the right of the Village Councils and communities to use the legislative mechanism to obtain full disclosure of the full investment activities from any miner seeking permission to prospect or mine from the Village Council prior to providing consent for prospecting or mining to take place in Village Titled Lands.

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[5] The July 18 2012 blockage of major thoroughfares by protestors in the Linden township (a Non-Amerindian area), thereby dividing the country in half and isolating large section of Amerindian communities and companies from essential goods and services for one month was the subject of a ruling of an international Commission of Inquiry ( comprised of 3 foreign and 2 Guyanese jurists) which in February 2013 found that whilst peaceful protests were legitimate blockage of egress and ingress were against the law and not to be condoned.

Whilst the Committee has referred to several judicial rulings, some not correctly quoted, and whilst the Government is very displeased with this course of events with regard to some of these cases, the Government, however, must uphold the separation of powers between the executive and the judiciary, and, is therefore constrained.

The Government refers the Committee to its earlier submission of August 29, 2013 to the Chairman with Appendix 1 and attachments with relevant cases.

Domestic Remedies

The 2003 revised Guyana Constitution enshrined the human rights sections of the Guyana Constitution and provided for direct recourse by a citizen to the court on any perceived or real violation of any human right.

Furthermore, the Constitution provided for the established of 5 human rights commission, four of which are appointed through a parliamentary consensual mechanism. These four rights commissions are the Ethnic Relations Commission, the Women and Gender Equality Commission, the Rights of the Child Commission, and the Indigenous Peoples' Commission. This development has been elaborated extensively in Guyana's reports to the UNHRC UPR in May and September 2010 and 2015, and, the State Party Reports to CEDAW and CROC in 2010 and reviews before the CEDAW in July 2012 and mid-term report in 2021 as well as the CROC in January 2013.

The first rights commissions to be appointed under the new constitutional provisions were the Ethnic Relations Commission (2003), the Women and Gender Equality Commission (W & GEC), the Rights of the Child Commission (ROCC) and the Indigenous Peoples Commission (IPC) in 2009 and 2010 respectively through this parliamentary process. These constitutional rights' commissions report annually to the National Assembly. [6]

Amerindian villages, communities and peoples can therefore approach any of these rights commissions with their complaints and seek redress as well as approach the court on any constitutional violation of their human rights or review of a judicial decision in accordance with the Judicial Review Act.

Focus on development of Amerindian communities and equal access to services and opportunities

This commitment to right a historical injustice and to ensure that Amerindian/Indigenous peoples enjoy the same rights, benefits, and opportunities as other Guyanese, has included incremental direct budgetary allocations to Amerindian communities, the majority of which are located geographically in interior and hinterland areas, and, to ministries/agencies to improve access to services with the objective of having equal access to these services and opportunities.

A statistical indicator of the progress made over the last 30 years are; the population of the Amerindian population has more than doubled between 1992 and 2022, representing an increase

[6] The IPC has submitted reports to the National Assembly that are publicly available for years 2011 and 2016.

from 5% to 11% of the population in Guyana, primarily due to improved access to health services (including reduction of tuberculosis cases and almost non-existent cases of gastroenteritis among under 2 years olds); and education ( every community has a nursery and primary school and 13 secondary schools with dormitories' have been built in the 4 interior regions), and access to water has increased from 0% in 1992 to 36% in 2015 to 63% in all Amerindian communities in the last 2 years, and by 2025 100% of all Communities, Amerindian and other ethnic groups, will have access to clean water.

In the last 2 years, GY$50 Billion has been allocated and invested in the development of Amerindian communities and improved access to services including scholarships, training, job creation, agriculture, etc.

It is the only country where the President and the entire Cabinet meet with all the elected Toshaos and leaders of over 200 communities every 2 years for 5 consecutive days at the Conference of the National Toshaos Council.

The recently elected Chief of the Toshaos of the NTC, Toshao Dorrick John, stated at the opening of the NTC Conference on July 11, 2022 *"Guyana is the only country in the world where Amerindian/indigenous leaders can sit with the government for 5 days" to address their concerns and to remedy issues of concern to their communities.* The NTC also elect its executive at these conferences.

Of interest to the Committee, the NTC is used as a forum to resolve issues and concerns of the communities. At the recent NTC Conference[7] the issue of Chinese Landing and illegal mining activities and threats to the villagers by these miners were raised. A decision was immediately taken to send in officials of the Ministry of Home Affairs, the Guyana Police Force and the Guyana Geology and Mines Commission to investigate with the Toshoas.

The recently elected Government led by President Mohamed Irfaan Ali in August 2020, upholds the delicate balance between culture, identity and development in each community in a multi-ethnic, multi-cultural, multi-religious and multi-linguistic[8] nation. In these two years, the members of the Cabinet have visited and held meetings with over 97% of all Amerindian communities in a country the size of the United Kingdom.

The platform for the transformation of Guyana is the expanded 2030 Low Carbon Development Strategy (LCDS) which builds on 2010 LCDS, which has been taken to Amerindian Communities throughout the country and discussed in community meetings across the country. The Multi-Stakeholder Steering Committee which manages the consultation and the execution of the Strategy is a broad based body with participation from the private sector, labour movement, government agencies and representatives of the NTC, and Amerindian NGOS such as the Amerindian People's Association.

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[7] There was no NTC Conference since 2018 under the former government. This is the first one in 4 years.

[8] Guyana is a country of minorities where not one of the ethnic groups have 50% of the population; Indo-Guyanese 39.8%, Afro-Guyanese 29.2%, mixed 19.8 %, Amerindians 10.5%, Chinese, Portuguese and other ethnic groups less than 1 % ( 2012 census)

This model is replicated on Guyana's EITI monitoring body which is composed of equal seats for government, civil society and private sector.

**Assumption of Office**

The Committee is undoubtedly aware that General and Regional Elections in Guyana were last held on March 2, 2020, 14 months after a no confidence vote was successfully passed in the Parliament. The current administration, having been successful in those elections, assumed office on August 2, 2020 after many attempts by the officials in the Guyana Elections Commission and the former Government to thwart the will of the people's choice resulting in a 5 month delay in the declaration of the results and a total recount of all the votes cast.

Thereafter, the current administration was tasked with, and continues to be tasked with addressing several issues which resulted from those elections, and other issues which we became aware of only after assuming office.

Regrettably, the 17th May 2018, and 14th December 2018 correspondence, the issues they raise, and the responses they invited therein are among the matters that we became aware of only this year, upon our receipt of your 29th April 2022 correspondence.

Notwithstanding this disadvantageous situation, the Government of Guyana remains committed to providing the responses requested in all of the Committee's aforementioned correspondences. Unfortunately, however, the aforementioned correspondences do not disclose sufficient details to permit the Government of Guyana to:

a. fully inform itself of, and understand the totality of the allegations made against it; and
b. properly and comprehensively prepare its responses.

Consequently, in an effort to ensure that the Government of Guyana is fully informed of, and understand the totality of the allegations made against it, and is able to accurately, and comprehensively prepare its responses, we hereby request that:

a. the claims which informed the correspondence dated May 17th 2018 be forwarded to the Government of Guyana;
b. the claims which informed the correspondence dated 14th December 2018 be forwarded to the Government of Guyana;
c. the claims which informed the correspondence dated 29th April 2022 be forwarded to the Government of Guyana.

The Government of Guyana is of the view that this request is fair, and in keeping with the rules of natural justice, which is accepted both in municipal and international law as an indispensable aspect of any fact-finding process.

Most disturbing is that while preparing to response to these three letters mentioned above with such limited information and within a short deadline, the Government received with profound concern another correspondence on **June 10, 2022, Ref: AL GUY 1/2022 Joint Communication**

**from Special Procedures by the Special Rapporteur on the rights of indigenous peoples; the Working Group on the issue of human rights and transnational corporations other business enterprises; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the implications of human rights of the environmentally sound management and disposal of hazardous substances and waste.**

This correspondence raises some of the same issues as the CERD letter of April 29, 2022, with reference to Marudi mountain mining and Wapichan people, and the Kangaruma and Tassarene villages.

One is forced to wonder if there has been any coordination or sharing of information between the Committee and these Special Rapporteurs with regards to the April 29, 2022 correspondence on Early Warning and Urgent Action Procedure and the June 10, 2022 correspondence of the Special Rapporteurs.

At the same time, the Government of Guyana is also answering similar allegations raised by what appears to be the same non-governmental organizations at the Inter-American Commission on Human Rights.

It may be noteworthy to refer back to correspondence in 2013 to and from the Committee on the Elimination of Racial Discrimination and the entire submission of the Guyana Government on similar issues in the same period raised with the Inter-American Commission on Human Rights.

On August 30, 2013, the Government of Guyana submitted its "RESPONSE BY THE GOVERNMENT OF GUYANA TO THE CORRESPONDENCE OF THE CHAIR OF THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, dated MARCH 1, 2013 and THE URGENT COMMUNICATION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON INDIGENOUS PEOPLES," dated FEBRUARY 6, 2013 to Mr. Alexei Avtonomov, Chair of the Committee on the Elimination of All Forms of Racial Discrimination.

This submission included a letter from the then Minister of Foreign Affairs, Madam Carolyn Rodrigues- Birkett, a 32 page Appendix (1) which outlined how the Amerindian land titling is carried out in Guyana and specific responses to matters raised by the Committee. The submission also included additional appendices with court rulings.

The Chair of the Committee on the Elimination of racial Discrimination was also informed that the same complaints were also being made to the IACHR. In response the Committee advised in writing that the matter would be reviewed when Guyana periodic report was submitted.

Guyana also made two submissions to the IACHR in 2013 and 2014 with many attachments to substantiate the Government's response. This issue of Isseneru is still before the IACHR with the most recent submission of the Government being made on June 20th 2022.

At this point the Government is being inundated with multiple communications, many being similar or the same issues, from the IACHR and UN Bodies which are overstretching our capabilities as a small developing state (SID).

**Procedural Issues**
**Guyana has not ratified Article 14 of the Convention.**

Guyana has taken note of Article 14 and made a reservation at the time of signing:-

Guyana reservation 1968:-

> *"The Government of the Republic of Guyana do not interpret the provisions of this Convention as imposing upon them any obligation going beyond the limits set by the Constitution of Guyana or imposing upon them any obligation requiring the introduction of judicial processes going beyond those provided under the same Constitution."*

Guyana has not changed its position since.

Guyana has noted that article 14 (1) is very explicit on whether the Committee can receive and consider communications from individuals and groups within its jurisdiction claiming to be victims of a violation by a that State party if it has not declared formally that it recognizes the competence of the Committee:-

*1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention.* ***No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration****.*

In July 2012, Trade Union leader Mr. Lincoln Lewis petitioned the Committee:

*"The Committee on the Elimination of Racial Discrimination cannot examine petitions alleging violations of the Convention on the Elimination of Racial Discrimination (CERD) unless the state has made a declaration under Article 14 recognizing the committee's competence to receive and consider petitions. Guyana has not made the declaration," the Petitions Unit outlined as the ground for disregarding the petition filed on Lewis's behalf by his attorney Nigel Hughes.*[9]

Lewis had petitioned the UN Committee in July, accusing the government of promoting racism and discrimination against persons of African descent through an editorial published in the the government owned Guyana Chronicle newspaper.

The petition had been sent to UN Committee's Petitions Team in Geneva, Switzerland and a formal letter of complaint was sent to the then Attorney General Mohabir Anil Nandlall, who had responded that the position ignored the local judicial options for redress.

[9] https://www.stabroeknews.com/2012/10/16/news/guyana/lewis-appeal-to-human-rights-office-fails/

He had said, "*In my considered view, your haste to leap-frog the local judicial process in order to prejudicially internationalise your client's alleged grievance, may have caused you to overlook the proscription imposed by Article 154 (2) of the Constitution, which may altogether disqualify your client's proposed petition…*"

Guyana has also taken note of Art 14(6).

(a) **The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention**, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

Art 14(7).

(a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the **petitioner has exhausted all available domestic remedies.** However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

Ms. Gay McDougall's article on the Convention for the Elimination of Racial Discrimination posted on The Audio Visual Library of International Law stated that "*Under its Early Warning and Urgent Action Procedure, CERD is also authorized to address governments concerning matters brought to its attention that are of an urgent nature. The objective is to prevent existing situations from escalating into conflicts and to limit the scale or number of serious violations of the Convention.*

*The Convention also authorizes CERD to consider Communications from individuals that make claims that they have suffered injuries as a consequence of the failure of the State party to fulfill its obligations under the Convention.* ***Jurisdiction to consider such Communications is dependent on a prior and separate ratification of article 14 of the Convention****. Articles 11 to 13 give jurisdiction to CERD to consider Communications by one State party against another State party, a unique procedure which requires no separate ratification by the respondent State party."*[10]

**The Committee should recognize that the State party having not declared its support for Article 14 should not be receiving such correspondence on an Early Warning and Urgent Action Procedure without full disclosure.**

Noteworthy Guyana is not interested in knowing the names/sources of the information to the Committee; it does however assume that the bono fides of the organizations/individuals have been ascertained and they are residents in its jurisdiction.

Whether Guyana qualifies for the exception in the last line of article 14 (7) is debatable; the cases of Chinese Landing and Isseneru have all been tried in the courts, all cases brought by miners.

[10] https://legal.un.org/avl/ha/cerd/cerd.html

However, it is noteworthy that none of the communities nor non-governmental organizations approached the court on a constitutional motion with regards to the violation of their rights.

**<u>Guyana notes</u> Ref CERD C /506 , IV. Role of NGOs under the Early Warning and Urgent Action Procedure:-**

15. The Committee has observed throughout the years the crucial role of NGOs with respect to the Committee's Early Warning and Urgent Action Procedure. NGOs have submitted information on a large number of situations reflecting potential serious violations or serious violations of the Convention that the Committee has considered under this procedure. NGOs can provide the Committee with reliable and evidence-based information that reflects potential serious violations or serious violations of the Convention in the territory under the jurisdiction of the respective State party, and in accordance with the Committee's Guidelines for the Early Warning and Urgent Action Procedure. The Committee encourages NGOs to submit relevant reliable information on any developments that may have taken place at any stage of the Early Warning and Urgent Action Procedure including on the follow-up on actions taken by the Committee on specific situations, within the prescribed deadlines in the information note for NGOs posted to the webpage of the relevant session.

Guyana also notes that the Guidelines on Early Warning and Urgent of the 70th and 71 session 2007 of CERD (A/62/18) GO744200 CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION states:-

V1.512. Under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, individuals or groups of individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and **who have exhausted all available domestic remedies may submit written communications to the Committee on the Elimination of Racial Discrimination for consideration. A list of 51 States parties which have recognized the competence of the Committee to consider such communications can be found in annex I, section B.**

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Guyana therefore seeks clarity from the Committee on whether the issuance of an Early Warning and Urgent Action Procedure is in compliance with article 14 and GO744200 CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION (2007). Furthermore, whether the communities referred to in the series of correspondence dated May 17th 2018, December 14th 2018 and April 29th 2022 face such situations as described therein to demand such an intervention with the State Party.

Guyana is prepared to provide information to the Committee on the issues identified by the group/individuals who have raised concerns, as it believes that the Committee is not being apprised truthfully of the facts and, in fact, is being misinformed. However, it believes and verily does believe that this does not require the invocation of an early warning and urgent action procedure especially as Guyana has not declared its support for article 14.

Our Periodic report is almost ready but with these and other new and multiple interventions as well as responses having to be prepared on each request on similar issues with the IACHR and UN bodies, we have been distracted and unable to conclude as we would have wished.

With the additional correspondence of the Joint Communication from Special Procedures (SP) dated June 10, 2022, Guyana is prepared to provide information with regards to both CERD and SP as one single document and therefore seeks further time to do so in one comprehensive submission.

Were this proposal to be accepted we would ask for an extension of another three months from the time of the decision of CERD.

Alternatively, the Guyana Government is willing to provide a single party report to both CERD and SP along with the overdue CERD Periodic Report within four months.

Guyana is further requesting:-

i) a meeting with the Committee during its regular session in November or,
ii) a confidential dialogue with the Committee in order to discuss the cases at hand in order to provide much needed national content.

The Government of Guyana wishes to assure the Committee of its highest regards and its continued commitment and efforts to build democracy and protect all of our people's human rights, especially the most vulnerable, including the indigenous/Amerindian peoples and their communities.

**Ms. Gail Teixeira, M.P.,**
**Minister of Parliamentary Affairs and Governance**

Cc:Marie Joseph Ayissi, Secretary to the Committee on the Elimination of Racial Discrimination