

Justice Institute Guyana Inc



Parallel Report

submitted by

The **Justice Institute Guyana Inc., (JIG)**

to the

Committee on the Elimination of All Forms of Racial Discrimination

On the occasion of the consideration of the

List of Issues Prior to Reporting

for **Guyana**

Submitted 30th October 2020

1. Executive Summary

This report focuses on the failure of Guyana to uphold its obligation to eliminate racial discrimination as required by Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (UNCERD, specifically in the context of Guyana's oil and gas venture.

The Government of Guyana recently announced that it intends to use offshore gas as an energy source for Guyana.¹ The emissions from the use of this gas as a source of energy will exacerbate the climate emergency and will contribute to ocean acidification and rising sea-levels. The idea of natural gas as a bridge fuel has been completely discredited.² All Guyanese, including the Amerindian peoples of Guyana, will suffer these impacts. However, the Amerindian peoples of Guyana will not benefit from the new supply of electricity. Amerindian communities are off-grid and many are in the remote locations where they have traditionally lived and where they seek to maintain their culture and way of life. Indeed there appears to be no intention to benefit them from this proposed gas venture.

Based on government figures the cost of the proposed gas venture is likely to be at least US\$304M to and US\$511M³. This cost will be borne by the entire population of Guyana including Guyana's Amerindian peoples. In effect the Amerindian peoples of Guyana will be subsidizing the provision of electricity to the rest of the country. The proposed gas venture discriminates against the Amerindian peoples of Guyana and constitutes racial discrimination within the meaning of Article 1.

We urge the Committee to request the State party to provide information regarding the following question:

"What steps is the government of Guyana taking to ensure that the Amerindian peoples of Guyana do not bear the financial burden and environmental burdens (climate change, ocean acidification and rising sea-levels) as exacerbated by the emissions from the proposed natural gas venture which will not benefit, and is not designed to benefit, Guyana's Amerindian peoples?"

2. Background on the gas project

ExxonMobil's subsidiary Esso Exploration and Production Guyana Ltd (Esso) announced that it started producing oil in December 2019.⁴ Esso obtained an environmental permit on the basis that it would re-inject associated gas (other than associated gas that it wanted to use for its own purposes or sell.)⁵ Esso has not announced the sale of any associated gas perhaps because that gas has no commercial value. Esso has not re-injected the gas. Esso has flared over 9 billion cubic feet⁶ of this associated gas on the grounds that its equipment was faulty.⁷ Guyana's laws do not authorise flaring. The World Bank has lent Guyana money to change the law to allow flaring until 2030. The contract for the legal drafting was awarded to Hunton Andrews Kurth who are ExxonMobil's lawyers⁸ and who also claim to be the law

¹ The gas is 120 miles offshore. The petroleum deposit is 2 miles below the sea-bed. This is dangerous deep water drilling.

² <http://priceofoil.org/2019/05/30/gas-is-not-a-bridge-fuel/>

³ <https://www.stabroeknews.com/2020/10/19/news/guyana/brassington-to-head-gas-to-shore-taskforce/>

⁴ <https://www.forbes.com/sites/davidblackmon/2019/12/26/exxonmobil-announces-transformative-first-oil-in-guyana/#312ec02d6d27>

⁵ Application for environmental permit for Liza 1 field and statements in the Environmental Impact Assessment

⁶ <https://www.stabroeknews.com/2020/05/28/news/guyana/international-environment-group-calls-on-exxon-to-cease-gas-flaring/>

⁷ <https://www.stabroeknews.com/2020/06/11/news/guyana/exxonmobil-says-working-ferverently-to-fix-compressor-issues/>

⁸ <https://www.law.com/corpcounsel/2020/03/11/conflict-guyana-hires-exxon-mobils-lobbyist-to-rewrite-countrys-petroleum-law/?sreturn=20200926182648>

firm of choice for the World Bank⁹. In August 2020 the new government announced that Guyana would buy natural gas from ExxonMobil.

3. Vulnerability to the impacts of greenhouse gas emissions

Amerindian communities are particularly vulnerable to the impacts of greenhouse gas emissions. Rising sea-levels will affect all Guyanese who live on the coast. However while people may be able to move to new areas, the loss of land has a different dimension for Amerindian communities on the coast. Their land is part of their identity. Their cultures and their ways of living are attached to the particular area of land. Amerindian land is not a commodity.

In the hinterland Amerindian communities are already being affected by extreme weather events that are a direct result of climate change caused by the emissions of greenhouse gases from use of fossil fuels. Earlier this year the WaiWai were hit by floods which destroyed most of their crops.¹⁰ The WaiWai who number approximately 200 people have absolute title to 2300 square miles of forest in southern Guyana. In 2017 the Patamona and Macushi peoples experienced severe flooding in which farms were destroyed. Some homes were flooded by over 15 feet of water when the Potaro River burst its banks.¹¹ The impact of global warming disproportionately affects Amerindian communities whose emissions are relatively minor.

We note that the Committee has already considered the issue of climate change and in its concluding observations on Mexico¹² recommended that Mexico, *“Specify, in consultation with indigenous peoples, measures that promote mitigation, compensation for damage or losses and participation in the benefits of development projects; also specify measures to mitigate the effects of the climate crisis on their lands, territories and resources with a view to protecting their traditional ways of life and means of subsistence.”* In the case of Guyana, JIG considers that the government does not have a right to carry out activities, such as oil and gas exploitation that increase the existential threat to Amerindian peoples, not simply as individuals living in communities, but also as peoples with traditional ways of life that are protected under the Constitution of Guyana and means of subsistence that are guaranteed by the Amerindian Act 2006.

4. Background on Amerindian communities

The purpose of this section to provide the Committee with the context based on history and the current legal situation. There are nine (9) recognised Amerindian peoples in Guyana – the Akawaio, Arecuna, Arawak, Carib, Macushi, Patamona, WaiWai, Wapichan and Warrau. Historical documents, eyewitness accounts, testimony of Amerindians and archaeological evidence establish that different peoples entered Guyana at different times. Those who were present before the arrival of the European powers (whether as nomads, semi-nomads or settled communities) are clearly indigenous peoples of Guyana. Those who arrived after the European powers lack the pre-colonial presence that is necessary for indigenous land rights. In 1957 Stephen Campbell, was elected the first Amerindian MP in the then colony of British Guiana. Mr Campbell played a critical role in the independence negotiations. His advocacy resulted in Annex C of The Report of the British Guiana Independence Conference 1965 stating that the Government of British Guiana had decided that, *“the Amerindians should be granted legal*

⁹ <https://www.huntonak.com/en/regions/africa.html> *“The London-based journal Legal Week concluded that “[w]hen The World Bank seeks international legal advice for African governments, it most often turns to the US firm Hunton Andrews Kurth.” That reputation still stands.”*

¹⁰ <https://www.stabroeknews.com/2020/05/24/news/guyana/masakenari-toshao-appeals-for-help-after-rain-destroys-most-of-villages-crops/>

¹¹ <https://reliefweb.int/report/guyana/over-3000-persons-affected-massive-floods-regions-7-8>

¹² CERD/C/MEX/CO/18-21

ownership or rights of occupancy over any areas and reservations or any parts thereof where any tribe or community of Amerindians is now ordinarily resident or settled and other legal rights, such as rights of passage, in respect of other lands, where they now by tradition or custom de facto enjoy freedoms and permissions corresponding to rights of that nature.” Thus all Amerindians were guaranteed to have title to land without having to prove the pre-colonial presence necessary for indigenous land title. It was simply necessary for them to be occupying or using the land as at 1965 without further proof.

The Amerindian Act 2006 reduced the time period to 25 years from the date of the act so that Amerindian claimants were required to show occupation/use from 1981 onwards rather than from 1965.¹³ The evidence of occupation and use follows international best practice. The minister must take into account all information provided by the Amerindian community including their customs and traditions and their physical and cultural association with the land.¹⁴ The minister must also take into account the Amerindian community’s spiritual attachment¹⁵ to the land so that sacred sites, burial grounds etc. are included in the title. To date, not a single Amerindian community has rejected the title or gone to court to challenge the Minister’s decision.

The Amerindian Act 2006 gives Amerindian communities legal control of access to their lands and use of resources on those lands.¹⁶ The usual rules of ‘eminent domain’ have been excluded. The state of Guyana cannot interfere with Amerindian lands in the public interest. The Amerindian community has total control over logging.¹⁷ In relation to ordinary mining (small/medium scale) the community has an absolute veto.¹⁸ In relation to large scale mining (which has never been authorised on Amerindian land) the law does not allow the State to overrule the community’s veto unless two ministers declare that it is in the public interest and there are strict conditions on the mining to protect the community.¹⁹

5. Background on the Justice Institute Guyana

JIG is a legal institute promoting respect for the rule of law and justice. We raise this issue as a legal institute that is opposed to discrimination. We promote the values of the International Covenant on Civil and Political rights. JIG does not speak for or represent Amerindian communities. We provide legal advice and training at the request of Amerindian communities and their chosen leaders. JIG works in partnership with Amerindian communities and their chosen leaders. Melinda Janki, JIG’s executive director, has worked with Amerindian communities across Guyana over more than 20 years. JIG does not work with Amerindian NGOs. NGOs cannot speak for or represent Amerindians (other than members of the NGO in question). NGOs are not elected by or accountable to Amerindian peoples.

6. Suggested issue

In light of the above, we encourage CERD to include in its List of Issues for Guyana the following question to the State party:

What steps is the government of Guyana taking to ensure that the Amerindian peoples of Guyana do not bear the financial burden and environmental burdens (climate change, ocean acidification and rising sea-levels) as exacerbated by the emissions from the proposed natural gas venture which will not benefit Amerindian peoples?

¹³ Section 60

¹⁴ Section 61

¹⁵ Section 62(2)

¹⁶ Section 5

¹⁷ Sections 54 and 55

¹⁸ Section 48

¹⁹ Section 50