



Original article

Rentier nation: Landlordism, patronage and power in Guyana's gold mining sector

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ABSTRACT

The consequences are examined of the revision of Guyana's Mining Act in 1989 that was intended to allow access to international mining companies while safeguarding national interests. One outcome was the acquisition of over 75% of small-scale and over 40% of medium-scale concessions by a small number of nationals. Landlordism expanded following the spike in the international gold price from 2006. The State's failure to modify the poorly construed mining law, and to enforce the Regulations, enables the continued capture of the excess rent from gold sales by rentiers without commensurate responsibility for them to remedy the environmental degradation. Evidence of financial losses to the State from the renting of concessions and the smuggling of gold is presented. The legal protections of Indigenous Peoples are not enforced. The legal protections of mining workers are inadequate. We recommend: making the mining licence holder legally responsible for ensuring compliance with all Regulations on every concession; the implementation of Free, Prior and Informed Consent (FPIC) to safeguard Indigenous rights in both titled and customary territories; the capture of excess rent from gold sales for a sovereign wealth fund; and full transparency so as to end insider trading in concessions.

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1. Introduction

This article examines two inter-related themes in Guyana's gold mining sector: the consequences that follow from concentrated holdings and 'landlordism' of State property and from the State's weak administration of the sector. We suggest that one explanation for the minimal uptake of recommendations for sectoral reform contained in the reports of consultants and others is directly related to regulatory capture (Dal Bó, 2006).¹ This review of tenure arrangements in the gold mining sector complements our research into rentier practices in the forestry sector and the concentration into the hands of a few loggers of both logging concessions and the log trade (Bulkan, 2014a; Bulkan and Palmer, 2008; Palmer and Bulkan, 2010).

This article draws on the data contained in a Management and Systems Review of the Guyana Geology and Mines Commission (GGMC) commissioned by Guyana's Ministry of Natural Resources

and the Environment (MNRE) in 2014 and led by Grantley Walrond, a former GGMC Commissioner (Walrond et al., 2015). The Review was leaked to the Press which highlighted some of its findings (Stabroek News, 2015, 7 April). The disclosures led to a full-page ad hominem attack on the consultants by the GGMC in the form of a paid advertisement (Kaieteur News, 2015, 10 April). However, none of the Review's findings was refuted then or later. We examine briefly some of the social and economic consequences of the high-level crony corruption and lay out some policy prescriptions for sectoral reform.

This article is organized as follows. Section 2 contains a general overview of the geopolitical and institutional context of Guyana's public lands, including the legal safeguards for the rights of Indigenous Peoples. In Section 3 we briefly review recent literature on mining issues. In Section 4, we summarize mining administration, law and policy, including the main criteria for eligibility for large-, medium- and small-scale concessions. In Section 5 we assess the requirements for obtaining and retaining concessions in law and in practice. Section 6 tracks the growth in number and area of concession licences over time and Section 7 assesses the evidence relating to concession administration. Section 8 considers some of the charges of corruption levelled at concession procedures and practices. In Section 9, we discuss the evidence of landlordism and State support of or acquiescence in the *status quo*.

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E-mail addresses: janette.bulkan@ubc.ca (J. Bulkan), jpalmer2005@waitrose.com (J. Palmer).¹ Regulatory capture occurs when a government regulatory agency which is supposed to be acting in the public interest becomes dominated by the vested interests of the existing incumbents in the industry that it oversees.

In Section 10 we examine the data in the public domain pertaining to gold exports, internal declarations and the contribution of gold mining to GDP during 1990–2014. In Section 11 we present and discuss three examples of financial losses to the State from the illegalities in the sector. Section 12 concludes with policy recommendations for reform.

2. General overview of Guyana's geopolitical and institutional context

Gold and diamond mining are carried out in Guyana's hinterland that comprises 95 per cent of its land area (GLSC, 2013, p. 21). Over 80 per cent of the country's land area are public lands administered by the State and divided into three categories: State Forests (60 per cent), State Lands (23 per cent) and Protected Areas (5 per cent), each administered by a semi-autonomous commission (Guyana Forestry Commission and INDUFOR, 2013, p. 5). A Ministry of Natural Resources and the Environment (MNRE) was created in 2012 to oversee the five natural resources commissions (Environmental Protection Agency (EPA), Guyana Forestry Commission (GFC), Guyana Geology and Mines Commission (GGMC), Guyana Lands and Surveys Commission (GLSC) and the Protected Areas Commission). The commissions combine regulatory and law-enforcement functions; each has the authority to receive area fees and in the case of the Forestry and Mining Commissions, to receive royalties and to levy penalties. Six Mining Districts are overlaid on State Forests (and some State Lands) and administered by the GGMC.

Mineral exploration and mining concessions overlap with State Forest Exploratory Permits and logging concessions issued by the GFC on public lands. On paper the State's territorial monopoly suggests that integrated land use planning (ILUP) to rationalize spatial and temporal allocations to natural resources extraction would be feasible *via* inter-agency collaboration. In practice, however, ILUP was consistently ignored in favour of Ministerial and Cabinet discretionary practices. An itemization of the wide discretionary powers accorded to the Minister in the *Mining Act* (cap. 65:01 of 1989) covers 15 pages of Walrond et al.'s report (2015, Appendix A, p. 1–16).

In the aftermath of the first free-and-fair national elections in 1992 there were a number of donor-funded projects aimed at operationalizing ILUP. One notable project was the 'Guyana Integrated Natural Resources Information Service' (GINRIS) project, set up with German government funding in 1994 for Geographical Information Systems (GIS) equipment and training of staff of the land commissions with the intention to implement the national policy favouring ILUP. A second project was the Carter Center-funded National Development Strategy (NDS), whose chapter on Mining remains relevant in 2016 (Government of Guyana, 1996a,b, 2000). The ruling Peoples Progressive Party (PPP, 1992–2015) disregarded both GINRIS and the NDS. The former was dismantled when German aid ended after a pilot ILUP exercise was tested successfully in (administrative) Region 10 in 1997.

After its formation in 2012, the Ministry of Natural Resources and the Environment (MNRE) commissioned an external consultancy firm to draft its Strategic Plan (Strategic Environmental Advice, 2013). In tandem, a second consulting firm, HTSPE, developed a new version of a national land use plan (GLSC, 2013). However up to the time a new government was declared in May 2015, two years later, no action was taken to revive a national ILUP process to rationalize overlapping land uses on public lands. Consequently the natural resources Commissions continued to issue separate concessions on the same land area, using separate GIS systems software and with little coordination at headquarters or in the field.

Mining is regulated under the *Mining Act* that was revised in 1989 in a period of IMF-supervised reform of a failing State-controlled public sector. In his assessment of the 'processes of enclosure' that sought to link the Guyanese belowground resources to international investment capital and metropolitan centres of gold mining, Gavin Bridge noted the global trend towards expansion of mining access without a commensurate increase in State regulation:

'In the ten year period beginning in 1985, over ninety states adopted new mining laws or revised existing legal codes in an effort to promote foreign investment in their mining sector. The promulgation of new Mining Codes was frequently part of a broader package of neoliberal administrative and legal reforms. Their combined effect was to open up new opportunities for the international mining industry in areas that were formerly either closed *de jure* because of political restrictions, or closed *de facto* since political-economic risk was sufficiently high to deter prudent investment' (2007, p. 75).

The mineral-rich areas are coincident with the customary lands of Guyana's Indigenous Peoples, referred to as 'Amerindians' since at least the Crown Land Ordinances and Regulations from 1861.² Amerindians number around 80,000 and are the majority populations of the hinterland. 97 of the approximately 138 Amerindian communities hold communal legal title only to aboveground resources on 14 per cent of national territory through the *Amerindian Acts* of 1976 and 2006. The legal and equitable adequacies of the land titling and demarcation processes for Amerindians are frequently disputed (Dooley and Griffiths, 2014; APA, 2015). For example, Amerindian property rights are burdened by the State's reservation of the right to issue mining concessions on 'any part of Village lands; any land contiguous with Village lands; or any rivers, creeks or waterways which pass through Village land or any lands contiguous with Village lands' (Section 53 (a–c)) provided that 'the Guyana Geology and Mines Commission shall first (i) notify the Village and (ii) satisfy itself that the impact of mining on the Village will not be harmful' (*Amerindian Act* 2006, Section 53(i–ii)).

Gold mining on communally titled Amerindian Village Land (AVL) is regulated under Sections 48–53 of the *Amerindian Act* 2006. Any small or medium scale mining activities require 'good faith' negotiations with the Village Council (Section 48(1)(e)), and 'the consent of at least two-thirds of those present and entitled to vote at a Village general meeting' (Section 48(1)(g)). If a mining agreement is reached, 'the miner, his employees and agents shall comply with the rules made by the Village Council' (Sections 14(1) and 49(2)(e)). Thus, although the GGMC can issue mining concessions over titled AVLs, a Village can veto small- and medium-scale concessions (Section 48). No such veto is allowed to owners of other private property through Section 7 of the *Mining Act* 1989. In practice, mining takes place in and around AVLs and untitled communities, with or without the consent and participation of the Amerindians themselves (Bulkan, 2014b; Bulkan, in Press). GINRIS exercises in the 1990s showed that a majority of State Forests, State Lands and proposed Protected Areas overlapped with the claimed customary lands of Indigenous Peoples (confirmed by the former GTZ project manager, pers comm 2006; Colchester et al., 2002; map on page 105). A program of Amerindian Community Mine Rangers was instituted as part of the GGMC's field monitoring. Walrond et al. reported that there were

² The terms 'African', 'Amerindian', 'East Indian', and 'Mixed' are both the legal terms used in the decennial censuses and the self-ascriptions with widest social acceptance. In the main the nine surviving Indigenous Peoples of Guyana use the same term 'Amerindian' to describe their generic ethnic grouping.

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