

**CONSULTANT REPORT ON THE PROCESS TO ESTABLISH A  
STAKEHOLDER PLATFORM AND DEVELOP GUIDELINES  
FOR AMERINDIAN LAND TITLING IN GUYANA**

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United Nations Development Programme**

*9 December 2016*

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UNDP Country Office, Guyana:

Per Consultant's Terms of Reference, there shall be delivered a "*summary report accompanying the final Guideline describing key deliberations of the Representative Platform, how key concerns and contributions were addressed, and affirming the Guidelines' consistency with the ALT Project terms, the UNDP standards (SES) and safeguards, UNDRIP, and relevant UN international human rights instruments.*"

The following report is submitted in satisfaction of this required deliverable and above all transmits the final version of "A GUIDELINE FOR AMERINDIAN LAND TITLING IN GUYANA" ("Guideline") with the following declaration:

**Consultant affirms that the Guideline attached at Annex A is found to be consistent with the ALT Project terms, the UNDP standards (SES) and safeguards, UNDRIP and relevant UN international human rights instruments with the exception that it does not fully resolve interferences or limitations to indigenous peoples' territorial rights per the granting of third party interests or designation of national protected areas without prior Village or Community consent (see also paragraphs 69-72 below).<sup>1</sup>**

The following report further elaborates in greater detail the process by which discussions around the progress of the Amerindian Land Titling ("ALT") Project led to the decision of the Ministry of Indigenous Peoples' Affairs ("Ministry") and the United Nations Development Programme ("UNDP") to elaborate a Guideline, form a stakeholder platform (later called a "*Representative Platform*") to assist in the effort, and employ a Consultant to facilitate these activities and document the noteworthy discussions and conclusions.

Consultant wishes to extend her gratitude to the Guyana UNDP Country Office, especially its Officer-in-charge and Programme Specialist, Patrick Chesney, for their consistent cooperation, support, and guidance. As well, deep appreciation must be expressed for the assistance and contributions of Jennifer Laughlin, Technical Specialist, Safeguards and Grievance Mechanisms at UNDP and UN-REDD Programme. The Consultant further extends her deepest gratitude to the Ministry, Merve Williams (Advisor), David James (Special Assistant) and Martin Cheong (Advisor), as well as the ALT Project Manager ("*ALT PMU*"), Enrique Monize. The unconditional support of Minister Sydney Allicock and his staff made all the difference. This work further could not have been completed without the dedicate time of representatives from the other government commissions, ministries, Amerindian and civil society stakeholders. Indeed, the stakeholders' willingness to share in a frank and transparent manner, their questions,

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<sup>1</sup> As explained below, at the onset it was made clear to Consultant and the Representative Platform that this issue would need to be resolved within their respective mandates, but would require later reform of relevant domestic laws and regulations.

concerns, and proposed solutions, ensured progress at every meeting. A final thanks must be extended as well, to the Communities and Villages that opened up their lands to the Consultant. An understanding of their experience ensured that the Guideline attached hereto was not drafted in the abstract, but aimed to specifically improve the delivery of Amerindian titling in Guyana and their respective well-being going forward. Indeed, all the activities and achievements described in this report, as hoped for at the onset, were very much a collaborative effort.

The Consultant is hopeful that this same commitment carries over to the even more challenging phase of implementation and that the many fruitful discussions that began in the Representative Platform will now continue and permeate into future engagements among the stakeholders and inform how they may constructively and collaboratively address both the identified challenges and opportunities that still require their attention.

It was a pleasure and a privilege. Thank you.

A handwritten signature in black ink that reads "Vanessa Jiménez". The signature is written in a cursive, flowing style with a large initial 'V' and a decorative flourish at the end.

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## I. Background

1. In October 2013, the Government of Guyana (“*Government*”) and the United Nations Development Programme (“*UNDP*”) signed the Amerindian Land Titling Project (“*ALT Project*”) aimed at facilitating the titling of lands to Amerindian Communities and Villages, and to respond to Guyana’s Low Carbon Development Strategy. UNDP would serve as the Guyana REDD+ Investment Fund (“*GRIF*”) Partner Entity tasked with “Project Assurance” and the Government (particularly through the Ministry of Indigenous Peoples Affairs (“*Ministry*”), would act as the primary Implementing Partner.

2. A key objective of the project was and continues to be to protect indigenous peoples’ rights to their traditional lands in Guyana and eventually provide for opportunities for the Amerindians that depend heavily on the forest resources within such lands to sustain their physical and cultural survival and improve their livelihoods.

3. While having a budget of US \$10.7 million funded by the GRIF and a proposed duration for three (3) years,<sup>2</sup> for various reasons (including a fundamental change in the governing administration), implementation got off to a later start than anticipated. After about a year and a half of preparation and initial titling exercises (including the issuance of several Absolute Grants, a Certificate of Title (“*COT*”), and the completion of various demarcation exercises), a number of concerns began to be voiced about the implementation and efficacy of the project, including questions about the extent to which the processes were consistent with the project’s applicable standards and policies and the final results accepted by the subject Villages and Communities. Amerindians and their supporters have been particularly vocal about the ALT Project violating their rights to the lands and resources they have traditionally owned, used and occupied (including their right to free, prior and informed consent).

4. In response to these concerns, per the request of the UNDP Country Office (“*UNDP CO*”), UNDP’s headquarters sent a small team to Guyana: Jennifer Laughlin and Anne Perrault<sup>3</sup> --both experts on UNDP’s newly adopted Social and Environmental Screening Procedures (“*SESP*”) and Social and Environmental Standards (“*SES*”). Laughlin is a UNDP Technical Specialist on safeguards and grievance mechanisms and Perrault is an expert on international law and human rights. The two traveled to Guyana from 26-29 October 2015 to talk with project stakeholders and perform the exercise of applying UNDP’s SESP and SES to the current ALT Project. The results of the field study and the SESP/SES review can be found in the document titled “*Application of the Social and Environmental Screening Procedure (SESP) to the Amerindian Land Titling Project (ALT), Guyana*” (hereinafter “*SESP Review*”).<sup>4</sup> In summary, the SESP

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<sup>2</sup> See the ALT Project Document (“*PRODOC*”), available at [http://theredddesk.org/sites/default/files/amerindian\\_land\\_titling\\_and\\_demarcation\\_prodoc\\_draft\\_version\\_1\\_3.pdf](http://theredddesk.org/sites/default/files/amerindian_land_titling_and_demarcation_prodoc_draft_version_1_3.pdf).

<sup>3</sup> See the SESP at <http://www.undp.org/content/undp/en/home/librarypage/operations1/undp-social-and-environmental-screening-procedure/> and see the SES at <http://www.undp.org/content/undp/en/home/librarypage/operations1/undp-social-and-environmental-standards.html>.

<sup>4</sup> See page 2 of the Case Summary available at: <http://www.undp.org/content/dam/undp/library/corporate/Social-and-Environmental-Policies-and-Procedures/Applying%20the%20SESP%20in%20Guyana.pdf> (click on “Application of the SESP to the ALT Project in Guyana [with Commentary]”).

Review concluded that there were high risks associated with the project and that the best way to mitigate such risks going forward would be, among other things, to:

- “*identify a working group to examine and validate guidelines*” and “*draft guidelines for discussion, revision, and approval by the working group and others*” addressing: (i) a process for stakeholder engagement under the ALT Project, (ii) criteria and procedures for delimitation, demarcation and titling under the ALT Project, and (iii) a mechanism to respond to grievances arising from the project (defined as “*Track 1*” exercises); and
- “*establish an Indigenous Peoples Land Commission*” and gather UNDP and other domestic and international technical support to identify “*key legal issues*” that arise under domestic “*laws, regulations and policies*” for review, guidance to the project, possible regulation of the Amerindian Act and/or potential future reform (defined as “*Track 2*” exercises).<sup>5</sup>

5. On 6 January 2016, through discussion and approval of the 2016 ALT Project Work Plan, the ALT Project Board endorsed a series of actions recommended on the heels of a UNDP field mission and SESP Review, including the adoption of a new "Guideline" for the project that would address the three (3) points listed in the paragraph above (first bullet), as well as the establishment of a working group of stakeholders to examine and validate the proposed Guideline. While advancing on the Track 1 recommendations, and without prejudice to Consultant’s mandate related to “identify[ing] key legal issues to be addressed to advance the ALT Project”, it was agreed that Track 2 activities would not be within the remit of the Consultant and the Representative Platform.

6. In full support of these efforts, to facilitate effective implementation of the ALT Project, the UNDP and the Ministry decided to engage a qualified independent expert to assist in carrying out the tasks instructed by the Project Board. In April of 2016, attorney, Vanessa J. Jiménez was contracted based on her intimate knowledge of UNDP policies and safeguards, expertise in international law and the human rights of indigenous peoples, prior related field experience, and proven capacity to work effectively with indigenous communities, governments, and civil society. The Consultant was hired to work with all relevant stakeholders, Government, Amerindian, NGOs, miners, and logger associations, etc., to facilitate a discussion among them with the aim of identifying key concerns, and developing a Guideline that could improve the implementation of the ALT consistent with the project requirements and its applicable standards, policies and laws (domestic and international).

7. Prior to the convocation of the first stakeholder meeting (discussed below), the Terms of Reference (“*ToR*”) for the Consultant (also referenced herein as the “*Facilitator*”) and the working group --subsequently called the “*Representative Platform*” or “*Platform*”. The ToR are attached at Annex B. They specifically call upon the Consultant to, among other things, draft a Guideline that would address the following three (3) matters:

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<sup>5</sup> *Ibid*. See also “Mission Summary” (the power point presentation of Anne Perrault given during the October 2015 visit entitled “Applying the Social and Environmental Screening Procedure to the ALT Project” pp. 22-27) available at p. 2 of <http://www.undp.org/content/dam/undp/library/corporate/Social-and-Environmental-Policies-and-Procedures/Applying%20the%20SESP%20in%20Guyana.pdf>.

- a) *A process for Stakeholder Engagement under the ALT Project (including, but not limited to stakeholder mapping and the development of consultation, and FPIC processes with indigenous peoples concerned). It shall build on the Stakeholder Engagement Strategy in Annex 3 of the ALT project document.*
- b) *A streamlined process for Delimitation, Demarcation and Titling under the ALT Project consistent with the applicable laws of Guyana and subject to 14.d below (including but not limited to: defining claims, party responsibilities, applicable time periods, criteria for making decisions, investigation terms of reference, mapping, participatory mechanisms, transparency, community validation of investigation findings, process for ensuring final agreement with communities regarding titling decisions, reconciliation of overlapping claims, demarcation protocols, and appeal processes).*
- c) *A Project mechanism to respond to all categories of grievances and disputes arising from the implementation of the ALT Project.*

This is to be furthered, among others by a) conducting “one on one meetings” with stakeholders; b) serving “as the Facilitator responsible for overseeing the Platform's meetings and work”; c) visiting “several indigenous communities and villages to inform them of the work”; and d) as “engaged by the Government” ...” carry out discussions with relevant Government staff, particularly in MoIPA, to identify key legal issues to be addressed to advance the ALT Project - particularly those related to compliance with human rights norms”.<sup>6</sup>

8. Per the ToR, Consultant was also charged with providing the following deliverables: “(a) a draft Terms of Reference for the Representative Platform; (b) a draft Guideline; (c) a final Guideline to the Ministry and UNDP for their consideration and endorsement, and (d) a summary report accompanying the final Guideline describing key deliberations of the Representative Platform, how key concerns and contributions were addressed, and affirming the Guidelines' consistency with the ALT Project terms, the UNDP standards (SES) and safeguards, UNDRIP, and relevant UN international human rights instruments.”<sup>7</sup>

9. In terms of the ToR for the Representative Platform, the Platform is called upon to “provide input, advice, and recommendations to the Ministry and UNDP on how to implement the ALT Project effectively and in a manner that is consistent with the SES, UNDRIP and relevant UN human rights instruments, and addresses implementation concerns raised to date.” It is specifically given the following functions:

- a) *provide input, advice, recommendations and validation to the UNDP and MoIPA with respect to Guidelines being developed jointly by the two institutions to facilitate effective implementation and achievement of key requirements, outputs and outcomes*

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<sup>6</sup> Annex B, pp. 2-3.

<sup>7</sup> Annex B, p. 3.

*of the ALT Project respectively. The Guidelines will address the following three (3) matters: [same as listed above in the discussion of the Facilitator’s mandate] ...*

*b) play an active role in overseeing the implementation of the Guidelines (such role may include receiving reports from ALT Project staff, the Government and other stakeholders regarding said implementation, and providing to the Project Board periodic reports and recommendations to improve implementation of the Project). Together with the MoIPA and UNDP, the members of the Representative Platform will identify the mechanisms by which this oversight role can be carried out within the context of the ALT Project and its corresponding budget.”<sup>8</sup>*

10. As developed below, there have been four (4) separate meetings with project stakeholders: an initial stakeholder meeting in May of 2016 to agree to and establish the contemplated Representative Platform, a first Representative Platform meeting in June of 2016 (followed by several field visits to Amerindian Community and Villages and an update to the ALT Project Board), a Second Representative Platform meeting in September of 2016, and a Third Representative Platform meeting held at the end of November 2016. There have been two versions of the Guideline reviewed by Platform members: an August Guideline, an October Guideline, and now the 9 December 2016 Guideline attached at Annex A whose content follows the final proposals presented by those attending the November 2016 meeting. This final version is to be shared one last time with Platform members for a “no objection”. The Ministry and UNDP plan to make particular efforts to share it with the National Toshao Council members that could not attend the November meeting with the aim of securing their final endorsement.

## **II. Initial Stakeholder Meeting (May 2016)**

11. On 4 and 6 May 2016, per the invite of the Ministry and UNDP, there was convened a preliminary working group of key stakeholders. The participants included the following:

- National Toshaos’ Council (“*NTC*”);
- Indigenous People’s Commission (“*IPC*”);
- Amerindian Peoples Association (“*APA*”);
- The Amerindian Action Movement of Guyana (“*TAAMOG*”);
- Guyanese Organisation of Indigenous People (“*GOIP*”);
- Ministry of Indigenous People’s Affairs (“*Ministry*”);
- Ministry of Natural Resources (“*MNR*”) (day 2 only);
- Guyana Lands & Surveys Commission (“*GLSC*”);
- Guyana Forestry Commission (“*GFC*”);
- Guyana Women Miners Organisation; and
- Guyana Forest Producers Association (day 1 only).<sup>9</sup>

12. Referring to the findings of the “*SESP Review*”, the stakeholders discussed implementation of two of the *SESP Review*’s key recommendations: the establishment of the stakeholder

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<sup>8</sup> Annex B, p. 6.

<sup>9</sup> The Guyana Geology and Mines Commission was invited, but was unable to participate.

working group (Representative Platform) and the elaboration of mechanisms or protocols (via a single Guideline) addressing:

- a) stakeholder engagement, consultation and free, prior, and informed consent (“*FPIC*”),
- b) criteria and streamlining of the demarcation and land titling procedures; and
- c) strengthening of existing and creation of alternative grievance redress mechanisms.

13. During the two days of meetings, the participating stakeholders heard opening and closing remarks from David James, Ministry Legal Advisor and Special Assistant to the Minister, as well as Patrick Chesney, Officer-in-charge and Programme Specialist, Country Office CO. Mr. James confirmed the commitment of the Ministry to seeing the establishment of a the stakeholder forum and the development and adoption of the Guideline so as to further ensure the effective implementation of the ALT Project going forward, consistent with project requirements and applicable standards. Mr. James described the Platform and pending Guideline as an opportunity to address, perhaps not all, but a substantial number of the concerns and challenges that have arisen in the context of the ALT Project since its inception. Mr. James expressed that doing this would most certainly be progress. Mr. Chesney clarified that while the ALT Project was a national government-implemented project (not a UNDP-led endeavor), the UNDP was committed to continue its technical support of the Ministry, ensured the project’s implementation consistent with UNDP social and environmental standards and policies, and encouraged the participants to work as a ‘family’ to find commonly agreed ways forward.

14. The ALT Project Manager (“*ALT PMU*”), Enrique Monize further presented an overview of the ALT Project. Mr. Monize described the main project goals and outcomes, as well as the achievements of the project thus far, including several FPIC and conflict resolution workshops, mediation training, and the status of Absolute Grants and Certificates of Title (“*COTs*”) issued, as well as investigations and demarcations completed and still pending based on existing requests from Amerindian Communities and Villages. (The ALT Project’s Annual Report, also provides a helpful summary for the reader’s reference).<sup>10</sup>

15. Consultant, Vanessa J. Jiménez, also designated to be the Facilitator of the proposed Representative Platform, gave a total of five (5) power point presentations guiding a discussion on each of the following:

- i) Introduction: the SESP Review, intended process and mandate of the Representative Platform and its Facilitator;
- ii) Stakeholder Engagement, Consultation and FPIC;
- iii) Criteria/Streamlining of the Demarcation and Titling of Amerindian Lands;
- iv) Grievance Redress Mechanisms; and
- v) Next Steps and Way Forward.<sup>11</sup>

16. In the context of the *Introductory* discussion and first presentation, there was a review of several of the concerns and recommendations that have been advanced by the Government, other stakeholders, international human rights bodies, and per the UNDP’s January 2014 “baseline

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<sup>10</sup> *Annual Progress Report Amerindian Land Titling (ALT) Project* (January- December 2015).

<sup>11</sup> Each of these presentations were subsequently sent to all Platform members and may be requested from the UNDP CO.



assessment” of the ALT Project.<sup>12</sup> The Consultant further described the content, purpose and methodology around UNDP’s newly adopted SESP and SES,<sup>13</sup> particularly its “principle” regarding human rights in development and its Standard 6 related to indigenous peoples, as well as the results of their recent application to the project (discussed above). This included the determination that the risk was likely to be ‘High’ for the ALT project.<sup>14</sup> Pursuant to the SESP Review recommendations, the Consultant went on to describe in detail the intended mandate and functions of the Representative Platform as well as the Consultant (and Facilitator to the platform). These Terms of Reference were distributed at the commencement of the workshop and referenced periodically. (They can be found at Annex B attached hereto).

17. Primarily it was discussed that the role of the Representative Platform is to

a) provide “*input, advice, recommendations and validation to the UNDP and MIPA [Ministry] with respect to Guidelines being developed jointly by the two institutions to facilitate effective implementation and achievement of key requirements, outputs and outcomes of the ALT Project*”; and

b) “*play an active role in overseeing the implementation of the Guidelines*” and thereby work with the Ministry and UNDP to “*identify the mechanisms by which this oversight role can be carried out within the context of the ALT Project and its corresponding budget.*”<sup>15</sup>

18. It was further discussed that the role of the Consultant (Facilitator) is to assist in the development of the Guideline and the establishment and facilitation of the Representative Platform, including through the oversight of the Platform’s meetings and work; soliciting and reviewing relevant materials; compiling inputs, advice and recommendations from the Platform’s members; elaborating the draft and final Guideline to be deliberated by the Representative Platform and presented to the Ministry and UNDP for adoption; visiting several indigenous communities and villages to inform them of the work; and preparing a “*summary report accompanying the final Guideline describing key deliberations of the Representative Platform, how key concerns and contributions were addressed, and affirming the Guidelines’ consistency with the ALT Project terms, the UNDP standards (SES) and safeguards, UNDRIP, and relevant UN international human rights instruments.*”<sup>16</sup>

19. The introductory presentation of the Consultant closed with a review of the many standards applicable to the ALT Project in accordance with the express terms of the ALT Project document itself (the “*PRODOC*”). It was discussed that such standards include, but are not limited to safeguards and standards used by UNDP, as well as UN-REDD for any REDD+ related project, the United Nations Declaration on the Rights of Indigenous Peoples (“*UNDRIP*”) and other

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<sup>12</sup> *Baseline Assessment of Existing Capacities, Capacity Needs and Entry Points for Free, Prior & Informed Consent and Dispute Resolution* (UNDP, January 2014).

<sup>13</sup> Specifically, to identify opportunities to strengthen social and environmental sustainability; and identify potential social and environmental risks, their significance, and the level of assessment and management required to address them.

<sup>14</sup> The identification of the project as a “high” risk arose especially from the risks of harms to indigenous peoples, cultural heritage, and the risks of physical and economic displacement. *Supra* note 4 re Mission Summary, see pp. 14-15.

<sup>15</sup> See Annex B, p. 6.

<sup>16</sup> See Annex B, pp. 2-3.

relevant UN human rights instruments, as well as the domestic laws and the Constitution of Guyana.<sup>17</sup>

20. Discussions that followed included questions about the usefulness of the proposed Guideline in light of the ALT Project's closure date of October 2016 (per the PRODOC itself). Mr. Chesney clarified that an extension was being requested. It was further discussed that the Guideline could apply to the project through its duration, as well as future Amerindian land titling that may still need to occur post-project. At the commencement and throughout this initial working group, Amerindian participants expressed concern that the Guideline might not address:

- a) the fact that Absolute Grants, Certificate of Titles and demarcation processes were often issued and conducted in a manner inconsistent with FPIC standards;
- b) the continued concessioning of areas within their titled lands and areas subject to pending land title and demarcation requests; and
- c) the Government practice of granting titles that excluded from their traditional territories lands that were already under grants, permits, leases and concessions to others (often for mining, forestry, or agricultural uses).

21. While certain limitations to the Consultant and Representative Platform's mandate were recognized by many participants with respect to this matter, particularly the inability to fully resolve points (b) and (c) without law and policy reform, the Consultant acknowledged the opportunity to explore other targeted ways, within the applicable law and terms of the ALT Project, to address and mitigate possible harms arising from these activities -- not the least of which might include greater transparency and information-sharing, increased consultations and recognized consent processes, and inter-institutional coordination of information and practices. The Facilitator challenged would-be participants to the Representative Platform to work together with the view that more was possible, than not possible.

22. Participants further discussed the mandate of the Representative Platform with respect to this stakeholder engagement component, specifically:

*“to provide input, advice, recommendations and validation to the UNDP and MoIPA [Ministry] with respect to Guidelines”* addressing, among others, a *“process for Stakeholder Engagement under the ALT Project (including, but not limited to stakeholder mapping and the development of consultation and FPIC processes with indigenous peoples concerned). It shall build on the Stakeholder Engagement Strategy in Annex 3 of the ALT project document.”*<sup>18</sup>

23. The Consultant presented several slides related to *Stakeholder Engagement, consultation and FPIC*. The presentation touched upon the differences between the three, describing that at a minimum, stakeholder engagement should emphasize transparency, consultations should be with the aim of reaching agreement, and that FPIC --per the UNDP standards applicable to the project-- is required *“on any matters that may affect the rights and interests, lands, resources, territories (whether titled or untitled to the people in question) and traditional livelihoods of the*

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<sup>17</sup> See PRODOC, ¶¶ 22-23, 104, 106-114, 126-127, & Annex 3, ¶ 130).

<sup>18</sup> See Annex B, p. 6.

*indigenous peoples concerned.*” Indeed, the final Guideline identifies clear activities that require FPIC (see Part II, para. 15(b)). Emphasis was also placed on the numerous requirements in the PRODOC regarding consultation and FPIC, including the application of FPIC to “*subsequent investigation and verification process[es]*”, consultations at “*all stages of the land titling process*”, the “*agreement*” of the Village or Community to the Minister’s decision on their land request, the tracking and recording of all consultations, and the required availability of “*all documents related to consultations*” at least two weeks in advance of any consultation with a community or village.<sup>19</sup>

24. During the discussions on stakeholder engagement, consultation and FPIC, Amerindians repeated concerns about the fact that subject Communities and Villages never receive prior copies of the reports that summarize the information obtained during the investigations and make recommendations to the Minister to inform his decision on their Requests. Further concern was expressed as to how FPIC could be fully achieved if indigenous peoples felt pressured to take decisions because they are told the money available for demarcation and titling would soon be gone with the project, or because absent a title, their lands could not be protected from mining or forestry concessions that may still be granted. One government stakeholder expressed an interest in understanding more about how a given Community or Village makes decisions among and for its members and discussed concern about how their work is made difficult by the fact that opinions of the Village or Community often seemed to change from meeting to meeting making processes uncertain.

25. Participants also discussed the mandate of the Representative Platform with respect to this titling procedure component, specifically:

*“to provide input, advice, recommendations and validation to the UNDP and MoIPA with respect to Guidelines” addressing, among others, a “streamlined process for Delimitation, Demarcation and Titling under the ALT Project consistent with the applicable laws of Guyana and subject to F.13 below2 (including but not limited to: defining claims, party responsibilities, applicable time periods, criteria for making decisions, investigation terms of reference, mapping, participatory mechanisms, transparency, community validation of investigation findings, process for ensuring final agreement with communities regarding titling decisions, reconciliation of overlapping claims, demarcation protocols, and appeal processes).”<sup>20</sup>*

26. In her third presentation, the Consultant proposed that a possible way forward for the Representative Platform was to elaborate a mutually agreed set of *Criteria and Streamlined Approach for Demarcation and Titling* that had as its base for discussion and modification, Annex 1(c) of the PRODOC which outlines the “*Procedures for Titling Amerindian Lands.*” Stakeholders with intimate involvement in the implementation of the titling and demarcation procedures (Government and Community/Village stakeholder alike), shared preliminary thoughts on what they witnessed and participated in, what seems to work, what gives rise for

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<sup>19</sup> PRODOC, ¶¶ 26, 27 & 35 and Annex 1(c)93(b).

<sup>20</sup> Annex B, p. 6 (paragraph F.13 refers to the Facilitator’s duties, per her terms of reference, to submit with the final proposed Guidelines a “report describing key deliberations of the Representative Platform and affirming the Guidelines’ consistency with the ALT Project terms, the UNDP standards (SES) and safeguards, UNDRIP, and relevant UN international human rights instruments.”).

concern, and what could be enhanced. For instance, discussions took place around how Community/Village sketch maps are typically converted by the GLSC into preliminary maps for discussion by the other Government commissions and Villages/Communities, as well as the adequacy of the one to three-day field visits to gather sufficient information on traditional use and occupation as well as third party interests, and the way such visits respected standards related to consultation and consent.

27. Listening to concerns of other stakeholders, Ministry representatives acknowledged that there may be restraints at times presented by Guyanese laws, as well as difficulties with encumbrances in the lands requested, and a history of distrust. The Ministry affirmed, however, that it was not the Government's intention to withhold land that belonged to Communities and Villages, but rather to look at that which impedes swift movement of the titling process and work together to deal with them.

28. The Consultant offered several categories of potential enhancements to the existing demarcation and titling procedures, such as the addition of objective criteria not otherwise prohibited by applicable law, elements for increased disclosure of information, greater details regarding what constitutes adequate FPIC and validation processes, and clarifications where ambiguity currently exists in the titling procedures. Consultant took participants through a second review of the requirements and standards applicable to the ALT Project (national laws, UNDRIP, UNDP standards and safeguards, human rights treaties, etc.) providing a handout with specific references to the PRODOC text. It was discussed that these requirements and standards would inform the work of the Platform and Facilitator, while understanding that reforms of domestic laws was not within their mandate.

29. While a number of concerns and challenges were raised, an Amerindian representative from the Southern Rupununi district, spoke positively about the recent terms of reference agreed to between the Wapichan and the Ministry outlining not only a consultation and consent process that would follow the process of resolving their outstanding land matters, but also clarifying relevant criteria for the procedures themselves and steps that could be taken to inject greater transparency in the information around pending or existing concessions over the subject lands. Mr. David James of the Ministry reaffirmed the progress made per the referenced terms of reference.

30. Participants further discussed the mandate of the Representative Platform with respect to the grievance component, specifically:

*“to provide input, advice, recommendations and validation to the UNDP and MoIPA with respect to Guidelines” addressing, among others, a “project mechanism(s) to respond to all categories of grievances and disputes arising from the implementation of the ALT Project.”<sup>21</sup>*

31. On this matter, a preliminary discussion took place related to the PRODOC's requirement (and proposed outcomes) related to the definition of *“mechanisms to address conflicts and*

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<sup>21</sup> Annex B, p. 6.

*grievances.*”<sup>22</sup> The Consultant explained that the objective would be to develop a *national* grievance redress mechanism (“*GRM*”) (not solely a project-specific mechanism) such that it could apply to, but also survive the ALT Project. The objective would be to agree upon a GRM that would not only apply to unresolved grievances and disputes that have occurred since the start of the project, but also to those grievances that may arise in any future Amerindian land titling activities (within or outside the confines of the ALT Project).

32. Consultant explained that the intent was to create and/or identify multi-level mechanisms that, when combined, would strengthen existing national mechanisms (such as local reconciliation processes under way with the Villages of Wakapau and Akawini) and use new alternative mechanisms. The goal was to ensure that these mechanisms satisfied the eight (8) characteristics often used to establish the efficacy and fairness of a grievance mechanism: Legitimate, Accessible, Predictable, Equitable, Transparent, Rights Compatible, Enabling Continuous Learning, and Based on Engagement and Dialogue. (During the first Platform meeting (*discussed below*), a handout developing these eight components was distributed to Platform members and discussed). It was made clear that any mechanisms established would not prejudice the rights of any stakeholders which already exist in domestic or international law.

33. Some Platform members expressed concern that existing mechanisms may not have sufficient knowledge and capacity, economic resources, or independence to carry out a just and fair dispute resolution process. Representatives from the mining associations expressed concern that the mechanisms needed to address how proper due process and compensation would be afforded to third parties asked or required to leave lands titled to Amerindians. Further requests were made that somewhere in the grievance mechanisms or criteria and streamlining for the demarcation and titling procedures, there was an opportunity for Representative Platform members to work together to identify outstanding grievances --including grievances related to titling, investigations and demarcations already completed. Stakeholders also requested a well-define mechanism for Communities and Villages to update their titling requests as needed, and file complaints related to grievances about *past* demarcation and land titling activities, not just those that might emerge post-adoption of the Guideline.

33. Concluding the meeting, and with continued facilitation from the Consultant, the participants shared their respective ideas for *Next Steps and Ways Forward*. Stakeholders specifically discussed the establishment of the Representative Platform in terms of number of members and allocations of seats to each stakeholder, as well as the time and place for the Platform’s first meeting.

34. The Consultant further invited stakeholders to send in suggestions about possible Community and Village site visits which would occur in June. The Facilitator asked Stakeholders to take into account the limited time for the visits (over no more than a 10-day period), season (weather for traveling conditions), and the preference to visit Communities and Villages that demonstrate challenges that are emblematic of those facing other Communities and Villages, as well as places where there are positive developments and practices that can be witnessed and understood (community mapping, terms of reference with the Ministry, local reconciliation efforts by neighboring communities, etc.). The Consultant further affirmed her interest with the mining and

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<sup>22</sup> PRODOC, ¶112, see also ¶¶ 24, 31, & 32.

logging associations to meet with members of their constituencies during these site visits, perhaps separately. She invited their recommendations as well.

35. The Consultant encouraged all stakeholders to share information with UNDP and the Ministry regarding how they distribute information to their constituencies and beneficiaries to identify mechanisms for increasing communications among the Platform members and the transparency related to the Representative Platform's work and the development of stakeholder engagement processes.

36. During the closing discussion, the NTC requested more information about what the ALT Project affirms as completed tasks, where completed efforts in the Communities and Villages continue to be accompanied by Community and/or Village concerns or opposition, and where the project intends to focus its efforts in the remainder of 2016. The Consultant shared the "achievements" as represented in the ALT Annual Report 2015 and the ALT PMU, Enrique Monize, explained that early to mid-June activities have been scheduled to commence work in six (6) Communities and Villages.

37. At this time, participants considered the wisdom in continuing ALT Project activities in the field rather than temporarily suspending said activities until the Guideline was adopted by the Ministry and UNDP. Government stakeholders expressed a concern about keeping the schedule as is, especially as several Communities and Villages had already expressed an interest in the Government's visit and prompt processing of their relevant titling or demarcation request. It was decided that the matter would be reserved for further discussion by the Platform as it deemed prudent. The participants also decided that to increase transparency and stakeholder capacity, the next six (6) field visits scheduled would include an NTC member within the visiting technical team. The preference would be a future member of the Representative Platform who can share his/her observations on the same with the rest of the other Platform members. (This NTC participation did in fact take place). Deciding against suspension of ALT Project activities, participants reserved the right to communicate with said Villages and Communities about the intended efforts of the soon-to-be formed Representative Platform so that the Amerindians could continue to make informed decisions for their respective people.

38. As raised repeatedly throughout the two-day workshop, in the closing discussions the matter surrounding what several stakeholders described as limitations within the Amerindian Act and/or other norms of Guyanese law (i.e. the Mining Act) arose again. Specifically, the question was posed as to the relationship between "Track 1" and "Track 2" recommendations of the SESP Review (the former being the Guideline and establishment of the Representative Forum and the latter being the possible review and reform of relevant domestic laws and regulations). It was discussed and understood that while the Guideline and charge of the Platform are not to expressly deal with the issue of domestic law reform, it would be reasonable that in the context of the Platform's examination of the demarcation and titling procedures, as well as the stakeholder engagement, consultation and FPIC mechanisms, discussions may arise –and recommendations may emerge-- regarding what would fall within and outside of the current domestic laws applicable to Guyana.

39. Most important, the participants agreed to establish the Representative Platform, convene its first meeting during the first week of June 2016, and commence with the goal of completing the work as fast as possible, but always with the understanding that quality --and not speed-- is the objective. With this in mind they discussed the possibility that more than two Platform meetings (likely at least three) may be needed to finalize the Guidelines and elaborate, as required by its Terms of Reference, and identify the mechanisms in which the Platform can continue in a supporting role to implement the same. It was further discussed that the aim was to forward on to the Ministry and UNDP a *consensus* document for adoption. If consensus was not possible, the Platform members would discuss next steps and the Facilitator would make recommendations for the way forward in the absence of agreement.

40. In the context of further reviewing the ToR of the Representative Platform, stakeholders understood that participation in the Platform is voluntary. All participants reserve their right to withdraw in the future. Amidst concerns about representation and speaking for those not present, the Consultant clarified that participation in the Platform would not be taken as an endorsement of the ALT Project on behalf of others. Rather, such participation and the efforts related to the Guidelines do not prejudice the rights of each Community or Village to make independent decisions about their participation in the ALT Project or any other future titling efforts.

41. In closing, the participating stakeholders further agreed to allocate the membership of the Representative Platform in accordance with the following chart.

<i>Ministry (2)</i>	<i>MNR (1)</i>	<i>GGMC (1)</i>
<i>GFC (1)</i>	<i>GLSC (2)</i>	<i>IPC (1)</i>
<i>PAC (1)</i>	<i>Mining Associations (1)*</i>	<i>Logger Associations (1)*</i>
<i>Amerindian support NGOs/CSOs (APA, GOIP, TAAMOG, NADF) (2)*<sup>23</sup></i>	<i>Amerindians - NTC/Villages/Communities (8)</i>	<i>UNDP (1, as observer only)<sup>24</sup></i>

42. The Consultant asked for all to commit to select representatives that would “add value” and satisfy the criteria for membership laid out in the ToR:

*“Participants should have demonstrated specific knowledge; experience; interests, rights, duties and/or obligations with respect to; and/or prior engagement on issues related to or arising from the ALT Project. The participants should be individuals with the*

<sup>23</sup> The agreement of the stakeholders was that these four Amerindian NGOs/CSOs would talk amongst themselves and choose two (2) individuals to represent the four organizations. This was the same agreement that applied to the miners and forest associations (one representative chosen from among the relevant organizations).

<sup>24</sup> It was further stipulated later that the ALT PMU, Mr. Enrique Monize, would also serve only as an observer as he stated that ultimately, he receives instructions from the Project Board and he felt it would be a conflict of interest to directly participate. His technical corrections and comments about the daily workings of the Unit and ALT Project, however, were permitted during Platform meetings, as were his written comments to the Guideline drafts. All helped to enrich the final Guideline and ensure its practicability.

*demonstrated capacity to participate effectively and offer constructive insights, comments and solutions to the matters that will be addressed by the Guidelines.”<sup>25</sup>*

43. Subsequent to the meeting, the UNDP CO clarified that while it would certainly attend and support Representative Platform meetings, it would not be a “member” per se, but an “observer”. It was considered that such a role was most consistent with its responsibilities with respect to the project.

44. During the meeting it was further disclosed that consistent with her ToR,<sup>26</sup> for purposes of full transparency, that the Consultant conducted one on one meetings with the following government institutions on the day before the commencement of the meeting: the Ministry, GLSC, MNR, and the GFC. These meetings were followed up with a separate one-day session, on 5 May 2016, *only* with the members of the NTC. *All presentations made by the Consultant were forwarded post-working group to all participants.*

### **III. Representative Platform’s First Meeting (June 2016)**

45. From 13-15 June the Ministry and UNDP hosted the first meeting of the Representative Platform. With the membership having been agreed to by the stakeholders during the May meeting, all institutions and Amerindian representatives specified in paragraph 41 above attended and participated actively and constructively. The Consultant served as the Facilitator. Throughout the (3) three days the Platform members diligently broke out into small group discussions, deliberated constructively on key issues in plenary, and listened with interest to brief presentations from the Facilitator, UNDP, the Ministry, and other Platform members. For instance, using a template provided by the Facilitator, members began by working in break out groups to identify key problems that have been perceived in the project implementation and more specifically, where they see that problem first emerges or is first known, what has been done in the past to address the matter, what they believe the true origin of the problem is, and what measures they believe may resolve the matter, (preferably at its origin rather than as a reactive response).

46. Among the “problems” and possible solutions identified (non-exhaustive), the following was discussed:

- *The Absolute Grant/Certificate of Title eventually issued reflects an area smaller than the area requested thereby not affirming the actual traditional territory of the people in question. Several solution(s) proposed: increased information gathering during the investigation phase (including of all traditional uses), addition of a review and comment period to investigation reports; Community/Village prior consent of the Minister’s decision, increased understanding of what traditionally “occupied” and “used” means and the evidence that can be provided to substantiate the same, greater discussion about the possibilities within the law to avoid renewals or cancel third party-held permits, leases or*

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<sup>25</sup> Annex B, p. 7.

<sup>26</sup> Annex B, p. 3.



concessions, updates to maps (shape files) shared with government stakeholders as Amerindian requests change.

- *Grant/title received excludes third party interests.* Several solution(s) proposed: ensure full prior understanding of all third-party encumbrances within the affected Community/Village –including in maps displayed to the Community/Villages as well as with the written lists of the third-party interests describing their type, the holder of the interest, and duration; make time for negotiations around their treatment; encourage where possible within the law, relocation, modification, or cancelation of such interests).
- *Process conducted with Community/Village, but then the affected people change their mind about fundamental issues (such as the content of the request).* Several solution(s) proposed: have mutual understandings before consultations as to how decisions will be made, documented, and preserved from one leadership to the next; ensure that minutes are taken and signed as a record of all matters discussed and decided upon, and disseminated throughout the Community/Village in question).
- *Mining and forestry issues are still being granted over areas pending Amerindian requests.* Several solution(s) proposed: ensure that updated, corrected shape files reflecting the areas requested are distributed to Government institutions that may be able to abstain from certain permitting and concessioning or relocate existing ones, increase the sharing of information about types of encumbrances that exist (i.e. where provisional leases or only prospecting permits are in question, there is more flexibility in the law on how they can be treated).<sup>27</sup>
- *A protected area is designated over lands subject to title and extension requests (several solution(s): early sharing of information about Amerindian requests so that the PAC knows what areas are awaiting titling; negotiations as to role indigenous peoples might play in an “Amerindian Protected Area” per Chapter V of the Protected Areas Act (2011) (Consultant Note: The Act does provide at Article 84 that the borders of a previously designated national protected can be varied under certain circumstances. The interpretation and application of this provision could be examined more fully in the Track 2 work).<sup>28</sup>*
- *Community/Village has no record or conflicting opinions on the prior requests and solicits a change to their titling request during the field investigation.* Several solution(s) proposed: keep copies of all grant and title requests within the Ministry readily accessible to the Community/Village in question, institute record keeping practices within each Community/Village, ensure all Village/Community decisions (including requests) are evidenced in writing, increase information dissemination within the Community/Village, make provisions for corrections and amendments to requests in certain circumstances (versus requiring a “new” request).

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<sup>27</sup> See for instance *An Application by Daniel Dazell, No. 158 M, High Court of Guyana* (13 August 2008) declaring that mining prospecting permits do not constitute a property right and as such, can be affected by an Amerindian title.

<sup>28</sup> Article 84(b) of the Protected Areas Act provides that the “Minister may by order vary the boundaries of a national protected area provided that...such variation does not reduce the overall area of the national protected area.”

- *Private party (leaseholder, holder of a concession) hears of the issuance of a grant/title overlapping his/her interest.* Several solution(s) proposed: require Ministry to publish requests in accessible media outlet, ensure that field investigations also involve consultations with private stakeholders and not just Amerindians.
  
- *Resulting demarcation is perceived by Village as incorrect and/or may extend into neighboring Village lands or areas subject to requests of other Amerindians (initiating or escalating communal conflicts).* Several solution(s) proposed: have Ministry identify potential overlapping land claims per the field investigations and preliminary review of application requests, give notice to neighboring Village/Communities so that they may participate and/or observe in the demarcation process involving potential common boundaries, support mediation or local reconciliation effort that can avoid or resolve difference between neighbors, support new demarcation and changes to the Cadastral Plan if needed, conduct pre-consults with the Village so the demarcation process and their involvement in the same is understood beforehand, and agree before demarcation on the names given to all geographic features in the Grant Plan to be used for the demarcation exercises.
  
- *Community/Village is not aware of a scheduled meeting or does not have the information to prepare in advance.* Several solution(s) proposed: ensure advance notice of all meetings (at least two weeks), secure confirmation from leaders, see where the Ministry can assist in the gathering of people (resources permitting), using diverse means available (boats, radio, Community Development Officers) increase the distribution of maps and other information to be shared during the meetings in advance, leave said information with the Community/Village after the field investigation (mark them draft to avoid future confusion or misuse).

Overwhelming, all of the solutions proposed above, and more, were incorporated into the Guideline.

47. The Platform members also broke into small groups to examine the ALT Project’s current “land titling process” found in Annex 1(c) of its PRODOC. They compared what they know about the implementation from personal experience, where applied criteria and procedures needed further clarification, modifications and added steps. The second key issue of consultation and consent (FPIC) processes were folded into these discussions directly. Review of the “land titling process” annex brought about discussions regarding the following:

- Confusion as to what information and criteria the Minister must consider and apply in making his/her final decision.
- Lack of clarity as to why it is required, and what is required to demonstrate the required 25-year existence of a requesting Amerindian Community.
- Occasional ambiguity as to the respective roles and differing expertise of the GLSC and the Ministry in the titling processes (as provided by the Amerindian Act versus the State Lands Act).

- Capacity issues among all stakeholders around the meaning of the terms used in the existing procedures, particularly those related to the many “plans” and “maps” referenced (i.e. Special Provisions Plan (map), Grant Plan (map), Land Registration Plan, Cadastral Plan (map), even the differences between an Absolute Grant and a Certificate of Title and which the attention of a surveyor (private or otherwise)).
- Difficulties that arise because the names of geographic features in the Village or Community’s application request may not be the same as those known by Government officials and/or otherwise listed in the national Gazette.
- Concern about the absence of an objective definition of indigenous peoples’ property rights within the project documentation (or express domestic laws of Guyana) and mutual understandings about what proof of territorial ownership is required.
- Disappointment with the Government’s continued concessioning and granting of third party interests (especially via GGMC), even in areas subject to known title requests.
- Worry about the durability of a Community/Village agreement when the positions of Amerindians seem to change from one meeting to another (often due to attendance of different members, changes in leadership, misunderstandings between the stakeholders as to what transpired during meetings and what was agreed upon, as well as possible failures of Amerindian leaders to share information with new leaders and all Community/Village members).
- Lack of understanding as to why demarcation is needed at all and what the significance and difference is between a Grant Plan and Cadastral Plan (majority not realizing that these “plans” are actual maps).
- Uncertainty as to whether the Minister will accept the information provided by stakeholders pursuant to section 61(3) of the Amerindian Act (i.e. historical documents, mapping done by the Amerindians themselves, reports from anthropologists).
- Ambiguity as to how private stakeholders are made aware of requests, have access to consultations with the Government, and could seek compensation for any interests lost to an Amerindian title.
- Frustration with the long periods to service title and demarcation requests and for the Government to respond to stakeholder queries and grievances.
- Repeated disappointment with the limitations posed by the Amerindian and Mining Act, and the practice of existing encumbrances being “saved and excepted” from final grants and titles absent consent of the affected Village or Community.
- Confusion about the impact of recent court decisions on GGMC’s ability to terminate and cease granting existing permits and concessions.
- Misunderstandings and skepticism as to why an extension request must be submitted only after an original request is finalized through to an Absolute Grant (especially if the request on file is considered by the Community/Village to be incorrect or otherwise not reflecting their current desire).
- Curiosity on the part of Government officials as to who must be included within a 2/3 vote (how many members must participate in an assembly for it to be “legitimate”, must it be evidenced in writing).
- Puzzlement as to why the maps showing limits and third party interests is not shared in advance with the Community or Village (before the investigation team arrives) and not left with the Amerindians thereafter for further study and education of their members.

- Queries as to what maps are shared among Government officials and how third party encumbrances are discovered and reflected in these maps and explained to the Community and Village members.
- Interest in making sure that full information about third party interests are eventually known to the affected Community/Village prior to giving or withholding its consent to the Minister's decision (given that in the field investigations, sometimes the Government delegation does not have full information yet).
- Displeasure with the absence of a clear process by which the Minister must secure the prior agreement of the Amerindians in question related to his/her decision on their Request.
- Uneasiness with the 2/3 consent requirements imposed in certain circumstances if a given Community or Village wishes to honor traditional decision-making mechanisms more consistent with their values, norms, and customs.
- Concerns that true FPIC cannot be achieved if the Village or Community believes that if they do not immediately accept what is offered and/or secure an acceptable solution quickly, more concessions and encumbrances will enter their lands and/or the Government will no longer have the funds to treat their requests (as the ALT Project is characterized as having a limited budget and timeline, and has already allocated its funds to request made at the time of the project's adoption).
- Frustration with demarcation exercises where geographic features are misinterpreted or described, Community/Village agreement with the exercise is not forthcoming, lack of understanding how said processes would be carried out, and conflicts that are generated by not involving neighboring Villages or Communities with common boundaries.
- Apprehension about the limited time left within the ALT Project duration.
- Dissatisfaction with the titling process where various neighboring Communities and Villages (often from the same "people") are not able to secure a single title or at least have their multiple requests handled more holistically (avoiding a piecemeal or chronological treatment that might provoke or exacerbate conflicts).
- Feelings by some Government institutions that they have inadequate time to complete investigation tasks in the field (including the verification of geographic features and third party interests).
- Discontent over the presumed inclusion of the "save and except" clauses in grants only because the full extent of third party interests is not known and cannot be identified specifically.
- Concerns that some Amerindian Villages and Communities are seeking areas outside of their traditional territories, but of interest to them only for population expansion or economic initiatives (including mining and forestry).
- Unhappiness over the failure of the Ministry to provide copies of investigation reports to the stakeholders participating in its development (Government institutions and the Amerindians in question).

Each of the points discussed above, and more, have been addressed in the Guideline.

48. At the conclusion of the above discussions, all agreed that when read together with the other two protocols of the intended Guideline and with the amendments and enhancements discussed, the PRODOC's procedures could serve as a basis for the elaboration of the criteria and

procedures for delimitation, demarcation, and titling under the ALT Project. The Facilitator was instructed to draft the Guideline elements related to titling procedures and criteria as well as stakeholder engagement, consultation and FPIC processes based on the Platform's September discussions and what would be further learned in the Community and Village visits.

49. Lastly, the Platform members examined the matter of grievance redress mechanisms. They reviewed once again the key characteristics of an effective GRM. The participants listened as Platform member, Ashton Simon, described mediation/facilitation that was conducted by the Ministry of Natural Resources in the matter resulting in the agreements regarding the Marudi Mountains area between the miners and the Amerindian Villages of South Rupununi. Platform members also benefitted from a presentation made by fellow Platform member, David Wilson, about the local initiatives and inter-Village talks conducted between the Wakapaua and Akawini indigenous peoples to resolve the differences that first arose after the ALT Project resulted in an incorrect demarcation of the former's territory (their Villages share territorial boundaries).

50. In the end, despite expressed concerns about the Ministry's responses to prior alleged grievances, all agreed that the Ministry's key role in the ALT Project required it to play a critical, albeit somewhat independent role in the GRM – at a minimum by housing any new GRM and facilitating its progress. It was also largely agreed that a GRM should not prejudice any existing recourses that might exist, including those available through the UNDP (i.e. Stakeholder Response Mechanisms), but that existing mechanisms have not proven useful to date. As such, there was a need to also create a new mechanism – a specific unit with its own ombudsman/director -- that could apply both to the ALT Project now (including grievances that arose related to earlier project implementation) and after its duration to any future titling of Amerindian lands.

51. Furthermore, emphasis was placed on the need for the GRM to have its own independent personnel, actual time limits for responding to grievances, a mechanism to acknowledge grievance requests and regularly update the Claimant, capacity within the new unit (training necessary), publicity as to the existence of the GRM and how it can be accessed, and clear steps as to where the Claimant may go if they disagree with or unable to find a solution within the GRM. The Platform members also suggested that it would be a good idea to have relevant stakeholders appoint a liaison to the GRM and for the GRM to assist in gathering a list of potential mediator/facilitators which can be used in the field to resolve emerging differences. The Platform members expressed concern that the GRM would have adequate staff, economic resources, and sufficient competence and experience with the relevant issues. They were assured that initial expenses (as detailed in the Guideline) could be drawn from unused fund within the ALT Project budget. Finally, the Platform members charged the Facilitator with drafting the GRM element of the Guideline based on these discussions/. All of the Platform's recommendations were incorporated into the Guideline.

52. Overall the first meeting of the Representative Platform was marked by respectful and energized deliberations that demonstrated a shared commitment to improve the way Amerindian titling was conducted in Guyana, both through the ALT Project and thereafter. Before the meeting's closure, time was allocated to address and solicit inputs and suggestions on all three elements of the Guideline to be drafted.

▪ *Field Visits*

53. Following the first Representative Platform meeting and as organized by the UNDP in conjunction with Amerindian leaders on the ground, eight days of field visits were realized by the Facilitator accompanied by a representative from the Ministry, UNDP, the NTC, and where relevant, the GFC, PAC, and GGMC. The team traveled to Nappi, Wakapaua, Akawini, Little Kanaballi, Santa Rosa, Tasserene, and Rockstone. Each Community or Village was chosen because their respective issues were deemed emblematic of key matters, concerns, conflicts, and problem solving techniques that have arisen within the titling process across the regions of Guyana. The purpose of the visits was to learn firsthand how titling procedures are experienced by several Communities and Villages and take the opportunity to solicit their comments and reactions to some of the Representative Platform discussions and ideas. The following is a non-exhaustive summary of some of the key issues raised at these specific Community/Village meetings:

<i>Nappi</i>	<ul style="list-style-type: none"> <li>▪ Provided an example of the potential impact of overlapping agricultural leases.</li> <li>▪ Demonstrated the adverse impact of perceived unfulfilled Government promises and expectations that the area of their proposed extension request would not be included within a national protected area.</li> <li>▪ Illustrated a case in which the nearby township (Lethem township) has brought their boundary over and into the proposed extension area (subsequent to the Amerindian titling request).</li> </ul>
<i>Wakapaua</i>	<ul style="list-style-type: none"> <li>▪ Evidenced how future support to local reconciliation processes and dispute resolution mechanisms between neighboring Villages could help to avoid conflict escalation and resolve existing grievances.</li> <li>▪ Highlighted the need for surveyors to fully explain in advance what they are to demarcate and ensure that there is a common understanding of the interpretation of the Grant Plan to be the basis for that demarcation.</li> <li>▪ Facilitated the conclusion that where Villages and Communities may share borders, the Ministry should strive to identify overlaps early on per the application requests, preliminary field visits and other possible communications with relevant Amerindians.</li> <li>▪ Provided an example of how adverse impacts can result if demarcations of common boundaries are not carried out with both Villages or Communities involved in some way (and where both have submitted requests, treating them simultaneously can avoid future grievances).</li> <li>▪ Evidenced the importance of including Amerindians in the demarcation processes as they have knowledge of their territory and the names of the geographic features (to avoid using the wrong waterway or mountain range when walking the lands, planting paals and reflecting them in a final Cadastral Plan).</li> </ul>

<b><i>Akawini</i></b>	<ul style="list-style-type: none"> <li>▪ Similar issues as Wakapaua (as involved in local reconciliation talks with the Wakapaua about their common boundary, particularly after the demarcation of Wakapaua’s lands resulted in the inadvertent taking of some of Akawini’s traditional territory).</li> <li>▪ Highlighted that there are circumstances where neighboring Amerindian Villages or Communities can also be a threat to the resources within other territorial lands (forestry use).</li> <li>▪ Marked the importance of ensuring that demarcations are done properly, not just quickly (applying all applicable procedures for demarcations, i.e. following not just a well-marked trail rather, but the more challenging river boundary, if needed).</li> <li>▪ Described difficulties that GFC may have monitoring forest extraction if the Commission does not have the correct information about Amerindian ownership, land disputes, and outstanding title/extension requests --including new data being inputted into the GIS system so all government institutions can access it equally.</li> </ul>
<b><i>Little Kanabali</i></b>	<ul style="list-style-type: none"> <li>▪ Provided an example of where the area understood by the Government as subject to the Village request, was not what the Village says it requested.</li> <li>▪ Added further evidence as to the difficulties the GFC has with abstaining from granting forestry concessions or relocating existing ones within requested areas, where their area maps (and shape files) do not necessarily correspond with what the extension the Village may be requesting.</li> <li>▪ Evidenced the importance of agreeing beforehand with Amerindians as to the names of key geographic features (rivers, mountains, etc.) to ensure that title/grant descriptions and demarcation exercises properly reflect the intended territorial limits (especially when the national Gazette and Amerindians differ in their designations).</li> <li>▪ Highlighted the importance of fully explaining in advance to the Amerindians in question as to how the demarcation will be done (share and explain the Grant Plan (map) to be used as the basis of the exercise), what is expected of the Village themselves during the exercise, and ensuring that Amerindians participate in the demarcation, agree to the process, and certify the resulting Cadastral Plan.</li> <li>▪ Underscored the need to address how to deal with corrections to requests (fixes of errors) versus the submission of “new” title requests that may not be budgeted for in the project, including subsequent extension requests (correction vs. extension).</li> <li>▪ Emphasized the importance of ensuring that technical experts who will engage Amerindians and perform tasks within their lands understand the rights of indigenous peoples and the difference that might apply to processing private land interests versus indigenous peoples property rights.</li> </ul>

<b><i>Santa Rosa</i></b>	<ul style="list-style-type: none"> <li>▪ Evidenced the effect on a title of multitudes of “saved” or exempted GLSC leases.</li> <li>▪ Highlighted the difficulties arising from where requested areas may already be set aside for a Protected Areas (in this case because when they were set aside, the PAC argued that it did not know they were to be subject to an extension request).</li> <li>▪ Demonstrated the confusion, and often the lack of knowledge among all stakeholders (Government alike) as to the differences between the Grant Plan and Cadastral Plan, what information is contained therein, the significance of save and except clauses in their grants and plans, and the hierarchy of land rights as between the Village/Community and those holding private interests.</li> <li>▪ Emphasized the need to ensure that those Village or Community members who accompany the Government teams in the field (for investigations or demarcations) are authorized in writing by the respective Village Councils or Community leaders respectively.</li> <li>▪ Offered another potential example of overlapping claims, with the Village claiming the Waramuri lands requested overlapped with those requested by Santa Rosa.</li> </ul>
<b><i>Tasserene</i></b>	<ul style="list-style-type: none"> <li>▪ Stressed the difficulties posed to the Community when their request for a title is not processed for several years (in this case, uniquely, to then have it titled and inexplicably taken back by the Government, leaving the areas open to entrances of new mining concessions).</li> <li>▪ Underlines the importance of Community consent to the titles/grants to be issued by the State (in this case the Community did not agree to the title issued).</li> <li>▪ Evidenced the adverse impact of <i>extensive</i> mining concessions and permits in an area not yet subject to an Absolute Grant or COT; the need, as indicated by the Ministry official, to get a “legal opinion” on how to deal with the existing concessions; and the effect on the environment of mining practices that are not easy to regulate in vast geographic areas (not enough GGMC personnel on site).</li> <li>▪ Provided a clear example of how the differing treatment of Communities and Villages in the Amerindian Act disempowers the Communities to deal with mining and other intrusions within their lands (as the miner’s requirement under the Amerindian Act to secure the consent of the Village before commencement of permitted activities is not equally applicable to Communities).</li> <li>▪ Reminded the team of the particular challenges in conducting consultations, consent processes, and maintaining Community and Villages regularly where access geographically is difficult.</li> </ul>
<b><i>Rockstone</i></b>	<ul style="list-style-type: none"> <li>▪ Demonstrated, in the preliminary sketch map itself, the potential adverse impact of third party forestry and agricultural leases on an ever-reducing land base likely to be titled under the ALT Project.</li> </ul>



	<ul style="list-style-type: none"> <li>▪ Provided a good example of where additional ALT Project visits, not necessarily budgeted for, are often required to ground truth extensive third party-lease information.</li> <li>▪ Highlights the importance that Amerindians have full prior information of the leases and other third party interests that may be excluded from their grant or title – including about provisional grants or prospecting licenses that are more easily terminated. (The Ministry has visited numerous times but still does not have a complete map showing the extensive lessee interests).</li> <li>▪ Reinforced, for purposes of the required informed consent to Ministerial decisions and future demarcations, the need to ensure that the Amerindians in question understand that their territorial limit and the eventual Cadastral survey, typically, will follow a line that follows around the third-party interests (excluding those interests from the Village or Community’s title and land base).</li> <li>▪ Included a unique example of a Community with a diverse population of Amerindians and other ethnic groups.</li> </ul>
<b>General</b>	<ul style="list-style-type: none"> <li>▪ Understanding that the 2/3 vote of an assembly often referenced in the Amerindian Act is not necessarily consistent with the decision-making customs, norms or values of a particular Community or Village as required by applicable law, at every Community and Village meeting participants were asked about how they would like decisions to be made that would affect the extent of their title. At this time, all preferred to continue with a 2/3 vote unless otherwise indicated. The Guideline reflects this while respect that other forms of decision making exist, and are provided for in the Amerindian Act.<sup>29</sup></li> <li>▪ Traveling with the stakeholder delegation also revealed other important issues among the Government institutions themselves, including: a request for increased communication between the Government institutions involved in the investigations; a desire for the sharing in real time of new or amended requests; a call for regular updates to the electronic shape files when new or amended requests arise so as to inform institutional policies and practices; a request to be consulted on the final content of the investigation reports; the need for increased capacity as to what constitutes FPIC and good faith consultations; and a request to have the option to extend the field visits or have additional visits where needed.</li> </ul>

▪ *First Draft of the Guideline*

54. Taking all concerns, recommendations and lessons learned from the Representative Platform meetings to date, the documents provided, the one on one meetings with stakeholders, and the field visits, *and* viewing all in the context of the ALT Project requirements and applicable

<sup>29</sup> For instance, see Article 34 of the Amerindian Act.

standards, including the laws of Guyana, the Facilitator subsequently elaborated a first draft of the Guideline addressing the three issues repeatedly referred to above. As promised, prior to the second meeting of the Representative Platform (at least two weeks in advance), on 19 August 2016 a draft Guideline with all three chapters was sent by UNDP to all Platform members for their review (the “*August Guideline*”).

#### **IV. Representative Platform’s Second Meeting (September 2016)**

55. During the last meeting of the Representative Platform that took place from 1-2 September 2016, the members did a line by line review of the August Guideline that the Consultant prepared. There were no objections to any specific provisions in the draft, though several helpful clarifications and enhancements were made to existing provisions, including for example, several related to the pre-consultations with Villages before commencement of demarcation exercises, the process of Village certification of the Cadastral Plan, and the acknowledgment of certain circumstances where all third-party interests cannot be reflected in one map.

56. The only issue that prompted some significant discussion was the timing and manner by which Amerindian Villages and Communities might present their consent to the Minister’s decision on their Request. There was particular discussion as to the Cabinet’s role in the review and potential revision of the decision and the politics that might insert itself into the titling process at this juncture (arising from the recognition that this is not an express requirement of the Amerindian Act). The Facilitator highlighted that consent to the final decision taken by the Government (including a Ministerial decision subsequently modified by the Cabinet) was not only requirement under the ALT Project (both per its express acceptance of FPIC and the application of UNDRIP and international human rights agreement that affirm FPIC, and also the already existing recognition per paragraph 93(b) of Annex 1(c) requiring Amerindian “agreement”).

57. There was also concern articulated about the reasons for, mechanisms applied, and financial implications of any “advance visits” that the Ministry, GLSC and others might need to make to adequately prepare the preliminary sketch map and address other outstanding matters that might otherwise present obstacles to carry out a successful field investigation. All understood, however, that while the final decision about advanced visits rested with the Ministry, ultimately, the objective was to make sure that the Government arrived prepared to the Community/Village for the Primary Field Investigation and that all relevant information was available to the Village/Community and Minister before decision-making.

58. It was agreed that the subsequent Guideline version would be sent to the Platform members the following week (week of September 5) and each would take several weeks to revert back to their respective institutions and constituencies to prepare for the next meeting during which final edits and a final group consensus would be sought. All were advised that any significant outstanding issues that emerged from their final consultations with colleagues and constituencies

would be raised in advance to avoid surprises and permit problem solving before the next meeting. Consultant communicated with stakeholders in advance of the third Representative Platform meeting, and no such outstanding concerns were raised.

59. Prior to the meeting's close, it was once again confirmed that the final Guideline would then be forwarded to the Ministry and UNDP and endorsed thereafter by the ALT Project board. As approved, the final Guidelines would be considered applicable to all future Amerindian titling efforts --those financed and conducted through the ALT Project, or otherwise. They will be periodically reviewed for improvements and consistency with the project requirements, the relevant UNDP standards and policies, and applicable laws of Guyana.

60. As the ToR also envision an ongoing role for the Representative Platform in the implementation of Guidelines. It was agreed that this function would be thoroughly discussed at the next meeting, hopefully scheduled for early October. Meanwhile, UNDP committed to support the Ministry and other relevant partners to communicate the new Guidelines to all stakeholders through the project's communications strategy and handbooks, as well as in future meeting with Communities, Villages and other Government and non-Government Stakeholders. (Indeed, the UNDP presented their work on the communication strategy during the meeting).

▪ *Second Revision of the Guideline (October 2016)*

61. After the September meeting, the Consultant met with the GLSC Commissioner and his staff. The Commissioner requested several additional changes to ensure that the Ministry furnished the GLSC with a full copy of all applications received (up and until now it only received the descriptions and sketch maps provided by the requesting Village or Community), and also to secure a prominent role for the GLSC in the pre-demarcation meetings with the Villages (to explain what to expect and take their place as the experts on the matter). These minor changes were highlighted for transparency in the final revision sent to Platform members and conveyed specifically to the Ministry if there was any concern on their part.

62. Additionally, the distribution of the final draft was appropriately delayed when the UNDP, Ministry and ALT PMU decided to conduct a final internal review of the draft on 13 September 2016. This was a helpful occurrence as the changes that emerged not only enhanced the draft further, but ensured and facilitated the final acceptance and adoption by the Ministry and UNDP. The changes made by the UNDP and Ministry pursuant to this meeting were welcomed and found acceptable to the Consultant. Consultant transparently highlighted these new changes for the Platform members in the revised draft to distinguish these new changes from those discussed directly with all the Platform members during the September meeting.

63. The second revision of the Guideline was finally circulated on 28 October 2016 (the "*October Guideline*"). All changes were highlighted and it was clarified that the objective of the third meeting of the Representative Platform, to be held in November, would be to hold a closing discussion around the Guideline text and hopefully secure consensus around the draft to then be

forwarded to the UNDP and Ministry for final adoption, and then for approval by the ALT Project Board.

## V. Representative Platform's Third Meeting

64. To allow Representative Platform members sufficient time to review the October Guideline while still permitting completion of the Guideline before the end of the year, the third meeting of the Representative Platform was scheduled for 28-29 November 2016. The Consultant held several consultations with members remotely before the meeting, but due to a prior work commitment (court hearing scheduled for other clients), she was unable to attend the third meeting. NTC members expressed concern to the Consultant that they had not yet reviewed the latest draft and might not be disposed to attending the final meeting. This message was promptly shared with the UNDP.

65. On 7 December, the UNDP CO reported to Consultant that the meeting “*enjoyed the attendance of all members except those from the NTC. Among those who attended, there was full participation and unanimous support for the process and adjustments to the 18 October 2016 draft Guideline under the able chairmanship of [the Ministry’s] David James was very successful.*”

66. Additionally, Consultant was informed by UNDP that during the November meeting, the Platform members discussed that they would endure as a functioning body (per their ToR mandate), at a minimum, through the participation of its members in field investigations as appropriate, through its role in the GRM process as outline in Parts II and III of the Guideline (particularly the appointment of ALT GRM Monitoring Team, possible contributions to “*participatory evaluations of the Consultations and Stakeholder Engagements to assess for improvements*”)<sup>30</sup> and the drafting of the ToRs for the ALT GRM staff and/or liaisons.

### ▪ *Final Version of the Guideline*

67. The final Guideline revisions of 29 November, in markup format, were further shared with the Consultant on 7 December and the UNDP CO made clear that together with the Ministry, they would “*identify an opportunity for the NTC’s review of the final revised draft of the document.*” Consequently, it is understood by Consultant that the final Guideline will not be adopted by the Ministry and UNDP and forwarded to the Project Board before endorsement is sought from the NTC and Amerindian members that were unable to attend the November Platform meeting.

68. Consultant understands that there was an agreement in the November Platform meeting to send the final version of the Guideline back to the Platform for a “*no objection*” and then, upon

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<sup>30</sup> See Annex A, Part I, ¶15(j) and Part III, Sec. XIV.

the UNDP and Ministry's adoption, to the Project Board for endorsement at its meeting during the first week of January. From 7-9 December Consultant conducted a final review of the draft, corrected all formatting, internal consistency in terminology, reviewed the latest proposed edits of the November Platform meeting, and converted the document into a final clean and markup version of the Guideline. This proposed final version is attached at Annex A.

69. Overwhelmingly, the Consultant was very pleased with all the final changes that have been incorporated into the October draft Guideline both by the UNDP and Ministry beforehand, as well as by the Platform members during the November meeting. With each draft, the Guideline has undoubtedly improved. The Consultant accepted all changes proposed in the last Representative Platform meeting, *but maintains a significant reservation to Part I, paragraph 39*. Article 39 of the October Guideline read as follows:

“Investigation Reports that have not been shared with the NTC, relevant Commissions and subject Community or Village upon the adoption of this Guideline and which have not yet resulted in the issuance of an Absolute Grant, will follow the process outlined above prior to being finalized for submission to the Minister.”

70. The 29 November markup forwarded to Consultant included the following changes:

“Investigation Reports that have not been shared with the NTC, relevant Commissions and subject Community or Village upon the adoption of this Guideline and which have not yet resulted in the issuance of an Absolute Grant, will be shared with these Stakeholders for information ~~will follow the process outlined above prior to being finalized for submission to the Minister.~~”

71. ***Consultant strongly suggests returning the language to the original formulation.*** Based on discussions arising in and around the Platform meetings, field visits and one on one engagements, Consultant understands that there are a substantial number of investigation reports that would be covered by this provision. Most were conducted prior to the installment of the new ALT PMU, but required substantial review and finalization by the new ALT PMU. They have never been seen by the Communities and Villages in question, nor the other Government institutions that may have been involved in these investigations conducted before the would-be adoption of the proposed Guideline. The Guideline currently provides for a process by which *Provisional* Investigation Reports can be shared with the relevant stakeholders in advance to secure their comments and observations, reconcile the same, and if needed, note ongoing differences of opinion in the *Final* Investigation Report.<sup>31</sup> The proposed changes arising from the November Platform meeting would suggest excluding all of these prior reports, *still pending a Ministerial decision*, from this productive comment and review process. This would be contrary to the rest of the Guideline which among other things: calls for transparent and

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<sup>31</sup> See Annex A, Part I, ¶¶ 35-38.

informed processes, strives to secure all relevant accurate information required for decision making, provides for the participation of the Amerindian Village/Community in the investigation of its request (which only ends when the final report is given to the Minister), advocates the taking of measures to avoid future grievances and conflicts, and guarantees prior informed consent before the Ministerial decision.

72. The Consultant has been assured by the UNDP CO that there continues to be an agreement *“to ensure that the investigation mission is as comprehensive as possible, adhere to FPIC and include repatriation of investigation reports following agreements reached with the Amerindian community/village during the conduct of the investigation. The finalised investigation report sent to the Minister for consideration will enjoy the support of all relevant.”* Consequently, the Consultant is confident that the edit may have just inadvertently lost some of the intended content. As such, the Consultant advises that the new language be discarded or modified accordingly to ensure that Villages and Communities whose requests have been investigated and reflected in these prior reports can be treated, without discrimination, the same as those Villages and Communities going forward. Their situations are identical and do not warrant different treatment. Each are still pending a final decision of the Minister. As well, the risks that are mitigated by the report review and comment process, and the opportunities to secure *informed* decision making and avoid conflicts, remain the same for existing and future investigative reports where final Ministerial decisions have not yet been taken. *A final decision to maintain the revised language in Article 39 would be viewed by this Consultant as inconsistent with the ALT Project terms, the UNDP standards (SES) and safeguards, UNDRIP and relevant UN international human rights instruments. More importantly, it would likely lead to more grievances in the future, precise occurrences the UNDP, Ministry and Project Board has striven to avoid through the adoption of the Guideline.*

## **VI. Conclusions**

73. The Consultant wishes to convey that she has been very pleased with the continued dedication and good faith contributions of all stakeholders and participants in the Representative Platform. As noted above, it has been both a pleasure and a privilege to work with all the Platform members and an honor to be received by various Communities and Villages to listen to their stories.

74. From the very beginning, and throughout this seven (7)-month process, there has been substantial agreement among the parties about many of the opportunities that existed to improve the ALT Project implementation, as well as with respect to the root causes to many grievances and concerns that have emerged to date. Furthermore, participants were not only creative, but very welcoming of proposed solutions. Overwhelmingly, where clear potential for acrimony existed, participants respected the forum and chose a path of productivity. This kind of good faith participation made all the difference. For instance, even to the extent that participants

voiced concern, or felt limited by a project budget, a desire for expediency, or the parameters of existing domestic laws – all maintained a focus on treating what was possible within their mandate, rather than dwelling on that which would undoubtedly require future endeavors and advocacy.

75. With this in mind, the Consultant would leave readers with the following additional conclusion and recommendations:

(a) The Project Board, except for the finance ministry, is largely made up of representatives from the very institutions and organizations represented in the Representative Platform. It would be advisable that the Platform members advise their respective representatives on the board as to the work performed in the past seven months, answer any outstanding concerns, and strongly encourage them to adopt the Guideline without substantive changes. The endorsement from the board should be a formality, not a new forum for discussing a document that was not controversial within the Platform.

(b) This Guideline reflects the minimum requirements necessary to ensure that the ALT Project is implemented going forward in a manner that fulfills its objectives, and adheres to its requirements, the applicable law, standards, and policies. Elaboration is one thing. Implementation, however, may be the greater task. This will likely require, among other things:

(i) increased education and capacity building among all stakeholders about the content of the Guideline (all must know their rights and responsibilities);

(ii) the review and update, as needed, of existing or developing handbooks, manuals and materials of the project describing the Amerindian titling process and GRMs to accommodate the provisions in the Guideline;

(ii) additional human resources and expertise within the Ministry and ALT PMU (as suggested by the Mid-term review); and

(iii) the flexibility to reallocate some of the economic resources already dedicated in the ALT Project budget (i.e. if additional Community/Villages meetings or field visits are needed --but not otherwise budgeted for-- to ensure adequate consultation and FPIC and vital information gathering).

(c) The ALT GRM is not just a requirement of the ALT Project or a development of the Guideline. It is critical to resolving past grievances and avoiding future grievances. Above all, it needs immediate establishment upon adoption of the Guideline. The ALT GRM Liaisons should be immediately appointed by all ALT GRM Institutions and Terms

of Reference for the GRM staff hires should be completed urgently and employment secured promptly.

(d) The Guideline could not fully resolve interferences or limitations to indigenous peoples' territorial rights per the granting of third party interests or designation of national protected areas without prior Village or Community consent. This is an issue that arises within the context of the ALT Project, can amount to violations of human rights, and is not fully mitigated by the project's procedures, including the final Guideline. Grievances arising from this issue will undoubtedly be raised before the GRM. Full resolution of these violations of applicable law will likely only be addressed through a more progressive interpretation and application of existing norms, as well as future reforms to domestic laws, harmonization of the same, and the adoption of particular regulations related to the Amerindian Act, Mining Act, Protected Areas Act and possibly the forestry laws in Guyana.

Within the context of its mandate and the project requirements and applicable standards, policies and safeguards, the Guideline goes as far as it can in terms of (i) increasing early, timely and regular information flow among all stakeholders about the areas requested by Amerindians and the third-party interests (or protected areas) in the proposed requested areas, (ii) encouraging relevant Government bodies to take measures, whenever possible, to avoid encumbrances, and (iii) providing more expressly for the free, prior and informed consent of Amerindians to the Government's final decision on their request. The objective with these Guideline provisions is to facilitate informed discussions around the treatment of protected areas and third party interests in titling, ensure that Villages/Communities understand the titles and grants they receive, and promote policies and practices, whenever possible, within the GLSC, GFC, GGMC, and PAC, to address permitting, leasing and concessioning in a manner that respects indigenous peoples' property rights. Such rights include the duty of a State to abstain, until that delimitation, demarcation and titling has been done, "from any acts that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property"<sup>32</sup> (Thereafter, the free prior and informed consent would be necessary before interferences with Amerindian lands and resources).<sup>33</sup>

e) The Guideline include several provisions, particularly in Parts I and Parts II, that have been added to improve and clarify the titling procedures and processes for stakeholder engagement (i.e. the clarification of the applicable definition of property rights, the objective criteria the Minister must rely upon for making his/her decision, the addition of a specific list of events requiring FPIC). These provisions are consistent with the

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<sup>32</sup> *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79, para. 173(4) (2001).

<sup>33</sup> See substantial authorities listed in the *Legal Companion to the UN-REDD Programme Guidelines on FPIC (2013)*.



Amerindian Act and not prohibited by it. Guyana, however, would benefit greatly from the same being affirmed more expressly in a future regulation of the Act and reflected in any “Track 2” efforts toward legal reform.

(f) Finally, the Representative Platform should hold at least one more meeting<sup>34</sup> to specifically discuss how it will continue to “*play an active role in overseeing the implementation of the Guidelines*” and “[t]ogether with the MoIPA and UNDP...will identify the mechanisms by which this oversight role can be carried out within the context of the ALT Project and its corresponding budget.” A stakeholder body outside of the Project Board could provide a helpful guidance as well as accountability. Consultant is not aware that the Platform has had sufficient time to work on this part of its mandate. An additional meeting can also be used as a working group during which the members can appoint the ALT GRM Monitoring Team required by Part III, section XIV of the Guideline, and contribute to the elaboration of Terms of Reference related to the ALT GRM Liaisons and/or the GRM permanent staff members.

78. In closing, the Consultant reiterates her hope that the same commitment displayed by the stakeholders and Platform members during this process carries over to the even more challenging phase of implementation. The many fruitful discussions and confidence building efforts that began in the Representative Platform should now continue and permeate into future engagements among the stakeholders and inform how they may constructively and collaboratively address both the identified challenges and opportunities that still require their attention.

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<sup>34</sup> Operating on its own, and not necessarily counting further with the need of the Consultant facilitator.

**ANNEX A: Guideline for Amerindian Land Titling in Guyana**

**A GUIDELINE FOR  
AMERINDIAN LAND TITLING  
IN GUYANA**

**(9 December 2016)**

**FINAL DRAFT**

**To be adopted by  
the Ministry of Indigenous Peoples' Affairs  
and the United Nations Development Programme**

The purpose of this document is to strengthen the effective implementation of the Amerindian Land Titling (“ALT”) Project and address concerns that have been raised internally and externally about elements of the project’s implementation. The new “*Guideline*” is applicable to the implementation of the ALT Project and future Amerindian land titling processes otherwise performed by the Government of Guyana (“*Government*”) on behalf of Amerindians. It intends to address the three (3) points listed below:

- a) address how to carry out and strengthen Stakeholder engagement, including consultation and free, prior and informed consent (“*FPIC*”) processes;
- b) identify clear process and criteria for delimitation, demarcation and titling under the ALT Project; and
- c) develop grievance and dispute resolution mechanisms and processes to address conflicts that exist within and among Amerindian Communities/Cillages, between Amerindian Communities/Villages and various other parties asserting claims to lands and resources claimed by Amerindian Communities/Villages, as well as grievances between Amerindian Communities/Villages and the Government.

## PART I

### **CRITERIA AND PROCEDURES FOR THE AMERINDIAN LAND TITLING PROCESS**

1. The following are clarified criteria and procedures for conducting the process of titling Amerindian<sup>35</sup> lands, resources and territories. For purposes of these criteria and procedures, the titling process means the process that begins with a Community or Village request, the investigation, issuance of an Absolute Grant, survey and demarcation, through to final issuance by the Government of a Certificate of Title.<sup>36</sup> Said criteria and procedures shall be reviewed by the Government and Stakeholders every year to ensure consistency with any new regulations, policies, or law reforms and to identify areas for continued improvement in implementation.

2. Such criteria and procedures will be implemented so as to give effect to:

- a) the constitutional recognition that “Indigenous peoples shall have the right to the protection, preservation and promulgation of their languages, cultural heritage and way of life” and that “every person, as contemplated by the respective international treaties set out in the Fourth Schedule to which Guyana has acceded is entitled to the human rights enshrined in the said international treaties, and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of Government...”<sup>37</sup>;
- b) to the rights of the Amerindian peoples of Guyana to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired; and their right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired (hereinafter “*Property Rights*”),<sup>38</sup> and
- c) the duties and obligations of Guyana to give legal recognition and protection to these lands, territories and resources.<sup>39</sup>

Guyana, in accordance with its Constitution and national norms, as well as the standards and requirements of the ALT Project, agrees that it will respect, promote and protect Amerindian Peoples’ Property Rights. The criteria and procedures set forth below, will be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned and the need to

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<sup>35</sup> This Guideline consists of three (3) Parts. Throughout this Guideline and each of its Parts, the term Amerindian and “Indigenous Peoples” are used interchangeably.

<sup>36</sup> All acronyms and defined terms apply consistently throughout all three Parts of this Guideline unless otherwise stated.

<sup>37</sup> Constitution of Guyana, Art. 149(g) & 154(A).

<sup>38</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 26; UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples, Requirement 6.

<sup>39</sup> *Ibid.*

ensure meaningful and effective participation of all Stakeholders, as well as Consultation and the free, prior and informed consent ("FPIC") of Amerindians.

## I. THE REQUEST

### Communities with no titled Lands

3. According to the Amerindian Act, Section 60(1): An Amerindian community may apply in writing to the Minister of Indigenous Peoples' Affairs ("*Minister*")<sup>40</sup> for a grant of State lands provided –

- a. it has been in existence for at least 25 years ("it" being the Community or Amerindian Peoples to which they belong);
- b. at the time of application and for the immediately preceding five years, it comprised at least 150 persons.

4. The application must include –

- a. the name of the Amerindian community;
- b. the number of persons in the community (persons being "residents" of the Community as defined by the Amerindian Act; numbers can be sourced from national censuses, church records, birth records, Community records, etc.);
- c. the reason for the application (including but not limited to a description of how the Community and its People have traditionally owned, occupied or otherwise used the lands requested, an explanation of their physical, traditional, cultural association with or spiritual attachment to the lands, any other information the Community deems relevant);
- d. a description of the area requested (preferably a written description referring to identifying geographic features, as well as a map (sketched by hand is acceptable)); and
- e. a resolution authorizing the application and passed by at least two thirds of the adult members of the Amerindian Community. (60(2))<sup>41</sup>

5. The application must be signed by at least four members of the adult community, and if the community has a Community Council (per sec. 85), at least four signatories must be members of this Council.<sup>42</sup> (60(3) and 60(4))

### Villages that have titled lands and are requesting extensions

6. Under Section 59(1) of the Amerindian Act, a Village may apply in writing to the Minister for a grant of State lands as an extension to its Village lands. The application must include –

- a. the name of the Village;
- b. the number of persons in the Village (persons being "residents" of the Village as defined by the Amerindian Act; numbers can be sourced from national censuses, church records, birth records, Village records, etc.);

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<sup>40</sup> This Guideline has changed the "Ministry of Amerindian Affairs" to "Ministry of Indigenous People's Affairs (hereinafter "Ministry") to respect the official name change that took place in 2015.

<sup>41</sup> All section numbers referred to in this Guideline refer to the Amerindian Act unless otherwise stated.

<sup>42</sup> Note: Not all communities that qualify for title lands may have Community Councils.

- c. the area of land which the Village already owns (i.e. the written description found in the Village's Absolute Grant, Special Provisions Plan ("*Grant Plan (map)*"), the Land Registration Plan ("*Cadastral Plan (map)*"), or Certificate of Title (preferably whichever holds the latter date));
- d. the reason for the application (including but not limited to a description of how the Village and its People have traditionally owned, occupied or otherwise used the lands requested, an explanation of their physical, traditional, cultural association with or spiritual attachment to the lands, an explanation, if any, as to why said lands have not already been titled, any other information the Community deems relevant);
- e. a description of the area (preferably a written description referring to identifying geographic features, as well as a map (sketched by hand is acceptable));
- f. a copy of a resolution passed by two thirds of the Village general meeting, which authorizes the Village Council to make the application.

7. An application must be signed by the Toshao, Secretary and two other members of the Village Council. (59(2))

8. The application must be accompanied by a plan (being the Grant Plan or the Cadastral Plan), showing the existing Village lands prepared by a qualified land surveyor on the basis of a survey authorized by the Guyana Lands and Surveys Commission ("*GLSC*"). (59(3))

9. The State shall pay for the cost of the survey. (59(4))

## II. THE MINISTRY'S PROCESSING OF THE REQUEST<sup>43</sup>

### Acknowledgment of the Request

10. Under Section 61: Within one month of receiving the application for a grant of State lands or for an extension, the Minister shall respond in writing to the Community or Village (and adjoining villages) acknowledging receipt. To inform interested Stakeholders, within two (2) weeks of the Guyana Lands and Survey Commission ("*GLSC*") completes the preliminary sketch plan (map) requested by the Minister, the Minister will also publish notice of the intention to process an application in a national newspaper for three (3) consecutive Saturdays.

### The Investigation

11. Within six months, the Minister will cause an investigation to commence. (61(2)) The investigation includes one or more onsite field investigations, and, among other activities, the dissemination of the application (request) and accompanying plan to relevant government ministries and commissions, initiating a budget proposal to process the application request, consolidating information about all rights and interests in the requested land, reflecting the request on a map, Consultations with Stakeholders, and soliciting additional information from the Community or Village in question. Technical meetings will

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<sup>43</sup> While these Criteria and Procedure refer only to the Ministry, where titling of Amerindian lands is conducted under the ALT Project, it is understood that the ALT Project Manager continues its support role to the Ministry by running the project on a day-to-day basis on behalf of the Project Board within the constraints laid down by the Board and in coordination with the Ministry's project office (i.e. organizing field visits, managing the project budget, etc).

be held before and after the field investigation. The investigation ends with the acceptance of the Final Investigation Report by the Minister.

The primary purpose of the investigation is to obtain and verify the following information:

- a. a list of persons in the Amerindian Community or Village and the number of households;
- b. the names of the Amerindian peoples of the Village or Community;
- c. the length of time the Amerindian Village or Community has occupied or used the area requested;
- d. the use which the Village /Community makes of the land and its resources (historic and actual uses including but not limited to hunting, gathering, farming, burial, spiritual activities, medicinal uses, conservation/preservation, and other traditional livelihood activities (identifying seasonal, periodic and permanent uses));
- e. the size of the area occupied or used by the Village or Community;
- f. a description of the customs or traditions of the Village/Community (including those practices and activities necessary for their physical and cultural survival as Amerindian peoples --as evidenced through, among other things, the sharing of traditional knowledge and practices, oral history, customary tenure systems, maps and resource studies made by them);
- g. the nature of the physical, economic, social, cultural, spiritual and traditional relationship that the Village or Community has with the land and its resources (including, their relationship as derived from, among others, the oral history of the people, stories of the different groups within the Village or Community (women, hunters, shaman(s), gatherers, fishers, etc.), legends, cosmivision, customary tenure systems, norms and values);
- h. any interests or rights in or over the area of land requested (including but not necessarily limited to other titles, grants, permits, licenses, concessions, leases, protected areas, and overlapping applications for the same (including from other Amerindian Villages or Communities, the mining, forestry, protected areas, or agricultural sector or other private individuals));
- i. whether there is a school, health centre or other initiative by the Amerindian Village/Community or Government; and
- j. any other information which the Minister reasonably considers to be relevant (61(2)), which in exercise of his/her discretion is determined at this time to include, at a minimum, those materials offered pursuant to paragraph 12 below, as well as the following:
  - (i) resource management plans and land use and occupation maps produced by the Community and Village in question and/or in conjunction with the Government;
  - (ii) information about potential and existing overlapping claims and/or common boundaries with neighboring Amerindian Villages or Communities (including through a review of other Amerindian land applications in the area/region);
  - (ii) identification of the Village or Community's nearest neighbors;
  - (iv) relevant reports and studies of Amerindian civil society and non-profit organizations; and
  - (v) any other information relevant for determining the Property Rights of the Amerindians in question, including their physical, traditional, cultural association with or spiritual attachment to the land requested.



12. During the investigation period, per the Amerindian Act the Minister may accept information comprising the following, and in exercise of that discretion, the Minister has agreed to do so whenever it is freely offered by the Village or Community:

- a. oral or written statements from the Amerindian Village or Community (including, but not limited to testimony from elders, resource users, and others with knowledge of the Village or Community's actual and traditional ownership, use and occupation and customary land tenure systems);
- b. authenticated or verified historical documents;
- c. sketches and drawings prepared by the Amerindian Community or Village (including maps prepared by them or in conjunction with the Government);
- d. surveys prepared or authorized by the Guyana Lands and Surveys Commission ("GLSC");
- e. photographs;
- f. reports or documents from anthropologists or archaeologists;
- g. information in any other form which the Minister reasonably believes is appropriate (61(3)) and relevant for determining the Property Rights of the Amerindians in question, including their physical, traditional, cultural association with or spiritual attachment to the land requested, and the extent to which other rights or interests may exist within the requested lands.

13. During this period of investigation, a number of standard procedures are followed:

14. The Minister writes to the GLSC transmitting a copy of the Community or Village application and requesting:

- a. that the sketch or description of the area provided by the Community or Village be converted into a preliminary sketch plan (map) and description of the proposed area; and
- b. that the GLSC conducts a full title search, subject to the Advance Team Visit as needed (see paragraphs 18-19 below) and provides the Ministry with the names of any lessee or grantee, as well as details regarding the same -- identifying the type of interest (provisional lease, absolute grant, agricultural lease etc.), date of issuance, period of lease, the location and size, and any pending applications. The GLSC will also identify any overlapping and/or contiguous lands designated as part of the protected area system of Guyana. This information will be reflected on the preliminary sketch plan (map) along with the appropriate explanatory indexes and descriptions.

15. The Minister sends the preliminary sketch plan (map), indexes and description produced by the GLSC -- as reflected in the Geographic Information System (GIS) database and sent in the format of the "shape file" depicting the Amerindian request area -- to the Protected Areas Commission ("PAC"), Guyana Forestry Commission ("GFC") and the Guyana Geology and Mines Commission ("GGMC"), requesting that they indicate any comments or concerns that they may have with the requested area. If there exist any missing protected area information or any forest or mining concessions, permits, leases, licenses or other conflicting land uses within or contiguous to the requested area or that may otherwise have a potential effect on the way of life of the Amerindians in question<sup>44</sup>, the relevant Commission

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<sup>44</sup> See Constitution of Guyana, Art. 149G ("Indigenous peoples shall have the right to the protection, preservation and promulgation of their languages, cultural heritage and way of life"); see also *Thomas and Arau Village Council v Attorney General of Guyana and another*, No. 166-M/2007, HC of Guyana, unreported decision, 30 April 2009

must indicate this. The relevant Commission will identify the type of interest (i.e. protected areas, prospecting license, small/medium/large scale mining permit, special mining permit, claim license; forestry leases, grants, and exploratory permits for forest produce, etc.), date of issuance, term of the interest in question, the location and size, relevant renewal or relinquishment periods, and any pending applications.

16. This information will be inserted by each Commission on the respective preliminary sketch plan (map) along with the appropriate explanatory indexes and descriptions.

#### The Field Visit(s)

17. The Minister or an Officer of the Ministry delegated by the Minister visits the Community or Village to hold a Consultation which is attended by the Village or Community members, as well as representatives of the GLSC, and if necessary,<sup>45</sup> GFC, PAC, and GGMC and any other Stakeholders who may reasonably claim to have an interest in the area of land requested (the “*Primary Field Investigation Visit*”). (If the understandings reached with the Village or Community requires it, the Ministry will meet separately with other Stakeholders (miners, loggers, agricultural lessees, etc.) rather than at the same time alongside of the Amerindian Community or Village).<sup>46</sup>

- Advance Team Visit

18. Prior to the initiation of the *Primary Field Investigation Visit*, provided there is at least two (2) weeks advance notice to the Community/Village in question and an agreed upon date, an Advance Team may be sent to the Community or Village composed of a representative from the Ministry, the ALT Project Surveyor<sup>47</sup>, and the GLSC and/or other Commissions identifying an institutional need to participate in the Advance Team Visit. This is a scoping visit, not a full investigation visit. The primary reasons to authorize an *Advance Team Visit* are as follows:

- (a) difficulties in mapping the Village/Community sketch plan (map) and description of their requested area absent clarifying information more easily obtainable on the ground<sup>48</sup>;
- (b) available electronic and hard copy records for the requested area are deemed insufficient by GLSC, GGMC or GFC to determine third party rights and interests (absent ground truthing);

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(finding that the Government (including GGMC) has a duty under Article 149G of the Constitution “to make all reasonable efforts” to ensure that existing or future mining activities do not diminish “the usufructuary value [of the] land to the way of life of the applicants as an indigenous people” such that when evaluation mining applications, the GGMC “must take into consideration” the potential effects on the way of life of Amerindian occupants.

<sup>45</sup> If there are no protected areas, mining or logging interests in the requested area of land, PAC, GFC and GGMC need not attend the *Primary Field Investigation Visit*.

<sup>46</sup> Consultations with non-Amerindian or Government Stakeholders will be carried out consistent with Part II of this Guideline (*Stakeholder engagement, Consultation and FPIC*).

<sup>47</sup> Applications processed outside of the ALT Project do not require the project’s surveyor.

<sup>48</sup> Where 18(a) is the issue, the ALT Project Manager will discuss with the GLSC to establish, as a matter of efficiency, if an *Advance Visit* by only the ALT Surveyor is sufficient to secure the outstanding information needed by GLSC to produce the sketch plan (map). GLSC may of course accompany the ALT Surveyor if it so chooses.

- (c) additional information about key areas of actual and traditional ownership, use and occupation by the Community and Village would better clarify the scope, resources and time allocations required for the Primary Field Investigation Visit to come; and
- (d) indications exist that there may be Community or Village disagreement with the request as filed such that a new application may be advised prior to the *Primary Field Investigation Visit*.

19. After a preliminary review of the application, in Consultation with the GLSC, GFC, PAC, and GGMC, the Ministry may determine that the *Advance Team Visit* is *not* necessary if none of the reasons above are present and/or it would only duplicate work that can be done remotely and/or be adequately completed with the resources and time periods scheduled for the *Primary Field Investigation Visit*.

- Primary Field Investigation Visit

20. The *Primary Field Investigation Visit* is led by the Ministry<sup>49</sup>, joined by representatives the GLSC, National Tshaos Council (“*NTC*”), where relevant one or more of the GFC, PAC, GGMC, and when implementing land applications under the ALT Project, the United Nations Development Programme (“*UNDP*”). Where interest is expressed, logistics will support, and the Indigenous Peoples’ Commission (“*IPC*”) and any national indigenous peoples organisation can self-fund, a representative of the IPC or said organisation may observe the *Primary Field Investigation Visits*.

- Notice and Prior Information

21. The Ministry will send to the Community or Village in question, at least two (2) weeks’ in advance, a notice of the *Primary Field Investigation Visit*. The Ministry and Community or Village will agree on the dates of the visit to ensure the maximum participation of the Amerindian people involved and preparedness of the Government delegation as well as the Community and Village. (For the avoidance of doubt, the *Primary Field Investigation Visit* involves exchanges and presentations with Village/Community members attending a general meeting).

22. All documents (copies of the initial request, maps for discussion, documents explaining the titling procedures (such as this Guideline), etc.) to be discussed in the meeting will be forwarded a minimum of two (2) weeks in advance of the scheduled visit to the Community or Village. As appropriate, these materials will be clearly marked as “drafts” to avoid misuse or misinterpretation.

### *Agenda*

23. The Community or Village will be informed of the proposed agenda of the meeting which will include, at a minimum, to:

- a. discuss their application;
- b. verify the Community or Village’s agreement with the lands requested;
- c. explain the titling procedure and answer questions and concerns about the same;

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<sup>49</sup> As indicated earlier, where titling is done through the ALT Project, the Ministry would lead the visit in coordination and with the support and participation of the ALT PM.

- d. examine the Community or Village's actual and traditional ownership, use and occupancy over the requested area;
- e. investigate and discuss any other rights and interests potentially overlapping their requested area; and
- f. commence an onsite field investigation to among other things, gather relevant GPS points of key geographic features, such as boundary points, needed for preparation of the Special Provisions Plan (this is obtained with the assistance in the field of knowledgeable Village/Community members).

The Community or Village may communicate additional agenda items to the Ministry, preferably in advance of the actual visit to ensure preparedness.

24. The Community or Village will be encouraged to make available to the visiting team those that have particular knowledge about the actual and traditional ownership, occupation and use of the lands and resources that fall within their grant or extension request. Individuals that may accompany the government team to verify points in the field will be authorized in writing by the respective Village or Community Councils.

#### *Information about the Titling Process*

25. At the start of the *Primary Field Investigation Meeting*, the Ministry will provide full details regarding how the Community or Village's request will be processed in accordance with the land titling process in Guyana. The information provided will include, at minimum:

- a. an affirmation that the Community and Village have rights to the lands they have traditionally owned, occupied or otherwise used or acquired;
- b. a full description of the land titling process from receipt of the request, to the Absolute Grant, demarcation, and Certificate of Title;
- c. the sequencing and legal difference between the Absolute Grant and Certificate of Title;
- d. the sequencing and difference between the Special Provisions Plan (hereinafter "*Grant Plan (map)*") and the Land Registration Plan (hereinafter "*Cadastral Plan (map)*");
- e. the Government's intended treatment of third party rights within the requested area;
- f. the respective responsibilities and intended contributions of the Government (the Presidency, each of its Ministries, and Commissions) and the Community or Village at each step;
- g. the activities that will require Community or Village Consultation and consent<sup>50</sup>; and
- h. the availability and accessibility of an Amerindian Land Titling Grievance Redress Mechanism (the "*ALT GRM*").

If an *Advance Field Visit* is done, at a minimum, the information about the titling process described in this paragraph should be done by the Ministry representative, and repeated at the start of the *Primary Field Investigation Visit*.

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<sup>50</sup> For the avoidance of doubt, Amerindian "agreement", "certifications", "consent" or "approval" to a Government action or document as referred to in this Guideline is the same as requiring "FPIC" unless otherwise stated.

### *Mutual understandings regarding the Way Forward*

26. Minutes signed by the authorized representatives of the Ministry and Village/Community, after being read out loud at the close of any Consultation with Stakeholders, will describe all key matters discussed, agreed upon, and left pending for further comment or action. In the case of the *Primary Field Investigation Visit*, these minutes will reflect the mutual understandings, at a minimum, around the following issues:

- a. the area requested;
- b. any underlying principles that may provide a foundation for future engagements (applicable standards, good faith, mutual respect, transparency, etc.);
- c. the process for revising the grant/extension request if needed;
- d. the way forward if an extension request is based upon prior demarcation errors;
- e. the schedule of the titling process (anticipated timelines and activities, future Consultations)
- f. the manner in which the Amerindians will participate in the investigation and further titling process (accompanying in the field; sharing knowledge of traditional ownership, use and occupation; joint mapping, surveys and demarcation; sharing of customary laws/land tenure systems, oral history, etc.)
- g. the process for sharing and verifying information about third party interests in the requested area and determining their future status;
- h. all activities that will require Community/Village Consultation and Consent;
- i. the Community and Village methods of decision making, particularly where consent, approval and agreement are required by this Guideline;
- j. the process to elaborate, secure and incorporate Community/Village views on the Investigation Report;
- k. methods to strengthen ongoing communication;
- l. any other matter deemed relevant to the parties.

*(\*Read the above together with paragraphs 14-15 of Part II of this Guideline (Stakeholder Engagement, Consultation and FPIC))*

### *Third Party Interests*

27. During the *Primary Field Investigation Visit*, representatives from the Ministry and relevant commissions will present one or more maps and corresponding explanatory indexes and descriptions identifying where third party rights and interests, including national protected areas and other Village or Community titling requests, may overlap the area under request. The Ministry will make every effort to ensure that all overlapping rights and interests are known, presented and explained during this Primary Field Investigation Visit. (Incomplete information may give reason for additional visits to ensure that Community and Villages are making informed decisions when reaching agreement on the Minister's decision per paragraphs 42 and 44 below.)

28. The Ministry and other Government representatives will discuss with the Villages and Communities any further measures that may be available or required to address and determine the status of third party rights and interests going forward.

### *Neighboring Villages and Communities*

29. Prior to the field visits, the Ministry will cross check other Amerindian applications in the area to assess the overlap potential. When it becomes known during the *Primary Field Investigation Visit* or earlier that the application describes lands that may share a common boundary at present or in the future with another Amerindian Village or Community or overlap claims with another Village or Community, the Ministry will:

- a. arrange Consultations with the neighboring Villages or Communities on the same;
- b. assess whether there are Village or Community applications that could be considered at the same time if processing in a particular sequencing might otherwise generate conflict;
- c. take steps to ensure proper notification is given to neighboring Villages and Communities to observe the survey and demarcation activities;
- d. determine if talks between and among Villages and/or Communities may be warranted and what, if any, assistance the Ministry or ALT GRM may provide to the same.

### *Grant Request Verification*

30. If during the *investigation*, it becomes clear that the application request is not verified by the Community or Village, but rather an amended application is requested, the Village or Community in question will convene a general meeting (if not then, at a later date) so that a resolution can be passed by two thirds of the Village general meeting authorizing the Village to make the revised application or at least two thirds of the adult members of the Amerindian Community to make the revised application for a Community.

31. As soon as a revised application is submitted, the Ministry will request the GLSC to prepare a new preliminary sketch plan (map) of the area, reflect it in the Geographic Information System (GIS) database, and immediately send the revised “shape file” depicting the new request area to all government ministries, agencies and commissions that may oversee activities in the area (leases, permits, concessions, protected areas, etc.).

### *Geographic features*

32. During the field visits, review of all maps and area descriptions, the parties will share their understandings about the specific names of key geographic features. To the extent permitted by law, efforts will be made to have the names as they appear in the Gazetteer of Guyana and, if different, as known by the Community or Village making the request and its Amerindian neighbors, noted and reflected in the final Absolute Grant, the Grant Plan (map), Cadastral Plan (map) as registered, and the Certificate of Title. Such efforts will ensure that that the whole public (including those living in the region) understands the boundaries in question and help to avoid future conflict.

### *Number of Field Visits*

33. In certain circumstances it may be the case that only the *Primary Field Investigation Visit* will be needed to gather the required information for preparing the Investigation Report and permit a decision by the Minister. However, additional Village or Community Consultations and field visits may be conducted as deemed appropriate or where agreed previously with the Village or Community. These

may be particularly warranted where, among others, outstanding information needs to be compiled, explained, or further agreed upon.

### *The Investigation Report*

34. A Provisional Investigation Report (including the latest sketch plan (map)) will be prepared by the Ministry no later than two (2) months from the Primary Field Investigation Visit or from the last onsite field investigation. The report will address all of the objectives of the investigation and the information collected per this Guideline, describe the Consultations to date, provide recommendations and attached the latest sketch plan (map) to be the basis of the future Grant Plan (map) accompanying the Absolute Grant.<sup>51</sup>

35. Upon completion, the Provisional Investigation Report will be shared with the NTC and all Ministries and Commissions that have participated in the investigation of the application in question, as well as the UNDP.<sup>52</sup> Each shall have a period of thirty (30) days to submit any comments, additions or objections. The Ministry will have four (4) weeks to make any revisions and then share the complete revised Provisional Investigation Report with the Community or Village in question. Unless otherwise agreed with the Community or Village, they will have six (6) weeks to prepare and submit in writing their own comments, additions or objections.

36. The Community or Village's *response* to the report will be affirmed through a written resolution made by two thirds of the Village or Community general meeting. During the six (6) week period the Community or Village also may request that the Ministry clarify and explain issues reflected in the report, including through an additional onsite visit if said issues cannot be resolved remotely.

37. The comments of the Community or Village will be fully reflected in the Final Investigative Report, or otherwise reconciled to their satisfaction. If reconciliations are not possible that are likely to affect the agreement required at paragraphs 42 and 44 below, the Ministry will initiate renewed talks with the Community or Village with the aim of resolving points of difference. The ALT GRM may also be triggered. If a resolution is not readily possible, the points of differences then will be reflected in the Final Investigation Report before being sent to the Minister.

38. A copy of the Final Investigation Report will be provided to all of the original recipients of the provisional report.

39. Investigation Reports that have not been shared with the NTC, relevant Commissions and subject Community or Village upon the adoption of this Guideline and which have not yet resulted in the issuance of an Absolute Grant, will be shared with these Stakeholders for information.

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<sup>51</sup> As agreement with the Community or Village will require the prior review of the proposed Absolute Grant and Grand Plan (map), *where possible*, it is recommended that the proposed grant and plan be attached to the Provisional and Final Investigation Reports.

<sup>52</sup> The report will be shared with the UNDP as long as the ALT Project exists and UNDP is involved in the same.

## **Ministerial Decision**

40. Based on the final investigative report as delivered to the Minister, and after discussion with the Community or Village and other relevant Stakeholders, the Ministry re-submits the preliminary sketch plan and description to GLSC indicating any changes to be made to the proposed boundaries.

41. The preliminary sketch plan and description are amended accordingly by the GLSC and returned to the Ministry, and will be shared with the relevant Stakeholders.

42. The Minister makes a decision on the Community or Village request:

a. If, in the view of the Minister, the application is straight forward and s/he proposes to approve the request without change, the Minister's decision is submitted to the Cabinet Sub-Committee on Amerindian Affairs and Natural Resources for no-objection.

b. If the application is not straight forward and further negotiations are required, the Minister will commence negotiation with the Community or Village. Once negotiations are completed and an agreement is reached between the Ministry and the Community or Village in question, the Minister's decision is submitted to the Cabinet Sub-Committee on Amerindian Affairs and Natural Resources for no-objection. If the decision results in a new sketch plan being prepared that plan is shared with the relevant Stakeholders.

c. The agreement mentioned in sub-section (b) above will be secured in accordance with Part II of this Guideline (*Stakeholder Engagement, Consultation and FPIC*). Before agreement is reached, the Ministry will ensure that the Community or Village has a copy of the proposed Absolute Grant and the Grant Plan (map), and an identification and description of all third-party interests that will reduce the area they requested.

d. Once the Minister's decision is made with agreement of the Community or Village, the Minister will take reasonable efforts to have it put before and decided upon by the Cabinet within a period no greater than two (2) months.

43. Under Section 62 of the Amerindian Act, the Minister will make a decision within six (6) months of the investigation being completed. The Minister will decide if the request, in whole or part, reflects the Property Rights of the Amerindian Community or Village in question. In making a decision the Minister:

(a) shall take into account all information obtained in the investigation, including the information listed in and gathered per Paragraphs 11 and 12; and

(b) consider the extent to which the Amerindian Village or Community has demonstrated a physical, traditional, cultural association with or spiritual attachment to the land requested.

44. If there is no agreement between the Ministry and the Community or Village in question, or if agreement is reached but the Cabinet then objects and the Minister proposes a new decision, the Ministry will initiate renewed talks with the Community or Village with the aim of reaching agreement and resolving points of difference. In the case where the Minister proposes a new decision, a written explanation providing clear reasons for the new decision and the information and materials relied upon,



will be provided to the Community or Village in question. In the end, if agreement is not readily possible, the ALT GRM may also be triggered.

### III. ISSUANCE OF THE LAND GRANT

45. Upon receiving the consent of the Community or Village, the Minister will forward the grant decision to the President for signature pursuant to the State Lands Act. Section 63(1) of the Amerindian Act states that: “If an application is approved, title shall be granted under the State Lands Act”.

46. Under the State Lands Act, Section 3, the President may make absolute or provisional grants of any State lands of Guyana, subject to such conditions as he thinks fit or as are provided by the regulations for the time being in force. The regulations to the State Lands Act also specifies that the issuance of a grant of State lands requires that the tract of land being granted must be surveyed by a Sworn Land Surveyor (Section 18(1)), unless the area has previously been surveyed (Section 19(1)) or if the land is bounded by creeks or other well-defined limits (Section 19(2)).

### IV. SUMMARY OF TITLING PROCESS

47. In practice, the criteria and procedures described above mean that the granting of title to Amerindian lands (whether an initial grant or an extension request) involves four distinct steps:

- a. Preparation of a Grant Plan under the (Surveys) Special Provisions Act.
- b. the issuance of an Absolute Grant of land by the President to the Community (in the case of an initial request) or Village (in the case of an extension request);
- c. the conduct of a participatory cadastral survey and demarcation of the granted lands; and
- d. the subsequent issuance of a Certificate of Title to the Community or Village.

#### **Absolute Grant**

48. The issuance of an **Absolute Grant** involves the following procedures:

- a. The Minister makes a final decision on the Community or Village request (following the process described herein).
- b. The Minister writes to the GLSC requesting that the Absolute grant be prepared.
- c. A Special Provisions Plan (which is a map produced from aerial photography and using existing records) (the “Grant Plan (map)”) and the Absolute Grant, are prepared by GLSC.
- d. The Commissioner of Lands and Surveys endorses the Grant, which is then sent to the Office of the President for his/her signature.
- e. The Absolute Grant, along with a certified copy of the Grant Plan (map), is then issued to the Community or Village by the President at no cost.
- f. Under Section 63(2) of the Amerindian Act, in the case of a Village, title is granted to the Village Council to be held for the benefit of the Village. In the case of an Amerindian Community, the Minister shall by order establish a Village Council to hold title on behalf of the applicant Community, and upon the grant of a title the Amerindian community becomes a Village. (63(3))
- g. The Village and Community are encouraged to: maintain its copy of the grant and plan, ensure its understanding among all Village and Community members, and ensure that it is handed over from one Village Council to the next.

h. The plan referred to in the Absolute Grant shall be the plan to be used by all relevant Stakeholders prior to demarcation. This information will be communicated to the villages.

### Cadastral Survey and Demarcation

49. The conduct of the Cadastral<sup>53</sup> survey and Demarcation involves the following procedures:

- a. After having received an Absolute Grant from the President, upon approval made by two thirds of a general meeting, the Village may request to have their lands surveyed and demarcated (physical marking placed on the boundaries of their land). While demarcation is optional, demarcation is required before the Village can receive a Certificate of Title.
- b. The Village writes to the Ministry requesting that their lands be demarcated.
- c. The Ministry will initiate the survey<sup>54</sup> and demarcation process within a period of three (3) months from the receipt of the request.<sup>55</sup>

▪ *Ministry coordinates with GLSC<sup>56</sup>*

- d. To initiate the process, the Ministry writes to the GLSC to inform them of the request and that funds have been allocated for the surveying<sup>57</sup>, and ask that the process for surveying commences.
- e. GLSC advertises for surveyors<sup>58</sup> or uses in-house surveyors.<sup>59</sup>
- f. A surveyor is contracted to conduct the cadastral survey.
- g. The GLSC advises the Minister of the contractor's readiness to commence the survey.

▪ *Consultation before Survey and Demarcation*

h. Prior to the mobilization of the survey team to the Village, and with at least two (2) weeks prior notice, the Ministry -- together with the head of the intended GLSC surveyor team and —if

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<sup>53</sup> Wherever mention is made of cadastral survey it is understood that the relevant Village or Community participates in such survey.

<sup>54</sup> These criteria and procedure assume the Government is taking the lead to secure the survey and demarcation. This is without prejudice to the continuing right of the Amerindian Village, now in possession of an Absolute grant over private (and not State) lands, to take the initiative and hire its own private contractor to conduct the survey and demarcation activities.

<sup>55</sup> Demarcations not already financed under the ALT Project may require a budget request before the legislator, prolonging commencement.

<sup>56</sup> Subsection 49 (d) thru (g) do not apply if the Community or Village chooses to use a private surveyor instead of soliciting demarcation from the Government.

<sup>57</sup> An estimate of the survey team costs as well as a breakdown is requested by the Ministry so that a contract agreement can be signed between the Ministry and GLSC (or if titling is done through the ALT Project, among the Ministry, GLSC, and UNDP).

<sup>58</sup> Under the Land Surveyors Act, surveying of the land must be done by a Sworn Land surveyor in Guyana (i.e. certified by the Board of Examiners in Guyana).

<sup>59</sup> If the GLSC informs the Ministry that it lacks the capacity at the time to commence the survey, the Ministry can employ a private surveyor with the GLSC providing supervision and certification of the survey.

demarcation is being done through the ALT Project, the ALT surveyor— will hold a Consultation with the Village to discuss the cadastral survey and demarcation process.<sup>60</sup> The delegation will:

1. explain how the Absolute Grant and Grant Plan (map) will be the basis upon which the survey and demarcation is carried out, specifically in the identification of the relevant boundaries;
2. inform the Village that a surveyor has been selected to conduct the survey and identifies the surveyor(s) intending to visit the Village to conduct the survey and demarcation;
3. explain how the survey team has been instructed to address the presence of other interests within the requested area (whether they have been instructed to survey and demarcate around them thereby excluding them from the eventual Cadastral Plan and Certificate of Title, or whether they have been instructed to include them in the final title);
4. explain that a cadastral survey is carried out in accordance with the State Lands Act, the Land Surveyors Act, the Land Registry Act, and any other Act which may be relevant, and in accordance with GLSC's standard operating procedures;
5. reach mutual understandings with the Village about the specific names of key geographic features found on the map and relevant for the survey and demarcation (to the extent permitted by law, the names as they appear in the Gazetteer of Guyana and as known by the Village (if different), and its Amerindian neighbors (if applicable), will be noted and reflected in the final Cadastral Plan (map).
6. standard operating procedures for surveying and demarcating will be explained, for example:
  - (a) if all or part of the area is bounded by creeks or other natural or well-defined boundaries, it is not necessary to demarcate these stretches of the boundary;
  - (b) if the area lies on an international border, a buffer zone of 300 yards along the border must be observed;
  - (c) if a boundary is not accessible, a paal (marker) may be placed in its proximity and the Cadastral plan will state the direction and distance away from the true position; and
  - (d) the specific treatment under the law of navigable rivers in any State Land Survey where applicable.

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<sup>60</sup> This provision assumes that the Amerindian Village or Community has requested the Government to conduct the demarcation and has not hired a private surveyor, which is their right.

▪ *Prior Information to Neighbors*

i. The Ministry by letter will also inform neighboring Amerindian Villages and Communities in advance of the intended survey and demarcation exercise, especially those that currently share, or may share, a common boundary with the lands to be surveyed and demarcated or otherwise have an overlapping claim. If such Villages and/or Communities exist, they will be invited to send one or more representatives to observe the activities.

▪ *Village Participation in Survey and Demarcation Activities*

j. At least three members of the Village are employed as part of the team that conducts the cadastral survey and demarcation. The Village Council will authorize in writing the Village members designated to assist and advise in these activities.

k. Prior to the survey team's departure, unless another decisionmaking mechanism is identified by the Village, the Village Council will place in writing the Village's approval, as confirmed by resolution of two thirds of a Village general meeting, of the survey and demarcation exercise that has just taken place. The approval (or objection in whole or part) will be scanned and attached to the Cadastral Plan.

▪ *Next steps*

l. Upon completion of the cadastral survey as approved by the Village, the Ministry and survey team will return to their offices and the GLSC will finalize a Land Registration Plan ("Cadastral Plan (map)"), which is a map showing the accurate boundaries of the area after demarcation and recorded at the GLSC.

As this plan is more precise and may now differ from the Grant plan previously accompanying the Absolute Grant and reviewed by the Village, the Cadastral Plan (map) must be endorsed by written resolution made by two thirds of a Village general meeting .. A copy of the written resolution will be transmitted by the Village Council to the Ministry and GLSC.

50. If the Village consent to the Cadastral Plan (map) is not forthcoming, the Ministry will initiate renewed talks with the Village with the aim of reaching agreement and resolving points of difference. If a resolution is not readily possible, the ALT GRM may also be triggered.

**Certificate of Title upon completion of the Cadastral Plan**

51. The issuance of the Certificate of Title involves the following procedures:

- a. A first registration letter is prepared by the Cadastral Section of the GLSC,<sup>61</sup> and sent to the Ministry for the Minister's signature. This letter indicates that the Absolute Grant and Grant Plan (map) will be lodged with the Registrar of Lands under the Lands Registry Act, in order to be replaced with a Certificate of Title and the Cadastral Plan (map).
- b. The Ministry adopts the letter and sends it to the Registrar of Lands for preparation of the Certificate of Title.

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<sup>61</sup> Under Section 46 of the Land Registry Act Cap. 5:02.

- c. The Registrar of Lands prepares the Certificate of Title, based on the Cadastral Plan (map), in favour of the Village Council, and sends it to the Ministry.
- d. The Certificate of Title is issued to the Village by the Ministry along with a certified copy of the Cadastral Plan (map) at no cost.
- e. The Village is encouraged to: maintain its copy of the Certificate of Title and Cadastral Plan (map), ensure its understanding among all Village members, and ensure it is handed over from one Village Council to the next.
- f. The final Plan is shared with relevant Stakeholders (in shape file format).

## **V. DISPUTE RESOLUTION**

52. There may be cases in which the Community or Village and the Ministry cannot come to an agreement on the area of land that the Community or Village can reasonably request title to.

53. A Village or Community may address its grievances to the Amerindian Land Titling Grievance Redress Mechanism (“*ALT GRM*”) and in doing so, request mediation or facilitation, as well as maintain available all other existing rights to redress that may exist (i.e. the GLSC Dispute Resolution Committee; the Ombudsman’s office; project/institutional mechanisms (i.e. UNDP Stakeholder Response Mechanism); and other judicial or administrative measures available within Guyana). The Amerindian Act also makes provision for judicial settlement.

54. The Amerindian Act makes provision for a Community or Village to challenge the decision of the Minister, under Article 64 which states:

- a) “An Amerindian village or community which is dissatisfied with the Minister’s decision [...] may apply to the High Court for review of the decision”.

## PART II

### **STAKEHOLDER ENGAGEMENT, CONSULTATION AND CONSENT (FPIC) FOR THE AMERINDIAN LAND TITLING PROCESS**

1. The following provides a Guideline for carrying out continuous Stakeholder Engagement as part of the process of titling Amerindian lands in Guyana. It assumes --building upon the Stakeholder engagement plan identified at the commencement of the Amerindian Land Titling ("ALT" Project -- that relevant Stakeholders have already been identified, and additional Stakeholders may be added as each grant application and its relevant land area are reviewed and new Stakeholders are identified.
2. This Guideline has as its purpose the development of good faith Consultation processes with Stakeholders as well as Free Prior and Informed Consent ("FPIC") processes with Amerindians.
3. Where the Ministry of Indigenous Peoples' Affairs ("*Ministry*") is not leading or otherwise present in a given Stakeholder Engagement, Consultation or FPIC process, but rather one or more other Government of Guyana ("*Government*") ministries, commissions or agencies, this Guideline and the requirements herein still apply. The responsibility for Stakeholder Engagement, Consultation and FPIC is a State duty and obligation and as such, all ministries, commissions and agencies will follow this Guideline when engaging Stakeholders on matters related to Amerindian land titling.

#### **I. DEFINITIONS**

4. For purposes of this Guideline, the following definitions will apply:

*"Stakeholders"* mean those groups that have a stake/interest/right in the land titling process and those that will be affected either negatively or positively by land titling activities.

*"Stakeholder Engagement"* is a duty and obligation of the State and involves fostering a continuous process of transparency and information exchanges whereby meaningful and effective participation of Stakeholders is guaranteed throughout the lifetime of the titling process.

*"Consultation"* is a duty and obligation of the State whereby transparent engagements are conducted in good faith with those Stakeholders that may be affected by Amerindian land titling process and carried out with the objective of reaching agreement. Where conducted with Amerindians, such Consultations are carried out in a culturally appropriate manner and respects the norms, values and customs of the peoples in question.

*"Free, Prior and Informed Consent"* or *"FPIC"* is a duty and obligation of the State whereby through transparent and good faith Consultations, FPIC must be secured from Amerindians on any matters that may affect their rights and interests, lands, resources, territories (whether titled or untitled to the people in question) and traditional livelihoods of the indigenous peoples concerned. This includes any

activities related to the Amerindian titling process that will determine the extent to which Amerindians will maintain interest in lands they have traditionally owned, occupied and used.

## II. STAKEHOLDER ENGAGEMENT

5. As Stakeholder Engagement is not just a one off-process, the Ministry and all ALT GRM Liaison Institutions<sup>62</sup> will work continuously, individually and collaboratively, to identify methods, measures, and key moments related to the process of titling Amerindian lands where the sharing and collecting of information and opinions among Stakeholders can be maximized and the awareness of this Guideline can be increased (including through the use of the ALT's Communication Strategy).

6. While the primary beneficiary of the land titling process is Amerindian Communities and Villages, these are not the only Stakeholders. The Stakeholders include the various Government ministries, commissions and agencies, as well as interested third parties such as the National Tshaos Council ("NTC"), other Amerindian non-profits and civil society organizations, miners, forest producers, farmers and other private holders of rights and interests that may be contiguous to or overlap the area subject to the Amerindian application request.

7. As a start, to inform all interested Stakeholders, within two (2) weeks of the Guyana Lands and Survey Commission ("GLSC") completing the preliminary sketch plan (map) requested by the Minister, the Minister of Indigenous Peoples' Affairs ("Minister") will also publish a notice of the intention to process an application in a national newspaper for three (3) consecutive Saturdays.

### ▪ Government Stakeholders

8. The Ministry will work with the relevant Government Stakeholders to ensure that mechanisms are in place to allow for increased Consultation among and between them.

9. Government Stakeholders will share with each other relevant information about existing and pending (as applied) State and third party interests or rights in the areas that are subject to land applications received from Amerindian Villages or Communities. Such sharing will make it possible for the GLSC and Ministry, respectively, to eventually produce and present to the Community/Village a single map reflecting all third-party rights and interests (including protected areas) along with a combined set of explanatory indexes and descriptions. (While a single map is preferred, where the overlapping interests and claims are too extensive and representation in a single map would reduce, rather than increase clarity, the presentation of more than one map will be expected).

10. The Ministry will ensure that the provisional Investigation Report is submitted in advance to the Government Stakeholders to secure their comments and proposed revisions. A final report will be copied to each.

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<sup>62</sup> Defined by Part III of this Guideline as the Ministry, MNR, GFC, GGMC, GLSC, PAC, IPC, NTC and the UNDP.

11. The Ministry and GLSC will particularly coordinate regularly and take the necessary measures in Consultation, one with the other, to ensure that updated "shape files" are entered into the nation's GIS system depicting the lands subject to Amerindian Community and Village applications. Where there are subsequent revisions made to land applications (whether arising from Consultations conducted during field investigations or through the receipt of new Amerindian Community and Cillage grant applications), the GLSC will update the GIS and GLSC will notify the relevant Government offices within no less than thirty (30) days. This is to facilitate planning in those areas within the GLSC and the other respective ministries, commissions and offices (at a minimum, Ministry of Natural Resources ("MNR"), Guyana Geology and Mines Commission ("GGMC"), Guyana Forestry Commission ("GFC"), and Protected Areas Commission ("PAC").

▪ Private Stakeholders

12. The Ministry will ensure that it will budget for and schedule in time to meet with private Stakeholders affected by each land application (whether during an *Advance Field Visit*, *Primary Field Investigation Visit* or separate meeting). Efforts will be made to contact such Stakeholders with the assistance of other Government institutions that may already be engaging these individuals or groups, as well as organizations and civil society groups that may represent their interests regionally or nationally (forest producer associations, agricultural unions, mining associations, etc.).

13. Where the Government of Guyana is considering lease/permit/concession cancellations, relocations, or non-renewals of existing third party rights or interests, during Consultations the Private Stakeholders will be apprised of their rights and options, engaged directly on the applicable processes and timelines, and informed of the availability and accessibility of the Amerindian Land Titling Grievance Redress Mechanism ("ALT GRM").

**III. GOOD FAITH CONSULTATIONS**

▪ Basic elements

14. To ensure the proper carrying out of good faith Consultation processes with Stakeholders --whether conducted by or through the Ministry or any other ministry or commission that may be engaging Stakeholders on matters related to the Amerindian lands titling process—the Government of Guyana will:

- a) Actively consult with the relevant Community, Village or other Stakeholders throughout the process of titling.
- b) Ensure in a transparent manner that all relevant information is available in a language and a format that are easily understood within sufficient time periods to allow for comprehensive review and consideration.

*This may require, among others, the use of translation and interpretation services, oral summaries of complex written information; technical assistance, as well as an activity timeline that accommodates the necessary periods for the transmission of notices, agendas, and documentation, as well as decision-making.*



c) When Communities/Villages are involved, conduct Consultations in a manner that is culturally appropriate and consistent with the customs and traditions of the Amerindians in question.

*To ensure such Consultations, the following checklist will be discussed: (i) their forms of decision making consistent with their customs and traditions (including how decisions are made and who has the authority to make decisions); (ii) language; (iii) literacy rates; (iv) preferences/needs in terms of effective means of communication (written, oral, pictorial etc.); (v) identification of Community/Village elders or other individuals designated by the Community or Village to share information about their lands; (vi) need for technical assistance to facilitate understanding of critical maps and documents; and (vii) other cultural protocols, customs and practices around Community/Village information sharing, negotiations and decision-making that may affect exchanges (i.e. access to vulnerable populations, protocols for engaging certain individuals (women, shamans, etc.), or discussing certain topics (i.e. sacred sites and rituals).*

d) Maintain constant communication, including through regular updates on the status of a titling activity and establishment of methods for receiving inputs and providing prompt feedback.

*Consultations shall identify individuals responsible for communicating for each of the parties involved and the best format to reach said individuals.*

e) Provide at least two (2) weeks' notice of all proposed Consultations to the Stakeholder in question identifying the purpose of the Consultation, the anticipated participants, and notice of any available funds to assist Stakeholders in convening their meeting and/or gathering their relevant constituencies and/or members.

f) Ensure *informed* Consultation through the prior provision of relevant information (material describing Guyana's titling process, maps, applications requests, Ministerial decisions, details about third party rights and interests and their status going forward, potential overlapping claims of others (including other Villages and Communities), investigative reports, etc.).

*The Ministry will provide all physical materials to be presented during the Consultation at least two (2) weeks in advance (this should include background material on the titling process, a copy of applications received, the proposed agenda, and all maps and other relevant documents (where materials such as maps are only in "draft" form, they will be marked as such to avoid misuse or misinterpretation in the future)).*

g) Track and log each Consultation along with its outcome document (the latter to be shared with all participating parties).

*The Government will maintain a record of every Consultation (time, location, identification of parties in attendance, copy of Minutes and any other relevant Outcome Document). Unless otherwise agreed with the Stakeholders in question, if the Ministry is present in Consultations related to the titling of Amerindian lands, it shall be responsible*

*for maintaining the record and elaborating Minutes to be reviewed and signed before the close of the meeting. Beneath the phrase “affirmed as true and signed freely by the parties”, the authorized representative for each of the participating parties will make their mark.*

*Minutes will be prepared for all Consultations including those attached to all field visits, surveys, demarcation and other FPIC activities.*

*Such Minutes, at a minimum, will include a description of all key matters and timelines discussed, agreed upon, and left pending for further comment or action. These include the mutual understandings reached on the matters listed in Paragraph 15 below.*

*Where the Consultations are with Communities or Villages, it will be confirmed that the Village Toshiaw or the head of the Community Council is the authorized representative for signing the Minutes unless the Community or Village designates otherwise.*

*Copies of all Minutes and any other outcome documents concluded during the meeting will be sent to the Village, Community, and other participating Stakeholders no later than two (2) weeks after the close of meeting.*

▪ **Pre-Consultation: Mutual Understandings with Stakeholders**

15. The Government should reach mutual understandings with the Stakeholder, no later than during the *Primary Field Investigation Visit* and prior to engaging in comprehensive Consultations. These mutual understandings will be reflected in the Minutes and will address, at a minimum, the following issues:

a) Identify the issues to consult upon (as known at that stage), and periodic mechanisms to update these issues depending on changing circumstances. In the case of engaging Amerindians on the processing of land titles, Consultations will be required, at a minimum, in the context of:

*(i) verifying the grant application request;*

*(ii) conducting any field investigation visits (Advance Field Visit, Primary Field Investigation Visit, or other);*

*(iii) surveying the lands in question (which will also require Amerindian participation);*

*(iv) demarcating the lands in question (which will also require Amerindian participation);*

*(v) preparing and completing the Ministry's Field Investigation Report;*

*(vi) carrying out all activities that will eventually require FPIC (identified below); and*

*(vii) any other activity as identified through agreement between the Government and Amerindians in question.*

b) where Consultations are with Amerindians, identify the activities that will require FPIC. At a minimum, the relevant Amerindians Community or Village will need to give prior approval to the following:

- (i) the Minister's decision on the grant application before submission to the Cabinet;*
- (ii) any subsequent change to the Minister's decision before submission to the President (i.e. per suggestions by the Cabinet or other);*
- (iii) Commencement of Surveying and Demarcation;*
- (iv) the Completed Survey and Demarcation exercise;*
- (v) the proposed Final Cadastral Plan before submitted for registration; and*
- (vi) any other activity as identified through agreement between the Government and Amerindians in question.*

c) Define the schedule of the titling process (anticipated timelines and activities, future Consultations, etc.);

d) Discuss who needs to participate in various Consultations;

*Not all Stakeholders must be included in every Consultation (a Village may say only the Village Council or a specific Village land team need participate).*

*Stakeholders also may wish to be consulted separately (i.e. first with Amerindian Villages and in a different meeting with forest producers or miners)*

e) Identify who has the authority for each Stakeholder to negotiate, make recommendations and express agreement. Where Consultations are with Amerindians, identify the decision-making customs and practices of the people. (See also Section IV (FPIC) below).

f) Agree on methods of information disclosures depending on scale and complexity of project, diversity of Stakeholders and cultural appropriateness.

*The Government and Stakeholders will need to factor into the budget and logistics the fact that sometimes simple communications and the sending of physical documents are made difficult by existing infrastructure. For this reason, Stakeholders will cooperate and whenever possible, assist the Ministry and each other in the transmission of information.*

*Recognizing the challenges, Stakeholders will make efforts to be creative where necessary and increase their use, as necessary, of one or more of the following methods identified as available in Guyana (not an exhaustive list): radios; Jet boats and flights to the interior; Ministry CDOs; Ministry database of communities/villages; Toshao phone numbers and emails; walk-ins to the Ministry; local offices of GGMC, hinterland offices GFC, PAC, and GLSC; Regional Democratic Council (RDC); communication networks and*

*relay systems of Stakeholder NGO/CSOs, and association, local/regional newspapers; the Gazette, and points of community gatherings such as church services and schools.*

g) Determine the capacity needs of Stakeholders to ensure full, effective, and meaningful participation in Consultation processes.

*Identify if there are needs for technical expertise, mechanism to address those that are not literate, possible resources for Villages or organizations to inform and consult within their membership, etc.*

*Clarify special measures, if needed, to ensure that women, minorities, young, elderly, disabled, and vulnerable populations will be able to participate (i.e. scheduling meetings to avoid conflict with harvest times, obstacles to movements during the rainy season, meeting locations that maximize access and attendance).*

h) Determine (if known at the time), whether there may be a need in future Consultations for the involvement of other individuals or institutions in the process.

*This could mean the addition of a Government institutions not currently present (i.e. the MNR, the Ethnic Relations Commission), independent observers, a holder of a third party right or interest with whom discussions would be helpful, as well as representatives of neighboring Amerindian Villages or Communities.*

*This Guideline has clarified that where neighboring Amerindian Villages or Communities may have potentially overlapping rights and interests with the applicant, including but not limited to common boundaries, overlapping claims, and shared resource use areas, measures must be taken to ensure that they are properly consulted at all relevant times (preferably together, or separately if that is the only way).*

*It is further acknowledged that every Stakeholder also has a right to bring to a Consultation their designated technical or legal advisor.*

i) Discuss if a Mediator or Facilitator is needed.

*A Mediator typically has more authority than a Facilitator and is therefore more active in the process, but in both cases, the appointment of the expert and their terms of reference would be agreed to by the parties.*

j) Discuss methods for securing participatory evaluations of the Consultations and Stakeholder Engagements to assess for improvements.

*This may include, for example, receiving feedback at the end of Consultations from participants, fostering communications directly with members of the Representative Platform.*

#### IV. FREE, PRIOR AND INFORMED CONSENT

16. FPIC is an outcome that begins with Consultations and ends with evidence in writing of an agreement or if agreement is withheld and there is no consent, the conclusions of the FPIC process (the "*Outcome Document*"). Consequently, the requirements of Paragraphs 14 and 15 apply to all FPIC processes because all FPIC processes are also Consultations.

17. Amerindian land titling activities that may adversely affect the existence, value, use or enjoyment of indigenous lands, resources or territories shall not be conducted unless agreement has been achieved through the FPIC process. The activities requiring the prior approval of the Amerindians in question have been listed above in Paragraph 15(b) above.

18. Where FPIC is required, the following will also apply:

##### *a. Free*

'Free' refers to a process that is self-directed by the Village or Community from whom consent (FPIC) is being sought, unencumbered by coercion, expectations or timelines that are externally imposed. To guarantee that the Village/Community FPIC is given freely, all conditions that might otherwise create an environment of duress or coercion will be prohibited. This includes but is not limited to: unauthorized contact with Village/Community members, bribes, intimidation and inducements, rushed decision-making, and assertions that no money will be available if the Community or Village does not approve of the activity or requires more information or time for decision making.

Wherever possible and consistent with Applicable Law, the Government recognizing that the threat of awards of *new* grants, licences, permits, leases and concessions to third parties creates undue pressure on the Communities and Villages, the Government ministries and commissions overseeing such awards will endeavour to implement measures to relieve that pressure in areas known to be under applications or otherwise set aside for Amerindian Villages.

##### *b. Prior*

'Prior' means consent is sought sufficiently in advance of the commencement of an activity, prior to its finalization and/or submission as final, whichever the case may be. Prior implies that adequate time is provided for the Community or Village to receive, understand, and analyse information on the matter requiring their prior consent. The amount of time required will depend on, among others, the complexity of the information, the capacity and the decision-making processes of the respective Community or Village. These are matters to be discussed with the Community and Village during the first meeting with the Government (per Paragraph 15 above).

c. *Informed:*

'Informed' refers mainly to the nature of the engagement and type of information that should be provided to the Community or Village prior to seeking their consent. Information should:

- (i) Be accessible, clear, consistent, accurate, constant, and transparent.
- (ii) Be delivered in appropriate language and culturally appropriate format (*for example, if only a few Villagers read, emphasis must be on oral and pictorial descriptions as well as the possible need for repetition and reinforcement*).
- (iii) Be objective, covering both the positive and negative potential of a particular decision or activity requiring consent (*i.e. consequences of approving a decision on a land application that excludes a protected area should be explained and understood, as should the benefits of accepting demarcation so that a certificate of title can be secured*).
- (iv) Be complete, covering all relevant information (*see paragraphs 42 and 44 in Part I above*)
- (v) Reach the maximum number of Community and Village members (*this may require assistance to the Village Councils and Community leaders, whenever possible within resource constraints*).
- (vi) Be provided on an ongoing and continuous basis throughout the FPIC process (*where Consultations have produced questions requiring subsequent clarifications, or draft maps requiring updating, the Government should take steps to maintain communications throughout the process*).

d. *Decision-making*

The Amerindian Act does not *expressly* address how decisions are to be taken by the Community or Village on all FPIC matters described in this Guideline.<sup>63</sup> As a part of the Consultation and FPIC processes, the Amerindian Community or Village will explain to the Government its customary forms of decision-making, if any (see Paragraph 14(c) above). For purposes of FPIC under this Guideline, unless otherwise specified by the Community or Village at the onset of Consultations (see paragraph 15(e) directly above), consent will be evidenced through a

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<sup>63</sup> The Amerindian Act (2006) expressly requires a decision by 2/3 of the Village Assembly (Village) or the adult members of a Community in cases of: adoption of a Village rule or amendment (Sec. 15); consent to miners who wishes to carry out mining activities on Village lands or in any river, creek, stream or other source of water within the boundaries of Village lands (48(1)); consent to a person (not a resident) who wishes to use forest produce from Village lands shall (55); and Village applications for an extension (59) or Community applications for a grant of State Land (60).

resolution approved by two thirds (2/3) of the Village or Community general meeting, provided that, at all times, there will be full respect and accommodation for:

- (i) the Community or Village's customary forms of decision-making that lead up to the general meeting;
- (ii) the Village Council's right to determine quorum, entitlement to vote (eligibility) and voting procedures;<sup>64</sup>
- (iii) the Village's right under the Act, to decide to take decisions not expressly set aside for the 2/3 vote on the basis of consensus or majority vote of all votes cast<sup>65</sup>; and
- (iv) agreements between the Ministry and Community or Village for alternative decision-making within the Village or Community.

f. *Outcome Document*

Community or Village consent on the matters identified as requiring FPIC must be evidenced in writing. This can be satisfied in the form of the resolution approved by the Village or Community general meeting if in writing; or a written agreement between the Government and the Community or Village. The resolution and the agreement between the parties must both clearly describe the matter being approved along with any limitations or conditions to the same.

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<sup>64</sup> Amerindian Act (2006), Sec. 34(8).

<sup>65</sup> Amerindian Act (2006), Sec. 34(1) & (2) the Act does provide that the collective rights of a Village (i.e. Property Rights) are exercised by the Village and all decisions required to be made under the Act, but not expressly set aside for a 2/3 vote by the Act, are to be made per a Village general meeting in an emergency meeting or a meeting set with at least fourteen (14) days prior notice, acting by consensus, and if consensus cannot be achieved, on the basis of the majority of votes cast. (34(3)(4) (5) & (6)).

## PART III

### **GRIEVANCE REDRESS MECHANISM (GRM)** **FOR THE AMERINDIAN LAND TITLING PROCESS**

There will be established an Amerindian Land Titling Grievance Mechanism (“*ALT GRM*”).

#### **I. Mandate**

The mandate of the ALT GRM will be to:

- (i) receive and address any concerns, complaints, notices of emerging conflicts, or grievances (collectively “*Grievance*”) alleging actual or potential harm to affected person(s) (the “*Claimant(s)*”) arising from the titling of indigenous peoples’ lands, resources and territories<sup>66</sup>;
- (ii) assist in resolution of Grievances between and among Stakeholders to the Amerindian land titling process – including, but not necessarily limited to the direct Beneficiaries, the indigenous peoples themselves; as well as the various government ministries, agencies and commissions, Amerindian CSOs and NGOs, and other natural resource users (collectively, the “*Stakeholders*”);
- (iii) Conduct itself at all times in a flexible, collaborative, and transparent manner aimed at problem solving and consensus building.

#### **II. Functions**

The functions of the ALT GRM will be to:

- (i) Receive, Log and Track all Grievances received;
- (ii) Provide regular status updates on Grievances to Claimants, ALT GRM Liaison Institutions and other relevant Stakeholders, as applicable;
- (iii) Engage the Ministry of Indigenous People’s Affairs (“*Ministry*”), ALT GRM Liaison Institutions (defined at section IV below) and other relevant Stakeholders in Grievance resolution;
- (iv) Process and propose solutions and ways forward related to specific Grievances *within a period not to exceed sixty (60) days* from receipt of the Grievance;
- (v) Identify growing trends in Grievances and recommend possible measures to avoid the same;
- (vi) Receive and service requests for, and suggest the use of, mediation or facilitation;
- (vii) Elaborate bi-annual reports, make said reports available to the public, and more generally work to maximize the disclosure of its work (including its reports, findings and outcomes);
- (viii) Ensure increased awareness, accessibility, predictability, transparency, legitimacy, and credibility of the GRM process;

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<sup>66</sup> For purposes of this ALT GRM, titling of indigenous peoples’ lands, resources and territories means the process that begins with a Community or Village request, the investigation, issuance of an Absolute Grant, survey and demarcation, through to final issuance by the Government of Guyana of a Certificate of Title.



- (ix) Collaborate with ALT GRM Liaison Institutions (*defined below*) and other NGOs, CSOs and other entities to conduct outreach initiatives to increase awareness among Stakeholders as to the existence of the ALT GRM and how its services can be accessed;
- (x) Ensure continuing education of ALT GRM staff and ALT GRM Liaisons and their respective institutions about the relevant law, policy and Amerindian issues that they will need to be aware of to participate in the development of effective resolutions to Grievances likely to come before the GRM; and
- (xi) Any additional activities the ALT GRM Monitoring Team instructs and for which required funding is available.

### III. Composition

The ALT GRM will be composed of:

- (a) one and a half staff members: The ALT GRM Director (*“Director”*) and the ALT GRM Secretary (*“Secretary”*) (part-time) hired by the UNDP during the life of the Amerindian Land Titling (*“ALT”*) Project and then by the ALT GRM Monitoring Team designated below at section XIV), in accordance with the terms of reference drafted by the United Nations Development Programme (*“UNDP”*) and approved by the ALT Project Board;
- (b) three (3) ALT GRM Liaisons appointed from the following institutions: the Ministry, Guyana Lands and Survey Commission (*“GLSC”*), and the National Tshaos Council (*“NTC”*) --with the other liaisons listed at section IV below being co-opted when the Grievance submitted so requires it (their respective institutions responsible for remuneration, if any).

### IV. ALT GRM Liaisons

Each of the following institutions (collectively, the *“ALT GRM Liaison Institutions”*) listed below will appoint a liaison to the ALT GRM (the *“ALT GRM Liaisons”*) from within their own existing staff:

- (i) Ministry;
- (ii) Ministry of Natural Resources (*“MNR”*);
- (iii) Guyana Forestry Commission (*“GFC”*);
- (iv) Guyana Geology and Mines Commission (*“GGMC”*);
- (v) *GLSC*;
- (vi) Protected Areas Commission (*“PAC”*);
- (vii) Indigenous Peoples Commission (*“IPC”*);
- (viii) NTC;
- (ix) National Indigenous Peoples’ Organisations, and the
- (ix) UNDP.<sup>67</sup>

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<sup>67</sup> The UNDP will be a member of the ALT GRM Liaison group for as long as the ALT Project exists with UNDP involvement in the same.

The Ministry and the other ALT GRM Liaison Institutions will endeavor to take all necessary measures to provide assistance to the ALT GRM and ensure its success, timely and effective resolution of Grievances in accordance with Applicable Law.<sup>68</sup>

## **V. Offices**

The ALT GRM will have its Main Offices located within the Ministry headquarters in Georgetown.

The Director and Secretary and any additional staff that may be hired in the future will occupy the office. The respective ALT GRM Liaisons will maintain the offices they already have within their respective ministries or commissions. They will be engaged when needed in accordance with this Guideline.

## **VI. Work Plan and Budget**

The Director, in Consultation with the ALT GRM Liaisons, will prepare a work plan and submit it to the ALT Project Board. The ALT Project Manager (“ALT PMU”) will prepare a corresponding budget for approval by the ALT Project Board.<sup>69</sup>

The initial funding for the ALT GRM and through to the end of year 2017 --including cost for its establishment, staff salaries, and working budget to carry out effective operations-- will be drawn from the remainder of the *ALT Project* budget lines dedicated to relevant activities, including the funds dedicated to alternative mechanisms for resolving land titling disputes.

## **VII. Communicating a Grievance**

### *(i) Who can Submit a Grievance?*

A Grievance can be sent by any individual or group of individuals that believes it has been or will be harmed by the titling process related to indigenous peoples’ lands, resources and territories in Guyana and/or alleges an emerging or actual conflict between and among Stakeholders to the Amerindian land titling process.

If a Grievance is to be lodged by a different individual or organization on behalf of those said to be affected, the Claimant must identify the individual and/or people on behalf of who the Grievance is submitted and provide written confirmation by the individual and/or people represented that they are giving the Claimant the authority to present the Grievance on their behalf. The ALT GRM will take reasonable steps to verify this authority.

### *(ii) How is the Grievance Communicated?*

The ALT GRM shall maintain a flexible approach with respect to receiving Grievances in light of known local constraints with respect to communications and access to resources for some Stakeholders. A

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<sup>68</sup> “Applicable Law” is national law and other obligations of the Government under international law, whichever is the higher standard.

<sup>69</sup> Where Amerindian land titling occurs outside of the ALT Project, the ALT GRM work plan will be submitted to the institution responsible for carrying out said titling and preparing the budget for the same.

Grievance can be transmitted to the ALT GRM by any means available (i.e. by radio, letter, phone call, SMS, etc.). The contact information is the following:

ALT GRM  
Ministry of Indigenous People's Affairs  
First Floor  
251-252 Quamina & Thomas Sts.  
South Cummingsburg  
Georgetown, Guyana  
Tel: 592 225 5675  
Email: altprojectgy@gmail.com  
Radio channel(s): [**to be assigned**]

To facilitate communications with and between the ALT GRM and potential Claimants, the ALT GRM will receive support from the ALT project and the ALT GRM Institutions

*(iii) What information should be included in a Grievance?*

The Grievance should include the following information:

- (a) the name of the individual or individuals making the Complaint (the "Claimant");
- (b) a means for contacting the Claimant (email, phone, address, radio signal, other);
- (c) if the submission is on behalf of those alleging a potential or actual harm, the identity of those on whose behalf the Grievance is made, and written confirmation by those represented of the Claimant's authority to lodge the Grievance on their behalf;
- (d) the description of the potential or actual harm;
- (e) Claimant's statement of the risk of harm or actual harm (description of the risk/harm and those affected, names of the individual(s) or institutions responsible for the risk/harm, the location(s) and date(s) of harmful activity);
- (f) what has been done by Claimant thus far to resolve the matter;<sup>70</sup>
- (g) whether the Claimant wishes that their identity is kept confidential; and
- (h) the specific help requested from the ALT GRM.

*(iv) Confidentiality*

The ALT GRM cannot accept anonymous Grievances, but, if requested by the Claimant, the Claimant's name(s) can be maintained confidential from all but the Director and Secretary and redacted from any future reports or other briefings and statements otherwise shared by the ALT GRM.

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<sup>70</sup> The ALT GRM is not meant to be the first entity of approach where a Grievance arises. Claimant is encouraged and will be asked to demonstrate specific efforts they have made to resolve the matter with the other party(ies) before approaching the ALT GRM.

## **VIII. Logging, Acknowledgment, and Tracking**

All Grievances and reports of conflict will be received, assigned a tracking number, acknowledged to Claimant, recorded electronically, and subject to periodic updates to the Claimant as well as the office file.

Within one (1) week from the receipt of a Grievance, the ALT GRM will send a *written* acknowledgement to Claimant of the Grievance received with the assigned tracking number.<sup>71</sup>

Each Grievance file will contain, at a minimum:

- i. the date of the request as received;
- ii. the date the written acknowledgment was sent (and oral acknowledgment if also done);
- iii. the dates and nature of all other communications or meetings with the Claimant, any of the ALT GRM Liaisons or other relevant Stakeholders;
- iv. any requests, offers of, or engagements of a Mediator or Facilitator;
- v. the date and records related to the proposed solution/way forward;
- vi. the acceptance or objections of the Claimant (or other Stakeholders);
- vii. the proposed next steps if objections arose;
- viii. the alternative solution if renewed dialogues were pursued;
- ix. notes regarding implementation; and
- x. any conclusions and recommendations arising from monitoring and follow up.

## **IX. Maintaining Communication and Status Updates**

Files for each Grievance will be available for review by the Claimant and other Stakeholders involved in the Grievance, or their designated representative(s). Appropriate steps will be taken to maintain the confidentiality of the Claimant if previously requested.

The Director will provide periodic updates to the Claimant regarding the status and current actions to resolve the Grievance. Not including the acknowledgment of receipt of the Grievance, such updates will occur within reasonable intervals (not greater than every thirty (30) days).

## **X. Investigation and Consensus Building**

Within one (1) week of receiving a Grievance, the Director will notify the Minister, the GLSC, NTC, the IPC, UNDP,<sup>72</sup> and any other relevant institutions (through their respective ALT GRM Liaisons) of the receipt of the Grievance. If the Grievance involves an allegation that there has been any breach of duty, misconduct or criminal offence on the part of any officer or employee of one of the ALT GRM Liaison Institutions, without prejudice to the ALT GRM's continued capacity to address the Grievance, the Director shall also notify the Ombudsman of Guyana.

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<sup>71</sup> Oral acknowledgments can be used for expediency (and also recorded), but must be followed by a written acknowledgment.

<sup>72</sup> For as long as the ALT Project continues and the UNDP remains involved in the same.

The Director will promptly engage the Claimant, relevant ALT GRM Liaisons, and any other Stakeholders deemed appropriate, to gather all necessary information regarding the Grievance.

If deemed appropriate, the Director will identify a specific team of individuals drawn from the ALT GRM staff and/or the ALT GRM Liaisons and their respective institutions to address the matter. The names of these individuals will be made available to the Claimant.

Through their respective ALT GRM Liaisons, the Director will have the authority to request from relevant Government institutions any information (documents or otherwise) relevant to resolving the Grievance and avoiding future Grievances of the same nature.

As necessary, the Director and/or designated team members will convene one or more meetings with relevant individuals and institutions in Georgetown, or elsewhere in Guyana as needed.

The objective of all investigative activities is to develop a thorough understanding of the issues and concerns raised in the Grievance and facilitate consensus around a proposed solution and way forward.

The Ministry and all other ALT GRM Liaison Institutions will procure the cooperation of their respective staff and members with the investigation.

#### **XI. Initiating a field Investigation**

At any point during the investigation, the Director may determine that an onsite field investigation is necessary to properly understand the Grievance and develop an effective proposed solution and way forward.

The Director may request the presence of one or more of the ALT GRM Liaisons or other representatives from relevant Government institutions or other relevant Stakeholders on the field investigation. The ALT GRM will pay for the expenses of the additional participants that it formally invites.

#### **XII. Seeking Advisory Opinion and/or Technical Assistance**

At any point after receiving a Grievance and through to implementation of the proposed solution and way forward, the Director may seek the technical assistance and/or an advisory opinion from any entity or individual in Guyana or internationally which may reasonably be believed to be of assistance.

#### **XIII. Making Proposed Actions and Solutions Public and Overseeing Implementation**

The Director will communicate to the Claimant one or more proposed actions or resolutions and clearly articulate the reasons and basis for proposed way forward.

If the Claimant does not accept the resolution, the Director will make one of the following recommendations:

- (i) advise a return to dialogue with the ALT GRM and other relevant Stakeholder to seek out alternative resolutions;
- (ii) propose the use of mediation/facilitation (if not already engaged); or

- (iii) suggest transfer to another dispute resolution/grievance mechanism (GLSC Dispute Resolution Committee; the Ombudsman’s office; project/institutional mechanisms (e.g. UNDP Stakeholder Response Mechanism); domestic courts, other administrative measures available within Guyana, etc.).

If the Claimant accepts the proposed solution and way forward, the ALT GRM will continue to monitor the implementation directly and through the receipt of communications from the Claimant and other relevant parties. As necessary, the ALT GRM may solicit information from the relevant parties and initiate renewed dialogue where appropriate.

#### **XIV. Monitoring and Evaluation**

Bi-annually, the ALT GRM will submit to the Minister, ALT PMU, ALT GRM Liaison Institutions, and the ALT Project Board,<sup>73</sup> and make available to the public, a report describing the work of the ALT GRM, listing the number and nature of the Grievances received and processed in the past six months, a date and description of the Grievances received, resolutions, referrals and ongoing efforts at resolution, and status of implementation of ongoing resolutions. The level of detail provided with regard to any individual Grievance will depend on the sensitivity of the issues and Stakeholder concerns about confidentiality, while providing appropriate transparency about the activities of the ALT GRM. The report will also highlight key trends in emerging conflicts, Grievances, and dispute resolution, and make recommendations regarding:

- (i) measures that can be taken by the Government to avoid future harms and Grievances; and
- (ii) improvements to the ALT GRM that would enhance its effectiveness, accessibility, predictability, transparency, legitimacy, credibility, and capacity.

An independent team of individuals appointed by the Representative Platform (not to exceed five (5) people, including a representative from the Ministry) (“*ALT GRM Monitoring Team*”) will review the work of the ALT GRM after its first year of operation, and every two years thereafter (among other issues, this team will review the continued appropriateness of the ALT GRM having its physical location within the Ministry offices, the preparation of the budget by the ALT PMU, and the approval of its budget by the ALT Project Board).<sup>74</sup> To do this work, it will have access to the ALT GRM reports and files, the capacity to access and communicate with Claimants, ALT GRM Liaison Institutions and relevant Stakeholders, and the mandate to evaluate the ALT GRM system and make recommendations for improvements.

#### **XV. Mediation and Facilitation**

Upon requests from parties striving to address their Grievances among themselves, or per the initiation by the ALT GRM itself and with the consent of the Stakeholders involved, the ALT GRM will strive to

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<sup>73</sup> If Amerindian land titling takes place outside of the ALT Project, the ALT GRM bi-annual reports will be submitted to the entity responsible for carrying out the titling.

<sup>74</sup> If the ALT Project ends and the budget is prepared and approved by another entity, the ALT GRM Monitoring Team will review this arrangement as well.

provide mediators and/or facilitators with the experience and competence to assist the parties in the resolution of their Grievances.

The ALT GRM will make efforts to identify competent mediators and facilitators both within ALT GRM Liaison Institutions and elsewhere (domestically and internationally), to address the need for mediation and facilitation. A list of competent mediators and facilitators will be kept within the ALT GRM.

#### **XVI. Local Dispute and Grievance Resolution**

The ALT GRM shall encourage, and within their resources, strive to provide support when asked to any Amerindian Communities, Villages and local Stakeholders seeking to amicably resolve their differences and Grievances among themselves.

Those involved in local reconciliation talks will be encouraged to:

- (a) inform the ALT GRM of the same;
- (b) notify the ALT GRM if they need assistance and resources of any kind (e.g. maps, a mediator/facilitator, technical clarifications, agreement drafting support); and
- (c) put their agreements in writing and submit a copy to the ALT GRM which will copy the same to the Ministry and other relevant ALT GRM Liaison institutions.

#### **XVII. Capacity Building**

Recognizing that Grievance avoidance and resolution can benefit from increased knowledge and awareness of the relevant law, policy and issues surrounding the titling, protection and promotion of indigenous peoples' lands, resources and territories, together with the Ministry, NTC, GLSC, and IPC, the ALT GRM will take reasonable steps to continually educate and increase the capacity of its staff, its ALT GRM Liaison institutions and other Stakeholders.

Within the first ninety (90) days of its establishment, the Director will procure, in Consultation with the ALT GRM Liaisons and the approval by the ALT Project Board, one or more experts to provide training to its staff, the ALT GRM Liaison Institutions (at a minimum the ALT GRM Liaisons), and other relevant Stakeholders on domestic and international law and policies that may affect the indigenous peoples' lands, resources and territories (including those related to mining, forestry concessions, and protected areas. This initial capacity session, not to be less than three (3) days, will also include one or more Amerindian representatives with the expertise to educate participants on Village and Community dispute resolution mechanisms, indigenous physical, cultural and spiritual attachments to lands and resources, traditional uses and occupancy, shared resource use with neighboring communities/villages, traditional livelihoods, and preferably experiences with indigenous-led mapping activities.

All persons serving as a Director, Secretary, or ALT GRM Liaisons will attend the capacity session above, or one with similar content.

Additional trainings and capacity sessions will be provided, if funding is available.

### **XVIII. The Land Commission**

The Presidency has made repeated calls for the establishment of a Land Commission (sometimes referred to as a Hinterland Commission, or Amerindian or Indigenous Peoples Land Commission). Name notwithstanding, should such a Commission be established and authorized to engage in and make recommendations related to the titling of and the respect for and protection of indigenous peoples' rights to the lands, resources, and territories they have traditionally owned, occupied or otherwise used or acquired, the ALT GRM may seek technical assistance and advisory opinions from the Commission per section XII. The Ministry, NTC, GLSC, and IPC, in Consultation with the remaining ALT GRM Liaison Institutions, will further reconcile the distinctive and complementary roles of the ALT GRM and the Commission in addressing Grievances aiming at all times to increase the effectiveness of the mechanism.

### **XIX. Without Prejudice**

The existence and use of this GRM is without prejudice to any existing rights under any other complaint mechanisms that an individual or group of individuals may otherwise have access to under national or international law or the rules and regulations of other institutions, agencies or commissions involved in land titling.



**ANNEX B: Terms of Reference for Facilitator and Representative Platform**

## TERMS OF REFERENCE FOR UNDP EXPERT

(April 2016)

### **A. Background**

1. In October of 2013 the Amerindian Land Titling Project ("**ALT Project**" or "**Project**") was approved by UNDP. The Project is to be implemented in accordance with United Nations Development Programme ("**UNDP**") safeguards and standards (paragraph 23 of the ALT Project Document). The Project is designed to advance the process of demarcating and titling Amerindian lands and building on an existing titling process (para. 24). Among its expected outcomes is the issuance of Absolute Grants and Certificates of Title to all eligible Amerindian communities as well as to villages that have submitted extension requests, and the demarcation of already titled villages as well as newly issued extensions. (Outcome & Output 1 of the ALT Project Document).

2. The ALT Project also includes the strengthening of existing mechanisms to deal with land dispute with the aim of developing a collaborative, transparent dispute resolution mechanism that will ensure engagement of the National Tshao's Council ("**NTC**") and Indigenous Peoples Commission with the affected communities and allow all eligible communities the opportunity to secure title and ownership to their lands. (para. 24). The Project contemplates as an additional outcome, the increased use of existing and alternative mechanism to resolve land titling disputes. (Outcome & Output 2).

3. As expressed in the ALT Project Document, there is a strong commitment to the effective engagement of all relevant stakeholders in the process of the land titling, demarcation and related Project activities; such process is to be tracked and recorded as part of a stakeholder engagement plan (paras. 25 & 26, Outcomes & Outputs 2 & 3, and risk logs 1-2). Land titling processes at the community level will include Free Prior and Informed Consent ("**FPIC**") (para. 27 & Output 3).

4. To strengthen the effective implementation of the project and address concerns that have been raised internally and externally about elements of the project's implementation, on 6 January 2016, through discussion and approval of the 2016 ALT Work Plan ("**2015 AWP**"), the ALT Project Board endorsed a series of actions recommended on the heels of a UNDP field mission undertaken during the period of 26-29 October 2015, including the adoption of new "**Guidelines**" for the Project that would address the three (3) points listed below, as well as the establishment of a working group of stakeholders to examine and validate the guidelines:

(a) address how to carry out and strengthen stakeholder engagement, including consultation and FPIC processes;

b) identify clear process and criteria for delimitation, demarcation and titling under the ALT Project; and

c) develop grievance and dispute resolution mechanisms and processes to address conflicts that exist within and among Amerindian communities, between Amerindian communities and various other parties asserting claims to lands and resources claimed by Amerindian communities, as well as grievances between Amerindian communities and the Government of Guyana and/or the UNDP.

5. In full support of these efforts, to facilitate effective implementation of the ALT Project, the UNDP, as the GRIF Partner Entity tasked with "Project Assurance", and the Ministry of Indigenous People's Affairs ("**MoIPA**" or Ministry) as "Implementing Partner", have decided to engage an independent expert to assist in carrying out the tasks. Said expert will have knowledge about UNDP policies, procedures and standards; applicable law related to land tenure and indigenous peoples' human rights; mapping and demarcation exercises in indigenous lands; stakeholder engagement, consultation and FPIC processes; and preferably experience with negotiation and mediation techniques, as well as the use of dispute resolution and grievance mechanisms.

## **B. Duties and Functions**

6. The functions of the Consultant is to assist in the development of the Guidelines being developed jointly by the UNDP and MoIPA to facilitate effective implementation and achievement of the key requirements, outputs and outcomes of the ALT Project, respectively in a manner consistent with the UNDP's Social Environmental Standards ("**SES**"), policies and procedures, the United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**") and relevant UN human rights instruments and Applicable Law.

7. Consultant shall provide an initial draft of the Guidelines which will address the following three (3) matters:

a) A process for Stakeholder Engagement under the ALT Project (including, but not limited to stakeholder mapping and the development of consultation, and FPIC processes with indigenous peoples concerned). It shall build on the Stakeholder Engagement Strategy in Annex 3 of the ALT project document;

b) A streamlined process for Delimitation, Demarcation and Titling under the ALT Project consistent with the applicable laws of Guyana and subject to 14.d below (including but not limited to: defining claims, party responsibilities, applicable time periods, criteria for making decisions, investigation terms of reference, mapping, participatory mechanisms, transparency, community validation of investigation findings, process for ensuring final agreement with communities regarding titling decisions, reconciliation of overlapping claims, demarcation protocols, and appeal processes).

c) A Project mechanism to respond to all categories of grievances and disputes arising from the implementation of the ALT Project.

8. Consultant shall assist, as called upon by the UNDP and MoIPA, in the establishment and organization of the Representative Platform ("**Platform**") of stakeholders (*Terms of Reference* attached) which shall provide input, advice, and recommendations to the Ministry and UNDP on how to implement the ALT Project effectively (including through the development of the Guidelines and implementation thereof) and in a manner that is consistent with the UNDP's SES, policies and procedures, UNDP and relevant UN human rights instruments and Applicable Law, and addresses implementation concerns raised to date.

9. Consultant shall conduct one-on-one meetings as needed, informal presentations, and discussion sessions to secure feedback on the ALT Project and the Guidelines and promote mutual understandings. Consultant shall meet with relevant Government representatives, representatives of Indigenous Peoples and IP organizations, other stakeholder groups, and representatives from the UNDP country office.

10. Consultant will serve as the Facilitator responsible for overseeing the Platform's meetings and work; soliciting and reviewing relevant materials; compiling inputs, advice and recommendations from the Platform's members; and presenting the MoIPA and UNDP's draft Guideline for review and comment by the Platform.

11. Consultant shall also visit several indigenous communities and villages to inform them of the work of MoIPA, the UNDP and the Platform with respect to the Guidelines.

12. As engaged by the Government, Consultant shall carry out discussions with relevant Government staff, particularly in MoIPA, to identify key legal issues to be addressed to advance the ALT Project - particularly those related to compliance with human rights norms.

13. As engaged by the Government, Consultant shall work with relevant Government staff, and others, to compile laws, regulations, and policies relevant to identifying needed guidance and legal measures. Legal measures could include regulations to support the titling process and to temporarily suspend the issuance of new licenses until key titling issues are resolved, and amendments to the Amerindian Act.

### **C. Deliverables**

14. Consultant shall provide:

- (a) a draft Terms of Reference for the Representative Platform;
- (b) a draft Guideline; and
- (c) a final Guideline to the Ministry and UNDP for their consideration and endorsement,
- (d) a summary report accompanying the final Guideline describing key deliberations of the Representative Platform, how key concerns and contributions were addressed, and affirming the Guidelines' consistency with the ALT Project terms, the UNDP standards (SES) and safeguards, UNDRIP, and relevant UN international human rights instruments.

#### **D. Supervision**

15. Consultant's activities will be supervised by Jennifer Laughlin, Technical Specialist, Safeguards and Grievance Mechanisms at UNDP and UN-REDD Programme, UNDP, headquarters New York (tel: (212) 906-6578; email: jennifer.laughlin@undp.org). Consultant will work in close coordination with the UNDP's local office in Guyana. His/her principal contact shall be Dr. Patrick Chesney, Programme Specialist (tel: [592226 4040/8/9]; email: [patrick.chesney@undp.org]). Consultant will coordinate directly with the Ministry of Indigenous People's Affairs through David James (tel: [592 226 5167]; email: [davidjames.lawgy@gmail.com]).

#### **E. General**

16. All Consultant activities will be conducted in a transparent and participatory manner, and all of his/her activities and recommendations shall be consistent with applicable UNDP SES, policies and procedures (paras. 24, 31, 42 & 44 and Annex 2), and compliant with UNDRIP and other relevant UN human rights instruments (Annex 2, paras. 107 & 108) and Applicable Law.

#### **F. Funding**

17. Consultant's fees and expenses shall be the direct responsibility of UNDP Headquarters, New York and shall not be drawn from the existing ALT project budget.

#### **G. Duration**

18. Consultant's term of work shall commence on [18 April 2016] and continue until [1 March 2017], unless continued voluntarily, in writing, by the UNDP and the Consultant.

## ANNEX

### TERMS OF REFERENCE FOR REPRESENTATIVE PLATFORM

#### **A. Background**

1. In October of 2013 the Amerindian Land Titling Project (ALT Project) was approved by UNDP. The project is to be implemented in accordance with United Nations Development Programme (UNDP) safeguards and standards (paragraph 23 of the ALT Project Document). The project is designed to advance the process of demarcating and titling Amerindian lands and building on an existing titling process (para. 24). Among its expected outcomes is the issuance of Absolute Grants and Certificates of Title to all eligible Amerindian communities as well as to villages that have submitted extension requests, and the demarcation of already titled villages as well as newly issued extensions. (Outcome & Output 1 of the ALT Project Document).
2. The ALT project also includes the strengthening of existing mechanisms to deal with land dispute with the aim of developing a collaborative, transparent dispute resolution mechanism that will ensure engagement of the National Tshao's Council and Indigenous Peoples Commission with the affected communities and allow all eligible communities the opportunity to secure title and ownership to their lands. (para. 24). The Project contemplates as an additional outcome, the increased use of existing and alternative mechanism to resolve land titling disputes. (Outcome & Output 2).
3. As expressed in the ALT Project Document, there is a strong commitment to the effective engagement of all relevant stakeholders in the process of the land titling, demarcation and related project activities; such process is to be tracked and recorded as part of a stakeholder engagement plan (paras. 25 & 26, Outcomes & Outputs 2 & 3, and risk logs 1-2). Land titling processes at the community level will include Free Prior and Informed Consent (FPIC) (para. 27 & Output 3).
4. On 6 January 2016, through discussion and approval of the 2016 ALT Work Plan ("2015 AWP"), the ALT Project Board endorsed a series of actions recommended on the heels of a UNDP field mission undertaken during the period of 26-29 October 2015. These actions include the adoption of new "Guidelines" for the Project addressing the issues listed at paragraph 7 below, as well as the establishment of a working group of stakeholders to examine and validate the guidelines.
5. To facilitate effective implementation of the project in a manner that is transparent, participatory, consistent with applicable UNDP Social and Environmental Standards (SES) and safeguards (paras. 24, 31, 42 & 44 and Annex 2), and complaint with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and other relevant UN human rights instruments (Annex 2, paras. 107 & 108), the UNDP, as the Partner entity tasked with "Project Assurance", and the Ministry of Indigenous People's Affairs (MoIPA or Ministry) as

Implementing Partner, have decided to implement the board's working group decision by establishing this "Representative Platform."

## **B. Mandate**

6. The mandate of the Representative Platform is to provide input, advice, and recommendations to the Ministry and UNDP on how to implement the ALT Project effectively and in a manner that is consistent with the SES, UNDRIP and relevant UN human rights instruments, and addresses implementation concerns raised to date.

## **C. Functions**

7. The Functions of the Representative Platform shall be to:

a) provide input, advice, recommendations and validation to the UNDP and MoIPA with respect to Guidelines being developed jointly by the two institutions to facilitate effective implementation and achievement of key requirements, outputs and outcomes of the ALT Project respectively. The Guidelines will address the following three (3) matters:

i) A process for Stakeholder Engagement under the ALT Project (including, but not limited to stakeholder mapping and the development of consultation and FPIC processes with indigenous peoples concerned). It shall build on the Stakeholder Engagement Strategy in Annex 3 of the ALT project document;

ii) A streamlined process for Delimitation, Demarcation and Titling under the ALT Project consistent with the applicable laws of Guyana and subject to F.13 below (including but not limited to: defining claims, party responsibilities, applicable time periods, criteria for making decisions, investigation terms of reference, mapping, participatory mechanisms, transparency, community validation of investigation findings, process for ensuring final agreement with communities regarding titling decisions, reconciliation of overlapping claims, demarcation protocols, and appeal processes).

iii) A project mechanism(s) to respond to all categories of grievances and disputes arising from the implementation of the ALT Project.

b) play an active role in overseeing the implementation of the Guidelines (such role may include receiving reports from ALT Project staff, the Government and other stakeholders regarding said implementation, and providing to the Project Board periodic reports and recommendations to improve implementation of the Project). Together with the MoIPA and UNDP, the members of the Representative Platform will identify the mechanisms by which this oversight role can be carried out within the context of the ALT Project and its corresponding budget.

#### **D. Members**

8. There shall be no more than fifteen (15) members of the Representative Platform.
9. After a large stakeholder meeting, the Ministry, in consultation with UNDP, shall invite each relevant government institutions, indigenous peoples' communities, villages, councils, organizations and their advisors, and other stakeholders, to select a designated number of representatives to participate in the Representative Platform. Participants should have demonstrated specific knowledge; experience; interests, rights, duties and/or obligations with respect to; and/or prior engagement on issues related to or arising from the ALT Project. The participants should be individuals with the demonstrated capacity to participate effectively and offer constructive insights, comments and solutions to the matters that will be addressed by the Guidelines.
10. Membership is voluntary and each member can withdraw his or her participation at any time.

#### **E. Meetings**

11. For the completion of its Functions, after the Government and UNDP convene a two-day stakeholder meeting in Georgetown to explain these terms of reference and the desired outcomes for the initiatives planned thereunder, the members of the Representative Platform selected in accordance with Section D above, shall meet in Georgetown, at a minimum, twice. It shall meet once with the Facilitator in Georgetown to provide input, advice and recommendations related to each of the three (3) matters to be addressed by the Guidelines. It shall meet a second time to review and comment upon a draft of the Guidelines which shall be circulated to all members at least two (2) weeks in advance of the second meeting.
12. Additional smaller meetings, of one or more Representative Platform members may also be convened by the Facilitator as needed, including for purposes of soliciting further feedback and promoting mutual understandings.

#### **F. Facilitator**

13. There shall be a Representative Platform Facilitator designated by UNDP in consultation with the Ministry, who shall be responsible for overseeing the Representative Platform's meetings and work; soliciting and reviewing relevant materials; compiling inputs, advice and recommendations from Representative Platform members; producing a draft Guideline for review and comment by the Representative Platform; visiting several indigenous communities and villages to inform the Representative Platform's activities; and transmitting a final Guideline to the Ministry and UNDP for their consideration, accompanied by a report describing key deliberations of the Representative Platform and affirming the Guidelines' consistency with the ALT Project terms, the UNDP standards (SES) and safeguards, UNDRIP, and relevant UN international human rights instruments. (See Terms of Reference for UNDP Expert).



## **G. Funding**

14. Necessary costs for the all meetings, materials, and travel previously approved by the Ministry and UNDP shall be drawn from the existing ALT budget lines associated with satisfying the requirements, implementing the activities, and achieving the outcomes and outputs referred to in Section A and developed further throughout the ALT Project Document. Funding for stakeholder engagement and Representative Platform development is included in the ALT Project AWP 2016.

15. Notwithstanding the above, membership to the Representative Platform is voluntary and no fee, salary or other stipend will be provided for participation as a member. Transportation costs and other associated costs for member attendance at Platform meetings will be expensed by the ALT Project.

## **H. Duration**

16. The first meeting of the Representative Platform shall be convened by the Ministry and UNDP no later than the end of May 2016. The Representative Platform shall continue to operate until completion of the Functions described in Section C above, unless the Ministry and UNDP request the Members to complete additional tasks.

## **I. Support to Representative Platform**

17. The UNDP will organise and be responsible for provision of local secretariat support to the work of the Representative Platform.