

THE OFFICIAL GAZETTE 14TH MARCH, 2006
LEGAL SUPPLEMENT - A



ACT No.6 of 2006

AFRICAN INDIAN ACT 2006

I assent.

Bharrat Jagdeo,
President.
14th March, 2006.

ARRANGEMENT OF SECTIONS

SECTION

PART 1
PRELIMINARY

1. Short title and commencement.
2. Interpretation.
3. Application of Act.
4. Prosecutions

PART II ENTRY
AND ACCESS

5. Entry and access; scientific and other research.
6. Report; use of scientific and other research.
7. Conditional permission.
8. Official business.
9. Lawful travellers.

PART III
GOVERNANCE

10. Village Councils.
-] 1. Composition of Village Councils.
12. Office bearers.
13. Functions of Village Councils.
14. Powers of Village Council to make rules.
-] 5. Rules.
-] 6. Power of Village Council to investigate breaches of rules and impose fines.
-] 7. Offences.
18. Taxes.
19. Register.
20. Functions and powers of the Toshao.
21. Justice of the peace.
22. Duties.
23. Death or incapacity of a Toshao
24. Payments.
25. Conflict of interest.
26. Resignation.
27. Petitions for removal.
28. Investigation.
29. Removal of members of the Village Council.
30. Return of documents etc.
- 3] Village accounts.
32. Village plan.
33. Audits.
34. Village general meeting.
35. District Council.
36. Functions of District Council.
37. Special provisions for Karasabai.

3

A.D. 2006]

AMERINDIAN

[No.6

PART IV
NATIONAL TOSHAOS COUNCIL

38. Establishment of National Tshaos Council.
39. Executive committee.
40. Secretariat.
41. Functions of National Tshaos Council.
42. Meetings.
43. Procedure.

PART V
VILLAGE LANDS

44. Inalienability of Village lands.
45. Allocation of land to residents
46. Leases.
47. Consents required.
48. Mining.
49. Terms of agreement.
50. Refusal of Village consent for large scale mining.
51. Fees, tribute and royalties.
52. Traditional mining privileges.
53. Obligations of the Guyana Geology and Mines Commission.
54. Use of forest produce by residents.
55. Use of forest produce by non-residents.
56. Obligations of Guyana Forestry Commission.
57. Rights over State lands and State forests.
58. Protected areas.

PART VI
GRANTS OF COMMUNAL LAND TO AMERINDIAN VILLAGES AND
AMERINDIAN COMMUNITIES

59. Extensions of land.
60. Grants of land.
61. Acknowledgement and investigation.
62. Decision.
63. Approval.
64. Appeal.

No.6]

LAWS OF GUYANA

[A.D. 2006

PART VII

ELECTIONS

- 65. Tosaos and Councillors elected by secret ballot.
- 66. Returning officer.
- 67. Election clerks.
- 68. Election notice.
- 69. Electoral list.
- 70. Nominations.
- 71. Eligibility.
- 72. Conduct of the election.
- 73. Swearing in.
- 74. Effect of a tie.
- 75. Complaints.
- 76. Investigation committee.
- 77. Complaint upheld.

PART VIII

OFFENCES

- 78. Protection of Amerindian artefacts and monuments.
- 79. Multiple voting.
- 80. Additional penalties.

PART IX

MINISTER'S FUNCTIONS AND POWERS

- 81. Minister to approve rule made by Village Council.
- 82. Regulations.
- 83. Amendments.
- 84. Repeal.

PART X

COMMUNITY COUNCIL

- 85. Community Council.
- 86. Functions of a Community Council.
- 87. Authority of Community Council.
- 88. Elections for Community Council.
- 89. The Tosaos of a Community Council *ex officio* member of a National Tosaos Council.

FIRST SCHEDULE.

SECOND SCHEDULE.

A.D. 2006]

AMERINDIAN

[No.6

AN ACT to provide for the recognition and protection of the collective rights of Amerindian Villages and Communities, the granting of land to Amerindian Villages and Communities and the promotion of good governance within Amerindian Villages and Communities.

Enacted by the Parliament of Guyana:-

A.I.L2.Q06

**PART I
PRELIMINARY**

Short title and
commencement.

I. This Act may be cited as the Amerindian Act 2006 and shall come into operation on such date as the Minister may by order appoint and the Minister may appoint different dates for different sections.

Interpretation.

2. In this Act-

"Amerindian" means any citizen of Guyana who-

(a) belongs to any of the native or aboriginal peoples of Guyana; or

(b) is a descendant of any person mentioned in paragraph (a);

"Amerindian monument" means any structure of an archaeological nature, or any inscription, painting or other creation by an Amerindian, which is designated as an Amerindian monument by the Minister by order on the advice of the National Tshaos Council;

"Community or Amerindian Community" means a group of Amerindians organised as a traditional community with a common culture and occupying or using the State lands which they have traditionally occupied or used;

"Councillor" means a member of a Village Council other than the Toshao;

"District" means an area under the authority of a District Council;

"District Council" means a District Council established by order under section 35;

"large scale mining" has the same meaning as assigned to it under the Mining Act 1989;

"miner" means any person carrying out or intending to carry out mining activities.

No. 20 of 1989

"mineral" has the same meaning as in section 2 of the Mining Act 1989;

No 20 of 1989

"mining activities" includes exploration, prospecting, drilling, mining, extracting and appropriating any mineral;

LA WS OF GUYANA

"Minister" means the Minister responsible for Amerindian Affairs;

"resident" means an individual -

(a) who is an Amerindian who was born in, lives in or has his principal place of residence within the Village provided that no Amerindian ceases to be a resident simply because he is temporarily away from the Village for employment, education or medical treatment; or

(b) who lives within the Village and is recognised as a resident by the membership rules of that Village;

"traditional mining privilege" means any privilege to carry out artesional mining which an Amerindian possesses by virtue of being a member of an Amerindian Village or Amerindian Community;

"traditional right" means any subsistence right or privilege, in existence at the date of the commencement of this Act, which is owned legally or by custom by an Amerindian Village or Amerindian Community and which is exercised sustainably in accordance with the spiritual relationship which the Amerindian Village or Amerindian Community has with the land, but it does not include a traditional mining privilege;

"Village or Amerindian Village" means a group of Amerindians occupying or using Village lands; "Village lands" means lands owned communally by a Village under title granted to a Village Council to hold for the benefit of the Village;

"Village Council": means a Village Council established under the authority of the Amerindian Act, the Annai District Council, Kanashen Village Council, Bararnita Village Council and any Village Council established by order of the Minister under this Act;

"voter" means a person listed in the electoral list compiled under section 69 (1) by the Village Council of the Village in which he exercises his right to vote.

Cap. 29:01

3. (1) This Act applies to all Amerindian Villages and Amerindian Communities.

Application of Act.

(2) An Amerindian Village or an Amerindian Community may include in its name or in any description of itself the name of the native or aboriginal peoples to which it belongs, the name of the village or its location, any traditional name, or any term which is of cultural or social significance.

A.D. 2006]

AMERINDIAN

[No.6

Prosecutions

4. Prosecutions in respect of offences under this Act shall be brought in a court of summary jurisdiction by a T oshao or by a Councillor or anyone authorised by the V illage Council.

P ART II ENTRY
AND ACCESS

Entry and access;
scientific and
other research.

5. (1) A person, other than a person referred to in section 8, who wishes to enter Village lands shall apply for and obtain the permission of the Village Council.

First Schedule.

(2) A person who contravenes subsection (1) is guilty of an offence and liable to the penalties prescribed in paragraph (a) of the First Schedule.

(3) A person, other than a person referred to in section 8, who wishes to conduct any scientific, anthropological or archaeological research or any other research or study which relates to biological diversity, the environment or natural resources or to any use or knowledge thereof within Village lands shall apply for and obtain in advance-

- (a) the permission of the Village Council;
- (b) all permits required under any other written law; and (c) the permission of the Minister.

First Schedule.

(4) A person who contravenes subsection (3) is guilty of an offence and is liable to the penalties prescribed in paragraph (b) of the First Schedule.

Report; use of
scientific and
other research.

6. (1) A person who carries out any research or study under section 5(3) shall provide the Village Council and the Minister with -

- (a) a full written report of his findings;
- (b) a copy of all recordings made; and
- (c) a copy of any publication containing material derived from such research.

No. II of 1996

(2) A person who wishes to make use of any material derived from research or study under this section shall-

- (a) apply for and obtain the permission of the Village Council, the Minister, the Minister with responsibility for culture, and the Environmental Protection Agency established under the Environmental Protection Act 1996;
- (b) in good faith negotiate and enter into a benefit sharing agreement with the Village Council.

First Schedule.

(3) A person who contravenes subsection 2(a) is guilty of an offence and is liable to the penalties prescribed in paragraph (a) of the First Schedule.

First Schedule.

(4) A person who contravenes subsection (2) (b) is guilty of an offence and is liable to the penalties prescribed in paragraph (b) of the First Schedule.

LA WS OF GUYANA

No.6]

[A.D. 2006

Conditional
pennission.

7. (1) In granting pennission to enter Village lands, or to carry out any research or study, a Village Council may attach reasonable conditions to its permission including restrictions on access to sacred sites, private homes and other areas of Village lands.

(2) If a person breaches any condition of a permission granted to him the Village Council may revoke his pennission after giving him a reasonable opportunity to be heard.

First Schedule.

(3) A person who remains within Village lands after his permission has been revoked is guilty of an offence and is liable to the penalties prescribed in paragraph (a) of the First Schedule.

First Schedule.

(4) A person who continues to carry out research in Village lands after his permission has been revoked is guilty of an offence and is liable to the penalties prescribed in paragraph (b) of the First Schedule.

(5) A person who obtains permission from a Village Council under section 5 shall comply with the rules made by the Village Council under section 14.

Official
business.

8. (1) A person who enters Village lands to conduct official business for the Government or who is acting under the authority, of any written law or is otherwise lawfully authorised-

(a) is deemed to have permission from the Village Council:

(b) shall obtain any permission or consent required by any other written law;

(c) shall inform the Village Council of the nature of his business and his expected length of stay; and

(d) shall comply with the rules made by the Village Council under section 14.

(2) Official business includes the inspection, maintenance and repair of airstrips, schools, health centres and other public buildings operated by the State.

Lawful travellers

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

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

PART III
GOVERNANCE

Village Councils

10.(1) A Village Council is established to administer a Village.

(2) (3) A Village Council is a body corporate. In discharging its functions the Village Council shall act collectively.

A.D. 2006]

AJHERINDIAN

[No.6

Composition of
Village Councils.

II. (1) A Village Council comprises a Toshao and Councillors. (2) The number of Councillors, in addition to the Toshao, shall be calculated as follows-

- (a) Villages of not more than six hundred residents shall have a minimum of six and a maximum of twelve Councillors;
- (b) Villages of more than six hundred residents but not more than two thousand residents shall have a minimum of eight and a maximum of sixteen Councillors;
- (c) Villages of more than two thousand residents shall have a minimum of ten and a maximum of twentytwo Councillors.

Office bearers.

12. (1) A Village Council shall appoint from among its members a deputy Toshao, a secretary and a treasurer.

(2) A Village Council may appoint from among its members other office bearers as may be appropriate for the size and interests of the Village.

(3) Notwithstanding the provisions of subsection (1) a Village which traditionally elects its deputy Toshao may continue to do so without further notice and the provisions of Part VII shall apply to the election of the deputy as they apply to the election of the Toshao.

Functions of
Village Councils.

13. (1) The functions of a Village Council are to-

- (a) represent the Village;
- (b) provide advice and strategic direction to the Village;
- (c) provide for the planning and development of the Village;
- (d) hold for the benefit and use of the Village all rights, titles and interests in or over Village lands;
- (e) manage and regulate the use and occupation of Village lands;
- (f) promote the sustainable use, protection and conservation of Village lands and the resources on those lands;
- (g) encourage the preservation and growth of Amerindian culture;
- (h) ensure that places and artefacts located within Village lands and which hold sacred or cultural values to the Village are protected and cared for;
- (i) protect and preserve the Village's intellectual property and traditional knowledge;
- (j) nominate Councillors or other members of the Village to accompany the Toshao to attend meetings on behalf of the Village:

LA WS OF GUYANA

No.6]

[A.D. 2006

- (k) . ensure that proper accounts and financial records are properly kept and provide to the Minister and auditor a copy of the accounts;
- (l) levy taxes on residents.
- (2) A Village Council may assign tasks but may not delegate its functions to any other person.
- (3) In carrying out its functions a Village Council shall at all times
 - (a) act in the best interests of the Village; and
 - (b) provide for the good governance of the Village.

Powers of Village Council

- 10 make rules.

14. (1) Subject to the other provisions of this Act, a Village Council may, in the exercise of its functions, make rules governing
- (a) qualification as a resident;
 - (b) the occupation and use of Village lands;
 - (c) access to sites of sacred or cultural significance;
 - (d) the management, use, preservation, protection and conservation of Village lands and resources or any part thereof;
 - (e) the protection and sustainable management of wildlife including restrictions on hunting, fishing, trapping, poisoning, setting fires and other interference with wildlife;
 - (f) the development and regulation of agriculture ;
 - (g) the control, maintenance, protection and use of water supplies including the construction and regulation of wells which are owned by the Village or for which the Village is responsible;
 - (h) the construction and maintenance of roads, bridges, ditches, fences and other local works;
 - (i) the construction and maintenance of sewerage systems and other sanitary facilities;
 - (j) the regulation of the conduct of non-residents when within Village lands;
 - (k) maintaining discipline, good order, the prevention of disorderly conduct and nuisance; ••
 - (l) the granting of permission for business or trade on Village lands;
 - (m) access to research into and recording and publication of intellectual property and traditional knowledge which belongs to the Village;
 - (n) the certification of products made by residents using traditional methods;
 - (o) the voting procedure in a Village general meeting; (p) planning and development of the Village;

11 AMERINDIAN

A.D. 2006]

[No.6

1.1 /-)
J 1

(q) any other matter which falls within the functions of the Village Council.

(2) A Village Council may impose a fine of not more than nineteen thousand dollars for the breach of any rule made under subsection (1).

(3) A rule made by a Village Council shall not be inconsistent with any other law and shall be void to the extent of such inconsistency.

(4) The Minister may by order, subject to negative resolution of the National Assembly, increase the maximum penalty imposed under subsection (2).

Rules.

15. A rule, and any amendment to a rule, made by a Village Council comes into effect when-

(a) the Village Council has consulted the Village in general meeting and two-thirds of the members of the Village general meeting have given their approval; and

(b) the rule has been approved by the Minister and published in the Gazette.

Powers of Village Council to investigate breaches of rules and impose fines.

16. (1) If it is alleged that any person has breached a rule made by a Village Council that person may be required to appear before the Village Council.

(2) The Village Council shall inform the person of the allegation, investigate the matter and give the person a reasonable opportunity to be heard.

(3) If the Village Council is satisfied that the person has breached the rule, the Village Council may require him to pay a fine as specified in accordance with section 14 (2).

(4) A resident may elect to serve a period of community service not exceeding three consecutive hours of work per day for fourteen days in lieu of paying the prescribed fine.

Offences.

17. A person, who refuses to appear before a Village Council when required to do so under section 16(1) or who, although possessed of sufficient means so to do, fails to pay a fine imposed by the Village Council to serve the substituted period of community service imposed by a Village Council under section 16(4) commits an offence and is liable on summary conviction (before a magistrate) to the penalties prescribed in paragraph (b) of the First Schedule.

First Schedule.

18.(1) The Village Council may after consultation with the Village levy taxes on residents.

Taxes.

(2) The Village Council may permit a resident to pay his tax by providing goods or services to the value of the tax due provided that

LA WS OF GUYANA

No.6]

[A.D. 2006

any such permission is recorded in writing and a proper account is kept showing the value of the goods and services provided.

(3) A tax shall be submitted to the Minister for approval.

(4) The Minister may allow or disallow a tax, the means of assessment or collection of a tax or make any other alteration or variation as he thinks appropriate for the benefit of the Community but he may not increase a tax.

Register.

19. The Village Council shall
- (a) keep a Register recording-
 - (i) the name of each resident;
 - (ii) the date of birth of each resident; and (iii) the date of death of each resident;
 - (b) provide the Minister with a summary of the previous year's Register no later than the 31st January of each year;
 - (c) make the Register available to the Village each year during the month of December, and at any other time that the Village Council may decide, for the Village to inspect and notify the Village Council of any inaccuracies; and
 - (d) keep the Register in a safe place and ensure that it is maintained and kept up to date.

A Toshao-

Functions and powers of the Toshao.

20. (1)
- (a) is a member and the Chairman of a Village Council;
 - (b) is a member of the National Toshaos Council;
 - (c) is responsible for ensuring good governance including accountability and transparency within the Village Council; and
 - (d) is responsible for keeping peace and order in the Village.
- A Toshao has the powers and immunities of a rural

(2)

constable.

Justice of peace.

21. (1) A Toshao is ex officio a justice of the peace for the Village and he shall take the oath required to be taken by a justice of the peace before he performs the functions of a justice of the peace.

(2) As a justice of the peace a Toshao shall at all times act ministerially for the preservation of the peace, the prevention of crime and the detection of offenders, but he shall not act judicially as a justice either in any court or in any manner.

Duties.

22. A Toshao shall-
- (a) represent the interests of the Village at all times;
 - (b) carry out his duties with honesty and integrity;

A.D. 2006]

AMERINDIAN

[No.6

- (c) chair all meetings of the Village Council and ensure that all matters concerning the Village are adequately addressed;
- (d) participate on behalf of the Village in the National Toshao Council;
- (e) on behalf of the Village Council, and subject to the rules of the meeting, attend and participate at meetings;
- (f) provide the Village general meeting with a report of every meeting which he attends on their behalf;
- (g) provide the Minister with a copy of the residency rules made under section 14;
- (h) provide the Minister with a copy of the annual accounts prepared by the Village Council; and
- (i) report to the Minister on matters which affect the Village.

23.(1) If a Toshao is temporarily absent, incapacitated or otherwise unable to carry out his functions the deputy Toshao shall act as Toshao.

Death or
incapacity
of a Toshao.

(2) If a Toshao is incapacitated or otherwise unable to carry out his functions for more than four months the Village Council shall call a Village general meeting to decide whether the deputy Toshao should be sworn in as Toshao or whether elections for a new Toshao should be held and the Village Council shall notify the Minister of the decision of the Village general meeting within one month of the date of the meeting.

(3) If a Toshao dies the Village Council shall call a Village general meeting to decide whether the deputy Toshao should be sworn in as Toshao or whether elections for a new Toshao should be held and the Village Council shall notify the Minister of the decision of the Village general meeting within one month of the date of the meeting.

(4) A deputy Toshao who is acting as Toshao does not have the powers or immunities of a rural constable until he has been sworn in as Toshao and he shall not exercise the functions of justice of the peace until he has taken the oath referred to in section 21.

24. (1) The Ministers shall set and pay a stipend to the Toshao.

(2) The Village may authorise a payment from the Village's funds to supplement the Toshao's stipend.

Payments.

(3) A Toshao may accept paid employment while he is a Toshao but subject to subsection (2) he shall not accept any emolument, perquisite, payment, benefit or other inducement to carry out his functions as Toshao.

(4) The Village may authorise a payment from the Village's funds to a Councillor.

No.6]

LA WS OF GUYANA

[A.D. 2006

(5) A Councillor may accept paid employment while he is a Councillor but subject to subsection (4) he shall not accept any emolument, perquisite, payment, benefit or other inducement to carry out his functions as Councillor.

Conflict of interest.

25. (1) A member of a Village Council shall not put himself in a position where his duties to the Village shall conflict with his personal or other interests.

(2) A member of a Village Council who is a party to or otherwise involved in a proposed contract or arrangement with the Village Councilor has an interest in any matter before the Village Council shall declare that involvement or interest to the Village Council and shall not take part in the discussion or decision making.

(3) A disclosure under subsection (2) shall be recorded in the minutes of the Village Council.

(4) If a Village Council becomes aware that a Toshao or Councillor has contravened this section the Village Council shall call a Village general meeting and report it to them.

Resignation.

26. (1) A Toshao or Councillor shall resign with immediate effect if -

- (a) he is convicted of a serious criminal offence involving violence or dishonesty;
- (b) he fails to attend three consecutive meetings of the Village Council without reasonable excuse;
- (c) he has been absent from the Village for thirty consecutive days without informing the Village Council;
- (d) he contravenes section 24 (3), section 24(5), section 25(1) or section 25 (2).

(2) A Village Council shall notify the Minister immediately if a Toshao or Councillor does not comply with subsection (1).

(3) Subject to subsection (1) a Toshao or Councillor may resign by giving not less than one month's written notice to the Village Council.

(4) A Village Council shall notify the Minister immediately upon the resignation of a Toshao or Councillor and shall send the Minister a copy of the letter of resignation.

Petitions for removal.

27. (1) A Village general meeting may petition the Minister to carry out an investigation on the grounds that a Toshao or a Councillor has failed to carry out his duties or has contravened any provision of this Act. (2) The Minister shall carry out an investigation if at least fifty one percent of the Village general meeting voted in favour of the petition.

A.D. 2006]

AMERINDIAN

[No.6

(3) The Minister may carry out an investigation if fewer than fifty one percent of the Village general meeting voted in favour of the petition or if a separate petition is presented to the Minister.

Investigation.

28. (1) The Minister shall appoint a committee of three persons to carry out an investigation under section 27.

(2) The National Tshaos Council and the Regional Democratic Council may each nominate a member to the committee.

(3) The Minister may suspend a Tshao or Councillor named in the petition with effect from the date of appointment of the committee. (4) The committee shall give a Tshao or Councillor a reasonable opportunity to answer any allegations made against him in the petition.

(5) The committee shall make a report to the Minister within twenty-one days of being appointed and the Minister shall take this report into account in making his decision.

(6) Within one month of receiving the report the Minister shall send it to the Village general meeting with a notice stating-

(a) whether the Tshao or Councillor named in the petition is removed or in the case of a Tshao or Councillor who has been suspended whether that person is reinstated; and

(b) the reasons for the Minister's decision.

(7) The Minister may discuss the report with the Village general meeting and make recommendations.

29. (1) The Minister shall remove a Tshao or Councillor who fails to resign under section 26(1).

(2) The Minister may remove a Tshao or Councillor if a recommendation for his removal is made following a petition under section 27.

Removal of
members of the
Village Council.

30. (1) A Tshao or Councillor who ceases to be a member of the Village Council shall immediately restore to the Village Council all funds, documents, records, files, assets, accounts and other items which belong to the Village Council.

Return of
documents etc.

(2) The outgoing Tshao and Councillors shall hand over all funds, documents, records, files, assets, accounts and other items relating to the business of the Village Council to the newly elected Tshao and Councillors immediately following their swearing-in.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable to the penalties prescribed in paragraph (a) of the First Schedule.

First Schedule.

LA WS OF GUYANA

No.6]

[A.D. 2006

Village Council.

31. (1) A Village Council may maintain a bank account in the name of the Village Council at a licensed financial institution and all taxes, royalties, fees, rents, fines, grants and other Village income whatsoever shall be deposited in the account.

(2) All moneys mentioned in subsection (1) shall be deposited on behalf of the Village, for the benefit of the Village in respect of which moneys have been deposited.

Village plan.

32. (1) A Village Council shall submit each year for approval by the Village general meeting a Village plan of the activities proposed for the next twelve months and if the Village plan includes expenditure the Village Council shall give reasonable estimates of that expenditure including -

- (a) any administrative expenses;
- (b) the costs of any development projects or programmes; and
- (c) the costs of any goods and services to be provided to the Village.

(2) A Village general meeting may approve, disapprove or amend the Village plan in any way it sees fit for the overall benefit of the Village.

(3) A Village Council shall send the Minister and the Regional Executive Officer a copy of the approved Village plan and any subsequent changes approved by the Village general meeting.

(4) A Village Council may not make any payments which are not authorised in the Village plan or otherwise approved by a Village general meeting.

Adults

33. (1) The Minister may arrange for a financial audit to be carried out of a Village Council by an independent auditor at any time during a Village Council's term of office provided that the Minister shall give the Village Council two weeks notice and provided that audits shall not be carried out more frequently than annually, unless requested by the Village general meeting or otherwise deemed necessary.

(2) The Minister shall give copies of the financial audit to the Village Council and the National Toshias Council, and the Village Council shall call a Village general meeting immediately after it receives the financial audit and shall make it available to the Village general meeting.

(3) Not less than three months before the date of the Village Council elections the Minister shall arrange for a general audit to be carried out comprising

- (a) a supplementary financial audit from the date of the last financial audit; and
- (b) an audit of the Village Council's records and documents.

A.D. 2006]

AMERINDIAN

[No.6

(4) The Minister shall give copies of the general audit to the Village Council and the National Toshihos Council and the Village Council shall call a Village general meeting immediately after it receives the general audit and shall make it available to the Village general meeting.

(5) A Village Council shall make the financial audit and the general audit available to the Village general meeting immediately upon receiving each audit.

(6) The National Toshihos Council may nominate one of its members to observe the financial audit and the general audit.

Village general
meeting.

34. (1) Except as delegated to a Village Council under this Act, the collective rights and powers of a Village are exercised by the Village. (2) All decisions required to be made by a Village under this Act shall be made in a Village general meeting.

(3) A Village Council shall call a Village general meeting every quarter and if the Village Council fails to call a Village general meeting within four months of the previous Village general meeting then not less than ten residents who are eligible to vote at the Village general meeting may call the meeting instead.

(4) The notice period for a Village general meeting is at least fourteen days.

(5) A Village Council may call a meeting on less than fourteen days notice if the Village Council considers that the situation amounts to an emergency and requires an immediate response and-

(a) the meeting shall deal only with the emergency and no other matter; and

(b) any decision taken at the meeting shall be put to the next Village general meeting for ratification or comment.

(6) The Village general meeting shall act by consensus but if consensus cannot be achieved a vote may be taken and a decision made on the basis of the majority of votes cast unless this Act specifies otherwise. (7) All residents are entitled to attend a Village general meeting.

(8) The quorum, entitlement to vote and voting procedures shall be in accordance with the rules made by the Village Council.

35. (1) The Minister may by order establish a District Council if

(a) at least three Village Councils make such a request in writing to the Minister:

(b) the Village Councils making the request are in the same geographic area:

(c) none of the Village Councils is a member of another District Council; and

District Council

LA WS OF GUYANA

No.6]

[A.D. 2006

(d) each Village Council has obtained the approval of its Village general meeting.

(2) The Minister may include in a District only those Villages whose Village Councils have made the request.

(3) A District Council comprises the Toshao and one Councillor from each Village in the District.

(4) A District Council may elect a Chairman, a secretary and a treasurer.

Functions of District Councils.

36. The functions of a District Council are-

- (a) to coordinate the activities of the Village Councils in the District;
- (b) to work for consistency in the rules made by the Village Councils as far as is reasonable;
- (c) to give advice to the Village Councils and Villages on issues of common interest;
- (d) to plan and develop programmes for the District on environmental protection and management, health care, education, transportation, culture, economic development and any other issues relating to the functions of the Village Councils;
- (e) to monitor compliance with and assist in the enforcement of rules made by Village Councils;
- (f) to build consensus and assist in resolving conflicts and disputes within the District; and
- (g) to provide technical advice and assistance to the constituent Village Councils or to other Village Councils at their request.

Special provisions for Karasabai.

37. (1) All lands whose title is held by the Karasabai District Council are recognised as Village lands.

(2) The Karasabai District Council may exercise the functions of a Village Council over its Village lands subject to the approval of the Karasabai Village as expressed through the councils established by the Village.

(3) The Minister may by order recognise a council if requested to do so by the Karasabai Village and may specify in that order the portion of land which is under the jurisdiction of the council.

(4) Upon recognition a council becomes a Village Council and is subject to the provisions of this Act governing Village Councils.

(5) The Minister may at the request of the Karasabai Village and its councils accept a transfer of title back to the State on condition that the Minister establishes Village Councils among whom the Village lands are divided by the grant of separate titles.

A.D. 2006]

AMERINDIAN

[No.6

(6) Subject to subsections (3), (4) and (5), the Karasabai District Council has the functions, powers and duties of a Village Council and its Toshao and councillors are likewise subject to the obligations imposed on Toshaos and Councillors under this Act.

(7) The Toshao of the Karasabai District Council and the Toshaos of any Village Councils recognised under subsection (3) are ex officio members of the National Toshaos Council.

(8) The Minister may by order and at the request of the Karasabai Village and its Village Councils reconstitute the Karasabai District Council as a District Council under sections 35 and 36 of this Act.

PART IV NATIONAL TOSHAOS COUNCIL

Establishment
of National
T
oshaos
Council.

Executive
committee.

38. There is hereby established a National Toshaos Council which is a body corporate comprising all Toshaos.

39. (1) The National Toshaos Council shall elect an executive committee comprising-

- (a) one Toshao from each administrative region of the country; and
- (b) not more than ten additional Toshaos.

(2) The executive committee shall elect a Chairman, a Secretary and a Treasurer and may elect other office bearers.

Secretariat.

40. The National Toshaos Council may establish a Secretariat.

Functions of
National Toshaos
Council.

41. The functions of the National Toshaos Council are-

- (a) to nominate in accordance with Article 212 S (2) of the Constitution persons to the Indigenous Peoples Commission;
- (b) at the request of the Minister to investigate allegations of improper conduct by any Toshao or Councillor or within any Village Council or District Council;
- (c) to promote good governance in Villages including investigating matters as requested by a Village and making recommendations, provided that the National Toshaos Council may not investigate any matter which has been referred to the Minister and must ensure that any person involved in the investigation is given a reasonable opportunity to be heard;

No.2 of 1980.

No.6]

LA WS OF CUYA, \A

[A.D. 2006

- (d) to prepare strategies and plans for reducing poverty and improving access to health and education in Villages;
- (e) to prepare strategies and plans for the protection, conservation and sustainable management of Village lands and natural resources;
- (f) to promote the recognition and use of Amerindian languages;
- (g) to provide advice to the Minister on -
 - (i) the protection of Amerindian culture and heritage including the identification and designation of Amerindian monuments;
 - (ii) the development of Villages;
 - (iii) the impact of legislation or policy on Villages and any changes that should be made to such legislation or policy;
- (h) to coordinate and integrate the activities of Villages on a national basis;
- (i) to share, document and record the experiences of Villages; and
- (j) to send an observer to Village Council elections and District Council elections.

42. (1) The National Toshaos Council shall meet at least once every two years.
- Meetings.** (2) The executive committee shall meet at least twice in each calendar year.
43. (1) The National Toshaos Council may determine its own procedure and may, in consultation with the Minister, make rules governing such procedure.
- Procedure.** (2) The Minister is an ex officio member of the National Toshaos Council but may not vote.
- (3) The National Toshaos Council shall
 - (a) publish notice of its meetings in at least one national newspaper at least one month in advance;
 - (b) allow Amerindians to attend its meetings and
 - (c) publish an annual report of its activities and annual accounts and provide a copy to the Minister and each Village.

PART V
VILLAGE LANDS

Inalienability
of Village lands

44. (1) A Village Council shall not dispose or attempt to dispose of any interest, right or title in Village lands except as provided in this Act. (2) Any attempt to dispose of any right, title or interest in Village lands, except as provided in this Act, is void.

Allocation
of land to
residents.

45. (1) A resident shall apply in writing to the Village Council, in order to use a part of Village lands.

(2) The Village Council shall make a decision within thirty days of receiving the application.

(3) An allocation of Village lands(a) may be indefinite; and

(b) shall be consistent with the Village's recognition of traditional rights to use and occupy Village lands.

(4) An allocation of Village lands under subsection (3) expires if ~

(a) the resident to whom the land was allocated notifies the Village Council that he renounces the allocation; or

(b) the land is abandoned according to the Village's traditional rules.

(5) If there is a dispute over the allocation of Village lands the Village Council shall be responsible for resolving it.

(6) If the Village Council is not able to resolve the dispute within two months of being notified of the dispute, the Village Council shall ask the Village general meeting to decide.

(7) If the Village general meeting is unable to reach a decision, the dispute shall be referred to the Minister who shall make a decision within one month following the submission of the dispute for resolution to the Minister whose decision shall be final.

(8) A Village Council shall keep a plan showing the occupation and use of Village lands.

Leases

46. (1) A Village Council may grant leases of Village lands provided that -

(a) the total amount of land leased does not exceed ten percent of Village lands;

(b) the maximum term of a lease is fifty years; (c) the lease is granted at a market rent or above;

(d) the purpose of the lease is for agriculture, tourism or other productive and sustainable use of the land, which is consistent with the Village's cultural attachment to the land and provided that it is in the best interests of the Village; and

(e) the Village Council obtains the advice and consents required under section 47 .. (2) The following conditions are implied in every lease granted under this section -

(a) a right to re-enter and detennine the lease if the lessee is in breach of any covenant of the lease;

(b) a prohibition against subletting or assigning. (3) A lease shall not be extended or renewed.

(4) A lease shall not be granted for residential purposes.

(5) The provisions of any other written law conferring security of tenure, restrictions on rent increases or other protection for tenants are excluded from any lease granted under this Act.

(6) The Village Council shall-

(a) notify the Minister when a lease is granted; and

(b) provide the Minister with a copy of the lease and any subsequent amendments.

47.(1) Before granting or amending a lease a Village Council shall obtain the advice of the Minister.

Advice and
Consents
required.

(2) If a lease is to be granted to a non-resident or if a lease granted to a non-resident is to be amended, the Village Council shall call a Village general meeting and obtain the consent of at least seventy-five percent of those present and entitled to vote at the Village general meeting.

(3) If a lease is to be granted to a resident or if a lease granted to a resident is to be amended, the Village Council shall call a Village general meeting and obtain the consent of at least fifty one percent of those present and entitled to vote at the Village general meeting.

(4) If the Village Council does not obtain the advice and consents required by this section, the lease shall not be granted and is void if granted.

48. (1) A miner 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 shall-

Mining.

(a) obtain any necessary pennissions and comply with the requirements of the applicable written laws;

(b) make available to the Village any infonnation which the Village Councilor Village reasonably requests;-

(c) give the Village Council a written summary of the proposed mining activities including infonnation on -.

(i) the identity of each person who is involved;

(ii) a non-technical summary of the mining activities;

(iii) the site where the mining activities will be carried out;

A

23

:A.D. 2006]

AMERINDIAN

[No.6

- (iv) the length of time the mining activities are expected to take;
- (v) the likely impact of the activities on the Village and the Village lands;
- (vi) any other matters which the Village Council on behalf of the Village requests and which are reasonably relevant;
- (d) attend any consultations which the Village Council or Village requests;
- (e) negotiate with the Village Council on behalf of the Village in good faith all relevant issues;
- (t) subject to section 51 reach agreement with the Village Council on the amount of tribute to be paid; and
- (g) obtain the consent of at least two-thirds of those present and entitled to vote at a Village general meeting.

(2) The Guyana Geology and Mines Commission may facilitate the consultations to be held under subsection (I) but may not take part in any negotiations.

(3) A person who contravenes subsection (I) is guilty of an offence and is liable to the penalties prescribed in paragraph (d) of the First Schedule.

First Schedule.

Terms of agreement.

49. (I) After the Village has given its consent under section 48, the Village Council, acting on behalf of the Village, shall enter into a written agreement with the miner.

(2) An agreement made under subsection (I) contains the following implied terms-

- (a) subject to paragraph (b) the miner shall offer employment to residents at market rates;
- (b) the miner shall not offer employment to nonresidents unless residents with the required skills are unavailable;
- (c) the miner shall purchase all food and materials from the Village if these are available at reasonably competitive prices;
- (d) the miner shall take all reasonable steps to avoid-
 - (i) damage to the environment;
 - (i i) pollution of ground water and surface water;
 - (iii) interference with agriculture;
 - (iv) damage to or disruption of flora and fauna; (v) disruption of residents' normal activities;
- (e) the miner, his employees and agents shall comply with the rules made by the Village Council under section 14.

(3) If the Village so requires, the miner and the Village shall include in the agreement -

- (a) a protocol regulating the behaviour of the miner and his employees and agents including any restrictions on the use of alcohol and the carrying of firearms;
- (b) requirements for reporting to the Village Council;
- (c) an environmental protection programme;
- (d) a waste disposal plan;
- (e) a mechanism for assessing and paying compensation;
- (f) a mechanism for identifying and resolving conflict;
- (g) a health programme including providing medical supplies to health workers for use by the Village; and
- (h) support for education in the Village including an employee education programme and financial contributions to the Village school and library.

50. (1) If a Village refuses its consent in respect of large scale mining, a miner may carry out the mining activities if-

Refusal of
Village consent
for large scale
mining

- (a) the Minister with responsibility for mining and the Minister declare that the mining activities are in the public interest;
- (b) subject to section 51(2) and (3), the Minister with responsibility for mining in consultation with the Minister determines the fee and the tribute to be paid by the miner to the Village; and
- (c) the miner gives the Minister with responsibility for mining a written undertaking that he will-
 - (i) comply with the rules made by the Village Council;
 - (ii) require his employees and agents to comply with the rules made by the Village Council; and
 - (iii) promptly pay fair compensation for any damage caused by his mining activities to Village lands or property owned by residents.

Such a written undertaking shall take place for a period of sixty days from the declaration made by the Minister and the Minister with responsibility for mining, during which time the Village shall have the right to require the miner to enter into negotiations and the Village and the miner shall negotiate in good faith with a view to reaching agreement before mining commences upon the expiry of the sixty days period.

(3) If the miner and the Village fail to reach agreement under subsection 50 (2) the Minister

A.D. 2006]

AMERINDIAN

[No.6

- (a) shall require the miner to enter into an agreement with the Minister on behalf of the Village which contains the provisions in section 49 (2); and
- (b) may require the miner to enter into an agreement with the Minister on behalf of the Village covering the items specified in section 49 (3).

Fees, tribute
and royalties.

51. (1) A miner shall pay the Village tribute of at least seven percent of the value of any minerals obtained from Village lands from small or medium scale mining.

(2) A miner shall negotiate in good faith with a Village the amount of tribute to be paid for minerals obtained from Village lands from large scale mining and in the case where the Village has refused its consent such tribute shall be agreed between the Minister and the miner before the mining activities commence.

(3) The Guyana Geology and Mines Commission shall transfer twenty per cent of the royalties from the mining activities to a fund designated by the Minister for the benefit of Amerindian Villages.

Traditional
mining
privileges.

52. (1) An Amerindian who wishes to exercise a traditional mining privilege shall-

- (a) obtain the consent of the Village Council; and
- (b) comply with any obligations imposed by or under any other written law.

(2) An Amerindian who wishes to carry out mining activities which are not covered by a traditional mining privilege shall obtain the permits required by, and comply with the obligations imposed under, any other written law.

Obligations of
the Guyana
Geology and
Mines Commission.

53. Subject to the other provisions of this Part, if the Guyana Geology and Mines Commission intends to issue a permit, concession, licence or other permission over or in-

- (a) any part of Village lands;
- (b) any land contiguous with Village lands; or
- (c) any rivers, creeks or waterways which pass through Village lands or any lands contiguous with Village lands.

the Guyana Geology and Mines Commission shall first-

- (i) notify the Village; and
- (ii) satisfy itself that the impact of mining on the Village will not be harmful.

Use of forest
produce by
residents

54. (1) A resident who wishes to use forest produce from Village lands shall obtain the permission of the Village Council and comply with any conditions attached to that permission.

(2) The Village Council may invite the Guyana Forestry Commission to monitor the use of forest produce by a resident.

Use of forest produce by non-residents.

55. (1) A person, other than a person referred to in section 54, who wishes to use forest produce from Village lands shall-

- (a) send the Village Council a written notice containing a request for a meeting and a detailed description of the proposed activity;
- (b) send the Minister, the Guyana Forestry Commission and the Environmental Protection Agency a copy of the notice sent to the Village Council under paragraph (a);
- (c) attend any consultations which the Village requests; (d) negotiate in good faith with the Village; and
- (e) obtain the consent of at least two-thirds of those present and entitled to vote at a Village general meeting.

(2) The Guyana Forestry Commission may facilitate the consultations at the request of the Village but may not take part in the negotiations.

(3) A consent given by a Village under subsection (1) is deemed to be subject to a condition that the use of forest produce from Village lands shall comply with any obligations imposed by or under any other written law relating to the use of forest produce from State forests;

(4) If a Village consents to the use of forest produce from Village lands, the Guyana Forestry Commission shall monitor the forest operations and while within Village lands shall comply with the rules made by the Village Council under section 14.

Obligations of Guyana Forestry Commission.

56. If the Guyana Forestry Commission intends to issue a permit, concession, licence, timber sales agreement or other permission in respect of any State forests which are contiguous with Village lands the Guyana Forestry Commission shall first consider the impact on the Village.

Rights over State lands and State forests.

57. Nothing in this Act shall, except where expressly stated, be construed to prejudice or alter any traditional right over State lands and State forests save that where leases have been granted traditional rights shall be exercised subject to the rights of private leaseholders existing at the date of commencement of this Act

Protected areas.

58. (1) A Village which wishes to have the whole or any part of its Village lands recognised as a part of a national protected areas system shall comply with the requirements of any written law governing such system.

(2) No protected area may be established over the whole or any part of Village lands without the consent of the Village general meeting.

(3) If a protected area is established on lands occupied or used by an Amerindian Community-

- (a) there shall be no alteration or abrogation of any traditional right over such land unless the Amerindian Community which has the right gives its consent in writing; and
- (b) the Amerindian Community which has a traditional right over such land shall be adequately consulted about the management of the protected area.

PART VI

GRANTS OF COMMUNAL LAND TO AMERINDIAN VILLAGES AND AMERINDIAN COMMUNITIES

59. (1) A Village may, in accordance with subsection (2), apply in writing to the Minister for a grant of State lands as an extension to its Village lands and the application shall include-

Extensions of
land.

- (a) the name of the Village;
- (b) the number of persons in the Village;
- (c) the area of land which the Village already owns; (d) the reason for the application;
- (e) a description of the area; and
- (t) a copy of a resolution passed by two-thirds of the Village general meeting, which authorises the Village Council to make the application.

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

(3) An application shall be accompanied by a plan showing the existing Village lands prepared by a qualified land surveyor on the basis of a survey authorised by the Guyana Lands and Surveys Commission.

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

60. (1) An Amerindian Community may apply in writing to the Minister for a grant of State lands provided-

Grants of land

- (a) it has been in existence for at least twenty-five years; (b) at the time of the application and for the immediately preceding five years, it comprised at least one hundred and fifty persons.
- (2) An application made under subsection (1) shall include (a) the name of the Amerindian Community;
- (b) the number of persons in the Amerindian Community;

- (c) the reason for the application;
- (d) a description of the area requested; and
- (e) a resolution authorising the application and passed by at least two thirds of the adult members of the Amerindian Community.

(3) An application shall be signed by at least four adult members of the Amerindian Community.

(4) If a Community Council has been recognised under section 85, at least four of the signatories to an application shall be members of the Community Council.

**Acknowledgement
and investigation.**

61. (1) Within one month of receiving an application under section 59 or section 60 the Minister shall respond in writing acknowledging receipt.

(2) Within six months the Minister shall cause an investigation to commence to obtain the following information-

- (a) a list of the persons in the Amerindian Village or Community and the number of households;
- (b) the names of the Amerindian peoples of the Amerindian 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 Amerindian Village or Community makes of the land;
- (e) the size of the area occupied or used by the Amerindian Village or Community;
- (f) a description of the customs and traditions of the Amerindian Village or Community;
- (g) the nature of the relationship which the Amerindian Village or Community has with the land;
- (h) any interests or rights in or over the area of land requested by the Amerindian Village or Community;
- (i) whether there is a school, health centre or other initiative by the Amerindian Village or Community or Government; and
- (j) any other information which the Minister reasonably considers to be relevant.

(3) The Minister may accept information comprising-

- (a) oral or written statements from the Amerindian Village or Community;
- (b) authenticated or verified historical documents;
- (c) sketches and drawings prepared by the Amerindian Village or Community;

- (d) surveys prepared or authorised by the Guyana Lands and Surveys Commission;
- (e) photographs;
- (f) reports or documents from anthropologists or archaeologists; and
- (g) information in any other form which the Minister reasonably believes is appropriate.

Decision.

62. (1) The Minister shall make a decision *within* six months of the investigation being completed.

(2) In making a decision the Minister shall take into account all information obtained in the investigation and 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.

Approval.
Cap. 62:01

63. (1) If an application is approved title shall be granted under the State Lands Act.

(2) [n the case of a Village. title shall be granted to the Village Council to be held for the benefit of the Village.

(3) 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 title the Amerindian *Community* becomes a Village.

(4) If a Community Council has been recognised under section 85, the Minister shall by order establish the Community Council as a Village Council.

Appeal .

64. An Amerindian Village or Community which is dissatisfied with the Minister's decision under section 62 may apply to the High Court for a review of the decision.

PART VII
ELECTIONS

Toshao and
Councillors
elected by
secret ballot.

65. (1) Each Toshao and councillor shall be elected by secret ballot.

(2) Elections shall be held in a Village at intervals of not more than thirty-six and not less than thirty-three months under the direction of a returning officer.

(3) The date of the election shall be fixed by the Minister in consultation with the returning officer and the Minister may fix a date for the election of a Toshao which is different to the date fixed for the election of the Councillors.

- (4) The Minister and the National Toshios Council may each designate a person to observe the elections and any observer so designated may-
- (a) scrutinise the electoral list;
 - (b) enter the place of voting;
 - (c) observe the voting process;
 - (d) monitor the counting of the ballots; and
 - (e) seek information from the returning officer and electoral clerks.

Returning
Officer.

66. (1) The clerk of the Regional Democratic Council shall act as the returning officer for Villages in that region or shall appoint another person to act in his stead.

(2) The returning officer-

- (a) has overall responsibility for ensuring the proper conduct of the elections for the Toshao and Councillors including-
 - (i) . ensuring that the Village is notified of the arrangements for the elections;
 - (ii) verifying the electoral list;
 - (iii) monitoring the nominations process; (iv) making preparations for election day;
 - (v) monitoring the voting process and maintaining order;
 - (vi) counting the votes cast;
 - (vii) declaring the results of the election; and
 - (viii) swearing in the newly-elected Toshao and Councillors;
- (b) shall cooperate with any elections observers; (c) shall appoint an election clerk; and
- (d) may appoint a deputy election clerk.

Election clerks.

67. (1) The election clerk and any deputy election clerk shall assist the returning officer to conduct elections and perform such other duties as may be delegated to them by the returning officer.

(2) An election clerk and a deputy election clerk shall not be candidates in the election for which they are clerks.

Election notice.

68. (1) The returning officer shall give the Village Council a written notice of election not later than thirty-five days before election day, which shall confirm-

- (a) the day on which the election will be held;
- (b) the hours between which voting may take place; and
- (c) the location of the place of voting .

(2) When the Village Council receives the election notice the Village Council shall immediately call a Village general meeting and inform the meeting of the contents of the election notice.

El-ctorallist.

69. (1) Not later than sixty days before the election date, the Village Council shall-

- (a) compile an electoral list of all adult residents;
- (b) display the electoral list at the Village office and permit all residents to inspect it;
- (c) submit the electoral list to the returning officer.

(2) A resident may make an oral or a written complaint to the Village Council if he believes that the electoral list -

- (a) contains the name of any person who is not entitled to vote;
- or
- (b) omits the name of any person who is entitled to vote.

(3) The Village Council shall consider the complaint and, if it upholds it, it shall correct the electoral list and shall notify the complainant and, if applicable, any other person whose name has been added or removed.

(4) A person who is dissatisfied with the decision of the Village Council may make an oral or a written complaint to the returning officer whose decision is final.

(5) A person shall not be listed in more than one electoral list or register.

Nominations

70. (1) A person who wishes to stand as a candidate for Toshao or Councillor shall be nominated by at least two persons who are adult residents and eligible to vote in the elections.

(2) Nominations shall be submitted to the returning officer not earlier than thirty days before election day and not later than thirty minutes before voting is scheduled to begin.

Eligibility.

71. (1) A person may not stand for election or be elected as a Councillor unless he-

- (a) is an Amerindian of at least eighteen years of age; (b) is resident in the Village on the date of the nomination;
- (c) has been continuously resident for a period of not less than three years immediately before his nomination provided that if a person has his principal home within the Village, any absences from the Village for education, employment or health care shall be disregarded in determining continuity of residence; and
- (d) has not been convicted of a serious criminal offence involving violence or dishonesty ..

(2) A person may not stand for election or be elected as a Toshao unless he-

- (a)
- (b)
-)

is eligible to stand as Councillor; and has not held the position of Toshao for the two terms immediately preceding his nomination.

(3) A person who has resigned as Councillor or Toshao under section 26 or who has been removed under section 29 may not stand as a candidate in the election immediately following his removal.

Conduct of the election.

72. (1) Before the voting starts the returning officer shall ensure that there are adequate materials for the election including (a) a sufficient number of ballot papers; (b) a sufficient number of copies of the list of electors; (c) a ballot box for election of Councillors; (d) a ballot box for election of the Toshao; and (e) such tables, chairs, compartments and other conveniences reasonably necessary for the proper conduct of the elections.

(2) The returning officer, the election clerk and any deputy election clerk shall ensure that all election materials are kept in a locked place free from tampering or unauthorised access.

(3) At the hour stated in the election notice for voting to start, the returning officer in the presence of the election clerks shall -

- (a) open each ballot box and confirm that it is empty; (b) lock each ballot box and retain its key;
- (c) ensure that each ballot box is clearly marked showing which is for the election of the Toshao and which is for the election of the Councillors;
- (d) place each ballot box on a table which shall at all times be in full view of the elections clerk or any deputy elections clerk; and
- (e) formally declare that voting may begin.

(4) Voting shall be closed at the hour specified in the election notice but if at that hour there are still voters waiting in line to vote, voting shall remain open for a sufficient time to enable those voters to vote.

(5) Upon entering the place of voting each voter shall identify himself to the elections clerk by producing an identification document or by having his identity confirmed by any other person on the electoral list who produces an identification document.

(6) The election clerk shall provide the voter with a ballot paper for the election of the Toshao and a ballot paper for the election of the Councillors as soon as he has confirmed-

- (a) the identity of the voter;
- (b) that the voter's name is on the electoral list; and (c) that the voter has not already voted.

A.D. 2006]

33
AMERINDIAN

[No.6

(7) The voter shall enter the designated voting compartment, and place each ballot paper in the correct ballot box.

(8) A voter who is blind or otherwise incapacitated, may request another adult to place that voter's ballot papers in the correct ballot boxes.

(9) As soon as a voter's ballot papers have been deposited in a ballot box, the returning officer shall strike the voter's name off the electoral list.

(10) A voter shall vote without delay and shall move a reasonable distance away from the ballot boxes as soon as he deposits his ballot papers in the ballot boxes.

(II) As soon as voting has been closed, the returning officer, in the presence of the electoral clerks, shall-

- (a) open the ballot box for the election of the Toshao and count the number of votes;
- (b) separate the votes on the basis of the candidates for whom they have been cast;
- (c) count and record the number of votes cast in favour of each candidate; and
- (d) declare the name of the candidate who has received the most votes or in the case of a tie the names of the candidates who have tied for the most votes.

(12) Immediately after declaring the result of the election for Toshao the returning officer shall-

- (a) open the ballot box for the election of the Councillors;
- (b) separate the votes on the basis of the candidates for whom they have been cast;
- (c) count and record the number of votes cast in favour of each candidate;
- (d) declare the number of votes each candidate has received; and
- (e) declare the names of those candidates who have been elected as Councillors.

(13) After the declaration of the result, the returning officer shall-

- (a) complete a statement of election results;
- (b) prepare and certify two copies of the statement for delivery to the Minister and the Regional Executive Officer;
- (c) place the votes for the Toshao and the votes for the election of the Councillors in sealed envelopes in their respective ballot boxes;
- (d) lock and remove the ballot boxes for delivery to the Minister.

(14) The Minister shall keep the statement of election results and the ballot boxes in safe custody until the next elections are completed.

Swearing in.

73. The returning officer shall, as soon as possible, but not later than the morning after the election results are declared, swear in the Toshao and the Councillors who have been elected.

Effect of a tie.

74. If there is a tie between two candidates for Toshao, the returning officer shall so declare and hold a new election within seven days at which election there shall be no new candidates.

Complaints.

75.(1) Not later than thirty days after the declaration of the election results, a voter may complain in writing to the Minister if he believes there was an irregularity in the election process because-

- (a) there was fraudulent or corrupt practice during the election;
- (b) there was a breach of the electoral procedure established by this Act;
- (c) the returning officer, the election clerk or any deputy election clerk committed an act or made an omission which prejudiced the outcome of the election.

(2) The Minister shall consider the nature of the complaint, the number of electors bringing the complaint, the report of any elections observers and any other relevant factors, and may -

- (a) dismiss the complaint; or
 - (b) establish a committee to investigate the complaint.
- (3) If the Minister establishes a committee the Minister may direct the Village Council to remain in office or may appoint an interim Village Council while the investigation is going on.

Investigation committee.

one individual nominated by the Minister;

76. (1) An investigation committee established under section 75 shall comprise (a)

(b)

one individual nominated by the National Toshao Council;

- (c) one individual nominated by the Regional Democratic Council;
- and

(d) one individual nominated by the District Council if any.

The investigation committee may-

- (2) (a) scrutinise the electoral list and Register;
- (b) recount the votes cast at the elections; and
- (c) take statements from the returning officer, election clerk, deputy election clerk, observers, any person

alleged to have been involved in the matters which form the subject of the complaint and any other person who the investigation committee reasonably believes to be in possession of facts relevant to the investigation.

(3) The investigation committee shall present its report to the Minister within one month of being appointed.

(4) The Minister shall take into account the report of the investigation committee and either dismiss or uphold the complaint.

Complaint upheld.

77. (1) If the Minister upholds the complaint the Minister(a) shall
 declare the election invalid;
 (b) shall set a date for new elections; and
 (c) may suggest safeguards to prevent a recurrence of the irregularity.

(2) For the period of time from the declaration that the election is invalid to the holding of new elections, the Minister may, if he has not already done so under section 75, appoint an interim Village Council.

PART VIII OFFENCES

Protection of Amerindian artefacts and monuments.

78. (1) A person who, without the permission of the Minister and the Village Council, removes from Village lands an Amerindian artefact which is of historical, religious or cultural significance to the Village commits an offence and is liable to the fines specified in paragraph (c) of the First Schedule.

(2) A person who destroys defaces or in any way damages an Amerindian monument is guilty of an offence and is liable to the fines specified in paragraph (c) of the First Schedule.

First Schedule.

79. A person who votes in elections in more than one Village is guilty of an offence and is liable to the penalties in paragraph (a) of the First Schedule.

Multiple voting.

First Schedule.

80. (1) Notwithstanding the maximum fine imposed under the First Schedule the court may impose an additional fine on a person convicted of an offence under this Act if=:

Additional penalties.

First Schedule.

- (a) the court is satisfied that the person acquired monetary benefits from committing the offence; and
 (b) the amount of the fine imposed under this section does not exceed the court's estimate of the amount of the monetary benefits.

(2) If a person is convicted of an offence under this Act, the court may, at the time of passing sentence and at the request of a Village, order that person to pay compensation to the Village for loss or damage suffered as a result of the offence.

PART IX MINISTER'S FUNCTIONS AND POWERS

Minster to
approve rule
made by
Village Council.

81. (1) The Minister may approve any rule made by a Village Council provided that the rule does not conflict with any law and shall cause the rule to be published in the Gazette.

(2) If the Minister does not approve a rule made by a Village Council within six months of receiving it, the Minister shall inform the Village Council in writing and shall give reasons for the rejection.

Regulations.

82. The Minister may make regulations to give effect to the provisions of this Act.

Amendments.
Second Schedule.

83. The Acts mentioned in the Second Schedule shall be amended in the manner and to the extent described in that Schedule.

Repeal.
Cap. 29:01

84. (1) The Amerindian Act is hereby repealed.

(2) Subsidiary legislation made under the Amerindian Act are hereby revoked, provided that where such subsidiary legislation confer a right or privilege that has not been revoked or provided for in any other law, such subsidiary legislation shall remain in force but may be amended by this Act, as though made by this Act to the extent that may be necessary.

PART X COMMUNITY COUNCIL

Community
Council.

85. The Minister may by order recognise as a Community Council, a council which was established by an Amerindian Community no later than 31st December 2003.

Functions of a
Community
Council.

86. The functions of a Community Council are-

- (a) to exercise in relation to the Amerindian Community the functions of a Village Council other than those functions which relate to Village lands; and
- (b) to make an application for communal ownership of land in accordance with Part VI of the Act on behalf of the Amerindian Community provided that the Amerindian Community meets the criteria for application.

A.D. 2006]

AMERINDIAN

[No.6

Authority of a
Community
Council.

87. A Community Council has authority over the members of the Amerindian Community and may regulate the exercise of their traditional rights over State lands.

Elections for a
Community
Council.

88. Elections for a Community Council shall be conducted in accordance with Part VII.

Toshao of
Community
Council ex officio
member of a
National T oshaos
Council.

89. The Toshao of a Community Council is ex officio a member of the National T oshaos Council.

FIRST SCHEDULE

Iss 4, 5, 6, 7, 17, 30, 48, 78, 79, 801

Para-raphPrescribed Penalties

- (a) a fine of not less than five thousand dollars nor more than ten thousand dollars;
- (b) a fine of not less than ten thousand dollars and nor more than thirty thousand dollars and imprisonment for one month;
- (c) a fine of not less than thirty thousand dollars nor more than one hundred thousand dollars and imprisonment for four months;
- (d) a fine of not less than one hundred thousand dollars nor more than three million dollars and imprisonment for one year;

A.D. 2006] 39
A,HERINDIAN [No.6

SECOND SCHEDULE

s.83

Act

Amendments

Local Democratic Organs Act 1980,
No. 12 of 1980
section 2 (I)

In the definition of Local democratic organ
delete the words 'and any council
established under the Amerindian Act

State Lands Act, Cap. 62:01
section 41.

Delete the proviso.

Forest Act, Cap. 67:01
section 37.

Delete the proviso.

Wild Birds Protection Act, Cap. 71 :07
section 7.

Delete section 7 (2).

Passed by the National Assembly on 10th February, 2006.

S.E. Isaacs.
Clerk of the National Assembly.

(BILL No. 13/2005)