



**Joint Parallel Report**

submitted by

The **Justice Institute Guyana Inc.,**

and

the **Center for International Environmental Law**

to the

**Human Rights Committee**

On the occasion of the consideration of the

**List of Issues Prior to Reporting**

for **Guyana**

during the Committee’s 129th Session

29 June – 24 July 2020

Submitted 1st June 2020

**Executive Summary**

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| **Key issues**   * **Massive increase in greenhouse gas emissions threatening the right to life under Article 6** * **An unconstitutional administration amounting to a threat to democracy under Article 25** |

This report focuses on the failure of Guyana to uphold its obligation to protect the right to life, as required under article 6 of the International Covenant for Civil and Political Rights (ICCPR), in the context of the dangerous greenhouse effect leading to climate change, ocean acidification and rising sea levels It also examines Guyana’s violation of the guarantees in Article 25 of the right to vote at genuine periodic elections and to participate in public affairs under article 25 of the ICCPR, as a result of the current administration’s violations of Guyana’s constitution and failure to adhere to the rule of law.

**Paragraph 6**

Protecting the right to life guaranteed under article 6 requires States to adopt and implement adequate and effective policies to mitigate the causes of climate change and to adapt to its impacts, in order to protect those whose lives are already endangered. However, given that there are limits to the ability of adaptation measures to safeguard life from the impacts of climate change, reducing emissions is a prerequisite for the effective protection of the right to life - including that of future generations. As noted by the Human Rights Committee in its recent General Comment 36 on article 6, “climate change and non-sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”.

Guyana is one of the world’s few carbon sinks. However the government has decided to begin oil production. In December 2019[[1]](#footnote-1) Esso Exploration and Production Guyana Ltd. (Esso), CNOOC Nexen Petroleum Guyana Ltd. (Nexen), and Hess Guyana Exploration Ltd. (Hess) produced Guyana’s first oil. In May 2020, the Environmental Protection Agency admitted that Esso, Hess and Nexen had also flared over 9 billion cubic feet of natural gas[[2]](#footnote-2). The relevant environmental permit does not permit routine flaring. In these six months, flaring by Esso, Hess and Nexen has catapulted Guyana into the top ten gas flaring countries in the world.[[3]](#footnote-3) This massive increase in greenhouse gas emissions from Guyana contributes to climate change, ocean acidification and rising sea levels. According to the EPA, Esso, Hess and Nexen continue to flare 15 million cubic feet of gas per day.[[4]](#footnote-4)

We urge the Human Rights Committee to request the State party to provide information regarding the following questions:

**(i) What steps is the present administration of Guyana taking in order to stop the threat to the right to life arising from all greenhouse gas emissions from gas flaring by Esso, Hess and Nexen which exacerbate climate change, ocean acidification and sea level rise bearing in mind the impact on the right to life in Guyana, the Caribbean and the rest of the world?**

**(ii) What steps is the present administration Guyana taking to ensure that offshore oil production and its inevitable greenhouse gas emissions do not further conflict with Guyana's obligations under the ICCPR, in particular threats to the right to life posed by climate change, ocean acidification and rising sea-levels?**

**Paragraph 25**

Paragraph 1 of General Comment No. 25 states that “Article 25 lies at the core of democratic government based on the consent of the people.”[[5]](#footnote-5) , However, since 21 December 2018, when the government lost a no-confidence motion and became a ‘caretaker government’[[6]](#footnote-6) the people of Guyana have not had a government with a full democratic mandate. Since 18th September 2019 when the caretaker government failed to hold free and fair elections, as required by Guyana’s Constitution and by a judgment of the Caribbean Court of Justice[[7]](#footnote-7) Guyana has not had a constitutional government.

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

**(iii) What steps is the present administration taking to bring themselves back into compliance with the Constitution of Guyana and to adhere to the rule of law?**

# **Climate Change and the Protection of the Right to Life (Article 6)**

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| **Factual Background: Guyana’s climate change commitments and oil development plans**  Guyana is one of the world’s few carbon sinks and from time immemorial has removed from the atmosphere more greenhouse gases than it has emitted. As a Party to the United Nations Framework Convention on Climate Change (UNFCCC) and Paris Agreement, Guyana has committed to limit the increase of global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C.[[8]](#footnote-8) Parties recognized that keeping global temperature increase below this threshold would “[s]ignificantly reduce the risks and impacts of climate change”[[9]](#footnote-9) and that “[d]eep reductions in global emissions will be required in order to achieve the ultimate objective of the Convention”.[[10]](#footnote-10) Guyana’s Revised Intended Nationally Determined Contribution under the Paris Agreement states that with adequate financial support Guyana can develop a 100% renewable energy power supply by 2025.  The IPCC’s Special Report on 1.5°C reiterates the necessity of committing to a world below 1.5°C warming.[[11]](#footnote-11) The report warns that “Climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth are projected to increase with global warming of 1.5°C and increase further with 2°C”.[[12]](#footnote-12) Global warming of 2 degrees rather than 1.5 would lead to even greater rates of poverty, increased water stress, heightened food insecurity, more heat-related health problems, increased sea level rise, ocean acidification, species loss, greater temperature extremes, and higher rates of drought, among other impacts.[[13]](#footnote-13)  The IPCC recognizes that ‘[a]mbitious mitigation actions are indispensable to limit warming to 1.5°C while achieving sustainable development and poverty eradication (high confidence).’[[14]](#footnote-14)It also notes that without significant additional emissions reduction efforts, an increase of average temperatures by more than 4 degrees is “more likely than not”, which would include substantial species extinction, global and regional food insecurity, consequential constraints on common human activities, and limited potential for adaptation in some cases (high confidence).”[[15]](#footnote-15) Guyana has endorsed these findings through the adoption of the 1.5°C Special Report and all reports produced by the IPCC. Guyana has also acknowledged the threat climate change poses to human security, especially in low lying countries (such as Guyana) and developing countries (such as Guyana), recognizing that “[t]his global threat requires a united and strong global position to reduce carbon emissions and reverse the worst impact on future generations.”[[16]](#footnote-16) Guyana’s new oil production is incompatible with this statement by Guyana.  The use of oil products is estimated to account for around 35% of global GHG emissions.[[17]](#footnote-17) To keep dangerous anthropogenic warming under 1.5°C and protect the human rights of all, States must not increase their emissions but must urgently halt all proposed new fossil fuel extraction.  Guyana’s approval of new fossil fuel production is incompatible with the objective of preventing dangerous global warming and related climate-induced threats to human life and the biodiversity that supports such life.[[18]](#footnote-18) Guyana’s oil production lies within the Amazonian-Orinoco Influence Zone which is an ecologically or biologically significant area with high levels of biodiversity, including rare and endangered species that may require enhanced conservation and management measures.[[19]](#footnote-19)  Despite all this, the government of Guyana has approved large-scale extraction of fossil fuels which is already resulting in a significant increase in greenhouse gas emissions which contribute to climate change, ocean acidification and rising sea-levels and which undermine fundamental human rights, in particular the right to life. By mid-2022, production is expected to reach up to 220,000 barrels per day.[[20]](#footnote-20) ExxonMobil has currently declared discoveries of more than 8 billion oil equivalent barrels.[[21]](#footnote-21) However Guyana’s total reserves are estimated to be over 13.6 billion barrels of oil and 32 trillion cubic feet of natural gas which, if burned, could release over 7 Gigatons[[22]](#footnote-22) of greenhouse gas. Just burning the 120,000 barrels of oil that Guyana plans to produce per day will release 18,8 million metric tons of CO2 per year[[23]](#footnote-23), equivalent to roughly 9 times the annual CO2 emissions of Guyana’s entire population (or 16 times the annual CO2 emissions of the Guyanese population if production grows as projected by the industry).[[24]](#footnote-24)  As a carbon sink, Guyana is home to one out of four remaining intact tropical rainforests in the world.[[25]](#footnote-25) Guyana is particularly vulnerable to the effects of climate change and ocean acidification because of its close dependency on its natural environment, especially in the case of Amerindian communities and poor rural and urban groups. Moreover, 76% of the country’s population is living below sea level and relies on obsolete infrastructure, making the country particularly sensitive to sea level rise and flooding.[[26]](#footnote-26) Flooding in 2005 caused US$465M worth of damage (nearly 60%) of GDP[[27]](#footnote-27) and Guyana is required by Article 6 to take steps to protect the lives of its people from the threats posed by rising sea-levels.  Oil production and related activities, including permission to discharge 4,000 barrels of sewage daily into the ocean[[28]](#footnote-28), adversely affect Guyana’se marine environment.[[29]](#footnote-29) An oil spill or well blowout could have a devastating effect on Guyana’s fisheries and on the communities who depend on marine resources for their livelihoods.[[30]](#footnote-30)  Offshore oil drilling can also negatively impact Guyana’s neighbours. Esso’s environmental impact assessment shows that a deep water well blowout that releases 600,000 barrels of oil[[31]](#footnote-31) could cause oil pollution in Venezuela, Trinidad, Tobago, St Vincent, the Grenadines, Aruba, Bonaire and other Caribbean neighbours.[[32]](#footnote-32) In its General Comment 36, the Committee stressed that the obligation to respect and ensure the right to life requires States to implement adequate policies and measures to preserve the environment, including “to consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them […] and pay due regard to the precautionary approach”.[[33]](#footnote-33)  Guyana has strong laws for environmental protection including an Environmental Protection Act that requires oil companies to carry out thorough environmental impact assessments and identify, describe and evaluate the direct and indirect effects of oil production including on climatic factors and marine ecosystems. However there is a lack of adequate enforcement as demonstrated by the flaring of over 9 billion cubic feet of natural gas and the permission for Esso to discharge 4,000 barrels of sewage every day into the Atlantic Ocean. |

## ***States’ obligations under the ICCPR in the context of climate change***

The right to life is recognized as a fundamental human right, “basic to all human beings”.[[34]](#footnote-34) Article 6 of the ICCPR provides that “[e]very human being has the inherent right to life. This right shall be protected by law.”[[35]](#footnote-35) In General Comment No. 36 concerning the Right to Life, the Committee noted that “[o]bligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life must reinforce their relevant obligations under international environmental law.” Fulfilment of the right to life has been linked to other human rights such as the right to food, water and an adequate standard of living.[[36]](#footnote-36)

The Committee also emphasized that a broad range of obligations can be derived from the right to life, which entitles individuals to be free from both acts and omissions that cause, or may be expected to cause, death or impair the enjoyment of a life with dignity.[[37]](#footnote-37) The Committee specified that “[t]he duty to protect the right to life by law also includes an obligation for States parties to take appropriate legal measures in order to protect life from all foreseeable threats, including from threats emanating from private persons and entities.”[[38]](#footnote-38)

The right to life requires States to take “appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity” and that “these general conditions may include … degradation of the environment”. General Comment 36 recognizes that “[e]nvironmental degradation, climate change and non-sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”[[39]](#footnote-39) Guyana is a party to the UNFCCC which says that Parties should, “protect the climate system for the benefit of present and future generations.”[[40]](#footnote-40) Likewise the Paris Agreement says that, “Parties should when taking action to address climate change, respect, promote and consider their respective obligations on human rights as well as inter-generational equity.”[[41]](#footnote-41)

The Committee has reiterated that climate change affects the right to life. Decision C/127/D/2728/2016 rejected the petitioners' claim, but still stressed that “environmental degradation, climate change and unsustainable development constitute a serious threat to the right to life.”[[42]](#footnote-42) The Committee has addressed the States’ obligation in the context of climate change in its recommendations and/or lists of issues to five States, namely Cabo Verde,[[43]](#footnote-43) the United States,[[44]](#footnote-44) Dominica,[[45]](#footnote-45) Philippines,[[46]](#footnote-46) and Kenya.[[47]](#footnote-47) In all of those, it highlighted the impacts of climate on the right to life,[[48]](#footnote-48). In its COB to Cabo Verde, it recommended increased “efforts to develop mechanisms and systems to ensure the sustainable use of natural resources … and adopt a precautionary approach to protect persons in the State party, including the most vulnerable, from the negative impacts of climate change and natural disasters.’[[49]](#footnote-49)

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| **Expressions of Concerns issued by UN Human Rights Mechanisms related to Oil Extraction in Guyana**  The CEDAW and the Working Group on the Universal Periodic Review (UPR) have specifically addressed Guyana’s oil and gas extraction operations during recent reviews of the State’s compliance with its human rights obligations. CEDAW recommended in 2019 that the government of Guyana “review its climate change and energy policies, particularly those relating to the extraction of oil and gas, and develop a disaster risk reduction strategy that takes into account the negative effects of climate change on gender equality and on the lives of women and their families, especially those living in areas below sea level”.[[50]](#footnote-50) In the latest UPR, Panama recommended that Guyana “[r]eview its policies on climate change and energy, in order to prevent that possible natural disasters and environmental degradation resulting from extractive activities and the consequent emissions of greenhouse gases have a disproportionate effect on women and children, mainly those living in poverty”.[[51]](#footnote-51) Vanuatu recommended “[i]ntensifying efforts to have laws and policies in place to ensure oil and petroleum production will not contribute to climate change and adversely affect biodiversity and will not therefore compromise the right to life”.[[52]](#footnote-52) Fiji recommended that Guyana “strengthen measures to combat the negative effects of economic activities on the environment and biodiversity” a recommendation that is particularly relevant following the recent revelation that Esso has flared over 9 billion cubic feet of natural gas. |

## ***The Right to Life and the Duty to Mitigate the Causes of Emissions – Statements and Findings from International Human Rights Institutions and Domestic Courts***

Many international institutions have recognized that the right to life implies that States have a duty to prevent foreseeable human rights harms caused by climate change, both within and outside of their jurisdictions. This duty in turn obligates States to review their policies and practices regarding the extraction of fossil fuels, which are the leading cause of global warming.

In September 2019, the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC), the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and the Committee on the Rights of Persons with Disabilities (CRPD) adopted a joint statement on human rights and climate change, articulating the legal obligations of the 196 States that have signed the relevant UN human rights treaties in the context of climate change.[[53]](#footnote-53) After noting that the climate impacts identified in the IPCC report on 1.5°C threaten the right to life, among other fundamental rights, the statement calls upon States to “effectively contribute to phasing out fossils fuels”; to “regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially”; and to “discontinue financial incentives or investments in activities and infrastructure which are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors as a mitigation measure to prevent further damage and risk”.

The CESCR has issued recommendations addressing specifically the human rights threats posed by the extraction of fossil fuels. In its Concluding Observations (COB) to Ecuador, it expressed its concern “that the increase in extractive activities announced...runs counter to the State party’s commitments under the Paris Agreement adopted in relation to the United Nations Framework Convention on Climate Change and would have a negative impact on global warming and on the enjoyment of economic and social rights by the world’s population and future generations.[[54]](#footnote-54) It also recommended “that the State party reconsider the increase in oil development and large-scale mining in the light of its commitments under the Paris Agreement”.[[55]](#footnote-55) The Committee took a similar approach in its COB to Argentina, with regard to the country’s large-scale exploitation of unconventional fossil fuels.[[56]](#footnote-56)

Reviewing the implementation of the Convention on the Rights of the Child in Norway, the Committee on the Rights of the Child (CRC) recommended that, “[i]n the light of the State party’s exploitation of fossil fuels, … it increase its focus on alternative energy and establish safeguards to protect children, both in the State party as well as abroad, from the negative impacts of fossil fuels”.[[57]](#footnote-57)

In its Concluding Observations to Norway, the CEDAW recommended that the government review its policy on the extraction of oil and gas, given the extraterritorial obligations emanating from the Convention, because of the disproportionate negative effects of climate change on the rights of women.[[58]](#footnote-58) In its General Recommendation No. 37 on gender-related dimensions of disaster risk reduction in the context of climate change, the Committee stressed that “[l]imiting fossil fuel use and greenhouse gas emissions and the harmful environmental effects of extractive industries such as mining and fracking ... are regarded as crucial steps in mitigating the negative human rights impact of climate change and disasters”.[[59]](#footnote-59)

In 2015, five Special Procedures mandate holders of the Human Rights Council underlined that limiting warming to 1.5°C is a human rights imperative, since warming above 1.5°C will have very serious adverse implications for human rights, including the right to life.[[60]](#footnote-60) In his 2019 report on Safe Climate, the Special Rapporteur on Human rights and the Environment addressed “society’s addiction to fossil fuels”,[[61]](#footnote-61) and stressed states’ obligation to take effective measures to mitigate climate change, in order to uphold the right to life.[[62]](#footnote-62) This would include “[p]rohibiting further exploration for additional fossil fuels… [and] [r]ejecting any other expansion of fossil fuel infrastructure”.[[63]](#footnote-63) The same Special Rapporteur, recalling his report to the General Assembly - which among other things highlighted the impact of climate change on the right to life[[64]](#footnote-64) - recommended that Norway “prohibit further exploration for fossil fuels, reject further expansion of fossil fuel infrastructure, develop a just transition strategy for workers and communities dependent on the fossil fuel industry, prohibit the expansion of the most polluting and environmentally destructive types of fossil fuel extraction, including oil and gas produced from hydraulic fracturing (fracking)”.[[65]](#footnote-65)

Regional human rights institutions have also confirmed that the protection of the right to life imposes a duty upon states to protect the environment adequately so as to uphold their duty of due diligence and to prevent environmental threats to human life. The Inter-American Court in its *Yanomami case* has established that the realization of the right to life is linked to, and dependent upon, the physical environment and therefore, environmental degradation and climate change.[[66]](#footnote-66) In its advisory opinion requested by Colombia concerning the environment and human rights, the Court stated in 2017 that States have several substantive and procedural obligations regarding environmental protection arising from the obligation to respect and ensure the rights to life and personal integrity.[[67]](#footnote-67)According to the Court, these duties include the obligation to prevent significant environmental damages within and outside their territory, including through regulation, supervision and monitoring of activities under their jurisdiction as well as the mitigation of any significant environmental damage that could have occurred. This need for preventive action in light of article 2 of the European Convention on Human Rights (ECHR), was also key in the decision of the European Court for Human Rights (ECtHR) in *Öneryildiz v. Turkey.* In this decision the European Court for Human Rights (ECtHR) ruled that states have a positive obligation to take preventive measures to protect the lives of those within their jurisdiction.

National courts have also started to acknowledge the impacts of climate change on fundamental rights. In *Urgenda Foundation v. State of the Netherlands,* the Supreme Court of the Netherlands confirmed that the Dutch government, by failing to reduce GHG emissions within a given threshold, was violating the right to life and to private and family life.[[68]](#footnote-68) The Court added that those rights also entail States’ duty to take preventive measures to counter the danger, even if the materialisation of that danger is uncertain, which may encompass both mitigation measures and adaptation measures.[[69]](#footnote-69) In *Ashgar Leghari v. Federation of Pakistan*, the Lahore High Court of Pakistan found that inadequate state action with respect to climate change adaptation was a violation of the right to life under Pakistan’s Constitution.[[70]](#footnote-70)

This recent jurisprudence by international and national bodies and courts clearly identifies States’ duties to protect the right to life in the context of dangerous global warming from greenhouse gas emissions and to put in place measures to prevent threats to life. Such measures include limiting extraction of fossil fuels because of their contribution to the greenhouse effect. . State’s duties apply both within and outside States’ jurisdiction. The science clearly demonstrates that oil is one of the main drivers of climate change, and that current extraction and exploitation trends will lead to changes in the global climate that will endanger the lives of billions of people across the world. Guyana’s plans to extract its oil reserves and transition to using associated gas rather than renewable energy, will exacerbate the greenhouse effect and contribute to greater climate change, more acid oceans and higher sea level rise, thus violating the fundamental right to life of people in Guyana, the Caribbean and across the world, as enshrined in Article 6 of the ICCPR.

# **Violations of the Right to Vote and Guarantees of Democratic Governance (Article 25)**

The Committee has stressed in General Comment 25 that “[w]here citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions.”[[71]](#footnote-71)

Article 154A of the Constitution incorporates into the Constitution the human rights enshrined in the International Covenant on Civil and Political rights and requires the executive, legislature, judiciary and all organs of government (including GECOM) to respect and uphold the rights in Article 25.

There have been multiple violations of Article 25 by A Partnership for National Unity and the Alliance for Change (APNU AFC) Coalition. On 21st December 2018, the APNU AFC coalition lost a vote of no confidence and became a caretaker government with limited powers.[[72]](#footnote-72) However when it failed to hold free and fair elections, by 18th September 2019, it became an unconstitutional administration.

## ***Failure to uphold the right to vote at genuine periodic elections.***

Following the loss of the no-confidence motion the Constitution required the APNU AFC to call elections within 3 months. However, APNU AFC defied the Constitution and did not call elections within the 3 months time limit which expired on 21st March 2019.

This constituted a violation of (i) the right to vote at genuine periodic elections - pursuant to article 25(b) ICCPR - the period in this case being set by the Constitution, rather than by politicians; and (ii) the right to take part in the conduct of public affairs through freely chosen representatives, pursuant to article 25(a).

APNU AFC challenged the no-confidence motion in court on several grounds, but on 18th June 2019, the Caribbean Court of Justice (CCJ) upheld its validity. The CCJ set a new time limit for the APNU AFC to hold elections by 18th September 2019. APNU AFC defied the CCJ, however, and again refused to call elections. This constituted a second violation of article 25 (a) and (b).

APNU AFC have claimed that they could not call elections because the Guyana Elections Commission (GECOM), a constitutionally created body, was not ready. The Constitution requires elections to be held within three months. It does not provide for any excuses. GECOM has no power to override or disobey the Constitution or the Caribbean Court of Justice; GECOM is subject to the law, not above it.

The state’s failure to ensure that the relevant institutions, such as GECOM, were equipped to manage elections within the constitutionally required period is a further violation of art 25 (a) and (b).

## ***Failure to respect the will of the people expressed through the vote***

Guyana has a history of rigged elections by the People’s National Congress (PNC), which is the main partner in APNU. Since 1992, Guyana has invited international bodies to observe the voting and the counting in order to help guarantee the free expression of the will of the electors.

Elections were held on 2nd March 2020. International observers were present and assessed the elections to be orderly and transparent[[73]](#footnote-73) and free and fair[[74]](#footnote-74). The electoral law in Guyana requires that every vote is counted at every polling station and recorded on a statement of poll (SOP). The APNU AFC, the PPP/C and other political parties signed every SOP as correct. Each SOP was then posted outside the polling station for voters to see the result.[[75]](#footnote-75)

Article 25(b) guarantees the “free expression of the will of the electors”. It is implicit that once the electors express their will, it must be respected. Their votes cannot be ignored or given to a party that they did not vote for. In 9 of the 10 electoral districts the returning officers added up the numbers from each SOP and declared the results. APNU AFC got 100,871 votes. The PPP/C got 152,400 votes. In the 10th electoral district, (electoral district 4) the returning officer refused to add up the numbers on the SOPs and his tabulation of the votes was not transparent or credible. He made 2 declarations using different numbers to give APNU AFC enough votes to win the election. The numbers in these 2 purported declarations also differed from the numbers in the SOPs held by the PPP/C and other parities.

The first purported declaration of results was held invalid by the court[[76]](#footnote-76). The second purported declaration has been rejected by the United Kingdom, United States, European Union, Canada, the Commonwealth, the Organization of American States (OAS), the Organization of African, Caribbean and Pacific States (ACP) and Carter Centre on the grounds that these supposed results are not ‘credible.’[[77]](#footnote-77) International observers also dismissed as “intimidation” an intervention by a former APNU AFC minister at the place where they were observing the verification of the votes.[[78]](#footnote-78) Such veiled threats to international observers (whose presence is crucial to ensure that vote are counted transparently and accurately and to ensure credibility of the elections) undermine the guarantees of Article 25 (a) and (b).

The fraudulent numbers declared by the returning officer in electoral district 4 clearly do not reflect the will of the people but are an attempt to subvert the free expression of the will of the people and undermine democratic government contrary to Article 25(a).

## ***Failure to abide by constitutional limits on the scope of the elected government’s power***

Paragraph 7 of General Comment No. 25 states that “[i]t is also implicit that the [freely chosen] representatives exercise only those powers that are allocated to them in accordance with constitutional provisions.” This comment carries great weight in Guyana’s legal system as the CCPR has been incorporated into Guyana’s Constitution under the part that deals with fundamental rights. .

On the 21st December 2018, at the very moment when the APNU AFC coalition lost the no-confidence motion they also lost their democratic mandate as a government. Under Article 106 of the Constitution, the effect of that motion was that the president and all ministers resigned immediately. The CCJ and the High Court of Guyana have held that these resignations occurred by operation of law.[[79]](#footnote-79) The APNU AFC coalition were reduced to the status of a ‘caretaker’ government and were required to act with restraint.[[80]](#footnote-80) In accordance with the common law on caretaker conventions, the government’s powers were limited to routine or non-controversial matters or matters that were urgent and in the public interest.

Rather than comply with the Constitution, however, APNU AFC continued to govern, and to hold itself out as the legitimate representatives of the state, as if the no-confidence motion had not occurred.[[81]](#footnote-81) For example, in April 2019, the government entered into a Financing Agreement with the World Bank . Concerned citizens have written to the World Bank pointing out, however, that there was no minister of finance who could sign the Financing Agreement.[[82]](#footnote-82) This Financing Agreement was neither “non-controversial” nor in the public interest since it relates to oil development in Guyana which is highly controversial; Guyanese citizens have written to the President of the World Bank raising concerns about irregularities and illegalities in the oil sector and the World Bank project [[83]](#footnote-83), The World Bank loan of US$20M is outside of the authority of caretaker government and the project clearly cannot be implemented by an unconstitutional government.

By seeking to accelerate legal reforms with long lasting implications for the people and environment of Guyana despite any democratic mandate, the APNU AFC is clearly in breach of the caretaker conventions and the Constitutional limits on their powers thereby also breaching Article 25.

A court cannot make APNU AFC lawful. It is trite law that courts cannot recognise as a ‘government’ any administration that holds office outside of the Constitution: *“… a court created in terms of a written constitution has no jurisdiction to recognise, either as a de jure or de facto government any government other than that constitutionally appointed under that constitution."[[84]](#footnote-84)*

Following the voting on 2nd March 2020 and the two purported declarations in electoral district 4 which have been rejected as not credible, the leader of the APNU and the Leader of the PPP/C have agreed to a recount, not just the votes in electoral district 4, but all of the votes, including the votes for electoral districts where there was no challenge or dispute. The recount has proceeded slowly with numerous delays and objections from APNU AFC so that 3 months after the elections, the results not declared and the wishes of the voters have not been respected.

## ***Repeated and continuing violations of Article 25 threaten to undermine other human rights***

The consequences of the repeated and continuing violations of Article 25 are extremely serious for the people of Guyana including violations of Article 6 which guarantees the right to life. There is no minister of health with the legal authority to restrict movements and take other measures to protect the health of the Guyanese people, which is much needed in the context of the current Covid-19 pandemic. Public health and lives now depend almost entirely on the common sense and goodwill of the Guyanese people. With regard to oil companies’ attempts to exploit Guyana’s oil and gas reserves, a lack of legitimate government is already resulting in the inability of the administration to protect the Guyanese people from the impacts on the environment, health and life that result from extractive activities, as highlighted in the first part of this report.

# **Suggested Issues**

In light of the above, we encourage the Human Rights Committee to include in its List of Issues for Guyana the following questions to the State party:

**(i) What steps is the present administration of Guyana taking in order to stop the threat to the right to life arising from all greenhouse gas emissions from gas flaring by Esso, Hess and Nexen which exacerbate climate change, ocean acidification and sea level rise bearing in mind the impact on the right to life in Guyana, the Caribbean and the rest of the world?**

**(ii) What steps is the present administration Guyana taking to ensure that offshore oil production and its inevitable greenhouse gas emissions do not further conflict with Guyana's obligations under the ICCPR, in particular threats to the right to life posed by climate change, ocean acidification and rising sea-levels?**

**(iii) What steps is the present administration taking to bring themselves back into compliance with the Constitution of Guyana and to adhere to the rule of law?**

1. <https://www.businesswire.com/news/home/20191220005597/en/ExxonMobil-Begins-Oil-Production-Guyana> [↑](#footnote-ref-1)
2. <https://www.kaieteurnewsonline.com/2020/05/22/grave-environmental-damage-looms-german-ngo-warns/> [↑](#footnote-ref-2)
3. <https://www.ciel.org/news/exxons-gas-flaring-is-latest-sign-that-oil-may-turn-guyana-from-carbon-sink-to-carbon-bomb/> [↑](#footnote-ref-3)
4. <https://www.kaieteurnewsonline.com/2020/05/30/exxonmobil-encounters-more-issues-now-flaring-15-million-cubic-feet-of-gas-per-day-epa-head/> [↑](#footnote-ref-4)
5. CCPR General Comment No. 25 (57) on Article 25 (Right to participate in public affairs, right to vote and be elected and right to have access to public service)’ (27 August 1996), para 1. [↑](#footnote-ref-5)
6. 18th September 2019 [↑](#footnote-ref-6)
7. Ram et al v Attorney-General et al [2019] CCJ 14 (AJ) [↑](#footnote-ref-7)
8. UNFCCC, Paris Agreement adopted at the 21st Session of the Conference of the Parties (12 December

   2015) (Paris Agreement), article 2.1.a. [↑](#footnote-ref-8)
9. Paris Agreement, preamble. [↑](#footnote-ref-9)
10. *Ibid.* [↑](#footnote-ref-10)
11. IPCC Special Report: ‘Global warming of 1.5°C. An IPCC special report on the impacts of global warming

    of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context

    of strengthening the global response to the threat of climate change, sustainable development, and efforts

    to eradicate poverty’ (2018) (SR 1.5) [↑](#footnote-ref-11)
12. *Ibid.,* at 9 (B.5) [↑](#footnote-ref-12)
13. IPCC Special Report: ‘Global warming of 1.5°C. An IPCC special report on the impacts of global warming

    of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context

    of strengthening the global response to the threat of climate change, sustainable development, and efforts

    to eradicate poverty’ - Summary for Policymakers (2018), at 7-10 [↑](#footnote-ref-13)
14. *Supra* note 4, Chapter 1 Executive Summary. [↑](#footnote-ref-14)
15. IPCC Fifth Assessment - Summary for Policymakers (2014), at 19 [↑](#footnote-ref-15)
16. CESCR National Report 2014, para 378. [↑](#footnote-ref-16)
17. Key World Energy Statistics (Intl. Energy Agency, 2015). [↑](#footnote-ref-17)
18. This is of particular importance given the findings of the Global Assessment of the IPBES on

    biodiversity, and the warning that nature, and its vital contributions to people, is deteriorating. ; IPBEScalls for

    transformative change to recover ecosystems and biodiversity, including through rights-based action

    (accessible at https://www.ipbes.net/deliverables/2c-global-assessment). [↑](#footnote-ref-18)
19. UNEP/CBD/COP/DEC/XI/17 https://www.cbd.int/decision/cop/?id=13178 [↑](#footnote-ref-19)
20. *Ibid.* [↑](#footnote-ref-20)
21. <https://corporate.exxonmobil.com/en/Locations/Guyana/Guyana-project-overview#DiscoveriesintheStabroekBloc> (accessed 12 May 2020) [↑](#footnote-ref-21)
22. See: <https://www.eia.gov/tools/faqs/faq.php?id=45&t=8> and <https://www.epa.gov/energy/greenhouse-gases-equivalencies-calculator-calculations-and-references> [↑](#footnote-ref-22)
23. Based on IPCC and EPA formula 5.80 mmbtu/barrel × 20.31 kg C/mmbtu × 44 kg CO2/12 kg C × 1 metric

    ton/1,000 kg = 0.43 metric tons CO2/barrel, see https://www.epa.gov/energy/greenhouse-gasesequivalencies-

    calculator-calculations-and-references. [↑](#footnote-ref-23)
24. This refers to Guyana’s emissions in 2014, see

    https://www.macrotrends.net/countries/GUY/guyana/carbon-co2-emissions for metric tons of

    emissions per capita and https://www.worldometers.info/world-population/guyana-population/ on

    Guyana’s population. [↑](#footnote-ref-24)
25. CRC National Report 2012, para 41. [↑](#footnote-ref-25)
26. See Hickey, C. and T. Weis, 2012: The challenge of climate change adaptation in Guyana. Climate and

    Development, 4(1). [↑](#footnote-ref-26)
27. https://www.gfdrr.org/en/publication/guyana-story-impact-communicating-flood-risk-along-guyanas-coast [↑](#footnote-ref-27)
28. EIA Liza Phase 1 [↑](#footnote-ref-28)
29. <https://www.youtube.com/watch?v=IwQZ_Qp8Vao> [↑](#footnote-ref-29)
30. See for example the effects of the Exxon Valdez spill in Alaska and the BP Macondo well blowout in the Gulf of Mexico [↑](#footnote-ref-30)
31. The BP Macondo blowout released over 4 million barrels of oil [↑](#footnote-ref-31)
32. Figure 7-15 Deterministic Map for Scenario 9 – Unmitigated 20,000-Barrel-per-Day Release of Crude Oil for 30 days (December through May) Depicting Weathering and Fate from the environmental impact assessment prepared for Esso Exploration and Production Guyana Ltd. [↑](#footnote-ref-32)
33. CCPR General Comment No. 36 on Article 6 (Right to life)’ (30 October 2018), para 62. [↑](#footnote-ref-33)
34. UN Human Rights Council, ‘Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights’ (15 January 2009) A/HRC/10/61, para 8. [↑](#footnote-ref-34)
35. ICCPR, Article 6. [↑](#footnote-ref-35)
36. Committee on the Rights of the Child (CRC), ‘General Comment No. 7 (2005): Implementing Child Rights in Early Childhood’ (20 September 2006), para. 10. [↑](#footnote-ref-36)
37. ‘CCPR General Comment No. 36 on Article 6 (Right to life)’ (30 October 2018), para 3. [↑](#footnote-ref-37)
38. *Ibid*, para. 22. [↑](#footnote-ref-38)
39. *Ibid*, para. 62. [↑](#footnote-ref-39)
40. Article 3 [↑](#footnote-ref-40)
41. Preamble [↑](#footnote-ref-41)
42. Para. 9.4 [↑](#footnote-ref-42)
43. UN Docs CCPR/C/CPV/Q/1/Add.1 (LoI) and CCPR/C/CPV/CO/1/Add.1 (COB) [↑](#footnote-ref-43)
44. UN Doc CCPR/C/USA/QPR/5 [↑](#footnote-ref-44)
45. UN Doc CCPR/C/DMA/Q/1/Add.1 (LoI), and CCPR/C/DMA/COAR/1 (COB) [↑](#footnote-ref-45)
46. UN Doc CCPR/C/PHL/Q/5 [↑](#footnote-ref-46)
47. UN Doc CCPR/C/KEN/Q/4 [↑](#footnote-ref-47)
48. *Supra* note 47, para. 15; note 17, para. 12 [↑](#footnote-ref-48)
49. *Supra* note 46 (COB), para. 18 [↑](#footnote-ref-49)
50. UN Doc CEDAW/C/GUY/CO/9, para. 42 [↑](#footnote-ref-50)
51. UN Doc A/HRC/44/16, para. 100.73. The report of the Working Group on the UPR will be officially adopted at the forty-fourth session of the Human Rights Council (June 2020). [↑](#footnote-ref-51)
52. Ibid., para. 100.63 [↑](#footnote-ref-52)
53. See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E> (last accessed 12 May 2020) [↑](#footnote-ref-53)
54. UN Doc E/C.12/ECU/CO/4, para. 11 [↑](#footnote-ref-54)
55. Ibid., para. 12 [↑](#footnote-ref-55)
56. UN Doc E/C.12/ARG/CO/4, para. 13 [↑](#footnote-ref-56)
57. UN Doc CRC/C/NOR/CO/5-6, para. 27 [↑](#footnote-ref-57)
58. UN Doc CEDAW/C/NOR/CO/9. [↑](#footnote-ref-58)
59. UN Doc CEDAW/C/GC/37, para. 14 [↑](#footnote-ref-59)
60. See: ‘The Effects of Climate Change on the Full Enjoyment of Human Rights’, Joint Paper by five Special Procedures mandate holders of the Human Rights Council (2015), available at http://www4.unfccc.int/Submissions/Lists/OSPSubmissionUpload/202\_109\_130758775867568762-CVF%20submission%20Annex%201\_Human%20Rights.pdf; Public Statement of the Committee on Economic, Social and Cultural Rights made on 31 October 2018, UN Document E/C.12/2018/1, paragraph 2. [↑](#footnote-ref-60)
61. Safe Climate: Report of the Special Rapporteur on Human Rights and the Environment, UN Doc A/74/161, p. 35 [↑](#footnote-ref-61)
62. *Ibid.,* para. 28 [↑](#footnote-ref-62)
63. *Ibid.,* para. 78 [↑](#footnote-ref-63)
64. UN Doc A/74/161, paras. 28-29 [↑](#footnote-ref-64)
65. UN Doc A/HRC/43/53/Add.2, para. 96 [↑](#footnote-ref-65)
66. Case of Yanomami Indians v Brazil, IACmHR [1985] Case N/7615. [↑](#footnote-ref-66)
67. Advisory Opinion requested by the Republic of Colombia, IACHR [2017] Oc-23/17 [↑](#footnote-ref-67)
68. Case No. 19/00135, Supreme Court of the Netherlands, Decision of 20 December 2019, para 8.2.2. for the English version of case documents, see <http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/> (last accessed 20 May 2020) [↑](#footnote-ref-68)
69. *Ibid.*, para. 5.3.2 [↑](#footnote-ref-69)
70. Case No. 25501/2015, Lahore High Court, Order of 4 September 2015. [↑](#footnote-ref-70)
71. HRCtte, ‘CCPR General Comment No. 25 (57) on Article 25 (Right to participate in public affairs, right to vote and be elected and right to have access to public service)’ (27 August 1996), para. 7. [↑](#footnote-ref-71)
72. Ram et al v Attorney-General et al [2019] CCJ 14 (AJ) [↑](#footnote-ref-72)
73. <https://dpi.gov.gy/commonwealth-observer-satisfied-with-gecoms-election-process/> [↑](#footnote-ref-73)
74. https://menafn.com/1099810564/Guyanas-election-free-and-fair-says-CARICOM-election-observers [↑](#footnote-ref-74)
75. <https://www.stabroeknews.com/2020/03/10/news/guyana/law-provides-for-at-minimum-four-certified-copies-of-sops-from-each-station/> [↑](#footnote-ref-75)
76. https://guyanatimesgy.com/cj-rules-ros-region-4-declaration-of-elections-results-unlawful/ [↑](#footnote-ref-76)
77. <https://www.stabroeknews.com/2020/03/24/news/guyana/uk-foreign-secretary-in-stern-warning-over-non-democratic-transition/>; <https://www.stabroeknews.com/2020/03/24/news/guyana/uk-foreign-secretary-in-stern-warning-over-non-democratic-transition/>; <https://www.cartercenter.org/news/pr/2020/guyana-031320.html> [↑](#footnote-ref-77)
78. <https://www.youtube.com/watch?v=VaiCS3qTBuc> [↑](#footnote-ref-78)
79. <https://www.kaieteurnewsonline.com/2019/10/17/chief-justice-throws-out-application-for-order-compelling-cabinet-to-resign/> ; Ram et al v Attorney-General et al [2019] CCJ 14 (AJ) [↑](#footnote-ref-79)
80. Ram et al v Attorney-General et al [2019] CCJ 14 (AJ); [↑](#footnote-ref-80)
81. As late as 15th March 2020, the former president, whose government lost the no-confidence motion in December 2018, signed an Aide-Memoire as “His Excellency David Granger President of the Cooperative Republic of Guyana.” [↑](#footnote-ref-81)
82. Letter to David Malpass 16th April 2020 [↑](#footnote-ref-82)
83. Letter to David Malpass on 16th April 2020 [↑](#footnote-ref-83)
84. Madzimbamuto v Lardner – Burke 1968 (2) SA [↑](#footnote-ref-84)