



## **University of Oklahoma College of Law**

### **International Human Rights Clinic**

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Report on the Republic of France to the 15<sup>th</sup> Session of the Universal Periodic Review, Human Rights Council, 21 January to 1 February 2013

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## **EXECUTIVE SUMMARY**

The International Human Rights Clinic of the University of Oklahoma College of Law (IHRC-OU) submits the following report to the Fifteenth Session of the Universal Periodic Review, Human Rights Council. Specifically, this report concerns the Amerindians of French Guiana, a Department of the Republic of France and surveys the Republic's compliance with certain human rights obligations. The report focuses on the selected areas of Heritage and Language Retention, Land and Resource Rights, and Health. The purpose of this report is to provide a comprehensive view of Amerindian concerns in French Guiana and offer recommendations with the hope that they will guide the Republic in the areas of Heritage and Language Retention, Land and Resource Rights, and Health.

The IHRC-OU notes the expressions of commitment made by the Republic to continue to develop and improve the protection of indigenous persons.

### **I. HERITAGE AND LANGUAGE RETENTION**

#### **Normative and Institutional Frameworks:**

International Provisions: The 2008 UPR recommended that the Republic remove reservations and interpretive statements to the International Covenant on Civil and Political Rights (ICCPR). While the Republic has reduced the scope of or undertaken to revise other interpretive statements to the ICCPR, it maintains its interpretive statement to Article 27. In their response to the 2008 UPR, the Republic concluded that this interpretive statement still allows indigenous peoples overseas to maintain their cultural identity and to use their own language. However, the Republic in their midterm UNHRC report restated their position that the Republic guarantees to all citizens the right to religious, linguistic and cultural freedom and therefore does not recognize the concept of "ethnic, religious or linguistic minorities."

Domestic Undertakings: Regarding specific rights for indigenous peoples, the Republic referenced the State's ability to integrate local customs and practices in its policy of recognizing and protecting indigenous peoples. Part of this integration was the 2010 establishment of the Conseil Consultatif des Populations Amerindiennes et Bushinenge (Consultative Council). The Council has the "authority to take responsibility for any issue" concerning the Amerindian population in French Guiana. In January 2010, the Republic consulted with residents in French Guiana concerning the institutional future of the territory. A change in the governmental framework would directly affect Amerindian populations in French Guiana. The dialogue resulted in a referendum vote on the political structure of French Guiana, giving residents an opportunity to choose the Department's governmental classification.

## **Human Rights on the Ground**

The loss of traditional native languages is a significant concern for many Amerindians residing in French Guiana. There are at least six distinct Amerindian peoples in French Guiana: Arawak, Emerillons, Kali'na, Palikur, Wayana, Wayapi all of whom speak languages that are traditionally unwritten. Because the native languages are considered the core of Amerindian culture, preservation of the languages is crucial to maintaining cultural identity and a traditional way of life. Under the French education system, children are required by law to attend school until the age of 16. Amerindian youth must live away from their home communities for extended periods in order to attend school. This forced distance from their home communities and their immersion into a dominant culture makes it difficult for the children to engage in Amerindian cultural activities and to maintain fluency in their traditional language. Public school teachers instruct classes in French. Native languages are not spoken during instruction. Children who have grown up speaking an Amerindian language experience a gap in performance and may drop out of school due to a solely French language instruction. Amerindian children sometimes become ashamed of speaking in their native language. Younger community members may not fully develop their ability to speak in their native language. A generational gap in the ability to speak the language is created between elders and youth. Because many Amerindian languages are not written, this generational gap creates a danger of loss of language. Relegating language to the private sphere and not including it in the public school system or other government-sponsored functions, threatens the continued existence of Amerindian languages.

## **Recommendations**

- In consultation with leaders of Amerindian communities at risk of losing traditional language, develop and implement appropriate measures to encourage the use of native languages and to increase the number of fluent native language speakers.
- Offer instruction in Amerindian languages in French public schools with significant populations of Amerindian students in the same manner as instruction is offered for such languages as English and Spanish.
- Incorporate instruction in Amerindian languages for Amerindian students entering the French public schools.
- Provide language instruction and cultural awareness training for teachers working with Amerindian students.
- Recruit persons fluent in Amerindian language(s) to be trained as teachers.
- Continue and expand individualized language assistance for Amerindian students to reduce the negative impact on academic performance.
- Increase efforts to ensure that Amerindian languages are treated on parity with the French language.
- Take steps to ratify the European Charter for Regional and Minority Languages.

## **II. LAND AND RESOURCE RIGHTS**

## **Normative and Institutional Frameworks**

International Obligations: In 2010, the Committee on the Elimination of All Forms of Racial Discrimination (CERD Committee), in reviewing the Republic's record of compliance with its obligations under the CERD, noted its concern that "the current system does not allow recognition of the collective rights of indigenous peoples, in particular the ancestral right to land." It recommended that the Republic take appropriate measures to ratify the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples. At present, the Republic still maintains its traditional stance on this issue by upholding individual civil rights over collective rights. Similar obligations flow from Articles 8(b) and 26 of the United Nation's Declaration on the Rights of Indigenous Peoples ("UNDRIP") to the extent that it is considered to be evidence of customary law.

The Republic holds the affirmative duty to consider and protect Amerindian interests under Article 8(j) of the Convention on Biological Diversity ("CBD"). Amerindians, in preserving traditional knowledge, must be encouraged to participate in benefit-sharing through the same Article. The International Treaty for Plant Genetic Resources and Food ("IST") furthers this obligation under Article 9.2. In the context of plant genetic resources, the Republic is required to: (1) protect traditional (Amerindian) knowledge; (2) allow Amerindians to participate in equitable benefit sharing; and (3) allow Amerindians to participate in decision-making at the national level.

Domestic Undertakings: Decree 87-267 in 1987 instituted subsistence rights for Amerindian populations living on state-granted land in French Guiana. Although 496,000 hectares of land were set aside in this undertaking, this allocation has yet to be definitively distributed to the Amerindian groups. Article 3211-5 of the Forest Code provides the method for sale of state-owned forests. The sale must be no more than 150 hectares and may not upend the maintenance/conservation of mountainous areas, or degrade water resources, or the ecological balance of a region/welfare population. Even so, this does not provide Amerindian peoples a role in the decision-making process.

## **Human Rights on the Ground**

A persistent worry of Amerindians is that they will not have adequate land resources to support their community. Amerindian communities possess only subsistence rights and hold no substantive rights to the land they occupy. Extensive pieces of territory have been nationalized in the name of conservation, displacing many Amerindian communities who lived in those areas. The degradation of traditional Amerindian territory along freshwater sources due to illegal mining practices is making it increasingly harder to live in the affected areas.

These groups face many problems and the Republic's creation of the Consultative Council is a positive step towards addressing those problems. However, the Council does not have substantive decision-making power but is only an advisory body.

Amerindian communities are granted land use and subsistence rights but these may be usurped by the Republic. Nationalization of territory through indeterminate policy has led to the infringement of land use and has caused the relocation of Amerindians. As conservationists of their traditional lands, Amerindians have not been extended adequate compensation or statutory protection for their communities.

### **Recommendations**

- Consider the recommendations made in 2010 by the CERD Committee to take the necessary legislative measures to ratify the International Labour Organization Convention concerning Indigenous and Tribal Peoples.
- Make efforts to comply with Articles 8(b) and 26 of the UNDRIP which cover indigenous peoples' land rights.
- Include Amerindian representatives in national decision making and benefit sharing processes required under the CBD and IST.
- Make efforts to comply with Article 4 of the UNDRIP which covers the right to self-governance by indigenous peoples in their local affairs.
- Review the use of decrees, instead of substantive provisions, in granting Amerindian land rights. If the Republic wishes to still be reliant on such, the decrees should be strengthened to ensure that they are not easily rescinded.
- Consider granting substantive authority to the Consultative Council.

## **III. HEALTH**

### **Normative and Institutional Frameworks**

International Obligations: In its 2008 concluding observations, the Committee on Economic, Social and Cultural Rights (ESCR Committee) noted with concern the high rate of suicide in the Republic, despite the plans and strategies that the Republic had adopted to combat this phenomenon. The ESCR Committee recommended that the Republic identify the motives for committing suicide, and compile, analyze and provide statistical data with a view towards developing preventative measures targeted at vulnerable groups and for tracking the progress made in implementing the Republic's remedial measures.

The CERD Committee requested in its 2010 concluding observations that the Republic increase efforts to guarantee equality of access to public health in the overseas territories, as well as provide statistical data tracking the implementation of this recommendation. In response, the Republic's midterm UNHRC report referenced the Interministerial Delegation for the Equal Opportunity of Overseas French Citizens, for its work in securing equality in health.

Domestic Undertakings: On February 21, 2008, the Republic responded to the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. In its response, the Republic acknowledged the existence of mercury in the environment in French Guiana and noted the exposure of Amerindian populations to “mercurial risk.” It reported that it had pursued risk prevention policies; worked with indigenous actors to implement programs to reduce mercury exposure; instituted programs to educate affected populations on the risks of mercury; and adopted “progressive regulations” that “respect the geographic realities and customs of Guiana.”

In early 2008, then President Nicolas Sarkozy instituted Operation Harpie to locate and disable illegal gold mining operations that are the dominant cause of the mercury contamination. National forces were periodically present. Helicopter surveillance was used to reduce illegal mining operations. In a speech delivered on February 18, 2010, then President Sarkozy announced that Operation Harpie Reinforce would be instituted as a permanent program.

### **Human Rights on the Ground**

Health guarantees in French Guiana are plagued by problems of access resulting in a dramatic difference between the health care available to coastal residents and to residents of the interior. Because over ninety-eight percent (98%) of French Guiana is covered by rain forest, portions of the interior are only accessible by helicopter or boat. The dense forested terrain makes it difficult to prevent illegal gold mining and to provide needed health care, thereby impeding the ability to address the mercury poisoning problem. Mercury pollution is a primary concern which affects both freshwater systems and the traditional aquatic food sources of Amerindians.

Although Harpie operations have yielded seizures of equipment and gold and disrupted some of the mining activity, illegal gold mining continues to be prevalent. Armed conflicts have erupted between the illegal gold miners and neighboring Amerindian communities as well as between the illegal miners and French forces. On June 27, 2012, illegal gold miners ambushed French forces, killing two, and recapturing confiscated gold and equipment.

This violence not only threatens the security of Amerindian communities, but also the safety of mobile health providers. Isolated Amerindian communities are served by intermittent health care providers, rather than permanent facilities with full-time medical personnel. Remote distances and sparse population influence the Republic’s allocation of resources. Problems of access are also compounded by language barriers because health care providers frequently do not speak indigenous languages.

The lack of access to health care leads to identifiable medical problems for the Amerindians. In addition to mercury poisoning, suicide and infectious disease have been prevalent despite government efforts to alleviate these problems.

### **Recommendations**

- Include Amerindian representatives in the identification of effective activities to curb illegal gold mining and to expand programs undertaken by the Republic to effectively reduce illegal mining.
- Work with Amerindians to identify culturally appropriate food alternatives for Amerindian populations whose food source and freshwater systems have been contaminated.
- Solicit the assistance and cooperation of neighboring countries to address the transnational dimension of illegal gold mining operations.
- Cooperate with Amerindians to establish and/or increase use of permanent health care facilities within local villages.
- Encourage the hiring of medical personnel who speak indigenous languages or enlist the assistance of translators so that language barriers and cultural differences do not impede the provision of medical care.
- Continue multi-dimensional programs that address the social, cultural and psychological causes of suicide.
- Work to establish a permanent presence in Amerindian communities by partnering with relief organizations and Amerindians to increase self-sufficiency and governmental responsiveness.