



**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

**ANNEX**

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## ANNEX

1. French Guiana is an overseas department of France bordering the Atlantic Ocean to the east, Suriname to the north, and Brazil to the south and west in South America. With a total surface area of 226,000 square kilometers, French Guiana is the largest department of France, and is forest-covered over 98.4% of its territory.<sup>1</sup> French Guiana is divided into two *arrondissements*: Saint-Laurent-du-Maroni to the west, and Cayenne to the east.

2. French Guiana has a population of 226,000. 76.4% of the population lives in urban areas, including 62,000 in the capitol city of Cayenne.<sup>2</sup> The population is largely concentrated along the coast, where 95% of the populace resides; the remaining 5% live in the interior.<sup>3</sup> The population of French Guiana is predominantly Creole. Minority populations include native Amerindians, metropolitan French, and immigrants from other nations.<sup>4</sup>

3. There are approximately 8,000 Amerindians in French Guiana, who live along the coast and in the interior.<sup>5</sup> The term Amerindian includes the six indigenous populations in French Guiana: the Arawak, Emerillons, Kali'na, Palikur, Wayana, and Wayapi.

4. The Guiana Coast, an Atlantic seaboard along northern South America, was introduced to European civilization by Christopher Columbus on his third Atlantic voyage in 1498.<sup>6</sup> In 1503, Spaniards settled the area around the present-day capital, Cayenne.<sup>7</sup> Cayenne itself was established in 1643 by French merchants. It was occupied by Dutch colonial interests in 1664.<sup>8</sup>

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<sup>1</sup> United Nations Statistics Division (2012), "French Guiana," UNData *available at* <http://data.un.org/CountryProfile.aspx?crName=French%20Guiana>.

<sup>2</sup> Id.

<sup>3</sup> Personal Interview, May 25, 2012. Record of interview on file with the University of Oklahoma College of Law.

<sup>4</sup> Id.

<sup>5</sup> Personal Interviews, May 26 and 28, 2012. Record of interviews on file with the University of Oklahoma College of Law.

<sup>6</sup> Tota C. Mangar, *Conceptualisation and History of the Guianas*, Stabroek News (July 31, 2003).

<sup>7</sup> *French Guiana*, Encyclopedia Britannica (July 3, 2012).

<sup>8</sup> Id.

In 1667, the Treaty of Breda ended the Anglo-Dutch war, permanently dividing the Guianese territories. The Republic of France retained the area modernly known as French Guiana.<sup>9</sup>

5. During the 18<sup>th</sup> century, all inhabitants of French Guiana gained status as French citizens, and representation in Parliament in 1877.<sup>10</sup> Present day French Guiana is governed by Article 73 of the French Constitution as an overseas department.<sup>11</sup> As part of the Republic, French Guiana sends two elected representatives to the National Assembly and one to the Senate.<sup>12</sup>

6. French Guiana is administered locally by a Prefect, who is appointed by the President of the Republic. The local executive body at the regional level is an elected *regional council*, which comprises 19 members. The elected 31-member *general council* operates at the departmental level. Following a referendum vote held on January 24, 2010, the people of French Guyana voted to combine the regional and general councils into a single executive body, to take effect in 2014.<sup>13</sup>

7. In 2007, the Amazonian Park was established in the heart of French Guiana's Amazon forest.<sup>14</sup> The Park covers approximately 13,000 square miles in the communes of Camopi, Maripasoula, Papaïchton, Saint-Élie and Saül.<sup>15</sup> The Park's dual objectives are to protect the natural habitat within the boundaries of the park as an element of France's cultural heritage, and to durably develop French Guiana's natural resources.<sup>16</sup>

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<sup>9</sup> *Treaty of Berda*, Encyclopedia Britannica (July 3, 2012).

<sup>10</sup> *French Guiana*, Encyclopedia Britannica (July 3, 2012).

<sup>11</sup> Constitution of October 4, 1958, Art. 73.

<sup>12</sup> *French Guiana*, Encyclopedia Britannica (July 3, 2012).

<sup>13</sup> Personal Interview, May 26, 2012. Record of interview on file with the University of Oklahoma College of Law.

<sup>14</sup> Décret no 2006-943 du 28 juillet 2006 relatif aux établissements publics des parcs nationaux et modifiant le code de l'environnement, and Décret no 2006-944 du 28 juillet 2006 relatif aux parcs nationaux et modifiant notamment le code de l'environnement. Available at: <http://www.parc-guyane.gf/site.php?id=65>.

<sup>15</sup> <http://www.parc-guyane.gf>.

<sup>16</sup> *Id.*

8. The territory has experienced many “gold rush” periods throughout its history. The first occurred in the 1850s. Presently, extraction of gold continues to attract miners. Illegal gold mining is currently a source of many problems for the Republic.<sup>17</sup>

9. In writing this report, the IHRC-OU Law had the opportunity to travel to French Guiana and meet with public officials, private individuals, and Amerindian leaders. We express our sincere gratitude to Alexis Tiouka for his guidance and assistance; the Sous-Préfet, Benoit Vidon; and L’Université des Antilles et de la Guyane. We would like to thank the inhabitants of Awala-Yalimapo for their hospitality and collaboration. We further express our sincere gratitude to the University of Oklahoma College of Law and Dean Joseph Harroz.

## **I. Linguistic Heritage**

### **Best Practices**

10. In an effort to reduce the academic achievement gap between Amerindian and non-Amerindian school children, the Republic continued to implement the intervenants en langue maternelle positions to help Amerindian children develop French language skills. The role of intervenants en langue maternelle is important to assure that Amerindian children, whose first language is often their native language, understand French well enough to comprehend school lessons. Those serving in the role of intervenants en langue maternelle assist students that have little to no knowledge of French in integrating to the public school setting.

11. In 2010 the Republic has created an advisory council for Amerindian populations in French Guiana, the Conseil Consultatif des Populations Amerindiennes et Bushinenge (Consultative Council).<sup>18</sup> The Consultative Council has the “authority to take responsibility for

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<sup>17</sup> Mangar at 1.

<sup>18</sup> UNHRC Mid-Term Review of Recommendations and Additional Pledges, p. 3. 2010.

any issue” concerning the Amerindian population in French Guiana.<sup>19</sup> It was established to address concerns specific to the Amerindian people and allows for greater representation of Amerindian peoples. The Consultative Council is made up of twenty members, six of whom are nominated by Amerindian or Businenge organizations and is convened at the request of the government.

12. The Republic consulted with residents in French Guiana concerning the institutional future of the territory. The dialogue resulted in a referendum vote on the political structure of French Guiana. The referendum gave residents an opportunity to remain classified under Article 73 of the French Constitution or to be reclassified under Article 74. Under Article 73 of the French Constitution the same laws that govern mainland France also govern the department. Being classified under Article 74 of the French Constitution would allow for the Department to develop and apply laws specific to French Guiana. In January 2010, 70% of residents that voted chose to remain under article 73.

### **Challenges and Obstacles**

13. In the June 2010 Mid-Term Review of Recommendations and Additional Pledges (Mid-Term Review), the Republic stated that the Republic “does not plan to review its position on the legal status of minorities.”<sup>20</sup> The Republic took this position based on Article 1 of the French Constitution, which provides: “France is an indivisible, secular, democratic and social Republic. It ensures the equality of all citizens before the law, without distinction of origin, race or religion. It respects all beliefs. . . .”<sup>21</sup>

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<sup>19</sup> UNHRC Mid-Term Review of Recommendations and Additional Pledges, p. 3. 2010.

<sup>20</sup> UN Human Rights Council Mid-Term review of Recommendations and Additional Pledges, No. 29, p. 27, June 11, 2010.

<sup>21</sup> French Constitution at Art. 1 (1).

14. Moreover, the government stated that the Republic “has always held that members of minorities should enjoy all human rights fully but that collective rights should not be granted to particular groups or communities identified on the basis of ethnic, cultural or religious criteria, particularly in view of the difficulty of defining such communities.”<sup>22</sup> Relying upon a recommendation of the Constitutional Council, the Republic refused to ratify the European Charter for Regional or Minority Languages. This decision occurred before the 2010 amendment of the French Constitution by Article 75-1, which provides that “regional languages are part of France’s heritage.”<sup>23</sup>

15. To help combat discrimination against minority groups, the Republic created the Commission of Experts on the Measure and Evaluation of Diversity and Discrimination (COMEDD) in 2009 to investigate the scope of diversity and measure discrimination within the governmental structure. In 2010, COMEDD issued a report setting forth proposals relating to statistical data and diversity. The Republic in the Mid-Term Review reported that it was assessing the proposals. To date, the COMEDD report has not led to any definitive response to concerns raised by Amerindian communities.

16. One of the biggest concerns of Amerindian groups in French Guiana was the need to retain native languages. Many persons have experienced a pressure to assimilate to a non-Amerindian culture. Assimilation, even partial, has created an obstacle to maintaining traditional language and heritage. One example of obstacles to preserving language and heritage is the structure of the Republic’s public education system. Being raised in their native language, Amerindian children are usually not as fluent in French as other students. Because instruction in

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<sup>22</sup> Id.

<sup>23</sup> Decision No. 99-412 DC of the Constitutional Council of 15 June 1999. Note: the President of France requested from the Council a determination of whether the Charter would supersede the Constitution as it applied to Articles 1 & 2.

the Republic's educational system is exclusively in French, Amerindian children are often at an academic disadvantage. As Amerindian children progress in school, they speak their native languages less frequently because of academic and social pressures. The chief of an Amerindian village shared that children from the Amerindian villages are ashamed of utilizing their tribal languages.<sup>24</sup> Although speaking French may help Amerindian students feel more accepted in a school setting, it creates an estrangement with their families and communities.

17. Some Amerindian leaders fear that within a few generations Amerindian communities will no longer have enough fluent speakers to maintain their native languages. Yet other Amerindian leaders believe that the responsibility for maintaining fluency in native languages belongs exclusively to the parents.<sup>25</sup> Ultimately, because the government requires attendance at schools which force the removal of Amerindian youth from their home communities, the responsibility for maintaining the language of Amerindians in French Guiana is a shared one. It is imperative that Amerindian communities have the opportunity, in both public and private areas, to speak and learn in their native languages. The need for native language-speaking teachers, doctors and others providing governmental services to Amerindian communities is apparent.

18. Actions by the Republic have contributed to a perception that Amerindian culture is inferior to the majority culture. For example, one leader of an Amerindian advocacy group spoke of the decision to locate the Republic's space program headquarters. The buildings and the launch pad for space missions were constructed directly on top of sacred ground for the Ka'lina tribe.<sup>26</sup>

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<sup>24</sup> Personal Interview, May 24, 2012. Record of interview on file with the University of Oklahoma College of Law.

<sup>25</sup> Personal Interview, May 26, 2012. Record of interview on file with the University of Oklahoma College of Law.

<sup>26</sup> Personal Interview, May 22, 2012. Record of interview on file with the University of Oklahoma College of Law.

19. Similar issues have arisen with the opening of the “Amazonian Park” in 2007. Many of the Amerindian people are adamant that the creation of this Park has denied them access to their traditional lands. They also fear that the Park will stimulate the emergence of rainforest tourism deep within their territory. Such actions accelerate the deterioration of Amerindian heritage and culture because they fail to respect and value the communities’ traditions and customs.

20. The challenges faced by the Amerindian peoples with regard to maintaining their traditional culture and linguistic heritage are many. The designation of French as the controlling language in Article 2 of the French Constitution hinders inclusion of traditional Amerindian languages in the Republic’s school systems and other government-sponsored frameworks. The distance between the schools and home communities makes it difficult for Amerindian children to participate in many cultural activities, especially those key ceremonies that reflect rites of passage or growth. These children are also housed with “foster” families who usually do not share their same cultural practices and customs. Finally, Amerindian heritage and culture are not often validated in a way that fosters respect and learning.

### **National priorities, initiatives and commitments**

21. A 2010 revision to the French Constitution states that “the Republic recognizes, within the French people, the overseas populations, in a common ideal of liberty, equality and fraternity.”<sup>27</sup> Most notably, the Constitutional Council in overseeing the revisions concluded that the Republic is “composed of all French citizens, with no distinction as to origin, race or religion.”<sup>28</sup> This position is reaffirmed in the French Constitution, Article 1, which does not distinguish between individual citizens and Article 2, which establishes the official language of

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<sup>27</sup> Constitution of October 4, 1958, Art. 72(3).

<sup>28</sup> Decision 91-290 DC of 9 May 1991, Statut de la Corse, and the Decision 99-412 DC of 15 June 1999, Charte européenne des langues regionales ou minoritaires.



the Republic to be French.<sup>29</sup> However, Article 75-1 of the Constitution which was adopted in 2010, recognizes that “regional languages are a part of [the Republic’s] heritage.”<sup>30</sup>

22. The Republic is also a party to the European Cultural Convention (ECC), Article 2 of which requires each state party to “endeavor to promote the study of its language or languages, history and civilization in the territory of the other Contracting Parties and grant facilities to the nationals of those Parties to pursue such studies in its territory.” The recent addition of Article 75-1 to the French Constitution seems to give new meaning to the Republic’s requirements outlined in the ECC. Given that the Republic’s Constitution recognizes the significance of regional languages, presumably including traditional Amerindian languages, the Republic may now have a commitment under the ECC to promote the study of Amerindian languages.

23. To the extent that it constitutes evidence of customary law, the Republic is also a party to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Under this Declaration, minority cultural and linguistic identities are to be supported, and state parties are to “encourage conditions for the promotion of that identity.”

### **Expectations in terms of capacity-building and technical assistance**

24. Because Amerindian languages in French Guiana are not written, the Republic must work with Amerindian communities to develop appropriate responses to threats to linguistic heritage. Technical assistance from Amerindian peoples is essential to develop culturally relevant and sensitive training for government officials responsible for providing services to Amerindian communities.

## **II. Land and Resource Rights**

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<sup>29</sup> French Constitution at Art. 1 and 2.

<sup>30</sup> French Constitution at Art. 75-1.

## **Best Practices**

25. The creation of the Conseil Consultatif des Populations Amerindiennes et Bushinenge in 2010 gave great hope to Amerindian communities that their concerns would finally be addressed.<sup>31</sup> Since its creation, the Council has made two rulings that impact the Amerindians. The first ruling eliminated hunting quotas on game for Amerindian people living in the Amazonian Park. The second ruling pertained to zoning issues. In that ruling, the Council advised the Republic that the wrong zoning interpretation had been made. The Republic ignored the Council's position and allowed the zoning action to stand.<sup>32</sup> The Council has not met since the 2011 zoning decision. Even though it has ruled favorably for the Amerindian communities, it is only a consultative body with no real authority. The Council can only convene at the request of the government and does not have a permanent presence. The Council is heavily dependent on limited state funding. These conditions, along with the Republic's treatment of rulings adverse to the Republic, raise questions as to the potential effectiveness of the Council to secure rectification of Amerindian problems.

## **Challenges and Obstacles**

26. The Republic has ultimate control over designation of the lands and must comply with the statutory provision relating to any sale. Generally, Amerindian peoples are granted a portion of land within the territory for subsistence, but this grant is very limited in scope. The Republic uses "decrees" to provide land rights instead of a promulgated law. At the behest of the government, Amerindian land can be reallocated for other uses, thus displacing tribal communities. This authority undermines the land "rights" bestowed upon the Amerindian

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<sup>31</sup> Conseil Consultatif des Populations Amerindiennes et Bushinenge (2010).

<sup>32</sup> Conseil Consultatif des Populations Amerindiennes et Bushinenge, No. 5831 and Avis No. 2.

people. The controlling decree only grants Amerindians subsistence rights on the land they occupy.<sup>33</sup> They do not even enjoy the right to sell excess crops for economic gain.<sup>34</sup>

27. With 98.4% of the territory covered by forest, ownership becomes vitally important. Little if any land is owned by the Amerindian peoples. Sale of state-owned forest is restricted to 150 hectares but can still affect Amerindian populations.<sup>35</sup> Because the Amerindian peoples do not own the land, they are not able to designate the allocation of funds from the proceeds of authorized deforestation on the land that they possess.<sup>36</sup> Most Amerindian groups do not wish to obtain property through Westernized property schemes, but rather to retain their traditional land to the exclusion of others.

28. Nationalization of the territory's land for conservation is a major problem for Amerindians. With regard to the Amazonian Park and various other parks, lands have been taken from traditional lands in the name of conservation. This ever-changing demarcation of Amerindian boundary leads directly to various societal problems within the native communities. They are placed in volatile living situations, subject to partisan politics. The process of conservation, especially in such a bio-resource rich area, is highly complex and requires extensive input from local communities coupled with government oversight to ensure proper practice. Up to this point, the Republic has held absolute authority in determining which areas are best for conservation, the scope of such areas, and allowable activities within those areas. The Amerindian voice is ignored by the state/state interests. Thus when conservation policies are implemented, tribal communities can be displaced or cut off from ancestral land. Pursuant to Article 9.2(3) of the International Treaty on Plant Genetic Resources and Food (IST),

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<sup>33</sup> Decree 87-267, 1987.

<sup>34</sup> Personal Interview, May 21, 2012. Record of interview on file at the University of Oklahoma College of Law

<sup>35</sup> L 3211-5, Forest Code.

<sup>36</sup> Articles R. 170-56 et seq of the State's Domain: Land Rights.

Amerindian communities have the right to participate in conservation policy decision making at the national level. Currently, the government has not allowed this participation.

29. Finally, the Republic has the affirmative obligation to compensate Amerindian communities for their role in sustaining biodiversity. The development of a reasonable system of benefit-sharing has been challenging. A fiscal approach that would seem reasonable and appropriate for Amerindian communities along the coast might not be beneficial for Amerindian communities located in the interior of French Guiana. These issues of sustainability and biodiversity could be considered by the Consultative Council. Compensation through the benefit sharing process would be more adeptly reviewed enabling the Council to provide reasonable solutions to this complex issue.

30. In summation, Amerindian communities in bio-resource heavy French Guiana (1) have not been allowed to truly share in the benefits of conservation and (2) do not hold substantive land rights over the territory they inhabit/have traditionally inhabited.

### **National Priorities, Initiatives, and Commitments**

31. The Republic ratified the International Convention on the Elimination of All Forms of Racial Discrimination on July 28, 1971. Article 5(d)(v) denotes the right of ownership both individually and collectively.<sup>37</sup> Moreover, on September 23, 2010, the CERD committee noted that the Republic should be more active in granting substantive land rights to Amerindian communities<sup>38</sup> and should revisit its position that individual civil rights adequately protects indigenous populations. Although there are a few places in domestic law wherein the Republic has attempted to provide Amerindian communities some rights, these are very limited. For

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<sup>37</sup> International Convention on the Elimination of All Forms of Discrimination, Art. 5(d)(v).

<sup>38</sup> CERD/C/FRA/CO/17-19, p. 4, Sept. 23, 1010. “The Committee is still concerned that the current system does not allow recognition of the collective rights of indigenous peoples, in particular the ancestral right to land.”

example, Article L172-4 of the Forest Code reiterates sustenance rights for communities or peoples who “traditionally derive their livelihood from the forest.”<sup>39</sup>

32. Article 26 of the UNDRIP states that “indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” while Article 8(b) provides that “States shall provide effective mechanisms for the prevention of...any action which has the aim or effect of dispossessing them of their lands, territories or resources.”<sup>40</sup> To the extent that the UNDRIP is considered to be evidence of customary international law, the Amerindian peoples would have the right of lawful ownership, not mere possession, of their ancestral lands. It should be noted that the Republic voted for the UNDRIP as a member of the Human Rights Council in 2006,<sup>41</sup> voted against a resolution for delay<sup>42</sup> in the General Assembly, and voted in favor of its adoption.<sup>43</sup> Mr. Fabien Fieschi, a delegate from the Republic, stated that “the Declaration was an essential step forward in the promotion...of human rights for all,” that the UNDRIP “referred to many of the rights that had been elaborated in the French Constitution,” and that the Republic “had supported all multinational initiatives for Amerindian peoples.”<sup>44</sup>

33. The Republic has ratified both the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources and Food (IST). Article 8(j) of the CBD requires each party to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.” The IST builds on this in Article 9.2, which provides

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<sup>39</sup> Article L172-4, Code of the Forest.

<sup>40</sup> A/61/295, Sept. 13, 2007.

<sup>41</sup> HRC 2006/2.

<sup>42</sup> Namibia Resolution for Delay, Sept. 2007.

<sup>43</sup> GA/10612, Sept. 13, 2007.

<sup>44</sup> Id.

that “each contracting party should...take measures to promote and protect [indigenous] Farmers” that include (1) “protection of traditional knowledge,” (2) “the right to equitably participate in sharing benefits,” and (3) “the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources.”<sup>45</sup> Amerindian communities/farmers are to preserve biodiversity. They are to be duly compensated for this undertaking. They are to have a voice in major decisions. Yet, at the International Conference on the Major Forest Basins held in Paris in 2010 and hosted by then President Sarkozy, 64 states discussed problems of deforestation. Amerindian interests were ignored and not mentioned. The need for the allocation of benefits derived from state-held rainforests in French Guiana to the Amerindian peoples is apparent and would comport with the Republic’s obligations under the CBD and IST.

34. Another major CBD concern is degradation of environmental quality on lands adjoining freshwater sources. Article 17 requires the preservation and sharing of Amerindian knowledge for the betterment of sustainable agriculture. Yet, illegal mining practices have polluted many freshwater systems with unacceptable levels of mercury. This in turn contaminates traditional food sources, such as fish, while further pushing communities away from traditional areas. The forced migration allows wildcatters unfettered access to resource-rich areas. The Republic has a duty to the Amerindian groups to prevent the loss of biodiversity.

### **Expectations in Terms of Capacity-Building and Technical Assistance**

35. If the Republic were to ratify the International Labour Organization Convention No. 169 which deals with the rights of Amerindian and tribal peoples, Amerindian land concerns would be targeted. Specifically, the need for adherence to Articles 2 and 7, dealing with the right to own/develop land, and Article 13, the right to land/heritage, should be taken into account

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<sup>45</sup> The International Treaty on Plant Genetic Resources and Food, Art. 9.2 (June 29, 2004).

throughout French territory. Furthermore, Articles 26 and 8(b) of the UNDRIP require the recognition of Amerindian land rights.

36. As discussed in Paragraph 8 above, the creation of the Consultative Council benefitted Amerindian communities, but only to a limited degree. This body needs to be granted more authority in order for it to be effective. The Council could work with Amerindian groups and the government to draft statutory provisions that ensure land rights to tribal communities. Furthermore, the Council only meets when convened by the Republic. This should evolve to require at annual mandatory sessions so that Amerindian concerns can be more expeditiously addressed.

37. In order for the Republic to come within full compliance of the IST and CBD, it also needs to compensate Amerindian communities for conservation practice. Amerindians should further be afforded the opportunity to participate in the process for the designation of territory for conservation. The Consultative Council could be a possible forum for the discussion and implementation of such decisions.

### **III. Health**

#### **Mercury Poisoning**

38. Many factors contribute to substantial health problems for Amerindian community members. Among them, mercury poisoning is of particular concern.

39. Mercury poisoning is attributed to illegal gold mining practices that have ravaged the territory. Mercury has been used for centuries in hydraulic gold mining to assist gravity in driving the particles down as the water-soil mixture runs through a slough. Although many major gold mining facilities worldwide have stopped using this practice, it remains the easiest

method for gold extraction. Those who utilize this practice have left large quantities of mercury in the rainforests of French Guiana. Freshwater sources and fish have been particularly affected.

40. The mining is often practiced clandestinely by *garimpeiros*. Often, the *garimpeiros* are citizens of neighboring Brazil and Suriname, who have crossed largely unprotected borders with French Guiana in order to unlawfully extract the precious metal.

### **Best Practices**

41. Beginning in 2003, the French government responded to the practice of illegal gold mining with a series of patrols. In 2008, then President Nicolas Sarkozy instituted Operation Harpie. The Operation was a multi-ministerial response in which members of the armed forces of Guiana (FAG) were supplemented by the national police force (Gendarmerie) and French Foreign Legion. The operations alternated between reinforced and non-reinforced periods, and were principally aimed at the influx of illegal gold miners in an effort to destroy the implements of their trade. In line with this mission, the Republic passed a law permitting the destruction of the tools used in committing illegal gold-mining infractions.<sup>46</sup> In addition, road and river blocks were established.

42. In 2010, Operation Harpie was replaced by Operation Harpie Reinforce. In a speech made February 18, 2010, then President Sarkozy referred to illegal gold mining as an ecological and health disaster and a major factor contributing to insecurity in the interior. He announced the decision, effective in March, to maintain a permanent militarized presence in French Guiana. This change no doubt reflected the belief of many, including Colonel Francois Müller, commander of the Gendarmes, that Operation Harpie was successful only while the Gendarmes were physically present. Upon their departure, the illegal gold miners soon returned.<sup>47</sup>

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<sup>46</sup> Article L 512-9 of the Mining Code.

<sup>47</sup> *Id.*



43. In its present incarnation, Operation Harpie Reinforce mobilizes 1,000 French soldiers from the Armed Forces of Guiana (FAG) in the Amazonian forest.<sup>48</sup> Of these forces, 300 to 350 are deployed permanently on the terrain.<sup>49</sup> Since 2012, 1,200 patrols have been conducted, resulting in the dismantling of 55 illegal gold mining sites, according to State defense statistics.<sup>50</sup>

44. Significantly, a 2011 assessment of the Harpie Operations compiled by the Prefecture in Guiana revealed a decline in the rate of confiscations and destruction of implements over the preceding three years. Whether this decline can be properly attributed to the success of the operation, or to the adaptations of the illegal gold miners is unclear.

### **Challenges and Obstacles**

45. French Guiana's eastern border with Suriname is formed in the north by the Maroni River. To the west, the border with Brazil is formed by the Oyapock River. These rivers run through densely rain forested areas making the area difficult to patrol.

46. The *garimpeiros* are frequently armed and skirmishes have resulted. The first fatality of Operation Harpie occurred in 2010, when an infantryman whose boat had been damaged disappeared on the Tampock river. His body was discovered four days later. As recently as June 27, 2012, a skirmish resulted in the death of 2, and the injury of 3, when illegal gold miners attacked French patrol forces in an ambush.<sup>51</sup>

47. In terms of environmental impact, mercury pollution has become rampant, especially around the headwaters of the Oyapok and Maroni rivers. As a result, the indigenous Amerindian

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<sup>48</sup> Ministry of the Overseas Departments & Territories, available at: <http://www.oultre-mer.gouv.fr/?-depeches-a-f-p,102-.html#afparticle2490>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> <http://www.defense.gouv.fr/ema/forces-prepositionnees/guyane/actualites/guyane-2-militaires-francais-tues-lors-d-une-operation-de-lutte-contre-l-orpaillage-illegal>

populations in the vicinity of these rivers have been disproportionately affected. For example, one study of the Wayana population found that 57% of the population had mercury levels above the World Health Organization (WHO) safety limit.<sup>52</sup> In addition, all those over one year of age had a higher mercury level than the WHO safety limit.<sup>53</sup>

48. Exposure to elemental mercury can cause a vast array of health problems, such as neuromuscular disorders, headaches, sensation disturbance, change in nerve responsiveness, and performance deficits on cognitive function tests.<sup>54</sup> In addition, expectant mothers exposed to mercury are at risk of birthing complications and damage to the developing fetus.<sup>55</sup>

49. The diet of Amerindians has also been significantly affected. Fish, which remain a principal component of the native diet, are disproportionately contaminated by the mercury pollution. Game animals (*gibier*) used by Amerindians to supplement their diet have dwindled in numbers as well. This result obtains because the *garimpeiros* kill more than is required for their consumption as part of a strategy to decrease the livability of an area, and thereby encourage the departure of Amerindians.

50. Measures taken by the Republic have included telling the Amerindians not to consume fish, as well as providing *boîtes* for consumption. However, neither method is sensitive to the culture of the Amerindians, which has traditionally relied on fish food sources.

### **Expectations in terms of capacity-building and technical assistance**

51. Because the problem of illegal gold-mining is trans-national, crossing borders both with neighboring Suriname and Brazil, effective and coordinated cooperation with the

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<sup>52</sup> N. Frery, *Gold-Mining Activities and Mercury Contamination of Native Amerindian Communities in French Guiana: Key Role of Fish in Dietary Uptake*, 109 Environmental Health Perspectives No. 5, 449 (May 2001).

<sup>53</sup> *Id.*

<sup>54</sup> U.S. Environmental Protection Agency <http://www.epa.gov/hg/effects.htm>

<sup>55</sup> Agency for Toxic Substance & Disease Registry: [www.atsdr.cdc.gov/toxfaqs/tf.asp?id=113&tid=24](http://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=113&tid=24)

governments of Suriname and Brazil would be critical to the long-term success of any campaign to eliminate the practice of illegal gold mining.

### **Suicides**

52. Another area of concern is the rate of suicide within traditional Amerindian communities. This phenomenon is exacerbated by a lack of culturally responsive mental health treatment in indigenous communities.

### **Best Practices**

53. In an effort to address the prevalence of suicides in indigenous communities, the French government has responded by developing educational campaigns and sending a mental health practitioner to survey the Amerindian communities. The practitioner conducted interviews with Amerindians, and issued a report which listed the root cause of suicides. The report concludes that suicides have a significant cultural component.<sup>56</sup>

### **Challenges and Obstacles**

54. Many of the Amerindians interviewed by the IHRC-OU were dissatisfied by the sending of the mental health practitioner to conduct a survey. To begin, the endeavor was principally research-oriented. While the fact-finding mission will result in a written report, as of today's date, no concrete plans have been developed to remedy the prevalence of suicide among Amerindians. A further concern voiced by Amerindian persons was the problem of sending a white practitioner to deal with an issue that has significant cultural overtones.<sup>57</sup> Many Amerindians were unable to confide in the practitioner whose interest and involvement in the communities were only temporary, believing that no long term solutions to the suicides would be achieved by a government response that was not permanent.

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<sup>56</sup> Personal Interview, May 25, 2012. Record of interview on file with the University of Oklahoma College of Law.

<sup>57</sup> Personal Interview, May 26, 2012. Record of interview on file with the University of Oklahoma College of Law.

## **Expectations in terms of capacity-building and technical assistance**

55. Opportunities for capacity building are two-fold: cooperation with existing relief organizations and with the Amerindian communities themselves.

56. As detailed in the ADER Guyane report, relief organizations have established a presence near affected Amerindian communities. These organizations remain in contact with the communities in order to respond to the threat or occurrence of a suicide. In terms of preventative measures, noting the significant cultural component in suicides, relief organizations have established programs that offer enrichment opportunities to Amerindians including sporting and media events.

57. Governmental programs which build on the success of these relief organizations, or increase funding to established relief entities would be successful in addressing the issue of suicide, to the benefit of the Amerindian communities.

58. In addition, the effort to address the problem of Amerindian suicides would also benefit from closer cooperation with affected Amerindian communities. Such cooperation would address the cultural element of the suicide trend, while supporting the self-sufficiency of Amerindians.