



University of Oklahoma College of Law  
International Human Rights Clinic  
United States of America

Report on the Republic of France to the 43<sup>rd</sup> Session of the Universal Periodic  
Review (UPR) Human Rights Council.

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## Executive Summary

The University of Oklahoma College of Law International Human Rights Clinic (OU-IHRC), United States of America submits the following report on the Republic of France to the 43<sup>rd</sup> Session of the Universal Periodic Review (UPR) Human Rights Council. 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 and recommendations during the third cycle of the UPR of France reviews. The report focuses on the selected area of collective rights of the Amerindian peoples of French Guiana. 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 regard to collective rights and derivative rights that arise from them.

The OU-IHRC would like to highlight with certain concern the expression "France takes into account the aspirations of indigenous peoples, respecting the constitutional principle of equality between citizens." (A/HRC/WG.6/29/FRA/1. para. 85). This may lead to confusion and obviate the clarity on indigenous peoples rights achieved under the UNDRIP

### **Introduction.**

This report addresses urgent areas of concern related to the status of collective rights and derivative rights associated with them to the Amerindian peoples in French Guiana and is intended to supplement information the Government of France provided in responding to the third review of its domestic and international policies regarding human rights. Currently in both France and foreign territories (referred to by the Government of France as "collectivities"), collective rights of Amerindian peoples are not recognized, and many other rights of them suffering as a result. Particularly in French Guiana, this lack of collective rights results in mercury contamination of the rivers of French Guiana, in particular the Maroni, and illegal gold mining, lack of the use of traditionally held lands, and the inability to effectively teach indigenous languages.

This lack of collective rights and self-determination for the Amerindian peoples of French Guiana has had tremendous effects on the health and traditional way of living of these groups. Youth in Amerindian peoples are committing suicide at a rate ten (10) times that of youth in Paris and Amerindian leaders point to the lack of cultural autonomy as the root cause. Through France's lack effectively to implement recommendations received during its third cycle of the UPR and in some cases complete refusal to do so, Amerindian peoples in French Guiana suffer from having their traditional way of life stripped from them and their health put at risk due to France's reluctance to change. Unless France takes active, affirmative steps towards allowing Amerindian peoples collective rights, it is unlikely that the present situation will improve.

**Monitoring the third cycle of the UPR.** The OU-IHRC have been following the third cycle of the Universal Periodic Review (UPR) of France during the 29th session of the UPR Working Group in January 2018, where France received 297 recommendations and of which it supported 239. While this appears to be a large percentage of acceptance on the part of France, it needs to be taken into consideration that many of these “acceptances” were partial in nature. Reiteratively, France has been making similar commitments in previous reports and yet not straightforward answers that provide a valuable safeguard in this regard, being a considerable obstacle in the way is thereby intended to resolve these issues.

Similar acceptances on France’s part. Even still, when recommendations are divided by subject matter, recommendations regarding Amerindian are cast by France into a group which is referred to as “other specific groups and persons” thus losing the weight of the impact an interested party may have received otherwise. As a result, we find that a review of France’s commitments to Amerindian peoples and their collective rights, particularly the Amerindian peoples of French Guiana, is absolutely necessary after a long, and unsatisfactory path to the detriment of the Amerindian peoples should be treated with the utmost seriousness

In the French Constitution and through French domestic policy, minorities and minority ethnic groups are not recognized, but instead all peoples throughout the Republic are merely considered French. This is made clear in the Constitution in Article I which states “[France] shall ensure the equality of all citizens before the law, without distinction of origin, race, or religion.” Regarding collectivities, the French Constitution states “France shall form with its overseas peoples a Union founded upon equal rights and duties, without distinction of race or religion.” Also, in the well-known legal document titled the Declaration of the Rights of Man and of the Citizen (a document that has since been incorporated into the French Constitution), it makes clear that commitments to equality are paramount by stating in Article I that “[m]en are born and remain free and equal in rights [and] social distinctions may be based only on considerations of the common good.” While the Republic has stated that this non-recognition of minorities does not hinder its ability to combat discrimination and inequality within its territory, it is clear that Amerindian peoples and groups face obstacles as a result of this lack of acknowledgement. While this policy may serve well as aspirational standards for France within its territorial limits on the European continent, in French Guiana that has been held by its own native peoples for millennia, the aiming to protect its cultural identity has not been complied in accord with international standards. Ignoring this historical background not only negates their long-held cultural values and traditions, but it completely reshapes health, well-being, and deeply ingrained way of life of the Amerindian peoples of French Guiana.

On November 19, 2015, the Administrative Court of Cayenne rendered its judgment on the “Recourse in full litigation” filed in April 2014 by two associations, the Organization of Indigenous Nations of Guyana-ONAG and Association Solidarite Guyane-ASG. Their request was rejected. The court does not rule on the merits. Leaving in complete defenselessness the tragedy experienced by the Amerindian peoples who are victims of gold panning, illegal mining, in particular, that gold panning activity, given its intensity, has major repercussions on the health of the Amerindian peoples and on the environment in French Guiana; that this activity releases mercury that is toxic to the environment and that the State, duly warned, has not taken any preventive measures to control legal gold mining and prevent illegal gold mining.

Currently, the complaints from Amerindian leaders’ legal framework does not exist under domestic law that guarantee the full exercise of their rights, particularly with regards to their enjoyment of safe environment rights, in order to safeguard their physical and cultural survival.

Consequently, the OU-IHRC is of the view that cannot be regarded as justified to the legitimate aim being pursued that " France shall form with its overseas peoples a Union founded upon equal rights and duties, without distinction of race or religion."

### **The International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).**

During the third cycle of the UPR 2018, France received recommendations by **Paraguay** para. 145.16 “Ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and comply with the United Nations Declaration on the Rights of Indigenous Peoples”, in the same line Bolivarian Republic of **Venezuela** para. 145.15. **Mozambique** para. 145.2 “Withdraw its declarations on article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and on article 27 of the International Covenant on Civil and Political Rights”, and **Greece** para. 145.3 “Withdraw the declaration relating to article 13 of the International Covenant on Civil and Political Rights”.

Conventions and covenants are directly related to the ability of Amerindian peoples to self-govern and reclaim traditionally held lands for Amerindians peoples. However, France has never accepted any recommendations that explicitly state acceptance of international law mechanisms for Amerindians peoples because the Republic interpret these to be contrary to its constitution and domestic law.

While the Republic of France has accepted and partially accepted certain recommendations related to the rights of Amerindians peoples, France has largely only “taken note” of the recommendations specifically related to Amerindian issues and collective rights, the ILO Convention 169, and the Declaration on the Rights of Indigenous Peoples which effectively

serves as a dismissal of the recommendation. Additionally, these types of recommendations are not a new occurrence; France has been recommended similar changes to be made for nearly 20 years and yet France has merely stated that it would “take note.” However, it would appear that if recommendations are written with specificity to not include the Declaration on the Rights of Indigenous Peoples, France is at least receptive to the idea of partially accepting recommendations concerning the ILO Convention 169 although it is unclear whether France would actively seek to incorporate this convention into its domestic law.

The OU-IHRC is of the view that if France is unable to ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), because of its constitutional system. The republic must avail itself of ILO technical assistance and urged it to accept an ILO direct contact mission and consider accept a visit to the country by the direct contacts mission, and demonstrate in this regard, that the republic have willingness and contribute really to finding solutions to the issues raised in relation to the application of the ILO Convention 169.

The ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), shall be understood as referring as a living instrument, and their interpretation must go hand in hand with the evolution of international law and with current living conditions and shall not adversely affects rights, and benefits of the peoples concerned nor diminish it effective functioning.

**The Lack of Collective Rights.** The lack of collective rights with the Amerindian peoples of French Guiana is a significant concern. Collective rights per the UNDRIP includes the right to traditionally held lands, clean water, maintenance of culture, to be free of forced assimilation, and self-determination.

While the Amerindian peoples of French Guiana have quasi-representation through an organization created for them called the Grand Customary Council, recommendations made by this council hold no legal weight and are ultimately decided by an assigned French official who has the discretion to either grant or deny proposals. As a result, Amerindian peoples are entirely reliant on the French government for the resolution of issues that they face. However, the French government, while having made commitments to allot lands to the native peoples of French Guiana, end illegal gold panning that pollutes the water, and preserve native languages through learning opportunities, unfortunately many of its commitments continue pending without facilitate real change.

For example, in the Accord de Guyane du 21 avril 2017, the French have stated they would “assign” 400,000 hectares to Amerindians of French Guiana, but there is no indication of what the word “assign” means in this context nor for what purposes the land may be used. To date, there has been no concession of land to Amerindian peoples in French Guiana and when asked by local peoples, the French government appears ambivalent to these requests. Interestingly, in other collectivities the Republic of France has made efforts and has moved lands to indigenous peoples including groups in the collectivity of New Caledonia.

Additionally, while the French government has sent 300 troops to the lands most affected by illegal gold mining, this territory is roughly equivalent to the land mass of Scotland and as a result is vastly underserved. This is roughly equivalent to having one (1) officer for every 100 square miles or every 162 square kilometers. Even then, it is unclear what the roles of the troops and officers that have been sent to French Guiana serve. Locals are uncertain whether they provide an enforcement role or an instructive role. Further, there are indications that even with these officers present their enforcement is negligible with armed militias actively terrorizing villages in rural areas and mining still being ever present. There are signs, too, that the French government primarily relies on neighboring governments such as Brazil and Suriname to do the majority of enforcement in these rural regions. Even then, requests by Amerindian peoples for actions to be done appear to be ignored by French military members and gives the appearance that the French government does not have a vested interest in the end of illegal gold mining. If Amerindian peoples within French Guiana were to be given greater autonomy through the Republic recognizing their collective rights to the land and enforcement of laws, the local peoples will have greater power to facilitate the cessation of illegal gold mining and major improvements to health and safety could increase as a result.

**Native Language Courses:** Furthermore, while native language courses are available, these classes are not held during regular school hours and are mostly given in nursery school environments—hardly a conducive environment necessary to preserve the native tongue. Even still, there are indications from Amerindian peoples that even these classes are not held nor respected and the continuation of the native languages is entirely dependent on the teaching of older members to youth. Even this has issues being implemented due to the lack of funding for instructional tools and resources. While it does say in the French Constitution that the language of France is French, there are also instruments within the Constitution that state that every member of French society will be respected and valued. France has repeatedly stated that they will allow the tutelage of students in their native languages, but has not proceeded to make real, tangible steps towards having these commitments made a reality. Through this ineffective functioning towards its commitments to the Amerindian peoples of French Guiana, the collective right of cultural maintenance through language learning falls to the wayside.

Moreover, the French government while giving the appearance of holding a hard stance against special privileges for collective groups has made special considerations concerning individual cultural groups including the Roma people. In the past, the French government passed laws restricting the ability of the Roma people to move freely across France, but these laws were later repealed, and considerations were granted considering the longstanding tradition and way of life of this group. Much in this same sense, the Republic could grant greater access to collective rights and self-determination to the Amerindian peoples to utilize the lands and waters that they have traditionally inhabited for thousands of years. However, the French government does not consider the Roma people to be of France but are rather considered transitory residents.

In sum, the lack of access to native languages, clean water, and self-determination of traditionally held lands culminates into a lack of collective rights of Amerindian peoples and suffering comes as a result of France's lack of action.

**Unprecedented level of suicide.** In French Guiana, there is an unprecedented level of suicide as a result of the lack of collective rights and due attention. Amerindian youth feel powerless to the change, feel that their culture is disappearing, feel forgotten and neglected by the French government, and with no viable options for the future. As a result of this lack of recognition, exist a public health crisis in French Guiana.

## V. Recommendations

- Consider recognition of ethnic minorities in France and French territories so that instances of inequality and discrimination may be more easily managed and special considerations for Amerindian peoples such as were given to the Roma people.
- Grant the Grand Customary Council more enforcement tools and mechanisms so that solutions to problems faced by Amerindian peoples can be addressed on the local level and work in a more collaborative manner.
- Introduce into domestic law amendments that recognize the collective rights of indigenous peoples in extraterritorial collectivities. Consider removing reservations and qualifying statements made to international provisions such as the ILO Convention No. 169, ICCPR, and the UNDRIP.
- France should take meaningful steps in coordination with Amerindian peoples to increase military presence within French Guiana so that illegal mining operations cease and traditionally held lands may return to their clean, natural state.
- Reaffirm commitments to teach native languages equally with the French language.
- Reaffirm commitments to respect the health and safety of Amerindian peoples through disbursement of money and resources to rural areas and grant greater autonomy and authority to local governments so that local health concerns can be more readily addressed.