

Indigenous Peoples Rights and Movements | Section II

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Indigenous Peoples in French Guiana: will France ever recognize their right to self-determination, land, territory, biodiversity and Free, Prior and Informed Consent?

French Guiana, located in South America, hosts over 10,000 Indigenous Peoples, principally the Kali’na Tileuyu, Lokono and Pahikweneh, Wayãpi, Teko and Wayana people. Despite making up around 4% of the total population, Indigenous Peoples in French Guiana continue to face systematic challenges in being able to fully enjoy their human rights and rights as Indigenous Peoples. As an overseas territory of France, French Guiana falls under the governance of France and is fully integrated as an overseas department, separate from other overseas territories such as New Caledonia. This full integration has classified Indigenous Peoples as French People, making it not only difficult to get estimates of the actual number of Indigenous Peoples in French Guiana as the French Constitution prohibits ethnic statistics, but also prevent the ability of Indigenous Peoples to obtain their right to self-determination and control over their own land as provided in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Therefore, this paper will discuss the violations of the UN Declaration on the Rights of Indigenous Peoples committed by France that hinders their attainment to their fundamental freedoms and basic human rights. To do so, this paper will firstly begin by discussing the implementation of the UNDRIP in French Guiana in reference to several articles. In explaining the various articles, it will demonstrate how the French government’s recent actions continue to lead to the destruction of Indigenous territories and threaten their survival. Moreover, this paper will focus on articles 3, 10, 25, 29 which pertain to the right to

self-determination, the right to land and territories, and the right to protect biodiversity. These rights alongside the right to Free, Prior and Informed Consent (FPIC) should allow Indigenous Peoples to exercise control over decisions that essentially affect not only their way of life but also their existence, particularly considering the history of Indigenous Peoples that have frequently been the “first victims of development activities.”¹

To begin with, France has not ratified the International Labour Organisation Convention 169, that addresses the rights of Indigenous Peoples and recognizes the “aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live.”² Serving as an essential document and legally binding, the ILO Convention seeks to repair the relationship between the State and the Peoples for the centuries of oppression and erasure of traditions, culture, language, etc. Indigenous activists have fought and have been advocating for France to implement the ILO Convention, but as mentioned the French Constitution does not recognize Indigenous Peoples. However, this latter claim has been challenged by “the National Consultative Commission on Human Rights, France’s own national human rights institution, that declared collective rights to be compatible with the Constitution and stressing that France’s position is a driver of inequality and human rights violations.”³ In 2010 the Committee on the Elimination of Racial Discrimination “recommended the French state recognize the collective rights of indigenous peoples.”⁴ In not doing so, “France keeps these

¹ Navi Pillay, “Free, Prior and Informed Consent of Indigenous Peoples,” 2013.

<https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

² “C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169).”

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169./Document

³ Forest Peoples Programme, “France: The Last Barrier to Forest Peoples’ Protection in EU Law | FPP,” 2022.

<https://www.forestpeoples.org/en/article/2022/France-last-barrier-forest-protection-EU-law>

⁴ RNZ, “UN Report Urges France to Ratify ILO Convention on Indigenous People’s Rights,” 2010.

<https://www.rnz.co.nz/news/pacific/192732/un-report-urges-france-to-ratify-ilo-convention-on-indigenous-people's-rights>

people in a social, economic and cultural stalemate” and evades “the issue of fundamental rights essential to their survival in terms of ownership and use of ancestral lands and resources, civil and political liberties.”⁵

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted on September 13, 2007, represents an international framework to uphold and provide minimum standards for “the survival, dignity and well-being of the Indigenous Peoples of the world.” (UBC) After a process that lasted over 23 years, the Declaration represents and serves “as a standard of achievement to be pursued in a spirit of partnership and mutual respect between states and Indigenous Peoples.”⁶ Consisting of 24 preambular paragraphs and 46 operative articles setting, the Declaration outlines several human rights intended to protect Indigenous Peoples including, the right to self-determination, rights to land, territories and natural resources, and free, prior and informed consent for development activities, amongst others. Even though the Declaration is not legally binding, it establishes “an important standard for the treatment of indigenous peoples,” serving as an instrument for States to implement the declaration through national laws.⁷ As an enthusiastic supporter of the UNDRIP, French representative Fabien Fieschi stated that they “believed that the Declaration was an essential step forward in the promotion and protection of human rights for all.”⁸ Nonetheless, France has not taken active

⁵ Ibid.

⁶ Oldham, P. and Frank, M.A., “‘We the Peoples...’: The United Nations Declaration on the Rights of Indigenous Peoples - Anthropology Today - Wiley Online Library,” 2008.
<https://rai.onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8322.2008.00569.x> (accessed May 9, 2023).

⁷ “United Nations Declaration on the Rights of Indigenous Peoples | Division for Inclusive Social Development (DISD).”
<https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>

⁸ Nikic, Samantha, “Liberte, Egalite, Fraternite: The United Nations Declaration of the Rights of Indigenous Peoples Fails to Protect Hopi Katsinam from the Auction Block in France.” *Brooklyn Journal of International Law* 41(1), 2015. <https://brooklynworks.brooklaw.edu/bjil/vol41/iss1/9>.

steps to ensure the promotion and integration of the UNDRIP into French society, particularly within French Guiana.

The ability for Indigenous Peoples to have the right to self-determination is highlighted under article 3 of the UNDRIP, by “virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. Through Law No. 2017-256 of 28 February 2017 for Real Equality in Overseas France, France created the consultative body of the Grand Customary Council.⁹ Created in 2007, the Grand Customary Council is responsible for representing the Indigenous and Maroon (locally referred to as Bushinenge) peoples of French Guiana in defending “their legal, economic, social, cultural, educational and environmental interests.”¹⁰ In March 2022, the chief of the Maroon people, Mr. Bruno Apouyou, was elected as the new President for a three-year mandate. Even with the institution of this council, some challenges and issues arose. Firstly, the presidency is rotating, meaning that the new president must be Bushinenge, a population that self-refer and are the descendants of enslaved Africans who fled the plantations of neighboring Suriname. Although this would be good in principle, in reality it prevents the ability for Indigenous Peoples to lead on issues that concern them, which relates to the next challenge of grouping two different groups of people under one Council. Indeed, the Bushinenge and Indigenous Peoples diverge fundamentally in traditions and customary rights, therefore imposing a system of shared governance, without their free, prior, and informed consent does not allow Indigenous Peoples to defend their interests. In fact, the new leader “made known his willingness to defend the specific interests of the Maroon people.”¹¹ As a non-Indigenous person, the leader cannot and should not speak on Indigenous

⁹ “The Indigenous World 2023: French Guiana” - IWGIA - International Work Group for Indigenous Affairs, 2023 <https://iwgia.org/en/french-guiana/5090-iw-2023-french-guiana.html> (accessed May 11, 2023).

¹⁰ Ibid.

¹¹ Ibid.

Peoples issues, which therefore presents the reasoning behind the demand of a new Independent institution governed by Indigenous leaders. Finally, the last matter concerns the power of the Council that may only issue “advisory” opinions that are non-binding that the local authorities do not have to follow.¹²

Articles 10 and 25 consist of the protection of lands and territories of Indigenous peoples. Under Article 10, “Indigenous peoples shall not be forcibly removed from their lands or territories” and “no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” Additionally, Article 25 of UNDRIP states that “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.” The violation of these articles by the French government has continued to pose challenges to the Indigenous Peoples in French Guiana. Becoming a colony of France in 1604, the state applied the principle of “terra nullius” signifying the “land of no one.”¹³ This means that such “land could only be open for occupation if no one else was occupying it.”¹⁴ Many colonial powers, such as France, did not recognize Indigenous Peoples as human beings, and therefore took control of territory. So much so that the French state considered placing Kali’na in human zoos towards the end of the 19th century. In the case of French Guiana, the French government still holds ownership over areas managed by Indigenous communities. “To obtain land use rights,

¹² Ibid.

¹³ Ibid.

¹⁴ Thomas W. Donovan, “The Marouini River Tract and Its Colonial Legacy in South America,” 2004. <https://scholarship.kentlaw.iit.edu/ckjicl/vol4/iss1/1/> (accessed May 11, 2023).

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Indigenous leaders must apply to the French government’s representative in French Guiana, the Prefect, who has the power to validate or cancel the creation of a subsistence area.”¹⁵

Moreover, the national park, Parc Amazonien de Guyane, consists of 3.4 million hectares created in the south of the territory, making it the largest park within the European Union.¹⁶ This park first came to life following the 1992 Rio Conference or the Earth Summit to ensure the protected area of the forest. At first, the proposal was met with reluctance from some members of Indigenous communities as they feared the park would obstruct their way of life and traditional livelihood activities.¹⁷ Nonetheless, when the possibility that the Parc Amazonien would eradicate illegal gold mining more Indigenous communities residing within the park helped shift the narrative to a more positive one. In October 2006, a few months before the creation of the park, the Wayana listed their objections for the park during a public consultation where they asked “to benefit from the proximity of the heart of the Parc, in order to protect [their] places of life and activity [that were not] retained in this project.”¹⁸ The Wayana representative added, “nothing protects us against the many nuisances related to illegal gold mining; on the contrary, the project contains some provisions favorable to gold panning; and the project does not guarantee our Communities against intrusions on our living and activity spaces.”¹⁹ Despite these vocal concerns of the Wayana, the French government located the core of the park far from the location that the Wayana and Tekos had requested, posing difficulties in the ability to protect the environment and prevent illegal activities.

¹⁵ “The Indigenous World 2023: French Guiana” - IWGIA - International Work Group for Indigenous Affairs, 2023 <https://iwgia.org/en/french-guiana/5090-iw-2023-french-guiana.html> (accessed May 11, 2023).

¹⁶ Ibid.

¹⁷ Tristan Bellardie & Marieke Heemskerk. “Indigenous Peoples In French Guiana History, Demographics, Living And User Areas, Socio-Political Organization, And Perspectives On Mining.” 2019. https://s24.q4cdn.com/382246808/files/doc_downloads/2021/06/French-Guiana-Indigenous-Peoples-Final.pdf

¹⁸ Ibid.

¹⁹ Ibid.

Article 29 of the UNDRIP guarantees the right to environmental protection by stating that “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources” and that “states shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.” Despite being systematically and disproportionately impacted by the effects of climate change, Indigenous Peoples represent important protectors of biodiversity that go hand in hand with the respect of their traditions and culture. Biodiversity damage and environmental degradation has dramatic repercussions on their lives. Around the world, their survival remains threatened by large scale industrial activities, dumping of toxic waste, and mining that not only pose risks to their health but also result in conflict and migration. Front Line Defenders found that 77 per cent of the human rights defenders killed in 2018 were defending land, indigenous rights, or the environment. This threat can be demonstrated by Davi Kopenawa’s *The Falling Sky*, which articulates the invasion of “garimpeiros” or Earth eaters, into their territory and the issues that came about as a result. Lack of clean water may further result in illnesses and epidemics, as can be currently seen within the Yanomami community, in which five gold miners were convicted of genocide in the 1990s.²⁰ In French Guiana, the same activities threaten the existence of the Indigenous Peoples.

French Guiana has suffered from the presence of illegal gold mining activities within the territory, thus impacting and threatening the survival of the Indigenous Peoples. Located upstream of the Maroni River, the Wayana people have been affected by the pollution of mercury

²⁰ Balingit, M., Dias, M. and Pires, J.P., “The Yanomami Are Dying of Malaria and Malnutrition. Is It Genocide?” *Washington Post*, 2023. <https://www.washingtonpost.com/world/2023/04/18/brazil-yanomami-genocide/> (accessed May 9, 2023).

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in the river that has damaged their ability to feed themselves.²¹ In the village of Twenke, located in the south-west of French Guiana, Supreme leader of the Wayanas people, has stated that he just wants the water to become cleaner again.²² Within this river, the community washes themselves, and hunts for fish that are “full of the toxic methylmercury and high mercury levels.”²³ Diringer et al. (2015) demonstrated that communities located hundreds of kilometers downstream of ASGM activity, including children and indigenous populations who may not be involved in mining, are at risk of dietary mercury exposure that exceed acceptable standards.

Moreover, recently planned projects of the French government seek to cut down forest in French Guiana in order to build biomass power plants. The territory, being covered by around 90% of dense equatorial forest, and representing 1% of Amazon rainforest, filled with unique wildlife and unique biodiversity will be endangered through this project. In the name of “green energy,” and that would bypass French environmental laws, these power plants would require a “large amount of rainforest clearing, totaling between 536 square miles and 892 square miles (nearly three times larger than the land area of New York City).”²⁴

More recently the European Parliament adopted a new measure to combat global deforestation that will require companies to issue a due diligence “statement confirming that the product does not come from deforested land or has led to forest degradation, including of irreplaceable

²¹ “French Guiana Case - Rights Of Nature Tribunal.” Rights of Nature, 2020.

<https://www.rightsofnaturetribunal.org/cases/french-guyana-case/> (accessed May 11, 2023).

²² “Face à l’orpaillage clandestin, les Wayanas de Guyane veulent ‘de l’eau propre,’” *Geo.fr*, 2019.

<https://www.geo.fr/environnement/face-a-lorpaillage-clandestin-les-wayanas-de-guyane-veulent-de-leau-propre-196088> (accessed May 11, 2023).

²³ “ProBios: ‘Skaliens Richten Nog Steeds Grote Schade Aan, Ondanks Vele Beloften Regering’” de Ware Tijd, 2022. <https://dwtonline.com/probios-skaliens-richten-nog-steeds-grote-schade-aan-ondanks-vele-beloften-regering/> (accessed May 11, 2023).

²⁴ “French Guiana Soy Biofuel Power Plants Risk Massive Amazon Deforestation,” Mongabay Environmental News, 2020. <https://news.mongabay.com/2020/12/french-guiana-soy-biofuel-power-plants-risk-massive-amazon-deforestation/>.(a ccessed May 9, 2023).

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primary forests, after 31 December 2020.”²⁵ “The products covered by the new legislation are: cattle, cocoa, coffee, palm-oil, soya and wood, including products that contain, have been fed with or have been made using these commodities (such as leather, chocolate and furniture) as well as “rubber, charcoal, printed paper products and a number of palm oil derivatives.”²⁶ Moreover, companies will have to undergo a risk assessment that takes into account the (i) “the presence of indigenous peoples in the country of production or parts thereof; (ii) the consultation and cooperation in good faith with indigenous peoples in the country of production or parts thereof; and (iii) the existence of duly reasoned claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of the area used for the purpose of producing the relevant commodity.”²⁷ This law is a major victory for the respect towards Indigenous Peoples as their right to free, prior, and informed consent, as articulated under UNDRIP is protected though France has been actively opposed to the initial adoption of the measure.

Additionally, the French government violated the right to free, prior, and informed consent of the Indigenous Peoples of French Guiana through an initial mining project, “la Montagne d’Or” (“the Mountain of Gold”). Becoming the first instance of a UN Treaty body “dealing specifically with indigenous peoples’ issues and adopting an early warning procedure against France,” the UN Committee on the Elimination of Racial Discrimination (CERD) on 14 December 2018, “reprimanded France for its human rights violations against the indigenous peoples.”²⁸ Notwithstanding the attempt of the French government to build a mining project and

²⁵ “European Parliament, “Parliament Adopts New Law to Fight Global Deforestation,” News, 2023. <https://www.europarl.europa.eu/news/en/press-room/20230414IPR80129/parliament-adopts-new-law-to-fight-global-deforestation>. (accessed May 9, 2023).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Alexandre Sommer-Schaechtele, “Treaty Bodies | How a UN Committee Contributed to End a Controversial Mining Project in French Guiana,” *ISHR*, 2019.

providing it with a lucrative name, the Indigenous People did not consent to the project, making it a violation of the UNDRIP. On top of that, the lack of consent from the community was a violation of the Convention on the Elimination of All Forms of Racial Discrimination of which France is a State party since 1971 and allowed the ability for victims to take action through a rapid referral to the CERD against the French government.²⁹ In doing so, it was successfully put to an end, though it demonstrates the non-consideration and lack of willingness from the French government to uphold the values and framework of the UNDRIP.

Aside from the issues raised, which stem from actions taken by the French government, Indigenous Peoples face other forms of challenges through their interaction with other stakeholders and the differentiating need between Peoples living in urban versus rural areas. Indeed, NGOs have also been violating the Indigenous communities' Free, Prior and Informed Consent by entering the territory without proper engagement and implementing a top-down approach. Jupta Itoewaki, Chairperson of the Mulokot Foundation, a foundation that aims to bring sustainable development to the Wayana People, remarked that NGOs such as: the WWF, Conservation International (CI) and the Amazon Conservation Team (ACT) “come as new settlers to our area, pretending to want to help us with development.”³⁰ In addition, the access to rights of Indigenous Peoples is divided into two categories: that of the coast, to the way of life modern, and that of the interior, an area with very little urbanization, within which access to primary services (drinking water, electricity, primary care, schooling) and to sovereign services

<https://ishr.ch/latest-updates/treaty-bodies-how-a-un-committee-contributed-to-end-a-controversial-mining-project-in-french-guiana/>. (accessed May 11, 2023).

²⁹ Ibid.

³⁰ “The Wayana Indigenous Peoples in Suriname and Conservation NGO’s: A ‘True Love’ Story?,” World Rainforest Movement, 2019 (Accessed May 9, 2023) <https://www.wrm.org.uy/bulletin-articles/the-wayana-indigenous-peoples-in-suriname-and-conservation-ngos-a-true-love-story>.

inherent in the rule of law is not fully ensured.³¹ For those Indigenous Peoples living in rural areas, mostly accessible through the rivers, and with limited connectivity, it becomes difficult to partake in administrative procedures. The lack of education and the ability to practice their own language is also at stake, since the teaching, exclusively delivered in French, does not leave but only a subsidiary place for the languages of the Indigenous Peoples.³² Finally, after immense protests in 2017, a Memorandum of Understanding was signed between the Minister for Overseas France with the Indigenous and Bushinenge peoples. This Memorandum included “the return of 400,000 hectares of land to the Amerindian peoples, and a referral to the Council of State to consider the constitutionality of ILO Convention 169,” though still no land has been returned.³³ These matters exhibit the persistent challenges that Indigenous peoples in French Guiana constantly face in trying to just exist.

In conclusion, this paper has demonstrated violations and failure of the French government to uphold the United Nations Declaration on the Rights of Indigenous Peoples in regard to the Indigenous Peoples present in French Guiana. These Peoples face obstacles in gaining recognition through the French government and the ability to uphold their right to self-determination. In addition, their territory and lands remain at risk due to the environmental degradation posed by illegal mining but also the projects that are either attempted or in progress by the French government. Doing so, without consulting Indigenous Peoples, the first victims by such projects, the French government is violating their free, prior and informed consent as

³¹ Commission Nationale Consultative des Droits de l’Homme, *Avis Sur La Place Des Peuples Autochtones Dans Les Territoires Ultramarins Français : La Situation Des Kanak de Nouvelle-Calédonie et Des Amérindiens de Guyane*, 2017
<https://www.cncdh.fr/publications/avis-sur-la-place-des-peuples-autochtones-dans-les-territoires-doutre-mer-de-france>

³² Ibid.

³³ “The Indigenous World 2021: French Guiana,” IWGIA - International Work Group for Indigenous Affairs, 2021
<https://iwgia.org/en/french-guiana/4218-iw-2021-french-guiana.html> (May 11, 2023).

protected in the UNDRIP. As the rights of Indigenous Peoples continue to be further recognized in other countries, particularly in South America, France sooner or later will have to place a larger importance to protect the lives of Indigenous Peoples present in French Guiana, as for the moment, they continue to be extremely at risk.

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