

University of Oklahoma College of Law International Human Rights Clinic

The United State of America

Submission of an alternative report on the Republic of Suriname for consideration of the Committee on the Elimination of Racial Discrimination and review the implementation of the Convention in the Republic of Suriname, during its 107th Session of the Committee that will take place from 08 to 30 August 2022.

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1. Introduction

The University of Oklahoma College of Law International Human Rights Clinic, U.S.A. (“IHRC-OU”) submits its fourth alternative report for consideration of the Committee on the Elimination of Racial Discrimination and review the implementation of the Convention in the Republic of Suriname, during its 107th Session of the Committee that will take place from 08 to 30 August 2022.

The University of Oklahoma (hereafter “OU”) was established in 1890. The College of Law is currently the academic home of over 700 students enrolled in the full-time Juris Doctor Program. The College of Law also offers Master of Law programs in Energy and Natural Resources, Indigenous Peoples Law, and U.S. Legal Studies and Master of Legal Studies programs.

IHRC-OU sincerely appreciates the Committee’s efforts to review this alternative report and hopes the report will assist the Committee in its evaluation.

 II. Follow-up information

 A. Follow-up information relating to paragraph 22 of the concluding observations

1. Situation of indigenous and Tribal Peoples.

1. **Structural discrimination**: The 2020 report submitted by Suriname to the Committee on the Elimination of Racial Discrimination displays lack to effective fulfillment in the issue of self-determination of the Indigenous and Tribal Peoples. The report submitted by Suriname[[1]](#footnote-2) shows that nothing has been done. Indeed, self-determination is not even mentioned once. In this report, Suriname acts like it recognizes Indigenous people and their culture, without mention one concrete evidence in this regard.
2. The Indigenous and Tribal Peoples continue to depict real challenges for the national economy, no evidence displays they are included in these programs. Furthermore, as they are living very war from the city center, they do not benefit enough from the education either. There’s also a language and health issue. Indeed, Suriname laws do not recognize the right to communal property and therefore, indigenous population are not protected against violations of their lands.
3. That «*there are no organizations in Suriname whose main focus is on racial discrimination ».[[2]](#footnote-3)* So, how can we measure racism or discrimination if there is no organization or minister in charge of it? The Indigenous are represented. Indeed, in Parliament, 2 out of 57 people are from the indigenous community, in the corps of district commissioners, 2 out of 16 and it is not mentioned for the government administrations[[3]](#footnote-4). The last census of indigenous people is from 2012. At this time, indigenous people represented 3.8% of the Suriname’s population, that being approximately 20,344 individuals. With this number of people, they could, at least, be a little more represented.

 B. Follow-up information relating to paragraph 24 of the concluding observations

2. Legislative framework

1. Suriname introduced a Bill on Collective Rights to Parliament in 2019. To date, this bill has not been implemented and has since been withdrawn from Parliament for review by a Presidential Committee. The withdrawal of the bill was not communicated to the Indigenous and Tribal Peoples representatives, and Suriname did not provide information showing that the representatives were consulted nor allowed to participate in the formation of the bill. Although the introduction of this bill is a positive sign, there is still no legislation that has been enacted to protect the rights of Indigenous and Tribal Peoples within Suriname.

 C. Follow-up information relating to paragraphs 26 and 28 of the concluding observations

3. Exploitation of natural resources and the right to free, prior, and informed consent.

 (a). The Special Rapporteur for Suriname has previously reported that even more formal, regulated ventures permit small-scale miners to operate within concession areas for a percentage of their profits without oversight; that miners have threatened indigenous peoples, driving them from their traditional hunting, fishing, and agricultural lands; and that the Artisanal and Small-Scale Gold Mining (ASGM) mercury amalgamation processes contaminate waterways, causing grave health consequences for indigenous peoples.[[4]](#footnote-5) According to the Special Rapporteur, these problems were especially acute in the Wayana indigenous communities of Apetina and Anapaike in south-eastern Suriname.[[5]](#footnote-6) The State party reported that between January 2015 and July 2019, two hundred and seventy-one (271) mining rights for gold and other materials were issued.[[6]](#footnote-7) Reports suggest many of these concessions continue to be granted in eastern Suriname on traditional Apetina and Anapaike lands and therefore represent an ongoing concern.[[7]](#footnote-8)

1. Since 2003, Suriname has officially recognized mercury problems associated with small-scale gold mining in the interior.[[8]](#footnote-9) In 2008, Suriname stated that the Ministry of Natural Resources conducted health and safety investigations on small-scale and industrial gold-mining.[[9]](#footnote-10) In 2014, the Government recognized that ASGM has negative impacts on surrounding environments and communities and has therefore recently implemented measures to combat the problem.[[10]](#footnote-11) However, Suriname has been less inclined to address its inadequate consultation process with Indigenous and Tribal Peoples.[[11]](#footnote-12) In addition, Suriname has not addressed the Special Rapporteur’s specific allegations regarding the Apetina and Anapaike.
2. The IHRC-OU highlight that the Committee in its concluding observations has repeatedly asked that State party take measures to mitigate the environmental and health effects of mercury pollution from ASGM for Indigenous Peoples.
3. The IHRC-OU is concerned in Suriname’s prospective legal frameworks on mercury mitigation under Minamata Convention. For example, in its Minamata Initial Assessment, Suriname claimed, “Because of a lacking adequate [environmental] legal framework, the agencies are not able to execute their regulatory and supervisory tasks appropriately. Within the framework of the above the goal for this police area is formulated as: having an integral national policy and adequate legislation available to prevent mercury pollution.”[[12]](#footnote-13) The lack of an effective environmental framework is problematic in its own right, but Suriname has signaled a commitment to correcting said frameworks. More importantly, Suriname views this purely as a regulatory problem relating to the import, trade, and use of mercury. We do not doubt that general mercury abatement would benefit indigenous peoples, but nowhere has Suriname addressed improved legal frameworks vis-a-vis indigenous peoples specifically, which is what this Committee has required for over 15 years.
4. It is increasingly worrying that the State party has yet to provide any kind of information about the health and environmental status of indigenous and tribal peoples communities affected by mercury contamination.
5. The IHRC-OU have noted undue and prolonged incompliance with treaty standards relating to ASGM, much to the detriment of indigenous peoples. However, we also note that with a new Surinamese government comes renewed reason for optimism. Bearing in mind that ASGM and mercury contamination on indigenous lands will be a difficult challenge to meet, we stress that the new government can play an important role in aligning the country with internationally accepted norms and values, creating a fair and just environment for its indigenous and tribal peoples.
6. **Health and environmental contamination**. One particularly concerning group, and a perfect example for demonstrating this issue, is found in the Wayana people – a group of indigenous communities that live along the rivers of Suriname and the French Guyana border. After centuries of living sustainably and self-sufficiently – the Wayana people are losing their land to government-granted mining contracts and are staring down the barrel of complete eradication because of the highly unregulated and prominent ASGM practices in Suriname poisoning the rivers they depend on for sustenance. Under the former Surinamese governments, the Wayana were largely prevented from access to modern scientific study. They knew their people were being poisoned, but they could not do anything about it and were only allowed a very surface-level understanding of the cause.
7. The list obstacles to addressing the continually worsening plight of the Wayana is seemingly endless. At the top of the list is their remote location, which makes access difficult for resources and medical personnel as well as their location along a contested border with French Guyana which has created a “not my problem” attitude by both nations.
8. The Wayana people are one example of the many indigenous groups within the Amazon that are facing exponentially escalating health complications relating to ASGM practices.
9. The ASGM sector in Suriname virtually unregulated, even though ASGM is responsible for nearly half of the total gold produced in the country.[[13]](#footnote-14) Under the former administration, and in accordance with the Minamata Convention, the import and use of mercury was made illegal without a license, none of which have been issued since 2004.[[14]](#footnote-15) Despite the government claiming to have come in compliance by making mercury import practically illegal, an estimated 50 tons of mercury was used for ASGM in Suriname alone in 2019.[[15]](#footnote-16) According to researchers on the ground, approximately 98% of gold miners in Suriname use mercury to extract gold from ore that is flushed from massive pits that are dug in the middle of the jungle.[[16]](#footnote-17)

D. Follow-up information relating to paragraphs 30 of the concluding observations

4. Decisions of the Inter-American Court of Human Rights.

1. To begin with, Suriname must comply with the three sentences of the Inter American court regarding the three indigenous and tribal communities. Article 68 (1) of the American Convention which Suriname entered on the 12th of November 1987 establishes that “*the States parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.”[[17]](#footnote-18)* Article 62 (3) emphasizes that *the jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it.[[18]](#footnote-19)* According to Article 63 (1) of the American Convention the Inter American Court can rule that *if the Court finds that there has been a violation of a right of freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated.: It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.[[19]](#footnote-20)*

1. Due to being a party to the American Convention Suriname recognizes the jurisdiction of the Inter American Court and submits itself to it. It is also clear that the Inter American Court is entitled to decide in human right cases concerning Suriname. The Court also has the right to impose legal consequences on Suriname which the State has to abide by. A treaty-based obligation was therefore introduced to the State Parties to implement fully the Inter American Courts sentences internationally and in their own territory in the judgments in which they play part. This duty is mandatory to fulfil by all the powers and organs of each individual State.

1. Suriname must fulfil all the sentences of the Inter American Court due to their international and constitutional law responsibilities. The IHCR-OU has strong hopes that through the election of a new government circumstances concerning the three communities will change after 16, 14, and 6 years without implementing all the sentences. The President of Suriname even holds in his statement in front of the UN in the 76th Session of the United Nations General Assembly at the 22nd September in 2021: *It is my firm belief, societies should be organized based on democratic values, good governance, an independent judiciary, and with* ***respect for******human rights****.[[20]](#footnote-21)* Nevertheless, it still has to be seen if real change happens and Suriname finally implements all the sentences and orders of the following three cases which they delayed for a very long time.
2. **The Moiwana case** with the judgment of June 15th in 2005. The Inter American Court prescribed the State of Suriname many measures which they partly did not fulfil until now. There were also three orders of the Inter American Court between 2007 and 2010, a private hearing on June 22, 2012, notes from the Courts Secretariat of October 19, in 2012, five notes from the Secretariat, a report from the State of 2015 and Secretariats notes in 216 and 2017 to monitor compliance with the judgment. Although many efforts of the Inter American Court have been taken, the following parts of the sentence have still to be fulfilled. [[21]](#footnote-22)
3. After more than 35 years after the massacre Suriname, and more than 16 years after its judgment was handed down still failed to present any information on how the investigations are advancing or the founded Coordination Team for the investigation. As a reason for not implementing this order Suriname made arguments in the past that no victim would have come forward to testify even though they were appealed for doing so. Suriname stated that they were in another country and would be waiting for Suriname to take their testimony. Suriname would be unable to approach them because of that fact. Furthermore, the representative of the victims, Mr. Ajintoena would be difficult to reach. On the other hand, the Inter American Court stated that Suriname could not give any information on how victims are protected to build up their courage to testify.
4. Suriname has the obligation to provide a safe environment for potential witnesses to safely testify. Additionally, as previously stated Suriname was not able to clarify any progress in investigating the incident with due diligence and how that will continue to look like in the next years. To comply with the requirements of the American Convention the investigation has in the words of the Inter American Court to be *serious, impartial, and effective and be aimed at determining the truth* which is clearly not the case*.* For that reason, Suriname must ensure a safe and thorough investigation process.[[22]](#footnote-23)

1. **Recovering the remains of the members of the Moiwana community.** Suriname must present clear and detailed information to the Inter American Court, and the Mowana community members that those buried remaining parts are from victims of the massacre. However, Suriname still does not fulfil this part of the sentence.
2. **Adopt the measures required to ensure the property rights of the members of the Moiwana community.** As a reason for not implementing this order Suriname made arguments in the past that the Moiwana community wanted ownership of everything on that territory and that there are conflicts between the indigenous and maroon people in regards of that land area. The State did not provide any proof concerning this argument. The Court also mentioned that the Moiwana community has without doubt the privilege to have those land right. Suriname did for a long time not make any progress to make sure that the Moiwana community possesses any land rights.[[23]](#footnote-24)
3. **The Saramaka case** decided by the InterAmerican Court on the November 28th in 2007: Delimit and demarcate and grant collective title over the territory of the members of the Saramaka people.
4. As a reason for not implementing this order Suriname made arguments in the past that they tried to make an agreement with the Saramaka people and that a draft of a land use map was made. They also made the point that they could not make any further steps because of the death of the Saramaka leader and the following lack of unanimity. Therefore, it would be impossible according to Suriname to fulfill this part of the judgment. The Inter American Court stated that Suriname failed again to provide enough information with these measures and that it is in clear non-compliance with the time schedule of the sentence.
5. **The Kalina and Lokono** case decided by the Inter American Court on November 25th in 2015. It ruled that Suriname violated *the rights of recognition, collective property, political rights and cultural identity and the duty to adopt domestic legal provisions.* Currently, not legal effective judicial remedies in Suriname to claim these rights.

1. CERD/C/SUR/16-18. [↑](#footnote-ref-2)
2. CERD/C/SUR/16-18 para 28 [↑](#footnote-ref-3)
3. CERD/C/SUR/16-18 para 73 [↑](#footnote-ref-4)
4. AL Indigenous (2001-8) SUR 1/2012 p. 2. [↑](#footnote-ref-5)
5. *Id*. at 4. [↑](#footnote-ref-6)
6. CERD/C/SUR/16-18/ para 64. July 20, 2020. [↑](#footnote-ref-7)
7. Suriname SCSD Project. Rapid Social Assessment. The World Bank. p. 58. June 2019. [↑](#footnote-ref-8)
8. CERD/C/446/Add.1. para 91, 92, 93, 94 and 95. October 1, 2003 [↑](#footnote-ref-9)
9. CERD/C/SUR/12. para 97. January 31, 2008 [↑](#footnote-ref-10)
10. CERD/C/SUR/13-15. para 46. April 11, 2014 [↑](#footnote-ref-11)
11. CERD/C/SUR/12. para 95. January 31, 2008. [↑](#footnote-ref-12)
12. Republic of Suriname. Measures to Implement the Minamata Convention on Mercury. P. 3-4. [↑](#footnote-ref-13)
13. Mercury, chasing the quicksilver, Suriname pg. 4 [↑](#footnote-ref-14)
14. Mercury chasing the quicksilver, Suriname pg. 14 [↑](#footnote-ref-15)
15. Mercury, chasing the quicksilver, Suriname pg. 4 [↑](#footnote-ref-16)
16. Mercury chasing the quicksilver, Suriname pg. 8 [↑](#footnote-ref-17)
17. Order of the Inter-American Court of Human Rights Case of Moiwana Community v. Suriname Monitoring

Compliance with Judgment, November 21. 2018 p.3; American Convention on Human Rights Article 68 [↑](#footnote-ref-18)
18. American Convention on Human Rights Article 62 [↑](#footnote-ref-19)
19. *Id.* Art. 63 [↑](#footnote-ref-20)
20. Statement of the President of Suriname in front of the UN in the 76th Session of the United Nations General Assembly at the 22nd September in 2021, p. 4 [↑](#footnote-ref-21)
21. Order of the Inter-American Court of Human Rights Case of Moiwana Community v. Suriname Monitoring Compliance with Judgment, November 21. 2018, p.1-4 [↑](#footnote-ref-22)
22. Order of the Inter-American Court of Human Rights Case of Moiwana Community v. Suriname Monitoring Compliance with Judgment, November 21. 2018, p.4-10 [↑](#footnote-ref-23)
23. Order of the Inter-American Court of Human Rights Case of Moiwana Community v. Suriname Monitoring Compliance with Judgment, November 21. 2018, p. 10-15 [↑](#footnote-ref-24)