

A Global Health Perspective on International Law Terra Nullius Causing Death, Disease, and Disability in the Wayana Language Territory, a conflict zone between French Guiana, Suriname and Brazil

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## **Summary**

Recent epidemiological data from global health research reveals indigenous people in the Wayana Language Territory between French, Suriname and Brazil, are being disabled by a lifetime of exposure to mercury from gold mining operations. The Wayana people are being forced to abandon their minority cultural traits and merge with mainstream society. The racial hostility they suffer and the lack of opportunity for self-determination or benefit from economic development projects prevents Wayana communities from becoming permanent and legitimate components of society. This report describes an analysis conducted at different scales that identifies Terra Nullius as an overarching root cause of death, disease and disability. Terra Nullius is the basis for privatizing indigenous land and resources. Under Terra Nullius, lands and resources occupied by the Wayana are considered empty and vacant. This legal framework renders the lives and life-years-lost of the indigenous people living there without value and equal to zero, thus affecting the allocation of resources and services. In this context, this report refers to the importance of overcoming the social, political and economic determinants of health that are responsible for a crisis that threatens an entire minority ethnic class.

## Introduction

Since WWII, economic development has improved the lives of millions of people in developing nations. While converting land and resources held by indigenous people into private ownership has created an active market for land, increased investment and productivity, and reduced poverty when measured in terms of per capita GDP, it has also made poverty an acute condition affecting indigenous people who become disassociated, impoverished and alienated minorities and whose health status has declined to unacceptable lows when measured in terms of death, disease and disability, years of life lost, and a burgeoning rate of suicide<sup>1</sup>.

Using the Wayana Language Territory as a case example, this report takes a public health approach to conflict and a crises facing the indigenous peoples of overseas territories that occur when issues at the interface between community health and economic development are left unresolved. Socially isolated, marginalized communities whose health status is harmed by globalization often turn to armed conflict in their search for relief. Public health provides a common ground around which many disciplines are willing to come together to form alliances for the prevention of conflict and war. Like economic development, the voice of public health should be heard as a force for the greater good.

## Area of Concern - Wayana Language Territory

In the indigenous Wayana Language Territory (Figure 1)<sup>2</sup>, a region surrounding the Maroni River between French Guiana, Suriname, and northern Brazil, studies show that mercury contamination is significant suggesting there is a widespread global health issue due to its impact on human health among both mining and non-mining communities<sup>3</sup>.



**Figure 1.** The Wayana Language Territory is a frontier region between Brazil (East Paru River, state of Pará), Suriname (Tapanahoni and Paloemeu rivers) and French Guiana (upper Maroni River, Lawa River and its tributaries and the Tampok and Marouini). The Wayana Language Territory surrounding the Maroni River is an area characterized by multiple frontiers where native Amazonians, tribal people of African descent, migrant Brazilian gold prospectors, and metropolitan state functionaries interact.

It is assumed that mercury pollution is a management problem involving three main groups of stakeholders: the private sector, government, and civil society<sup>4,5</sup>. Despite governments in the region becoming parties to the Minamata Convention on Mercury (Hg), they have not yet implemented measures that effectively address a health and environmental crisis due to mercury poisoning that is produced by gold mining and is causing death, disease and disability in the region<sup>6</sup>.

### **Assessment Results**

Since 1978, Community-led research assessing the health impacts of forced assimilation among indigenous people has been performed. Indigenous peoples in places as diverse as the United States, French Guiana, Suriname, Brazil, Nicaragua, and Ecuador and at the United Nations in Geneva revealed a common experience of loss, and the way in which loss or being lost is a main feature of their lives<sup>7-14</sup>. Especially traumatic for them are the methods used by governments and corporations to separate them from their lands.

The public health approach to address the effects of mercury poisoning from mining and the high rates of death, disease, disability and suicide occurring among the indigenous people in the Wayana Language Territory was considered to provide an appropriate perspective based on its practitioner's expertise in epidemiology; their ability to identify risk and protective factors; planning, developing, monitoring, and evaluating prevention strategies; management of programs and services; policy analysis and development; environmental assessment and remediation; and health advocacy.

### **Mercury and Gold Mining Impacts on Indigenous Health and Human Rights**

- Impacts of mercury – INDIVIDUAL LEVEL: Since 2004, over 150 individuals tested exceeded WHO safety limits for mercury. Self-reported neurological symptoms, including numbness in arms, fingers and toes, are accompanied by complaints of headaches, pain and tingling in their hands and feet. Over one-third complained of either headaches or strong feelings of sadness or depression. Subsequent health assessments and neurological testing in conjunction with hair mercury testing revealed neurological dysfunction consistent with mercury poisoning.



Mercury poisoning is causing still births, and children born with serious deformities. First child of 21 year old mother died at the age of 2 months. She was badly deformed at birth. She is buried under her mother's hammock in her house.



Boy, 3 years old, exposed to mercury since conception, cannot walk



Wayana elder, exposed to mercury eating contaminated fish, lost his ability to walk, lost most of his memory and his hands shake.

- Impacts of mercury – COMMUNITY LEVEL: The disproportionate exposure of communities in the Maroni River region, compared to the coastal region, is responsible for a health crisis at the community level. The causes lie outside the health sector and are socially, economically, and politically formed. Social discord erodes majority culture support and creates a downward spiral of increased rates of death, disease, disability and suicide. That, in turn, leads to increased social discord and less majority culture support.
- Impacts of mercury – POPULATION LEVEL: Collectively, the lifetime exposure of people in this region to mercury and the coincidence of depression, anxiety, and conflict with security forces and the incursion of the majority culture suggest possible population level pathologies due to the convergence of Ambiguous Loss Disorder, Post Traumatic Stress Disorder, and Traumatic Brain Disorder.
- Impacts of ASGM on human rights, including right to health, a healthy environment, life, adequate food, safe drinking water, meaningful and informed participation, development and the rights of future generations;
- Human rights impacts on persons, groups and peoples in vulnerable situations, including workers, children and especially indigenous peoples: This addresses the very difficult situation of the indigenous people who live in the Wayana Language Territory (WLT) as well as the inter-riverine ‘no-contact people’ living traditional lives in the forested regions of the WLT. People in the WLT, disabled by a lifetime of exposure to mercury from ASGM since conception, are being forced to abandon their minority cultural traits and merge with mainstream society. The racial hostility they suffer and the lack of opportunity to participate in the

central government or benefit adequately from resource distribution prevents the Wayana communities from becoming permanent and legitimate components of the society. In this context, this report refers to the importance of overcoming the social, political and economic determinants of health that are responsible for the crisis.

## **Conclusion**

This report argues that the (unspoken) conceptual center of the crisis that indigenous people face in the Wayana Language Territory and around the world is due to a colonial legacy that perceives the world as uncharted territory, which is ripe for discovery and ownership. This vision of the world as a blank canvas, or Terra Nullius<sup>15-17</sup>, sets aside all other models of ownership and devalues other traditional modes of relating to territory and nature. The Wayana Language Territory is an example that shows this long-lasting also determines the current relationship between indigenous people in the Wayana Language Territory and the governments of French Guiana, Suriname and Brazil. The current relationship between Indigenous People's right to self-determination and Terra Nullius is untenable under current international law.

Terra Nullius claims are couched in the security needs of the global North and is referenced to the low density of the population of indigenous people, the ambiguity of their land tenure that is not protected by Western Civil Law, and the low yields of indigenous-held land that fails to meet the Western standards of highest and best use. This report argues that understanding "wild" land as terra nullius ("land belonging to no one") emerged during historical colonialism, entered international law, and became entrenched in national constitutions and cultural mores around the world. This has perpetuated an unsustainable and unjust human relationship to land that is no longer tenable in the current era of land scarcity and ecological degradation. Human rights and environmental conservation, by valuing wild lands and indigenous rights, most notably the U.N. Declaration on the Rights of Indigenous People, challenges the Terra Nullius assumption of the vulnerability of unused lands to encroachment. Indigenous groups reasserting their rights to communal territories likewise contest individual property rights. The Wayana Language case study illustrates the routinized application of terra nullius and its inherent prejudices.

## **Call to Action**

Increasingly, the global North is casting its security concerns in trans-boundary terms and treating indigenous-held land and resources as a global commons awaiting incorporation. Invoking security to justify intervention in the lives and property of others opens floodgates of legal power and precedent. Most familiar are the security concerns of war, natural disasters and most recently global pandemics. Securitization

narratives are expanding. Current policy agendas are distinguished by food and energy concerns which are driving land seizure through a variety of means and framed in security terms. Food security in capital-rich nations assumes mission-level necessity and self-justification on a global scale, following in the footsteps of former missions such as ‘civilizing’, and evangelizing, The Terra Nullius narrative is now being used to justify food and energy related security missions today.

The global health issues in the Wayana Language Territory caused by international multilateral investment projects call for immediate action. The release of over 200 tons of mercury annually from small-scale gold mines in the region will eventually be recognized as the cause of an environmental disaster comparable to other global disasters such as the Minamata Disaster in Japan (mercury contamination in Japan in the 1950s), the Bhopal Tragedy (gas leak in India in 1984), the Chernobyl nuclear disaster that occurred in 1986 in the Soviet Union, and the Fukushima Daiichi disaster (nuclear meltdown in 2011).

It should be noted that the public health approach in the Wayana Language Territory (WLT) is pulled between narrower biomedical initiatives to treat and control death, disease, and disability due to the effects of mercury from gold mining at a population scale and the broader mission of addressing the social determinants of health caused by gold mining spawned by international investment in resource extraction at the supranational scale. In this region, economic development projects that make gold mining activities possible are important for the region’s economies, making up a significant part of a country’s GDP. However, decades of research monitoring the effects of mercury from gold mining on indigenous people’s health shows that indigenous people have been devastated by mercury contamination and large-scale environmental degradation. Intervention mapping studies have identified six possible international-level solutions for mitigating the health effects of mercury contamination from gold mining operations:

**Possible Solution 1:** Extend WHO’s Health in all Policies, Framework for Country Action (HiAP) to the supranational level (e.g., G7 and G20) and adapt it for use as a guide for finding cooperative solutions across sectors at the policy level to facilitate more equitable patterns of growth and development leading to measurably improved health outcomes.

**Possible Solution 2:** Fully implement the IADB's (IADB’s) Operational Policies on Indigenous Peoples and Strategies for Indigenous Development to replace the ‘assimilation model’ currently followed for economic development with the IADB’s ‘development with ‘identity model’. This model affirms the IADB’s commitment to equity in health and recognizes the fundamental responsibility of government at the

international level to protect the health of every human being without distinction of race, religion, political belief, economic or social condition.

**Possible Solution 3:** Tailor Corporate Social Responsibility (CSR) Programs. Mediation across interests and sectors will be needed to explore, innovate, and develop novel strong high-level policy processes to enhance a country's overall quality of life, increase the entire population's capacity for learning, strengthen families and communities and improve workforce productivity. Likewise, action aimed at promoting equity significantly contributes to health, poverty reduction, social inclusion and security and creates cost-benefits across sectors and society at large.

**Possible Solution 4:** Revise WHO's 2005 IHRs. Replace articles 2, 12, and 16 of the IHRs with regulations that require "trade and travel" to comply with recommended solutions 1-3 above.

**Possible Solution 5:** Establish WHO Emergency Committee. As per International Health Regulations, the WHO's Director General should establish an Emergency Committee, request the Committee to appoint technical experts, then act to have 'Possible Solutions 1-3 above' implemented. Deeply rooted economic development policies structure social, economic and political alliances making them resistant to feedback and reform.

**Possible Solution 6:** Repeal all expressions of Terra Nullius in Western civil law.

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