

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on the rights of indigenous peoples.

REFERENCE: AL Indigenous (2001-8)
SUR 1/2012

19 September 2012

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 15/14.

In this connection, I would like to draw the attention of your Excellency's Government to **the alleged situation of health and environmental problems and land rights issues affecting the Wayana indigenous communities of Puleowime (Apetina) and Kawemhakan (Anapayke) in Southeastern Suriname**. Concerns related to the alleged presence of small-scale gold mining operations in the traditional lands of the Wayana people and a proposed hydroelectric project in the area are allegedly due, in large part, to the lack of legal recognition and protection of these communities' lands. Consequently, this situation is relevant to the observations and recommendations I presented to your Excellency's Government in my report on the *Measures needed to secure indigenous and tribal peoples' rights land and related rights in Suriname* (A/HRC/18/35/Add. 7).

According to the information received:

Puleowime (Apetina) and Kawemhakan (Anapaike) are two of the largest communities of the Wayana indigenous people inhabiting areas of land around the Tapanahoni and Lawa Rivers in the Amazon region of Southeastern Suriname. The Wayana population in Suriname ranges between 500 and 600 people, with the communities of Apetina consisting of approximately 63 households and Anapaike with around 16 households.

The lands inhabited by these communities represent their traditional territory, upon which they depend for their livelihood and subsistence activities, including hunting, fishing, agriculture, medicine, and shelter. Fishing constitutes the main source of protein for the vast majority of Wayana families. Although the Wayana have inhabited these lands for centuries and the boundaries of their territories have been known and respected by neighboring indigenous and tribal Maroon peoples, their lands lack state legal recognition and thus are considered to be under state ownership under the domestic law of Suriname.

In recent decades, the traditional lands of the Wayana, particularly within the Lawa and Tapanahoni river watersheds, have attracted a great number of small-

scale gold miners, who operate without any government regulation or oversight. According to the information received, in 1996, the Government granted a concession to the company Nana Resources N.V. within Wayana territory including the territory inhabited by the Anapaike community.

It is alleged that Nana Resources has permitted small-scale gold miners to operate within its concession area, which is a common practice in Southeastern Suriname where concession-holders allow small-scale miners to operate in their concession for a percentage of their proceeds. According to the information received, no effective consultations were held with the Wayana communities prior to the initiation of these gold-mining operations in their traditional territories. It has also been further alleged that no prior social and environmental impact assessments were undertaken before the approval of mining operations in the traditional territory of the Wayana communities.

According to the allegations, the small-scale mining operators within Wayana territory use mercury amalgamation to extract the gold without any State regulation. It has been documented that the use of mercury has entered the creeks and river systems in this region of Suriname and has been absorbed by the fish harvested for human consumption, which subsequently has caused adverse health effects on indigenous and tribal peoples. It is alleged that consumption of fish contaminated with mercury exacerbated by the other activities of gold miners which further contaminate the air, water and soil has caused grave health problems among the members of the Apetina and Anapaike communities. These health problems allegedly have included an increased number of birth defects and neurological disorders, with documented cases of children and adults unable to walk for many years due to neurological damage caused by mercury poisoning.

It has also been alleged that the small-scale gold miners have physically threatened Wayana men and women, preventing them from entering areas where they traditionally hunt, fish, and engage in agricultural activities. As a result of the degradation of and the diminished access to their traditional lands, the Wayana communities are reportedly losing their ability to maintain their traditional practices and to sustain themselves. The Government has allegedly not taken any action in this situation and the Wayana have not been provided any alternate resources for their sustenance. This situation is made more difficult by the lack of access to adequate health services, education, or transportation to the Wayana communities. Consequently, many members of these communities have had to migrate to urban areas where they have continued to be socially and economically marginalized.

In addition to gold mining activities, the Apetina and Anapaike communities also face possible effects from the proposed construction of the Jai-Tapanahoni hydroelectric project in East Suriname. It has been alleged that engineers have been present in their territories to carry out preliminary studies without their previous knowledge or consent. According to the information received, members

of these communities have not been informed about the possible social, cultural or environmental impacts that this project might have on their traditional lands and territories. Serious concerns have been expressed over the possible displacement of the Wayana communities when the construction of the hydroelectric project begins.

Furthermore, it has been alleged that, because there is no recognition of indigenous communal property in Suriname, the Wayana and other indigenous peoples are left without protection or legal recourse. The Government has focused attention on the regulation of the gold mining sector through the *Ordering Goudsector* (Gold Sector Planning), which is an initiative aimed at the restoration of the State authority over mining activities, its taxation, improved extraction and production methods, sustainability and addressing of health concerns. However, indigenous and tribal peoples have reportedly expressed that indigenous land issues must first or concurrently be resolved, which has not occurred.

According to the information received, the Government has not taken action to comprehensively address the demands of indigenous and tribal peoples across Suriname for the recognition of their land and natural resource rights in accordance with international human rights standards. A National Land Rights Conference organized by the Government in October 2011 to address indigenous and tribal peoples' land issues reportedly did not yield any positive results due to differing interpretations between the Government and indigenous and tribal representatives on the contents of the collective land and natural resource rights of indigenous peoples.

While I do not wish to prejudge the accuracy of the above allegations, I would like to refer your Excellency's Government to relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007 with a favorable vote from Suriname.

The Declaration affirms indigenous peoples' rights to the lands, territories and resources that they traditionally owned, occupied or otherwise use or acquired, and for States to give legal recognition to those lands, territories and resources with due respect to their customs, traditions and land tenure systems, *art. 26*. Article 32, provides for the right of indigenous peoples to be consulted "through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploration of mineral, water or other resources." Article 28 states the right of indigenous peoples to redress, including restitution or just, fair and equitable compensation for traditional lands, territories and resources "which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent." Additionally, article 10 provides that indigenous peoples "shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned..."

Furthermore, the Declaration provides, in art. 29, for the right of indigenous peoples “to the conservation and protection of the environment and the productive capacity of their lands or territories and resources” and for States “to take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected [...], are duly implemented”. Article 24 affirms indigenous peoples’ “equal right to the enjoyment of the highest attainable standard of physical and mental health.” Article 21 states that “Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in... health,” and article 23 notes that indigenous peoples have the right to be involved in the development and administration of health programs.

The allegations contained in this letter bring to light the issues and concerns brought forth in my previous report presenting observations and recommendations on securing of indigenous and tribal peoples rights in Suriname, which was prepared at the request of your Excellency’s Government (A/HRC/18/35/Add.7). In my report, I noted the need for Suriname to adopt, in consultation with indigenous and tribal peoples, measures to secure the rights of indigenous and tribal peoples in accordance with international standards and the legally binding judgments of the Inter-American Court of Human Rights. I noted proposals made by indigenous and tribal peoples dating from 2005 that represented a good starting point for negotiations between the Government and indigenous and tribal peoples on the development of legislation addressing a broad range of rights including lands and resources. Consequently, I recommended that in light of the judgments by the Inter-American Court of Human Rights in the cases of *Moiwana Village v. Suriname* and *Saramaka People v. Suriname*, your Excellency’s Government needed to give priority to developing specific legislation establishing indigenous and tribal land titling procedures as well as procedures for consulting and seeking consent of indigenous and tribal peoples in matters related to resource extraction and other activities affecting their lands and resources.¹

In its 2009 conclusions and observations on Suriname, the Committee on the Elimination of Racial Discrimination urged your Excellency’s Government “to ensure legal acknowledgement of the collective rights of indigenous and tribal peoples... to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure system...”² Similarly, the Committee recommended that Suriname endeavour to consult and obtain the informed consent of indigenous peoples before taking legislative or administrative decisions which may affect the rights and interests of indigenous and tribal peoples.³

I would also like to recall the statements by the Government of Suriname during the 2011 Universal Periodic Review by the Human Rights Council. In its September 2011 response to the various recommendations made by States, your Excellency’s Government replied it could not support the recommendations dealing with the recognition of indigenous and tribal peoples’ land and resource rights and the recommendations that it

¹ A/HRC/18/35/Add.7, paras. 17-20; 29-32; 33-38.

² CERD/C/SUR/CO/12, para. 12.

³ CERD/C/SUR/CO/12, para. 14.

comply with the previously mentioned judgments by the Inter-American Court of Human Rights.⁴ In its response, your Government made reference to the National Land Rights conference of October 2011, mentioned above, that was to offer a platform for national debate and discussion to resolve land rights issues.⁵ However, as noted earlier, this conference was reportedly unsuccessful. Furthermore, in its evaluation of Suriname's implementation of the *Saramaka* decision, the Inter-American Court of Human Rights found that the most substantive reparations concerning the adoption of legislation for the recognition of land rights and prior consultation, among others, have not been complied with.⁶

As I continue to monitor and clarify the circumstances surrounding the present situation, I would be interested in knowing your Excellency's Government's views on the accuracy of the information contained in this letter, and would be grateful to receive any additional information your Government may deem relevant. In particular, I would like to know further information about:

1. The measures taken by your Government to address the health and environmental situation affecting the Wayana communities of Puleowime (Apetina) and Kawemhakan (Anapaike) affected by mercury contamination resulting from gold-mining activities on or near their traditional lands;
2. The measures taken by your Government to address and investigate the concerns related to the allegations that gold miners have encroached upon the traditional hunting and agricultural areas of the Wayana communities;
3. The legal status of the lands currently inhabited and used by the Apetina and Anapaike communities and any measures taken by the Government to address any claims made by these communities for the recognition of those lands;
4. The measures taken by your Government to consult with members of the Apetina and Anapaike communities prior to the granting of mining concessions and the realization of gold-mining activities within their traditional lands;
5. Whether the proposed Jai-Tapanahoni hydroelectric project has undergone a process of consultation with indigenous peoples that may be affected, including the Apetina and Anapayke communities, and whether any social, cultural or environmental impact studies have been undertaken related to this project, and the results, if any, of these studies;
6. An explanation of the position stated by the Government during the 2011 Universal Periodic Review with respect to the rejection of the recommendations dealing with the legal recognition of indigenous peoples' land and natural

⁴ A/HRC/18/12/Add.1, para. 13.

⁵ A/HRC/18/12/Add.1, para. 11.

⁶ Inter-Am. Ct. H.R. , Case of the Saramaka People v. Suriname, Monitoring Compliance with Judgment, (23 November 2011), para. 50, Resolution point 2.

resource rights as well as the implementation of the judgment by the Inter-American Court of Human Rights in the *Saramaka People v. Suriname* case;

7. Recent efforts by the Government to recognize and protect the rights of indigenous and tribal peoples, particularly in the areas of land rights recognition and prior consultation related to resource extraction and other activities affecting their lands and resources, in accordance with the previous recommendations made to your Government in my report on *Measures needed to secure indigenous and tribal peoples' rights land and related rights in Suriname*.

I would appreciate a response from your Excellency's Government within 60 days. I undertake to ensure that your Excellency's Government's response will be taken into account in my assessment of this situation and in developing any recommendations that I make for your Excellency's Government's consideration pursuant to the terms of my mandate.

Please accept, Excellency, the assurances of my highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples