

**Request for an early warning to the Committee on the Elimination of Racial Discrimination**  
**Western Guiana Power Plant Project (CEOG)<sup>1</sup>**  
*March 2024*

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**1. Presentation of the authors of the request**

This application was submitted by the Organisation des Nations Autochtones de Guyane française (ONAG) with the support of the International Service for Human Rights (ISHR).

1. The Organisation des Nations Autochtones de Guyane française (ONAG) is a federation of indigenous associations whose purpose is to defend by all means the human rights and fundamental freedoms of Indigenous Peoples, and to promote and protect their civil, economic, social, cultural, educational and environmental rights, as well as their health. One of its missions is to assert the identity of Indigenous Peoples and promote their claims, customs and traditions, in order to enable their collective and individual growth and development.
2. The International Service for Human Rights (ISHR) is an international NGO based in Geneva, with offices in New York and Abidjan, which works for the recognition and protection of human rights defenders through capacity building, advocacy and litigation with international human rights bodies.

**2. General context**

In French Guiana, the six indigenous nations (Kali'na Tileuyu, Lokono, Pahikweneh, Wayana, Teko and Wayampi) represent around 15,000 people, or 5% of the population (286,618 inhabitants, INSEE 2021). Since colonial times, they have coexisted with Afro-descendant populations known as "Creoles" (40%), Europeans (12%), and the rest of the population resulting from large waves of immigration from China, Lebanon, Brazil, Haiti, Suriname and Guyana. Since French colonization in the 17th century, American Indians have been part of a Guyanese population made up mainly of Afro-descendants from the Creole and Noir Marron communities, as well as communities from large-scale immigration from Haiti, Surinam, Guyana, Brazil and, more recently, Syria, Afghanistan and Morocco.

96% of the territory is owned by the French state. The population is unevenly distributed across the 84,000 km<sup>2</sup> territory, which is the size of Portugal or Austria.

There is a glaring difference in living standards between the so-called "urban" coastline, where the majority of the Creole and European population is concentrated in the capital of Cayenne, and the rest of the territory,

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known as the "interior", which is home to one of Europe's largest primary forest reserves, where the Indigenous People still live by hunting and fishing alongside the Bushinenge people.

Since it was set up in 2010, ONAG has been taking action in the form of meetings and consultations in American Indian villages, involving young American Indians in the Scholarship Programme for Indigenous Representatives and conducting advocacy work with the French Government and the United Nations.

78 years after French Guyana's transition from the status of colony to that of overseas department, ONAG notes that the American Indian peoples are today largely disadvantaged according to socio-economic criteria and live on the fringes of Guyanese society. They have undeniably been abandoned by the French Republic. The American Indian peoples of French Guiana are demanding recognition of their indigenous identity and the rights associated with it, but the French state systematically refuses to recognise Indigenous Peoples and guarantee them specific rights.

After several years of inaction on the part of the Guyanese government and political decision-makers, the consequences for the day-to-day lives of the Indigenous Peoples are as follows:

- The damage caused by illegal gold mining and mining companies;
- Deforestation of forests from which Indigenous Peoples derive their livelihood;
- Suicides among young American Indians in French Guiana;
- Pollution of rivers, fauna and flora, whether near inhabited villages or not;
- Lack of consultation and participation in decision-making;
- The French State's refusal to recognise the right of Indigenous Peoples to demarcate their own territories and their collective right to land;
- Police and military repression of protests and land occupations.

During the social unrest in French Guiana in March 2017, ONAG played an active role in the mobilisation of Indigenous People and in negotiations with the State.

On 2 April 2017, ONAG and other indigenous organisations signed a memorandum of understanding with the Minister of the Overseas France containing 20 emergency measures, most of which have not been implemented.

### **3. Presentation and background to the power plant project**

The Centrale Électrique de l'Ouest Guyanais ("CEOG") project involves the construction, by the private company Hydrogène de France (HDF), of a power plant producing electricity from renewable energy.<sup>2</sup> Located on a 140-hectare plot of land leased from the National Forests Office (French: Office national des forêts (ONF)),<sup>3</sup> the project involves clearing 78 hectares of a forest located 1.6 kilometres from the village of Prospérité, in the commune of Mana. The Kali'na people who live in Prospérité derive their livelihood from hunting, fishing, gathering and farming in the surrounding forests. The plot leased by CEOG is located on land of major cultural importance to the people of Prospérité.

The people of Prospérité, led by young people and supported by the village chief - Yopoto Roland Sjabere - have actively mobilised since work began in 2019 to prevent the construction of the power station at this location. It should be emphasised that Yopoto Roland Sjabere and the villagers are not opposed to the project

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<sup>2</sup> <https://www.ceog.fr/le-projet>

<sup>3</sup> The Office National des Forêts is a French public body responsible for managing public forests.

as such, but to its location. They denounce the environmental impact of this so-called "green" project<sup>4</sup> - significant water consumption,<sup>5</sup> pollution of waterways, risk to a large number of animal species including more than thirty protected species,<sup>6</sup> destruction of a forest in full recovery of its surface<sup>7</sup> - and stress the consequences of its implementation on their way of life and their means of subsistence. The plot of land granted to HDF for the construction of the CEOG is located in areas used by the inhabitants of the village of Prospérité for hunting, fishing and gathering, making it more difficult for them to access areas of vital importance over which they have had a collective right of use since 2020 - and not a concession, as they had requested.

However, the collective use rights zones (ZDUCs)<sup>8</sup> are far from being permanent arrangements in that the French state retains the right to withdraw the use enjoyed by the communities of inhabitants in this zone, unlike what would be made possible by a genuine transfer of land such as that provided for in the Guiana agreement signed on 21 April 2017 between the French state and the indigenous organisations. The document mentions the retrocession of 400,000 hectares to the Indigenous Peoples of French Guiana via a Public Establishment for Cultural and Environmental Cooperation (EPCCE).<sup>9</sup> Although mentioned by the Minister of the Overseas in a letter to Yopoto Roland Sjabere, the transfer of land to the inhabitants of the village of Prospérité has still not taken place, and would in any case exclude the CEOG project from its scope.

The project was not actually presented to the residents of Prospérité until October 2019,<sup>10</sup> even though work had already begun in August and even before the prefectorial operating permit had been obtained.<sup>11</sup> They were not informed of the organisation of the public enquiry held in Mana between July and August, nor was the president of the Guiana Regional Nature Park, on whose territory the plant is being built.<sup>12</sup> The meetings and exchanges that subsequently took place between the French authorities and local leaders were for information purposes only and did not constitute genuine consultation. In addition, the village chief was subjected to telephone harassment and threats in order to obtain his consent to the construction of the power plant. As a result, he was unable to give his free consent to the project.

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<sup>4</sup>The CEOG project was mentioned by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes in his July 2023 report on the adverse effects of certain proposed solutions to climate change, (Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste, Marcos Orellana, 13 July 2023 (A/HRC/54/25), §63). The harmful environmental consequences of the CEOG project are detailed and documented in a document sent for information to the Special Rapporteur on 17 January 2023 by 13 associations, including ONAG ("The toxic impacts of some climate change solutions").

<sup>5</sup> To operate, the CEOG needs the equivalent of 3 days' consumption by the town of St Laurent du Maroni per day.

<sup>6</sup> More generally, the impact of the works on species and habitats has been assessed by Biotope and highlighted in an environmental study published in 2018, available at: <[https://www.guyane.developpement-durable.gouv.fr/IMG/pdf/annexe\\_14- etude\\_ecologique.pdf](https://www.guyane.developpement-durable.gouv.fr/IMG/pdf/annexe_14- etude_ecologique.pdf)>

<sup>7</sup> While the CEOG representatives insist that the parcel of forest they have been allocated is "secondary", this is debatable, as it has never been clear-cut and has not been used for 50 years.

<sup>8</sup> A French decree from 1987 authorises hunting and fishing for subsistence purposes within a defined area, away from any commercial, residential or agricultural use.

<sup>9</sup> Guiana Agreement of 21 April 2017 - "Pou Lagwiyan dékolé" Protocol, accessible at: <<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034519630#:~:text=Ainsi%2C%20le%202%20avril%202017,un%20simple%20réaménagement%20de%20dotations>>

<sup>10</sup> Discussions had already taken place in 2018 between HDF, the Great Customary Council, including Chief Sjabere, and the prefecture, without any clear mention of the power plant construction project.

<sup>11</sup> The prefectorial environmental authorisation order relating to the operation of the CEOG was not published until 13 November 2019 (<<https://www.guyane.gouv.fr/contenu/telechargement/14374/98869/file/recueil-r03-2019-223-recueil-des-actes-administratifs.pdf>>).

<sup>12</sup> Letter dated 2 February 2022 from Jean-Paul Féreira to Roland Sjabere.

#### 4. CEOG's failure to comply with its commitment to obtain the free, prior and informed consent of the Kali'na population of Prospérité

Initially, the village of Prospérité was not opposed to the project as such, but to its location.<sup>13</sup> By the end of 2019, the village had expressed its profound disagreement with this location.

The Kali'na people of Prospérité wanted the expression of their free, prior and informed consent to be sought and respected by the industrialist.

General Recommendation 23 concerning the Rights of Indigenous Peoples of the International Convention on the Elimination of All Forms of Racial Discrimination states in Paragraphs 4 c) and d).

“4. The Committee calls in particular upon States parties to:

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;”

Secondly, it is worth recalling the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011.

These Guiding Principles are grounded in recognition of:

“(a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;

(b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;

(c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

CEOG is committed to respecting these principles.

Thus, CEOG has expressly and contractually agreed to abide by Corporate Social Responsibility (CSR) principles and to respect the principle of free, prior and informed consent of indigenous peoples in the conduct of its project.

To this end, SAS CEOG formalized with the association of the Village of Prosperité, which represents the Kali'Na peoples of Prosperité, a synallagmatic agreement dated July 16, 2021 entitled "***Mutual commitment to a partnership agreement between CEOG and Village Prosperité.***"

Under the terms of this agreement, CEOG has expressly acknowledged that it submits to the principle of prior and informed consent of the indigenous people impacted by its project, and in the following terms:

"CEOG is committed to recognizing and honoring the rights, customs and culture of the Kali'na population of the Village of Prosperity, recognizing their right to the prior informed consent of the indigenous inhabitants of the Village of Prosperity as a systemic process."

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<sup>13</sup> See the Tribune published in Le Monde et calling for the change in location of the CEOG projet [https://www.lemonde.fr/idees/article/2022/12/31/en-guyane-la-transition-energetique-ne-se-fera-pas-en-niant-les-droits-des-peuples-autochtones-et-en-saccageant-la-foret-amazonienne\\_6156169\\_3232.html](https://www.lemonde.fr/idees/article/2022/12/31/en-guyane-la-transition-energetique-ne-se-fera-pas-en-niant-les-droits-des-peuples-autochtones-et-en-saccageant-la-foret-amazonienne_6156169_3232.html).

The Chief of the Village of Prosperity signed this agreement,<sup>14</sup> which was based entirely on CEOG's commitment to the principle of free, prior and informed consent, and referred to the negotiation of a future agreement to set out "the free and informed consent process of the Village of Prosperity for the implementation of the stages of the project."

Beyond its detailed provisions, this commitment entailed recognition of the rights of the Kali'na people, one of the first peoples, over the land constituting the project's right-of-way, and at the same time an area of customary Kali'na influence.

However, in total disregard of its commitment of July 16, 2021, CEOG has begun work on the project, clearing several dozen hectares of forest before any regularization of the agreement envisaged in the July 16, 2021 agreement, and above all in total violation of its commitment to respect the principle of free, prior and informed consent.

In addition, the draft agreement sent by CEOG to the village as part of this process had been drawn up without any consultation, and was rendered meaningless by the unilateral start of work.

In fact, it emerged that the mutual commitment signed between CEOG and the Village had been used by CEOG to obtain financing from banking institutions whose criteria include respect for human rights, including the European Investment Bank.

However, CEOG signed this commitment with the Kali'na community of Prospérité without any intention of respecting it, as evidenced by the start of construction.

The village therefore indicated that it was not possible to sign the draft agreement and express prior consent to the conditions set unilaterally by CEOG, when work had already begun.

Opposition to the project thus crystallized, on the one hand because of disagreement over the project's location, but on the other because of CEOG's failure to respect its contractual commitment to respect the principle of free, prior and informed consent of the indigenous Kali'na people of Prospérité.

In December 2023, an interim injunction was filed with the Cayenne Court of Justice, seeking to halt work until this commitment had been fulfilled. This case is ongoing.

## **5. Opposition to the project from local people living in the affected area**

The village of Prospérité is not opposed to the project as such, but to its location.<sup>15</sup> By the end of 2019, the village had expressed its profound disagreement with this location. In 2021, the chief signed an agreement<sup>16</sup> for a village compensation agreement, in which the operator CEOG undertook to respect *the "free and informed consent of the villagers"*. In the end, the village decided not to proceed with the agreement, which

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<sup>14</sup> Accord en vue d'une convention CEOG – Prospérité le 16.07.2021.

<sup>15</sup> See the opinion piece published in Le Monde calling for the CEOG project to be relocated [https://www.lemonde.fr/idees/article/2022/12/31/en-guyane-la-transition-energetique-ne-se-fera-pas-en-niant-les-droits-des-peuples-autochtones-et-en-saccageant-la-foret-amazonienne\\_6156169\\_3232.html](https://www.lemonde.fr/idees/article/2022/12/31/en-guyane-la-transition-energetique-ne-se-fera-pas-en-niant-les-droits-des-peuples-autochtones-et-en-saccageant-la-foret-amazonienne_6156169_3232.html).

<sup>16</sup> Agreement for a CEOG - Prospérité convention on 16.07.2021.

explicitly provided for the possibility of a right of withdrawal. The Grand Conseil Coutumier also opposed the project, notably in its deliberations following a hearing with the project's promoters.<sup>17</sup>

It was against this backdrop that the discontent of the Indigenous Peoples exploded into the open and has since manifested itself in social mobilisations, a series of legal proceedings, an occupation of the site and, finally, a series of discussions concerning the terms and conditions of a study into the relocation of the project.

Opposition to the location of the project, rather than to the project itself, first manifested itself in a series of social movements. In 2021, the village chief spoke out on the forecourt of Paris City Hall during COP26. In December of the same year, the first demonstration took place at the Margot crossroads near where the power station is located, with the support of various organisations and political parties<sup>18</sup>. A Dignity March was organised for the International Day of the World's Indigenous Peoples in August 2022, during which the struggle of the Prospérité residents was highlighted.<sup>19</sup> They sent a delegation to Paris in December 2022 to raise their profile.<sup>20</sup>

The village of Prospérité demonstrated its opposition to the location of the project by initiating several legal proceedings. In July 2022, the matter was referred to the Administrative Court of French Guiana for failure to comply with the Environmental Code, but the application was rejected as being out of time. Nevertheless, the President of the Administrative Court regretted that citizens were not sufficiently informed of their rights.<sup>21</sup> In November, the Association Nationale pour la Biodiversité lodged a criminal complaint against CEOG,<sup>22</sup> but this was dismissed. In March 2023, an inter-association petition was filed seeking to give CEOG formal notice to cease the alleged pollution and to establish the alleged offences committed by the company. The application was rejected,<sup>23</sup> the court ruling that the applicants had failed to demonstrate "the reality of a serious danger" to wildlife as a result of the CEOG project.<sup>24</sup> In September 2023, the Prospérité village association sued CEOG for neighbourhood disturbance.<sup>25</sup> Finally, the last complaint to date is that of 24 September 2023, which is an inter-association criminal complaint for "taking measures intended to obstruct the enforcement of the law" against the Prefect of French Guiana and the Director General of the Territories and Sea of French Guiana<sup>26</sup>, which remains unresolved.

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<sup>17</sup> Deliberation made on 12 March 2022 in Cayenne following the CEOG hearing.

<sup>18</sup> <https://www.guyaweb.com/actualites/centrale-electrique-de-louest-guyanais/centrale-electrique-de-louest-guyanais-mobilisation-au-carrefour-margot/>

<sup>19</sup> <https://www.radiopeyi.com/post/social/une-marche-de-la-dignite-pour-la-journee-internationale-des-peuples-autochtones-1659634956>

<sup>20</sup> <https://la1ere.francetvinfo.fr/guyane/ouest-guyanais/opposition-a-l-emplacement-de-la-ceog-roland-sjabere-yopoto-du-village-prosperite-a-paris-pour-se-faire-entendre-1346128.html>

<sup>21</sup> <https://www.franceguyane.fr/regions/guyane/le-tribunal-administratif-pointe-du-doigt-des-administrations-defaillantes-922384.php>

<sup>22</sup> Filing of a criminal complaint by the national association for biodiversity at the Cayenne judicial court on 17 November 2022.

<sup>23</sup> Decision by the Administrative Court of French Guiana on 17 March 2023 to reject the inter-association application (No. 2300313).

<sup>24</sup> <https://la1ere.francetvinfo.fr/guyane/affaire-ceog-pas-de-suspension-des-travaux-le-tribunal-administratif-rejette-la-demande-des-associations-1375930.html>

<sup>25</sup> The village Prospérité summonsed SAS CEOG before the Cayenne Magistrates' Court for neighbourhood disturbance on 7 September 2023 (provisional RG: 23/A0407).

<sup>26</sup> Filing of an inter-association criminal complaint at the Cayenne judicial court against Antoine Poussier, Prefect of French Guiana, and Yvan Martin, Director General of Territories and the Sea of French Guiana, for an offence provided for and punishable under article 432-1 of the Criminal Code, on 24 September 2023.

## **6. On the use of armed force and the judicial handling of the conflict by the French State**

The failure to take into account the opinion of the inhabitants of the village of Prospérité forced them to peacefully occupy the site - to the point of gathering over 200 people in November 2022 - to prevent the construction of the power plant.

It should be noted that, although CEOG held a single environmental permit, individual administrative acts are always issued subject to the rights of third parties.

**Therefore, on the civil side, CEOG was bound by commitments made to the Village de Prospérité, which had to be respected notwithstanding any administrative authorization.**

However, not content with breaching its commitments, CEOG took refuge behind its administrative authorization to request the assistance of the police in order to quell the dispute, which had its origins precisely in the failure to put in place the prior consent process to which CEOG had agreed.

As a result, the French government carried out a major police crackdown both on the industrial site and on the indigenous lands.

Under the authority of the Prefect of French Guiana and the Public Prosecutor's Office, this indiscriminate repression was extremely violent.

The arrest of the village chief and other inhabitants was followed by the dispatch of reinforcements from law enforcement, and the use of rubber bullets and tear gas against the demonstrators. Since August 16, 2023, the day the work resumed due to the alleged impossibility of moving the project, and despite the absence of consent from the Prospérité residents, the occupation of the land has resumed on a daily basis.

More than 80 Gendarmerie soldiers were deployed on site, including in the village of Prospérité.

This repression resulted in:

- police violence, including against minors and human rights defenders;
- infringements of the Kali'na community's rights of use, including outside the perimeter of the single environmental authorization and in areas covered by decrees R03-2021-22-00002 of November 22, 2021 and R03-2021-22-00003 of November 22, 2021;
- additional damage to the environment and disruption of hunting areas due to the movement of law enforcement officers, particularly on quad bikes;
- an invasion of the privacy of the village's inhabitants due to the recurrent overflight of the village by Gendarmerie observation drones;
- confiscation of hunting weapons, again infringing the Kali'na's rights of use and hindering their subsistence hunting activities;
- legal proceedings and criminal convictions against defenders of indigenous rights, including minors;
- lasting trauma within the Kali'na community, as the use of force was intended to cover up the violation of CEOG's legally binding commitments.

In November 2023, CEOG staff were found to be armed with firearms. On several occasions, young Kali'na who had approached the site to take photographs were threatened with weapons by private personnel.

## **7. Violations of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination**

Under the Committee on the Elimination of Racial Discrimination's "**Guidelines Applicable to Early Warning and Urgent Action Procedures**",<sup>27</sup> the above situation meets several indicators for triggering the early warning procedure, including:

- segregation policies or de facto exclusion of members of a group from political, economic, social and cultural life (A/62/18, Annex III, §12.d);
- Encroachment on the traditional lands of Indigenous Peoples (A/62/18, Annex III, §12.h);
- Polluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups (A/62/18, Annex III, §12.i).

We recall that the International Convention for the Elimination of All Forms of Racial Discrimination implies not only the adoption by States Parties of corresponding legislation, but also the adoption of practices in conformity with its provisions. Article 2 of the Convention sets out an obligation to condemn discrimination and to pursue by all appropriate means a policy of eliminating all forms of racial discrimination.

In addition, article 5 of the Convention obliges States parties to guarantee the right of everyone to equality before the law, in particular in the enjoyment of the right to equal treatment before tribunals and all other organs administering justice (art. 5.a); the right to security of person and protection by the State against violence or bodily harm by government officials (art. 5.b); the rights to freedom of opinion, expression, peaceful assembly and association (5.d-viii and ix); and economic, social and cultural rights (art. 5.e).

The Committee on the Elimination of Racial Discrimination has identified a number of obligations of States Parties towards Indigenous Peoples. As part of these obligations, the Committee in its General Recommendation no. 23 of 1997<sup>28</sup> requires in particular:

- To provide Indigenous Peoples with an environment conducive to sustainable economic and social development that is compatible with their cultural characteristics (§3.c), but also to recognise and protect their right to own, develop, control and use their communal lands, resources and territories, and where they have been deprived of the lands and territories which traditionally belonged to them or which they inhabited or used, without their free and informed consent, to take measures to ensure that these lands and territories are returned to them (§5);
- To ensure that members of Indigenous Peoples enjoy equal rights with respect to effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent (§3.e).

The Committee has also recognised on numerous occasions:

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<sup>27</sup> At its 71st session in August 2007, the Committee adopted revised guidelines on early warning and urgent action procedures (see annual report A/62/18, annex, chapter III).

<sup>28</sup> Committee on the Elimination of Racial Discrimination, General Recommendation no. 23, The rights of Indigenous Peoples, Fifty-first session, 1997 (UN. Doc.A/52/18, appendix V).



- The obligation of States Parties to ensure the full enjoyment and effective exercise by Indigenous Peoples of their rights over the lands, territories and natural resources which they occupy or use, as well as the obligation to consult with Indigenous Peoples and ensure their free and informed consent in relation to projects affecting their territories, including:
  - In its concluding observations on Peru<sup>29</sup> and Nicaragua,<sup>30</sup> the Committee mentioned the right of Indigenous Peoples to have **access to their lands**.<sup>31</sup>
  - In its Concluding Observations on Laos<sup>32</sup> and Canada,<sup>33</sup> the Committee emphasised the obligation of States to ensure that the right of Indigenous Peoples to free, prior and informed consent is respected in the **planning and implementation of projects affecting the use of their lands and resources**.
  - In its Concluding Observations on Mexico, the Committee stated that "*effective consultations are carried out **at each stage of the process** with communities likely to be affected by projects to develop and exploit natural resources, with the aim of obtaining their free, prior and informed consent.*"<sup>34</sup>
  - In its Concluding Observations on Peru<sup>35</sup> and Guatemala,<sup>36</sup> the Committee recommended adopting an **appropriate methodology for conducting prior consultation processes**.<sup>37</sup>
  - In its Concluding Observations on Argentina, the Committee went even further, urging the State to "*adopt a national law regulating consultation procedures for obtaining the free, prior and informed consent of Indigenous Peoples, to establish appropriate mechanisms for carrying out such consultations and to ensure the effective participation of Indigenous Peoples in the development of the aforementioned law and consultation mechanisms*",
  - and recommending that it ensure that "*Indigenous Peoples effectively participate in the development of the national action plan on business and human rights, that this plan reflects the importance of protecting and respecting the rights of Indigenous Peoples in the context of business activities and that effective, accessible mechanisms are in place to*

<sup>29</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the report of Peru, 25 September 2014 (CERD/C/PER/CO/18-21).

<sup>30</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the report of Nicaragua, 22 December 2023 (CERD/C/NIC/CO/15-21).

<sup>31</sup> The Committee urges Peru to guarantee the full enjoyment and effective exercise by Indigenous Peoples of their rights over the lands, territories and natural resources they occupy or use (§15 b.), and asks Nicaragua to adopt the necessary measures to guarantee the protection of the rights of Indigenous Peoples to own, use, develop and control their lands, territories and resources (§19 a.).

<sup>32</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the report of the Lao People's Democratic Republic, 13 April 2012 (CERD/LAO/CO/16-18), §17.

<sup>33</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the report of Canada, 4 April 2012 (CERD/CAN/CO/19-20), §20.

<sup>34</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the report of Mexico, 4 April 2012 (CERD/C/MEX/CO/16-17), §17. a. The Committee adds that to the State Party should "*promote forums where government representatives can actively participate in different discussion groups with Indigenous Peoples, ensuring that these lead to concrete, viable and verifiable agreements that are properly implemented*" (§17.b).

<sup>35</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the report of Peru, *op. cit.*

<sup>36</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the report of Guatemala, 12 June 2015 (CERD/C/GTM/CO/14-15).

<sup>37</sup> The Committee recommends that Peru "*adopt an appropriate methodology for conducting prior consultation procedures in conformity with international standards (§14.a)*" and "*ensure that all projects on the development and exploitation of natural resources, including mining operations, are submitted to the consultation process with a view to obtaining the free, prior and informed consent of the communities that may be affected*" (§14.b). The Committee urges Guatemala to "*devise practical ways of consulting with indigenous populations through the institutions representing them*" (§14. a).

*remedy any harm that may be caused to these communities by such activities.*"<sup>38</sup> In its Concluding Observations on Mongolia, the Committee recommended that the State "*ensure that the Tsaatans are fully and effectively consulted with a view to obtaining their free, prior and informed consent in relation to all decisions affecting their rights and lands.*"<sup>39</sup> In a decision on Suriname, the Committee expressed "*deep concern about information alleging that Suriname is actively disregarding the Committee's recommendations by authorizing additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples, without any formal notification to the affected communities and without seeking their prior agreement or informed consent.*"<sup>40</sup>

With regard to France, the Committee regularly reiterates its concern about discrimination against Indigenous Peoples in overseas territories and the fact that their rights - in particular the right to land and the right to free, prior and informed consent - are not fully respected.<sup>41</sup> In a letter dated 14 December 2018, the Committee requested France to guarantee the right of Indigenous Peoples affected by a planned extractive project in French Guiana to be informed and consulted in order to give their free, prior and informed consent before the project is carried out.<sup>42</sup> This letter, sent in response to the early warning request made jointly by ONAG and ISHR, contributed to the suspension of work on the project. It should be noted that, in this case, in addition to the lack of adequate consultation of the Indigenous Peoples, the construction of this power plant is taking place on land necessary for their survival, dedicated to hunting and fishing. The infringement of the rights of the Indigenous Peoples is therefore manifold.

In addition, CERD could draw inspiration from the letters sent to Brazil in response to an early warning request, in which it expressed concern about the impact of several infrastructure projects - some of which involve the construction of hydroelectric power plants - on areas occupied by Indigenous Peoples, and about the lack of consultation with these communities by the State party.<sup>43</sup>

Although France recognises that "*the American Indian and Bushinenge peoples living in French Guiana have a strong attachment to the customary lands that they have been using for generations in a manner respectful of biodiversity and the natural renewal of forested areas, without any system for individual appropriation*

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<sup>38</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the report of Argentina, 28 April 2023 (CERD/C/ARG/CO/24-26), §29. It adds that the State should "*ensure that federal and provincial legislative or administrative measures and all infrastructure and natural resource development projects that may affect Indigenous Peoples are subject to consultation with these communities with a view to obtaining their free, prior and informed consent*".

<sup>39</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the report of Mongolia, 17 September 2019 (CERD/C/MNG/CO/23-24), §24. a.

<sup>40</sup> Committee on the Elimination of Racial Discrimination, Decision 1 (67) on Suriname, 1 November 2005 (CERD/C/DEC/SUR/4), §3.

<sup>41</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the twentieth and twenty-first periodic reports of France, 10 June 2015 (CERD/FRA/CO/20-21), §12; and Concluding observations on the twenty-second and twenty-third periodic reports of France, 14 December 2022 (CERD/C/FRA/CO/22-23), §15 and §16.a-c-d.

<sup>42</sup> Committee on the Elimination of Racial Discrimination, Letter from the Committee to France dated 14 December 2018 (CERD/EWUAP/France/2018/JP/ks).

<sup>43</sup> See, in particular, the letter of 7 March 2008 (JMN/NP/JF) in which the Committee asks the State to put in place the necessary procedures to obtain the free, prior and informed consent of the Indigenous Peoples affected by a power plant construction project, before presenting it to the Brazilian Congress; see also more recently the letter of 25 August 2021 (CERD/EWUAP/104th session/2021/CS/ks), concerning a project to build several hydroelectric power stations in the state of Mato Grosso and the lack of consultation with members of the Xavante people. The same project was the subject of another CERD letter to Brazil, dated 29 August 2022 (CERD/EWUAP/2022/MJ/CS).

.<sup>44</sup> and has adopted provisions aimed at protecting the traditional knowledge of Guiana's Indigenous Peoples, at ensuring that they are consulted and that their free and informed consent is obtained prior to the implementation of any project that may affect their environment,<sup>45</sup> these elements are insufficient and do not allow for effective protection of the rights of the Indigenous Peoples in the present case.

**The refusal to grant the inhabitants of the village of Prospérité the benefit of special legal protection over land located less than 2km from their village, and the clearing of 78ha of forest from which they traditionally derive their livelihood, deprive them of the full enjoyment and effective exercise of their rights over land, territories and natural resources. In addition, the inhabitants of Prospérité have not been sufficiently consulted and have not been able to give their free and informed consent to a project that will have an impact on their environment and way of life. Taken together, these factors led to a breach of the above-mentioned provisions by the French State.**

The violation of Article 5.e of the Convention can also be clarified by the findings of the Committee on Economic, Social and Cultural Rights (CESCR). In its General Comment 21 on the right of everyone to take part in cultural life, the Committee called on States Parties to "*respect the principle of free, prior and informed consent of Indigenous Peoples in all matters covered by their specific rights*" and to "*obtain their free and informed prior consent when the preservation of their cultural resources, including those associated with their way of life and cultural expression, are at risk.*"<sup>46</sup>

In particular, the CESCR recommends that, prior to the construction of hydroelectric projects, a State should carry out full impact assessments and extensive consultations with affected communities, giving them real opportunities to present their views and influence decision-making.<sup>47</sup>

Furthermore, in its General Comment 26 on land and economic, social and cultural rights, the CESCR states that "*Indigenous Peoples can freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends, only if they have land or territory in which they can exercise their self-determination*". It also states that "*the sources of international human rights law provide for respect and the protection of the relationship that Indigenous Peoples have with their lands, territories and resources, requiring States to demarcate their lands, protect those lands from encroachment and respect their right to manage the lands according to their internal modes of organisation*". Consequently,

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<sup>44</sup> France, Combined twenty-second and twenty-third periodic reports submitted by France under article 9 of the Convention, due in 2017, 15 August 2019 (CERD/C/FRA/22-23), §171.

<sup>45</sup> Article L.412-4 of the French Environment Code provides special protection for "*all communities of inhabitants who traditionally draw their means of subsistence from the natural environment and embodying traditional lifestyle for the conservation and sustainable utilisation of biodiversity*"; article L.412-1 of the same code states that a legal entity governed by public law must organise the consultation of communities of inhabitants holding traditional knowledge associated with generic resources and that it must negotiate and sign benefit-sharing contracts with the user. In the case of French Guiana, since 2017 the law has provided for the creation of a cultural and environmental public body to be placed under the authority of the Grand Customary Council, a creation that has still not taken place; article L.7124-14 of the General Code of Local Authorities, which states that any project or proposed decision of the Assembly of French Guiana that has consequences for the environment or way of life, or that concerns the identity of the American Indian and Bushinengue populations, is subject to the prior opinion of the Grand Customary Council.

<sup>46</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 21 on the right of everyone to take part in cultural life, 21 December 2009 (E/C.12/GC/21).

<sup>47</sup> Committee on Economic, Social and Cultural Rights, concluding observations on Ethiopia, 31 May 2012 (E/C.12/ETH/CO/1-3).

relocation of Indigenous Peoples "*should be allowed only under narrowly defined circumstances and with the prior, free and informed consent of the groups concerned.*"<sup>48</sup>

Account should also be taken of the decisions of the Human Rights Committee, which has recognised, for example, that logging projects and the construction of roads on the lands of Indigenous Peoples against their consent constitute a violation of the Covenant.<sup>49</sup>

In the alternative, we would like to draw the Committee's attention to the fact that, in addition to the violations of the Convention on the Elimination of Racial Discrimination, the conduct of the French State in this case demonstrates a lack of respect for the provisions of other international texts, whether binding or not:

- The United Nations Declaration on the Rights of Indigenous Peoples<sup>50</sup>, which France signed at the General Assembly on 13 September 2007, states:
  - The right of Indigenous Peoples to participate in decision-making and to be consulted in order to give their free, prior and informed consent (Articles 18, 19) and
  - The right to dispose of their traditional lands and to have their environment preserved (articles 25, 26, but especially 32).<sup>51</sup>
- The Aarhus Convention,<sup>52</sup> which gives members of the public (individuals and the associations representing them) the right of access to information and the right to participate in the environmental decision-making process, as well as the right to claim compensation if these rights are not respected.
- ILO Convention 169<sup>53</sup> on indigenous and tribal peoples, which reaffirms the obligation to consult Indigenous Peoples and the principle of free and informed consent (articles 6, 15, 16 and 17). France is committed to respecting this convention insofar as its Constitution allows, although it has not yet ratified it.
- The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas of 17 December 2018, which also applies to Indigenous Peoples under Article 1.3. In its Article 17, the declaration notably consolidates the right to land of these peoples and sets out the obligations relating to the protection of the land arising therefrom, incumbent on States.

## 6. Requests to the Committee

In view of the above, ONAG and ISHR ask the Committee to adopt an early warning calling on France to immediately halt the construction of the West Guiana Power Plant.

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<sup>48</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 26 on land and economic, social and cultural rights, 24 January 2023 (E/C.12/GC/26), §11 and §16. It also mentions that "*both the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights have taken the view that Indigenous Peoples who have unwillingly loss possession of their lands without their free and prior consent after a lawful transfer to third parties are entitled to restitution thereof or to obtain other lands of equal extension and quality*" (§16).

<sup>49</sup> Human Rights Committee, Views under Article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 779/1997, *Ms. Anni Äärelä and Mr. Jouni Näkkäläjärvi v. Finland*, 7 November 2011 (U.N. Doc. CCPR/C/73/D/779/1997).

<sup>50</sup> Resolution 61/295 adopted by the United Nations General Assembly on 13 September 2007.

<sup>51</sup> This article provides that "States shall consult and cooperate in good faith with the Indigenous Peoples concerned 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 exploitation of mineral, water or other resources."

<sup>52</sup> UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. It should be noted that the principles of the Convention were included in article 7 of the Charter for the Environment, which has constitutional value in France.

<sup>53</sup> Convention 169 of the International Labour Organisation, 1989.

If not, France would be in breach of its obligations under the Convention. It would be in breach of its obligation to ensure the full enjoyment and effective exercise of the rights of Indigenous Peoples over their lands. It would also contravene the principle of free and informed consent of the American Indian communities affected by the project, who are unanimously opposed to it.

In view of the latest statements by the French executive and representatives of the CEOG project, it is imperative that this request for early warning be examined without delay and that the Committee call on France to respect its treaty obligations, in particular by consulting the populations concerned and changing the location of the project.