



EUROPEAN TRIBUNAL IN DEFENSE OF AQUATIC ECOSYSTEMS

MARONI RIVER VS. THE FRENCH STATE

FINAL VERDICT

In the case of the Maroni River, Wild Legal, the Maiouri Nature Guyane Association, the Organization of Indigenous Nations of Guiana (ONAG), the Association of Victims of Mercury (ADVM) (hereinafter "the plaintiffs") versus the French State (hereinafter also "the State" or "France"), the European Tribunal in Defense of Aquatic Ecosystems (hereinafter "the Tribunal"), by virtue of the hearing held on February 27, 2020¹, renders the following verdict:

I. Law applicable to the European Tribunal in Defense of Aquatic Ecosystems

1. The Tribunal is established to promote universal respect for the rights set forth in the Universal Declaration of the Rights of Mother Earth (hereinafter "the Declaration") in order to foster harmonious coexistence between human beings and other entities of the community of life.
2. The Declaration was approved by the Peoples' Conference on Climate Change and the Rights of Mother Earth, which met in the city of Cochabamba, Bolivia, from 19 to 22 April 2010. At this conference, 142 countries were represented by official delegations, groups and social movements. This Declaration is the first international

¹ Review the court hearing: <https://www.facebook.com/102874091171981/videos/249721506633391>

civil society instrument to consider Nature as a subject of rights, thus going beyond the anthropocentric paradigm of environmental protection.

3. The Declaration recognises, in Article 2, that Mother Earth has the right to live, to be respected, to regenerate, to continue its life cycles and processes without human disturbance, to maintain its identity and integrity as a collective of distinct, self-regulating and interrelated beings, to have access to water as a source of life, to enjoy full health, to be free from contamination, pollution and toxic wastes, as well as the right to its full and prompt restoration.
4. Similarly, the Tribunal considers the relevant European instruments for the protection of Nature, environment and biodiversity, such as the Water Framework Directive (2000/60/EC),, as well as international texts such as the Minamata Convention (2013), for the prohibition of mercury, or the Convention on Biological Diversity (1992).
5. Given the Tribunal's recognition of the dependence of human beings on Mother Earth and the close relationship between the violation of the Rights of Nature and the violation of human rights, with respect to the allegations of violations of human rights and the rights of indigenous peoples in this case, this Tribunal is also governed by the provisions of the Universal Declaration of Human Rights; the Covenants on Civil, Political, Economic, Social and Cultural Rights; Convention 169 of the International Labour Organization; and the Universal Declaration on the Rights of Indigenous Peoples without prejudice to such other instruments as the Tribunal deems relevant to the case.

II. Competence

6. The Tribunal shall have the competence to promote the respect and recognition of the rights established in the Universal Declaration of the Rights of Mother Earth, in order to promote harmonious coexistence between human beings and the rest of the living community within the European Union. This competence is based on Article 3 II B of the Universal Declaration of the Rights of Mother Earth, providing that

“human beings, all States and all public and private institutions have the duty to recognize and promote the full and complete application of the rights and obligations set out in this Declaration ”.

7. To this end, it is the responsibility of this tribunal to investigate and adjudicate on any violation of the rights, or breach of the responsibilities established in the Declaration, whether committed by the State, private or public legal entities, and/or individuals.

III. Procedural context of the case

8. On the occasion of the call for applications for the European Tribunal for the Defence of Aquatic Ecosystems launched by the European Hub of the Global Alliance for the Rights of Nature at the end of 2019, the association Wild Legal and its partners Maiouri Nature Guyane, the Organization of Indigenous Nations of Guiana (ONAG), the Association of Victims of Mercury (ADVM) filed an application relating to the case of mercury contamination of the rivers of French Guiana, in particular the Maroni.
9. During the hearing process, the Tribunal listened to the allegations presented by claimants on behalf of the Maroni River and the Wayana Amerindian people affected by mercury pollution from gold mining activities affecting the French Amazon. In particular, it took note of the health impacts of the waterways polluted by the toxic discharges as well as the contamination of the entire food chain, affecting human and non-human beings dependent on the river.
10. On the basis of the evidence provided and in response to the request of the complainants, the Tribunal decided to accept the case of French Guiana against the French State as a potential case of wrongful failure to act and violation of aquatic ecosystem rights.
11. On February 6th, 2020, the Secretariat of the Tribunal (hereinafter referred to as the "Secretariat"), in communications addressed to the French State, through the Prefecture of French Guiana, made this decision known and invited the representatives of France to participate in the Tribunal (see Appendix).
12. The Tribunal, composed of Judges Valerie Cabanes, Cormac Cullinan, Tom Goldtooth

and Lisa Mead set the hearing, which was held virtually due to the COVID 19 outbreak, for February 27, 2020.

13. During a hearing that lasted two and a half hours, the Tribunal examined the oral and written evidence presented by Marine Calmet, lawyer and president of the association Wild Legal, Linia Opoya, president of the Association of Women Victims of Mercury (ADVM) through a pre-recorded video testimony, as well as Alexis Tiouka, a lawyer expert in indigenous peoples' rights.

IV. The Facts

14. The facts of the present case refer to the allegations of wrongful failure of France to take action due to the inability of the measures put in place to address the violation of the Rights of Nature and of the peoples impacted by illegal gold mining in Guiana for more than 30 years.

15. French Guiana, a French overseas territory, is located in South America. The equatorial forest that covers its territory (the only large rainforest in the European Union) is still largely preserved on its 8.35 million hectares. It conceals an exceptional biodiversity, among the richest in the world in animal and plant species. This biodiversity is still partly unknown. French Guiana is notably crossed by the Maroni River which extends over an area of 60,000 km². The Maroni River separates this French overseas region from Suriname, and flows into the Atlantic Ocean. It is populated by many indigenous peoples, a mixture that has lasted for thousands of years. In addition to being a major axis of exchange in French Guiana the Maroni River is also a very important element of identity for the inhabitants living on its banks, and in particular for the Wayana and Teko Amerindian peoples living upstream of this river, in the west of French Guiana, on the territory of the "Haut Maroni".

16. This populated territory is located in the Amazonian Park of Guiana, a protected area of 34,000 km² covering the south and center of Guiana. It is the largest French and European park. It is home to 90 species of amphibians, 133 reptiles, 520 birds and 182

mammals as well as more than 200 species of water fish, that is to say 50% of the French biodiversity. Its forest ecosystem sequesters more than a billion tons of carbon. Also, the Amerindian peoples of the Haut-Maroni have lived in harmony with Nature for centuries, knowing how to live on their territories while preserving them. These ancestral territories and those of other peoples of the river banks (such as the Maroons) are today directly threatened by illegal gold mining, which has an impact on their conditions and their way of life.

17. Since the 1980s and 1990s, the use of mercury in illegal gold mining activities has led to significant contamination of the Amazonian terrestrial and aquatic ecosystems of Guiana. In 40 years, hundreds of tons of mercury have been dumped into the environment, particularly around and in the Maroni River. This mercury is endangering more than ever the ecosystems and with them the indigenous and local communities that depend on them. The collapse of biodiversity but also the threats to the health of the peoples around the river are important and worsen with time. The Wayana and Teko Amerindian peoples in particular are intoxicated by mercury due to their daily consumption of carnivorous fish at the end of the food chain. More widely, the entire Guyanese population is concerned by this poisoning, as the consumption of these fish is part of local food habits and culinary traditions.

V. Causes of damage

18. Illegal gold mining continues to cause serious damage and the French state is not providing an appropriate response to stop this scourge. Despite the deployment of punctual repressive operations against this scourge since 2002, and despite the permanent deployment of the military operations "Harpie" since 2010, the activities of illegal miners are still going strong. Between 2011 and 2017, the number of identified illegal sites increased from 52 sites to 177 sites in the Amazonian Park of Guiana. It was only in 2018 that the rates dropped to 132 sites in the protected territory of the Park alone. Despite the implementation of the "Harpie 2" operation, the surface area of sites increased from 150 hectares in 2017 to 450 hectares in 2018.

19. Currently, the Armed Forces of Guiana, mobilized on these military operations, have 9 helicopters. It is estimated that 500 French soldiers are mobilized in the fight against illegal gold mining, in addition to 260 gendarmes and 15 environmental inspectors of the Amazonian Park of Guiana. Eleven patrols are deployed each day, all institutions combined. These numbers may seem large, but Guiana is a huge territory and they are confronted with approximately 10,000 illegal miners, called "garimpeiros" because of their predominantly Brazilian origin, armed and fully equipped, in an area larger than Scotland, covered with dense tropical vegetation.
20. At the level of the populations, preventive actions with the inhabitants of the river so that they transfer their traditional food mainly composed of carnivorous fish, on a Western food not adapted to their nutritional, cultural needs and to their geographical and economic means (difficult access to supermarket foodstuffs). This state deficiency leads to an ecocide of the French Amazonian aquatic and terrestrial ecosystems, and to an ethnocide of the peoples who depend on the river: Wayana, Teko, Creoles and other communities are progressively deprived of their eroded and contaminated lands, of their deteriorating health and of their disappearing way of life.
21. Because of the persistent ecological, sanitary and social damage, the deputies of the current mandate have obtained the opening of a Commission of Inquiry on the fight against illegal gold mining in order to evaluate the public policies conducted by the State. The report establishes ²*a state of affairs and draws up a list of proposals to improve and strengthen the fight against illegal gold mining. It is intended to be a cry of alarm and the first step in a general mobilization to effectively counter illegal gold miners, guarantee the health and respect for the way of life of the population living near illegal gold mining sites, and promote sustainable economic development in French Guiana.* There are still many levers to activate to act more effectively against the scourge of illegal gold mining.

² Read the survey report: https://www.assemblee-nationale.fr/dyn/15/rapports/ceorpguy/l15b4404_rapport-enquete

VI. Legal framework applicable to this case

22. This Tribunal refers to what is written in the Universal Declaration of the Rights of Mother Earth, which is applicable to the protection of rivers and streams impacted by illegal mining activities, in that it provides for the right of the entities that make up the community of Life to live and exist; the right to be respected; and the continuity of their cycles and vital processes, without human disturbance; the right to maintain their identity and integrity as distinct, self-regulating and interrelated beings; the right to water as a source of life; the right to full health; the right to be free from contamination, pollution and toxic waste; and the right to full and prompt redress for violations of the rights recognized in this Declaration resulting from human activities. The Declaration also imposes duties on all States, and all public and private institutions. These include the duties: to establish and apply effective norms and laws for the defence, protection and conservation of the rights of Mother Earth (Art. 3(2)(e)), to guarantee that the damages caused by human violations of the inherent rights recognized in this Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth (Art. 3(2)(g)), and to establish precautionary and restrictive measures to prevent human activities from causing the destruction of ecosystems or the disruption of ecological cycles; (Art. 3(2) (i)).

23. The Tribunal refers to what is stated in the Charter of the Environment, part of the block of constitutionality:

"That biological diversity, human flourishing and the progress of human societies are affected by certain patterns of consumption or production and by the excessive exploitation of natural resources ;

That the preservation of the environment must be sought in the same way as the other fundamental interests of the Nation;

That in order to ensure sustainable development, choices made to meet the needs of the present must not compromise the ability of future generations

and other peoples to meet their own needs,

PREAMBLE:

Article 1. Everyone has the right to live in a balanced and healthy environment.

Article 2. Every person has the duty to take part in the preservation and improvement of the environment.

Article 3. Any person must, under the conditions defined by the law, prevent the attacks which it is likely to carry to the environment or, failing that, limit their consequences.

Article 4. Every person must contribute to the repair of the damage he causes to the environment, under the conditions defined by the law. "

24. The Water Framework Directive, a European reference text, will also be taken as a reference by the Tribunal in that it guarantees a high level of protection of aquatic ecosystems at the Community level. The Tribunal underlines what is established in its Preamble:

"(1) Water is not a commodity like any other but a heritage that must be protected, defended and treated as such.

(33) The objective of good water status should be pursued for each river basin, so that measures for surface water and groundwater belonging to the same ecological and hydrological system are coordinated.

(34) For the purposes of environmental protection, it is necessary to ensure greater integration of the qualitative and quantitative aspects of both surface water and groundwater, taking into account the natural conditions of water circulation in the hydrological cycle.

(40) As regards pollution prevention and control, Community water policy should be based on a combined approach aimed at reducing pollution at source by setting emission limit values and environmental quality standards.

Article 1

Object

The purpose of this Directive is to establish a framework for the protection of inland

surface waters, transitional waters, coastal waters and groundwater, which:

(a) prevent further degradation, preserve and enhance the condition of aquatic ecosystems and, with respect to their water needs, terrestrial ecosystems and wetlands directly dependent on them

(b) promote sustainable water use based on the long-term protection of available water resources;

(c) aims to enhance the protection of the aquatic environment and to improve it, including through specific measures designed to progressively reduce discharges, emissions and losses of priority substances, and the cessation or phasing out of discharges, emissions and losses of priority hazardous substances;

(d) ensure the gradual reduction of groundwater pollution and prevent its further pollution, and

(e) helps mitigate the effects of floods and droughts, and thus contributes:

- to ensure an adequate supply of good quality surface water and groundwater for sustainable, balanced and equitable water use,

- to significantly reduce groundwater pollution,

- to protect territorial and marine waters,

- to achieve the objectives of relevant international agreements, including those aimed at the prevention and elimination of pollution of the marine environment by Community action under Article 16(3), to cease or phase out discharges, emissions and losses of priority hazardous substances posing an unacceptable risk to or via the aquatic environment, with the ultimate aim of achieving concentrations in the marine environment which are close to background levels for naturally occurring substances and close to zero for man-made synthetic substances".

25. At the level of French Guiana, the requirements of the WFD are transposed in the Schéma Directeur d'Aménagement et de Gestion des Eaux de Guyane (SDAGE Guyane)³, an administrative document setting the objectives to be achieved to

³ Read the SDAGE Guiana: <http://eauguyane.fr/images/pdf-page/SDAGE-Guyane-2016-2021.pdf>

preserve or restore the good ecological status of the hydrological basin and waterways.

26. More generally, Article 191 of the Treaty on the Functioning of the European Union (formerly Article 174) provides that Community policy on the environment must contribute to the pursuit of the objectives of preserving, protecting and improving the quality of the environment and making prudent and rational use of natural resources, and must be based on the precautionary principle and the principle that preventive action should be taken, and that environmental damage should, as a priority, be rectified at source, as well as on the polluter pays principle.

27. The Tribunal is also vigilant with regard to the application of France's commitments in the Minamata Convention on Mercury, and in particular the recitals set forth in its Preamble:

"Recognizing that mercury is a chemical of global concern due to its long-range atmospheric transport, persistence in the environment once introduced by humans, potential for bioaccumulation in ecosystems, and significant adverse effects on human health and the environment,...

Noting the particular vulnerability of Arctic ecosystems and indigenous communities due to mercury biomagnification and contamination of traditional foods, and concerned more generally about the situation of indigenous communities with respect to the effects of mercury

Recognizing the important lessons learned from Minamata, in particular the serious health and environmental effects resulting from mercury pollution, as well as the need to ensure proper management of mercury and to prevent similar events in the future"

28. Given that mercury pollution and ecosystem destruction have affected indigenous territories, the Tribunal wishes to recall the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration recognizes the right to self-determination of indigenous peoples (Article 3) and to autonomy or self-

government over their internal and local affairs (Article 4). It also establishes consultation for free, prior and informed consent against the approval of any project or measure that affects their lands or territories and other resources (Article 32), as well as the standard of consent in cases of :

- the storage or disposal of hazardous materials on their lands or territories (Section 29); and
- the restitution of their lands, territories and natural resources in cases where they have been "*confiscated, taken, occupied or damaged without their free, prior and informed consent*", or to reparations which may consist of land of equal size and quality, or fair and just compensation (Article 28).

29. The Tribunal may also refer to Convention 169 of the International Labour Organization, which recognizes, among other things, the right to a healthy environment and to the subsistence, development and protection of natural resources. In its articles 4.1 and 7.4, it imposes on States the obligation to adopt measures to protect the indigenous environment. In this regard, governments are obliged to ensure that studies are conducted, in cooperation with indigenous peoples, to determine the social, spiritual, cultural and environmental impacts that development activities may have on them. Article 7.3. recognizes the subsistence rights of indigenous peoples, in particular, it provides that handicrafts, rural and community-based industries and traditional activities related to the subsistence economy of the peoples concerned, such as hunting, fishing and gathering, among others, be recognized as important factors in the maintenance of the culture, self-sufficiency and economic development of the indigenous group, and that governments have an obligation to ensure that these activities are strengthened and encouraged. Likewise, Convention 169 recognizes the right of indigenous peoples to freely determine their political status and to freely pursue their economic, social and cultural development. In accordance with Article 7.1, it is built around the right to self-determination, safeguarding the power of indigenous peoples to establish their own development priorities, which is extremely relevant when their model clashes with

the one that the State intends to impose, either on its own behalf or by private individuals, and when the use and exploitation of Nature and the elements that make up the natural habitat of indigenous peoples are challenged. Article 15.1 recognizes the rights of indigenous peoples over the natural resources existing in their territories and imposes an obligation on the State to specially protect these rights and to guarantee indigenous participation in the use, administration and conservation of these resources. It is provided, however, that if the ownership of these resources belongs to the State in accordance with national legislation, measures must be adopted to protect and preserve the territories of indigenous peoples, such as: free, prior and informed consent, participation in the benefits of the exploitation of the resources, and reparation for damages (article 15.2).

30. Given that the pollution affected protected areas; particularly within the Amazonian Park of Guiana, this Tribunal will also take into account what is mentioned in the Charter of the Park ⁴, dated October 28, 2013, providing :

"Considering that the emblematic policy of national parks is part of an ethic of responsibility and participates in the implementation of the constitutional charter of the environment ;

Art. 1. - The creation of a national park aims to protect an exceptional natural, cultural and landscape heritage, the composition of which is determined in part by certain human activities that respect natural areas and contribute to the character of the park, while taking into account the ecological solidarity between the protected areas of the heart and the surrounding areas concerned by a policy of protection, enhancement and sustainable development.

The State promotes an exemplary integrated protection as well as a partnership management based on a territory project in order to guarantee a natural, economic and social evolution compatible with the character of the park.

⁴ Read the Charter of the Amazonian Park of Guiana: <https://www.parc-amazonien-guyane.fr/fr/download/file/4043>

Art. 3 - The heart of the National Park constitutes a space of protection and scientific reference, of national and international importance, allowing to follow the evolution of the natural successions, within the framework notably of the follow-up of the biological diversity and the climatic change. It is also a space of discovery of Nature, of resourcefulness and tranquillity.

The conservation of the tangible and intangible elements of the park's character, and in particular, as such, the conservation of the fauna, flora, geological formations, cultural heritage included in the heart of the park, as well as the preservation of the pluralities of perception and values attached to them, offer to the present and future generations a source of inspiration, culture and well-being of which the State is the guarantor.

Art. 4 - The purpose of the conservation management of the park's heritage is to maintain a good state of conservation of natural habitats, fauna and flora, the ecological functions and the dynamics of ecosystems, to avoid fragmentation of natural environments.

VII. Considerations of the Tribunal on the Rights of Nature in relation to the facts presented

31. The European Tribunal will now refer to its considerations regarding the denounced facts, for that it is considered relevant to determine if the Rights of Nature have been violated.
32. From these facts, it appears that the Guyanese aquatic ecosystems, flora and fauna, destroyed by the exploitation of the beds of streams and rivers, or contaminated by mercury pollution, are victims of a violation of their right to life and existence, as well as their right to the regeneration of their biocapacity and to the continuity of their cycles and vital processes, without disturbances of human origin in that the human activities related to the illegal extraction of gold (pollution and contamination with mercury, deforestation, poaching, etc.) have an enormous and almost irreversible impact on the ecosystems. Indeed, scientists have established that mercury released

into the aquatic biotope is converted into methylmercury (MeHg) by natural microbial processes and accumulates in all aquatic food chains. Mercury thus intoxicates all ecosystems: stored by plants, ingested by fish and other herbivorous animals, it is finally found in carnivorous organisms. Alluvial gold mining consists of extracting gold from crevices, rivers and streams by scraping deposits from the streambed, which destroys the ecosystems in these areas. By searching for gold in the riverbed, miners are responsible for the destruction of thousands of kilometres of rivers, whose turbidity and mercury content make life impossible, causing the disappearance of fauna and flora. Illegal miners are also searching for gold underground, digging gaping holes in the forest and polluting groundwater and small streams to wash the ore from the ground with mercury. This gold production is becoming more and more widespread and hundreds of illegal camps are currently operating in protected areas of the rainforest along the streams. To feed themselves in the middle of the forest, these thousands of illegal miners hunt animals, especially fish in the rivers. A wave of poaching is hitting hard the protected species already threatened by the destruction of their habitat.

33. It appears from these facts that the Guyanese aquatic ecosystems, flora and fauna, destroyed by the exploitation of the beds of streams and rivers, or contaminated by mercury pollution, are victims of a violation of their right to water as a source of life and the right to full health and their right to be free of contamination, pollution and toxic waste. Indeed, mercury, although extremely polluting, and officially banned in Guiana, is used massively for its cheapness. It takes 1.3 kg of mercury for 1 kg of gold. Informal gold production is estimated at 10 tons per year. Added to the nearby pollution from Suriname via the border river and to the mercury already present in its natural state in the soil and activated by gold panning activity, as well as in the sediments of rivers, it can be estimated that over the past 40 years, hundreds of tons of mercury have been dumped into the environment, particularly in the Upper Maroni area. According to the report Indicators of sustainable management of

French overseas forests in French Guiana, published in 2018⁵: "Since the beginning of gold mining in French Guiana according to the work of the ONF (Coppel et al. 2008), the total linear of watercourses directly impacted by gold panning activities (legal and illegal) would be about 1,330 km. The length of watercourses located downstream of these sites, and therefore potentially impacted indirectly, was estimated to be approximately 4,700 km (more than half of which were located in the Maroni and Mana basins) in 2006. A new assessment was carried out in 2015 and shows a very sustained rate of destruction of creeks until 2008 (with a maximum > 200 km/year between 2004 and 2008) followed by a very significant decrease between 2009 and 2014. In 2014, the linear of destroyed creeks would reach 2,910 km cumulatively since 1990, the potentially impacted downstream linear would be relatively stable between 4,000 and 4,500 km/year since 2008 but would concern cumulatively since 1990 more than 6,385 km of rivers (ONF 2015). These figures must be related to the 110,000 km of rivers listed in Guiana." As for the SDAGE of Guiana, it identifies the state of the rivers:

Tableau 2: Etat actuel des masses d'eau en Guyane

Masses d'eau	Nombre total de masses d'eau	Bon et très bon état écologique		Bon état chimique		Bon état global	
		Nombre	Pourcentage	Nombre	Pourcentage	Nombre	Pourcentage
Cours d'eau	841	698	83%	701	83%	694	83%
Eaux de transition	9	1	11%	3	33%	1	11%
Eaux côtières	1	Indéterminé	-	Indéterminé	-	Indéterminé	-
Plan d'eau	1	0	0%	Indéterminé	-	0	0%
Total	852	699	82%	704	83%	695	82%

34. The SDAGE shows that almost all of the rivers that do not have good ecological status according to the Water Framework Directive (WFD) "owe their downgrading to the impacts of illegal gold mining.

The main environmental impacts of illegal gold mining are the following:

- Hydromorphological alteration of watercourses through their destruction and/or diversion (disappearance of habitats, acceleration of water velocity, etc.).

⁵ Read the report: http://www.gip-ecofor.org/wp-content/uploads/2019/03/IGDFF_GUYANE_2015.pdf

- *Increase in the quantity of suspended solids (SS) in the watercourse (clogging of the bottom, blocking of photosynthesis, asphyxiation of fish, disruption of the food chain, etc.)*
- *Release of mercury used for alluvial gold mining or remobilization of mercury from soils, leading to contamination of the food chain through bioaccumulation."*

35. It is therefore clear from these findings that the facts constitute a violation of the Rights of Nature to water as a source of life and the right to full health and their right to be free from contamination, pollution and toxic waste within the meaning of the Universal Declaration of the Rights of Mother Earth, but also a violation of the Water Framework Directive, the SDAGE of Guiana and the Minamata Convention on mercury.

36. It is clear from these facts that the aquatic ecosystems of Guiana, the flora and fauna, destroyed by the exploitation of the beds of streams and rivers, or contaminated by mercury pollution, are victims of a violation of their right to full and prompt reparation in the event of a violation of the rights recognized in this Declaration resulting from human activities, in that the State has not currently allowed the restoration of the ecosystems degraded as a result of illegal gold mining. The investigation report of the Commission of Inquiry on the fight against illegal gold panning mentions *"the identification underway by the Amazonian Park of Guiana of "pilot sites" for an experiment to be conducted by the end of 2021 on sites whose restoration would have the advantage of no longer appearing as an easy target for illegal gold panners, and this "for a larger scale deployment from 2022." The minister, before the commission of inquiry, estimated the amount of the operation at one million euros for the pilot sites with a total area of 40 hectares, which amounts to an average cost of 25,000 euros per hectare."* In this case, even though illegal gold mining has been destroying Guiana's ecosystems for several decades already, the implementation of restoration measures has been deliberately set aside. This fact is even noted in the Charter of the Amazonian Park of French Guiana which specifies that *"it is unthinkable today, in the context of increasing gold prices,*

consolidation on the borders of logistical support dedicated to gold panning and pressure on the natural environments of the National Park, to devote human and financial resources to restorations that could be reduced to nothing by resumption of exploitation. It is however advisable to lay the foundations for these future restorations, in order to be able to engage them as soon as possible (certainly within the framework of a second charter)". In this respect, the Tribunal finds that the Rights of Nature to prompt reparation have been deliberately set aside for reasons of human and financial resources and that they have therefore been violated.

37. The violation of all these rights recognized in Article 2 of the Universal Declaration of the Rights of Mother Earth implies, on the part of the French State, an effective action for the restoration of the Guyanese Amazonian ecosystems.

38. The Tribunal also wishes to refer to the Atrato River jurisprudence in Colombia to demonstrate the validity of the Maroni in claiming respect for its rights through its defenders. Indeed, in the decision of November 10, 2016, the Constitutional Court of Colombia ruled in a case that is very similar to the Guyanese context. Indeed, the Atrato River, which crosses the state of Choco, suffers the full force of contamination related to illegal mining. While this river crosses one of the richest regions in biodiversity in the world, the health of the river and its inhabitants has deteriorated so much that a state of humanitarian emergency had to be declared. Seized by local associations, the Colombian Constitutional Court made in 2016, a historic decision. In order to protect Atrato from illegal gold mining, the Court recognized the river as a legal entity with its own rights. In this perspective, it enjoined the State to ensure the protection of the river and "*considers it relevant to call on the ethnic communities that inhabit the Atrato River basin to protect, in the exercise of their customs, uses and traditions, the environment of which they are the primary custodians and responsible.*" In order to represent the interests of the river, the justice system established a system of "legal guardianship", shared between the local communities and the Colombian State. Since this decision, a commission of guardians of the Atrato has been created, composed of 14 representatives designated by the

inhabitants of the region. In the same way as the rights of the river, the judges of the Constitutional Court thus intended to guarantee the bio-cultural rights of the inhabitants of the river. Recognizing the intrinsic link between the protection of Nature and that of the fundamental rights of these peoples, the Court recalled that bio-cultural rights are the "*rights of ethnic communities to administer and exercise autonomous tutelage < tutela > over their territories - in accordance with their own laws, customs - and over the natural resources that constitute their habitat, where their culture, traditions and way of life are developed on the basis of the special relationship they have with the environment and biodiversity.*" This jurisprudence has had an international echo, encouraging greater consideration of the link between the preservation of aquatic ecosystems and the fundamental rights of humans dependent on them, as the Tribunal wishes to discuss below.

VIII. Considerations of the Tribunal on the rights of indigenous peoples in relation to the facts denounced

39. In addition to these violations of the Rights of Nature, there are allegations concerning the violation of the right to life, the right to health and the right to a healthy environment of the peoples living around the Maroni River, as well as various rights specific to indigenous peoples, recognized in texts such as the Universal Declaration of Human Rights, the Covenants on Civil, Political, Economic, Social and Cultural Rights, the United Nations Declaration on the Rights of Indigenous Peoples of September 13, 2007, signed by France, and Convention 169 of the International Labor Organization.

40. The Tribunal first addresses the argument of the violation of the right to health and life of the inhabitants of the Maroni River and particularly of the Amerindian people of the Upper Maroni region. It should be noted that the first studies on mercury levels in the Amerindian populations of the Upper Maroni were carried out in 1994. The average concentration of mercury in the hair was 12 µg, distributed between 11.7

µg in adults and 14 µg in children, of which 65% of adults and 80% of children exceeded the 10 µg threshold recommended by the World Health Organization.

41. In 1997, another study confirmed these mercury concentrations with an average of 11 µg. The study on the psychomotor development of children, conducted at the same time, showed a decrease in performance on tests measuring motor coordination and video-spatial organization in relation to mercury exposure of the order of 10 to 20 µg. In 1998, a third survey was carried out and confirmed the figures from the previous studies and highlighted other health problems, such as insufficient monitoring of pregnancies and deliveries. Finally, in 2005, another study conducted in the Haut-Maroni, in the villages of Antécume-Pata, Taluwen, Twenke, Elahé and Kayodé, yielded an average of 11.5 µg/g. But this average actually masked disparities between villages. By way of comparison, average mercury concentrations are 3 µg for the entire Guyanese population, 1.5 µg for metropolitan Guyanese, and the world average is 2 µg/g.
42. In March 2004, the Association Solidarité Guyane noted an intensification of gold mining activities in the Haut-Maroni and, above all, that none of the results of previous mercury surveys had been returned to the villages, and therefore decided to conduct a test operation. A first sample of 10 samples, processed by the INSPQ, revealed an average level of 10.6 µg/g, with a maximum of 17.6 µg/g.
43. Following these results, a second campaign was planned in October 2004 in cooperation with the National Institute for Minamata Diseases in Japan, involving 60 people, 40 from Kayode and 20 from Taluwen and Twenke. In Kayode, the average level in children was 11.51 µg/g with a maximum of 21.97, and in adults it was 12.8 µg/g with a maximum of 21.13 µg/g. In the village of Taluwen, the average level in children was 8.3 µg/g and 9.47 in adults.
44. The association Solidarité Guyane (ASG) then renewed its sampling campaigns every year until 2014, focusing on the village of Kayodé, because ASG's approach was to target the mercury problem in a village in the interior, on the bank of the Tampok, a tributary of the Maroni, for which the responsibility for mercury pollution is totally

under the authority of the French state, whereas the other villages border Suriname. Most of the people sampled were children under 12 years of age and pregnant women or women of childbearing age. These samples were followed up over several years, from the mother sampled during her pregnancy and breastfeeding to the baby, which was subsequently monitored, to explain any functional or cognitive problems in the child.

45. The first campaigns showed very high levels, especially in children, some of whom had levels of 20µg. In the village of Kayodé, more than 50% of the population has a level above 10µg/g and 30% above 12µg/g. This means that 80% of the population is already above the 5µg/g threshold. In the villages of Taluen and Twenke, the levels are between 8 and 10µg/g. It was possible to link the academic level of some children with their mercury levels, highlighting cognitive problems.
46. During the last sampling campaign in 2014, the average level for the village of Kayodé was 10.65 µg/g while it was 10.57 in 2013. The highest level being 22.95 µg/g. In the group of children aged 2 to 10 years, 80% of the children had levels above 6µg/g, knowing that from this level sequelae can be identified. The group of adults was more reflective of the pollution level with average levels of 14.27 µg/g. Until 2008, this average was around 12µg/g. Half of them had levels above 14. This level attests to the very high level of illegal gold panning activity upstream of the village.
47. As reported by Marine Calmet, lawyer and president of the association Wild Legal who presented the case before the Tribunal, the impact of mercury pollution has been known and well documented since the 1950s due to the Minamata scandal. Minamata disease is characterized by neurological and motor symptoms. Ingested methyl mercury is neurotoxic and reprotoxic, i.e. harmful to reproduction. High levels of contamination can lead to balance and walking disorders, hearing loss and visual field narrowing.
48. In young children, who are particularly sensitive, the damage can be significant, with, among other things, delays in psychomotor and language development and behavioral problems. For pregnant women, mercury can lead to lesions of the brain

and the nervous system in the fetus.

49. Also, according to the report *Neurodevelopmental investigations among methylmercury-exposed children in French Guiana* published in the journal *Environmental Research* in May 2002 neurological and neuropsychological tests performed in 1997 on the Amerindian population of Haut-Maroni showed that at exposure levels of 10 to 20 µg/g (micrograms of mercury/gram) of hair, there were moderate but objectivable signs of impaired neurological or neuropsychological development and thus impaired reasoning and visuo-spatial organization and motor skills

50. Even today, studies are carried out sporadically and show alarming results without any protective measures being taken by the public authorities. We are still far from knowing the extent of the damage caused by mercury pollution because the studies, disseminated piecemeal, provide little data.

51. As expert Alexis Tiouka recalled during the Tribunal hearing, gold mining activity and its consequences also lead to a loss of cultural references. Because of mercury pollution, the Amerindian peoples are greatly affected in their hunting and fishing activities, which are part of their traditional way of life. Game is becoming scarce as illegal gold diggers massively poach all the species they can find to feed in the forest. And the fish is contaminated with mercury to such an extent that the authorities advise pregnant women and children against eating it. Article 29 of the Declaration on the Rights of Indigenous Peoples states that :

“1. Indigenous peoples have the right to the preservation and protection of their environment and the productive capacity of their lands or territories and resources. To this end, the states shall establish and implement assistance programs for Indigenous Peoples, without discrimination of any kind.

2. States shall take effective measures to ensure that no hazardous materials are stored or discharged on the lands or territories of Indigenous Peoples without their free, prior and informed consent.

3. States shall also, as appropriate, take effective measures to ensure that

surveillance, prevention, and health care programs for Indigenous Peoples affected by these materials, designed and carried out by them, are adequately implemented."

52. As it stands and in view of the known figures exceeding the standards set by the competent authorities in health matters and the risks incurred, it is therefore established that mercury pollution is responsible for a violation of the right to life and health of the indigenous peoples affected by river contamination, in particular the Wayana people of the Upper Maroni.
53. Thus left to their own devices, the people of the rivers have no choice but to turn away from their traditional diet for fear of being contaminated, or to resolve to eat this fish that makes them sick. The Tribunal will therefore focus a second time on the question of food security of the inhabitants impacted by the pollution of the rivers of Guiana.
54. According to the Nyéléni Declaration⁶, food sovereignty is the right of peoples to define their own policies and strategies for the production, distribution and consumption of food in accordance with their cultures and natural resource management systems. The UN Declaration on the Rights of Indigenous Peoples affirms several rights essential to food sovereignty, including the right to secure their own means of subsistence and development and to engage freely in all economic, traditional and other activities, the right to the preservation and protection of their environment and the productive capacity of their lands, territories and resources, and the right to define and establish priorities and strategies for the development and use of their lands or territories and other resources.
55. However, currently 72% of methylmercury intake is due to the consumption of only 4 piscivorous species: Huluwi, Aïmala-aïmara, Mitala, Piraïe, species at the heart of the local populations' diet. The contamination of the environment in Guiana, and in particular of the aquatic environments, jeopardizes the right of the indigenous peoples to food security. In addition, the fact that the State offers as the only

⁶ Read the statement: <https://www.eurovia.org/fr/campagne/nyeleni/>

palliative measure, an alternative diet based on Western standards, based on frozen chicken or imported processed products is not desirable. On the contrary, it seems fundamental to preserve the cultural identity of indigenous peoples through their traditional food. It is also essential to guarantee their financial independence linked to their food autonomy in order not to force them to depend on external aid.

56. At the population level, the only measures that are currently taken are preventive actions aimed at the inhabitants of the river so that they switch from their traditional diet, which is mainly composed of carnivorous fish, to a Western diet that is not adapted to their nutritional and cultural needs, and is very expensive and difficult to obtain because of the geographical distance from the cities.

57. As a result, the scourge of illegal gold mining is leading to an ecocide of the French Amazonian aquatic and terrestrial ecosystems, and to an ethnocide of the peoples who depend on the river: Wayana, Teko, Maroons and other communities are progressively deprived of their eroded and contaminated lands, their health deteriorating, and their way of life disappearing. Illegal gold mining also creates security problems directly related to the increase in arms and drug trafficking, prostitution and delinquency. Whether it is rape, looting in the fields, or even murder, indigenous peoples are on the front line. On many occasions, heavily armed individuals have threatened the inhabitants on their own village lands. This leads to frequent confrontations between Amerindians in French Guiana and foreign illegal gold miners, as well as the risk of conflicts between communities.

VIII. Considerations of the Tribunal on the conduct of the State in relation to the facts presented

58. The violation of all these rights recognized in Article 2 of the Universal Declaration of the Rights of Mother Earth implies, on the part of the French State, an effective action for the restoration of the Guyanese Amazonian ecosystems.

59. If the illegal miners are each responsible for the direct destruction of Nature encouraged by the great human misery in the region and the price of gold on the

market, for the applicants, it is the French State that must be held responsible in this case.

60. The petitioning associations raise the issue of the government's failure to combat illegal gold mining in the territory of Haut-Maroni. In charge of the protection of the environment, health and security on its territory, it has not been able to contain this ecological and social crisis.

61. Indeed, the French government is aware of mercury pollution. It has scientific analyses and reports from local institutions since the 1990s. It knows the zones in which the waters are contaminated because maps are produced and updated regularly. France is aware of the destruction of aquatic ecosystems and mercury pollution, and is the only country that can put in place adequate logistical and human resources to overcome this situation.

62. It is the responsibility of the French State to implement effective measures to curb the consequences of illegal gold mining on Nature and in particular on the ecosystem of the Maroni River and its tributaries. Through its inaction, France is therefore responsible for the violation of the Rights of Nature provided for in Article 2 of the Universal Declaration of the Rights of Mother Earth, and in particular the rights of the Maroni River. However, the protection of the environment must be sought in the same way as the other fundamental interests of the Nation, of which the State is the guarantor, as provided for in the Charter of the Environment inscribed in the French constitutional block. In the sense of article 410-1 of the French penal code, the fundamental interests of the nation include the integrity of its territory, its security, the safeguarding of its population, the balance of its natural environment and its environment. It thus seems undeniable that the attacks caused by the activities of illegal gold panning are attacks against the fundamental interests of the French Nation. Because of the seriousness of these facts, France should have implemented all the necessary means to defend the integrity of its territory and its population.

63. In terms of the doctrine of the Rights of Nature and in the case before the Tribunal,

this means protecting the integrity of aquatic ecosystems, not only for their own sake, but also for the benefit of all living organisms in the territory, not only for human beings. The functioning of the water cycle implies that mercury pollution affecting certain basins and sub-basins of the Maroni and other rivers in French Guiana, has a direct impact on all terrestrial and aquatic environments depending on it. Thus, plants, herbivorous and carnivorous fish are contaminated.

64. Similarly, the French State can be held responsible by the inhabitants of the Upper Maroni, in particular the Wayana and Teko peoples, for the violation of their right to life, to food and to a healthy environment.

65. The State not only has the obligation to respect the Rights of Nature, but also has the obligation to act in order to prevent violations by third parties. This obligation to prevent environmental damage ensures the application of the principle of prevention, against environmentally damaging activities. These obligations include the obligation to (i) regulate; (ii) supervise and control; (iii) require and approve environmental impact assessments; (iv) establish contingency plans; and, (v) mitigate in cases where environmental damage has occurred.

66. Faced with the ineffectiveness of current measures to deal with the phenomenon, the recent report submitted by the Commission of Inquiry on the fight against illegal gold washing makes 44 proposals for improving the policy implemented by France. The report points out several shortcomings: the weak application of current regulations, the need for better coordination, a repression strategy that is not adapted to the context, means that are sometimes too weak, insufficient involvement of indigenous peoples, controls that must be systematized and reinforced in strategic areas, particularly on rivers to break the supply networks of exploitation sites.

67. In light of this observation, it is undeniable that the means should have been and must now be reinforced to deal with the damage caused by illegal gold mining and that the State is indeed in a situation of deficiency.

XI. DECISION

68. The European Tribunal In Defense of Aquatic Ecosystems rules on behalf of those animals, fish and plants that have no voice, the inhabitants of the Maroni River, human, but also non-human forming the living community of the river whose rights have been violated by mercury pollution due to illegal gold mining.

69. The Tribunal states that, in the Maroni River vs. the French State case there is a clear violation of the Rights of Nature.

70. Concerning this pollution, the Tribunal finds the French State liable for culpable failure to combat illegal gold mining. The Tribunal finds that the French State has failed to fulfil several duties which the Declaration imposes on States, including the duties: to establish and apply effective norms and laws for the defence, protection and conservation of the rights of Mother Earth, to guarantee that the damages caused by human violations of the inherent rights recognized in the Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth, and to establish precautionary and restrictive measures to prevent human activities from causing the destruction of ecosystems or the disruption of ecological cycles (see Article 3(2)(e)m (i) and (g)).

71. The Tribunal directs the french State to adopt the following measures:

1. The recognition of the Maroni River and its tributaries as subjects of legal rights, including the rights to protection, conservation, maintenance and restoration. The State will be responsible for establishing a legal status that guarantees the intrinsic rights of the river as provided for in the Universal Declaration of the Rights of Mother Earth: the right to life, to the continuity of their cycles and vital processes, without suffering from pollution of human origin.
2. The governance of the Maroni River must be reviewed in order to integrate the Amerindian nations of Guiana, but also all the peoples affected by mercury pollution (including those in Surinam) through a body that could be created on the same model as the Commission of Guardians of the Atrato

River in the Choco region of Colombia. This body, composed of representatives of indigenous and non-indigenous communities, should be empowered to protect the interests of the river and to guarantee the effective respect of its rights.

3. In order to achieve the restoration of the Maroni and its tributaries, France is required to put in place a new model of governance between the river guards and the representatives of the State accompanied by a group of scientific experts. , in order to carry out a plan to fight against illegal gold panning, involving the inhabitants in the preservation of the ecosystems of the Maroni river.
4. In addition, in order to remedy the current situation, a program of restoration of the ecosystems of the Maroni River and its tributaries must be put in place, and all measures must be taken to establish conditions conducive to the flourishing of the fauna and flora that constitute them. This involves the establishment of a regular monitoring of the pollution of the Maroni River and its tributaries, measuring among other things its level of mercury to ensure that the quality of water improves to ensure at least a good ecological status as provided by European standards and the Water Framework Directive. It will be necessary to define with competent scientists all the necessary measures to restore the damaged aquatic ecosystems and allow their good health in the future.
5. Following these decades of violation of their intrinsic rights, the State must also repair the human damage resulting from the physical and psychological suffering endured by the peoples of the river. A process of restorative justice, associating the impacted peoples and the State will have to be organized within a period of 6 months to open a dialogue necessary to the respect of the bio-cultural rights of the people threatened by the illegal gold mining.
6. In order to guarantee the right to health of the peoples impacted by illegal gold panning, the state will have to ensure strict and regular health

monitoring, particularly with regard to pregnant women whose mercury levels must not exceed 2.5 µg/g of hair instead of 10 µg/g of hair.

7. In order to allow the affected peoples to protect themselves against mercury pollution while respecting their traditional diet, the Tribunal ordered the State to set up a consultation process with the inhabitants, scientists, doctors and public authorities in order to develop local solutions aimed at food autonomy.
8. In the face of this social, health and identity crisis, the State must provide short-, medium- and long-term support for community food autonomy projects aimed at achieving a new form of food resilience in their territory, respectful of local cultural traditions.
9. In the short term, the State can no longer be satisfied with advising the inhabitants of the Maroni to modify their diet. It is up to France to provide substitute food aid for cases requiring urgent modification of the diet while awaiting long-term measures. This may be necessary in cases where an individual exceeds the permissible thresholds and does not have sufficient financial resources to replace locally caught fish with another source of protein in their daily diet.
10. In view of the socio-economic, cultural and environmental distress of the Amerindian peoples of the Upper Maroni due to the consequences of illegal gold mining, the reparation of their moral prejudice necessarily implies their recognition as indigenous people, that is to say the recognition of a legal status of their own. France is responsible for ratifying international conventions, in particular ILO 169 and the United Nations Declaration on the Rights of Indigenous Peoples, and consequently to guarantee all the Amerindian nations of Guyana the right to the full benefit of rights recognized in these legal instruments. This specific status would allow them to have collective bio-cultural rights allowing the effective protection of all their fundamental rights, their way of life and their lands, territories and

resources.

This decision is certified by:

Co-secretariat of the European Tribunal in Defense of Aquatic Ecosystems

Olivia Gervais

Camille Bouko-Levy

Natalia Greene

Signatories of the document - TRIBUNAL JUDGES

Cormac Cullinan

Valérie Cabanes

Tom Goldtooth

Richard Falk

Lisa Mead