



THE MAHO COMMUNITY AND THEIR LEGAL STRUGGLE OF THE YEARS

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Introduction

Approximate 400 groups of indigenous people are living in the beautiful Amazon rain forest. These communities have preserved their traditional and cultural beliefs for centuries. Unfortunately the last 20 years the indigenous communities are facing continuous threats and challenges, impacting their peaceful way of living. These challenges include land grabbing, illegal mining, deforestation and more recently the Corona virus. Looking into the lives of the indigenous community ‘‘ Maho people’’, they always have been deeply connected to their land. Instead of perceiving the land as possession or means of production, the land is a ‘‘material and spiritual element that they must fully enjoy to preserve their cultural legacy and transmit it to future generations’’ (IACtHR, 2001, para. 149). For decades, the Maho community has survived in their land without damaging the environment, and their subsistence consists in hunting, fishing and harvesting the forest produces, among other practices. All these activities belong to their heritage and culture and reflect their spiritual and social relationship to the land (Kaliña, 2009, p.12).

This report will focus on the legal position of the Maho community concerning their land rights and deprivation of other human rights that this community is faced with.

The Maho community

The Maho peoples are the original inhabitants of Suriname. Archaeological evidence and map records dating from the 17th century indicate the presence of indigenous occupation in the area and suggest that the Maho community has used the territory for thousands of years (Kaliña, 2009, pp.1-10). Suriname, as a member state of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), is, under article 26¹, internationally obligated to recognize ownership and possession rights for those people that have traditionally occupied a territory (UNGA, 2007).

Apart from the traditional occupation of the land, the government, in 1971, provided a 65-hectare plot of land and officially recognized the use of such land by the Maho community (IACHR, 2021, p.1). Since then, the Maho community has subsisted on the west of the Samaracca river and the Maho Creek, in the district of Samaracca (Kaliña, 2009, p. 9).

However, the Maho community lives in threatening and challenging conditions as they do not have access to electricity, nor to running water and there is a lack of sanitation systems.

Moreover, the intervention of third parties in the territory has deteriorated their environment and way of life. Due to the continuous threats and violations of their fundamental rights², the size of the community has shrunk (Kaliña, 2009, p. 9). As it will be discussed in the further report, the occupation and the destruction of their land for the benefit of third parties endure.

¹ Can be found at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

² Such as the right to be free from any kind of discrimination, the right to live in freedom, peace and security and the right to practice their cultural traditions and customs, the right to not be removed from their lands or territories, (among others).

Human rights violations against the Maho Community

Decades have passed by, and the Maho community is still having various basic human rights³ neglected by the government of Suriname. To this day, unchecked encroachment remains one of the biggest problems to the indigenous people of Maho, because they are losing almost all of their lands under this status of negligence (VID, 2011).

Suriname's indigenous populations are often marginalised and suffer from discrimination, putting them at risk of violence and abuse. With this in mind, the crops of the Maho community's lands are being repeatedly damaged by outsiders and such systematic persecution of Maho's agricultural resources could be highly seen as an attempt to force them to flee their lands (VID, 2011). The continuous disruption of their lands places the entire community in extremely vulnerable positions as they are constantly being attacked by other people.

The infringement of basic human rights and the lack of proper assistance and measures towards the fragile situation of the Maho community is beyond concerning. Non-governmental organizations like Forest Peoples Programme⁴ and Vereniging van Inheemse Dorpshoofden⁵ in Suriname (the Association of Indigenous Village Leaders in Suriname in English) have been petitioning for the implementation of measures in favour of the indigenous people of Maho and proper recognition of their rights as a whole (VID, 2011).

In 2015, the Inter-American Court of Human Rights declared the Surinamese state responsible for violating several human rights in the case of the Maho community⁶. Such violations include the rights to recognition of juridical personality, communal property, political rights and cultural identity (Bureau of Democracy, 2018). Among other factors, the court-ordered rehabilitation of mining-affected regions and proper demarcation of the lands with official titles to the community. With this in mind, it is clear that the Surinamese government, in addition to the third parties, has been undermining the livelihood of the indigenous community.

The lack of proper demarcation of the indigenous lands have led to several illegal and uncontrolled logging and mining, and no law grants the right to share in the revenues from the exploitation of their lands. Therefore, not only the indigenous lands and the community were being severely damaged by it, but they also had no right to receive a part of the future profit (Bureau of Democracy, 2018). To make matters worse, people from third parties were granted concession rights over the traditional lands of the Maho community.

The serious degradations of Maho's lands made by the outsiders have been generating serious consequences for the people. An example of its results is the continuous and intense sand mining in the area, which has been contaminating the water and resulted in a large artificial lake in the agricultural space in the previous years (VID, 2011). The harm caused on their lands is not only a matter of

³ Ibid.

⁴ This human rights organization works with forest people from everywhere around the world to secure their fundamental human rights such as the right to land and livelihoods. Their website can be found at: <https://www.forestpeoples.org/en>

⁵ Can be found at: <https://vids.sr>

⁶ Can be found at the official summary issued by the IACtHR at: https://www.corteidh.or.cr/docs/casos/articulos/resumen_309_ing.pdf

inhumane violations, but it is also a threat to survival. If the lands continue to be degraded and destroyed by outsiders, the community will have nowhere to grow their food, which could lead to starvation.

The urge for the implementation of collective rights as an indigenous community and individuals' rights needs to be addressed as soon as possible since the harm is irreparable and must not continue.

The legal battle of the Maho Community

In 2009, the Maho community filed a complaint on the Inter-American Commission of Human Rights describing the numerous human rights violations that it has been suffering from the acquiescence of the Surinamese government and requesting the adoption of provisional measures. Despite the 1971 grant, the State of Suriname has deprived the Maho community of its ancestral lands by allowing third parties to exploit them and their natural resources (Kaliña, 2009, pp. 1, 8).

The Maho community has filed numerous complaints to the Surinamese police and other government officials and agencies, but they have not been successful or effective. Thus, due to the fact the State's judicial and legal systems do not offer minimum guarantees for the exercise of Maho's land rights, the exception from the exhaustion of domestic remedies requirement was applicable (Kaliña, 2009, p. 4).

In 2010, the Commission granted precautionary measures,⁷ asking the State of Suriname to guarantee the survival of the Maho community on the 65 hectares of land that were reserved to it in 1971 (IACHR, 2010).⁸

Despite its previous ruling, on March 2, 2021, the Inter-American Commission on Human Rights lifted these precautionary measures, claiming to lack "specific and current information sufficient to verify compliance with the requirements of seriousness, urgency, and risk of irreparable harm to the life and integrity of the beneficiaries." Nonetheless, the Commission stated that "the State of Suriname should respect and guarantee the rights of the inhabitants of the Maho indigenous community, regardless of the Commission's decision to lift these measures" and that the lifting of said measures "does not preclude the IACHR from reviewing a new request" (IACHR, 2021, p. 3, 5).

The legal situation of the Maho community remains concerning. In 2021, a Surinamese Court ruled in favour of a family that claims to be the rightful owners of the traditional lands, denying the legal personality and the collective rights of the Community. Although the case remains under appreciation of the Inter-American Commission on Human Rights, the lifting of the precautionary measures means that they may be evicted in the near future.

The Inter-American Court of Human Rights has decided, in the Case of the Saramaka People v. Suriname, that the State's domestic laws do not offer "adequate and effective legal recourses to protect them [the Saramaka People] against acts that violate their property right" (IACtHR, 2007, p. 54). The Surinamese laws have not been amended since this ruling to better protect indigenous peoples' land rights, so the Maho community is in an extremely vulnerable position. Although the community has

⁷ According to Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights, the Commission may "request that a State adopt precautionary measures" to prevent "irreparable harm to persons or to the subject matter of a pending petition or case". Can be found at: <https://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>. See also:

<https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/decisions/about-precautionary.asp>

⁸ Can be found at: <https://www.oas.org/en/iachr/decisions/MC/precautionary.asp?Year=2010&Country=SUR>

filed several petitions to the competent authorities over the years, its situation has not been properly addressed, because Surinamese domestic legislation does not provide adequate protection.

As of August 2021, the fate of the Maho community depends on the Inter-American System for the Protection of Human Rights. It is imperative that Suriname refrains from evicting the Maho from its traditional lands, in accordance with regional and global Human Rights standards. For this goal, the Commission must grant new precautionary measures to safeguard the Community's interests until it can rule on the merits of the case.

Hopefully, the Commission will rule in favour of the Maho community and will determine that Suriname respects its land rights.

The alternative route towards justice: IACHR

The Maho people, as seen, keep enduring abuses and the latest domestic decision issued by the Surinamese Court will violate their fundamental human rights such as dignity, way of living and land. These families belonging to the Maho community do not have access to justice domestically, there is a lack of recognition of their indigenous rights under national law.

A legal option to stop the evacuation is requesting precautionary measures to the Inter-American Commission of Human Rights, following article 25 of the Rules of Procedure⁹ which would immediately prevent the violation of human rights (IACHR, 2002). These precautionary measures are provided where there is a risk of irreparable harm, and in this case, the evacuation of these Maho families will result in the destruction of their intrinsic connection to their land.

The families will be forced to abandon their land without any further information of the reallocation. Not only the lack of information violates their rights, but the evacuation from their traditional lands violates every international provision (i.e. customary international law¹⁰, the jurisprudence of the Inter-American Court of Human Rights¹¹ and the provisions of the UNDRIP¹²).

Under article 25 of the Rules of Procedure, the situation is, firstly, serious: the eviction of the families will produce a grave impact on their way of living, disrupting their connection to their land. Secondly, the situation is urgent: the threat of losing that traditional connection with the land will materialize with the eviction, it is imminent: an urgent need exists for immediate preventive action. Lastly, the eviction will cause irreparable harm, i.e. the disruption of these indigenous people with their land will not only succeed in destroying their dignity but will destroy the nature of their way of living, their culture and future heritage.

Thus, the domestic judicial decision ordering the evacuation of these families does fulfil the requirements to establish precautionary measures, and it is the most suitable legal opportunity for the Maho families to avoid the evacuation and stay in their traditional lands.

⁹ Can be found at: https://www.oas.org/xxxvga/english/doc_referencia/Reglamento_CIDH.pdf

¹⁰ Domestic practice and the shared expectations of indigenous rights such as the provisions in the UNDRIP can reflect customary international law.

¹¹ Such as the case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, among others.

¹² Such as article 7 regarding the right to live in freedom, peace and security but especially article 10 which establishes that indigenous people shall not be forcibly removed from their lands or territories. The UNDRIP can be found at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Suriname's international obligations

Suriname's conduct violates its international obligations. The State has ratified numerous international Human Rights treaties, whose binding provisions protect the life, property and dignity of the Maho community's inhabitants, among which the International Covenant on Civil and Political Rights,¹³ International Covenant on Economic, Social and Cultural Rights,¹⁴ and the International Convention on the Elimination of All Forms of Racial Discrimination¹⁵ must be highlighted.

Specifically, regarding the American Convention on Human Rights, Suriname must guarantee the Maho community's right to property (Article 21),¹⁶ to life with dignity (Article 4(1))¹⁷, to have their physical, mental, and moral integrity respected (Article 5(1)),¹⁸ to freedom of thought and expression (Article 13),¹⁹ to recognition as a legal person (Article 3),²⁰ and judicial protection (Article 25)²¹ (Kaliña, 2009, pp. 30-49).

It must be noted that the Court of San José decided, in 2001, that indigenous communities have the right to the property of their ancestral lands (IACtHR, 2001, p. 74).²² It has been argued that the protection of land rights is included in a broad right to cultural integrity, which is supported by a group of positive rights (Gilbert, 2013). Within this broad context, the United Nations Human Rights Committee stated that the enjoyment of cultural rights – protected by the 27th Article of the International Covenant on Civil and Political Rights, to which Suriname is a party – include a “particular way of life associated with the use of land resources, especially in the case of indigenous peoples” (UNHR Cttee, 1994, p. 4).

Although not a source of positive legal obligations, Suriname voted in favour of the 2007 United Nations Declaration on the Rights of Indigenous Peoples. This document explicitly recognizes “their rights to their lands, territories and resources” and determines that States prevent “Any action which has the aim or effect of dispossessing them of their lands, territories or resources;” (Article 2 (b)). It also grants the rights to traditionally occupied lands, requiring that States give them legal protection

¹³ Such as the right of ethnic, religious or linguistic communities to enjoy their own culture (Article 27).

Can be found at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. See: Gilbert, 2013; UNHR Cttee, 1994.

¹⁴ Such as the right to an adequate standard of living, including adequate food and freedom from hunger, and housing (Article 11) Can be found at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>. See: Kaliña, 2009, p. 37, para. 146; Gilbert, 2013.

¹⁵ Such as the right to own property, without distinction as to race, colour, or national or ethnic origin (Article 5 (d) (v)). Can be found at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>. See: Gilbert, 2013.

¹⁶ Such as the right to use and enjoy their property, without arbitrary deprivation (Article 21). Can be found at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>. See: Kaliña, 2009, para. 122-160.

¹⁷ Such as the right to have their life respected, without arbitrary deprivation (Article 4). Can be found at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>. See: Kaliña, 2009, para. 161-167.

¹⁸ Such as the right to have their physical, mental, and moral integrity respected (Article 5). Can be found at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>. See: Kaliña, 2009, para. 168-172.

¹⁹ Such as the right not only to think and express themselves freely in any medium without prior censorship, but to seek information (Article 13). Can be found at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>. Kaliña, 2009, para. 173-176.

²⁰ Such as the right to be recognized as a person (Article 3). Can be found at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>. Kaliña, 2009, para. 177-83

²¹ Such as the right to be protected by Surinamese law (Article 25). Can be found at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>. Kaliña, 2009, para. 184-191.

²² IACtHR, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, para. 149.

(Article 26) and that they refrain from forcibly evicting indigenous communities (Article 10) – such as the case of the Maho (UN, 2007).

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