



VIDS

Vereniging van Inheemse Dorpshoofden in Suriname

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**The Situation of the Maho Indigenous Community in Suriname:
A Request for Consideration under the Early Warning and Urgent
Action Procedures of the United Nations Committee on the
Elimination of Racial Discrimination
(Seventy-Eighth Session)**

I. Introduction

1. This request concerns the situation of the Kalina indigenous community of Maho, District of Saramacca, Suriname (“Maho” or “the Maho community”) and is respectfully submitted for consideration under the Committee on the Elimination of Racial Discrimination’s (“the Committee”) early warning and urgent action procedures. It is submitted by the *Vereniging van Inheemse Dorpshoofden in Suriname* (the Association of Indigenous Village Leaders in Suriname in English), the national indigenous peoples’ organisation, and the Forest Peoples Programme, an international NGO (“the submitting organisations”).¹

2. Maho has lost almost of all its lands due to unchecked encroachment and its crops are routinely destroyed by outsiders. Recognising the serious and urgent nature of this situation, on 27 October 2010, the Inter-American Commission on Human Rights (“the Inter-American Commission”) adopted precautionary measures in favour of the Maho community. Said precautionary measures recommend that the State of Suriname (“Suriname” or “the State”)

¹ The Association of Indigenous Village Leaders in Suriname is an association of indigenous village leaders from each of the 49 indigenous villages in Suriname. Established in 1992, its primary goals and objectives are to promote and defend the rights of indigenous peoples, to speak for indigenous peoples on the national and international levels, and to support the sustainable development of indigenous peoples in Suriname. The Forest Peoples Programme is an international NGO, founded in 1990, which supports the rights of indigenous peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. Address: 1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: info@forespeoples.org.

take the necessary measures to ensure that the Maho community can survive on the 65 hectares that have been reserved for it free from incursions from persons alien to the community until the Commission has decided on the merits of the petition.²

3. Suriname has failed to implement the above quoted measures to date. Moreover, as discussed below, on 20 January 2011, a large farm planted with subsistence crops by the Maho community was destroyed by a private party who claims to have acquired title issued by the State and a road was bulldozed into the forest used by Maho for its subsistence activities. Both of the areas in question are in close proximity to houses occupied by the victims and both are within the 65 hectares reserved to Maho. Further, on 24 January 2011, the same person bulldozed a second area cleared by the Maho community for use as an agricultural plot. To make matters worse, since 03 February 2011 this person has extracted sand from one of the bulldozed areas, removing 30 truck-loads of sand in one weekend alone. Previous sand mining has resulted in the creation of a large artificial lake (see below) and other serious degradations of Maho's lands and the natural environment, thus further undermining the livelihood of the community.

4. This deliberate targeting of Maho's agricultural and other resources appears to be designed to intimidate the community and deprive it of its subsistence resources and food security, and, therefore, force it to leave its lands.³ These lands are coveted by non-indigenous persons because land in the area has risen in value due to improved transportation links with Paramaribo, the capital city. Complaints to the police have not resulted in any positive protection for the community, which has now lost a significant part of its food crops and an important area for growing food in the coming year, severely degrading its means of subsistence and threatening its survival. This conclusion is especially apparent and made worse when viewed cumulatively and in the context of years of deprivations and destruction of Maho's subsistence resources and crops by third parties, all tolerated and even supported by the State (see below).

5. The preceding not only represents a serious violation of the precautionary measures adopted by the Inter-American Commission, it also fails to preserve the rights potentially at risk while the controversy is resolved by the inter-American human rights protection organs. It also constitutes further irreparable harm to the Maho community in violation of the individual rights of its members and its collective rights as an indigenous community.

6. The situation described herein threatens gross and irreparable to the Maho community and satisfies the criteria for consideration under the Committee's early warning and urgent action procedures. In addition to constituting a serious "Encroachment on the traditional lands of indigenous peoples ... [including] for the purpose of exploitation of natural resources," it also represents a situation that threatens the survival of Maho as a viable cultural and territorial entity considering its small population, the likelihood of additional substantial and negative impacts on the

² *Communication of the Inter-American Commission*, Petition 1621-09 and Precautionary Measures Request MC-395-09, 27 October 2010, at p. 1.

³ The Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the Right to Food recognize food security as a necessary corollary of the right to food. Important elements linked to food security are, sustainability (long-term availability and accessibility) and adequacy (cultural and consumer acceptability) of the availability of and access to food. See CESCR, General Comment No.12, 12 on the Right to Food, UN doc. E/C.12/1999/5, para. 11-2; and *The Right to Food, Report of the Special Rapporteur*, UN doc. E/CN.4/2003/5, para. 24.

maintenance of its multiple relationships with its lands, and the impunity enjoyed by the outsiders that are occupying and degrading its lands.⁴ It thus represents a grave situation “requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention” and to reduce the risk of further racial discrimination.⁵

7. The urgency of this situation and the threat of irreparable harm was recognised by the Inter-American Commission in October 2010 when it adopted precautionary measures in favour of Maho.⁶ The Inter-American Commission also has held that Suriname’s treatment of indigenous peoples is racially discriminatory, a conclusion that the submitting organisations endorse and that greatly exacerbates Suriname’s international responsibility for violations of the Maho community’s rights.⁷ Such discrimination is also confirmed in the Committee’s concluding observations as well as its decisions on Suriname under the early warning and urgent action procedures.⁸ The submitting organisations therefore respectfully request that the Committee considers the situation described herein under its early warning and urgent action procedures at its seventy-eighth session (see paragraph 41 below for specific requests).

II. The situation at Maho is urgent and constitutes irreparable harm

A. Maho has been largely deprived of its means of subsistence due to the acts and omissions of Suriname

8. The Maho community’s subsistence is derived primarily from swidden agriculture, hunting and fishing, and other uses of the resources of its traditional lands and forests. These traditional lands and forests are both within the 65 hectares reserved for the community in 1971 and outside of this area.⁹ Given that Maho has been deprived of much of its traditional hunting and fishing areas due to encroachment by non-indigenous persons, who have been issued title by the State, agriculture comprises the largest and most important source of food available to the community at present.

9. The subsistence agriculture practiced by Maho is rotational, which requires that farms are cut in the forest and rotated periodically, while previously farmed areas must be left fallow for substantial periods to allow the soil to regenerate. This means that limited areas are available for farming at any given time. Additionally, more than one

⁴ See *Guidelines for the Use of the Early Warning and Urgent Action Procedure*, August 2007, at p. 3, para. 12.

⁵ *Prevention of Racial Discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination*. UN Doc. A/48/18, Annex III, at para. 8-9.

⁶ *Four Ngobe Indigenous Communities and their Members*, Order of the I-A Court of Human Rights, 28 May 2010, at para. 3 (footnotes omitted).

⁷ See *inter alia* Report No. 09/06, Case of the Twelve Saramaka Clans, Case 12.338 (Suriname), Inter-Am. Com. H.R., 2 March 2006, at para. 235 (explaining that “indigenous peoples have endured racial discrimination, and that one major manifestation of such discrimination has been the failure of state authorities to recognize customary indigenous forms of land possession and use”) and, at para. 237 (concluding that “The Commission considers that the lack of constitutional and legislative recognition or protection of the collective rights of the Saramaka communities reflects unequal treatment in the law, which is not compatible with the guarantees of the American Convention”).

⁸ See *inter alia* CERD/C/SUR/CO/12, 13 March 2009 and; CERD/C/64/CO/9/Rev.2, 12 March 2004.

⁹ The Ministerial ordinance reserving the land for Maho in 1971 did not, as conceded by the State, confer title on the community, and in fact it has no formal legal standing under contemporary law. See *Response of the State of Suriname*, MC-395-09, 09 March 2010, p. 2

farm is cut at a time and each is planted with crops sequentially in order to ensure that food is continuously available throughout the year.

10. For a variety of reasons, explained below, Maho presently has almost no available land for agriculture. Moreover, cassava, the basic food crop planted by Maho, requires sandy and well drained soils to grow, thus further restricting the available areas. As explained in Petition 1621-09, and confirmed in a report by State officials who visited Maho in March 2008, much of the land reserved to Maho is swamp that is unsuited to farming or is occupied by non-indigenous persons.¹⁰ This report by the State states, among other things, that: the area reserved for Maho is mostly swamp that is inappropriate for agriculture; Maho is “completely surrounded by third parties and there is no possibility at all to go hunting or fishing, etc.,” and the Maho community is “completely restricted in their livelihood.”¹¹

11. Additional reasons include, first, the construction of a 2000 metre-long dam by *Stichting* Mohsiro, an NGO-like entity, within the area reserved to Maho that causes flooding of some of its best farm lands in the rainy seasons and renders this substantial area unsuitable for most crops.¹² Second, parts of the area reserved to Maho have also been appropriated by at least three private individuals in addition to Mohsiro, and these areas, which once included farms planted by Maho, are now fenced off and unavailable for use by Maho.¹³ In the case of the area held by Mr. Baboelal or Baboeram, community members are excluded from the area by an armed guard.¹⁴ Third, the former District Commissioner of Saramacca, a local government official, extracted sand from a substantial area of the 65 hectares and created a very large artificial lake where it is now impossible to grow food.¹⁵ Fourth, other smaller-scale sand mining operations, likely illegal, have further reduced the available area.¹⁶

12. Additionally, and to provide further context, Maho has also experienced years of repeated destruction of its subsistence farms by Mohsiro. The destruction of Maho’s farms commenced in 1993 and has continued until the present day. This is detailed in Petition 1621-09 and in the July 2010 expert report prepared in support of precautionary measures by Dr. Ellen-Rose Kambel (see Annex 2 hereto). This has not been refuted by the State, which insists in its response to the request for precautionary measures that its domestic law privileges the rights of non-indigenous title holders over indigenous peoples who do not hold title.¹⁷

13. Further, in addition to losing a large percentage of its lands that may be used for subsistence farming, Maho has also lost almost all of its forests in which hunting could take place. These areas have either been converted to residential areas or logged to the

¹⁰ *Petition 1621-09, Submitted to the Inter-American Commission on Human Rights by the Kalina Indigenous Community of Maho and the Association of Indigenous Village Leaders in Suriname against the Republic of Suriname*, 8 December 2009 (hereinafter “Petition 1621-09”), para. 59-80. This petition is available at: <http://www.forestpeoples.org/topics/inter-american-human-rights-system/publication/2010/petition-submitted-inter-american-commiss>.

¹¹ See Petition 1621-09, paras. 99 and 164 and Annex F(6), summarising and containing the full text of this report, respectively.

¹² The activities of *Stichting* Mohsiro are discussed in Petition 1621-09, *inter alia*, para. 62-73.

¹³ Dr. Ellen-Rose Kambel, *A Report on the Current Situation of the Maho Indigenous Community*, 26 July 2010, (hereinafter “Report of Dr. Kambel”), para. 20, 43-9.

¹⁴ Petition 1621-09, para. 78-80 and Report of Dr. Kambel, para. 20 and 43-5.

¹⁵ Petition 1621-09, para. 75 and Report of Dr. Kambel, para. 50-1.

¹⁶ See for instance Report of Dr. Kambel, para. 46-7.

¹⁷ *Response of the State of Suriname*, MC-395-09, 09 March 2010.

point that they no longer continue to be viable forest ecosystems. Loss of animal habitat is further exacerbated by the destruction of fruit trees in the forest by logging – animals are attracted by the fruit – by land clearances and by the use of heavy machinery by Mohsiro and others, which has driven larger game animals away. The community thus presently only finds small rodents, like rabbits, when hunting while large game animals used to be plentiful. The State itself acknowledged in its response to the request for precautionary measures that this situation has persisted unabated for more than 30 years.¹⁸

14. Finally, the lands reserved to Maho and its traditionally owned lands outside of the reserved area have substantially increased in value in the recent past due to the completion of an improved road to Paramaribo. This is confirmed in the report of Dr. Kambel submitted to the Inter-American Commission. Dr. Kambel further explains that this has substantially increased land speculation and attempts to acquire land reserved for and in the vicinity of Maho for use as residential property, either by individuals or property developers.¹⁹

15. According to Dr. Kambel's expert report, the situation at Maho in July 2010 can be characterised as follows:

at present the community is barely able to produce enough food to feed itself, but has very little, if any, surplus to gain a cash income. It is easy to see how a period of drought, excessive rain or insect plagues may wipe out their next plantings and create serious food shortages, which they have so far been able to avoid. The likelihood of such catastrophic consequences are greatly increased considering that the community's greatly restricted land base (due to encroachment) has resulted in a massive decrease in the diversity of its food sources and its security over the associated resources. This should also be viewed in light of the significant degradation of the productive capacity of its remaining lands caused by the dam constructed by Mohsiro and its destruction of forests and blocking of water courses; the fencing-off of substantial areas by other third parties (including within the area nominally reserved for the community); and the massive artificial lake created by the sand mining operations. These sand mining operations are now taking in at least one additional area further reducing the areas available for cultivation.²⁰

16. Clearly, if Maho were to lose further farms or farm lands it would place the community in a dire situation with respect to its food security, with all the attendant consequences for the exercise of a range of other interrelated rights, and cause irreparable harm to its ability to sustain itself from its lands and resources. As discussed in the following section, this is precisely what occurred in January and early February 2011.

17. In sum, whereas Maho was once able to satisfy its basic needs and even generate a surplus for sale from the sustainable use of its lands and resources, today it has been largely denied access to and control over its means of subsistence. The areas available for farming – its most important means of subsistence – have been greatly reduced and the community is now forced to seek farming areas at a great distance from the

¹⁸ *Id.* p. 3-4.

¹⁹ Report of Dr. Kambel, para. 14 and 65.

²⁰ *Id.* at para. 38.

community in order to provide food that could meet its basic subsistence needs (this places an onerous burden on community members who much spend large parts of the day just travelling to and from these farms). In some cases, its means of subsistence have been destroyed entirely. This has led to severe economic losses as well as substantial negative impacts on the health and well-being of community members, and has plunged the community into a cycle of extreme poverty and deprivation. Lack of access to traditional food sources and destruction of subsistence crops, coupled with intimidation and violence, was also one of the main factors behind many of the community members fleeing their ancestral lands.²¹

18. The Inter-American Court has commented on the impact that restrictions on indigenous peoples' subsistence practices had on the community's integrity and its cultural identity in *Xákmok Kásek*, concluding that these impacts "are fundamentally results of the Community's lack of territory and the natural resources that come with it..."²² In that case it found violations of, *inter alia*, the right to life with dignity, the right to humane treatment and the right to property. This is precisely the situation facing the Maho community presently and the same violations are alleged in Petition 1621-09.

19. It is against this background that the current request for consideration under the early warning and urgent action procedures should be assessed. In the following section, it is shown that the attacks on Maho's means of subsistence have continued until the present day, and that this constitutes an urgent and extremely grave situation in which irreparable harm has occurred and additional irreparable harm is threatened, all in direct violation of the precautionary measures adopted by the Inter-American Commission in October 2010. As has occurred in the past 30 years, Maho's attempts to seek protection for its rights domestically have been rebuffed and summarily rejected by State authorities; it remains defenceless and its rights continue to be violated with impunity. The State, the police in particular, continues to rely on principles of domestic law to justify this situation, insisting that the non-indigenous persons that hold title have rights that supersede any rights that may be asserted by the Maho community.²³ It also justifies police repression against community members on this basis.²⁴

B. A substantial percentage of Maho's remaining crops and farm lands were destroyed by third parties in January 2011 rendering the community severely short of food for the coming year

20. In addition to losing a substantial area of its farming lands and almost all of its hunting and fishing areas due to encroachment, the Maho community has suffered repeated destruction of its farms, farms which produce all of its food supplies throughout the year. As discussed above, these farms are planted sequentially so as to provide food continuously during the year. Therefore, loss of even one farm means that the community may go hungry. This possibility is mitigated by the planting of multiple farms provided that land is available. Presently in Maho, as explained by Dr. Kambel, land for farming is extremely scarce and the community's existence, survival and food security is on a knife edge as a consequence.

²¹ On the fragmentation of the community caused by the loss of many of its members due to encroachment, see Petition 1621-09, para. 40 and 62 *et seq.*

²² *Xákmok Kásek Indigenous Community Case*, Judgment of 24 August 2010, at para. 182.

²³ See *Response of the State of Suriname*, MC-395-09, 09 March 2010, and *infra*.

²⁴ *Id.*

21. In January 2011, the community's ability to survive and feed itself was severely and further undermined when two additional farms were deliberately destroyed by further encroachment by a person claiming to have acquired title to at least five hectares of land within the reserved area. This took place within the 65 hectares reserved for the community and less than 100 metres from houses occupied by community members, and involved the bulldozing of a farm that was ready to be harvested and another that had been prepared for planting (clearing alone involves a substantial investment of time and energy by the community).²⁵ While the community has a number of other farms in various stages of development, the loss of these two farms represents not only at least 30 percent of its food supplies for the year, but also the food that would have been used in the coming months while the other farms were further cultivated in sequence, as well as food scheduled to be used in 7-9 months in the future.

22. These food supplies are irreplaceable and the loss cannot be compensated for through purchases of other food since the community's only meaningful source of income is selling any agricultural surplus it may have. This loss causes irreparable harm to the community member's right to food and the community's right to be secure in its means of subsistence and its right to exist as a distinct cultural and territorial entity. The grant of an additional title also greatly undermines the rights at issue in Petition 1621-09 while the Inter-American Commission considers the merits of this case given that it represents another forcible alienation of the community's traditional lands.

23. In particular, on 20 January 2011, a man named Mr. Kim Mangal bulldozed a farm containing approximately 1000 pineapple plants, 800 *bacove* plants, a considerable amount of corn plants, 200 banana trees and numerous orange, papaya and cashew trees. A day later he returned and bulldozed a farm that had been cleared for planting but not yet planted. He also bulldozed a 600 metre-long trail into the forest through both of these farms, where he asserted that he would extract sand and valuable timber. At one location pits were dug to extract sand samples as a prelude to mining.²⁶ Again, all of the areas in question that were destroyed were within the 65 hectares reserved to the Maho community in 1971.

24. When questioned over the phone by the police subsequent to a complaint filed by the community on 21 January 2011, Mr. Mangal explained that he was acting on behalf of Mr. Diepakkoemar 'Robby' Chitan, who claims to have bought or otherwise acquired five hectares of land within the reserved area prior to the May 2010 general election.²⁷ Mr. Chitan is a Member of Parliament for the Saramacca District and a member of the Pertjaja Luhur Party, which, until the 2010 elections, held the Ministry of Physical Planning, Land, and Forestry Management, the same Ministry that issues land titles and with which Maho met repeatedly between 2006-2009 to try to resolve the situation caused by encroachment on its lands.²⁸

25. When destroying the first farm, Mr. Mangal removed a sign erected by the community specifying that the area was 'indigenous land'. The sign was later replaced by the community but taken down again by Mr. Mangal when he returned the following day to destroy the second farm. Mr. Mangal claims that he was constructing a road to do

²⁵ See Annex 1 containing photos depicting this destruction.

²⁶ See Annex 1, photo 3 (showing the test pit).

²⁷ The police promised to call the Maho community after the complaint was made, but failed to do so.

²⁸ On Maho's meetings with this Ministry, see Petition 1621-09, para. 84-105.

logging and sand mining and that this caused the destruction of the farms, yet the two farms were some distance apart and there was no need to construct a road that passed through even one of these farms, let alone both, and an existing pathway could have been used to reach the forest area in question. This, together with the removal of the sign (twice) indicating that it was indigenous land, leads to the conclusion that this was a deliberate and calculated effort to destroy the community's food supplies. The aim of destroying the farms appears to be to deprive the community of food and force it to leave its lands, which could then be taken over without opposition, either for use or sale to others.

26. Maho community members and a delegation from the Association of Indigenous Village Leaders in Suriname, which included an indigenous Member of Parliament, met with the local police subsequent to a visit to Maho to view the situation first hand on 01 February 2011. The local police Inspector, Mr. Emanuels, confirmed that the destruction had been conducted by Mr. Mangal and that he was acting on the orders of Mr. Chitan. This was stated to the police by Mr. Mangal. He further explained that if Mr. Chitan held a valid title, while the Maho community does not, the police could not intervene in the matter as property disputes are not within police jurisdiction. He explained that if the destruction has taken place on public lands – meaning if Mr. Chitan does not have a valid title – the community could file a complaint seeking compensation for the destruction of its crops. This is essentially reiterating the same excuse raised by the State in its response to the request for precautionary measures: that domestic law privileges the rights of person hold title over those who do not: in this case, indigenous peoples, none of whom hold title in Suriname.

27. As noted above, commencing on 3 February 2011, Mr. Mangal returned and began excavating sand from the area reserved to Maho. In one weekend alone, he removed 30 truck-loads of sand, leaving a substantial hole and rendering the area unusable for agriculture. It is unknown if Mr. Mangal or Mr. Chitan has a valid permit for sand mining and requests for information from the State in this respect have been unanswered.

28. In sum, Maho has suffered additional encroachment on its lands since the Inter-American Commission adopted precautionary measures in October 2010, including within the 65 hectares reserved to the community and specified by the Commission in the precautionary measures. These have included the purported acquisition of further land titles, significant sand mining operations and attempts to log its lands, including through the forcible imposition of infrastructure, and the further and targeted destruction of its subsistence crops. The latter, occurring in January 2011, involves the loss of up to 30 percent of its food supplies for the coming year. Moreover, the latest round of destruction of farms appears to be targeted at depriving the community of its means of subsistence in order to force it from its lands as these lands are coveted by others given the increase in value due to the new road that improves access to Paramaribo. The community certainly views these latest incursions in this way and feels enormously threatened and fearful given the influence of the person behind these attacks on its integrity and well-being.

29. The police and other organs of the State continue to fail to protect Maho and continue, on the basis of provisions of domestic law – all held previously to violate the American Convention on Human Rights and the Convention on the Elimination of All

Forms of Racial Discrimination²⁹ – to support the persons that are causing irreparable harm to the Maho community. The community thus remains defenceless and in desperate need of international assistance.

30. Previously, the Committee has observed with serious concern that Suriname's law is severely deficient with respect to the recognition, respect for and protection of the rights of indigenous peoples.³⁰ This includes an absence of legislative guarantees for these rights, a lack of effective domestic remedies by which indigenous peoples can seek protection for their rights, and serious abuses of these rights in practice. Nothing has changed since the Committee issued its findings and the situation at Maho is emblematic of all three of these major defects in Suriname law and practice. As discussed in the following section, consideration under the urgent action and early warning procedures is not only urgently needed in the case of Maho, but is warranted and justified as a matter of fact and law.

III. Consideration under the early warning and urgent action procedures is warranted and urgently required

31. The Inter-American Court of Human Rights explains that provisional/precautionary measures have two characteristics: the first is precautionary, the second protective. The same is also the case with respect to the Committee's early warning and urgent action procedures. The precautionary aspect is intended to preserve rights potentially at risk until the controversy is resolved whereas the latter is intended to protect human rights, to the extent that they seek to avoid irreparable harm to persons and/or indigenous peoples.³¹ In the case of the Maho community both aspects are applicable and urgently needed. This was previously acknowledged by the Inter-American Commission when it adopted precautionary measures in October 2010, measures that are now being flagrantly disregarded by Suriname.

²⁹ See *Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans*, 2 March 2006, para. 6 & 14; *Saramaka People v. Suriname*. Judgment of 28 November 2007. Series C No. 172, at para. 185 (the Court concluded that Suriname's domestic laws "do not provide adequate and effective legal recourse to protect [indigenous and tribal peoples] against acts that violate their right to property"); *Report No. 76/07, Admissibility, The Kaliña and Lokono Peoples (Suriname)*, 15 October 2007, at para. 59 (finding that "Suriname failed to provide any remedies under domestic law for the petitioners" and that "the domestic legal system does not provide adequate, effective remedies to respond to the complaints presented..."); CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 14 (stating that "the Committee is concerned that indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons"); and CERD/C/SUR/CO/12, 13 March 2009, at para. 12 (expressing concern about "the nonexistence of [a] specific legislative framework to guarantee the realization of the collective rights of indigenous and tribal peoples"); and para. 19 (noting the State party's view that the remedies provided under Surinamese law are sufficient to assert and seek protection of rights, the Committee stresses the analysis by the Inter-American Commission of Human Rights and the judgements by the Inter-American Court of Human Rights, which found the domestic legal system does not provide adequate effective remedies to collective rights"). See also *Case of Moiwana Village v. Suriname*, Inter-American Court of Human Rights, Judgment of 15 June 2005, Ser. C, No. 124; and *Saramaka People v Suriname*, at para. 115-16 (stating that Suriname's extant legal framework is substantially inadequate because it "merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference"); and, at para. 106 (explaining that "an alleged recognition and respect in practice of 'legitimate interests' of the members of the Saramaka people cannot be understood to satisfy the State's obligations under Article 2 of the Convention with regards to Article 21 of such instrument").

³⁰ See CERD/C/SUR/CO/12, 13 March 2009 and; CERD/C/64/CO/9/Rev.2, 12 March 2004.

³¹ *Four Ngobe Indigenous Communities and their Members*, Order of the I-A Court of Human Rights, 28 May 2010, at para. 3.

32. With regard to the precautionary aspect, the Maho community has lost a considerable area of both its traditional lands and the 65 hectares reserved for it in 1971 due to unchecked encroachment. Its traditional lands are now almost completely occupied by non-indigenous persons who have been granted title by the State. As discussed above, two State officials observed in March 2008 that Maho is almost entirely surrounded, greatly restricting its ability to pursue its livelihood. Within the 65 hectares, most of which is swamp land, *Stichting* Mohsiro has destroyed farms, exploited and severely damaged forest resources, including destroying sacred trees, and built a dam that causes flooding and renders the land useless for agriculture. A large area has also been rendered useless by at least four sand mining operations, the most recent occurring in the first week of February 2011. Additionally, two persons have fenced off large areas of the reserved lands asserting that they have title issued by the State and forcibly exclude community members from accessing these areas, including through the use of an armed guard. Most recently, a local Member of Parliament has bulldozed a number of farms planted or cleared by the Maho community and claims to have acquired title to at least five hectares of land. This person is also responsible for extremely prejudicial sand mining operations. Efforts to seek protection from the State have been summarily rejected in favour of the 'rights' of these non-indigenous parties.

33. If this continues, the community will have little land left in its possession and no means to support itself at its current location. The rights asserted in Petition 1621-09, which are also protected by the Convention on the Elimination of All Forms of Racial Discrimination, include the property rights of the Maho indigenous community, which arise by virtue of its customary law and tenure, and which are greatly prejudiced by the above-described encroachment on its lands. Indeed, if encroachment continues – and likely it will increase given the substantial rise in the value of property in the area – there will be no lands left that can be secured for the benefit of the community and to secure its survival as an indigenous community. Without urgent international intervention, these property rights are greatly undermined and at risk and cannot be preserved in the current situation while the case is adjudicated by the Inter-American Commission.

34. Without urgent intervention, it will not be possible to ensure the integrity and effectiveness of a decision on the merits. Lack of urgent action will also have an effect on the utility and even the character of the final decision. For instance, rather than being a decision on the recognition and protection of the Maho community's traditional tenure and associated property rights, the decision will have to focus on restitution of the same lands, which is a much more complicated outcome. Additionally, it is likely that these lands will be further and substantially degraded by logging and mining activities and the Maho community will be further deprived of its means of subsistence and ability to survive in the interim period.

35. The failure to ensure the *status quo ante* also affects the exercise and enjoyment of a range of other fundamental rights that are at issue in Petition 1621-09. For example, in *Saramaka People v Suriname*, the Inter-American Court emphasized that indigenous peoples' property rights include the right to effectively control and manage their traditional lands and territories in accordance with their customary tenure systems. These property rights are also inextricably related to rights to survive as an indigenous people and a range of economic, social and cultural rights, which are all negatively affected by the current situation at Maho and cannot be adequately secured without

urgent intervention.³² The right to food, for instance, is gravely affected by the encroachment at Maho. The right to food is the only right labelled ‘fundamental’ in the Covenant on Economic, Social and Cultural Rights and the Committee on Economic, Social and Cultural Rights has emphasized that this right is a prerequisite for the realization of other human rights.³³

36. The right to food includes not only access to adequate and culturally appropriate food but also to its means of procurement, in this case productive agricultural lands. The core obligation of the right, in particular, is relevant insofar as it involves a duty not to make the situation worse or to deprive or allow others to deprive Maho of its means of subsistence and food security, including the lands in which it grows its food.³⁴ In the *Ogoni Case*, the African Commission explained, *inter alia*, that “the minimum core of the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples’ efforts to feed themselves.”³⁵ Such destruction is occurring on a regular basis at Maho and can be expected to continue given the absolute failure of the State to take any measures to protect Maho and the complete impunity enjoyed by persons who encroach on and a seek to take the community’s remaining lands.³⁶

37. Turning to the protective aspect of precautionary measures, there is an urgent need to prevent further irreparable harm to the Maho community. The latest destruction of its farms constitutes an extremely grave situation as it deprives the Maho community of at least 30 percent of its available food supplies for the coming year as well as creating a significant gap in production at certain times of the year given the sequential manner in which traditional agriculture takes place. Any further losses of farm lands or actual farms would push the community to the point of starvation and force them to leave the area in order to survive. Reducing an already depleted diet – depleted due to the prior acts and omissions of the State, particularly with respect to the eradication of traditional protein sources caused by encroachment on or destruction of hunting and fishing areas - is almost certain to have serious repercussions for the nutritional status, health and well-being of the members of the Maho community.³⁷ The young and elderly, who make up a

³² See *Xákmok Kásek Indigenous Community Case*, Judgment of 24 August 2010; *Yakye Axa Indigenous Community Case*, Judgment of 17 June 2005; and *Sawhowamaxa Indigenous Community Case*, Judgment of 29 March 2006.

³³ General Comment No.12 on the Right to Food, UN doc. E/C.12/1999/5, para. 4.

³⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 3, The nature of States parties’ obligations (art. 2, para. 1, of the Covenant), at para. 10 (explaining that “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party”).

³⁵ *Communication No. 155/96, The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria*, at 65.

³⁶ In a statement that is highly relevant to situation of Maho, the Committee on Economic, Social and Cultural Rights observed that indigenous peoples are especially vulnerable to violations of the right to food in cases where “access to their ancestral lands may be threatened.” General Comment No. 12, The Right to Adequate Food (Art. 11 of the Covenant), adopted at Committee’s Twentieth session, 1999, at para. 13.

³⁷ As observed by the Court in *Yakye Axa*, the Committee on Economic, Social and Cultural Rights has also raised the issue of violations of the right to health in this context, observing that “development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.” General Comment 14, *The right to the highest attainable standard of health: 11/08/2000*. UN Doc. E/C.12/2000/4, 11 August 2000, at para. 27.

significant percentage of the community, have been and will continue to be disproportionately affected. In the respect, Dr. Kambel observes that

it is evident that Maho has experienced significant reductions of fundamentally important parts of the community member's diet, particularly sources of protein caused by a substantial loss of hunting and fishing resources. They do not earn enough cash to replace this protein through purchasing meat or fish elsewhere and it can be safely concluded that their diet is now protein deficient in a way that could damage their health. Any further reduction in their available protein intake will almost certainly result in malnutrition as they are barely surviving at present (assuming that they do not leave the area entirely as many of the community members have already done...).³⁸

38. With respect to the severe limitations on Maho's means of subsistence caused by Suriname's acts and omissions, the petitioners emphasize that in the *Moiwana Village* case the Inter-American Court presumed the existence of material harm, *inter alia*, on the grounds that the community members' "ability to practice their customary means of subsistence and livelihood has been drastically limited."³⁹ Similar conclusions were reached in the *Sawhoyamaxa* and *Xákmok Kásek* cases and are equally applicable to the situation at Maho.

39. As documented extensively in Petition 1621-09 and in the report prepared by Dr. Kambel, Maho has experienced years of harassment, intimidation and violence against its members when it sought to complain about the taking of its lands and the destruction of its crops. This includes death threats against community members involving the use of guns, including by active duty police officers, and caused the majority of the community to flee the area and the community to fragment. Intimidation and threats have increased and the latest example of destruction of the community's farms seems intended to deprive it of its food and thus drive it from its lands altogether.

40. The targeted destruction of its farms, which were destroyed when a local Member of Parliament ordered that they be bulldozed, ostensibly for a road into Maho's forests so that logging and sand mining could take place, is a prime example. There was no need for this road, which should not have been constructed in the first place, to directly traverse through the two farms and both could have easily been avoided and the road alternatively sited. The person driving the bulldozer also intentionally removed a sign stating that the land was indigenous land, including on the second occasion removing it in order to destroy a second farm. Given that the value of the land has increased and the repeated and notorious failure of the State to intervene to protect Maho intimidation and the destruction of vitally important farming lands are likely to increase and intensify.

IV. Conclusion and Request

41. Maho today faces a situation of extreme gravity in which it is denied its means of subsistence and subjected to daily assaults on its remaining lands and integrity as an indigenous community. This situation denies the rights of its members to life with dignity and to humane treatment as well as denying the Maho community the enjoyment of its property and other basic rights. In this light, the submitting organisations request, as a matter of urgency, that the Committee:

³⁸ Report of Dr. Kambel, at para. 40.

³⁹ *Moiwana Village Case, supra*, at para. 186-7.

- a) considers this situation under its urgent action and early warning procedures and recommends that Suriname, at a minimum, adopts measures that include
- i) effective protections for the Maho community's lands, including those reserved to it in 1971, and to guarantee it security over its means of subsistence;
 - ii) that all existing encroachment be immediately stopped and removed, that any titles issued are immediately revoked and the persons who have destroyed the community's crops are sanctioned and warned against repetition;
 - iii) that the community is compensated for the loss of its crops, if necessary including through the provision of adequate and culturally appropriate food and other necessities, and for the destruction of its lands caused by third parties; and
 - iv) that the police are ordered to provide positive protection to the community, including by making it known publicly that any further encroachment on Maho's lands will not be tolerated.

Annex 1 – Photos of the January 2011 Destructions of Maho’s Lands



Photo 1: Section of the 600 metre-long road bulldozed into forest traditionally owned by Maho



Photo 2: Section of farm destroyed showing bulldozer tracks



Photo 3: Test pit dug for sand mining



Photo 4: Showing destruction of farm (plants visible are the remnants of corn and banana)



Photo 5: Showing destroyed fruit trees in farm