

University of Arizona Indigenous Peoples Law and Policy Program

Universal Period Review: Belize

10 November 2008

I. Executive Summary

1. On 12 October 2004, the Inter-American Commission on Human Rights found that Belize was obligated as matter of international law to delimit, demarcate, and title the traditional lands of the **indigenous Maya communities of Southern Belize**. After years of government disregard for the recommendations of the Inter-American Commission, the Maya communities took their case to the Belize Supreme Court. On 18 October 2007, the Supreme Court of Belize took an important step in complying with Belize's obligations under international law by affirming the proprietary and legally enforceable nature of Maya customary rights over lands and resources, and ordering the government to determine, demarcate, and title Maya lands.
2. Since the new government was elected in February 2008, Maya leaders have been attempting to engage in discussions concerning implementation of the Supreme Court judgment. At first, the actions of the government were encouraging. It acknowledged that the judgment had implications for all Maya lands in Toledo District, not just those of the two claimant communities, Conejo and Santa Cruz; and it took a concrete, effective step to protect Maya customary rights by issuing a directive suspending leasing, permitting for natural resource exploitation, and other land dealings in the Toledo District pending the process of implementing the Supreme Court judgment. However, in an abrupt about-face mere weeks after it was issued and without any notice to the Maya communities, the government effectively revoked the directive, limiting its application to the two claimant villages in the lawsuit, and leaving the lands of the 36 other Maya villages in Toledo District unprotected and vulnerable to exploitation by the government and third parties.
3. In the absence of any protective measures or legislative framework to secure Maya customary title, actions by the government and third parties since the revocation of the directive have resulted in numerous infringements, violations, and expropriations of Maya lands. The longer the government delays in developing a framework to register the customary title of the Maya villages, the more likely it will be that the Maya will be left with no more than a residual patchwork of land that is inadequate to sustain the environment necessary for their physical and cultural survival.

II. Background: affirmation of Maya land rights in international and domestic law

1. The Final Report of the Inter-American Commission on Human Rights

4. In its final report on the merits of the case in the case of the *Maya Indigenous Communities of the Toledo District against Belize*, the Inter-American Commission on Human Rights found that the State of Belize had violated specific provisions of the American Declaration of

the Rights and Duties of Man by not recognizing Maya traditional lands, by failing to delimit, demarcate, and officially recognize those lands, and by granting logging and oil concessions to third parties to extract resources within them. To remedy the violations, the Inter-American Commission recommended that Belize delineate, demarcate, and title Maya traditional lands.¹ In addition, the Commission reiterated that Belize abstain from any acts that might “affect the existence, value, use or enjoyment of the property located within the geographic area occupied and used by the Maya people.”²

2. The UN Special Rapporteur on Indigenous People and CERD

5. The Special Rapporteur has commented on the failure of Belize to demarcated and title Maya lands. In response to these communications sent by the University of Arizona on behalf of the Maya, the Special Rapporteur expressed his “concern about the allegations ... concerning the dismembering of the Maya people’s traditional communal land tenure system, which should not necessarily be seen in contradiction with the rights to private ownership...” and stated that the constitutional protections afforded property in Belize should apply to Maya customary rights.³ The Special Rapporteur expressed his “full support to the Inter-American Commission’s findings and recommendations”⁴ and called upon Belize to “fully implement the recommendations of the Inter-American Commission on Human Rights.”⁵ Likewise, concerning the situation of the Maya of Belize, the Committee on the Elimination of Racial Discrimination stated that it “is preoccupied by reports regarding privatization and leasing of land without the prior consultation or consent of the Maya people as well as the granting of concessions for oil development, logging and the production of hydro-electricity.”⁶

3. The Judgment of the Supreme Court of Belize

6. Despite repeated attempts to engage the government of Belize in negotiations to give force to the recommendations of the Inter-American Commission, and despite the urgings of the Special Rapporteur to fully implement the recommendations of the Inter-American Commission, the violations continued, forcing the Maya communities of Toledo District back into the courts of Belize to seek protection of their traditional lands. On 3 April 2007, with the support of the MLA, two Maya communities, Conejo and Santa Cruz, brought an action for constitutional redress, seeking legal recognition and protection of their customary land rights.⁷ On 18 October 2007, the Chief Justice of the Supreme Court rendered the landmark decision in *Cal et al. v. the Attorney General of Belize* (hereinafter “*Maya Villages*

¹ Case of Maya Indigenous Communities of Belize, Case 12.053, Inter-Am. C.H.R. Report No. 40/04, (Oct. 12, 2004), para. 197.

² *Id.*

³ United Nations, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum: Summary of cases transmitted to Governments and replies received. U.N. Doc. A/HRC/4/32/Add.1 (Mar. 19, 2007), at 10.

⁴ *Id.* at 11.

⁵ *Id.*

⁶ Correspondence from the Chairman of the Committee for the Elimination of Racial Discrimination to the Permanent Representative of the Permanent Mission of Belize to the United Nations (9 March 2007).

⁷ *Cal et al. v. AG (Belize) and Coy et al. v. AG (Belize)*, Consolidated claims 171 and 172 of 2007 (hereinafter referred to as *Maya Villages case*).

judgment”). Chief Justice Conteh found that he was: ... ineluctably bound to conclude that there does exist in the Toledo District Maya customary land tenure.”

7. The Supreme Court concluded that Maya rights to land based on customary land tenure are “property” protected by the constitution of the Belize. The Supreme Court further found that Belize had infringed upon the rights of the Maya villages of Conejo and Santa Cruz to equality and non-discrimination by not recognizing and protecting Maya lands, and by issuing leases, land grants, and concessions for logging and oil concessions within Maya traditional lands. Finally, the Supreme Court concluded that the rights of the Maya communities to their lands are protected by the right to life, liberty, security of the person and protection of the law guaranteed under the constitution because, “without the legal protection of their rights to and interests in their customary land, the enjoyment of their right to life and their very lifestyle and well-being would be seriously compromised and would be in jeopardy.”⁸
8. The Supreme Court ordered the government to demarcate and title the villages’ customary title and ordered the government not to interfere with villagers’ use and enjoyment of their lands by issuing leases, permits, or concessions in the area used by them. While the order of the court applied specifically to the two claimant communities, Conejo and Santa Cruz, the judgment made clear that Maya customary land tenure exists in the Toledo District, and that Maya communities have rights to land based on this customary land tenure system that are protected by the Belize Constitution, thereby laying the foundation for the recognition of the rights of other Maya villages by the government of Belize.

III. Continuing Disregard for Maya Land Rights

1. Halted Negotiations with the Government to implement the Supreme Court Judgment

9. Since the government of Prime Minister Dean Barrow was elected in February 2008, Maya leaders have been attempting to engage the government in discussion towards developing a framework to demarcate and title the lands of Maya villages in Toledo District. The first meeting between the government and Maya representatives to discuss implementation of the *Maya Villages* judgment was held on 26 March 2008. At that meeting, the Attorney General and the Solicitor General agreed with the Maya representatives that the reasoning in the judgment applied to all Maya villages in the Toledo District.⁹
10. Encouragingly, upon the urging of the Maya representatives, the following day, on 27 March 2008, the Solicitor General issued a directive to “All Chief Executive Officers, Commissioner of Lands, and Departments of Forestry, Fisheries, Environment and Petroleum and Geology,” citing the *Maya Villages* judgment and requiring them to “immediately cease all activities and/or operations on, or to otherwise deal with, land in the

⁸ *Id.* para. 117.

⁹ Minutes of first meeting between government and MLA re: implementation of *Maya Villages* case (March 26, 2008).

Toledo District.”¹⁰ The directive was for the most part effective in its protection of Maya lands.

11. However, on or around 23 April 2008, without any notice to or consultation with Maya leaders or villages, the directive was effectively revoked by the government by limiting its application to Conejo and Santa Cruz and explicitly allowed activities under existing permits to resume.¹¹ While the new directive “encouraged” officials to “give proper consideration” to the fact that other Maya communities “may consider that they have similar rights,” it does not provide any guidance as to what “proper consideration” of such claims might entail.¹² It is important to point out that this directive is redundant because the order of the Supreme Court of Belize already disallowed government or third party interference in Conejo and Santa Cruz until those lands are titled.
12. The government has not responded to concerns of Maya leaders and several Maya villages. On the contrary, the expected government representatives failed to attend the third scheduled meeting on 14 May 2008 between the government and Maya representatives concerning implementation of the *Maya Villages* decision. The government sent only a single Crown Counsel from the Attorney General’s Ministry, who stated to that she did not have authority to make any statements on behalf of the government at that meeting.¹³
13. The government has taken no other steps to demarcate and title Maya lands, including the lands in Conejo and Santa Cruz villages.

2. Ongoing violations of the rights of the Maya of Toledo District and Return to Supreme Court

14. Events since the revocation of the directive have underscored the necessity of such an injunction. Immediately following the revocation of the directive, leasing and logging resumed full force in Maya villages, without any consultation or consent of the villages. In practice, despite its verbal commitment to creating a framework through which Maya villages can establish and title the area over which they have customary rights, the government of Belize in all of its instances *continues* to behave as though Maya customary property rights do not exist and as though Maya people are squatters on the land that they traditionally use and occupy. Despite the decision in the *Maya Villages* case, the government *continues* to disregard the rights of Maya communities and individuals over their land, and treats Maya land as unburdened land for the purposes of issuing leases, grants, and concessions for natural resource exploitation, including logging and oil concessions.

15. For example:

¹⁰ Memorandum SGF/40/01/08(3), from the Solicitor General, Attorney General’s Ministry, to All Chief Executive Officers, Commissioner of Lands, and Departments of Forestry, Fisheries, Environment and Petroleum, and Geology (March 27, 2008).

¹¹ Memorandum SGF/40/01/08 (23) from Solicitor General, Attorney General’s Ministry, to All Chief Executive Officers, Commission or Lands, and Departments of Forestry, Fisheries, Environment and Petroleum and Geology (April 23, 2008).

¹² *Id.*

¹³ Minutes of third meeting between government and MLA re: implementation of *Maya Villages* case (May 14, 2008).

- In Golden Stream village a non-Maya village outsider acting under a purported lease from the government was permitted, with the explicit backing of police, to bulldoze a Maya farmer's five-year-old cacao grove and growing corn and vegetable crops.
 - In San Marcos village, third party outsiders are surveying land for cattle grazing, destroying some 300 acres of land that Maya farmers had been using to grow corn and other food for their subsistence for decades. Further survey lines are being laid right through this year's corn crops. In addition, the government is issuing logging permits permitting the extraction of village forest resources.
 - In Santa Anna village, private outsiders continue to log village lands despite the opposition of the villagers. Santa Anna has also had outsiders to the village enter village lands and begin surveying to obtain leases.
 - In Santa Teresa village, logging permits have also been issued to village outsiders, who are negatively affecting Maya hunting and farming areas by extracting timber. In this village also, an outsider has come in and begun surveying, without any regard to the fact that the land may not be available for leasing because Santa Teresa enjoys property rights there.
 - In San Pedro Columbia village, village leaders wrote to the Prime Minister adverting him to the fact that leasing of village lands has been forcing Maya farmers off their lands and causing conflict within the community. Rather than suspending dealings, investigating the issue and acting to stop the problem, a newly elected government minister announced further leasing in the remaining communal lands.
 - In San Antonio village, outsiders to the village are surveying and logging on village lands, with permission from or tolerance of government departments, even after being informed by village authorities that the lands belong to San Antonio and are not available to others for leasing.
16. In an attempt to halt further destruction of Maya lands, the MLA filed a second lawsuit in the Supreme Court of Belize on 13 June 2008. In the lawsuit, the Maya leaders are asking the government to maintain the *status quo* in Maya lands so that the Maya are not left with merely a residual patchwork of land that is inadequate to sustain the environment necessary for their physical and cultural survival by the time the government fulfils its domestic and international legal obligations to protect Maya lands in the Toledo District. The hearing is expected to take place in early 2009.

IV. Recommendations to Belize

- Develop the legislative, administrative, or other measures necessary to create an effective mechanism to identify and protect Maya customary property rights in accordance with Maya customary laws and land tenure practices, and in consultation with the affected Maya people.
- Until such time as there exists an effective mechanism to identify and protect Maya customary property rights, cease and abstain from any acts that might lead the agents of the government itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the Maya people of Toledo, unless such acts are pursuant to their informed consent and in compliance with the safeguards of the Belize Constitution.