



MAYA LEADERS ALLIANCE

&

Cultural Survival

United Nations Universal Periodic Review (UPR)
Joint Stakeholder Submission on BELIZE

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The Maya Leaders Alliance (MLA) was organized to advocate for the rights of the Maya villages in the Toledo district. It is an umbrella organization, composed of a variety of representative and sectoral Maya organisations including the Toledo Alcaldes Association which itself is comprised of the traditional elected leaders of all the Maya villages of southern Belize.

Cultural Survival is an international indigenous rights organization with a global indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org. In preparing this report, Cultural Survival collaborated with student researchers from University of Denver and consulted with a broad range of indigenous and human rights organizations, advocates, and other sources of verifiable information on Belize.

Maya Leaders Alliance and Cultural Survival submission to the Universal Periodic Review of Belize

I. Introduction

1. The MLA and Cultural Survival welcome the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Belize. In the 2009 review of Belize, numerous States addressed the country's lack of recognition and protection of Maya customary title in the Toledo District. Belize was encouraged to take up the issue and to implement the judgments of the Supreme Court of Belize in the Maya Land Rights Cases (2007 & 2010)¹ and the 2004 recommendations of the Inter-American Commission on Human Rights (IACHR) in *Maya indigenous community of the Toledo District v. Belize*.² Little progress has been made since that time.
2. During the first round of Universal Period Review of Belize on 5 May 2009, the Working Group adopted the following recommendations and urged Belize to:

Redouble its efforts in favor of the respect of the rights of indigenous peoples, in line with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (Mexico);³ and

Investigate duly and promptly allegations of misconduct, abuse and violence by public agents and take adequate action against those responsible for such crimes (Italy; 67(31))

Protect Mayan customary property rights in accordance with Mayan customary laws and land tenure practices in consultation with affected Mayan people of the whole Toledo district (Slovenia).⁴

3. Belize supported the first two of these recommendations, and made a commitment to engage the UN Special Rapporteur on the rights of Indigenous Peoples, stating: "The situation of the Maya of Belize is a matter of national importance. Belize intends to engage the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people." To the best of our knowledge, it has refused to do so.
4. Since the UPR report was issued in 2009, the government of Belize quietly granted an American oil company, U.S. Capital Energy Ltd. ("U.S. Capital"), drilling rights to

¹ *Cal et al. v. Attorney General (Belize)* and *Coy et al. v. Attorney General (Belize)*, Consolidated claims 171 and 172 of 2007 (18 October 2007), (*Re Maya Land Rights I*); *Maya Leaders Alliance, et al. v. Attorney General of Belize, et al.*, Claim number 366 of 2008, June 28, 2010 (*Re Maya Land Rights II*) [Attached as Appendix 1]

² *Case of Maya Indigenous Communities of Toledo v. Belize*, Case 12.053, Inter-Am. C.H.R Report No. 40/04 (2004) available at: <http://www.cidh.org/annualrep/2004eng/Belize.12053eng.htm> ("Maya Communities").

³ Human Rights Council, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review: Belize, 4 June 2009, A/HRC/12/4 at para. 67(35).

⁴ *Id.* at para. 68(9).

protected Maya lands inside the Sarstoon-Temash National Park (STNP)⁵ in the Toledo District, in defiance of two Supreme Court decisions as well as the recommendations of the IACHR and the UPR Working Group.

5. The Sarstoon-Temash Institute for Indigenous Management (SATIIM), which co-manages the park, only became aware of the oil permit after the company returned unannounced to the park. The affected Maya villages were not informed of the oil exploration activities, much less provided their consent. Therefore the presence of the company and its equipment is a direct violation of existing domestic court injunctions and Belize's *Petroleum Act*, which require the company to obtain the consent of the Maya landowners before entering their lands.
6. Belize voted in favour of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), thereby committing to uphold the human rights standards contained therein, including the right to free, prior and informed consent (Articles 10, 11, 19, 29, 32). This principle of free, prior and informed consent is also set out in the International Labour Organization's *Convention concerning Indigenous Peoples in Independent Countries* (ILO 169). Belize however has not signed nor ratified this convention that protects the rights of a large portion of its population.

II. History and Background

7. In 1994, without notice or consultation, the government of Belize designated a significant portion of some Maya villages' traditional land a national park. Three years later, when the Maya found out about this classification of their land, they organized and obtained a co-management agreement. In 2001, again without notice or consultation, the government of Belize entered into a Production Sharing Agreement that granted U.S. Capital exclusive rights to conduct oil exploration within a twelve-square-mile area of the park.⁶
8. On 12 October 2004, the IACHR issued a report recommending that Belize delimit, demarcate and title the traditional lands of the Maya people of the Toledo District.⁷
9. In 2006, after SATIIM discovered that U.S. Capital was going to conduct seismic testing within the national park, it obtained a temporary injunction halting oil exploration within the park until an Environmental Impact Assessment was completed.⁸

⁵ Under Belize's *National Parks System Act* (available at belizelaw.org), the declaration of a National Park has no effect on any existing property rights. Thus, the Sarstoon-Temash National Park coexists with, and is subject to the villages' title, while their use of the lands is circumscribed by the restrictions of the *NPSA*. This legal situation has not been formally recognized by the government, since it continues to deny the existence of Maya customary title, but in practice has been managed and accommodated by the designation of SATIIM as co-manager of the park, although the government has allowed the co-management agreement to expire.

⁶ U.S. Capital Energy Belize Ltd. Production Sharing Agreement, January 22, 2001 [Attached as Appendix 2].

⁷ Maya Communities, *supra* note 2.

⁸ *SATIIM v. Forest Department*, Claim 212 of 2006, Supreme Court of Belize (September 27, 2006). Available at www.elaw.org/system/files/bz.satiim.decision.doc

10. In April 2007, two Maya communities, Conejo and Santa Cruz, filed actions in the Supreme Court of Belize seeking recognition of their Maya customary property rights under the Belize Constitution. On 18 October 2007, the court ordered the government to delimit, demarcate and document Maya title to their lands.⁹
11. In February 2008, Prime Minister Dean Barrow's government was elected. Initially, the government showed signs of compliance with the 2007 court decision by issuing a directive requiring the Departments of Forestry, Fisheries, Environment and Petroleum and Geology to "immediately cease all activities and/or operations on, or to otherwise deal with, land in the Toledo District."¹⁰
12. By April 2008, the government withdrew that directive except with respect to Conejo and Santa Cruz villages.¹¹ Consequently, in June 2008, leaders of multiple Maya villages sued for constitutional redress for the remaining villages. On 28 June 2010, the Supreme Court again affirmed Maya customary land rights.¹² Its judgment included an injunction against the government interfering or allowing interference by third parties in the use and occupation by Mayan people in all the Maya villages in the Toledo District, unless the affected village expressly consents to such activities. Issuing logging or oil extraction permits was explicitly enjoined.
13. The government has appealed the 2010 judgement, which was heard in March and June 2011 and the appeal decision is still pending as of March 2013. The government made clear that it will appeal to the highest court if it loses.¹³ It continues to assert before the court and publicly that Maya land rights do not exist or do not merit legal protection.
14. In the meantime, the injunction remains in place. The 2007 injunction against interference with Conejo and Santa Cruz village lands was not appealed and also remains in full effect regardless of the outcome of the current appeal.

III. Follow-up to 2009 UPR Recommendations

15. Belize underwent Universal Periodic Review in May 2009. Since that time, the recommendations related to Maya land rights and respecting the rights articulated in the

⁹ *Maya Land Rights I*, *supra* note 1.

¹⁰ *Id.* at para. 19 (vi). Minutes of first meeting between government and MLA re: implementation of *Maya Villages* case (March 26, 2008); 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). (on file with author)

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). (on file with author)

¹² *Maya Leaders Alliance, Toledo Alcaldes Association and 23 villages v. AG Belize & Minister of Natural Resource*, Civil Appeal No. 27 of 2010 ("*Maya Land Rights II*"). [Attached as Appendix 3]

¹³ See "PM expects Maya land case to result in appeals" Channel 5 News, June 12, 2009 ("...the government certainly is convinced that this issue must be ventilated at the highest level...It is a huge national issue and I believe that no matter which way the decision at first instance goes, there will be appeals.") available at <http://edition.channel5belize.com/archives/1448>; "Maya win historic case against GOB" Love FM, June 28, 2010 available at: <http://www.lovefm.com/ndisplay.php?nid=12254&fromsrch=1>.

UNDRIP have been largely ignored. Belize has failed to protect Mayan customary rights by neglecting to delimit, demarcate and title Maya customary land and to enact legislation that would protect these rights, and has licenced resource extraction activities in their lands without consultation or consent. Three main examples of the consequences for the Maya are oil exploration/extraction, logging, and road construction.

Oil Exploration and Exploitation

16. The oil issue demonstrates Belize's failure to respect the Maya people's land and resource rights (Article 26), rights to "free and informed consent [regarding] any project affecting their lands or territories" (Article 32) and to "consultation and cooperation" (Article 38) in line with the provisions of UNDRIP.
17. Belize failed to provide notice to or consult with, much less obtain free and informed consent from affected Maya villages prior to issuing permits to U.S. Capital in March 2010 and 2011¹⁴ allowing the company to engage in petroleum exploration and extraction activities in lands belonging to four Maya villages and located within the STNP.
18. Belize has also failed to enforce its *Petroleum Act*, which requires oil companies to obtain the consent of landowners and lawful occupiers before entering their lands for exploration and extraction activities.¹⁵
19. In mid-October 2011, U.S. Capital began cutting seismic testing lines in lands belonging to Sunday Wood village within the STNP. In 2012, seismic survey lines were cut in the village lands of Crique Sarco, Corazon and Sunday Wood, all beyond the boundaries of the STNP, and thus of the permit. The company also attempted to open lines in Conejo village lands, despite the specific exclusion of the village from the permit, but villagers prevented them from continuing.
20. On 7 October 2012, U.S. Capital issued its EIA of drilling on Maya lands -online. This 300-page report is written in technical English, and was not translated into the Mopan or Q'eqchi languages spoken by the Maya. Very few Maya villagers have access to the internet; those that do generally use internet cafes in Punta Gorda, and printing costs are significant. Maya customary decision-making involves oral delivery and discussion of information.¹⁶

¹⁴ Forest Department, Ministry of Natural Resources and the Environment, "Permission Granted under Section 6 of the National Parks System Act, Chapter 215, The Substantive Laws of Belize, Revised Edition 2000-2003; Section 8 of the Petroleum Act; Regulation 3(2) of the Environmental Impact Assessment Regulations" March 28, 2011 [Attached as Appendix 4]

¹⁵ See *Petroleum Act*, Revised Laws of Belize 2000, Ch. 225, s.26(1)(b), "A contractor shall not exercise any of his rights under a petroleum contract... (b) except with the written consent of the owner or lawful occupier thereof: Provided that where the consent of the owner or lawful occupier is withheld, if the Minister, on an application by the contractor, and after hearing both the parties, is satisfied that such consent is being unreasonably withheld, may by Order, direct the owner or lawful occupier to allow to contractor to conduct petroleum operations on the land..." [emphasis added] The *Petroleum Act* is available online at <http://www.belizelaw.org/lawadmin/index2.html>.

¹⁶ "SATIIM wants postponement of EIA community meeting; DOE says no." Channel 5 News (October 19, 2012), available at: <http://edition.channel5belize.com/archives/77336>

21. A single consultation meeting regarding the EIA was scheduled for October 25, 2012 in the Maya village of Sunday Wood. SATHIM¹⁷ and the MLA both asked that the consultation be rescheduled to provide sufficient time to translate and disseminate the EIA; this request was denied.¹⁸ Four elders chosen by the communities were not permitted to give their spiritual invocation that traditionally begins discussions of important issues, contrary to Articles 14, 15, and 34 of the UNDRIP. Furthermore, U.S. Capital restricted comments to one minute per person and forcibly removed SATHIM's Greg Ch'oc when he attempted to speak longer.¹⁹
22. The Minister for Forestry met with representatives of the TAA and MLA on 22 February 2013. She made four main points: that the government has no intention of slowing or suspending oil activities in the STNP under any circumstances; that the government will not discuss or take action on Maya customary land rights (including those not under appeal) nor negotiate on the basis of their existence; that the government requires the Maya people to designate one or a small number of leaders with authority to negotiate with the government concerning oil issues; and that the government is willing to negotiate a benefits-sharing agreement for Toledo District.
23. Three of these four positions are diametrically opposed to the letter and spirit of the UNDRIP. Maya customary norms view leadership as communicating the voice of the villages. Leaders are not supposed to make important decisions on their own, and if they do, such decisions do not bind their communities. The government's insistence on a small number of leaders to deal with on this issue for its own convenience will not lead to legitimate decision-making.
24. This is particularly true in light of evidence that U.S. Capital has tried to bribe traditional leaders.²⁰ A former high-profile Maya leader, Ligorio Coy, abruptly left his position and appeared with a new truck working on behalf of U.S. Capital lobbying alcaldes to agree to its demands. Prior to recent elections for the TAA executive, multiple alcaldes reported that they were offered the equivalent of \$100 USD, along with a message to vote for Domingo She, a pro-oil candidate.

Illegal Logging Activities

25. In 2011, according to the government's own statistics, 7 times more Rosewood timber was logged in Toledo than was permitted by the Forestry Department.²¹ Most of this timber was

¹⁷ Ltr from Gregory Ch'oc, (misspelled Ch'co), Executive Director SATTIM, to Martin Alegria, Chief Environmental Officer, Department of the Environment, Oct. 11, 2012.

[Attached as Appendix 5]

¹⁸ Ltr from M. Alegria to G. Ch'oc, Oct. 16, 2012. [Attached as Appendix 6]

¹⁹ "SATHIM's Greg Ch'oc removed from mic during US Capital Consultation." Channel 5 News (October 26, 2012), available at: <http://edition.channel5belize.com/archives/77602>.

²⁰ "Campaign Update: Oil Company Attempts Bribery, Corruption of Traditional Leaders," *Cultural Survival* (February 14, 2013), available at: <http://www.culturalsurvival.org/news/campaign-update-belize-oil-company-attempts-bribery-corruption-traditional-leaders>

²¹ An investigation into rosewood logging in Toledo by a joint team from the MLA, PGTV (a local media outlet) and the Yax'che Conservation Trust in August 2011 discovered proof that Forest Department officials, in particular Mr. Charles Rivas, were not only tolerating but facilitating and even organizing the illegal harvesting of rosewood by distributing a "right to buy" from Maya villages among private operators, and by allowing these buyers to place

logged from Maya village lands without the consent of the affected village, yet for over a year, the government permitted this timber to be transported and exported without requiring any evidence of the Maya village's consent. After many complaints from Maya leaders, in March 2012 the Ministry of Forestry responded to the rapacious illegal logging of Rosewood with an indefinite blanket moratorium on all harvesting and exportation of that species.²²

26. In November 2012, a logging concession was issued to Hilmar Alamilla on Golden Stream village lands without their informed consent. The Minister of Forestry cancelled the concession in January 2013 after villagers confiscated piles of Rosewood that were illegally harvested. However, despite repeated requests, the Minister has not provided documentation of the original concession nor its cancellation.
27. In February 2013, a businessman informed Crique Sarco villagers that he had a logging concession in their lands. The Minister of Forestry denied any knowledge of such a license being issued. Despite requests, the government has not provided confirming in writing that the concession does not exist.

Road Construction

28. The government has been constructing a paved road through multiple Maya villages without consultation or consent. This road will run to the Belize-Guatemala border and significantly increase traffic through village lands. Experiences in Belize and a number of other countries have demonstrated that road improvements lead to increased demand for land along the roads by third parties. Without official confirmation of the village's customary title, the road construction poses a greater risk that these villages will lose control of their lands to settlers.

Accountability for abuse of power

29. In addition to the Maya-specific recommendations, the 2006 UPR recommended improved accountability for "*allegations of misconduct, abuse and violence by public agents.*" Again, Belize supported this recommendation. However, there have been numerous examples of utter impunity for misconduct by public agents in response to Maya assertion of communal property rights.
30. In April 2011, Santa Ana village leaders identified men engaging in unauthorized logging in their village lands. These men admitted to logging on behalf of Mr. Samuel Edwards, a non-resident of the village. As the leaders were obtaining evidence from the loggers, Mr. Edwards arrived with several police officers (one of whom was heavily armed) and two Forest officers. The police prevented the men from signing written statements, escorted

official government stamps on unmarked harvested logs without the involvement of any Forest Department officials. One of the buyers involved is the Vega Imports and Export company, a family enterprise that is allegedly owned by relatives of the Deputy Prime Minister and Minister of Natural Resources, Gaspar Vega. See Maya Leaders Alliance, "Rosewood Field Investigation," Aug. 10, 2011.(on file with author)

²² Robin Oisin Llewellyn, "Belize enacts moratorium on rosewood," Monga Bay (March 20, 2012), available at http://news.mongabay.com/2012/0319-llewellyn_moratorium_rosewood.html?utm_campaign=General+news&utm_medium=Twitter&utm_source=SNS.analytics

them from the village and encouraged them (unsuccessfully) to sue the alcalde for false imprisonment.

31. A Mr. Rodwell Williams began logging in Golden Stream village land, under a lease that had been issued in violation of the 2010 injunction. Despite the obvious illegality of the lease, police visited the alcalde and threatened to arrest him if villagers interfered any further in Mr. Williams' logging activities.
32. In October 2011, San Marcos leaders became aware of illegally-cut timber in their village lands. The alcalde and 56 villagers confiscated the rosewood timber and carried it to the community centre. Three days later, two Forest officers and two village council members from a nearby non-Maya village, Yemeri Grove, arrived in San Marcos and demanded the timber be released to them. The alcalde refused, explaining that the logs had been illegally harvested and belonged to the village. That evening, four men arrived at the alcalde's house, yelling demands to release the logs. Although none of them were in uniform, they identified themselves as police officers.²³ One of the officers flashed and primed a handgun, causing the villagers to disperse. The vehicle then left. A few days later, Forest officers and a Yemeri Grove leader returned and again demanded the release of the timber. In the face of such intimidation, the alcalde released the logs and made a complaint to the police concerning the incident. No action has been taken on that complaint.
33. In a number of Maya villages throughout 2011 and 2012, police and government officials have provided no support to alcaldes who attempted to enforce Maya customary norms against loggers cutting rosewood timber in their lands. For example, the allegations and evidence of corruption in rosewood logging described in footnote 21 (above) were never investigated.

IV. Maya Engagement of International Human Rights Mechanisms

34. The Maya people have pursued many avenues to assert their land and resources rights. As previously mentioned, the Inter-American Commission on Human Rights issued a decision in 2004. The Commission is convening a working meeting to discuss compliance with the decision at its next period of sessions in March 2013.
35. In August 2012, the MLA participated in the country review of Belize in the absence of a state report by the Committee on the Elimination of Racial Discrimination, which has sent numerous letters to Belize under the urgent action and early warning procedure.²⁴ The Committee recently issued its Concluding Observations which included recommendations that Belize take concrete steps to recognize Maya customary land rights.²⁵

²³ Three of the individuals were identified as Harold Usher (an officer currently suspended from active duty and facing charges related to drug trafficking), Arden Edwards, and Jerry Usher (an active duty police officer and resident of Yemeri Grove village).

²⁴ See Ltrs from United Nations Committee on the Elimination of Racial Discrimination to Government of Belize, March 9, 2007; August 24, 2007; March 7, 2008, and March 9, 2012 available at: <http://www2.ohchr.org/english/bodies/cerd/early-warning.htm>

²⁵ *Id.* at para. 11.

36. The MLA contributed to a joint shadow report to the U.N. Human Rights Committee in relation to Belize's compliance with the International Covenant on Civil and Political Rights. An MLA representative is attending the country review of Belize in March 2013.
37. In a March 2007 report, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people expressed concern for the situation of the Maya people. The government of Belize responded that "the more 'educated and enlightened' sections of the Maya communities now prefer individual property rights in any part of the country rather than remaining confined to the Toledo District."²⁶ In 2009, 2011 and 2012, the MLA submitted communications to the Special Rapporteur, informing him of the ongoing violations and urging him to make a site visit.

V. International Human Rights Commitments of Belize

38. Belize is a signatory to a number of human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination. However, Belize has not signed any of the optional protocols to these human rights treaties. Belize has signed but not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).
39. Belize has neglected to submit reports to relevant treaty bodies. The Human Rights Committee has not received a State report from Belize since 1997 and the CERD has not received a report from Belize since 2002. Belize currently has no open invitations extended to any thematic special procedures mechanisms of the United Nations human rights bodies.

VI. Recommendations

40. We respectfully request that the UPR Working Group and the Human Rights Council urge the Government of Belize to:
- i.** Respect and implement the judgments of the Supreme Court of Belize and recommendations of the IACHR with respect to Maya land and resource rights, including the injunctions against interference by state agents or third parties with the use, value and enjoyment of lands used and occupied by the Maya.
 - ii.** Cease its efforts to overturn domestic judicial recognition of Maya rights of land and resources.
 - iii.** Sign and Ratify the International Labour Organization's *Convention concerning Indigenous and Tribal Peoples in Independent Countries* (ILO 169).
 - iv.** Implement the *United Nations Declaration on the Rights of Indigenous Peoples* through national legislation.

²⁶ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, A/HRC/4/32/Add.1, March 19, 2007 at para. 24.

- v. Respect national law by enforcing the *Petroleum Act*, requiring companies to obtain consent from landowners and lawful occupiers.
- vi. Ratify the ICESCR, and sign optional protocols to both ICCPR and ICESCR. Withdraw reservation of Article 14 of ICERD.
- vii. Extend an open invitation to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, as well as all thematic special mechanisms.
- viii. Submit all reports to relevant treaty bodies in a timely manner.
- ix. Adhere to recommendations made by the UPR in 2009.

VII. List of Appendices

1. *Cal et al. v. Attorney General (Belize)* and *Coy et al. v. Attorney General (Belize)*, Consolidated claims 171 and 172 of 2007 (18 October 2007), (*Re Maya Land Rights I*).
2. U.S. Capital Energy Belize Ltd. Production Sharing Agreement, January 22, 2001.
3. *MLA, TAA et. al. v. A.G. (Belize) et. al.* Claim no. 366 of 2008, Supreme Court of Belize, (June 28, 2010) (*Re Maya Land Rights II*).
4. Forest Department, Ministry of Natural Resources and the Environment, “Permission Granted under Section 6 of the National Parks System Act, Chapter 215, The Substantive Laws of Belize, Revised Edition 2000-2003; Section 8 of the Petroleum Act; Regulation 3(2) of the Environmental Impact Assessment Regulations” March 28, 2011.
5. Ltr from Gregory Ch’oc, (misspelled Ch’co), Executive Director SATTIM, to Martin Alegria, Chief Environmental Officer, Department of the Environment, Oct. 11, 2012.
6. Ltr from M. Alegria to G. Ch’oc, Oct. 16, 2012.