

Submission to the 107th session of the Human Rights Committee

**SHADOW REPORT RELATING TO THE
EXAMINATION OF BELIZE**

Sarstoon Temash Institute for Indigenous Management



Minority Rights Group International



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1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This Shadow Report has been written for the Human Rights Committee to assist it in its consideration of the measures adopted by Belize to give effect to the rights recognised in the International Covenant on Civil and Political Rights (ICCPR), scheduled to occur during its 107th session. This Shadow Report has been submitted in the absence of the initial report of Belize required under Article 40 of the ICCPR.
- 1.2 The Report has been prepared by the Sarstoon Temash Institute for Indigenous Management (SATIIM) and Minority Rights Group International (MRG). SATIIM is a community-based indigenous organisation working in the far south of Belize, in a region in the Toledo District that lies between the Sarstoon and Moho Rivers. SATIIM works to promote and protect the rights of indigenous peoples, to safeguard the ecological integrity of the Sarstoon Temash region, and to promote the sustainable use of its resources for its indigenous peoples' social, cultural, environmental, and spiritual wellbeing. In this context, it has been leading the effort to ensure that the Belizean government complies with its indigenous rights obligations under domestic and international law. MRG is an international non-governmental organisation working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organisations in nearly 50 countries. MRG has consultative status with the United Nations Economic and Social Council, observer status with the African Commission on Human and Peoples' Rights, and is a civil society organisation registered with the Organization of American States.
- 1.3 In this Shadow Report, SATIIM and MRG consider Belize's performance under Article 2, Articles 2 and 26, and Article 27 of the ICCPR, with reference to the *List of issues*¹ compiled by the Human Rights Committee during its 106th session.
- 1.4 In summary, the submitting organisations encourage the Human Rights Committee to consider asking the Belizean government the following questions with regard to its examination, in the absence of an initial report:

Article 2 and Articles 2 & 26

- Q1. What concrete steps has the government taken to implement the 2007 judgment of the Supreme Court of Belize and delimit, demarcate and title all lands in and around the villages of Conejo and Santa Cruz?*
- Q2. What concrete steps has the government taken to delimit, demarcate and title all Maya village lands in the Toledo District in strict accordance with the 2010 judgment of the Supreme Court of Belize, which affirms the 2007 judgment as well as the report of the Inter-American Commission on Human Rights?*
- Q3. In what time frame does the government propose to complete the process of implementing the 2007 and 2010 judicial decisions?*
- Q4. What concrete steps has the government taken to design and implement a regulatory framework that fully recognises and protects indigenous peoples' collective rights affected by extractive operations?*

1 CCPR/C/BLZ/Q/1, 23 November 2012

- Q5. *What concrete steps has the government taken to provide effective sanctions and remedies when the collective land rights of indigenous peoples, including their rights to free, prior and informed consent, are infringed either by governments or corporate actors?*
- Q6. *What mechanisms are in place to ensure that third party corporations, such as US Capital, comply with all applicable laws and respect indigenous rights in conducting their operations?*

Article 27

- Q1. *How is the government ensuring that the Maya system of customary land tenure governs the system of land rights in traditional Maya villages?*
- Q2. *In the absence of the full and informed consent of the Maya communities to US Capital's project, what steps is the government taking to prevent the imminent drilling activities by US Capital on traditional Maya lands?*
- Q3. *What steps is the government taking to re-open a good faith dialogue between the Maya communities, US Capital and itself in respect of the proposed oil exploration project?*
- Q4. *What mechanisms has the government put in place to ensure that the Maya communities will receive full, timely and accessible details regarding the proposed oil exploration project?*
- Q5. *What mechanisms are in place to ensure that the free, prior and informed consent of indigenous peoples are obtained before any further grants of natural resource concessions, including oil, logging, hydroelectricity and road-building, over indigenous lands?*
- Q6. *What steps is the State taking to protect the forest in and surrounding the Maya villages of Toledo District, and prevent logging in that forest other than in accordance with Maya customary norms?*
- Q7. *What steps, including legal and regulatory steps, is the government taking to ensure that business enterprises operating in its territory are respecting the rights of indigenous peoples affected by their activities?*
- Q8. *What concrete steps is the government taking to ensure consultation with the Maya communities and the incorporation of their views in the development of the Village Demarcation Act?*
- Q9. *What concrete steps is the government taking to involve the Maya communities, in accordance with the principles of meaningful consultation, in healthcare decisions that affect them and their distinct culture?*
- Q10. *What concrete steps is the government taking to pay proper consideration to indigenous medicinal knowledge and traditional healthcare structures in healthcare decisions affecting the Maya communities?*
- Q11. *What mechanisms are in place to ensure that the government will consult and cooperate in good faith with indigenous peoples through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing any other legislative or administrative measures that may affect them?*

2. ARTICLE 2 (CONSTITUTIONAL AND LEGAL FRAMEWORK AND RIGHT TO AN EFFECTIVE REMEDY)

2.1 The Maya of Toledo are the direct descendants of the ancient Maya civilisation.² Their ancestral territory in the Toledo District is comprised of living, farming, hunting, fishing, and ceremonial areas, which are central to the Maya people's livelihood and cultural survival. Under their traditional land tenure system, lands are held communally, and individuals have certain derivative rights of use and occupancy over the lands.³ Land management is carried out through the village leader, called an *alcalde*, with the consultation of the villagers and a local village council.⁴ In 1994, the Belizean government created the Sarstoon Temash National Park ('STNP'), which is home to five Maya communities - the Graham Creek, Crique Sarco, Sunday Wood, Conejo and Midway (referred to herein as the 'Maya communities').⁵ Despite its conservational importance, the Maya communities did not learn of its existence until 1997. Over the last two decades, the Maya communities have been experiencing continuous violations of their most basic human rights as a result of encroachment onto their ancestral land by both the government and private companies, first by large logging concessions granted to a Malaysian company, then with the creation of the STNP, and most recently by oil exploration concessions.

2.2 In 1998, the Maya took a case to the Inter-American Commission on Human Rights, ('IACHR') challenging the violation of their rights over their traditional lands. In its 2004 decision, the IACHR in *Maya Indigenous Communities of the Toledo District v Belize*⁶ clearly identified a series of violations of the American Declaration of the Rights and Duties of Man ('American Declaration'). Included were: violations of the petitioners' right to property⁷ through a failure to recognise their communal property rights over their traditional lands and to delimit, demarcate, title and protect those lands;⁸ violations of the right to property through the granting of logging and oil concessions to third parties in the absence of effective consultation and informed consent;⁹ violations of the right to equality before the law, to equal protection of the law, and to non-discrimination¹⁰ in the failure to afford and protect property

2 TOLEDO MAYA CULTURAL COUNCIL & TOLEDO ALCALDES ASSOCIATION, THE MAYA ATLAS: THE STRUGGLE TO PRESERVE MAYA LAND IN SOUTHERN BELIZE, 3, North Atlantic Books (1997) ('MAYA ATLAS')

3 See Petition to the IACHR by the Toledo Maya Cultural Council on behalf of Maya Indigenous Communities of the Toledo District against Belize at para. 20 (August 7, 1998) ('Petition'); MAYA ATLAS, *supra* note 2, at 19

4 See Petition, *supra* note 3, 13; MAYA ATLAS, *supra* note 2, at 19

5 The STNP is also inhabited by the Garifuna community, the Barranco, – which, together with the five Maya communities, have a combined population of 1200.

6 Report No 40/04, Case 12/053 (12 October 2004)

7 Article XXIII of the American Declaration of the Rights and Duties of Man

8 *Supra* note 6, paras 99-135

9 *Supra* note 6, paras 136-156

10 Article II of the American Declaration of the Rights and Duties of Man

rights fully and equally along with other members of the Belizean population;¹¹ and, last, violations of the right to judicial protection¹² by rendering domestic judicial proceedings ineffective through excessive delay.¹³

- 2.3 Despite the decision of the IACHR, the government did nothing to attempt to remedy the situation. It disregarded the IACHR's recommendations, explicitly taking the position that the IACHR's report "*is not legally binding on Belize.*"¹⁴ Further, in 2001, the government had entered into a 'Production Sharing Agreement' with US Capital Energy Belize Ltd. a wholly-owned Belizean subsidiary of US Capital Energy, Inc. (together, 'US Capital'), a small energy exploration company based in Texas and Colorado. Under that agreement, the government granted US Capital the exclusive right to conduct petroleum operations within the STNP. In November 2005, SATHIM learned that the government had issued a permit to US Capital to conduct seismic surveys within the STNP, without the knowledge of the Maya communities. SATHIM filed a lawsuit against the government to stop the activity. The Supreme Court of Belize ruled that as an environmental impact assessment (EIA) had not been carried out prior to the granting of the permit as required by law, the permit must be quashed.¹⁵
- 2.4 In light of the government's failure to comply with the decision of the IACHR, the two Maya communities of Conejo and Santa Cruz litigated the non-recognition of their land rights in the Belizean courts. On 18 October 2007, in *Aurelio Cal and Others v Attorney General of Belize and Others*,¹⁶ the Supreme Court of Belize found that the Belizean Constitution, in general terms, protected the collective rights to the traditional lands of the Maya. The Chief Justice ordered the government to: (i) recognise the collective and individual rights of the Santa Cruz and Conejo villages to their traditional lands; (ii) determine and demarcate those titles and rights; and (iii) cease and abstain from any acts that might affect those lands without informed consent, including the granting of further concessions for resource exploitation and harvesting and the parcelling of land for private leasing.
- 2.5 The government has failed to implement the decision of the Supreme Court, despite the fact that it made an undertaking in response to the 2009 Universal Periodic Review that it would respect the judgment.¹⁷ SATHIM has also called upon the government to enter into a dialogue on the issue on several occasions, but to no avail. A further lawsuit was therefore lodged with the Supreme Court. On 28 June 2010, the Supreme Court of Belize in *The Maya Leaders*

11 *Supra* note 6, paras 157-171

12 Article XVIII of the American Declaration of the Rights and Duties of Man

13 *Supra* note 6, paras 172-186

14 Statement by Belize Solicitor General to the press, following the release of the Inter-American Commission on Human Rights final report in the case of the *Maya Communities of Toledo District v. Belize* [date unknown].

15 *SATHIM v. Forest Department Minister of Natural Resources and US Capital*, Claim No. 212 of 2006; <http://www.elaw.org/node/2280>, accessed 16 January 2013

16 Claim Nos 171 and 172 of 2007 (18 October 2007)

17 Views on Conclusions and/or Recommendations, voluntary commitments and replies presented by the State under review (Belize), Human Rights Council, 12th Session, 18 September 2009, UN Doc A/HRC/12/4/Add.1, Recommendation 39

*Alliance, the Toledo Alcaldes Association and Others v Attorney General of Belize and Others*¹⁸ reaffirmed the 2007 decision, making clear that the order, in very similar terms to the first set of injunctions, covered all Maya villages in the Toledo Districts. The government's appeal was heard by the Court of Appeal in March 2011 but the judgment is pending. The Prime Minister has publicly declared that the government will appeal all the way to the Caribbean Court of Justice should the Court of Appeal uphold the judgment.¹⁹ It has continued to grant leases and resource concessions to third parties, in violation of these judgments. Most recently, the Maya communities have been informed that US Capital will commence drilling in early March 2013 as part of a petroleum exploration project implemented pursuant to a government-granted oil concession over the Maya lands.²⁰

2.6 The non-implementation of the IACHR and Supreme Court's decisions have resulted in severe violations of the rights of the members of the Maya communities enshrined under Article 27 of the ICCPR (explained further in Part 4 below). There is therefore a manifest failure by the State to comply with its obligations under Article 2 of the ICCPR, namely, to ensure the provision of an effective remedy in response to violations of Covenant rights (Article 2(3)(a)), and to ensure that the competent authorities enforce such remedies when granted (Article 2(3)(c)). The State's violation of Article 2 is further reinforced by its failure to protect the rights of the Maya communities against abuses by business enterprises and to implement effective remedies to redress violations of indigenous rights by such entities, pursuant to the the Guiding Principles on Business and Human Rights.²¹ No judicial remedy can ever be effective when there is a continuing arbitrary and illegal executive override.

2.7 **SATIIM and MRG encourage the Human Rights Committee to recommend in its concluding observations in respect of Article 2 that Belize:**

2.7.1 **take immediate steps to implement the 2007 judgment of the Supreme Court of Belize and delimit, demarcate and title all lands in and around the villages of Conejo and Santa Cruz;**

2.7.2 **take steps to delimit, demarcate and title all Maya village lands in the Toledo District in strict accordance with the 2010 judgment of the Supreme Court of Belize, which affirms the 2007 judgment as well as the report of the Inter-American Commission on Human Rights;**

2.7.3 **provide details of the timeframe according to which the government will implement the 2007 and 2010 judicial decisions;**

18 Claim No 366 of 2008 (28 June 2010)

19 See 'PM expects Maya land case to result in appeals' Channel 5 News, June 12, 2009, available at <http://edition.channel5belize.com/archives/1448>; 'Mayas win historic case against GOB' Love FM, June 28, 2010, available at <http://www.lovefm.com/ndisplay.php?nid=12254&fromsrch=1>

20 See Part 4 for more details.

21 The Special Rapporteur on the Rights of Indigenous Peoples has affirmed their applicability in such situations, see Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, 6 July 2012, A/HRC/21/47, para 54, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47_en.pdf

- 2.7.4 **design and implement a regulatory framework that fully recognises and protects indigenous peoples' collective rights affected by extractive operations;**
- 2.7.5 **provide a system of effective sanctions and remedies to redress violations by governments or corporate actors of the collective land rights of indigenous peoples;**
- 2.7.6 **put in place mechanisms to ensure that third party corporations, such as US Capital, comply with all applicable laws and to respect indigenous rights in conducting their operations.**

3 ARTICLES 2 AND 26 (NON-DISCRIMINATION)

- 3.1 The judicial decisions referred to in Part 2 above also require the government to protect, under the Belizean Constitution and American Declaration, the collective rights to property of the Maya communities in the Toledo Districts.²² The State is therefore required under Article 2(1) and Article 26 to ensure the right to equality before the law, equal protection of the law, and to non-discrimination, in the enjoyment and exercise of Maya land rights, fully and equally to other members of the Belizean population. By failing to recognise these collective rights, while continuing to recognise and grant individual rights over land, both in general and over the Maya traditional lands, the government is acting in clear violation of the principle of equal treatment. This failure particularly affects those communities that view land as a communal good. Consequently, the failure to recognise collective land rights disproportionately affects the Maya villages in southern Belize. The discriminatory treatment, as the 2007 and 2010 judgments affirm, “*stems largely from the fact that the[y] are Maya and practice the customary land tenure system of their people*”.²³
- 3.2 **SATIIM and MRG encourage the Human Rights Committee to recommend in its concluding observations in respect of Article 2 and 26 that Belize take the steps outlined in paragraph 2.7 above.**

4. ARTICLE 27 (RIGHTS OF PERSONS BELONGING TO MINORITIES)

A) Granting of natural resource concessions by government in Toledo districts

- 4.1 Article 27 requires the State to ensure that persons belonging to cultural, religious or linguistic minorities enjoy the right, in community with the other members of their group, to *inter alia* enjoy their own culture, and profess and practise their own religion. The Human Rights Committee has taken the view that culture may manifest itself in a particular way of life associated with the use of land resources, especially in the case of indigenous peoples.²⁴

²² See IACHR Report, *supra* note 6, para 162; *Aurelio Cal*, *supra* note 16

²³ *Aurelio Cal*, *supra* note 16, para 113

²⁴ General Comment No. 23: The rights of minorities (Art. 27), 08/04/1994, CCPR/C/21/Rev.1/Add.5, para 7

That right is said to include traditional activities, such as fishing or hunting.²⁵ Further, Article 27 requires States to take positive legal and other measures to protect and ensure the effective participation of members of minority communities in decisions which affect them.²⁶ Despite the judicial judgments upholding the individual and collective land rights of the Maya communities in the STNP, the State continues to grant oil development concessions in the Toledo districts to third parties with little to no consultation with the representatives of the Maya communities. As explained in paragraph 2.1 above, the traditional Maya lands are central to the livelihood and cultural survival of the Maya communities, such that the granting of the concessions over their lands severely violates the rights of their members to enjoy their culture and practice their religion under Article 27. Details of these violations are outlined further below.

Oil concessions:

- 4.2 On 28 March 2011, the Ministry of Natural Resources issued US Capital with a permit, without consulting with, or providing notice to, the Maya people. In mid-October 2011, US Capital began cutting seismic testing trails within the STNP. When SATIIM met with indigenous leaders on 7 November 2011, all villagers expressed outrage and growing concern that the government and US Capital had not informed them about the seismic activities. By 8 November 2011, vehicles equipped for seismic drilling had arrived along with a drill-ready tractor.²⁷
- 4.3 In 2012, seismic survey trails measuring five feet wide were cut in the village lands of the Maya communities, again without their consultation. These lands are all beyond the boundaries of the STNP and, therefore, fall outside the permit. Further, despite the specific exclusion of Conejo lands written into the permit, US Capital cut 3.5 miles of seismic trails in that region. The activity only stopped after the leadership of Conejo, with the support of SATIIM, waged an all-out public campaign to highlight the violation.
- 4.4 At the request of the Conejo residents, SATIIM retained an independent expert who conducted an assessment of the environmental and social implications of the cutting of the seismic line. The results highlight that the cutting of the trail has and will continue to significantly curtail the ability of the Conejo members to fully enjoy and exercise their cultural and religious rights under Article 27. The damage includes the cutting of trees and vine used by the Conejo community for construction lumber, rafter-tying, and food, the burning of an estimated 1 to 2 hectares of land, and the increased scope for illegal hunting, resource extraction and harvesting of forest products, which will severely deplete the game

²⁵ *Ibid*

²⁶ *Ibid*

²⁷ See “*End the Secrecy!*” SATIIM demands explanation for US Oil Company’s Return to National Protected Land”, available at <http://satiim.blogspot.co.uk/2011/11/end-secrecy-satiim-demands-explanation.html>, accessed 17 January 2013.

population.²⁸ The estimated value of natural resources lost or at risk over the following three years as a direct result of the opening of the seismic line is between Bz\$25,000 to \$50,000.²⁹

- 4.5 US Capital has failed to take any action to redress these damages. The State, having enabled US Capital to inflict these damages without consultation with the affected individuals, is directly responsible to the members of the Conejo community for failing to protect their Article 27 rights. This concern is particularly significant in light of the apparent high-level support for oil drilling in the Toledo area: Prime Minister Barrow's "*drill we will*" approach to oil exploration in the STNP captures the spirit of the authorities' determination to proceed with the proposals, regardless of the flagrant violations of Article 27.³⁰
- 4.6 On 13 August 2012, SATIIM learned that US Capital was proposing to continue with the exploration phase of their project within the concession area, including the STNP, once environmental clearance had been obtained. US Capital asked SATIIM to submit its views and concerns about the proposed project, and provided provisional Terms of Reference for the study, and a map of the proposed drilling sites. SATIIM submitted its response to US Capital in September 2012. However, on 1 October 2012, the Department of Environment uploaded US Capital's EIA onto its website, making it clear that the EIA had in fact already been completed without the involvement of SATIIM or the Maya communities. US Capital agents subsequently visited communities in the STNP, informing them that drilling would start in November 2012.
- 4.7 Pressed by SATIIM, the Maya communities and SATIIM met with representatives of the government – including the Ministry of Fisheries, Forestry and Sustainable Development and the Department of Environment – and US Capital on 25 October 2012 to discuss the EIA. Two requests by SATIIM to defer this consultation to allow the communities sufficient time to understand and discuss the 300 page technical document written in English, were refused by US Capital. Furthermore, the meeting was scheduled for 5pm, which was both an inconvenient time for farmers and workers in the local communities since it was harvest season, and also being so late in the day, did not allow any time for real deliberation and discussion. At the meeting, members of the Maya communities had only one minute of speaking time, and SATIIM's executive director had the microphone grabbed from him by a government representative. Furthermore, US Capital's Public Relations Consultant reportedly stated after the meeting that the company's sole obligation and participation in the consultation meeting had been to provide a venue, and that the remainder of the consultation was the responsibility of the Department of the Environment.³¹ The Maya Leaders' Alliance has also raised concerns over US Capital's tactics to divide the communities and seek support for its actions, including the employment of one of the Alliance's most prominent members under an alleged lucrative contract.³²

28 Paul Walker, Wildtracks, "Assessing Damages Caused by Seismic Trail Cut Through Conejo Community Lands, pages 6 and 11

29 *Ibid*

30 <http://edition.channel5belize.com/archives/48844>, accessed 16 January 2013

31 See 'U.S Capital says it's G.O.B. who made the rules to EIA Consultation engagement', News 5, 31 October 2012, available at <http://edition.channel5belize.com/archives/77827>, accessed 22 January 2013

- 4.8 Subsequent media reports stated that on 1 November 2012, the Department of Environment had approved the application by US Capital to carry out its exploration project in the STNP.³³ Members of the US Capital workforce have been entering the communities to create access for drilling, including surveying for a 13 metre-wide road to drilling site ‘A1’, which is located 200 metres from the Temash River.³⁴ The Maya communities have been informed that US Capital will commence drilling in early March 2013.
- 4.9 The process described above cannot in any way be considered a full and informed consultation with the Maya communities, and fails to meet the requirements required under Article 27 for the effective participation of indigenous communities in decisions which affect them.³⁵ Drawing upon the UN Declaration on the Rights of Indigenous Peoples (‘UNDRIP’), the requirement to consult includes cooperating in good faith in order to obtain the free, informed, and prior consent of indigenous peoples in respect of projects affecting their lands.³⁶ Further, as highlighted by the Special Rapporteur and Expert Mechanism of the rights of Indigenous Peoples, a State’s protective role is “*especially important*” when corporations consult directly with indigenous communities regarding the development of extraction activities, due to the “*significant disparities*” in the balance of power and access to information.³⁷ Moreover, as indigenous land rights are necessary to their survival, consent becomes a requirement for any extraction activities taking place upon indigenous lands.³⁸ None of the Maya communities or SATIIM had any meaningful opportunity to learn about the project or express their views prior to the completion of the EIA. US Capital’s request for SATIIM’s views on the project therefore appears to have been a mere formality. The State also manifestly failed to take positive steps to facilitate the effective participation of the Maya communities before and during the 25 October meeting, all of which highlight a flagrant violation of the Article 27 rights of the Maya members.
- 4.10 In response to the calls of SATIIM and the communities for a meaningful consultation, the Prime Minister appointed Lisel Alamilla as Minister of Forestry, Fisheries and Sustainable Development who, together with the Minister of Energy, Science and Technology and Public Utilities, Joy Grant, would “*commence a dialogue*” with the Maya communities to “[c]larify the process for obtaining access to information relating to oil concessions, inclusive of permits and oil exploration data”, and “[a]gree on a mechanism to

32 See ‘US Capital Energy obtains drilling permit on Maya land in Belize without Maya consent and then bribes key Maya leader’, Turtle Talk, 4 November 2012, available at <https://turtletalk.wordpress.com/2012/11/04/us-capital-energy-obtains-drilling-permit-on-maya-land-in-belize-without-maya-consent-and-then-bribes-key-maya-leader/>, accessed 13 February 2013; ‘Maya Leaders accuse U.S. Capital/GOB of inciting ethnic division’, The Belize Times, 8 November 2012, available at <http://www.belize-times.bz/2012/11/08/maya-leaders-accuse-u-s-capitalgob-of-inciting-ethnic-division/>, accessed 13 February 2013

33 See R.O. Llewellyn, ‘Oil drilling approved for national park in Belize’, 20 November 2012, <http://news.mongabay.com/2012/1120-belize-oil-park-llewellyn.html>, accessed 17 January 2013

34 *Ibid*

35 See General Comment No. 23, *supra* note 24

36 Article 32(2) of the United Nations Declaration on the Rights of Indigenous Peoples

37 See Report of the Special Rapporteur, *supra* note 21, para 71

38 See Report of the Special Rapporteur, *supra* note 21, para 65

allocate 2 percent of the Government[s]....10 percent working interest in the US Capital Energy Production Sharing Agreement to fund projects in the Toledo district, in the event that oil is discovered in commercial quantities".³⁹ The first meeting is scheduled for 22 February 2013, although the agenda for the meeting was not confirmed at the date of submitting this Shadow Report.

- 4.11 The State's obligation in respect of consultations concerning the development of extraction activities also extends to the substance of the final agreement reached.⁴⁰ In particular, where consent is obtained, it should be upon "*equitable and fair*" terms, including "*terms for compensation, mitigation measures and benefit-sharing in proportion to the impact on the affected indigenous party's rights*".⁴¹
- 4.12 The EIA omits these vital elements. In particular, SATIIM has obtained an evaluation of the EIA which highlighted severe flaws in US Capital's plans, including: a violation of the purposes and regulations of the protective designations of the STNP; a failure to elaborate on the serious social and environmental consequences of a spill; the omission of a pre-established oil spill contingency plan or a blowout prevention mechanism; a failure to consider or discuss the potential impact on the offshore marine ecosystem, in particular, the potential flowing of any oil spill down the Temash River and offshore towards Honduras and Guatemala.⁴²
- 4.13 Other significant omissions in the EIA include: no references to any international human rights mechanisms, indigenous customary laws and traditions, or the 2007 and 2010 judicial decisions, despite Principle 15(b) of the Guiding Principles on Business and Human Rights requiring corporations to have in place a due-diligence process to identify, prevent, mitigate and account for their impacts on human rights (which includes indigenous rights⁴³); a failure to adopt codes of conduct to respect indigenous peoples' rights in accordance with relevant international instruments, in particular UNDRIP;⁴⁴ the failure to carry out proposed mitigating steps, such as reaching a prior agreement with the Maya communities on "*rules, regulations, standards and compensation in case of damage to personal property*",⁴⁵ and taking measures to mitigate the socio-cultural impact of the influx of US Capital's labour force on existing institutions and social groups through the introduction of cultural practices alien to locals and

39 Letter from Lisel Alamilla (Minister of Forestry, Fisheries and Sustainable Development) and Joy Grant (Minister of Energy, Science and Technology and Public Utilities) to Juan Choc, Chairman of the Crique Sarco Village, dated 23 November 2012

40 See Report of the Special Rapporteur, *supra* note 21, para 71

41 See Report of the Special Rapporteur, *supra* note 21, para 58

42 Three other assessments into the EIA have reportedly also been carried out by or on behalf of Belizean environmental NGOs, all of which have found the US Capital's proposals to be "*fatally flawed*". See Llewellyn, *supra* note 35

43 See Report of the Special Rapporteur, *supra* note 21, para 61

44 Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, 15 July 2009, A/HRC/12/34, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/145/82/PDF/G0914582.pdf?OpenElement>, para 73

45 Environment Assessment of US Capital Energy Belize Ltd., Exploring Drilling, Testing and Completion Phase_Block 19, p. 186

pressure on existing lifestyles;⁴⁶ the failure to negotiate with the government to set up additional police stations to deal with the potential increase in crime;⁴⁷ and the failure to assess the impact on the existing beliefs and churches of the communities.

- 4.14 The fact that the National Environmental Appraisal Council⁴⁸ accepted US Capital's application on the basis of the EIA without the effective participation of the Maya members *and* in light of these omissions is a further violation of its obligations under Article 27.

Logging concessions:

- 4.15 The government's unwillingness to put in place mechanisms to implement the 2007 and 2010 Supreme Court judgments has led to unregulated logging activities in and around Maya villages. An investigation into rosewood logging in Toledo, led by the Maya Leaders' Alliance, PGTV (a local media outlet) and the Yax'che Conservation Trust, in August 2011 gathered information that Forest Department officials are not only tolerating but facilitating, and even organising, the harvesting of rosewood. This is achieved by distributing 'right to buy' export permits among private buyers, which allow these private buyers to obtain official government stamps on unmarked harvested logs. This is in addition to private buyers placing official government stamps on harvested logs without the involvement of any Forest Department officials. The consequence of these deliberate State actions has been an explosion in the extent of logging in Maya villages by both Maya and non-Maya individuals. This system is very clearly designed to subvert the customary structures surrounding resources use and the allocation of logging rights, in direct contravention of the State's obligations under Article 27. In response to the widespread clearing of rosewood for the Asian market, on 16 March 2012, the government imposed moratorium on the harvesting and export of rosewood with immediate affect, in order "carry out an orderly assessment of the situation on the ground and as a first response to regulate the timber trade occurring in southern Belize."⁴⁹ However, SATHIM reports that illegal logging still continues on Maya traditional lands, continuing the government's violations under Article 27.

B) Consultation with the Maya communities on legislative and administrative measures

- 4.16 Notwithstanding the findings of the Supreme Court and IACHR, the government has not delimited or demarcated any Maya village land nor has it created a mechanism for doing so. An ongoing process of statutory reform, beginning in August 2009 with a United Nations Development Programme-funded 'National Policy on Local Governance', has led to the announcement of proposed Village Boundaries Demarcation laws and a new Alcalde Act. Although the government has been consulting with the Maya communities with respect to the

46 *Ibid* pp. 250 and 263

47 *Ibid* p. 182

48 The National Environmental Appraisal Committee is the governmental body responsible for the evaluation and approval of environmental impact assessments.

49 See [Robin Oisín Llewellyn, 'Belize enacts moratorium on rosewood'](http://news.mongabay.com/2012/0319-llewellyn_moratorium_rosewood.html), Mongabay.com, 20 March 2012, available at http://news.mongabay.com/2012/0319-llewellyn_moratorium_rosewood.html, accessed 13 February 2013

Alcalde Act, which could represent a significant step forward in the formal recognition of Maya customary rights, it has not consulted with the Maya people with respect to the proposed Village Demarcation Act. The State's failure to consult represents a manifest breach of its obligation to protect the Article 27 rights of the members of the Maya communities, in particular, to ensure the effective participation of members of minority communities in decisions which affect them.⁵⁰ This obligation is further informed by Article 19 of UNDRIP, which requires States to consult and cooperate in good faith with indigenous peoples to obtain their free, prior and informed consent before adopting and implementing legislative measures that may affect them, which the State is also failing to fulfil.

- 4.17 The government has recently secured grant funding from the Japanese Social Development Fund via the World Bank for \$2,752,894 USD for improving Children's Health and Nutrition in local Maya Communities in Toledo. The target population of the project is the Maya communities. However, there are no provisions within the project for the recognition of traditional indigenous knowledge and medicine and its related norms, values and practices. In particular, the project seeks to implement changes without finding ways to reconcile both knowledge systems for the overall improvement of the health of indigenous communities. Further, while the project is specifically targeting Maya children, no Mayas have been involved in the decision-making in respect of the implementation of the project. The newly-established non-profit organisation, the Toledo Health Council – the implementing agency – is a politically-constituted body. Some traditional leaders have no knowledge at all of the project and it has not been made clear how it will accomplish its stated objectives or what participatory mechanisms will be put in place for the full and effective involvement of local communities.
- 4.18 The failure to consult and actively involve the Maya communities in the development, determination and implementation of this health project is a further manifest breach of the State's obligations under Article 27 to respect and protect the right of the Maya members to enjoy their culture, as informed by Article 23 of UNDRIP which protects indigenous peoples' participatory rights in such development projects. There is therefore a greater need for respect of how Maya communities are provided access to better health services. To positively change this, the government and state health system must be respectful of the indigenous health system and seek to harmonise the governing norms of both, so that they can complement one another.
- 4.19 **SATIIM and MRG further encourage the Human Rights Committee to recommend in its concluding observations in respect of Article 27 that Belize:**
- 4.19.1 act immediately to cease and prevent all current, and any further, grants of natural resource concessions, including oil, logging, hydroelectricity and road-building;**
- 4.19.2 act promptly to protect the forest in and surrounding the Maya villages of Toledo District and prevent logging in that forest other than in consultation with the Maya or in accordance with Maya customary norms;**

⁵⁰ See General Comment No. 23, *supra* note 24

- 4.19.3 re-open good faith dialogue with the Toledo Maya communities to ensure their full participation in all decision-making processes concerning their lands;**
- 4.19.4 commit, in future dealings with the Maya villages of Toledo, to operate through a principle of free, prior and informed consent;**
- 4.19.5 take steps to involve the Maya community, in accordance with the principles of meaningful consultation, in healthcare decisions that affect them and their distinct culture;**
- 4.19.6 in relation to healthcare decisions affecting the Maya community, pay proper consideration to indigenous medicinal knowledge and traditional healthcare structures;**
- 4.19.7 put in place mechanisms to ensure that the government will consult and cooperate in good faith with indigenous peoples through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing any other legislative or administrative measures that may affect them.**