

Submission to the 17th Session of the Working Group on the UPR

Joint Stakeholder Report Relating to the Examination of Belize March 2013

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.

In line with the mandates of SATIIM and MRG, this Report focuses on the rights of the indigenous Maya people located in the Toledo District of southern Belize. Throughout the Report, the submitting organisations respectfully urge the Working Group to make a series of recommendations to Belize to respect, protect and fulfil the rights of the Maya people.



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1. BACKGROUND AND FRAMEWORK

Scope of international obligations

1.1. Belize is a party to most international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC). Belize has notably not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), and has not signed the Optional Protocols to the ICCPR or ICESCR. Belize voted in favour of the United Nations Declaration on the Right to Development (UNDRTD) in 1986, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.

1.2. Belize is a member of the Organisation of American States (OAS), which adopted the American Declaration of the Rights and Duties of Man (American Declaration) in 1948. Belize has not signed the Inter-American Convention on Human Rights but, as a member of the OAS, is subject to the jurisdiction of the Inter-American Commission on Human Rights (IACHR).

Constitutional and legal framework relating to the protection of Maya land rights

1.3. The Maya of Toledo are direct descendants of the ancient Maya civilisation.¹ Their ancestral territory in the Toledo District is comprised of living, farming, hunting, fishing, and ceremonial areas, which are central to their 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.² Land management is carried out through the village leader, called an *alcalde*, with the consultation of the villagers and a local village council.³ In 1994, the 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 (the 'Maya communities').⁴ Despite its conservational importance, the Maya communities did not learn of the STNP's existence until 1997. Over the last two decades, the Maya communities have been experiencing continuous violations of their 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.

1.4. In 1998, the Maya took a case to the 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*⁵ clearly identified a series of violations of the American Declaration. Included were: violations of the petitioners' right to property⁶ through a failure to recognise their communal property rights over their traditional lands and to delimit, demarcate, title and protect those lands;⁷ 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;⁸ violations of the right to equality before the law, to equal protection of the law, and to non-discrimination⁹ in the failure to afford and protect property rights fully and equally along with other members of the Belizean population;¹⁰ and violations of the right to judicial protection¹¹ by rendering domestic judicial proceedings ineffective through excessive delay.¹²

1.5. Despite the decision of the IACHR, the government did nothing to remedy the situation, explicitly taking the position that the IACHR's report "is not legally binding on Belize."¹³ In 2001, the government 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 business 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, SATIIM learned that the government had issued a permit to US Capital to conduct seismic surveys within the STNP, without the knowledge of

¹ Toledo Maya Cultural Council & Toledo Alcaldes Association, *The Maya Atlas: The Struggle to Preserve Maya Land in Southern Belize*, 3, North Atlantic Books (1997)

² 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); *Maya Atlas*, *supra* note 1, at 19

³ Petition, *supra* note 2, at 13; *Maya Atlas*, *supra* note 1, at 19

⁴ The STNP is also inhabited by the Garifuna community, the Barranco, which, together with the five Maya communities, have a combined population of 1200.

⁵ Report No 40/04, Case 12/053 (12 October 2004)

⁶ Article XXIII of the American Declaration of the Rights and Duties of Man

⁷ Report No 40/04, *supra* note 5, paras 99-135

⁸ Report No 40/04, *supra* note 5, paras 136-156

⁹ Article II of the American Declaration of the Rights and Duties of Man

¹⁰ Report No 40/04, *supra* note 5, paras 157-171

¹¹ Article XVIII of the American Declaration of the Rights and Duties of Man

¹² Report No 40/04, *supra* note 5, paras 172-186

¹³ Statement by Belize Solicitor General to the press following the release of the IACHR's final report in the case of the *Maya Communities of Toledo District v. Belize*, date unknown

the Maya communities. SATIIM 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.¹⁴

1.6. 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*,¹⁵ 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.

1.7. SATIIM 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 Alliance, the Toledo Alcaldes Association and Others v Attorney General of Belize and Others*¹⁶ 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.¹⁷

2. EQUALITY AND NON-DISCRIMINATION

Articles 2 and 7 UDHR; Articles 2 and 26 ICCPR; Articles 2 and 5 ICERD; Article 2 of the American Declaration; Articles 2, 9 and 15(2) UNDRIP; Articles 5 and 6 UNDRTD¹⁸

2.1. The judicial decisions referred to in paragraphs 1.4 to 1.7 above require the government to protect, under the Constitution and American Declaration, the collective rights to property of the Maya communities in the Toledo Districts.¹⁹ However, the government continues to grant leases and resource concessions to third parties, in violation of these judgments, despite it having stated in response to its UPR in 2009 that it would respect the decision of the Supreme Court on the matter.²⁰ 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.²¹

2.2. Under its international obligations, Belize is required 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 this 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. This 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”.²²

2.3. SATIIM and MRG urge the Working Group to recommend that Belize:

2.3.1. 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;

¹⁴ *SATIIM v. Forest Department/Minister of Natural Resources and US Capital*, Claim No. 212 of 2006; <http://www.elaw.org/node/2280>

¹⁵ Claim Nos 171 and 172 of 2007 (18 October 2007)

¹⁶ Claim No 366 of 2008 (28 June 2010)

¹⁷ “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

¹⁸ UN General Assembly, Declaration on the Right to Development, A/RES/41/128, 4 December 1986

¹⁹ Report No 40/04, *supra* note 5, para 162; *Aurelio Cal*, *supra* note 15

²⁰ Addendum to the Report of the Working Group on the Universal Periodic Review, A/HRC/12/4/Add.1, 18 September 2009, para 39

²¹ See para 5 below for more details.

²² *Aurelio Cal*, *supra* note 15, para 113

2.3.2. 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 IACHR;

2.3.3. Provide details of the timeframe in which the government will implement the 2007 and 2010 judicial decisions;

2.3.4. Design and implement a regulatory framework that fully recognises and protects indigenous peoples' collective rights affected by extractive operations;

2.3.5. Provide a system of effective sanctions and remedies to redress violations by both the government and corporate actors of the collective land rights of indigenous peoples, including the Maya;

2.3.6. Put in place mechanisms to ensure that third party corporations, such as US Capital, comply with all applicable laws and respect indigenous rights in conducting their operations.

3. RIGHT TO LIFE

Article 3 UDHR; Article 6 ICCPR; Article 1 of the American Declaration; Articles 7, 20 and 24 UNDRIP

3.1. Maya ancestral territory includes living, farming, hunting, and fishing areas which are a crucial source of subsistence for the Maya communities. The Maya plant crops mostly for their own use in the area surrounding the village centres. Corn is their staple food and is planted twice a year according to traditional *milpa* (slash and burn) and *matambre* (mulch) farming. The Maya also use the land to raise animals and plant rice, beans, and vegetables on a rotational basis throughout the year and permanent crops such as fruit and cacao. In the large expanses of forest surrounding the village centres and agriculture areas, the Maya communities hunt and gather materials to construct their palm thatched roof houses and canoes, and gather plants to be used for traditional medicines. They also fish, bathe, and wash in the rivers and creeks that run throughout their lands.

3.2. By granting leases and resource concessions to third parties without an adequate framework to protect the Maya members against the consequential destruction of their traditional lands and water sources, the Belizean government threatens the very existence and survival of the Maya people. This represents a severe violation of the right to life of the Maya, and their right to be secure in the enjoyment of their own means of subsistence and development.

3.3. In 2012, US Capital cut 3.5 miles of seismic trails in the territory of the Conejo community, despite that land being excluded from a government permit sanctioning the activity.²³ At the request of the Conejo residents, SATIIM retained an independent expert who conducted an assessment of the environmental and social implications of the activity. The results highlight that the cutting of the trail has and will continue to significantly curtail the ability of the Conejo members' rights to subsistence. The damage includes: the cutting of trees and vine used by the Conejo community for food, construction lumber, and rafter-tying; 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 population.²⁴ 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 \$50,000.²⁵ The government has failed to take any action to redress these damages, despite the submission of the report to the offices of the Attorney General and the Ministry of Fisheries Forestry and Sustainable Development.

3.4. Further violations of the right to life of the Maya are anticipated as US Capital prepares for the government-sanctioned exploration (drilling) phase of its oil extraction project near several Maya communities and in the STNP.²⁶ Similar concerns also arise from the logging concessions granted by the government to third parties, and the government's inability to appropriately regulate illegal logging within the STNP.²⁷

3.5. SATIIM and MRG reiterate the recommendations in paragraph 2.3 above and paragraph 5.19 below as they are vital for respecting, protecting and guaranteeing the rights to life of the Maya members.

²³ See paras 5.2 and 5.3 below for more details.

²⁴ Paul Walker, Wildtracks, "Assessing Damages Caused by Seismic Trail Cut Through Conejo Community Lands, pp 6 and 11

²⁵ *Ibid*

²⁶ See para 5 below for more details.

²⁷ See para 5 below for more details.

4. RIGHT TO AN EFFECTIVE REMEDY

Article 8 UDHR; Article 2 ICCPR; Article 6 ICERD; Article 18 of the American Declaration; Articles 27, 28 and 40 UNDRIP

4.1. The non-implementation of the IACHR and Supreme Court's decisions discussed in paragraphs 1.4 to 1.7 above has resulted in severe violations of the rights of the Maya communities.²⁸ There is a manifest failure by the state to ensure the provision of an effective remedy in response to these violations, and to ensure that the competent authorities enforce such remedies when granted. The state's violation of this obligation 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 Guiding Principles on Business and Human Rights.²⁹ No judicial remedy can ever be effective when there is a continuing arbitrary and illegal executive override.

4.2. SATIIM and MRG encourage the Working Group to recommend that Belize take the steps outlined in paragraph 2.3 above to rectify these violations.

5. LAND RIGHTS AND RIGHTS OF PERSONS BELONGING TO MINORITIES

Article 17 UDHR; Article 27 ICCPR; Articles 2, 5(d)(v), 5(d)(vii) and 5(e) ICERD; Article 23 of the American Declaration; Articles 8, 10, 12, 19, 26 to 29 and 32 UNDRIP; Articles 1 to 3, 5, 6 and 8 UNDRTD

5.1. Despite the judicial judgments above, the State continues to grant oil development concessions in the Toledo districts to third parties without consulting with the Maya communities. As explained in paragraphs 1.3 and 3.1 above, the traditional lands are central to the livelihood and cultural survival of the Maya communities, such that the granting of the concessions over their lands continues to severely violate their rights to property, and to enjoy their culture and spiritual practices in community with each other, under international and regional human rights law. It also severely violates the individual and collective rights of the Maya to participate in, contribute to, and enjoy economic, social and cultural development. These violations are explained in more detail below.

5.2. 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 that the government and US Capital had not informed them about these activities. By 8 November 2011, vehicles equipped for seismic drilling had arrived along with a drill-ready tractor.³⁰

5.3. In 2012, seismic survey trails measuring five feet wide were cut in Maya lands, again without their consultation. These lands fell outside the scope of the permit. Further, despite the specific exclusion of Conejo lands in the permit, US Capital cut 3.5 miles of seismic trails in that region. The activity only stopped after the Conejo community and SATIIM publically campaigned to highlight the violation.

5.4. The damaging effects of the trail on the rights to life of the Maya members is outlined in paragraph 3.3 above. The State, having enabled US Capital to inflict these damages, is directly responsible to the members of the Conejo community for failing to protect their rights to property and development, and to enjoy their culture and spiritual practices. Prime Minister Dean Barrow's "drill we will" approach to oil exploration in the STNP demonstrates the authorities' determination to proceed with the proposals, regardless of the flagrant international and regional human rights violations.³¹

5.5. In August 2012, US Capital asked SATIIM to submit its views on their proposed continued exploration. SATIIM submitted its response to US Capital in September 2012. However, on 1 October 2012, the Department of Environment uploaded the EIA onto its website, stating that the EIA had 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.

²⁸ See paras above and below for more details.

²⁹ 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

³⁰ "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>

³¹ "SATIIM will do everything possible to stop oil drilling", News5, 14 February 2011, available at <http://edition.channel5belize.com/archives/48844>

5.6. The government announced that a public consultation on the EIA would take place on 25 October 2012. Two requests by SATIIM and the Maya communities 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 an inconvenient time for the Maya farmers since it was harvest season, and did not allow any time for real discussion. Members of the Maya communities had only one minute of speaking time, and despite the Maya communities having elected SATIIM's executive director to speak on their behalf, the Chief Environmental Officer grabbed the microphone from him. Furthermore, US Capital reportedly stated that the company's sole obligation and participation in the meeting had been to provide a venue, and that the remainder of the consultation was the responsibility of the Department of the Environment.³²

5.7. On 1 November 2012, the Department of Environment reportedly approved the EIA, enabling US Capital to carry out its exploration project in the STNP.³³ US Capital's workers 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.

5.8. The process described above cannot be considered a full and informed consultation with the Maya communities, and fails to meet the state's obligations to ensure the effective participation of indigenous communities in decisions which affect them, and to respect and protect their individual and collective rights to development.³⁵ 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, 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

5.9. 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. The government also manifestly failed to take positive steps to facilitate the effective participation of the Maya communities before and during the meeting on 25 October 2012. These failures highlight a flagrant violation of the rights of the Maya members to their property, to participate in and enjoy their economic, social and cultural development, and to enjoy their culture and spiritual practices. It also violates Belize's undertaking made in response to its UPR in 2009 to "[r]edouble its efforts in favor of the respect of the rights of indigenous peoples, in line with the provisions of the [UNDRIP]".³⁹

5.10. The state's obligation in respect of consultations concerning the development of extraction activities extends to the substance of the final agreement reached.⁴⁰ 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

5.11. 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; and 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

5.12. Other significant omissions in the EIA include: no references to human rights standards or the 2007 and 2010 judicial decisions, despite the requirement to establish a due-diligence process to identify, prevent, mitigate and account for the impact

³² "US Capital says it's G.O.B. who made the rules to EIA Consultation engagement", News5, 31 October 2012, available at <http://edition.channel5belize.com/archives/77827>

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>

³⁴ *Ibid*

³⁵ General Comment No. 23: The rights of minorities (Art. 27), 08/04/1994, CCPR/C/21/Rev.1/Add.5, para 7

³⁶ Article 32(2) of UNDRIP

³⁷ Report of the Special Rapporteur, *supra* note 29, para 71

³⁸ Report of the Special Rapporteur, *supra* note 29, para 65

³⁹ Addendum to the Report of the Working Group on the Universal Periodic Review, A/HRC/12/4/Add.1, 18 September 2009, para 40

⁴⁰ Report of the Special Rapporteur, *supra* note 29, para 71

⁴¹ Report of the Special Rapporteur, *supra* note 29, 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 33

on human rights (including indigenous rights⁴³);⁴⁴ a failure to adopt codes of conduct to respect indigenous peoples' rights in accordance with relevant international instruments, in particular UNDRIP;⁴⁵ 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*";⁴⁶ and mitigating the socio-cultural impact of the introduction of alien practices and lifestyles by US Capital's workforce;⁴⁷ the failure to negotiate with the government to establish additional police stations to deal with the potential increase in crime;⁴⁸ and the failure to assess the impact on beliefs/churches.

5.13. Under an Environmental Compliance Plan dated January 2013, the government granted US Capital environmental clearance for its oil exploration activities, and obliges it to take certain mitigating steps. However, the plan fails to adequately protect Maya rights. The plan requires US Capital to abide by the requirements of "*pertinent landowners*" when traversing private property, provided that they do not conflict with certain other conditions of the plan.⁴⁹ The obligation to rehabilitate land on completion of the project also requires US Capital to comply with the reasonable requirements of the landowner.⁵⁰ No reference is made to the Maya communities or their traditional land rights; their protection under these weak provisions remains unclear. The only implied reference to the Maya communities is made in the "*Miscellaneous*" section, in which US Capital agrees to only *meet* the village councils and alcaldes,⁵¹ and *inform* them of its activities.⁵²

5.14. The fact that the National Environmental Appraisal Committee⁵³ accepted US Capital's application in light of these omissions is a further violation of its obligations to respect and protect the rights of the Maya to development, and to enjoy and practice their culture and religion.

5.15. 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 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*".⁵⁴ The first meeting was scheduled for 22 February 2013..

5.16. At the meeting, the Minister of Fisheries, Forestry and Sustainable Development stated that the government has "*all intentions to proceed with oil exploration in the [STNP].*"

The government considered that it holds all mineral rights under the Constitution, which prevail over all other laws, and that any activities within STNP are carried out in a manner which protects the environment. With regards to the judicial decisions upholding Maya land rights, the government claimed that it would not discuss this matter until after the appeal decision concerning the 2010 judgement. The government noted the Prime Minister's 2 percent production sharing proposal, indicating that there was scope for negotiation, and that the reason for the meeting was to engage in face to face discussions. However, no concrete proposals or steps were provided by the government to demonstrate its plans and proposals.

5.17. The government's unwillingness to put in place mechanisms to implement the 2007 and 2010 Supreme Court judgments has also 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 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. In addition, private buyers place 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.

⁴³ Report of the Special Rapporteur, *supra* note 29, para 61

⁴⁴ Principle 15(b) of the Guiding Principles on Business and Human Rights

⁴⁵ "*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, para 73 available at <http://daaccess-dds-ny.un.org/doc/UNDOC/GEN/G09/145/82/PID/G0914582.pdf?OpenElement>

⁴⁶ Environment Assessment of US Capital Energy Belize Ltd., Exploring Drilling, Testing and Completion Phase Block 19, p 186

⁴⁷ *Ibid* pp 250 and 263

⁴⁸ *Ibid* p 182

⁴⁹ Environmental Compliance Plan, January 2013, Clause 3.01.4

⁵⁰ *Ibid*, Clause 3.09.2

⁵¹ *Ibid*, Clause 3.11.3

⁵² *Ibid*

⁵³ The National Environmental Appraisal Committee is the governmental body responsible for the evaluation and approval of environmental impact assessments.

⁵⁴ 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

5.18. This system is clearly designed to subvert the customary structures surrounding the use of resources and the allocation of logging rights, in direct violation of the Maya communities' rights to property and development, and to enjoy their culture and spiritual practices. 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*."⁵⁵ However, SATIIM reports that illegal logging still continues on Maya traditional lands.

5.19. SATIIM and MRG reiterate the recommendations set out in paragraph 2.3 above encourage the Working Group to make the following recommendations to Belize:

5.19.1. act immediately to cease and prevent all current, and any further, grants of natural resource concessions, including oil, logging, hydroelectricity and road-building;

5.19.2. 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;

5.19.3. re-open good faith dialogue with the Toledo Maya communities to ensure their full participation in all decision-making processes concerning their lands;

5.19.4. commit, in future dealings with the Maya villages of Toledo, to operate through a principle of free, prior and informed consent, and recognise and respect the rights of the Maya communities to decide whether or not to grant such consent to extradition or development projects on traditional Maya lands;

5.19.5. recognise and respect the Maya communities' decision-making processes, which guarantee full and effective participation of the Maya members, including the participation of their appointed representatives, Maya organisations, their lawyers, and appointed experts, at all level of the evaluation and decision-making processes.

5.19.6. 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.

6. CONSULTATION WITH THE MAYA COMMUNITIES ON LEGISLATIVE AND ADMINISTRATIVE MEASURES

Article 27 ICCPR; Article 30 ICRC; Articles 2(2), 5(d)(v), 5(d)(vii), 5(e)(iv), 5(e)(vi) and 7 ICERD; Articles 10, 19, 27 to 29 and 32 UNDRIP; Articles 1 to 3 and 8 UNDRTD

6.1. 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 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 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.⁵⁶ 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 government is also failing to fulfil.

6.2. The government also recently secured grant funding from the Japanese Social Development Fund via the World Bank for \$2,752,894 USD to improve Children's Health and Nutrition in local Maya Communities in Toledo. 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 specifically targets Maya children, no Maya have been involved in the decision-making in respect of the implementation of the project. The

⁵⁵ Robin Oisín Llewellyn, "*Belize enacts moratorium on rosewood*", Mongabay.com, 20 March 2012, available at http://news.mongabay.com/2012/0319-llewellyn_moratorium_rosewood.html

⁵⁶ General Comment No. 23, *supra* note 35

newly-established non-profit organisation and implementing agency, the Toledo Health Council, 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.

6.3. The failure to consult and actively involve the Maya communities in the development, determination and implementation of this health project is a manifest breach of the state's obligations to respect and protect the right of the Maya members to enjoy their culture, and to ensure the Maya communities' participatory rights in such development projects.⁵⁷ 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.

6.4. There is also a general need for the input of indigenous communities to the process of recognition of the diverse cultural histories of Belize, and a willingness on the part of the government to adopt a culturally-sensitive cultural policy following proper consultation. While there are ongoing consultations, one of which was held on 1 August 2012 in Punta Gorda, Toledo, directed towards formulating a National Cultural Policy, there is concern that this process is directed more at the links between the economy, arts/culture and tourism.

6.5. **SATIIM and MRG reiterate the recommendations in paragraph 5.19 above, and urge the Working Group to make the following additional recommendations to Belize:**

6.5.1. **in relation to healthcare decisions affecting the Maya community, pay proper consideration to indigenous medicinal knowledge and traditional healthcare structures;**

6.5.2. **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;**

6.5.3. **take immediate and effective steps to develop and implement a policy which is sensitive to the cultural history of Belize's indigenous and minority groups, following consultation and cooperation with such groups.**

7. RIGHT TO EDUCATION AND CHILDREN

Articles 2, 4 and 28 to 30 ICRC; Articles 2, 5(d)(vii), 5(d)(viii), 5(e) and 7 ICERD; Article 14, 15, 21 to 23 UNDRIP

7.1. Various organisations, including SATIIM, have been advocating for the adoption of a bilingual, intercultural approach to education, which would include mother-tongue teaching as well as culturally-relevant learning methods and curricula.⁵⁸ The CRC has indicated that indigenous children have a "*right to be taught to read and write in their own indigenous language... as well as in the national language(s)*".⁵⁹ The significance of bilingual and intercultural education for indigenous groups generally lies in the need for them to preserve their cultural heritage. Despite some positive moves, such as the support expressed in 2006 by Francis Fonseca, then Minister of Education, Youth and Sports, for bilingual intercultural education,⁶⁰ Belize still has no policy on language, culture or bilingual intercultural education. Belize's educational system remains based only on the English language and utilises teaching methods and curricula that are largely foreign to the indigenous groups of the country. Belize has failed to abide by the recommendation of the CRC in 2005 that it allocate sufficient resources and pay special attention to the needs of indigenous and minority children in order to safeguard their right to education at all levels.⁶¹ Any real movement towards reform has been led by the Maya themselves.

7.2. The discriminatory treatment of the Maya communities has a particularly negative impact on Maya children. Following its consideration of Belize's country report in 2005, the CRC raised concerns over the inadequate resources allocated to meeting the needs of children and the non-implementation of equality law, particularly with respect to vulnerable children, including those from minorities and indigenous groups.⁶² The CRC consequently recommended that Belize prioritise "*effective*

⁵⁷ Article 23 UNDRIP

⁵⁸ "*Developing Belize Through Bi-lingual, Intercultural Education*", First National Symposium on Bi-lingual Intercultural Education (organised by SATIIM, the Mayan Leaders Alliance, the National Garifuna Council and UNICEF), 6-7 July 2007 (copy on file)

⁵⁹ CRC, Recommendations, 34th Session, 15 September – 3 October 2003, para 19(b), available at <http://www.right-to-education.org/sites/r2e.gn.apc.org/files/CRC%20indigenous%20children%20recommendations.pdf>

⁶⁰ First National Symposium, *supra* note 59, section 2.4

⁶¹ CRC, "*Concluding Observations: Belize*", CRC/C/15/Add.252, 31 March 2005, paras 72 to 73

⁶² Committee on the Rights of the Child, Concluding Observations: Belize, 38th Session, 31 March 2005, UN Doc CRC/C/15/Add.252, paras 15 to 16, 25 to 27 and 72 to 73

measures to reduce poverty” among them, in order for such children to enjoy their equal rights.⁶³ Such concerns remain in 2013; in the absence of a governmental strategy to eliminate discrimination against minorities and indigenous children, the State continues to neglect its obligations to take immediate and effective steps to combat discrimination against such persons.

7.3. In 2005, the CRC noted a particular concern regarding the difficulties for indigenous girls to be heard in society, and highlighted that their right to participate and to be heard in proceedings affecting them is often limited.⁶⁴ The CRC recommended that Belize take measures *“to promote respect for the views of children, especially girls, belonging to minorities and indigenous peoples and facilitate their participation in all matters affecting them.”*⁶⁵ However, the State has failed to take adequate steps to secure the participation of Maya girls.

7.4. SATIIM and MRG request that the Working Group make the following recommendations to Belize:

7.4.1. Establish, in consultation with the affected indigenous communities, a system of bilingual and intercultural education utilising culturally-appropriate learning methods and curricula;

7.4.2. Take immediate and effective steps to implement existing anti-discrimination laws, including the adoption of a detailed strategy to eliminate discrimination against children from minority and indigenous groups;

7.4.3. Prioritise resource allocations to protect the rights of children from minority and indigenous groups;

7.4.4. Take immediate and effective steps to promote respect for the views of children, especially girls, belonging to minorities and indigenous peoples, and to facilitate their participation in all matters affecting them.

⁶³ *Ibid.*, para 73

⁶⁴ *Ibid.* para 62(d)

⁶⁵ Concluding Observations, *supra* note 62, para 73