

Observations on the State of Indigenous Human Rights in Light of the Declaration on the Rights of Indigenous Peoples

Belize

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CULTURAL SURVIVAL

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Cultural Survival is an international indigenous rights organization with a global indigenous leadership and consultative status with ECOSOC. Cultural Survival, which is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States, 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 Harvard University and consulted with indigenous and human rights organizations, advocates, and other sources of verifiable information in Belize.

EXECUTIVE SUMMARY

The government of Belize has taken commendable steps to affirm and secure the property rights of that country's Kek'chi, Mopan, and Yucatec Maya peoples' land tenure. But the government has also taken steps that undermine this progress. Involvement of the Inter-American Commission on Human Rights and the UN Special Rapporteur has culminated in a promising ruling by the Supreme Court of Belize in October, 2007. However, the Government must do more to affirm and protect the rights of the Maya people including engaging Maya communities in decisions regarding land and resource use and preventing discrimination and exclusion of Maya.

BACKGROUND

Indigenous Maya peoples have lived in the territory that is now Belize since pre-colonial times. According to the 2000 Belize Census, 24,501 Belizeans (10% of the population) identified as belonging to the Kek'chi, Mopan, or Yucatec groups. The Maya of Belize maintain customary land use and occupancy patterns that are tied to traditional religious and cultural practices and centuries-old land tenure modes. Those practices continue to be threatened by government concessions to oil and logging companies, despite findings by national courts and international human rights organs that the concessions violate their human rights.

1998 PETITION TO THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS

On August 7, 1998, the Indian Law Resource Center and the Toledo Maya Cultural Council presented a petition to the Inter-American Commission of Human Rights against the State of Belize pertaining to land rights of the Mopan and Ke'kchi Maya People of the Toledo district of Southern Belize.¹ The petition claimed that, by granting concessions to oil and logging companies, the state “[failed] to adequately protect those lands, [failed] to recognize and secure the territorial rights of the Maya people in those lands, and [failed] to afford the Maya people judicial protection of their rights and interests in the lands due to delays in court proceedings instituted by them.”² The State responded that it was “unclear” whether the lands under dispute fell within the scope of the aboriginal rights of the Maya people,³ even though it had recognized other traditional land rights in the Toledo district.⁴

The commission found that the government had violated the Maya peoples’ right to property by failing to take effective measures to recognize their communal property right to the lands that they have traditionally occupied and used, and by failing to establish “the legal mechanisms necessary to clarify and protect the territory on which their right exists.”⁵ The commission further found that Belize had failed to include indigenous groups in the decision-making processes that preceded the oil and logging operations, and had violated the right to equality before the law, to equal protection of the law, and the right not to be subjected to racial discrimination. It recommended that the state enact legislation to protect indigenous land rights,⁶ abstain from actions that might threaten the local communities’ claims to these lands,⁷ and repair damage to indigenous lands that resulted from the illegitimate authorization of logging operations.⁸ In its 2004 Final Report, the commission stressed that the government of Belize had

a duty to inform the indigenous communities of any activity that would affect their traditional territories.⁹

2006 APPEAL TO THE UN SPECIAL RAPPORTEUR

The government of Belize failed to implement the commission's recommendations and, in 2006, the Maya Leaders Alliance sought assistance from the UN Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People.¹⁰ The Alliance argued that the government's refusal to adhere to the American Declaration threatened to "further marginalize Maya people through the perpetuation of a pattern of discrimination, infringement, and non-recognition of their rights."¹¹ In addition, it argued that "these acts of the Belize government also violate its obligations under United Nations treaties to which it is a party, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination."¹²

2007 REPORT OF THE UN SPECIAL RAPPORTEUR

The UN Special Rapporteur conducted an investigation in the Toledo district where the Belize government maintained that it had engaged in "a continuous process of informed consultations" with the Maya people and had "already made massive investment to improve the lives and address the concerns of the Maya, in the form of roads, bridges, electricity, water, education, or health."¹³

The Special Rapporteur acknowledged these improvements, but his 2007 report concluded that the government had failed to address the structural problems that are associated with the Mayas' grievances, noting that efforts persisted "to privatize and parcel indigenous communal lands in the framework of the National Lands Act."¹⁴ He further noted that the government had granted concessions to private companies without consulting the Maya peoples and without regard to indigenous traditional land tenure. The Special Rapporteur cited in particular the case of the Sarston-Temash National Park in the Toledo District, where seismic testing and oil exploration began "before suitable consultation procedures had been put in place."¹⁵ Furthermore, the proposed consultations "had failed to meet the minimum requirements called for by accepted international standards, and that in some specific cases they had resulted in manipulation and fostered division among the Maya communities."¹⁶ He also voiced concerns

about threats to the Mayan people's way of life and about the disruption of their customary farming practices that directly resulted from land rights infringements.¹⁷

2007 DECISION OF THE BELIZE SUPREME COURT

The failure of the Belize government to adequately address the grievances of its indigenous peoples also violated the country's constitution. On October 18, 2007, the Belizean Supreme Court issued a decision in a lawsuit filed by the Mayan villages of Conejo and Santa Cruz against the Attorney General and Minister of Natural Resources and Environment alleging that they had failed to recognize, protect, and respect their land rights which are based on the traditional land use and occupation of the Maya people."¹⁸ The complainants further argued that the government's failure to accord the same legal recognition and protection to Maya customary property rights that it extended to other forms of property discriminated against indigenous peoples.¹⁹ Moreover, the communities claimed that the leases, grants, and concessions that the government had issued with respect to Mayan lands did not respect the traditional land tenure practices of the Santa Cruz and Conejo communities and that these acts diminished their ability to perform traditional subsistence and religious practices that are critical to their physical and cultural survival.²⁰

The Belize Supreme Court, ruled in favor of the claimants, holding that their rights to lands based on Maya customary land tenure practices constitute "property."²¹ Moreover, the court ruled that the government had not taken "any meaningful steps to delimit, demarcate or otherwise establish the necessary framework to clarify and protect the lands on which these rights exist" and that "the acts and omissions of the defendants regarding the claimants' rights to and interests in their lands, do not accord with the protective regime of the constitution regarding property."²²

The Supreme Court ordered the government to produce a declaration of the "collective and individual rights in the lands and resources" of the two Maya communities and to recognize the fact that these rights constitute property rights to be protected by the Belize Constitution. In addition, the court declared that the Maya communities possess "collective title to the lands their members have traditionally used and occupied".²³ Finally, the Supreme Court ordered the government to "cease and abstain from any acts that might lead the agents of the government itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value,

use, or enjoyment of the property located in the geographic area occupied and used by the Maya people of Santa Cruz and Conejo unless such acts are pursuant to their informed consent and in compliance with the safeguards of the Belize Constitution.”²⁴

AFTERMATH AND EFFECTS OF THE SUPREME COURT CASE

The current Belize government, which was elected in February, 2008, has begun to engage the indigenous Maya communities by participating in discussions with them and by affirming the Supreme Court’s ruling for all of Belize’s indigenous people.²⁵ Moreover, the government took the commendable step of issuing a directive suspending leasing, permitting, and other land dealings in Toledo, until further notice.²⁶

Within weeks after doing so, however, the government effectively revoked it without notifying the Maya communities. On April 23, 2008, the Solicitor General released a new directive restricting the ban to the villages of Santa Cruz and Conejo and allowing activities under existing permits to resume.²⁷ Since the revocation of the directive, there have been numerous infringements, violations, and expropriations of Maya lands by the government and third parties. For example, the members of the indigenous Maya village of Golden Stream are facing immediate and irreparable harm to their lands and livelihoods due to the unauthorized leasing and bulldozing of village lands by a non-Maya outsider, purportedly acting under a lease issued by the government.²⁸

The affected Maya villages have attempted to engage the government by sending it letters explaining their situations and requesting the directive be reinstated over their village lands, but the government has yet to respond.²⁹ To the contrary, government representatives did not attend the third meeting scheduled on May 14, 2008 with the indigenous Maya communities, and only sent a single Crown Counsel from the Attorney General’s Ministry, who stated “that she did not have authority to make any statements on behalf of the government at that meeting.”³⁰

REFERENCES

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- ¹ Report N° 40/04, Case 12.053. Maya Indigenous Communities of the Toledo District Belize. October 12, 2004.
- ² Report N° 40/04, Case 12.053, 1.
- ³ Report N° 40/04, Case 12.053, 1.
- ⁴ Report N° 40/04, Case 12.053, 1.
- ⁵ Report N° 40/04, Case 12.053, 53.
- ⁶ Report N° 40/04, Case 12.053, 54: “Adopt in its domestic law, and through fully informed consultations with the Maya people, the legislative, administrative, and any other measures necessary to delimit, demarcate and title or otherwise clarify and protect the territory in which the Maya people have a communal property right, in accordance with their customary land use practices, and without detriment to other indigenous communities.”
- ⁷ Report N° 40/04, Case 12.053, 54: “Carry out the measures to delimit, demarcate and title or otherwise clarify and protect the corresponding lands of the Maya people without detriment to other indigenous communities” and to abstain from any actions that might “affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the Maya people.”
- ⁸ Report N° 40/04, Case 12.053, 54: “Repair the environmental damage resulting from the logging concessions granted by the State in respect of the territory traditionally occupied and used by the Maya people.”
- ⁹ U.N. Report of the Special Rapporteur 9.
- ¹⁰ Urgent Appeal to the U.N. Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People, In Regards to Human Rights Violations by Belize. January 2006. The appeal to the UN Rapporteur was prepared for the Maya Leaders Alliance by the University of Arizona Indigenous Peoples Law and Policy (IPLP) Program.
- ¹¹ U.N. Report of the Special Rapporteur 9.
- ¹² Urgent Appeal to the U.N. Special Rapporteur, 2.
- ¹³ U.N. Report of the Special Rapporteur, 8.
- ¹⁴ U.N. Report of the Special Rapporteur, 11.
- ¹⁵ U.N. Report of the Special Rapporteur, 9.
- ¹⁶ U.N. Report of the Special Rapporteur 9.
- ¹⁷ U.N. Report of the Special Rapporteur, 7.
- ¹⁸ Claim No. 171 and Claim No. 172 of 2007, 2-3.
- ¹⁹ Claim No. 171 and Claim No. 172 of 2007, 3.
- ²⁰ Claim No. 171 and Claim No. 172 of 2007, 4.
- ²¹ Claim No. 171 and Claim No. 172 of 2007, 52.
- ²² Claim No. 171 and Claim No. 172 of 2007, 55.
- ²³ Claim No. 171 and Claim No. 172 of 2007, 65-66.
- ²⁴ Claim No. 171 and Claim No. 172 of 2007, 65-66.
- ²⁵ The Indigenous Peoples Law and Policy Program, University of Arizona. “Request for Intervention and an On-Site Visit to the Inter-American Commission on Human Rights of the Organization of American States regarding The Case of *The Maya Indigenous Communities of the Toledo District vs. Belize*, May 29, 2008,” 1.
- ²⁶ The Indigenous Peoples Law and Policy Program, University of Arizona, 1-2.
- ²⁷ The Indigenous Peoples Law and Policy Program, University of Arizona, 2, 6.

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- ²⁸ The Indigenous Peoples Law and Policy Program, University of Arizona, 2.
²⁹ The Indigenous Peoples Law and Policy Program, University of Arizona, 7.
³⁰ The Indigenous Peoples Law and Policy Program, University of Arizona, 7.