PRE-SESSIONAL REPORT TO THE COUNTRY REPORT TASK FORCE ON BELIZE

SARSTOON TEMASH INSTITUTE FOR INDIGENOUS MANAGEMENT & MINORITY RIGHTS GROUP INTERNATIONAL

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The Sarstoon Temash Institute for Indigenous Management (SATIIM) is a community-based indigenous environmental organisation working in the far south of Belize, in a region in the Toledo District that lies between the Sarstoon and Temash Rivers. SATIIM co-manages, with the Belizean Forestry Department, the 41,898 acre Sarstoon Temash National Park. It has been leading the effort to bring the Government to comply with its domestic and international law indigenous rights obligations.

Minority Rights Group International (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.

81 Main Street
Punta Gorda Town, Toledo District
Belize, Central America
Tel: 501-722-0103
Fax: 501-722-0124

Web: www.satiim.org.bz
I. Introduction

1. This submission focuses on Articles 2, 26 and 27 of the International Covenant on Civil and Political Rights. More particularly, it will outline in brief the ways in which the Government of Belize has failed in various ways to meet its obligations under the Covenant through its treatment of the indigenous Maya communities in Toledo, Belize. SATIIM and MRG seek the inclusion of these issues in the List of Issues to be taken up in connection with the examination of Belize by the Human Rights Committee in its 107th Session, to be held from 11-28 March 2013 in New York.

II. Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (Article 2)

2. A number of domestic and regional judicial developments each touch on the situation of the Maya communities in Belize.

3. The Report from October 2004 of the Inter-American Commission on Human Rights in Maya Indigenous Communities of the Toledo District v Belize clearly identified a series of violations of the American Declaration of the Rights and Duties of Man. Included were: violations of the petitioners’ right to property through a failure to recognise their communal property rights over their traditional lands and to delimit, demarcate, title and protect those lands; 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; violations of the right to equality before the law, to equal protection of the law, and to non-discrimination in the failure to afford and protect property rights fully and equally along with other members of the Belizean population; and, last, violations of the right to judicial protection by rendering domestic judicial proceedings ineffective through excessive delay.

4. On 18 October 2007, the Supreme Court of Belize, in Aurelio Cal and Others v Attorney General of Belize and Others, found that the Constitution of Belize, in general terms, protected the collective rights to the traditional lands of the Maya. The Chief Justice ordered that the Government recognise the collective and individual rights of the Santa Cruz and Conejo villages to their traditional lands. He further ordered that the Government determine and demarcate those titles and rights, as well as to cease and abstain from any acts that might affect those lands without informed consent. This expressly included the granting of further concessions for resource exploitation and harvesting and the parcelling of land for private leasing.

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1 Inter-American Commission on Human Rights, Maya Indigenous Communities of the Toledo District v Belize, Report No 40/04, Case 12/053 (12 October 2004)
2 Article XXIII of the American Declaration of the Rights and Duties of Man
3 Supra note 1, paras 99-135
4 ibid, 136-156
5 Article II of the American Declaration of the Rights and Duties of Man
6 Supra note 1, paras 157-171
7 Article XVIII of the American Declaration of the Rights and Duties of Man
8 Supra note 1, paras 172-186
9 Aurelio Cal and Others v Attorney General of Belize and Others, (Consolidated) Claim Nos 171 and 172 of 2007 (18 October 2007)
5. A second decision, on 28 June 2010, by the Supreme Court of Belize in *The Maya Leaders Alliance, the Toledo Alcaldes Association and Others v Attorney General of Belize and Others* reaffirmed the 2007 decision as well 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 has appealed this decision. The matter was heard by the Court of Appeal in March 2011 and the judgement is still pending at the date of this submission. 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 judgement.

6. The Government has failed to properly abide by these decisions, in that it has not taken action to delimit, demarcate and title Maya lands in Toledo and has not stopped granting leases and resource concessions. This reflects a manifest failure to properly implement the rights contained within the American Declaration, and echoed to some extent in the Covenant, and the rights guaranteed under the Constitution of Belize. Further, it represents a failure to abide by the undertaking given by Belize, in response to the 2009 Universal Periodic Review, that it would “respect the decision of the [Supreme] Court on [the] matter.” That the Government has deliberately and repeatedly breached the terms of court-imposed injunctions demonstrates that it has only superficial concern for ensuring the full implementation of Covenant rights and of ensuring a set of truly effective remedies. No judicial remedy can ever be effective when there exists a continuing arbitrary and illegal executive override.

III. Non-discrimination (Articles 2 and 26)

7. A number of judicial decisions have required the Government of Belize to afford protection, under the Constitution and under the American Declaration, to the collective rights to property of the Maya villages in the Toledo Districts. That the Government has failed to recognise these collective rights, while continuing to recognise and even grant individual rights over land, both in general and over the Maya traditional lands, is a clear violation of the principle of equal treatment. Moreover, this failure particularly affects those communities which 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 judgements affirm, “stems largely from the fact that they are Maya and practice the customary land tenure system of their people.”

IV. Rights of persons belonging to minorities (Article 27)

11. See ‘PM expects Maya land case to result in appeals’ Channel 5 News, June 12, 2009 (“...the government certainly is convinced that this issue must be ventilated at the highest level... It is a huge national issue and I believe that no matter which decision the appellate court goes, there will be appeals.”) available at http://edition.channel5belize.com/archives/1448; ‘Mayas win historic case against GOB’ Love FM, June 28, 2010 (“From the onset of the legal dispute, government had stated that it would appeal the case to the highest court, now being the Caribbean Court of Justice”) available at http://www.lovefm.com/n/display.php?nid=12254&fromsrch=1
12. 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
13. The Inter-American Commission found, at para 162 of its Report (*supra* note 1), that Belize had violated the equality provisions of the American Declaration.
14. *Aurelio Cal*, *supra* note 9, para 113
8. The traditional Maya village lands are central to their livelihood and cultural survival. The Maya rely on their land for physical survival. Notwithstanding the findings of the Supreme Court and Inter-American Commission, 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. To date the process has been quite promising, with the Government consulting with the Maya communities, and the proposed Act could represent a significant step forward in the formal recognition of Maya customary rights. The Government has however not consulted with the Maya people with respect to the proposed Village Demarcation Act.

9. State-sponsored activities continue to take place in which logging, oil and hydroelectric concessions are granted to third parties. In mid-October 2011, US Capital Energy began cutting seismic testing trails within the Sarstoon Temash National Park. By 8 November 2011, vehicles equipped for seismic drilling had arrived along with a drill-ready tractor. These activities took place under the authority of a permit issued by the Ministry of Natural Resources on 28 March 2011 (after the 2010 Supreme Court judgement). In 2012, seismic survey trails measuring five feet wide were cut in the village lands of Crique Sarco, Corazon, Sunday Wood, Midway and Conejo. These lands are all beyond the boundaries of the Sarstoon National Park and, thus, fall outside the permit. Further, despite the specific exclusion of Conejo lands written into the permit, the company also cut 3.5 miles of seismic trail there. They only stopped after the leadership of Conejo, with the support of SATIIM, waged an all-out public campaign to highlight the violation. SATIIM is concerned that there is high-level support for oil drilling in the Toledo area.

10. The Government’s unwillingness to put in place mechanisms to implement the 2007 and 2010 Supreme Court judgements 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

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15 ibid, para 116
16 The alcalde system is the traditional governance system of the Maya people of southern Belize.
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.

11. While the process of the parcelling of land to private third parties has abated somewhat since the 2010 judgement, it does continue.

Culture and health

12. 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.

13. 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.

14. There is a greater need for respect in connection with 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.

V. Recommendations

15. SATIIM and MRG recommend, based on the preceding observations, the following:

(1) That the Government act immediately to cease and prevent all current, and any further, grants of natural resource concessions, including oil, logging, hydroelectricity and road-building.

(2) That the Government take immediate steps to stop parcelling traditional Maya village lands and granting them to private buyers and that it allow the Maya system of customary land tenure to govern the system of land rights in those villages.

(3) That the Government act promptly 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.
(4) That the Government take immediate steps to implement the 2007 judgement of the Supreme Court of Belize and delimit, demarcate and title all lands in and around the villages of Conejo and Santa Cruz.

(5) That the Government take steps to delimit, demarcate and title all Maya village lands in the Toledo District in strict accordance with the 2010 judgement of the Supreme Court of Belize, which affirms the 2007 judgement as well as the report of the Inter-American Commission on Human Rights.

(6) That the Government re-open good faith dialogue with the Toledo Maya communities to ensure their full participation in all decision-making processes concerning their lands.

(7) That the Government commit, in future dealings with the Maya villages of Toledo, to operate through a principle of free, prior and informed consent.

(8) That the Government 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.

(9) That the Government in relation to healthcare decisions affecting the Maya community pay proper consideration to indigenous medicinal knowledge and traditional healthcare structures.