

Human rights — Property rights — Recognition of indigenous land rights — Indigenous Maya community in Southern Belize — Nature and content of right to property — Whether Maya people demonstrating communal right to property — Indigenous custom and tradition — Requirement of special measures to protect indigenous land interests — Right to property linked to physical and cultural survival of indigenous people — Nature of State's obligations to respect and protect right — Obligation on State to establish legal mechanisms to clarify and protect indigenous territory — Duty to consult effectively — Belize granting logging and oil concessions to third parties — Environmental damage — Whether Belize further violating right to property — American Declaration of the Rights and Duties of Man, 1948, Article XXIII

Human rights — Right to equality — Right to equal protection before the law — Right to non-discrimination — Whether Belize providing special measures necessary to enable Maya people's exercise of right to property equally with other Belizeans — Fundamental nature of rights — Articles 1(1) and 24 of the American Convention on Human Rights, 1969 — Whether Belize violating Article II of the American Declaration of the Rights and Duties of Man, 1948

Human rights — Right to judicial protection — Maya people commencing domestic proceedings in Belize — Whether delay in rendering judgment unwarranted — Necessity of effective access to courts for protection of fundamental rights — Article 25 of the American Convention on Human Rights, 1969 — Whether Belize violating Article XVIII of the American Declaration of the Rights and Duties of Man, 1948

Treaties — American Declaration of the Rights and Duties of Man, 1948 — Interpretation and application — Right to property — Right to equality — Right to judicial protection — Individual and collective interests of indigenous peoples — Developments in international human rights law — American Convention on Human Rights, 1969 — International Labour Organization Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries — Custom — Other relevant sources — American Declaration of the Rights and Duties of Man, 1948, Articles XXIII, II and XVIII

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MAYA INDIGENOUS COMMUNITIES OF THE TOLEDO DISTRICT
v. BELIZE

(Case 12.053)

*Inter-American Commission on Human Rights**Merits.* 12 October 2004(Roberts, *First Vice-President*; Villarán, *Second Vice-President*;
Fernández Arévalos, Sérgio Pinheiro, Gutiérrez Trejo and
Mélendez, *Commissioners*)

SUMMARY: *The facts:*—The petitioners, the Indian Law Resource Centre and the Toledo Maya Cultural Council, complained that the State of Belize had violated the rights that the indigenous Maya people of the Toledo District of Southern Belize had over certain lands and natural resources under the American Declaration of the Rights and Duties of Man, 1948.

The petitioners claimed that Belize had violated Articles I (right to life), II (right to equality before the law), III (right to religious freedom), VI (right to family and protection thereof), XI (right to preservation of health and well-being), XVIII (right to a fair trial), XX (right to participate in government) and XXIII (right to property) of the American Declaration in respect of lands traditionally used and occupied by the Maya people by granting logging and oil concessions, by failing to recognize and protect their lands and by failing to protect judicially their rights and interests in those lands, causing damage to the natural environment upon which they depended, thus endangering the people and their culture presently and in the future. Belize, a former British colony that became independent in 1981, maintained that it was unclear whether the Maya people had aboriginal land rights¹ and denied failing to protect their lands and rights. It asserted that the petitioners had not established any harm unique to Maya life and culture or amounting to a violation of their human rights. On the contrary it had taken steps to recognize the unique status of Belize's indigenous populations.

On 5 October 2000, the petition was declared admissible and precautionary measures issued. The Commission concluded that Belize had violated Articles XXIII, II and XVIII of the American Declaration and made recommendations.²

Held:—The recommendations were reiterated. Belize was to adopt in its domestic law and implement, with due consultation, measures necessary to

¹ The Government of Belize did, however, in Point 6 of the Ten-Point Agreement of 12 October 2000, recognize that the Maya people had rights to lands and resources in Southern Belize based on their long-standing use and occupancy.

² See paras. 4-6 of the decision.

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demarcate and protect the territory in which the Maya people had a communal property right. Belize was to refrain from any acts that might affect that property until those measures had been implemented and repair the environmental damage resulting from the logging concessions (para. 197).

(1) The American Declaration constituted a source of international legal obligation for all Member States of the Organization of American States, including Belize. Moreover, the Commission could examine any petition claiming alleged human rights violations contained in the American Declaration in relation to OAS Member States not party to the American Convention on Human Rights, 1969 (para. 85).

(2) In accordance with the jurisprudence of the inter-American human rights system, a governing instrument such as the American Declaration, drawn up with due regard to other relevant international law rules, was to be interpreted and applied in the context of international human rights law developments as evidenced by treaties, such as the American Convention on Human Rights and the International Labour Organization Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries, custom and other relevant sources of international law (paras. 86-8).

(3) Upon the available information, the Maya communities of the Toledo District of Southern Belize constituted an indigenous people whose ancestors inhabited the Toledo District prior to the arrival of the Europeans and the territory becoming a British colony and independent State. Since the petition was lodged on behalf of members of an indigenous people, due consideration was to be given to the particular norms and principles of international human rights law governing the individual and collective interests of indigenous peoples, including any special measures appropriate or necessary to give proper effect to such interests as had also been applied by other international and domestic bodies (paras. 89-98).

(4) Belize had violated the right to property under Article XXIII of the American Declaration.

(a) The right to property had an autonomous meaning in international human rights law. It was not limited to those property rights already recognized by States or defined by domestic law but included communal property arising from indigenous custom and tradition. Special measures were needed to recognize indigenous interests in land, any deprivation of which required informed consent under conditions of equality and fair compensation. The right to property also involved the protection of the human rights of a collective whose relationship with the land was the basis for its economic, social and cultural development. Since efforts to resolve Maya land claim issues had failed in domestic courts, there was an obligation to define their rights under international law (paras. 99-120).

(b) The Maya people had demonstrated a communal property right to lands that they had used and occupied since before European colonization for purposes relating to the physical and cultural survival of the Maya communities (paras. 121-31).

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(c) Belize had not guaranteed enjoyment of this right. It had failed to delimit, demarcate and title or otherwise establish the legal mechanisms necessary to clarify and protect the territory on which this right existed. This involved the duty to consult effectively and took into account traditional land use practices and the customary land tenure system (paras. 132-5).

(d) Belize had further violated the right to property under Article XXIII by granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands requiring demarcation or other protection without effective consultations with, and the informed consent of, the Maya people and with resulting environmental damage (paras. 136-56).

(5) Belize had violated the right to equality before the law, to equal protection of the law and to non-discrimination enshrined in Article II of the American Declaration by failing to provide the Maya people with the protections necessary to exercise their right to property fully and equally with other members of the Belizean population. Although Belize had taken some legal measures, it had not taken those necessary to afford the special protection required by this distinct group to guarantee its fundamental right to equality. The fundamental right to non-discrimination was affirmed in Articles 1(1) and 24 of the American Convention on Human Rights (paras. 157-71).

(6) Belize had violated the right to judicial protection enshrined in Article XVIII of the American Declaration due to the unwarranted delay in rendering judgment in domestic proceedings commenced by the Maya people and thereby failing to provide them with effective access to the courts for protection of their fundamental rights. The right to judicial protection was affirmed by Article 25 of the American Convention on Human Rights (paras. 172-86).

The following is the text of the decision of the Commission:

I. SUMMARY

1. This report concerns a petition presented to the Inter-American Commission on Human Rights (the “Commission”) against the State of Belize (the “State” or “Belize”) on August 7, 1998 by the Indian Law Resource Center and the Toledo Maya Cultural Council (the “Petitioners”). The petition claims that the State is responsible for violating rights under the American Declaration of the Rights and Duties of Man (the “American Declaration”) that the Mopan and Ke’kchi Maya People of the Toledo District of Southern Belize (the “Maya people of the Toledo District” or the “Maya people”) are alleged to have over certain lands and natural resources.¹

¹ According to the petition, the Mopan and Ke’kchi Maya people of the Toledo District of Southern Belize are represented by the Toledo Maya Cultural Council, a non-governmental organization, and include the individuals who live in or are otherwise members of the following villages: Medina Bank,

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2. The Petitioners claim that the State has violated Articles I, II, III, VI, XI, XVIII, XX and XXIII of the American Declaration in respect of lands traditionally used and occupied by the Maya people, by granting logging and oil concessions in and otherwise failing to adequately protect those lands, failing to recognize and secure the territorial rights of the Maya people in those lands, and failing to afford the Maya people judicial protection of their rights and interests in the lands due to delays in court proceedings instituted by them. According to the Petitioners, the State's contraventions have impacted negatively on the natural environment upon which the Maya people depend for subsistence, have jeopardized the Maya people and their culture, and threaten to cause further damage in the future.

3. The State has indicated before the Commission that applicable law and the facts presented by the Petitioners are unclear as to whether the Maya people may have aboriginal rights in the lands under dispute, although at the same time it has recognized in negotiations outside of the Commission proceedings that the Maya people have rights in lands in the Toledo District based upon their longstanding use and occupancy of that territory. Concerning the concessions referred to by the Petitioners, the State claims that it has taken steps to suspend, review and monitor logging licenses, and that there has been no oil exploration activity in the Toledo district since 1998. The State also asserts that the Petitioners have failed to produce sufficient evidence that logging and oil concessions have caused environmental or other harm or otherwise violated any of the rights of the Maya people of the Toledo District under the American Declaration. Finally, the State contends that the Maya people have not been denied their right to judicial protection, but rather claims that they have chosen not to pursue domestic litigation to its fullest.

4. In Report No 78/00 adopted by the Commission on October 5, 2000 during its 108th regular period of sessions, the Commission decided to admit the Petitioners' petition with respect to the claimed violations of Articles I, II, III, VI, XI, XVIII, XX and XXIII of the American Declaration and to proceed with consideration of the merits of the complaint.

5. In the report, having examined the evidence and arguments presented on behalf of the parties, the Commission concluded that the State violated the right to property enshrined in Article XXIII of the

Golden Stream, Indian Creek, Silver Creek, San Miguel, San Pedro Columbia, Crique Jute, San Antonio, Na Luum, Caj, San Jose, Santa Elena, San Vicente, Jalacte, Pueblo Viejo, Aguacate, San Benito Poite, San Pablo, Otoxha, Dolores, Corazon, Hicatee, Crique Sarco, Sunday Wood, Conejo, San Lucas, Mabil Ha, Santa Teresa, Jordan, Blue Creek, Laguna, San Marcos, Santa Anna, San Felipe, Boom Creek, Midway, San Marcos and Big Falls.

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American Declaration, and the right to equality enshrined in Article II of the American Declaration, to the detriment of the Maya people, by failing to take effective measures to delimit, demarcate, and officially recognize their communal property right to the lands that they have traditionally occupied and used, and by granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated and titled, without consultations with and the informed consent of the Maya people. The Commission also concluded that the State violated the right to judicial protection enshrined in Article XVIII of the American Declaration to the detriment of the Maya people, by rendering judicial proceedings brought by them ineffective through unreasonable delay.

6. Based upon these findings, the Commission recommended that the State provide the Maya people with an effective remedy, which includes recognizing their communal property right to the lands that they have traditionally occupied and used, without detriment to other indigenous communities, and to delimit, demarcate and title the territory in which this communal property right exists, in accordance with the customary land use practices of the Maya people. The Commission also recommended that the State abstain from any acts that might lead the agents of the State 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 until their territory is properly delimited, demarcated and titled.

7. In the present report, the Commission ratifies its conclusions, reiterates its recommendations and decides to make public the report.

II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY
REPORT NO 78/00

8. On October 5, 2000 during its 108th regular period of sessions, the Commission adopted admissibility report No 78/00 in which it declared that the petition was admissible with respect to the claimed violations of Articles I, II, III, VI, XI, XVIII, XX and XXIII of the American Declaration and placed itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter. In separate notes of the same date, the Commission informed the parties that it had decided to issue precautionary measures pursuant to Article 29(2) of its former Regulations, requesting that the State take appropriate measures to suspend all permits, licenses, and concessions for logging, oil exploration and other natural resource development activity on lands used and occupied by the Maya communities in the Toledo District

until the Commission had the opportunity to investigate the substantive claims raised in the case.

9. By letter dated October 24, 2000, the Petitioners informed the Commission that on October 12, 2000, the State had entered into an agreement with the Petitioners and other Maya leaders in Belize entitled “Ten Points of Agreement”. According to the Petitioners, this agreement resulted from discussions initiated by the Government outside of the framework of the friendly settlement process before the Commission.

10. On February 6, 2001, the Petitioners reiterated a previous request that the Commission conduct an on-site visit to Belize pursuant to Article 18(g) of the Commission’s Statute. In a note dated March 19, 2001 to the State, the Commission requested a meeting with the State’s representatives and the Petitioners to better facilitate a possible settlement of the case and to visit the Maya Indigenous Communities in Belize. By letter dated April 23, 2001, the State accepted the Commission’s proposal and offered May 9 and 10, 2001 as possible dates for the Commission’s visit. In letters dated April 25, 2001, the Commission informed the State and the Petitioners that it accepted the dates proposed for the visit.

11. On May 9 and 10, 2001, the Commission, through its Rapporteur for Belize, Dr Peter Laurie, and members of its Secretariat, traveled to Belize where it held meetings, individually and jointly, in Belize City with the Government of Belize, the Petitioners, and members of some of the Maya communities. The Commission delegation also traveled to Punta Gorda, Belize where it visited the Maya Indigenous Community of Santa Teresa as well as a logging site between Santa Teresa and Midway. During the Commission’s visit, the State presented a written “Preliminary Response” dated May 8, 2001 to the Petitioners’ petition together with maps and other supporting documentation.

12. Following its visit to Belize, the Commission informed the parties by letter dated May 25, 2001 that, based upon their discussions during the visit, it believed that grounds existed for achieving a friendly settlement in the matter. The Commission also provided recommendations for pursuing an amicable settlement of the matter and stipulated that in the event that there was no agreement between the parties by July 19, 2001 to enter into discussions for a friendly settlement, the Commission would proceed to consider the merits of the case and issue a report.

13. In a letter dated June 30, 2001, the Petitioners informed the Commission that pursuant to the Commission’s May 25, 2001 communication, they submitted to the State a proposed framework for the re-initiation of the friendly settlement process on May 7, 2001. They

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also indicated that on June 7, 2001, the State responded with a counter proposal and that there had not yet been agreement on all of the terms of the framework. By note dated July 9, 2001, the State similarly informed the Commission that there had been some progress with settlement discussions between the parties.

14. On July 18 and 20, 2001, the Commission met with the parties in Belize City concerning their friendly settlement negotiations in the case. At that meeting the Petitioners and the State agreed to re-initiate the friendly settlement process under the auspices of the Commission, with the parameters of the agreement set forth in a “Framework to Re-initiate the Friendly Settlement Process” signed by the parties.

15. In notes dated August 16, 2001, the Commission requested confirmation from the parties of their availability for a meeting in Belize on September 4, 2001 in order to continue discussions to implement the Framework to Re-initiate the Friendly Settlement Process. In a responding letter dated August 24, 2001, the Petitioners requested a postponement of the September 4, 2001 meeting.

16. By communication dated December 17, 2001, the Petitioners submitted their response to the State’s May 8, 2001 preliminary observations on their petition and requested that the Commission terminate the friendly settlement process that was re-initiated in July 2001 and issue a report on the merits of the case. In a letter dated December 20, 2001, the Commission transmitted the pertinent parts of the Petitioners’ response to the State with a request for observations within 30 days. In a note dated March 25, 2002, the State presented inquiries to the Commission as to the nature of the response requested.

17. In a letter dated November 5, 2002, the Petitioners reiterated their request that the Commission adopt a report on the merits of the case expeditiously.

III. POSITIONS OF THE PARTIES

A. *Position of the Petitioners*

18. In their initial petition and subsequent observations, the Petitioners have contended that the State is responsible for violations of the rights of the Maya people under Articles I (right to life), II (right to equality before the law), III (right to religious freedom and worship), VI (right to a family and to protection thereof), XVIII (right to a fair trial), XX (right to vote and to participate in government) and XXIII (right to property) of the American Declaration in respect of lands traditionally used and occupied by the Maya people.

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19. In particular, the Petitioners claim that the State has granted logging concessions and oil concessions on the Maya lands without meaningful consultations with the Maya people and in a manner that has caused substantial environmental harm and threatens long term and irreversible damage to the natural environment upon which the Maya depend, contrary to Articles I, III, VI, XIV and XXIII of the American Declaration. The Petitioners also contend that these measures form part of a broader failure on the part of the State to recognize and provide adequate protection for the rights of the Maya people to land in the Toledo District based upon Maya customary land use and occupancy, in violation of Articles II, XX and XXIII of the American Declaration. Further, the Petitioners argue that the State has failed to provide adequate judicial protection through the domestic legal system for their alleged violations of rights regarding lands and resources, contrary to Article XVIII of the American Declaration, due to delays in court proceedings instituted by them.

1. *Factual allegations of the Petitioners*

20. In support of the claims in their petition, the Petitioners have provided numerous factual allegations concerning the circumstances of the Maya people and the land and resources to which they claim rights, together with corresponding affidavit, documentary and other evidence. These allegations relate to four main areas: the traditional use and occupancy by the Maya people of territory in the Toledo District of southern Belize; logging and oil concessions and their impact on the natural environment; lack of recognition and adequate protection of indigenous lands; and unreasonable delay in domestic judicial proceedings.

a. *Traditional occupancy and use of land and resources by the Maya people of the Toledo District*

21. The Petitioners state that people who are identified as Maya have formed organized societies that inhabited the Toledo District of southern Belize and the surrounding region long before the arrival of the Europeans and the colonial institutions that gave way to the modern State of Belize. They also claim that among the historical and contemporary Maya people of the Middle American region encompassing Belize, distinct linguistic subgroups and communities have existed and evolved within a system of interrelationships and cultural affiliations. According to the Petitioners, the alleged victims in this case, who are comprised of individuals who live in or are otherwise members of communities of the

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Mopan and Ke'kchi-speaking people of the Toledo District of southern Belize, are the descendents or relatives of Maya subgroups that inhabited the territory at least as far back as the time of European exploration and incursions into Toledo in the seventeenth and eighteenth centuries.

22. In support of their contentions concerning these and other aspects of the Maya people's relations with the territory at issue in this case, the Petitioners refer to the writings and evidence of historians and other experts who have studied the origins, development and present status of the Maya people in the Toledo District.² The Petitioners also refer throughout their submissions to the 150-page Maya Atlas, which was prepared by the Toledo Maya Cultural Council and the Toledo Alcaldes Association with the assistance of professional geographers from the University of California at Berkeley, and which contains detailed information on the villages and demographics of the Maya people of southern Belize.³

23. Based upon these supporting materials, the Petitioners also provided details of the political organization, land use, land tenure and religious practices of the Maya communities of Toledo, particularly as they relate to the territory that they are said to have occupied and used for centuries. The Petitioners indicate, for example, that under the government structures that evolved under European colonial administrations and have continued as part of the municipal system of the governance of Belize, each Maya village has an elected *alcalde*, or village leader, who oversees community affairs in coordination with other leadership figures and a village council.

² Petitioners' petition dated August 7, 1998, pp. 3-6, paras. 12-22, citing Appendix B.2 (Richard M. Leventhal, *Maya Occupation and Continuity in Toledo* (February 1997), annexed as Exhibit RML1 to the affidavit of Richard Mishel Leventhal, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (No 510)) [hereinafter "Leventhal Report"]; Appendix B3 (Grant D. Jones, *Maya Resistance to Spanish Rule: Time and History on a Colonial Frontier* (Albuquerque: University of New Mexico Press, 1989), pp. 93-4); Appendix B4 (Grant Jones, *Historical Perspectives on the Maya Speaking Peoples of the Toledo District, Belize* (1997), annexed as Exhibit GJ1 to the Affidavit of Grant D. Jones, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (No 510)); Appendix B5 (Richard Wilk, *Mayan People of Toledo: Recent and Historical Land Use* (February 1997), annexed as Exhibit RW1 to the Affidavit of Richard R. Wilk, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (No 510)); Appendix B6 (Second Affidavit of Grant D. Jones, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (No 510); Appendix B7 (Second Affidavit of Richard R. Wilk, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (No 510)) [hereinafter "Wilk Report"]; Appendix B8 (Charles Wright, *Analysis of Forestry Concessions in Toledo District*, at 16, annexed as Exhibit CSW1 to the Affidavit of Charles S. Wright, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (No 510)) [hereinafter "Wright Report"]; Appendix B9 (Bernard Q. Nietschmann, *System of Customary Practices of the Maya in Southern Belize* at 11-12 (July 1997), annexed as Exhibit BN1 to the Affidavit of Bernard Q. Nietschmann, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (No 510)) [hereinafter "Nietschmann Report"]; Appendix B10 (Second Affidavit of Santiago Club at para. 12, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (No 510)).

³ Petitioners' petition dated August 7, 1998, p. 2, Appendix A "The Toledo Maya Cultural Council and Toledo Alcaldes Association, *Maya Atlas: The Struggle to Preserve Maya Land in Southern Belize*" (Berkeley, California: North Atlantic Books, 1997) [hereinafter "Maya Atlas"].