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# MODULE II

## SESSION 3 BELIZE

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# FPIC IN BELIZE

1. BACKGROUND

2. RECAP OF IP RIGHTS IN  
INTERNATIONAL LAW

3. BELIZE'S LEGAL FRAMEWORK

3. JURISPRUDENCE

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# OBJECTIVES

- recap IP rights in international human rights law
- comprehend the overall legal framework governing indigenous peoples in Belize
- analyze the extent to which indigenous peoples' rights have been recognized and protected in Belize
- explore FPIC-related case law in Belize



# BACKGROUND

Belize is a multiethnic society, with four groups of indigenous peoples residing in different parts of the country. These are:

- Mopan Maya
- Q'eqchi' Maya
- Yucatec Maya
- Garinagu



# BACKGROUND

Before colonization, indigenous peoples in Belize were self-governing communities, managing their lands and resources according to their own customary laws and practices. With the arrival of the British in the 19<sup>th</sup> century however, indigenous peoples in Belize were disempowered and marginalized.

- Their lands became Crown Lands.
- Their customary form of collective governance were incorporated into the colonial state as local judges.
- They were denied the right to vote and the right to own land

*Source: Wainwright, Joel, "The Maya and the Belizean State: 1997-2004" Latin American and Caribbean Ethnic Studies*

# BACKGROUND

The situation did not improve in any material way with the creation of the Belizean state. The lands and resources of indigenous peoples continued to be distributed and depleted without their consent. In particular, the Government of Belize continued to grant logging and oil concessions within indigenous lands.

This led to a campaign by indigenous leaders in international fora for the recognition of their rights to correct these historic injustices. The international community, and the United Nations in particular, provided a useful space that led to the development of a declaration that recognized the rights of indigenous peoples as distinct peoples with their own cultural beliefs, histories and philosophies. This declaration was called the **United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP)** and it was adopted by the **United Nations General Assembly on the 13 of September 2007.**

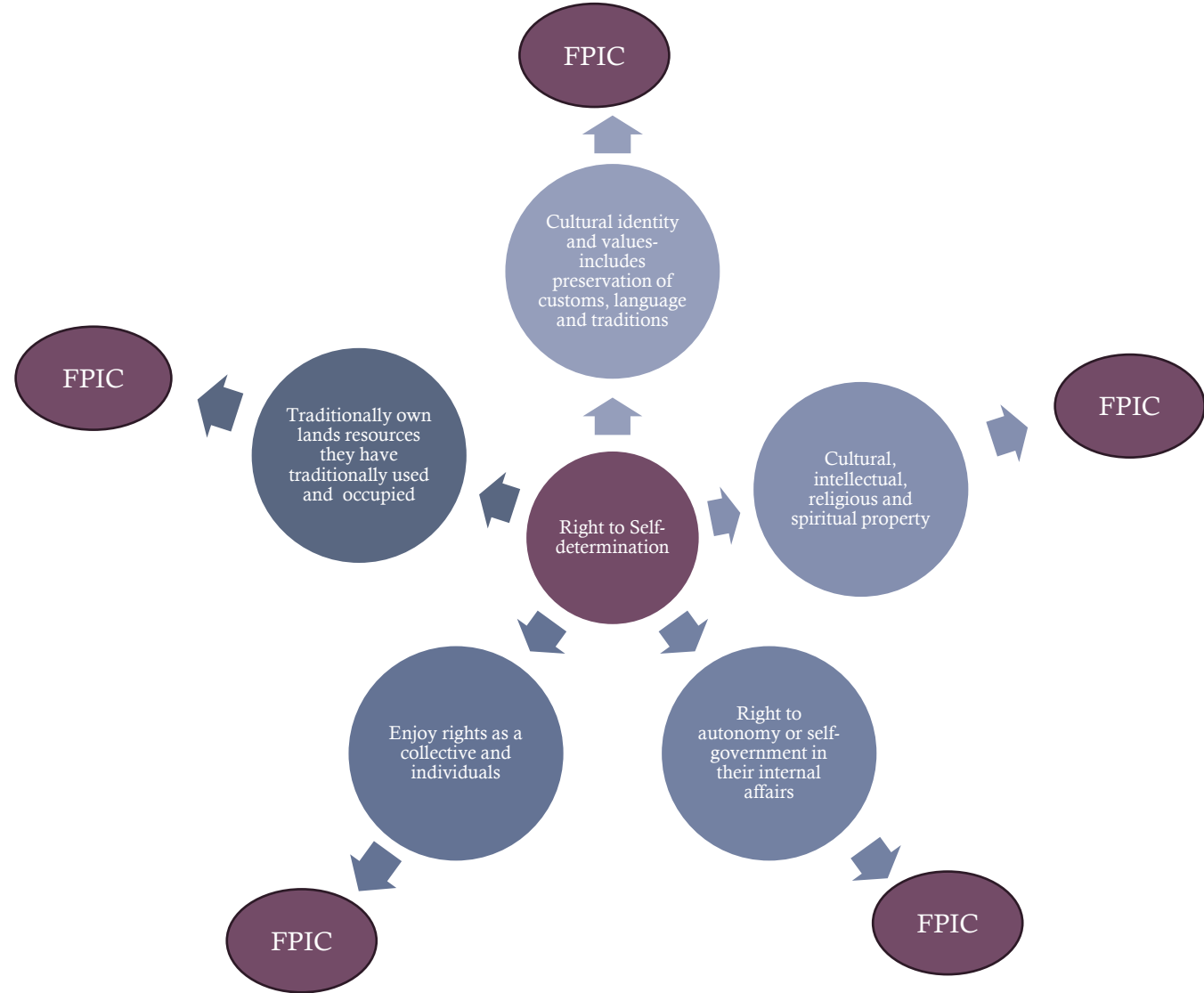
# INDIGENOUS PEOPLE'S RIGHTS

- While the Declaration is not legally binding, it enshrines the basic minimum standards for the protection of indigenous peoples' rights.
- Notably, the UNDRIP recognizes indigenous peoples' right to self-determination and self-government.

“Indigenous peoples have the **right to self-determination**. By virtue of that right, they freely determine their **political status and freely pursue their economic, social and cultural development**.” (UNDRIP, art. 3)

- **Belize voted in favor of the UNDRIP in 2007.** The Government of Belize, thus, has a good faith obligation to refer to the UNDRIP as a guide for laws and policies impacting indigenous peoples' rights.

# OVERVIEW OF UNDRIP





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# **BELIZE'S LEGAL FRAMEWORK**

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# FOUNDATIONS OF BELIZE'S LEGAL SYSTEM

- The foundations of Belize's legal system are not without controversy. Legal systems in the Caribbean are grounded in slavery and colonialism. They were born out of the region's colonial experience in which the law's primary function was to serve the settlers and keep afro-descendant masses brought as slaves in subordination.
- Neither the laws nor the Constitutions of Caribbean countries reflect the plurality of our societies. It is heavily influenced by the British legal system. The Belize Constitution does not reflect the cosmivision, customs or systems of governance of Belize's indigenous peoples. It was not until 2001, when the Constitution was amended, that indigenous peoples were given any recognition.
- The Belizean legal system did not (and does not) readily accommodate indigenous peoples' rights. This has only come about through generous interpretation of rights protected under the Constitution by the courts.

*Source: Antoine, Rose Marie, "Commonwealth Caribbean Law and Legal Systems" Routledge-Cavendish 2008*

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# POLITICAL RECOGNITION OF IP RIGHTS

## 17 July 1999 – MOU

The GOB entered into a Memorandum of Understanding with representative of the Garifuna communities recognizing that the Garifuna people have lived in Belize for almost 200 years. In that Understanding, the GOB committed to **consult the Garifuna representatives on legislative and administrative measures** which may directly affect the Garinagu of Belize. In addition, the GOB also committed to engage in **good faith negotiations on the issue of communal rights** of the Garinagu to certain lands,

## 12 October 2000 – Ten-Point Agreement

In an Agreement, referred to as the Ten-Point Agreement, negotiated between government officials and Maya representatives, the GOB recognized that the Maya People have rights to land and resources in Southern Belize based on their longstanding use and occupancy.

# LEGAL RECOGNITION

- In 2001, Belize amended the preamble of the Belize Constitution to “require policies of state...which protect the identity, dignity and social and cultural values of Belizeans, including **Belize’s indigenous peoples**”.
- The express purpose of the constitutional amendment was stated to be “to **increase the guiding principles** enunciated in the Preamble ... upon which the Nation of Belize is founded.”
- This marked the **first** instance Belize legally recognized the existence and significance of “indigenous peoples” in the country.

# BELIZE CONSTITUTION, CAP 04.

Belize enshrines the principle of constitutional supremacy, as the Constitution explicitly establishes the Constitution as the **Supreme Law** of Belize. [sec. 2 of the Constitution]

The **principle of constitutional supremacy** means that laws, policies and actions that are inconsistent with the Constitution shall be deemed **invalid, null and void**.

A part of the constitutional framework is the protection of fundamental rights and freedoms, which include the right to:-

1. Dignity [**section 3**]
2. Equality and protection of the law [**sections 3 and 6**]
3. Non-discrimination [**section 16**]
4. Property [**section 17**]

# LEGISLATION

- There is no indigenous-specific legislation in Belize.
- The only indigenous groups that have been able to exert some political pressure on the Government of Belize, insofar as legislation is concerned, have been the Q'eqchi' and Mopan Maya peoples, who, using strategic litigation, secured a court order from the Caribbean Court of Justice mandating the Government of Belize to develop legislative and administrative measures to recognize and protect the customary land rights of the Maya people in the Toledo district.
- However, no legislation has yet been developed in recognition of these rights
- Notably, the legislation would only apply to Q'eqchi' and Mopan Maya communities in southern Belize.

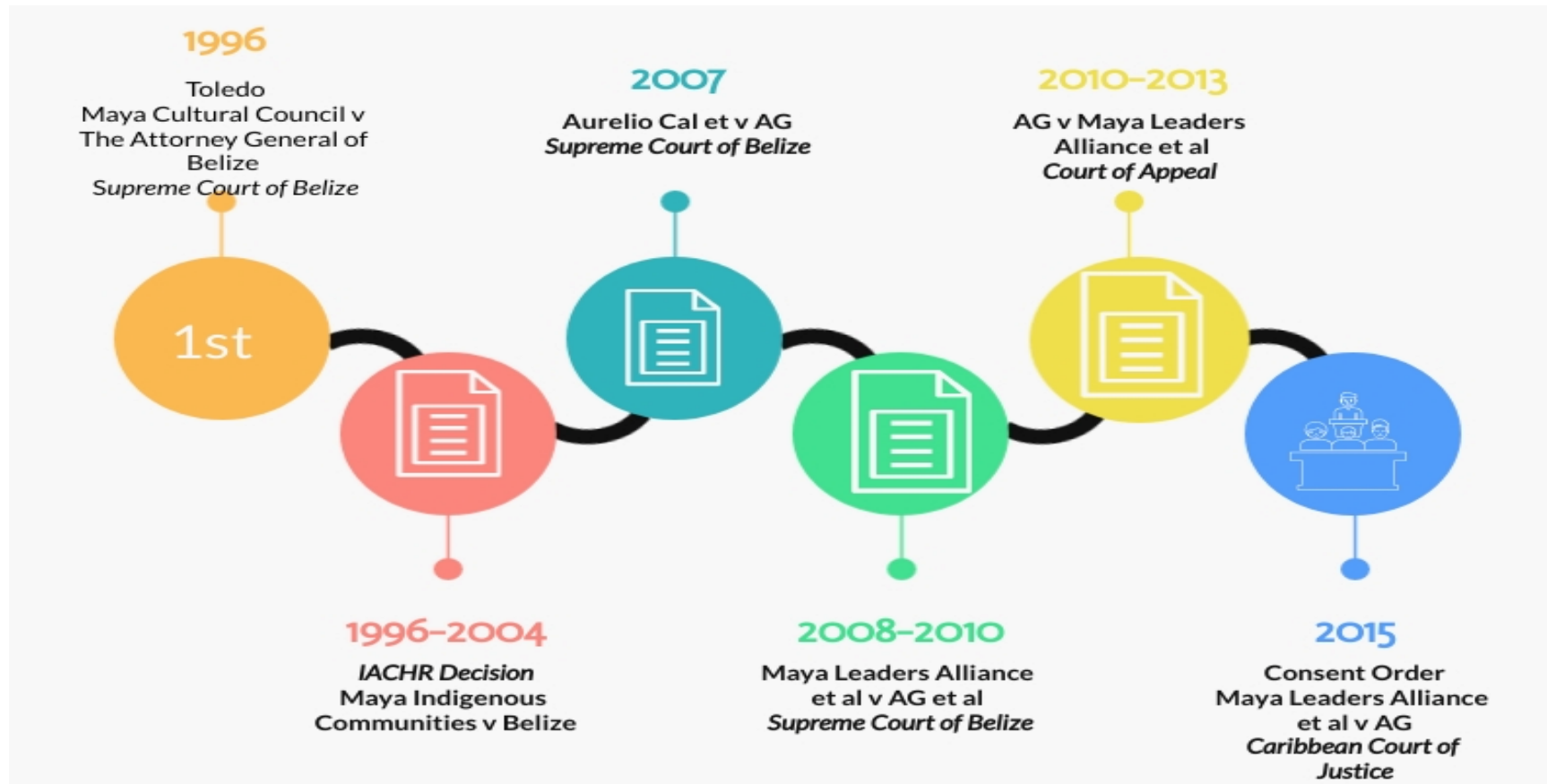
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# JURISPRUDENCE

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# LEGAL RECOGNITION OF INDIGENOUS RIGHTS





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**MAYA INDIGENOUS COMMUNITY OF THE TOLEDO DISTRICT V BELIZE (MERITS REPORT)  
CASE 12.053 REPORT NO./04 OCTOBER 12 2004**

**First Time Land Rights in Belize Legally Recognized.**

**Facts:** Maya communities in Toledo filed a petition with the Inter-American Commission on Human Rights against the State of Belize alleging violations of their rights over lands and resources they have traditionally used and occupied. The communities alleged that the State violated their rights by granting logging and oil concessions and failing to recognize and secure the territorial rights of the Maya people in those lands, among others.

**Findings of the Commission:**

- 1) Maya communities in Toledo have collective rights to the lands they traditionally used and occupied.**

*“These rights have arisen from the longstanding use and occupancy of the territory by the Maya people, which the parties have agreed pre-dated European colonization, and have extended to the use of the land and its resources for purposes relating to the physical and cultural survival of the Maya communities.”*

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**MAYA INDIGENOUS COMMUNITY OF THE TOLEDO DISTRICT V BELIZE (MERITS REPORT)  
CASE 12.053 REPORT NO./04 OCTOBER 12 2004**

**Findings:**

**2.) Breach of the right to property because Belize's system of titling and leasing does not recognize and protect the communal right of the Maya people.**

*“The right to property must be interpreted and applied in the context of indigenous communities with due consideration of principles relating to the protection of traditional forms of ownership and cultural survival and rights to land territories and resources”*

*“a]mong indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community [. . . ] Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival”*

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**MAYA INDIGENOUS COMMUNITY OF THE TOLEDO DISTRICT V BELIZE (MERITS REPORT)  
CASE 12.053 REPORT NO./04 OCTOBER 12 2004**

**Findings:**

**3.) Breach of the right to equality and non-discrimination because Belize has an obligation to take special measures to ensure recognition of the particular collective interest indigenous people have in the occupation and use of their traditional lands and resources.**

*“166. The Commission has also observed that the right to equality before the law does not mean that the substantive provisions of the law will be the same for everyone, but that the application of the law should be equal for all without discrimination. The protection is intended to ensure equality, not identity of treatment, and does not necessarily preclude differentiations between individuals or groups of individuals.”*

In the context of indigenous peoples, this includes the obligation to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

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**MAYA INDIGENOUS COMMUNITY OF THE TOLEDO DISTRICT V BELIZE (MERITS REPORT)  
CASE 12.053 REPORT NO./04 OCTOBER 12 2004**

**Findings:**

**4.) Link between land rights and the right to consultation and consent**

*“the right to use and enjoy property may be impeded when the State itself, or third parties acting with the acquiescence or tolerance of the State, affect the existence, value, use or enjoyment of that property without due consideration of and informed consultations with those having rights in the property.”*

*“The Commission ... observes in this connection that one of the central elements to the protection of indigenous property rights is the requirement that states undertake effective and fully informed consultations with indigenous communities regarding acts or decisions that may affect their traditional territories.”*

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# **AURELIO CAL V ATTORNEY GENERAL OF BELIZE, CLAIM NOS 171 AND 172 OF 2007**

**First case heard by a Belizean court** on the question of indigenous people's rights.

**Claimants:** Maya Villages of Conejo and Santa Cruz

**Facts:** The sought redress for violations of their constitutionally protected rights to the lands they have traditionally used and occupied. In short, they sought to protect the Maya customary land tenure. Claimed breaches of right to property, non-discrimination and equality.

**Findings:**

## **1.) Maya customary Land Tenure exists in Conejo and Santa Cruz**

*Maya villages whose members live, farm, hunt, and fish; collect medicinal plants, construction, and other materials; and engage in religious ceremonies and other activities on lands and waters within defined areas surrounding each village. Their land use and occupation reflect a broader pattern of Maya customary land tenure that is present among Maya communities throughout the Toledo District of southern Belize and has its roots in the millennial inhabitation of the Maya indigenous people of the Mesoamerican region of which Belize is part.*

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## **AURELIO CAL V ATTORNEY GENERAL OF BELIZE, CLAIM NOS 171 AND 172 OF 2007**

### **Findings:**

**2.) Maya villages have interests in lands based on Maya customary land tenure.**

**3.) These interests in land are constitutionally protected under the right to property**

*“An interpretation of the meaning of “property” in the Constitution that includes property arising out of Maya customary land tenure is consistent with the purpose of the Constitution, as described in the preamble: property rights asserted here are of central importance to their identity, dignity, and social and cultural values: [T]he [Inter-American] Commission has emphasized the distinct nature of the right to property as it applies to indigenous people, whereby the land traditionally used and occupied by these communities plays a central role in their physical, cultural and spiritual vitality”*

**4.) These rights were not extinguished with the creation of the Belizean state.**

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**MAYA LEADERS ALLIANCE AND THE TOLEDO ALCALDES ASSOCIATION V THE ATTORNEY GENERAL OF BELIZE, CLAIM 366 OF 2008**

**Filed after GOB confined *Aurelio Cal* only to Conejo and Santa Cruz.**

**Claimants:** All Maya Villages in the Toledo District

**Findings:**

- 1) Maya customary land tenure exists in all Maya Villages in the Toledo District.**
  - 2) Maya customary land tenure is a species of property rights not provided for in the current legal system of Belize and is protected under sections 3 and 17 of the Constitution.**
  - 3) These rights were not extinguished by the colonial settlement or the creation of the State of Belize.**
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## **MAYA LEADERS ALLIANCE AND THE TOLEDO ALCALDES ASSOCIATION V THE ATTORNEY GENERAL OF BELIZE [2015] CCJ 15(AJ)**

**Appeal by both parties from the Court of Appeal to CCJ. However, with the parties' consensual recognition of Maya customary land tenure in Consent Order. The only issue left for decision by court was the relief.**

**Parties:** All Maya villages through their representatives

**Findings:**

- 1) No finding on the claim for breach of property**
  - 2) No breach of discrimination**
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## **MAYA LEADERS ALLIANCE AND THE TOLEDO ALCALDES ASSOCIATION V THE ATTORNEY GENERAL OF BELIZE [2015] CCJ 15(AJ)**

### **3) Breach of Right to protection of the Law – “a broad spectrum right”**

*“right prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty and property” – para. 47*

*“requires relevant organs of the state to take positive action in order to secure and ensure the enjoyment of basic constitutional rights.” – para. 47*

*“encompasses the international obligations of the state to recognize and protect the rights of indigenous peoples” – para. 52*

### **4) Ordered the establishment of a fund to finance the implementation of the Consent Order**

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## MAYA LEADERS ALLIANCE AND THE TOLEDO ALCALDES ASSOCIATION V THE ATTORNEY GENERAL OF BELIZE [2015] CCJ 15(AJ)

### 4.) Remedial Jurisdiction

*“The power thus granted to the courts to provide redress for constitutional infractions confers, and again this bears emphasis, a broad discretion to fashion effective remedies to secure the enforcement of constitutional rights. These remedies may consist of, or include, an award of monetary compensation.” – para 6*

## MAYA LEADERS ALLIANCE AND THE TOLEDO ALCALDES ASSOCIATION V THE ATTORNEY GENERAL OF BELIZE [2015] CCJ 15(AJ)

### 5) Relevance of UNDRIP to the laws of Belize

*“While the UDHR and the 2007 UN Declaration are not binding, they are **relevant to the interpretation** of the Constitution of Belize which in its preamble explicitly recognizes that state policies must protect the culture and identity of its indigenous peoples but also must promote respect for international law and treaty obligations. The preamble of a Constitution cannot be treated as mere surplusage. This Court has recognized the normative functions served by the preamble in the Boyce decision with Wit JCCJ noting that, they “fill the Constitution with meaning reflecting the very essence, values and logic of constitutional democracies in general” and further that “[t]hese normative parts of the Constitution breathe, as it were, life into the clay of the more formal provisions in that document.” - **para. 54***

## CCJ CONSENT ORDER 2015

- The judgment of the Court of Appeal is affirmed insofar as it holds that Maya customary land tenure exists in the Maya villages in the Toledo District and gives rise to collective and individual property rights within the meaning of section 3(d) and 17 of the Belize Constitution.
- The Court accepts the undertaking of the Government to adopt affirmative measures to identify and protect the rights of the Appellants arising from Maya customary tenure, in conformity with the constitutional protection of property and non-discrimination in sections 3, 3(d), 16 and 17 of the Belize Constitution.
- In order to achieve the objective of paragraph 2, the Court accepts the undertaking of the Government to, **in consultation with the Maya people or their representatives, develop the legislative, administrative and/or other measures necessary to create an effective mechanism** to identify and protect the property and other rights arising from Maya customary land tenure, in accordance with Maya customary laws and land tenure practices.
- The Court accepts the undertaking of the Government that, until such time as the measures in paragraph 2 are achieved, it shall cease and abstain from any acts, whether by the agents of the government itself or third parties acting with its leave, acquiescence or tolerance, that might adversely affect the value, use or enjoyment of the lands that are used and occupied by the Maya villages, **unless such acts are preceded by consultation with them in order to obtain their informed consent**, and are in conformity with their hereby recognized property rights and the safeguards of the Belize Constitution.

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## **SARSTOON TEMASH INSTITUTE FOR INDIGENOUS MANAGEMENT (SATIIM) AND OTHERS V THE ATTORNEY GENERAL OF BELIZE AND OTHERS CLAIM 394 OF 2014**

**Claimants:** Maya Villages of Conejo, Crique Sarco, Midway, Graham Greek and SATIIM

**Facts:** Various Maya villages in southern Belize instituted legal proceedings against the Government challenging a licence issued to a multinational company, U.S. Capital Energy Belize Limited to conduct exploratory oil drilling in a national park located on the traditional lands of the Q'eqchi' and Garifuna communities. Public consultations were held by the Department of the Environment for a consultation.

**The Claim:** Relying on the Maya land rights cases and the UNDRIP, the Claimants argued that the licence was unlawful because it was granted without FPIC. The Claimant organization made repeated requests for information that went unanswered. When they finally became aware of the consultation, they were given 20 days to review 300 plus document in technical language. No translation was provided. No simplified language.

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## **SARSTOON TEMASH INSTITUTE FOR INDIGENOUS MANAGEMENT (SATIIM) AND OTHERS V THE ATTORNEY GENERAL OF BELIZE AND OTHERS CLAIM 394 OF 2014**

### **Defence:**

- The GOB argued the FPIC is a non-issue because the Government is the owner of the land.
- The national parks legislation extinguished the rights of the Maya over those lands.
- The Claimants had not proven that Maya customary land tenure exists over that particular area of land, especially as the lands have not been demarcated.

## **SARSTOON TEMASH INSTITUTE FOR INDIGENOUS MANAGEMENT (SATIIM) AND OTHERS V THE ATTORNEY GENERAL OF BELIZE AND OTHERS CLAIM 394 OF 2014**

### **Findings:**

- 1) The Maya Land rights cases settled that Maya customary land exists in the Toledo District.
- 2) It was not an answer that the lands have not been delimited. FPIC is required so long as the land COULD fall within lands claimed by the Maya people.
- 3) Referring to UNDRIP, the court found that Belize is bound to uphold the general principles in international law.
- 4) The Court ruled that the permissions for both oil drilling and road construction in the park were irrational and unreasonable because they were granted without the free, prior and informed consent to the indigenous peoples.
- 5) Consultations under the environmental legislation in sufficient to satisfy FPIC.
- 6) The Court chastised that the requests were not answered.

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## **SARSTOON TEMASH INSTITUTE FOR INDIGENOUS MANAGEMENT (SATIIM) AND OTHERS V THE ATTORNEY GENERAL OF BELIZE AND OTHERS CLAIM 394 OF 2014**

*“it does not appear to be good faith on the part of the Government or the oil company to throw a 300 plus document written in English in highly technical scientific language at these indigenous people and give the agrarian Mayan communities many of whom speak only Mopan/Q’eqchi language twenty days to digest it before the scheduled meeting.” - para. 13*

**Court Orders:** The Court ordered the State to undertake an FPIC process.



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## **JOSE ICAL ON BEHALF OF VILLAGE OF JALACTE AND ANOTHER V THE ATTORNEY GENERAL AND OTHERS CLAIM 190 OF 2016**

**Claimant:** the Village of Jalacte and affected villagers

**Facts:** This case challenged the decision of the Minister Agriculture to clear land, construct a road, and erect several structure over lands claimed by the Maya village of Jalacte. At no time prior to nor after commencing these works did the Government or its contractor seek or obtain the consent of the Village or the individual members whose lands were damaged. After failed attempts to enter into negotiations through an FPIC process, the village and the affected members instituted a claim for damages and restitution of lands compulsorily acquired. In essence, the claim was for compensation for the acquisition and use of their lands without first obtaining prior consent of the villagers of Jalacte.

**Findings:** The court agreed with the village and found that the judgments of the Court of Appeal and the CCJ, especially the Consent Order of the highest court, holds that when dealing with land which has been occupied and used by the Mayans for centuries and which is still used today, the presumption must be that those lands are customary Mayan lands. What follows from this is that the informed prior consent of the affected people must be obtained before the commencement of any project that will affect their land. In this case, the court order damages in approximately six million dollars, together with orders that the lands be returned in vacant possession.

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# REFLECTIONS

1. Legal system in Belize does not easily accommodate indigenous peoples' rights

- Individual rights versus collective rights
- ownership of land rights versus possession/custodian/usufructuary
- land as commodity versus land as cultural identity and survival

2. Partial recognition of indigenous people's rights – the rights of the Garinagu remain especially unsettled

3. The Constitution, though imperfect, has afforded recognition and protection of indigenous peoples rights. The Courts have affirmed that UNDRIP is relevant to the interpretations of the laws of Belize.

