
MODULE 3

FPIC IN BELIZE

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FPIC IN BELIZE

BACKGROUND
GUIDELINES FOR FPIC
IN BELIZE
CASE STUDIES
REMEDIES

OBJECTIVES

- Identity the legal and political tools available to ensure FPIC compliance.
- Understand how to use the different tools at the different stages of the FPIC process
- appreciate the different legal remedies/orders a court may award

REDRESS MECHANISMS

Legal Tools

- legal claim under the Constitution
- legal claim in contract law
- injunctive relief
- withdraw/revoke consent
- complaint to the Ombudsperson
- special mechanism under the CCJ

Political Tools

- complaint to the relevant authorities
- launch media campaign

PRIOR TO FPIC

Where no FPIC is pursued whatsoever, a Village should begin by filing a report or complaint with the relevant authorities. In Belize, this means filing complaint or report with the Ministry of Indigenous Peoples' Affairs through the Office of the Director of Indigenous Peoples' Affairs.

However, it is not uncommon for the relevant authorities to be unresponsive to a complaint, as we saw in the case of Santa Cruz and Jalacte.

Where no remedy/response is provided, the Village may :-

- file a legal claim under the Constitution
- apply for an interim injunction
- invoke the special mechanism under the CCJ
- file a complaint with the Ombudsperson Office

LEGAL REMEDIES/ORDERS

If successful, the court may grant the following remedies: -

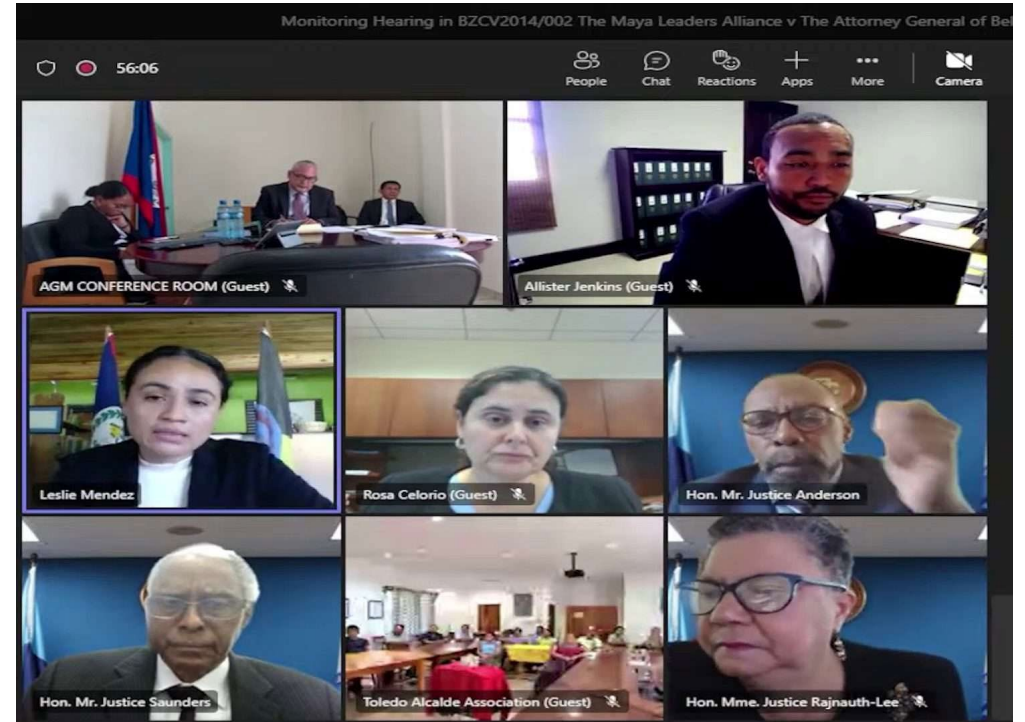
- **Declaration the right has been infringed**- a declaration confirms that a specific act has violated a fundamental right of the village. It also serves to inform public authorities of the acts that infringe rights.
- **Permanent Injunction**- this is an order that indefinitely prevents someone from doing a specific action.
- **Damages** – this is monetary award intended to compensate for any loss or damaged caused by the wrongful act.
- **Restitution** (especially where lands were acquired without the prior consent of the Village) – this remedy secures the return the lands wrongfully acquired

SPECIAL MECHANISM UNDER CCJ

A special dispute resolution mechanism was also created as part of the implementation of the Consent Order primarily to address issues related to FPIC. The mechanism allows villages to submit complaints about encroachments on lands of Maya villages without the prior consent of the village. Referred to as the “Authority”, the mechanism is essentially an expert in indigenous peoples’ rights, appointed by the Court with the agreement of both parties.

The Authority:

1. receives complaints from villages.
2. conducts investigations.
3. Provides opinion on whether the act alleges constitutes an infringement of the right of the village.
4. offers recommendation to the parties on how to resolve the breach.



DURING FPIC

FPIC may be also breached when corresponding standards are not adhered to during the consultative process. In these cases, a village may utilise any of the following options.

- withdraw consent
- claim in contract for breach of agreed plan
- injunctive relief
- mediation
- grievance redress mechanism as per the FPIC Protocol

AFTER FPIC

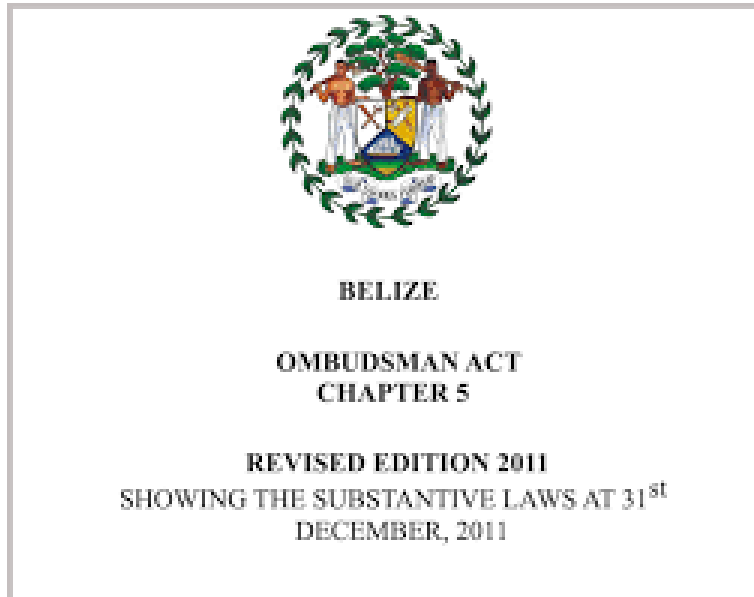
- Ideally, when FPIC results in consent being granted to the Government and the proponent, the parties will formalize their agreement through a Consent Agreement that clearly outlines the rights and obligations of all involved. Consent Agreements should also include a Monitoring Plan and Grievance Redress Mechanism to ensure compliance with the terms.
- The Consent Agreement should contain a mechanism for addressing conflicts, as obligations of FPIC remains valid throughout the entire lifespan of the project—granting consent is just the start.
- **Thus, where there is a breach the Consent Agreement, the first step is to review the Agreement to explore the dispute resolution mechanisms provided for in the Agreement.**



Legal Remedies Available

- Legal claim under the Constitution
- Legal claim in contract
- Monitoring plan
- Grievance redress mechanism
- Mediation
- Petition before the Inter-American Commission on Human Rights

OFFICE OF THE OMBUDSPERSON



The office of the Ombudsperson is established under the Ombudsman Act. His or her powers include:-

1. investigate complaints made against government agencies, officials or employees involving corruption, abuse of power, including discriminatory treatment and other breaches of fundamental rights and freedoms.
1. make recommendations for corrective measures which may be adopted by the officer or authority to remedy the wrongful act.
1. issues annual reports of the complaints made against the various departments.

one of the major weaknesses of the office is its lack of coercive power. As its function is mainly investigative in nature, its recommendations are often ignored by the public officials.

POLITICAL TOOLS



File a complaint with the Toledo Alcaldes Association (or a supporting organization)

A village dealing with a violation of FPIC usually struggles with navigating these issues on their own. In these circumstances, it would be recommended to notify the Toledo Alcaldes Association, the organization comprises of all the elected alcaldes of Maya villages, to obtain support.

File a complaint with the Ministry

Making a report to the relevant ministries is important. This gives the Government the opportunity to become aware of the violation and take corrective action.

Launch a campaign

Media engagement has also assisted in preventing harm to indigenous peoples. There are times when the formal process does not work or where the harm threatened is so egregious that slow pace of formal complaint mechanism may not be effective. In this case, media engagement and public awareness may offer quick reprieve because this forced public officials to prioritize the concern. Companies are also sensitive to bad press and public opinion and so may be motivated to quash any dispute quickly.

EXERCISE

The Maya village of Poite has never had access to residential water use. In August 2023, the Chairperson receives a letter from a government official informing him that Quench Limited wants to construct a water system within their village lands. The letter is addressed solely to the Chairperson, with no other village leader being copied. The letter requests that the Chairperson indicates whether he agrees to have his village participate in a preliminary meeting with the QL to discuss the project.

Advise the Chairman on the appropriate steps to take.

