



MODULE II

SESSION 3: BELIZE

Leslie Mendez

This material was made possible through support provided by the Office of Inclusive Development Hub, Bureau for Inclusive Growth, Partnerships, and Innovation, U.S. Agency for International Development, under the terms of Contract No.7200AA20CA00013. The opinions expressed herein are those of the authors and do not necessarily reflect the views of the U.S. Agency for International Development.

1. Introduction and Jurisprudence for FPIC in

Belize Indigenous Peoples in Belize

Belize is a multiethnic society, home to four indigenous peoples: the Mopan Maya, Q'eqchi Maya, Yucatec Maya and Garinagu peoples. Before colonization, indigenous peoples in the land now known as Belize were self-governing communities, managing their lands and resources according to their own customary laws and practices. With the arrival of the Europeans however, these communities, their governance systems and practices, were pushed to the margins. Their forms of governance were disrupted and at times captured, and their cultural and spiritual practices stigmatized. Regrettably, the situation did not materially improve with the creation of the Belizean state as the lands and resources of indigenous peoples continued to be distributed and depleted without their consent. Indigenous villages continued to witness the extraction forest resources as a result of logging concessions and leases issued by the Government of Belize without even the villages' knowledge, much less permission.

The situation was not unique to the indigenous peoples of Belize, and, progressively, indigenous peoples around the world advocated for the legal recognition of their right to exist as distinct peoples and preserve their cultural identity.

Recognition of Indigenous Peoples' Rights in Belize

Political recognition of indigenous peoples in Belize can be traced back to 1999, with a Memorandum of Understanding between the Government of Belize ("GOB") and the National Garifuna Council, in which the Government recognized 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 committed to engage in **good faith negotiations on the issue of communal rights** of the Garinagu to certain lands. Later, in 2000, the Government also nominally recognized the rights of Maya communities to the lands they have used and occupied in a political instrument, referred to as the **Ten-Point Agreement**.

Despite these political affirmations, only the Mopan and Q'eqchi Maya people of southern Belize have obtained legal recognition of their rights through the courts.

The group was the first to file a case seeking legal recognition and protection of their collective ownership over their lands and resources.¹ The claim was specifically prompted by large logging concessions granted to a Malaysian logging company to extract forest resources on nearly half a million acres of land claimed by Maya villages. The claim, for reasons unknown, was never assigned a hearing date, and as such the Maya people lodged a petition before the Inter- American Commission on Human Rights (IACHR) - a regional human rights organization that considers human rights complaints from individuals in Latin America and the Caribbean.² While the Maya people awaited the decision of the IACHR, the Maya Leaders Alliance and the Toledo Alcaldes Association, in 2000, negotiated and signed the **Ten-Point Agreement** with the Government of Belize, referred to above. In that Agreement, the State “recognize[d] that the Maya People have rights to lands and resources in southern Belize based on their longstanding use and occupation”. The Government of Belize agreed to create a program to address the urgent land needs of the Maya communities, including the surveying and distribution of land, to establish and protect communal lands. Then, in 2001, Belize amended its Constitution (Act No. 2 of 2001) to expressly affirm and recognize Belize’s indigenous peoples. No steps were taken to implement the Ten-Point Agreement.

In October 2004, the IACHR issued its Merit Report and found Belize in violation of the rights of Maya people to the lands and territories they have traditionally and historically occupied.³ This marked the first time indigenous peoples obtained *legal* recognition of their rights. The Commission issued specific recommendations to the State to remedy these violations. None of the recommendations were implemented.

These repeated failures to protect customary land prompted a series of court actions, which resulted in the courts of Belize repeatedly affirming the rights of Maya people and ordering the Government to protect the Maya customary land tenure system.⁴ In particular, the Supreme Court (now referred to as the High Court of Belize) and the Court of Appeal of Belize ordered the Government to take positive steps to develop legislative, administrative, and other measures necessary to effectively incorporate

¹ *Toledo Maya Cultural Council v The Attorney General of Belize*, Action No. 510 of 1996

² See their official website to learn more <https://www.oas.org/en/iachr/Default.asp>

³ *Maya Indigenous communities of the Toledo District of Belize*, Report 40/04, Case 12.053, Annual Report of the Inter-American Commission on Human Rights 2004, O.A.S. Doc. OEA/Ser.L/V/II.122, Doc. 5 rev. 1 (2005).

⁴ *Maya Village of Santa Cruz et. al. v. Attorney General of Belize and Maya Village of Conejo et. al v. Attorney General of Belize*, Consolidated Claim Nos. 171 and 172 of 2007, Supreme Court of Belize, 2007; *Maya Leaders Alliance v. The Attorney General of Belize et al.*, Claim No. 366 of 2008, Supreme Court of Belize, 2010.

the legal and administrative system of Belize. Eventually, this legal battle culminated into what the Caribbean Court of Justice- Belize's highest and final court- called a historic settlement between the parties; the **Consent Order** under which the Government of Belize:-

1. recognizes and affirms that Maya customary land tenure exists in southern Belize and is protected under the Belize Constitution;
2. agrees to adopt measures to identify and protect Maya rights to customary land tenure; agrees to develop measures to create a mechanism to identify and protect Maya customary land tenure property rights; and
3. agrees to abstain from acts, whether by agents of the Government or third parties, that might adversely affect Maya use and enjoyment of their lands **without consultation and consent of the affected Maya villages.**⁵

In the implementation of the Consent Order, the Government of Belize has developed a protocol setting out the national framework for consent processes in Maya villages called **the Maya of Southern Belize Free, Prior and Informed Consent Protocol (the "FPIC Protocol")**. We will look at this instrument more closely in another module.

For now, it is important to bear in mind that: -

1. despite the Memorandum of Understanding, the Ten-Point Agreement, the Constitutional amendment, and the decisions of the court, indigenous peoples' rights in Belize remain largely unprotected.
2. FPIC, nonetheless, has been specifically recognized in Belize.
3. though the cases – described in more detail below - all specifically relate to the Maya people in southern Belize, the principles apply equally to other indigenous peoples in Belize, such as the Garinagu.

⁵ CCJ Consent Order 2015.



Picture of Villages of the Maya Village of Jalacte demanding FPIC

Belize's Legal Framework

Belize is a sovereign democratic state, operating on the principles of a parliamentary democracy based on the Westminster model. The King of England remains the Head of State, represented by the Governor-General. Unlike the British system however, Belize adopts the principle of constitutional supremacy and enacted a written Constitution.

Belize's legal framework is made of the following:-

1. Belize Constitution
2. Legislation/Statute
3. Case-law
4. General legal principles, such as reasonableness, fairness and legality

I. Foundations of Belize's Legal System

As a former colony, the foundations of Belize's legal system are not without controversy. The legal systems in the Caribbean region are grounded in slavery and colonialism, during which the law's primary function was to serve the settlers and keep afro-descendant masses in subordination. Notwithstanding this reality, in the process of decolonization, Caribbean countries largely adopted the British legal system, with the exception of enacting written constitutions. The consequence of this has been that neither the laws nor the Constitutions reflect the plurality of Caribbean societies. The Belize Constitution, for instance, does not reflect the cosmopolitanism, customs or systems of governance of Belize's

indigenous peoples. In fact, as we saw above, it was not until 2001 that the Constitution was amended to give recognition of indigenous peoples in Belize.

It is no surprise then that the Belizean legal system did not (and does not) readily accommodate indigenous peoples' rights. Any recognition has only come about through the courts' application of the **principle of generous interpretation of constitutionally protected rights**.

II. The Belize Constitution

The Belize Constitution provides the overarching framework for Belize's legal system. As mentioned previously, the Constitution enshrines the principle of constitutional supremacy. This means then that any law or government action that is inconsistent with the Constitution is considered unlawful.

For the protection of rights, this is powerful. The Belize Constitution enumerates and cloaks 14 rights and freedoms with constitutional protection. These include the right to equality and protection against discrimination, the right to dignity, the right to protection, the right to privacy and more. Laws enacted by the Government that are inconsistent with these rights can be challenged and struck down by the courts of Belize.

In this sense, the Constitution has been a useful tool and the principal vehicle for indigenous rights recognition in Belize.

III. Laws in Belize

There are no indigenous-specific laws in Belize. The legal framework currently protecting indigenous peoples' rights then is set out under the Belize Constitution and case-law.

IV. FPIC Related Cases in Belize

a. **Maya Indigenous Communities of the Toledo District v Belize (Merits Report) 12.053 Report No/04 October 12, 2004**

While this case was not decided by the courts in Belize, the Commission's findings offered valuable insight into the scope of indigenous people's rights in the country. As discussed below, when the courts in Belize finally considered the claim, the decision of the Commission played a significant role in shaping the outcome.

The petition was filed by the Maya communities in southern Belize against the State of Belize responsible for violating the rights of the Maya people in Belize recognized under the American Declaration of the Rights and Duties of Man. The petitioners sought the recognition of their rights over their lands and natural resources. They claimed that by granting logging and oil concessions in and otherwise failing to adequately protect those lands, among others, the State of Belize had violated their rights. The communities averred that the State's violations had negative impacts on the natural environment upon which they depend, putting in jeopardy their culture, and threaten to cause further damage in the future.

It is important to note that the Commission has long recognized and promoted respect for the rights of indigenous peoples of this Hemisphere. In the Commission's 1972 resolution on the problem of "Special Protection for Indigenous Populations - Action to combat racism and racial discrimination," for example, the Commission proclaimed that **"for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the states."**

Ultimately, the Commission concluded that Belize had violated the property rights of the communities and the right to equality. The Commission found that 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 then recommended that the State:

- i. 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.
 - ii. 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.
- b. **Aurelio Cal v Attorney General of Belize, Claim Nos. 171 and 172 of 2007**

The Commission's recommendations were not implemented, and as such, Maya villages had to resort to the courts of Belize. This time the matter was heard.

The claim was filed by two villages, the Maya villages of Santa Cruz and Conejo of southern Belize against the Government of Belize for breaches of their constitutional rights to the lands and resources they have traditionally used and occupied. Through their claim, they sought to protect the collective manner in which they own and use the lands and resources thereon, which they refer to as Maya customary land tenure. Such tenure is directly connected to their cultural and spiritual practices. The villages claimed that by failing to recognize these rights, the Government of Belize was in breach of the right to property, non-discrimination and equality.

In response, the GOB argued that 1. the Maya people living in southern Belize are not the indigenous Maya that inhabited the area now known as Belize prior to colonization. 2. In any event, even if Maya customary land tenure can be said to have existed, these interests were extinguished upon the creation of the state of Belize.

The court ruled in favour of the Maya communities. It held that Maya customary land tenure exists in Conejo and Santa Cruz. It observed as follows:

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.

This land tenure, the court found, gives rise to interests in land, which are constitutionally protected under the right to property. In this sense, the court adopted a generous and purpose interpretation of the right to “property”. See below:

“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”

Lastly, the court rules that these rights were not extinguished with the creation of the Belize state.

c. Maya Leaders Alliance and the Toledo Alcaldes Association v The Attorney General of Belize, Claim 366 of 2008

The GOB had initially accepted the ruling of the court as set out above. It the relevant authorities that concessions and leases in respect of land within Maya villages in southern Belize ought to cease. Shortly after, however, the government retracted from this position and notified the authorities that this would apply only in Santa Cruz and Conejo.

As a result, another legal action had to be filed, this time listing most of the Maya villages, and seeking a declaration that all Maya villages in southern Belize are entitled to claim their collective rights over their lands and resources. While the question had for the most part been determined in *Aurelio Cal*, the Court allowed the parties to “relitigate” the case and present further evidence. Still, the result was the same.

The Court found that: -

- 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.

The GOB appealed to the Court of Appeal of Belize and then the Caribbean Court of Justice.

d. Maya Leaders Alliance and the Toledo Alcaldes Association v The Attorney General of Belize [2015] CCJ 15(AJ)

The appeals eventually culminated in the Consent Order.

However, the Consent Order did not resolve the claim for damages. As such the Caribbean Court of Justice still delivered a judicial decision on the questions of rights violations. In this respect, the Court found that there was no breach to the right against discrimination and refused to make a finding on the breach of property. Instead, the court said that the inaction of the Government constituted a breach of the right to protection of the law set out under section 6 of the Belize Constitution.

Key principles which emerged from this decision:

Right to Protection of the Law

The right to protection of the law, the court held, prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights. It requires in appropriate cases relevant

organs of the state to take “positive action in order to secure and ensure the enjoyment of basic constitutional rights.” In additionally, and importantly, the court found that in some cases the protection of the law may also be found to encompass *the international obligations of the state to recognize and protect the rights of indigenous peoples*”.

Wide Remedial Jurisdiction of the Court for breaches of Constitutional Rights

Another important principle was that the Court has a wide discretion to award remedies for breaches of constitutional rights. In ordinary cases, the court’s remedial jurisdiction is usually limited to damages or declarations. The CCJ ruled that in cases of constitutional breaches

“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.”

In the case, the court ordered the GOB to create a fund of 300,000.00 to commence the implementation of the Consent Order.

Relevance of UNDRIP to the laws of Belize

Finally, the court affirmed the relevance of the UNDRIP in interpreting the Belize Constitution. The court observed as follows:-

“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.”

e. **Sarstoon Temash Institute for Indigenous Management (SATIIM) and others v The Attorney General of Belize, Claim 394 of 2014**

***This case specifically addressed the application of the right to free, prior and informed consent (FPIC).**

Facts: Various Maya villages in southern Belize within the zone surrounding the Sarstoon-Temash National Park instituted legal proceedings against the Government challenging a licence granted 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. The Department of the Environment set out to conduct public consultations under the Environmental Protection Act. The Claimant organization made repeated requests for information which 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. Ultimately, neither the relevant authorities nor the company sought and obtained the consent of the communities.

The Claim: Relying on the Maya land rights cases and the UNDRIP, the Claimants contended that the licence was unlawful, as it was issued without obtaining FPIC.

The Defence: The GOB argued the FPIC is a non-issue because the Government is the owner of the land. It was argued that the national parks legislation extinguished the rights of the Maya over those lands. In any event, 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.

Findings: The court ruled that the Maya Land rights cases settled that Maya customary land exists in the Toledo District. It was not an answer

that the lands had not been delimited since after all it is the obligation of the state to delimit the lands. In any event, FPIC is required so long as the land COULD fall within lands claimed by the Maya people.

Referring to UNDRIP, the court found that Belize is bound to uphold the general principles in international law. As such, 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.

The Court chastised that the requests were not answered.

“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.” -

Notably also, the court ruled that consultations under the environmental legislation insufficient to satisfy FPIC.

While the court declared the licences unlawful, it did not quash the licences. Instead, the Court directed the Government to undertake an FPIC process.

f. Jose Ical on behalf of Village of Jalacte and another v The Attorney General of Belize and others, Claim 190 of 2016

Facts: This case challenged the decision of the Minister Agriculture to clear land, construct a road, and erect several structures over lands claimed by the Maya village of Jalacte. These activities resulted in damage to the land used by the village collectively as well as individuals. At no time prior to or after commencing the works did the Government or its contractor seek, much less 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 the lands effectively compulsorily acquired.

The Claim: In essence, the claim was the failure to obtain prior consent of the village of Jalacte. The claimants argued that this failure resulted in breaches of the right to property and protection of the law.

The Defence: In response to the claim, the GOB argued that there was no evidence to show that the lands acquired are subject to Maya customary land tenure because these have not been delimited. Consequently, there was no requirement to obtain consent.

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.

Reflections

While there is a compelling argument to be made that Belize's legal system was not originally designed with indigenous peoples in mind, the principle of purposive interpretation of rights, along with the influence of international standards, has enabled the Belize Constitution to offer robust legal recognition and protection to indigenous rights. Through a broad and purposive interpretation of the rights to protection and protection of the law, the courts in Belize have recognized the interest and rights of indigenous people over the lands they have traditionally used and occupied. In addition, the court has also recognized the relevance and applicability of the right to free, prior and informed consent.

Nonetheless, recognition remains partial, as the rights of the Garinagu have not been legally declared. Furthermore, as we will see in the following module, the actual operationalization of FPIC, despite its legal recognition, continues to be contested and fraught with numerous complications.

Requires Reading:

Maya Leaders Alliance et al v The Attorney General of Belize, [2015] CCJ 15 (AJ)

Suggested Material:

Sarstoon Temash Institute for Indigenous Management and others v The Attorney General of Belize and others, Claim 394 of 2024

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

Right to free, prior and informed consultation and consent

