**Expert Mechanism Seminar In Pretoria, South Africa**

**Right to Land under UNDRIP: A Human Rights focus**

September 30th – Oct 1st

What has been the impact of regional and international mechanisms in the recognition of indigenous ownership and control of lands and in resolving land disputes?

MAYA LEADERS ALLIANCE

**Introduction**

I am here as the spokesperson for the MLA and the Toledo Alcaldes Association and I want to begin by thanking the Expert Mechanism for the opportunity to bring an update on the status of Land Rights implementation for the Maya people of Belize

The Maya Leaders Alliance and the Toledo Alcaldes Association have been working on behalf of the Maya people since the mid 1990s and have been the plantiffs in various Maya land rights cases, collectively affirmed as the chosen representatives of the Maya people of Southern Belize. Through strategic litigation and extensive community organizing and outreach, the Maya people have been successful at achieving recognition for their land rights.

**Context**

I want to continue by providing a brief background on how we arrived at Land Rights recognition.

After Three Decades of Testing the Resilience of the Maya People:

**The modern Maya Land Rights struggle** has been a long process of direct negotiations and strategic litigation with and against the Government of Belize by the Maya People. I will not be going into details on the substance of the various cases in the interest of time, I will just say there has been an unbroken chain of decisions in favor of the Maya which started from the IACHR report of 2004; 2007 & 2010 Supreme Court decisions, 2013 Court of Appeals; It culminated in 2015 when a Consent Order and judgement was issued by the Caribbean Court of Justice, the highest domestic court of Belize, affirming the rights of the Maya people to their ancestral lands, territories and resources on the basis of Maya Customary use and occupancy.

Specifically, the CCJ found that the Government of Belize violated the Maya peoples’ constitutional rights by failing to recognize and protect their property arising from Maya customary land use. The CCJ concluded that **its** “Consent Order of April 22, 2015 confirms that Maya customary land tenure rights fall within the ambit of the Constitution of Belize and are protected by the Constitution.” In other words, the Court obligate the Government of Belize to protect those property rights equal to the protection of property rights as guaranteed under the constitution of Belize.

1. Maya customary land tenure exists in the Maya villages giving rise to collective and individual property rights
2. Government shall adopt affirmative measures to identify and protect these rights in consultation with Maya people
3. Government Shall cease and desist from granting any further development concessions until such measures are in place and until they have received the FPIC of the Maya people

Status of Implementation:

* 1. CCJ retained supervision, there continues to be hearings and in-camera meetings before the CCJ, 4 years after the CCJ order was issued,
	2. These hearing have addressed issues including where the Government of Belize has not been meeting court-ordered deadlines or obligations, and the court becoming increasingly concerned with the Government delays and flouting the rule of law

While there has been significant delays in implementaton I am please to report there have been a number of positive developments over the last eight months.

**Consultation**

In December 2018, the TMLRC and the Petitioners were able to arrive at an Agreement outlining the process for addressing a number of issues involved in implementing the CCJ Consent order and related human rights guarantees. This could be thought of as a road map for implementation.

Among other things, **the Agreement contemplates creation of an overall FPIC protocol, which is also being developed in consultation with the Maya**. The Maya people themselves back in 2009 developed their own Maya Consultation Framework which is now being adopted as the basis for this new Belize FPIC protocol.

**Maya Customary Land Rights Policy**

Between July 2018 and February 2019, the **TMLRC** developed a Maya Customary Land Tenure Policy for Southern Belize with input from the Maya people. The policy has been submitted to the Ministry of the Attorney General for review. The TMLRC has committed to continue the dialogue if there are any substantial changes proposed before it is advanced to Cabinet.

**Delimitation, demarcation and titling process**

The Agreement outlines the process for auto delimitation of areas being used and occupied by Maya villages in accordance with their customary land tenure. We have outlining overall exterior boundaries of our entire territory and the GOB has agreed to under go an exercise to deliver an inventory of all third party interests. A methodology for the village auto delimitation process has been developed collaboratively, and is currently being reviewed by the Maya. The only set back in this negotiation came as result of the government demanding proof of consent for community engagement in the autodelimination exercise and particpation in giving consent- they required that the Maya people show proof of citizenship. To this we aregued that this is not a self determined process and not in keeping with the Maya customary process of decision making.

As guided by the December agreement the GOB has agreed to jointly write Legislation will be required as part of the implementation process. We have had only one session so far to tease out the legislative headings and issues this new law will consider.

A pilot project for demarcation of Maya village lands will take place to test the adequacy of the proposed legislation and enable any needed changes to be identified and resolved prior to presenting the draft legislation to Cabinet for introduction in the Assembly. A methodology for this process is currently being developed and consulted between the TMLRC and the Maya.

**Non-interference with Maya use and occupancy**

In August 2018, the GOB and the Maya agreed upon a Dispute Resolution Framework to address concerns and alleged violations of paragraph 4 of the CCJ Consent Order, where the court order a cease and desist, since unfortunately incursions have continued to occur. The court specifically ordered that an attority to handle these arising disputes be appointed by the State in mutual collaboration with the Maya.

In January of this year, the GOB suggested Prof. Dinah Shelton for this position, and the we agreed to her appointment. Prof. Shelton provided procedural guidance to us in March, and the first processes concerning current interferences with Maya lands were filed in early April. However, by May Professor Shelton vacated this position due to medical issues. The new attority who is currently being appointed, is Professor Rosa Celario of George Wshington Univeristy. The Maya and the GOB are optimistic that this framework will serve as an effective means of ensuring compliance with paragraph 4 of the CCJ Consent Order.

**Funding**

We have submitted a concept note for a joint application to the International Land and Forest Tenure Facility (“ILFTF”) for funding for the activities outlined in the agreement and are hopeful we can initiated the demarcation process in January of 2020.

**Following with the theme of this session I would now like to focus my presentation specifically on how the Maya have used International Human Rights Mechanism and the significant impact they have had on our success and how it continues to guide the implementation process.**

This series of litigation, and the struggle for implementation since the final decision on the merits, gives a unique perspective for the impact that regional and international mechanisms can have on indigenous ownership and control of land. For the Maya people, these impacts have been three-fold:

**(1)** international instruments and the recommendations of a regional human rights mechanism were essential persuasive authority to guide our domestic courts in how to interpret the Belize constitution under a human rights lens;

**(2)** the continued diligence and review of both regional and international human rights mechanisms have been critical in keeping the Maya struggle for land and life in the purview of the global community, thereby keeping up political pressure on the Government of Belize to meet its obligations;

**(3)** the U.N. Declaration, and the valuable interpretation of this document by the many regional and international mechanisms have been vital in grounding the Maya people’s negotiation strategies with the Government of Belize since the 2015 decision.

Regional and International Human Rights Standards as Interpretive Tools Utilized by Belize’s Domestic Courts:

Although it’s not the most instinctive route, the most significant way that regional and international mechanisms have impacted the recognition of Maya ownership and control of their land is through the domestic courts of Belize.

Parallel to a similar development in the international community, Maya people and their chosen representatives began seeking creative methods leading up to and during the turn of the 21st century to utilize emerging human rights norms and extend them to protect aspects of their indigenous identity and self-determination. After experiencing failure of even basic recognition in the domestic courts of Belize in 1997, we decided to bring a petition in front of the Inter-American Commission on Human Rights. This petition alleged, amongst other things, that the Government of Belize was violating numerous articles of the American Declaration on the Rights and Duties of Man (Arts. I, II, III, VI, XI, XVIII, XX and XXIII) by failing to recognize and secure the territorial rights of the Maya people in their land, by granting logging and oil concessions on those lands, and by failing to afford the Maya people judicial protection of their rights and interests in those lands.

However, even after a favorable decisions for the Maya people by the Inter-American Commission in 2004, and subsequent specific recommendations by the Commission on how the Government of Belize should avoid these violations--and even after attention from numerous other international mechanisms--little was done by the Government to actually effectuate meaningful change on the very systems that were continually impacting our rights to our land. Fortunately though, what had changed in the meantime was a legitimate access to domestic courts.

In 2007 and 2008, the Maya people came together again to bring domestic litigation over violations of the Belize Constitution for the Government’s failure to protect Maya land rights. It was these cases that went all the way up to the Carribean Court of Justice and affirmed in 2015 the existence of, and requirements of protection for, Maya lands. What is most interesting for this presentation today is not the fact that it required domestic courts to recognize and protect Maya lands, and that review by regional and international mechanisms were insufficient, what is most interesting is what happens when you look into the content of the domestic courts decisions.

The lower courts, whose decisions, again, were affirmed by the Caribbean Court of Justice, made it clear that aside from obligations under the Belizean Constitution, the Government also had obligations that arose from international law: whether that be from the decision by the Inter-American Commission on human rights, international instruments ratified by Belize, or under developing customs expressed through such aspirational documents as the United Nations Declaration on the Rights of Indigenous Peoples. What is more, the lower courts ruled that even absent a direct enforcement of these international obligations, these obligations--particularly those adopted in the Inter-American Report--are useful tools for interpreting the Government’s own obligations under the Belize Constitution.

This is the real strength of regional and international mechanism’s impact on indigenous ownership of land, to establish persuasive authorities that can be cited by indigenous advocates and utilized by domestic courts as a lens under which it views indigenous rights and the engagement of indigenous communities with the broader society.

The Value of the U.N. Declaration and Regional and International Mechanisms since the 2015 CCJ Decision:

Aside from utilizing international norms in domestic litigation, the Maya people have been consistent in grounding their approach to ongoing negotiation over the implementation of Maya Land Rights in the U.N. Declaration. The Declaration is a globally accepted minimum standard for correcting the historical wrongs suffered by indigenous peoples. The Maya people in leaning on to the Declaration as a guiding framework have pushed the government of Belize to come to terms with the need to engage in a mutual partnership leading to the joint drafting of the Maya Land Tenure Policy, which I would like to read a section of:

“The GoB is committed to moving forward with open and transparent dialogue with the Maya people and to jointly develop and implement structured, collaborative actions focused on guaranteeing and ensuring the exercise and enjoyment of their rights, as indigenous peoples and as citizens. Promptly resolving these issues is a matter of respect for fundamental constitutional rights and the rule of law; firmly in the public interest; and a measure of good governance, sustainable development, and democracy.”

Our methods for utilizing the Declaration as a Minimum Standard:

**The Maya people did not take up litigation** because they believe that the law will fix their historical suffering. Litigation was understood to be a strategy to buy time, because it is accepted that colonial laws must reconcile with the original laws of indigenous lands.

While the Maya people were focusing and ultimately secured a favourable court decision, the leaders were already looking into the future. Some key areas of focus included:

· Strenghtening the Maya system of traditional governance

· Applying the Maya language in the functions of the organization

· Revitalizing efforts to care for natural resources, especially forest produce

· Joining thoughts on building a Maya economy

**The priorities above**, put simply, say that we must make our own decisions using our own ways; we must all understand fully what we decide on in our own language; we must be responsible for our lands and resources; we must create opportunities for our people based on or own priorities. It is the experience of the Maya people that the State will act to weaken the abilities mentioned above. It has attempted to coerce and assimilate the Maya traditional system of governance; demand that English be the language of communication; it has acted on the economic inequality of the Maya etc. The Maya people continues to remind the State of the global standards established under UNDRIP, and in this case specifically Art. 4, 11, 18, 19, 23.

The consistent application of UNDRIP in the day to day reality of the Maya people’s negotiated space within the State has resulted in the Maya people pushing for mutual partnership and respect. This is the spirit that is now driving the development of the Agreement, the Auto-Delimitation process, the Maya Land Tenure Policy, hopefully soon, the development of legislation.

**In closing**, I want to emphasize that international law, and the Declaration in particular have a pivotal part of the progress that the Maya people have so far enjoyed, but perhaps what is important is for indigenous peoples themselves to adopt the meaning of the Declaration in their own context, in their own realities, in their own language. So that, when states rely on such declarations, it would be meaningful to the people that it is being applied for.

Second, I want to emphasize that we have seen that nothing happens over night and that perhaps the greatest threat has been indigenous peoples frustration with years and years of litigation yet even with positive court decisions the implementation itself becomes painstakingly slow. What this does is threaten the unity and hope amongst the communities. One of the reasons we have been able to maintain our communities resilience is because of the friends of the Maya people who have given endless hours of time, energy, and research to support our efforts.

And finally I want to echo what one of our colleagues here reiterated, Lilia spoke yesterday of the importance to assemble the experiences of indigenous people. But perhaps thinking of shared experiences in the sense that we build our support around instances where there has been some progress, because we can learn and borrow significantly from the experiences of one and other, while still ensuring that indigenous peoples know that they are not alone—that this is global effort.

Thank you for your time.