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**Submissions by the Maya Leaders Alliance and the Toledo Alcalde Association on  
“Protected Areas and Indigenous Peoples’ Rights: the Obligations of States and  
International Organizations” for  
the United Nations Special Rapporteur on the Rights of Indigenous Peoples**

**22 March 2022**

**Executive Summary**

The Maya Leaders Alliance (MLA) and the Toledo Alcalde Association (TAA), through the American Indian Law Clinic at the University of Colorado Law School, submit this report to the United Nations Special Rapporteur on the Rights of Indigenous Peoples for consideration to be included in his 2022 report concerning lands and resources that have been removed from indigenous peoples' control for conservancies, climate change programs, national parks, game reserves and cultural heritage protection. This report is intended to inform the Special Rapporteur of developing situations between Maya communities and the government of Belize which threatens the Maya communities' rights to their lands and resources.

Even with the favorable court decisions of *Aurelio Cal v. Attorney General*<sup>1</sup> and *Maya Leaders Alliance v. Belize*,<sup>2</sup> the Maya people of Belize continue to encounter threats from the government and third-party actors. The Maya people currently face barriers to participation and free, prior, and informed consent on the management of areas within Maya communities. For example, Indian Creek village still faces conflicting claims to its communal lands, with the government of Belize facilitating the sale of village lands to Flora and Fauna International to convert into a private protected area. Further, the government has maintained the position, contrary to domestic court orders, that all protected areas within Maya communities are national lands. As a result, the government has unilaterally finalized and published a draft of its Free, Prior and Informed Consultation Protocol (FPIC Protocol) without input from the Maya people or their chosen representatives.

Finally, while programs like REDD+ in Belize have made efforts to include the Maya people's input into the national strategy, there is an absence of political will to concretely advance such input. This chronic position of the government has led to the Maya people feeling

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<sup>1</sup> *Aurelio Cal et al. v. The Attorney General of Belize*, Caim No. 171, [2007] S. Ct. of Belize at ¶ 31(72).

<sup>2</sup> *The Maya Leaders Alliance v. The Attorney General of Belize*, CCJ Appeal No. BZCV2014/002, [2015] CCJ 15 (AJ).

that these national conservation and climate change initiatives are designed to “placate” the Maya and not allow for meaningful inclusion in the decisions that impact their customary lands and rights with respect to these lands.

## **Protected Areas and Conservation**

### **(a) Indian Creek**

Of particular importance deserving attention of the Special Rapporteur is the matter at Indian Creek village. Indian Creek village is a Q’eqchi’ Maya village located in the Toledo District of Belize. Indian Creek was a named party in the Caribbean Court of Justice (CCJ) decision. The CCJ held that Maya customary land tenure is a protected form of property under the constitution of Belize and that the government of Belize has a legal duty to protect these property interests from encroachments by itself or third parties.<sup>3</sup> In the Consent Order issued by the CCJ, Belize is to refrain from any act that adversely affects the enjoyment or use of lands that are used or occupied by Maya villages. This includes any act either by agents of the government or by third parties, including private protected areas, acting with the leave of the government.<sup>4</sup>

Indian Creek faces substantial risks to their communal lands in the name of conservation. Despite the 2015 Consent Order, third parties have claimed 12,000 to 13,000 acres of lands used and occupied by the Indian Creek village which interferes with Indian Creek’s enjoyment of those lands.<sup>5</sup> In a recent development, in late 2021 Flora and Fauna International (FFI) recently purchased over 12,000 acres in an area used and occupied by Indian Creek village. FFI purchased this land with the approval of the government of Belize and without consultation or consent from the village. Since this purchased, FFI has posted privately hired rangers to police the area and keep villagers out. Such action completely denies the Indian Creek village of the traditional use of their lands and resources that are critical to the village’s cultural survival.<sup>6</sup> FFI is an international organization whose patrons include Prince Williams and whose President is Princess Laurentien of the Netherlands, the former of which visited the area without the consent of the village on March 19, 2022.<sup>7</sup>

Such “fortress conservation” was condemned by the Special Rapporteur on Indigenous Peoples in 2016.<sup>8</sup> The act of excluding indigenous peoples from their customary land in the name of conservation invokes multiple human rights violations and infringes the notions of free, prior, and informed consent as articulated in both the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples. These include but are not limited to the right to self-determination, right against forceful

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at ¶ 9(4).

<sup>5</sup> CCJ Compliance Report, dated 17 November 2021, CCJ Appeal No. BZCV2014/002, [2021] CCJ.

<sup>6</sup> *Id.*

<sup>7</sup> See <https://www.fauna-flora.org/people/>.

<sup>8</sup> Report of the Special Rapporteur of the Human Rights Council on the Rights of Indigenous peoples, 2016 A/71/229, ¶ 35.

removal/exclusion, the right to dispose and enjoy natural resources, and the right to free, prior and informed consent in legislative and administrative measure affecting them.<sup>9</sup>

The government of Belize contends that the lands in question are national lands and therefore can be sold to private third parties without the consent of any Maya villages. Paragraph 4 of the CCJ Consent Order, however, expressly requires the Belizean government to refrain from any activity that could interfere with Maya peoples' use and enjoyment of their customary lands, until a mechanism can be put into place to recognize and protect these lands.<sup>10</sup> Even in their own draft of the FPIC Protocol, the government recognizes that the Consent Order demands the highest standard of human rights.<sup>11</sup>

The Belize government must respect the customary practices of the Maya people and must ensure third parties do the same. Within FPIC Protocol, the third party must obtain the free prior and informed consent of any Maya community that uses land they have purchased or seek to purchase.<sup>12</sup> Anything less is a clear violation of the Maya peoples rights that have been affirmed in domestic and international courts and are supported by international human rights treaties.

### **(b) General Implementation Issues**

In paragraph 3 of the 2015 CCJ Consent Order, the court mandated the government of Belize to develop effective legislative, administrative, or other mechanisms to identify and protect property rights arising from Maya customary land tenure. One of the first administrative measures the government undertook in front of the CCJ towards implementing the 2015 decision was to form a FPIC Protocol. Pursuant to the CCJ order and the continued review by that tribunal, the government of Belize is to consult with the Maya people and their representatives to ensure effective participation and input from the very people who will be affected by this policy.<sup>13</sup>

In 2018, the Maya people and the Government of Belize reached an agreement<sup>14</sup> on a roadmap for the implementation of the CCJ consent orders. One of the first action was the development of a Free Prior and Informed Consent Protocol. The draft protocol was on the cusp of being mutually agreed upon. In November 2020, however, a new government came into office. The new government issued its first draft of the FPIC Protocol on September 14, 2021.<sup>15</sup> This draft had input from the MLA and TAA. Yet, on January 14, 2022, the government of Belize published and began dissipating a new draft of the FPIC Protocol without consulting or

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<sup>9</sup> See G.A. Res. 61/295, Declaration on the rights of Indigenous Peoples (Sept. 13, 2007), Art. 2, 10, 19, 20(2); Organization of American States, *American Declaration on the Rights of Indigenous Peoples*, AG/Res. 2888 (June 15, 2016), Art. 3, Art. 13(2), Art. 20(2), Art. 23(2).

<sup>10</sup> Aurelio Cal v. Attorney General of Belize, *supra* note 1, ¶ 9(4).

<sup>11</sup> Maya of Southern Belize Free, Prior and Informed Consultation Protocol, Draft (Jan 14, 2022).

<sup>12</sup> *Id.* at Pt 2, 2(4).

<sup>13</sup> A recording of the most recent CCJ compliance hearing, during which the government repeats its undertaking to consult with the Maya communities and their chose representatives in the construction of this policy, can be found at <https://www.youtube.com/watch?v=qHy1Cn1bkmc>.

<sup>14</sup> See the December 2018 Agreement, a roadmap for the implementation of the CCJ Consent Orders.

<sup>15</sup> CCJ Compliance Report, *supra* note 5, 1.1.

getting input from the MLA, TAA, or Maya villages on the new changes made and the draft version.<sup>16</sup>

There is no small amount of irony that the government of Belize submitted a draft of a policy designed to recognize the duties of the government to engage in consultation without any consultation with the population it was meant to protect. The MLA quickly responded, releasing a press statement saying that the new FPIC Protocol draft did not represent the will of the MLA, TAA, or the Maya villages.<sup>17</sup> While the FPIC Protocol does include a list of activities that trigger the consultation process, including the creation of conservation areas, the fact that the government is trying to push this through without any input from the Maya does not give much hope that they take this bill or FPIC seriously. If anything, such conduct is inconsistent with the meaning of free, prior, and informed consent. The Caribbean Court of Justice has since commissioned an Expert to review the draft protocol of the government if it meets the orders of the court and international standards.

Additional, the government is also unilaterally revising the implementation road map of 2018 and there is serious concerns by the Maya people on the government draft road map. In the new roadmap, the government maintains that the Maya must accept the property rights of third parties as is, even if those property rights conflict with the customary land tenure and usage of the Maya. Further, the government maintains the position that these conservation areas are national lands regardless of Maya land tenure.<sup>18</sup>

However, both of these positions are in direct conflict with the CCJ Judgment and Consent Order. The courts have reiterated the fact that Maya land tenure has not been extinguished nor abrogated simply by the fact that government claims it has been.<sup>19</sup> The lands of the Maya people is one of the remaining forested areas of Belize and it has within it several major protected areas. How the government will reconcile the land rights of the Maya people with conservation (protected areas) must be monitored to ensure that it is consistent with the orders of the Caribbean Court of Justice and international standards.

### **REDD+ Implementation:**

We would be remiss not to applaud the positive strides that the government of Belize has made in the implementation of REDD+<sup>20</sup> in encouraging and accepting Maya participation.<sup>21</sup> However, should the government deviate from the implementation of these policies and

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<sup>16</sup> Press Statement, Maya Leaders Alliance & Toledo Alcaldes Association, The Ministry of Indigenous Peoples Affairs Ambushes the Maya People (Jan. 26, 2022).

<sup>17</sup> *Id.*

<sup>18</sup> Meeting between the MLA/TAA leadership, the government of Belize, and stake-holders in private protect areas, *supra* note 10.

<sup>19</sup> See *Maya Leaders Alliance v. Attorney General of Belize*, *supra* note 2.

<sup>20</sup> “Reduce Emissions from Deforestation and Forest Degradation in Developing countries”. United Nations Framework Convention on Climate Change. <https://redd.unfccc.int/>.

<sup>21</sup> REDD+ Readiness Project of Belize, *Project MID Term Evaluation Report* (2019).

strategies, it would fail to meet its obligations to protect Indigenous Peoples under the climate agreements.<sup>22</sup>

As of the most recent Mid Term Evaluation Report, Belize's REDD+ program has demonstrated some success in capacity building for the indigenous Maya of Belize.<sup>23</sup> According to the Report, the Program's second stated component of developing a REDD+ implementation strategy has "led to the establishment of the Indigenous Peoples' desk and a reported improved understanding of the REDD+ process by IPs."<sup>24</sup> The IP desk serves as a catalyst for gathering feedback from the various Indigenous groups on activities related to REDD+.<sup>25</sup> Further, part of the implementation strategy included coordinating with the Indigenous Mopan and Q'eqchi' Maya an ethno-mapping process with the expressed aim of respecting their land tenure, which would produce a map which shows the cosmovision, history, and relationship between the Maya and their lands, including the forests.<sup>26</sup> These maps will be used to "train community mappers to integrate their traditional ecological knowledge into mapping software," and to allow for "community-based forest monitoring."<sup>27</sup> The Report goes on to state that one of the goals of the Readiness Preparation Project is to "contribute to global climate change mitigation goals, while ... respecting indigenous rights and supporting those whose livelihoods depend on forest ecosystems."<sup>28</sup>

During the first half of the implementation process, the Program has seen some positive results in the favor of Indigenous Peoples, including demonstrating IPs participation in the capacity building and consultation phase of the implementation.<sup>29</sup> One key way that the Program has encouraged the participation of the Indigenous Maya is the creation of the Indigenous Peoples desk and the Indigenous Technical Team as part of the Program's main structure, which have maintained channels for engagement with the Indigenous Maya and provided them support on the technical aspects of REDD+ readiness while assisting in capacity building.<sup>30</sup> In particular, the Indigenous Technical Team is responsible for safeguarding the rights of the Indigenous Maya and participating in the development of a strategic plan to incorporate the goals of the Indigenous Maya.<sup>31</sup>

However, the overall level of engagement of the Indigenous Maya in the REDD+ readiness program must be improved.<sup>32</sup> While "Donors and External Financial Institutions" have been informed, consulted, formal partnership developed, and delegated power, "Indigenous Peoples" have merely been informed, consulted, and placated.<sup>33</sup> This level of communication

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<sup>22</sup> Preamble to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, F.C.C.C., CP/2015/10/Add. 1).

<sup>23</sup> REDD+ Readiness Project of Belize, *supra* note 27.

<sup>24</sup> *Id.* at ix.

<sup>25</sup> *Id.* at 15.

<sup>26</sup> *Id.* at 21.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 27.

<sup>29</sup> *Id.* at 34-35 (showing that of the 895 participants in capacity building and consultation, 46% have been with indigenous peoples).

<sup>30</sup> *Id.* at 40.

<sup>31</sup> *Id.* at 43.

<sup>32</sup> *Id.*, Table 7 (demonstrating the different levels of participation of the 14 "stakeholders" in the Program).

<sup>33</sup> *Id.*

does not comport with the level of Free, Prior, and Informed Consent (FPIC) to which all Indigenous Peoples have a right under local, regional, and international law.<sup>34</sup>

While Paris Climate accords are the foundation for REDD+, they also state that “Parties should, when taking action to address climate change, must respect, promote and consider their respective obligations on human rights... the rights of indigenous peoples.”<sup>35</sup> Regional, international, and domestic law dictates that these rights be included within the FPIC Protocol when regulations are being made pertaining to IPs, their land, and their land rights.

Further bolstering the fact that the mere information, consultation, and placation of the Indigenous Maya is insufficient is the fact that, in its 2015 Consent Order, the Caribbean Court of Justice ordered the government of Belize to refrain from “issuing any leases or grants to any resources under the National Lands Act or any other Act,” or “registering any interest in land” that might affect the lands of Indigenous Maya without first obtaining their informed consent.<sup>36</sup>

Moreover, the danger of the Indigenous Maya being negatively impacted remains high, as demonstrated by the Risk Assessment report provided in Annex 4 of the Mid Term Report.<sup>37</sup> Inadequate project management, implementation delays, and delays in scheduled procurements are all high likelihood risks which would have a high impact on the project and in the management of which “[s]pecial attention must be given to land tenure issues for Indigenous Peoples and associated risks.”<sup>38</sup>

### **Recommendations:**

To prevent and remedy the ongoing infringement of the Maya people of Belize’s right to their customary lands in the name of conservation, as well as violations against their human rights, we urge that your report include the following recommendations to the government of Belize:

- a) The Belizean government must ensure that private rangers employed by FFI and the Punta Gorda Police refrain from interfering and intimidating the Indian Creek village members from enjoying their customary usage of the land which includes fishing, gathering, cleaning, and other customary usage.
- b) FFI must engage in meaningful consultation with Indian Creek village to ensure their customary usage is protected as guaranteed by the CCJ Consent Order. The consent order requires that any potential interference with the enjoyment of lands claimed by customary usage of Maya villages be prevented until the Consent Order is fully realized regardless of whether the land has been demarked or is in conflict.

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<sup>34</sup> See *American Declaration on the Rights of Indigenous Peoples*, *supra* note 10; *United Nations Declaration on the Rights of Indigenous Peoples* *supra* note 10.

<sup>35</sup> F.C.C.C. *supra* note 28.

<sup>36</sup> *The Maya Leaders Alliance v. The Attorney General of Belize*, *supra* note 2, at ¶ 9 (4).

<sup>37</sup> REDD+ Readiness Preparation Project, *supra* note 4, at 70.

<sup>38</sup> *Id.*

- c) Ensure that the Final FPIC protocol draft is written with meaningful participation and consultation with the representation chosen by the Maya villages which respects the traditional authority of the villages.
- d) Ensure that the FPIC Protocols have adequate grievance redress measures to allow Maya to ensure their enjoyment of their cultural lands is not impacted by potential conflicts of property interest.
- e) The Belizean government maintain its implementation strategy for REDD+ without removing any of the mechanisms for Indigenous Peoples' participation which it has included.
- f) Ensure that the Belizean government in drafting the carbon rights law of Belize follows the FPIC protocol in its consultation with the Maya people and respect the Maya people as property holders over their traditional lands as defined by the constitution of Belize and the CCJ Consent Order.