

**Mandate of the Special Rapporteur on the right to food.**

REFERENCE: AL Food (2000-9) BLZ 1/2013

18 April 2013

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right to food pursuant to Human Rights Council resolution 22/9.

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning **oil exploration activities by USCapital Energy Belize Ltd. on Maya customary lands and the distribution of Maya customary land to private individuals in the Toledo District of Belize** that is allegedly taking place without the prior, free and informed consent of the affected communities, negatively affecting their livelihoods and access to food.

The Special Rapporteur on the rights of indigenous peoples, James Anaya, is also aware of and continues to monitor this case and sent a communication to your Excellency's Government on 17 March 2009 about related concerns.

According to information received:

In the *Case of Maya Indigenous Communities of Toledo v. Belize*, Case 12.053, Report No. 40/4, 12 October 2004, the Inter-American Commission on Human Rights recommended the Government of Belize to "carry out the measures to delimit, demarcate and title or otherwise clarify and protect the corresponding lands of the Maya people without detriment to other indigenous communities and, until those measures have been carried out, 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."

Following the recommendation of the Inter-American Commission on Human Rights, the Belize Supreme Court recognized in two judgments, dated 18 October 2007 and 28 June 2010, the Maya customary land tenure in all Maya villages in the Toledo Districts and ruled that the customary land tenure gives rise to

collective and individual property rights within the meaning of the Constitution of Belize. The Court ordered the Government in 2007 to demarcate and title Maya lands and, until these lands are demarcated and titled, to abstain from any acts that may affect the lands used and occupied by Maya villages in Toledo District, unless these acts are pursuant to the informed consent of the indigenous communities. The 2010 judgment confirmed this judgment with respect to other Maya villages in the Toledo District, and directed the Government inter alia to abstain from “a) issuing any leases of grants to lands or resources under the National Lands Act or any other Act, b) registering any interest in land; c) issuing any concessions for resource exploitation, including concessions, permits or contracts authorizing logging, prospecting or exploration, mining or similar activity under the Forests Act, the Mines and Minerals Act, the Petroleum Act, or any other Act” (Supreme Court of Belize, MLA, TAA et. al. v. AG Belize et al. Claim No. 366 of 2008).

The first of these cases, brought by two Maya villages, Conejo and Santa Cruz, was not appealed by the Government and thus the order of the Court remains in full effect. The second of these two cases, which was brought by the remainder of the some 38 Maya villages in Toledo District, was appealed by the Government in 2010 and is pending final judgment by the court of appeals.

It is alleged that the Government has taken few steps to implement either of these judgments and has disregarded the Supreme Court’s orders. Despite efforts by organizations representing Maya villages in the Toledo District, including the Toledo Alcaldes Association and the Maya Leaders Alliance, to engage with Belize government officials and discuss a way forward for demarcating and titling Maya lands, it would appear that progress has been limited. According to information received the Government initiated the drafting of legislation that could potentially address demarcation and titling of Maya lands, including the *National Policy on Local Governance in Belize* (2009) which foresaw revisions to the existing *Village Councils Act* and the *Alcalde Jurisdiction Bill* (2010), However, there has been little progress on legislative reforms regarding village boundaries, Maya or non-Maya.

It is alleged that due to the lack of implementation of the binding judgments of the Belize Supreme Court and the recommendations of the Inter-American Commission on Human Rights, Maya indigenous communities face a number of threats, including related to oil exploration activities and the leasing of Maya traditional lands to private individuals.

#### *Impact of oil concessions on livelihoods and access to food*

Oil concessions have been granted on the lands used and traditionally occupied by Maya people in Belize. Recent oil exploration activities have been focused in the area comprising the Sarstoon-Temash National Park. The park lands are located

within the broader traditional territory of several indigenous villages, four Maya villages and one Garifuna village. These villages co-manage the park through the Sarstoon-Temash Institute for Indigenous Management (SATIIM), which has challenged oil exploration activities within the park through legal and other means since 2006.

According to the information received, current seismic testing lines and proposed oil extraction areas cross lands used by the Maya villages for agricultural activities and for hunting and gathering, activities upon which they depend for their food and livelihood. Reportedly, more than 200 miles of seismic paths have already been cut in the Sarstoon-Temash National Park, by a transnational corporation, USCapital Energy. Cutting and clearing for seismic testing lines has already caused negative impacts to important forest areas and waterways used by Maya peoples for subsistence purposes. It has reportedly also increased illegal logging and poaching activities in the area. It is alleged that future exploratory drilling activities could lead to the development of new roads, drill sites and waste management sites, which could further affect the habits of game animals, encourage settlement by outsiders on Maya lands, and destroy areas used for subsistence and cash-crop farming. In addition, the only cash crop for many Maya farmers, certified organic cacao, could risk its certification if contaminated by the presence of petroleum-related chemicals in the soil and water.

*Lack of free, prior and informed consent with respect to activities taking place in Maya lands*

On 7 October 2012, USCapital Energy Belize Ltd. published notice of its Environmental Impact Assessment (EIA) for exploratory oil drilling within Maya lands in the Sarstoon-Temash National Park. However, it would appear that the approximately 300-page document does not adequately address the potential impact of oil extraction activities on the lands and livelihoods of the Maya villages. The EIA recognizes Maya dependence on lands but does not assess the potential impacts, noting that “throughout the project area there is a close relationship between the people and the natural resource base. Most people depend on the natural resource base for food and shelter and income. Most farmers use the milpa system producing a mix of local staples including corn, rice, beans and ground provisions” (p. 41).

The EIA proposes furthermore that “hunters in the area should be discouraged from hunting wildlife along ROW [Right of Way] through education and incentives of gain through other means” (p. 261). The impact assessment fails to describe how the affected communities will have access to alternative livelihoods or the proposed education and incentives will be able to compensate the affected local hunters.

The EIA presented by USCapital Energy deals largely with measures intended to reduce environmental damage. Social mitigation measures are limited to provide

adequate temporary housing, safety and health to the employed workers and measures to address reduce the risk of potential crime through restricting access to the operational area – which again might negatively affect the local population. Overall the EIA does not include clearly indicated measures to mitigate the above mentioned potential negative human rights impacts. Instead the EIA assumes that social impacts are mostly positive and beneficial to the local communities and economy and will provide moderate employment opportunities for both low skilled and skilled labour (p. 249). Furthermore, the impact assessment does not provide any information about available remedies available to the local population, should any negative human rights impacts occur.

While the EIA mentions consultations conducted with public authorities, NGOs and community agencies (pp. 188-195), it does not say whether these consultations have resulted in the affected local and indigenous communities giving their free, prior and informed consent to the operations affecting their use of land and land rights. The EIA furthermore suggests that most communities are rather supportive of the oil exploration activities of USCapital Energy, an assessment which does not correspond with other information received.

Reportedly, a single public consultation was scheduled with Maya villages to discuss the EIA on 25 October 2012. Representatives of Maya communities requested a postponement of that meeting in order to have sufficient time to understand and assess the EIA, but this request was denied in a letter transmitted on 16 October 2012 by Belize's Chief Environmental Officer to the director of SATIIM, Mr. Gregory Ch'oc. The meeting was allegedly held in a space that was not large enough to accommodate those that wished to participate. According to the information received, there was very little time provided for the attendees to ask questions or raise concerns about the EIA and the proposed oil activities. In this regard, Mr. Ch'oc, who had been appointed to represent the villages of Graham Creek, Crique Sarco, Conejo and Midway at the meeting, was cut off the microphone and a speaking time of one minute was imposed. During the meeting, representatives from the communities asked for further consultations to be held and for the EIA to be translated into Qe'qchi and Garifuna so that they may make an informed decision about the proposed activities.

According to the information received, prior to the meeting, the Maya Leaders Alliance and Toledo Alcaldes Association had already expressed their concerns with the lack of consultation in a position statement and proposed a framework for consultation, which was sent to the Government on 23 October 2012. They received a response from the Government a month later, on 23 November 2012 in a letter from the Forestry Minister and Energy Minister offering to commence a dialogue between the Government and indigenous peoples around oil development. The stated objectives of the dialogue were to clarify the process for acquiring information regarding oil concessions, permits and exploration data and to agree on an allocation mechanism that would direct funds to projects in the

Toledo District in the case that oil is discovered in commercial amounts. There was no mention, however, of the property rights of Maya villages in the area.

For its part, USCapital Energy Belize Ltd. is operating under a permit granted by the Government of Belize in 2005 under the country's Petroleum Act. Further exploration and extraction permits were issued to USCapital Energy in March 2010, 2011, and 2012. Despite the fact that the March 2011 permit specifically excludes all of Conejo village lands, the company has allegedly cut survey lines and engaged in seismic testing in Conejo since that time. Further, the Petroleum Act section 26 requires oil companies to obtain the consent of landowners and lawful occupiers before entering their lands for exploration or extraction activities, which has not been obtained from the affected Maya communities.

### *Distribution of land*

According to information received Maya lands have been distributed to private individuals without consent of the indigenous population in the Toledo District. Reportedly lease papers for Maya customary land continued to be issued to private individuals not belonging to the indigenous population after the October 2010 ruling of the Belize Supreme Court. In one instance survey lines were cut on lands being actively farmed by indigenous villagers in San Pedro Colombia. Maya customary farmers who grow *matahambre* corn, fruit trees, rice, beans or other crops were warned to stop working on their lands and their coconut trees were cut down by private individuals and their crops sprayed with herbicide. While Mayan customary farmers have continued to use their lands, they received no compensation for the loss of their crops; instead, an indigenous farmer has reportedly been summoned to magistrate court on allegations of trespassing for continuing to work on her own lands.

I am concerned that the Government of Belize may have disregarded rulings of its own Supreme Court and recommendation of the Inter-American Commission on Human Rights to demarcate and title Maya lands and to abstain from any acts that may affect the lands used and occupied by Maya villages in Toledo District. I am also concerned that oil exploration activities on Maya lands and the distribution of Maya traditional lands to private individuals have allegedly continued without the free, prior and informed consent of the local Maya population and will affect the ability of the indigenous communities to feed themselves, as they rely on their customary lands for their livelihood. Finally, concern is expressed that the allegedly limited public consultations organized so far, including with the indigenous peoples' leadership, have not allowed for the active and meaningful participation of the concerned population in decisions which are likely to affect their lives.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards.

Article 25 of the Universal Declaration of Human Rights (UDHR) recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Furthermore, article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which Belize signed on 6 September 2000 – stipulates that States “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” and requires them to “take appropriate steps to ensure the realization of this right.”

The right to adequate food is also recognized in the Convention on the Rights of the Child – acceded to by Belize on 15 December 2000 – in articles 24.2(c) and 27.3. In the Convention, the right to adequate food is to be read in conjunction with the right to life, survival and development stipulated at article 6. States parties to the Convention on the Rights of the Child commit themselves to combat “disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking-water.”

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR, has defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food.

It follows from this authoritative interpretation of the right to adequate food that his right may be under threat when land on which people depend for their subsistence is traded away, for instance for the development of large-scale development projects.

Concerning the participation of affected individuals and communities in decisions which are likely to affect their lives, I would like to refer to article 25 of the International Covenant on Civil and Political Rights (ICCPR), to which Belize acceded on 10 January 1996, which ensures the right of every individual to take part in the conduct of public affairs. In the same context, we would also like to refer to articles 7 and 8 of the Convention in the Elimination of All Forms of Violence against Women which state that States should ensure participation of women in the formulation of government policy.

Furthermore I respectfully refer your Excellency’s Government to the following provisions of the United Nations Declaration on the Rights of Indigenous peoples (A/RES/61/295):

Article 20(2)

Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

On the basis of article 5(d)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of all Forms of Racial Discrimination also recommends States parties to “recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, including water and subsoil resources.”<sup>1</sup> Furthermore, in light of its General Recommendation No. 23 on indigenous peoples (1997), the Committee calls upon State parties to the Convention to “provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristic; ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;” and “to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.”<sup>2</sup>

Finally, all States also have a duty under the international human rights legal framework to protect against human rights abuse by third parties. In this context I would call your attention to the Guiding Principles on Business and Human rights (A/HRC/17/31) which clarify States’ duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises” (Principle 1). The Guiding Principles also explain that fulfilling this duty to protect requires that States take “appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” This requires, inter alia, that States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” and “ensure that laws and policies governing the creation and ongoing operation of business enterprises ... do not constrain but enable business respect for human rights” (Principle 3 (a, b)).

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<sup>1</sup> CERD/C/GUY/CO/14, 4 April 2006, para. 16 (Guyana); CERD/C/KHM/CO/8-13, 16 March 2010, para. 16 (Cambodia).

<sup>2</sup> *General Recommendation No. 23: Indigenous Peoples (Fifty-first session, 1997)*, contained in A/52/18, annex V, paras. 4-5.

The Guiding Principles state that business enterprises have an independent responsibility to respect human rights, which means “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur” (Principle 13 (a)). States may be deemed to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress private actors’ abuse. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

It is my responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts summarized accurate?
2. What measures has the State of Belize taken to ensure that the recommendations of the Inter-American Commission on Human Rights and the rulings of the Supreme Court of Belize relating to the demarcation and titling of Maya customary lands are implemented?
3. What measures have been put in place to ensure that the affected indigenous peoples will be able to exercise their right to food and that the oil exploration and potential exploitation activities do not have negative impacts on the livelihoods of affected communities?
4. How does the State of Belize envisage consultation with the affected indigenous communities and their leadership, in order to obtain their prior, free and informed consent to oil exploration and potential oil extradition activities affecting their customary lands?
5. To what extent have human rights impacts been considered in relation to the current oil exploration in the Toledo District, including the right to food of Maya indigenous communities with due regard to their right to the lands and resources which they have traditionally occupied and used?
6. What measures are envisaged to mitigate adverse human rights impacts of oil exploration and potential exploitation activities?
7. What policies have been put in place by the State of Belize to ensure that the operational activities of USCapital Energy Belize Ltd. and other business enterprises respect the human rights of the affected population?
8. What measures has the State of Belize taken to ensure that effective mechanisms are in place to provide to the affected population, including the indigenous peoples, just and fair redress or compensation in relation to development projects, such as the ongoing oil exploration, and alleged cases of leasing of Maya customary lands to private individuals?



I would be most grateful to receive a response within 60 days. I undertake to ensure that the response of your Excellency's Government will be taken into account in my assessment of the situation and in developing any recommendations that I may make for your Excellency's Government's consideration pursuant to the terms of my mandate. Your Excellency's Government's response will be made available in the report that I will submit to the Human Rights Council for its consideration.

A letter conveying concerns relating to ongoing oil exploration activities has also been sent to USCapital Energy Belize Ltd. and its parent company U.SCapital Energy Inc. as well as to the Government of the United States of America, the country where USCapital Energy Inc. has its legal domicile.

Please accept, Excellency, the assurances of my highest consideration.

Olivier De Schutter  
Special Rapporteur on the right to food