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Mandate of the Special Rapporteur on the right to food

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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.

I would like to bring to your Excellency's Government's attention information I have received regarding oil explorations undertaken by USCapital Energy, a company headquartered in the United States of America, in the Sarstoon-Temash National Park and surrounding areas in the Toledo District of Belize. Today I have sent a letter to the Government of Belize expressing my concerns about seismic testing and potential future exploratory drilling and oil exploitation activities by USCapital Energy in the area. A letter concerning this case has also been sent to the company, headquartered in Corpus Christi, Texas and its subsidiary in Belize.

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 the Government of Belize on 17 March 2009 about related concerns.

It is the principal obligation of the State where these oil explorations are taking place, Belize, to respect, protect and fulfil human rights, and to ensure that operations of business enterprises within their territory respect human rights. However, as I outline further below, international human rights standards, including the Guiding Principles on Business and Human Rights (A/HRC/17/31), also impose on home States certain responsibilities regarding business corporations operating abroad. Home States, under the jurisdiction of which the corporations concerned are domiciled, have established their headquarters or have their main place of business, are expected to set out clearly the expectation that such corporations respect human rights throughout their operations, including in operations that take place outside their national territory. Thus, international human rights treaty bodies are encouraging States parties to take appropriate measures to

prevent acts of corporations domiciled in their territory which negatively affect the enjoyment of human rights in other countries.

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 affected 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 on Maya traditional lands.

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 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 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.

Based on the information received, I have expressed my concern to the Government of Belize and USCapital Energy that the above mentioned oil exploration activities on Maya lands (a) may be contrary to rulings of the Supreme Court of Belize and recommendations of the Inter-American Commission on Human Rights; (b) may affect the ability of the indigenous communities to feed themselves, as they rely on their customary lands for their livelihood; ; and (c) have allegedly continued without the free, prior and informed consent of the local Maya population, as 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.

Notwithstanding the principal obligation of Belize, the State on the territory of which these operations are taking place, to respect, protect and fulfil human rights, and to ensure that operations of business enterprises within their territory or jurisdiction respect

human rights, the United States, under the laws of which USCapital Energy is incorporated, has a responsibility to influence the conduct of this corporation, and thus to support Belize in discharging its own obligations.

United Nations treaty bodies have repeatedly reiterated that States should take steps to prevent human rights contraventions abroad by business enterprises that are incorporated under their laws that have their main seat or their main place of business under their jurisdiction.

For instance, the Committee on the Elimination of Racial Discrimination (CERD) has expressed its view that State parties should also protect human rights by preventing their own citizens and companies, or national entities from violating rights in other countries. As the Committee noted in its concluding observation concerning the United States in 2008:

“... the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States.” (CERD/C/USA/CO/6, para. 30)¹

Similarly, the Committee on Civil and Political Rights (CCPR) noted in 2012 in a concluding observation concerning Germany:

“The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is also encouraged to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.” (CCPR/C/DEU/CO/6, para 16)

The Guiding Principles on Business and Human Rights (A/HRC/17/31), endorsed by the Human Rights Council in its resolution 17/4, state as a foundational principle that “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations” (Principle 2). This includes operations abroad. As the commentary to the guiding principles also affirms: “There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses.” In this regard, measures by the home State could include assisting the corporations concerned and host States to ensure that businesses are not involved with human rights abuses (Principle 7).

The Guiding Principles also clarify that all business enterprises have an independent responsibility to respect human rights, regardless of whether the State in

¹ See also CERD, Concluding Observations for Canada, CERD/C/CAN/CO/18, para. 17.

which they operate fulfills its own responsibilities. This responsibility applies to all business enterprises regardless of sector, size, operational context, ownership or structure (Principle 14). The business responsibility to respect human rights requires that business enterprises “(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Principle 13).

To meet this responsibility requires that business enterprises have in place: “policies and processes appropriate to their size and circumstance, including: a) A policy commitment to meet their responsibility to respect human rights; b) A human rights due diligence policy to identify, prevent, mitigate and account for how they address their impacts on human rights; c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute” (Principle 15). Due diligence requires processes to identify, prevent, mitigate, and address potential and actual impacts at various stages in a project or the enterprise’s operations. It should be an ongoing process and should involve meaningful consultation with potentially affected stakeholders (see Principles 17-21).

Consequently, a corporation would be considered to have failed to meet its responsibilities to respect human rights if it failed to act to prevent, mitigate and remedy adverse impacts on the ability of local populations to access adequate food or water by for example, polluting land used for agricultural purposes or local water supplies. Similarly, it may be considered to have failed to meet its responsibilities if it does not take effective action to mitigate its impact on human rights by not providing adequate compensation to affected persons.

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

1. Is the Government of the United States of America in possession of any further information concerning the accuracy of the alleged facts?
2. Has the United States of America directly or indirectly supported the fore mentioned activities of USCapital Energy in Belize, for example through risk insurance provided by a Government funded export credit agency or any other means?
3. What measures has the Government of the United States of America taken to encourage or require that business enterprises incorporated in the United States respect human rights throughout their operations?

4. What guidance does the United States of America provide to business enterprises to promote business respect for human rights? This would include any guidance on, inter alia, conducting human rights impact assessments, consulting with potentially affected stakeholders, or mitigating any negative impacts?

5. Does the Government of the United States of America have any mechanism in place to encourage a company like USCapital Energy to live up to its responsibility to respect human rights throughout its operations, including the responsibility to:

a. Consult with the indigenous communities concerned through their representative institutions in order to obtain their free, prior and informed consent to any significant impacts that the oil exploration and potential oil extraction might have on them or their rights over lands and resources;

b. Avoid causing or contributing to adverse human rights impacts, and address such impacts when they occur, including any adverse human rights impacts related to oil exploration and oil extraction activities on indigenous communities.

I would be most grateful to receive a response within 60 days. I undertake to ensure that your Excellency's Government's response will be made available in the report I will submit to the Human Rights Council for its consideration.

Yours sincerely,

Olivier De Schutter
Special Rapporteur on the right to food