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Mandate of the Special Rapporteur on the right to food

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Dear Mr. Hulings,

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 attention information I have received regarding oil exploration by USCapital Energy Belize Ltd. 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 alleged seismic testing and potential future exploratory drilling and oil exploitation activities by your company in the area. A letter concerning this case has also been sent through the Permanent Mission of the United States of America to the United Nations Office at Geneva to the Government of the United States of America, as USCapital Energy Inc., the parent company of USCapital Energy Belize Ltd., is headquartered in this country.

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.

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 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 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.

I am concerned that the fore mentioned oil exploration activities may be contrary to rulings of the Supreme Court of Belize and recommendation of the Inter-American Commission on Human Rights. I am also concerned that oil exploration activities on Maya lands have allegedly continued without the 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 your attention 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 this 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 company 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.”¹ Furthermore, in light of its General Recommendation No. 23 on indigenous peoples (1997), the Committee calls upon States 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.”²

In addition to the obligations of the concerned State under such standards, private actors – including all business enterprises – also have responsibilities under the international human rights legal framework. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. Following years of consultations that involved Governments, civil society, and the business community, the Human Rights Council unanimously adopted in June 2011 the Guiding Principles on Business and Human Rights (contained in A/HRC/17/31). The Guiding Principles have been established as the authoritative global standard for all States and businesses with regard to preventing and addressing business-related human rights impacts.

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

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

The Guiding Principles clarify the duties and responsibilities of States and businesses, centered around three pillars: the duty of States to protect human rights against adverse impacts by business, the responsibility of corporate entities to respect human rights, and the need to ensure greater access to remedy for victims of business-related human rights abuse. 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).

This responsibility to respect human rights refers to the full range of rights listed in the UDHR, the ICCPR, the ICESCR, coupled with the principles concerning fundamental rights in the eight International Labour Organization core conventions as set out in the Declaration on the Fundamental Principles and Rights at Work. Depending on circumstances and particular situations, business enterprises may also need to consider additional standards, particularly with regard to impacts on specific groups, including indigenous peoples (Principle 12). The Guiding Principles further apply to all enterprises regardless of their size, sector, operational context, ownership or structure (Principle 14).

Principles 11 to 24 and 29 to 31 provide further clarification on the requirements for business enterprises to know and show that they respect human rights. Specifically, to meet its responsibility to respect human rights, a business should 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). Consequently, a business enterprise 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.

Human rights due diligence requires ongoing processes to identify potential and actual impacts at various stages in a project or the enterprise’s operations. Where an impact assessment indicates that the company causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where the company contributes or may contribute to an adverse impact, it should similarly take the necessary steps to cease or prevent its contribution, as well as use its leverage to mitigate any remaining impact to the greatest extent possible through its relationships and links to

other actors/entities. When a company has leverage to prevent or mitigate adverse impacts by other entities that are directly linked to its operations, products or services, it should exercise it. If it has limited leverage, it should also explore ways to increase it.

Simply conducting an assessment and not adjusting strategy and approach based on this assessment does not fulfill the responsibility to respect human rights. Thus, due diligence requires a concrete plan to address how, for example, potential impacts on the rights to food, the rights of indigenous peoples to land and resources that may have been identified in an assessment can be prevented and/or mitigated by altering project plans and/or exercising leverage over other actors. If violations are found to have occurred during the implementation of a project, plans must be altered and effective remedy must be ensured. In order to verify whether adverse impacts are being addressed, the enterprise should also track the effectiveness of its responses based on appropriate qualitative and quantitative indicators, and draw on feedback from internal and external sources, including affected stakeholders. The enterprise should further be prepared to communicate externally on how it addresses its human rights impacts.

The Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to be paid to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, including children and indigenous peoples, and with due regard to the different risks that may be faced by women and men. Consequently, business enterprises should be aware of and seek to comply with internationally recognized human rights standards applicable to these groups. In the case of indigenous peoples, attention should be given to the land, natural resource rights and consultation provisions of the United Nations Declaration on the Rights of Indigenous Peoples (arts. 10, 19, 20, 26 and 32).

It is worth noting that the business responsibility to respect human rights applies independently of the activities of the Government of Belize. As stated in the commentary to principle 11, “The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”

It is my responsibility under the mandates provided to me 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. Are the facts summarized accurate?

2. How has USCapital Energy sought to meet its responsibility to respect human rights as detailed in principle 13 of the Guiding Principles? More specifically:
 - a. Has USCapital Energy taken into account the judgments by the Supreme Court of Belize regarding the land rights of Maya communities and if so in what way have these affected US Capital's proposed activities in the Toledo District?
 - b. How does USCapital Energy plan to consult with the indigenous communities concerned through their representative institutions in order to obtain their prior, free 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?
 - c. What measures will be taken to avoid or mitigate any negative impacts of the oil exploration and potential oil extraction activities on neighbouring indigenous communities?
3. How has USCapital Energy sought to address its responsibilities as detailed in principle 15 of the Guiding Principles?
 - a. Has USCapital Energy, conducted along with the EIA, a human rights impact assessment regarding the oil exploration project in the Toledo district of Belize? If so, I would be grateful if you could provide me with the conclusions of the assessment and what steps USCapital Energy has taken to address any concerns raised in the assessment?
 - b. Have any plans been put in place to ensure the continuous tracking of performance and the monitoring of human rights risks and impacts throughout the life of the project? If so, how often will these assessments be conducted and who will conduct them? What provisions are in place to alter conduct and project plans based on concerns raised and recommendations made in future assessments?
 - c. Have any operational-level grievance mechanisms been included into the plans for the oil exploration project? If so, could you please provide me with details of this mechanism?
 - d. Have complaints been lodged by local communities, including indigenous communities either through official grievance mechanisms or other means? How have these complaints been responded to?

I would be most grateful to receive a response within 60 days. I undertake to ensure that the information received from your company will be reflected 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