

SKELETON ARGUMENT OF THE CLAIMANTS

APPENDIX B: INTERNATIONAL LEGAL OBLIGATIONS OF BELIZE

1. Belize is obligated, by its own legal commitments in international human rights treaties, to recognize and protect indigenous peoples' rights to land and resources. In addition, customary international law requires Belize to uphold these rights apart from its treaty commitments.

2. The Constitution of Belize guarantees the fundamental rights of all Belizeans to property, non-discrimination, life, and security of the person. The Interpretation Act instructs this Court to interpret the Constitution in a manner consistent with its obligations under relevant international law.¹ A summary of the relevant international legal obligations follows.

I. Belize is obligated under international law to protect the Maya people's rights to their lands and natural resources

3. The Constitution affirms, in Section 3, that "every person in Belize is entitled ..., whatever his race, place of origin, political opinions, colour, creed or sex, to ... protection from arbitrary deprivation of property," and in Section 17 further states that every person is entitled to protection from the arbitrary deprivation of "property of any description."²

4. In contemporary international law, the right to property includes the rights of indigenous peoples to their traditional lands and natural resources. Belize is a party to several international treaties, including the International Covenant on Civil and Political Rights,³ the Convention on the Elimination of All Forms of Racial Discrimination,⁴ and the Charter of the Organization of American States,⁵ all of which have been authoritatively interpreted to require states to respect the rights of indigenous peoples over their lands and resources. In addition, customary international law requires Belize to uphold these rights apart from its affirmative commitments under international treaties.

¹ INTERPRETATION ACT, cap. 1, pt. II, § 65 (2000), [Vol. I, Tab 3].

² BELIZE CONSTITUTION ACT, cap. 4, pt. 2, §§ 3, 17(1) Revised Edition (2000-2003). [Vol I, Tab 1].

³ International Covenant on Civil and Political Rights (ICCPR), arts. 1(2), 17, 23, 27, Dec. 16, 1966, U.N. Doc. A/6316, 999 U.N.T.S. 171 [Vol V, Tab 17].

⁴ International Convention on the Elimination of All Forms of Racial Discrimination (CERD Convention), Jan. 4, 1969, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195 [Vol. V, Tab 18].

⁵ Charter of the Organization of American States, Dec. 13, 1951, 119 U.N.T.S. 3 [Vol. V, Tab 15].

a. Treaty Obligations

5. As a member of the Organization of American States and a party to its foundational multilateral treaty, the OAS Charter, Belize is obligated to respect and protect the human rights articulated in the American Declaration on the Rights and Duties of Man.⁶ This obligation has been well established by the Inter-American human rights institutions, which have been endowed with authority by states to promote human rights throughout the OAS system.⁷

6. Article XXIII of the American Declaration affirms the right to property. The Inter-American Commission on Human Rights has held that customary indigenous land tenure constitutes property that is protected by Article XXIII, and hence by the OAS Charter. In considering the rights of the Maya people of Belize in particular, the Inter-American Commission found that customary property rights protected by the OAS Charter through Article XXIII of the Declaration:

are not limited to those property interests that are already recognized by states or that are defined by domestic law, but rather that the right to property has an autonomous meaning in international human rights law. In this sense, the jurisprudence of the system has acknowledged that the property rights of indigenous peoples are not defined exclusively by entitlements within a state's formal legal regime, but also include that indigenous communal property that arises from and is grounded in indigenous custom and tradition.⁸

7. The decision of the Commission in the *Maya Indigenous Communities* case, which affirms the customary land tenure of the Maya people of southern

⁶ *Id.* art. 17 ("Each State has the right to develop its cultural, political, and economic life freely and naturally. In this free development, *the State shall respect the rights of the individual and the principles of universal morality.* "), art. 3(l) ("The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex"), and preambular paragraph 4 ("Confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man"). See *Reg. v. Reyes* [2002] UKPC 11 para. 27 ("By becoming a member of the Organization of American States Belize proclaimed its adherence to rights which, although not listed in the charter of the Organization, are expressed in the Declaration.") [Vol III, Tab 14].

⁷ Statute Of The Inter-American Commission On Human Rights, G.A. Res. 447, Inter-Am C.H.R., 9th Sess. (1979), May 22, 2001, OAS/Ser.L/V/I.4 rev.8, , art. 18 (Empowering the Commission to develop awareness, write reports and make recommendations to OAS member States in matters of human rights), art 20 (Empowering the Commission to monitor compliance with the American Declaration by States not party to the American Convention on Human Rights, to examine communications concerning violations of the Declaration and make recommendations to the state) [Vol. V, Tab 26].

⁸ *Maya Indigenous Cmty. of Toledo Dist. v. Belize*, Case 12.053, Report No. 40/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev., para. 117 (2004) [Vol. IV, Tab 6]; see also, e.g., *Case of Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua*, 79 Inter-Am. C.H.R. SER. C, para. 149 (2001) (hereinafter *Awas Tingni*) [Vol. IV, Tab 1].

Belize in particular, builds upon the jurisprudence of the Inter-American Court of Human Rights. In the landmark case of *Awat Tingni v. Nicaragua*, the Inter-American Court of Human Rights determined that the right to property guaranteed in the American Convention on Human Rights, which is essentially the same right to property under the American Declaration of the Rights and Duties of Man, protects the rights of indigenous peoples over their traditional territories.⁹ The court affirmed that

Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.¹⁰

8. Belize is also a member of the United Nations and a party to its foundational treaty, the UN Charter, which seeks to create an international order based on respect for fundamental human rights.¹¹ To realize this objective, the United Nations established the Human Rights Council, which among other activities continues the special procedures of its predecessor, the Commission on Human Rights, to address violations of human rights in specific contexts.

9. Among these special procedures is the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. The Special Rapporteur has specifically addressed the situation of the Maya of Belize, expressing his “concern about the allegations ... concerning the dismembering of the Maya people’s traditional communal land tenure system, which should not necessarily be seen in contradiction with the rights to private ownership...” and stating that the constitutional protections afforded property in Belize should apply to Maya customary rights.¹² The Special Rapporteur expressed his “full support to the Inter-American Commission’s findings and recommendations ... and disagree[d] with the interpretation that these recommendations might be read as ‘unconstitutional’.”¹³ He called upon Belize

⁹ *Awat Tingni*, *supra* note 8, para. 153 [Vol. IV, Tab 1].

¹⁰ *Id.* at 149.

¹¹ U.N. Charter, art. 1(3) (“The purposes of the United Nations are ... to achieve international cooperation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all ...”), art. 55(c) (“...the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all...”) [Vol. V, Tab 15].

¹² United Nations, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum: Summary of cases transmitted to Governments and replies received*. U.N. Doc. A/HRC/4/32/Add.1 (Mar. 19, 2007), at 10 [Vol V, Tab 38].

¹³ *Id.* at 11.

to “fully implement the recommendations of the Inter-American Commission on Human Rights.”¹⁴

10. Belize is also obligated to recognize and protect Maya customary land tenure as a party to the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁵ This treaty requires states to take measures to eradicate all manifestations of racial discrimination wherever they exist, including with regard to property.¹⁶

11. The United Nations Committee on the Elimination of All Forms of Racial Discrimination, which is mandated to monitor compliance with the Convention, has confirmed that the failure of states to recognize and respect indigenous customary land tenure is a form of racial discrimination incompatible with the Convention, and hence it has issued a call upon states

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.¹⁷

12. Concerning the situation in Belize in particular, the Committee on the Elimination of Racial Discrimination “is preoccupied by reports regarding privatization and leasing of land without the prior consultation or consent of the Maya people, as well as the granting of concessions for oil development, logging and the production of hydro-electricity.”¹⁸ It has recently asked the government of Belize to respond to its concerns.

13. Yet another treaty to which Belize is a party is the International Covenant on Civil and Political Rights.¹⁹ This treaty upholds the rights of indigenous

¹⁴ *Id.*

¹⁵ CERD Convention, *supra* note 4 [Vol. V, Tab 18]. Belize became a signatory to the Convention on September 6, 2000 and ratified the convention on November 14, 2001. Office of the United Nations High Commissioner for Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination, <http://www.ohchr.org/english/countries/ratification/2.htm>.

¹⁶ CERD Convention, *supra* note 4, art. 5(d)(v) [Vol. V, Tab 18].

¹⁷ U.N. Comm. on the Elimination of Racial Discrimination, *General Recommendation XXIII: Rights of Indigenous Peoples*, para. 5, U.N. Doc. A/52/18 Annex V (Aug. 18, 1997) [Vol. V, Tab 32].

¹⁸ United Nations, *Correspondence from Regis de Gouttes, Chairman of the Committee for the Elimination of Racial Discrimination, to H.E. Mr. Stewart Warren Leslie, Ambassador Extraordinary and Plenipotentiary, Permanent Representative, Permanent Mission of Belize to the United Nations*, dated Mar. 9, 2007 [Vol. V, Tab 34].

¹⁹ ICCPR, *supra* note 3 [Vol. V, Tab 17]. Belize became a party through accession to the ICCPR on June 10, 1996. Office of the United Nations High Commissioner for Human Rights, *Status of Ratification: International Covenant on Civil and Political Rights*, available at: <http://www.ohchr.org/english/law/ccpr-ratify.htm>.

peoples to their lands and resources as part of their right to their own means of subsistence and their right to protection of their cultural integrity. Compliance with this treaty is monitored by the UN Human Rights Committee.

14. Article 1 of the Covenant affirms for all peoples the right of self-determination, control of their own resources, and access to their means of subsistence.²⁰ While specifically addressing state obligations toward indigenous peoples, the UN Human Rights Committee has held that “the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence.”²¹ Given that the Maya people farm, hunt, fish, and gather nearly all of their food, and collect nearly all of their housing materials, on their traditional lands, their connection with these lands is protected by the right to their own means of subsistence and self-determination under article 1 of the Covenant.

15. Additional protection for traditional indigenous land tenure is found in article 27 of the International Covenant on Civil and Political Rights, which provides:

In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.²²

16. The UN Human Rights Committee has confirmed that “the rights protected by article 27, include the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong.”²³ Thus, when indigenous groups are concerned, traditional land tenure and resource use is an aspect of culture that must be recognized, respected, and protected.²⁴ According to the Committee:

²⁰ ICCPR, *supra* note 3, art. 1(1) [Vol. V, Tab 17].

²¹ U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee: Canada*, paras. 8-11, U.N. Doc. CCPR/C/79/Add.105 (Apr. 7, 1999) (cautioning Canada to correct its behavior to uphold the rights of indigenous peoples in manner consistent with this principle) [Vol. V, Tab 36]; *see also* United Nations Declaration on the Rights of Indigenous Peoples, Human Rights Council Resolution 2006/2, arts. 3, 4, 20, June 29, 2006 [Vol. V, Tab 35]; Proposed American Declaration on the Rights of Indigenous Peoples, art. 15, February 26, 1997, OEA/Ser/L/V/II.95 Doc.6 [Vol. V, Tab 25].; Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO No.169), art. 14.1, June 7, 1989, 28 I.L.M. 1382 [Vol. V, Tab 16].

²² ICCPR, *supra* note 3, art. 27 [Vol. V, Tab 17].

²³ Chief Bernard Ominayak and the Lubicon Lake Band v. Canada, para. 32.2, Communication No. 167/1984, U.N. Doc. CCPR/C/38/D/167/1984 (1990) [Vol. IV, Tab 2].

²⁴ *Id.* paras. 32.1, 32.2, 33 (finding that article 27 had been violated when the government granted leases for oil and gas exploration and timber development within lands traditionally used and occupied by indigenous peoples) [Vol. IV, Tab 2].

Culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.²⁵

17. Furthermore, the Committee has confirmed that states should take affirmative measures to protect those aspects of culture that are important to a group's identity, including, in the case of indigenous peoples, aspects related to lands and resources.²⁶

18. The Inter-American Commission on Human Rights has also recognized that the right of indigenous peoples to lands and resources should be viewed in light of their right to cultural protection, noting that "[i]t has been the Commission's longstanding view that the protection of the culture of indigenous peoples encompasses the preservation of 'the aspects linked to productive organization, which includes, among other things, the issue of ancestral and communal lands.'"²⁷

19. The need to take into consideration Belize's international obligation to protect the culture of the country's indigenous peoples when interpreting fundamental rights, including the right to property, is reinforced by the preamble of the Constitution, which requires policies of the state to "protect the identity, dignity and social and cultural values of Belizeans, including Belize's indigenous peoples."²⁸

b. Obligations under customary international law and general principles of international law

20. In addition to these treaty obligations, customary international law requires Belize to respect the rights of indigenous peoples to their lands and resources. Customary international law and general principles of international law are among the principal sources of international law.²⁹ Customary international law evolves from state practice relevant to matters of international concern. Related to customary international law are "general principles" that are commonly accepted by states and reflected in their international relations or domestic legal systems.³⁰ Both general principles of international law and

²⁵ U.N. Human Rights Comm., *General Comment No. 23(50): The Rights of Minorities (Art. 27)*, para. 7, UN Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 6, 1994) [Vol. 5, Tab 32].

²⁶ *Id.* paras. 6.1-6.2, 7.

²⁷ *Maya Indigenous Cmty's.*, *supra* note 8, para. 120 (internal citations omitted) [Vol. IV, Tab 6].

²⁸ BELIZE CONSTITUTION ACT, *supra*, note 2, preamble [Vol. 1, Tab 1].

²⁹ See Statute of the International Court of Justice, art. 38 (1), June 26, 1945, 59 Stat. 1055, 1060, 3 Bevens 1153, 1187 [Vol. V, Tab 29].

³⁰ See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 15-19 (6th ed. 2003); MARK JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW*, 55-59 (4th ed. 2003) [Vol. IV, Tab 12].

customary international law are binding upon all states, apart from their treaty obligations.

21. Customary international law and general principles can be discerned from international instruments, reports and decisions by authoritative international bodies, state assertions and communications at the international and national levels, and the actions of states internationally and domestically.³¹

22. The Inter-American Commission on Human Rights has held that “general international legal principles” applicable inside and outside of the Inter-American system, include the following:

- the right of indigenous peoples to legal recognition of their varied and specific forms and modalities of their control, ownership, use and enjoyment of territories and property;
- the recognition of their property and ownership rights with respect to lands, territories and resources that they have historically occupied; and
- where property and user rights of indigenous peoples arise from rights existing prior to the creation of a state, recognition by that state of the permanent and inalienable title of indigenous peoples relative thereto and recognition that such title may only be changed by mutual consent between the state and respective indigenous peoples when they have full knowledge and appreciation of the nature or attributes of such property. This also implies the right to fair compensation in the event that such property and user rights are irrevocably lost.³²

23. As observed by the Inter-American Commission, these general international legal principles regarding indigenous peoples are linked to, and build upon, existing and developing instruments devoted to affirming and protecting the rights of indigenous peoples. These include the International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples,³³

³¹ S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW*, 16-26 (2d ed. 2004) [Vol. IV, Tab 8].

³² *Mary & Carrie Dann v. United States*, Case 11.140, Report No. 75/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 860, para. 131 (2002) [Vol. IV, Tab 5]; *see also Awas Tingni*, *supra* note 8, paras. 164, 167 [Vol. IV, Tab 1]; *Juan Carlos Abella v. Argentina*, Case 11.137, Report No. 55/97, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 271, paras. 157-171 (1997) (“universal and regional human rights instruments and the 1949 Geneva Convention share a common nucleus of non-derogable rights and a common purpose of protecting human life and dignity.”) [Vol. IV, Tab 3]; S. JAMES ANAYA, *INDIGENOUS PEOPLES*, *supra* note 31, at 289-91 [Vol. IV, Tab 8].

³³ ILO No.169, *supra* note 21, arts. 13-17 (affirming indigenous peoples’ rights of ownership and possession of the lands that they traditionally occupy, and requiring governments to safeguard those rights and provide adequate procedures to resolve land claims). [Vol. V, Tab 16].

the Proposed American Declaration of the Rights of Indigenous Peoples,³⁴ and the United Nations Declaration on the Rights of Indigenous Peoples.³⁵ The principles articulated in these adopted and developing instruments inform Belize's obligations under international customary law and general principles of law with respect to the Maya people of the Toledo District.

24. The International Labour Organization Convention No. 169, to which the Inter-American Commission looked, among other sources, to interpret Belize's duty to protect Maya land rights,³⁶ states in its Article 14:

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.³⁷

25. The United Nations Declaration on the Rights of Indigenous Peoples,³⁸ provides further evidence of the increasingly widespread international recognition of and respect for indigenous peoples' rights in lands and resources. The UN Declaration affirms that:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

³⁴ Proposed American Declaration on the Rights of Indigenous Peoples, *supra* note 22 (affirming the rights of indigenous people to own, develop, control and use the lands and resource they have traditionally owned or otherwise occupied and used). [Vol. V, Tab 25].

³⁵ United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 21, arts. 2, 10, 25-29, 32. [Vol. V, Tab 35].

³⁶ *Maya Indigenous Cmty's.*, *supra* note 8, para. 118. [Vol IV, Tab 6].

³⁷ ILO No.169, *supra* note 21, arts. 14(1), (2). [Vol V, Tab 16].

³⁸ United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 21. [Vol. V, Tab 35].

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.³⁹

26. The growing consensus on the content of international norms concerning indigenous peoples' rights in land and natural resources is further evidenced by relevant provisions of the Proposed American Declaration on the Rights of Indigenous Peoples,⁴⁰ which was considered by the Inter-American Commission to be relevant to Belize's duty to protect Maya land rights.⁴¹ Emphasizing that such property rights originate from traditional patterns of land tenure, the Proposed American Declaration stipulates:

Indigenous peoples have the right to the legal recognition of their varied and specific forms and modalities of their control, ownership, use and enjoyment of territories and property. ...

Indigenous peoples have the right to the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied, as well as to the use of those to which they have historically had access for their traditional activities and livelihood.⁴²

27. That a norm of respect for traditional indigenous land tenure and other aspects of indigenous life is now part of general international law is further evidenced by supporting statements in numerous other written international instruments. Such statements are found in Agenda 21 adopted by the UN Conference on Environment and Development,⁴³ the Convention on Biodiversity,⁴⁴ the UNESCO Declaration on Cultural Diversity,⁴⁵ the World

³⁹ *Id.* art. 26.

⁴⁰ Proposed American Declaration on the Rights of Indigenous Peoples, *supra* note 21, art. 17 (right to indigenous legal systems); art.18 (right to lands, territories, resources, and legal recognition of property). [Vol. V, Tab 25].

⁴¹ *Maya Indigenous Cmty's.*, *supra* note 8, para. 118. [Vol IV, Tab 6].

⁴² Proposed American Declaration on the Rights of Indigenous Peoples, *supra* note 22, arts. 18(1), (2). [Vol. V, Tab 25].

⁴³ U.N. Conference on Environment and Development, Agenda 21, ch. 26, paras. 1, 3-4, June 13, 1992, U.N. Doc. A/CONF.151/26 (recognizing indigenous peoples' historical relationship with their lands and prescribing a number of measures to protect and strengthen that relationship). [Vol. V, Tab 30].

⁴⁴ United Nations Conference on Environment and Development, Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818 [Vol. V, Tab 20]. The Convention calls upon its signatories to "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices." *Id.* art. 8(j).

Bank's Revised Operational Policy and Bank Procedure on Indigenous Peoples,⁴⁶ the Programme of Action of the International Conference on Population and Development⁴⁷ the Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.⁴⁸ Also, a broad array of international human rights institutions, in addition to those already mentioned, have addressed indigenous peoples and reinforced prevailing normative assumptions in this regard. Such practice can be seen, for example, in reports and findings by the African Commission on Human and Peoples' Rights,⁴⁹ and comments by the Committee on Economic, Social and Cultural Rights.⁵⁰

28. Customary international law is created both by state practice internationally and by relevant official behavior at the domestic level. The growing, widespread practice of states to incorporate and protect indigenous land rights in their domestic legal frameworks demonstrates that respect for these rights has become a customary international law norm. Many countries have amended their constitutions⁵¹ or have adopted new laws to recognize and protect

⁴⁵ Universal Declaration on Cultural Diversity, UNESCO, art. 4, Nov. 2, 2000 [Vol. V, Tab 39]. Article 4 states, "The defense of cultural diversity... implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples." *Id.* art. 4. Article 5 more specifically states, "Cultural rights are an integral part of human rights, which are universal, indivisible and inter-dependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social, and Cultural Rights. . . . [A]ll persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms." *Id.* art. 5.

⁴⁶ World Bank, *Operational Manual: Operational Directive 4.10*, para. 17 (July 2005) [Vol. V, Tab 40] (establishing recognition of customary or traditional indigenous land tenure systems as a premise of bank-assisted projects).

⁴⁷ *Report of the International Conference on Population and Development*, G.A. res. 49/128, 49 U.N. GAOR Supp. (No. 49) at 149, U.N. Doc. A/49/49, para. 6.27 (Oct. 18, 1994) [Vol. V, Tab 27] ("Governments should respect the cultures of indigenous people and enable them to have tenure and manage their lands, protect and restore the natural resources and ecosystems on which indigenous communities depend for their survival and well-being and, in consultation with indigenous people, take this into account in the formulation of national population and development policies.").

⁴⁸ Durban Declaration, *Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, A/CONF.189/12, para. 43 (Jan. 25, 2002) [Vol. V, Tab 23].

⁴⁹ African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group of Experts on Indigenous Populations/ Communities*, 87-88 (2005) [Vol. V, Tab 21].

⁵⁰ U.N. Comm. on Econ., Soc. & Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, para. 27, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [Vol. V, Tab 31].

⁵¹ *See, e.g.*, CONSTITUCIÓN ARGENTINA, Ch. IV, § 75(17) (Arg. 1994) (recognizing indigenous peoples, their distinctive cultural identities, and their ancestral, communal land rights, and authorizing congress to act accordingly) [Vol. V, Tab 1]; CONSTITUCIÓN POLÍTICA DEL ESTADO REPÚBLICA DE BOLIVIA, Con Reformas De 1994, art. 171 (recognizing inherent rights of indigenous people to communal lands and social organization) [Vol. V, Tab 2]; CONSTITUIÇÃO FEDERAL, Ch. VIII, art. 231 (Braz. 1988); (recognizing rights of Indians to their own forms of

land and natural resource rights for indigenous peoples.⁵² In several countries, domestic courts have been the avenue through which these rights have been recognized in domestic law.⁵³ These developments signify a clear trend in state practice that gives rise to expectations of conforming behavior within the international community.

II. Belize is obligated under international law to not discriminate against the Maya people with respect to their rights to their lands and resources

29. The Constitution guarantees the right to nondiscrimination under Section 16(1), stating that “no law shall make any provision that is discriminatory either of itself or in its effect.”⁵⁴ Furthermore, Section 3 guarantees the right to be free

social organization, customs, language, beliefs and traditions, and original rights over the lands they traditionally occupy) [Tab 3]; CONSTITUTION ACT, 1982, CANADA ACT, 1982, ch. 11, sched. B, pt. II, art. 35 (U.K.) (recognizing and affirming inherent and treaty rights of aboriginal peoples) [Vol. V, Tab 4]; CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COLOMBIA DE 1995, arts. 286-287, 329-330 (affirming indigenous territories and establishing the foundations for a regime of indigenous autonomy within the administrative framework of the state) [Vol. V, Tab 5]; CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE ECUADOR DE 1998, título III, arts. 84, 224 (guaranteeing rights of indigenous peoples to community property, social organization, and consultation among others) [Vol. V, Tab 6]; CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA, arts. 66-68 (Guat. 1985) 66 (pledging to respect and promote the cultural rights of indigenous Mayan groups), art. 67 (provides protection of indigenous lands by “indigenous communities and others that have land that historically belongs to them and has been administered in a special traditional form, will maintain this system.”), art. 68 (lands for indigenous communities are guaranteed “[t]hrough special programs and adequate legislation.”) [Vol. V, Tab 7]; CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, art. 27, § VII, *as amended* 1992, 2001 (affirming indigenous communities’ rights to cultural expression and their distinctive forms of organization) [Vol. V, Tab 9]; CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA, arts. 5, 89, 180, *as amended* 1995 (affirming that the country’s indigenous peoples have the right to live and develop according to the forms of social organization that correspond to their historical and cultural traditions, and the right to their communal forms of ownership of their land) [Vol. V, Tab 10]; CONST. (1987), art. XII, § 5 (Philippines) (recognizing indigenous cultural communities and their rights to ancestral lands and ancestral domain) [Vol. V, Tab 12]; Konstitutsiia Rossiiskoi Federatsii (Russ.), art. 69 (guaranteeing the rights of small indigenous peoples in accordance with the generally accepted principles and standards of international law and international treaties of the Russian Federation) [Vol. V, Tab 13]; REPÚBLICA BOLIVARIANA DE VENEZUELA, CONSTITUCIÓN DE 1999, título VIII, art. 119 (recognizing the social, political, and economic organization of indigenous communities, and the collective, inalienable and non-transferable attributes of their land rights.) [Vol. V, Tab 14]; República DE PARAGUAY, CONSTITUCIÓN POLÍTICA DE 1992, título V, art. 63 (recognizing indigenous (customary) law with respect to land rights) [Vol. V, Tab 11].

⁵² S. James Anaya & Robert A. Williams, Jr., *The Protection of Indigenous Peoples’ Rights over Lands and Natural Resources Under the Inter-American Human Rights System*, 14 HARV. HUM. RTS. J. 33, 59-74 (2001) [Vol. IV, Tab 10].

⁵³ See, e.g., *Mabo v. Queensland II* (1992) 175 C.L.R. 1 [Vol. II, Tab 14]; *Alexkor Ltd & Another v. Richtersveld Cmty. & Ors.*, 2003 (12) BCLR 1301 at para. 34 (CC) (S. Afr.) [Vol. I, Tab 14]; *Delgamuukw v. British Columbia*, [1997] 153 D.L.R. (4th) 193 [Vol. I, Tab 28].

⁵⁴ BELIZE CONSTITUTION ACT, *supra* note 2, pt. 2, § 16(1) [Vol. 1, Tab 1].

from discrimination in the exercise of fundamental rights, including the right to property.⁵⁵

30. Relevant to interpreting Section 3 are the obligations Belize accepted when it became a party to the International Convention on the Elimination of All Forms of Racial Discrimination.⁵⁶ This Convention primarily addresses the right to equality, and obliges state parties to eliminate manifestations of racial discrimination in regard to all aspects of life, including the enjoyment of property.⁵⁷

31. The principle of non-discrimination has particular significance when applied to indigenous peoples and the maintenance of their traditional or customary forms of land tenure. As already noted, the United Nations Committee on the Elimination of Racial Discrimination has identified the failure of states to recognize and protect indigenous peoples' traditional land tenure as a form of discrimination that is contrary to the Convention. Consequently, in an interpretive statement, General Recommendation 23, it has called upon states to take affirmative measures to recognize, respect, and protect the rights of indigenous peoples to their traditional lands.⁵⁸ It has expressed concern about the privatization and leasing of Maya lands in Belize as meriting immediate attention, referring to that General Recommendation.

32. The Inter-American Commission on Human Rights has consistently affirmed that the right of indigenous peoples to their lands and resources should be seen in light of the right to non-discrimination, as it did in finding Belize in violation of the right in the case of *Maya Indigenous Communities v. Belize*. The Commission asserted that

respect for and protection of the private property of indigenous peoples on their territories is equivalent in importance to non-indigenous property, and ... is mandated by the fundamental principle of non-discrimination ... From the standpoint of human rights, a small corn field deserves the same respect as the private property of a person that a bank account or a modern factory receives.⁵⁹

33. The principle of non-discrimination is also a basic principle of general international law and, indeed, is a *jus cogens* norm:

⁵⁵ *Id.* § 3(d).

⁵⁶ CERD, *supra* note 4 [Vol. IV, Tab 18].

⁵⁷ *Id.* art. 5(d)(v).

⁵⁸ U.N. Comm. on the Elimination Racial Discrimination, *General Recommendation XXIII*, *supra* note 17 [Vol. V, Tab 32].

⁵⁹ *Maya Indigenous Cmtys.*, *supra* note 8, para. 119 (internal quotation omitted). [Vol. IV, Tab 6].

the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws. ... This principle (equality and non-discrimination) forms part of general international law. At the existing stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*.⁶⁰

III. Belize is obligated under international law to protect the Maya people's right to life, liberty, security of the person, and protection of the law

34. The Belize Constitution affirms the right to life, liberty, security of the person, and protection of the law.⁶¹ The American Declaration of the Rights and Duties of Man guarantees an almost identical right under article 1 (the right to life, liberty, and security of the person).⁶²

35. The lands and resources of the Maya people are necessary for their physical survival and well being and thus are necessary for their enjoyment of the right to life. The Inter-American Commission has acknowledged that “[c]ertain indigenous peoples maintain special ties with their traditional lands, and a close dependence upon the natural resources provided therein - respect for which is essential to their physical and cultural survival.”⁶³

36. The right to life under the American Declaration of the Rights and Duties of Man includes not only protects against the arbitrary deprivation of one's physical existence, but also “includes the conditions necessary for a life with dignity”, which may require positive government action.⁶⁴

37. The right to life is expressed in identical terms in the American Convention on Human Rights, and the Inter-American Court has confirmed that, where indigenous people are concerned, the right to life implicates access to

⁶⁰ Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC 18/03, 18 Inter-Am. Ct. H.R. SER. A, para. 101 (2003) [Vol. IV, Tab 4].

⁶¹ BELIZE CONSTITUTION ACT, *supra* note 2, pt. 2, § 3(a) [Vol. I, Tab 1].

⁶² American Declaration of the Rights and Duties of Man, art. 1, 1948, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992) [Vol. V, Tab 22].

⁶³ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, (Apr. 24, 1997) [Vol. V, Tab 26].

⁶⁴ *Sawhoyamaya Indigenous Community v. Paraguay*, 146 Inter-Am. Ct. H.R. SER. C, para. 2 (2006) [Vol. IV, Tab 7] (Judge A.A. Cançado Trindade concurring); *and see Sawhoyamaya Indigenous Cmty*, para. 152 (“it is not only presumed that no person shall be deprived of his life arbitrarily (negative obligation), but also that, in the light of its obligation to secure the full and free enjoyment of human rights, the States shall adopt all appropriate measures to protect and preserve the right to life (positive obligation).”)

ancestral lands. It found the right to life to have been violated where an indigenous community was dispossessed of its lands, and the state

did not adopt the adequate measures ... [to] relocate them within their ancestral lands, where they could have used and enjoyed their natural resources, which resources are directly related to their survival capacity and the preservation of their ways of life.⁶⁵

38. The dignity, life and continuity of the Maya communities of Toledo are dependent upon a matrix of subsistence and cultural practices that are carried out within the lands that the Maya have used and occupied for centuries. These practices include swidden agriculture, hunting, fishing, gathering, and religious uses of specific sites. Thus, protecting the Maya people's right to life and security of the person requires guaranteeing their customary land tenure.

Conclusion

39. The principle that States are obligated to respect and protect the rights of indigenous peoples to their lands and resources is reinforced throughout international human rights law applicable to Belize. This obligation is required by several treaties to which Belize is a party: the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Charter of the Organization of American States, and the Charter of the United Nations. It is reinforced by the widespread practice of countries around the world to include protection of indigenous interests in lands and resources in their own laws and in international treaties and instruments concerning diverse and disparate issues. It is articulated by authoritative human rights bodies mandated with promoting human rights and monitoring compliance with human rights treaties, some of which - Inter-American Commission on Human Rights, the Committee on the Elimination of Racial Discrimination, and the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples - have specifically addressed the circumstances of the Maya in southern Belize and affirmed that this obligation to protect and respect indigenous peoples' land and resource rights applies to this situation.

⁶⁵ *Id.* para. 164.