

SUPPLEMENTAL REQUEST FOR PRECAUTIONARY MEASURES

and

REQUEST FOR AN ON-SITE VISIT

to the

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
of the
ORGANIZATION OF AMERICAN STATES**

In the case of the

**THE TOLEDO MAYA CULTURAL COUNCIL on behalf of
MAYA INDIGENOUS COMMUNITIES OF THE TOLEDO DISTRICT**

**against
BELIZE**

Case No. 12.053

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**Supplemental Request for Precautionary Measures
and
Request for On-Site Visit
in the case of
The Toledo Maya Cultural Council against Belize**

Case No. 11.140

I. Introduction

1. The petitioner, the Toledo Maya Cultural Council (the “TMCC”), hereby adds to its earlier requests for precautionary measures under article 29 of the regulations of the Inter-American Commission on Human Rights. Precautionary measures are necessary in order to avoid the immediate and irreparable harm that will likely result from the oil development and logging activities that have been initiated and continued with authorization by the government of Belize. The TMCC, furthermore, requests that a delegation of the Commission conduct an on-site visit to Belize, pursuant to article 18(g) of the Commission’s Statute, in order to further investigate the facts of this case and, if possible, to assist in an amicable resolution of the controversy.

2. On August 7, 1998, the TMCC, a non-governmental organization that represents the Mopan and Ke’kchi Maya people of the Toledo District (the “District” or “Toledo”) of southern Belize, submitted a petition to the Inter-American Commission on Human Rights (the “Commission” or “Inter-American Commission”) against the State of Belize (the “State” or “Belize”) for failing to secure Maya rights over land and natural resources, and for violating those rights by granting numerous concessions for logging and oil development on lands traditionally used and occupied by the Maya.¹

3. The threat to the rights of the Maya people dramatically and dangerously increased last month. On July 13, 2000 the press office of the government of Belize released a statement announcing that AB Energy Limited (“AB Energy” or the “company”), a United States company registered in the British Virgin Islands, will be conducting seismic studies and exploratory drilling in southern Belize in an area that includes virtually all of the lands at issue in this case. Newspaper articles report that these studies have already begun.²

4. The area ceded for oil exploration and development at the time the original petition was filed was estimated at as much as 749,222 acres, or sixty-four percent of the District.³ Most of the area

¹ Petition to the Inter-American Commission on Human Rights by the Toledo Maya Cultural Council on behalf of Maya Indigenous Communities of the Toledo District, against Belize (August 7, 1998) (hereinafter “Petition”).

² See Charlene Smith, “Seismic studies underway in southern Belize,” *Amandala*, July 16, 2000 (Attached as appendix 1).

³ See letter from Steven M. Tullberg, Indian Law Resource Center to the Right Honorable Manuel Esquivet, Prime Minister of Belize, and the Right Honorable Joseph Cayetano, Minister of Energy, Science Technology and Transportation, Belize (Dec. 18, 1997) (citing information from Mr. Wade-Garcia, Director of Geology and Petroleum Unit) (attached as appendix B.24 to the petition).

covered by this oil concession includes lands traditionally used and occupied by the Maya people, who are the victims in this case.

5. The present communication to the Commission addresses the enhanced threat of oil development activities that result from recent actions by the State allowing oil exploration to go forward. The enhanced threat posed by the oil exploration is in addition to the damage, and threat of further, damage caused by the State-authorized logging on Maya ancestral lands. The logging and its consequences were detailed in the TMCC's earlier request for precautionary measures.⁴

II. Background

6. After the petition in this matter was filed, the TMCC and Belize agreed to a process of friendly settlement under the auspices of the Commission. However, as explained to the Commission in several earlier communications and at the hearing on the friendly settlement process before the Inter-American Commission on October 4, 1999, this process was not fruitful. The lack of progress in the friendly settlement process can be directly attributed to the State's failure to abide by the agreed-upon terms of negotiation or to respond adequately and in a timely manner to the petitioner's proposals and requests for information.

7. At the October 4 hearing the TMCC communicated to the Commission and the State its conditions for continuing the friendly settlement process. Among these conditions was a commitment from the State to alter immediately its course of action regarding the oil exploration, logging, and other development activities. By a note of October 8, 1999, the Commission transmitted the petitioner's conditions to the State, with a request that the government respond within fifteen days.⁵

8. On October 26, 1999, after more than fifteen days had transpired without a State response, the petitioner requested that the Commission terminate the friendly settlement process and enact precautionary measures against Belize.⁶ Shortly thereafter the petitioner received notice from the Inter-American Commission that the Government of Belize had requested and received an extension of time to present its response.⁷

9. In a submission to the Inter-American Commission dated November 8, 1999, the government of Belize responded to petitioner's conditions of October 4 for continuing the friendly settlement process. In that response the government declined to agree to petitioner's conditions, and stated that it would not immediately suspend the proposed legislation affecting Maya communities on Maya

⁴Petitioner's Request for Precautionary Measures (Oct. 26, 1999).

⁵ Letter from Jorge E. Taiana, Executive Secretary, Inter-American Commission on Human Rights to Ms. Deborah Schaaf, Indian Law Resource Center (Oct. 8, 1999).

⁶ See letter from Deborah Schaaf, Indian Law Resource Center to Dr. Jorge Taiana, Executive Secretary, Inter-American Commission on Human Rights (Oct. 26, 1999); Petitioner's Request for Precautionary Measures (Oct. 26, 1999).

⁷ See letter from Jorge E. Taiana, Executive Secretary, Inter-American Commission on Human Rights to Ms. Deborah Schaaf, Indian Law Resource Center (Oct. 27, 1999).

traditional lands.⁸ On December 13, 1999, following ten months of fruitless efforts to engage the government in meaningful negotiations, the petitioner confirmed its desire to terminate the friendly settlement process in this case.⁹

10. On February 2, 2000 the Inter-American Commission informed the petitioner that the Commission had written to the government of Belize requesting it to respond to petitioner's original petition within 30 days of its receipt of the Commission's communication.¹⁰ To the petitioner's best knowledge, no response was ever received from the government of Belize.

11. Belize continues to demonstrate an unwillingness to respect and secure the property rights of the Maya people. Acting outside of the auspices of the proceedings before the Commission, the State has indicated to Maya leaders a willingness to agree to minimal steps toward addressing Maya concerns over lands and natural resources. The TMCC views this as a potentially positive development. However, the problem is far from resolved.

12. The State has refused to suspend or modify, pending the outcome of this case, any concessions for natural resource extraction on land claimed by the Maya people, nor, under the circumstances, is the State likely to do so. Instead, the government of Belize has recently announced imminent plans for exploratory drilling, thereby exacerbating its threat of irreparable harm against the Maya people.

13. This case presents an urgent situation in which indigenous people are threatened with the loss of land and their means of subsistence, and with it destruction of their cultural identity. The harm already done to the Maya communities at the time the petition was submitted was detailed in that document. Harm was further detailed in the TMCC's previous request for precautionary measures. The present request contains additional information demonstrating the need for precautionary measures while the Commission investigates the facts of the case and prepares its report and recommendations.

III. Threat of Immediate Harm from Oil Exploration Activities

14. AB Energy's petroleum activities in the part of southern Belize referred to as "Block 12" constitute a serious and immediate harm to the Maya people. Block 12 covers most of the Toledo District, including private holdings, national protected areas, and virtually all of the Maya lands at issue in this case. On April 2, 1998, AB Energy and the government of Belize signed an eight year production sharing agreement,¹¹ consisting of an initial period of two fixed years, followed by three

⁸ See letter from Godfrey P. Smith, Office of the Prime Minister, Belize to Dr. Jorge Taiana, Executive Secretary, Inter-American Commission on Human Rights (Nov. 8, 1999).

⁹ See letter from Deborah Schaaf, Indian Law Resource Center to Dr. Jorge Taiana, Executive Secretary, Inter-American Commission on Human Rights (Dec. 13, 1999).

¹⁰ See letter from Jorge E. Taiana, Executive Secretary, Inter-American Commission on Human Rights to Messrs. Schaaf, Tullberg, & Anaya, Indian Law Resource Center (Feb. 2, 2000).

¹¹ See AB Energy - Belize Ltd., Production Sharing Agreement for Petroleum Exploration, Development and Production, Block 12 - Belize, April, 1998 (Attached as appendix 2).

subsequent renewal periods of two years, which can be activated at the request of the contractor.¹² Under this concession, AB Energy has exclusive rights to explore and extract oil within Block 12,¹³ and the Maya people have no recourse under domestic law should the company decide to invade their lands in search of oil.

15. AB Energy has a strong incentive to proceed as quickly as possible with its oil development activities in Block 12. Under the terms of the contract, AB Energy must pay the government of Belize regardless of whether or not the company finds oil. By allowing the first two years of its contract to elapse without conducting any active drilling within Block 12, AB Energy has presumably expended 3.3 million United States dollars without any return.¹⁴ Each additional two year period costs AB Energy an additional two million United States dollars, regardless of results, if the company chooses to activate that renewal period.¹⁵ Furthermore, under the contract the company must relinquish twenty-five percent of Block 12 after each two year period, so that by the year 2006 all of the area will have returned to its prior status.¹⁶ However, if AB Energy successfully locates oil anywhere in Block 12 during the contract period, it will maintain control over those oil fields for an unspecified and indefinite period of time.¹⁷ The structure of this contract, combined with the 3.3 million already invested, provides AB Energy with a definite impetus to move forward rapidly in the period remaining to it. The July 13 press announcement signals its intent to do so.

16. AB Energy has an added incentive for rapidly advancing its actions in the very southern part of Toledo, along the border with Guatemala, in that it has a concession on the Guatemalan side as well. A recent court ruling in Guatemala may affect this incentive: On January 31, 2000, the Guatemalan Human Rights Court ruled that the Guatemalan government had violated the fundamental human rights of all Guatemalans by allowing oil activity in the nearly 8.3 million acre Maya Biosphere Reserve in the north of Guatemala on the borders of Mexico and Belize.¹⁸ As this decision may be a signal that Guatemala is slowly becoming less accepting of oil exploration in protected areas, AB Energy may decide to take advantage of its concession in southern Toledo, Belize as soon as possible.

IV. Irreparable Nature of the Damages

A. Irreparable Harm to Maya Life, Health and Well-being

17. Petroleum activities in the Toledo District will cause irreparable harm to the life, health and well-being of the Maya people. Seismic studies involving explosives disrupt wildlife patterns and destroy plant life upon which the Maya people rely for medicinal and sustenance purposes.

¹² See *id.* at 3.1.

¹³ See *id.* at 2.1.

¹⁴ See *id.* at 6.1.1.1.

¹⁵ See *id.* at 6.1.1.2 - 6.1.1.4.

¹⁶ See *id.* at 4.1 - 4.3.

¹⁷ See *id.* at 3.4.

¹⁸ In reference to oil development in the Maya Biosphere, the ruling stated "Each time they [petroleum activities] disrupt the right to a clean environment, to the right of individual dignity, to the right of the preservation of the cultural and natural patrimony of the country, and the right to social and economic development...[they violate human rights]."

Moreover, petroleum operations will destroy the vegetative cover and microclimate necessary to the Maya people's subsistence crop production, and will cause severe environmental damage to the air, water, and soil upon which the Maya people depend for their health and livelihood.

1. Harm to Plants and Wildlife used by the Maya

18. The Maya people's access to plants for medicine and consumption as well as wildlife is directly threatened by the planned seismic studies and exploratory drilling. Petroleum exploration usually involves setting off explosives throughout the forest so that the seismic responses can be analyzed. These explosions destroy plant life and may adversely affect wildlife, dislocating them to other areas, and disrupting their foraging patterns. Already the game animals hunted by the Maya for subsistence have been forced by logging activities into more remote, undisturbed areas. Oil exploration would introduce disruptive human activity into even those areas not logged, and hunting would become yet more time-consuming and difficult for the Maya.

2. Harm to Subsistence Crop Production

19. Petroleum operations inevitably result in both direct and indirect deforestation. Every stage of oil operations - seismic mapping, exploratory drilling, and production drilling - can involve deforestation. The least expensive and most reliable method of seismic mapping involves cutting straight paths through the forest on which explosives are placed.¹⁹ While less intrusive technologies exist, the survey methods permitted or approved under the concessions in Toledo are unknown.

20. The deforestation ensuing from petroleum operations in forest areas threatens Maya subsistence crop production. Traditional Maya agricultural practices are suited to and depend on the humid tropical climate of the area. Vegetative cover in the area provides a mechanism for the trapping of rainfall through root structures and its return to the atmosphere through transpiration. As the forest cover is denuded, more water is transported from the area rapidly as runoff and uncaptured groundwater flow, and not returned to the local atmosphere. This gradually results in a drier microclimate in the area. Already, in some deforested regions of Brazil and Panama, local annual rainfall has dropped considerably.²⁰

21. Should the deforestation of Toledo be allowed to reach a level where the microclimate becomes drier, the traditional Maya methods of clearing agricultural plots by burning, a process developed in a humid, fire-resistant environment, will risk damaging larger tracts of forest by uncontrolled resultant fires. This would further threaten the local ecosystem and force a dramatic change in the agricultural methods around which the Maya communities, subsistence, and cultural life is focused.

22. The lack of the mediating process of vegetative transpiration accelerates the water cycle, so that at a micro climatic level, evaporation and atmospheric accumulation of vapor occurs more

¹⁹ See D.R. Skinner, *Introduction to Petroleum Production, Volume 1* (Gulf Publishing Co., 1981), at 38.

²⁰ See David Rind, "Drying out the Tropics," *New Scientist*, vol. 146 (1976). See also James D. Nations, "Terrestrial Impacts in Mexico and Central America," in *Development or Destruction: the Conversion of Tropical Forest to Pasture in Latin America*, Theodore Downing et. al (eds.) (Westview Press, 1992), at 199.

rapidly. This can lead to more erratic, episodic, and higher intensity precipitation than previously, again increasing the erosive power of the rainfall and decreasing absorption into the soil and exacerbating the problems of soil change, flooding and siltation.²¹

23. As the Inter-American Commission acknowledged in its *Report on the Situation of Human Rights in Ecuador*, oil exploration contributes to deforestation because of the associated construction of access roads, mud pits, derricks and pumps.²² Production drilling, of course, involves widespread clearing for roads, pipelines, and production stations. Elsewhere in the Americas, oil development activities have been linked, directly and indirectly, with problems in food supply and malnutrition.²³

24. The destruction of viable hunting, fishing, gathering, and agricultural production threatens the nutritional condition of the Maya villagers, whose cash incomes are insufficient to replace the calories and nutrients lost to their diet as a result of oil exploration and development. Poorer nutrition increases susceptibility to disease and diminishes individual energy levels, productivity, and ability to enjoy life.

3. Harm to the Maya people from Environmental Damage caused by Oil Activities

25. Petroleum exploration will also have devastating effects on the Maya people's general health and that of the natural environment on which they depend. Water contamination from exploratory wells is expected to be severe. Populations in proximity to oil and gas projects are at an increased risk for ailments including respiratory diseases, reproductive and neurological disorders, and cancer.²⁴ If oil reserves are discovered and developed, the Maya communities face increased health risks from toxic waste products, industrial accidents, air contamination, and possible spills of crude oil.²⁵

26. Once exploratory drilling begins, large amounts of drilling wastes are produced by each well. Each well drilled typically results in the production of waste oil, toxic drilling mud (a liquid mixture of water and chemicals which can include carcinogens such as arsenic, lead, mercury, benzene, naphthalene) and rock cuttings.²⁶ Drilling mud may be circulated through large, open pits, and can contaminate the ground water, and may overflow during heavy rains, thereby directly contaminating streams and rivers in the area.

²¹ See V.M. Meger-Homji, "Effects of Forests on Precipitation in India" in *Forest, Climate and Hydrology: Regional Impacts*, Evan R.C. Raynals and Frank B. Thompson (eds.) (United Nations University, 1988), at 72.

²² See Inter-Am.C.H.R., *Report on the Situation of Human Rights in Ecuador*, (OEA/Ser.L./V/II.96, Doc. 10 rev. 1, April 24, 1997, at 81 (hereinafter "IACHR Ecuador Report").

²³ See *id.* at 91.

²⁴ See IACHR Ecuador Report, *supra* note 21, at 79, 90.

²⁵ As detailed in the experience of the residents of the Ecuadorean Oriente. See *id.* at 89-91.

²⁶ See *id.* at 82.

27. Water sampling in the oil regions of Ecuador and Nigeria registered unhealthy levels of toxic contamination in drinking water due to oil projects.²⁷ Wastes from merely exploratory wells will likely contaminate the rivers, streams, and soils upon which the communities rely for drinking, bathing washing, transportation, and food. These effects could be minimized through effective storage and disposal procedures. However, there is no evidence that such procedures are required under the oil exploration concession granted, nor that Belize would devote sufficient resources to enforce such conditions.

28. As detailed above, petroleum exploration and development on the Maya people's land will damage the plants and wildlife on which the Maya people rely for medicine and subsistence. Deforestation from petroleum activities will damage the Maya people's ability to maintain subsistence crop production, and will destroy the health of all Maya people through environmental damages. As demonstrated in the petition, actions on behalf of the government of Belize which threaten the life, health, and well-being of the Maya people violate international law, including articles I (right to life) and XI (right to the preservation of health and well-being) of the American Declaration.²⁸

B. Irreparable Harm to Maya Cultural Integrity

29. Environmental destruction through oil exploration and other commercial activities in the Toledo District directly assaults Maya culture. The Maya people attach a spiritual significance to the living forest generally, and to many of its denizens in particular. Forest and land are considered sacred.²⁹ "The trees, the sinkholes, the lagoons - everything there has a history and a meaning to us. To us, everything in the [forest] is living, and what is living is sacred."³⁰ A similar significance is attached to some agricultural crops. "Corn has always been important, even sacred to the Maya. It is essential to our survival and to our traditional way of life."³¹ The Maya rely on the plants and animals of the forest, and their interrelationships, for practical and spiritual wisdom. There is no indication that the State or AB Energy are taking any measures to ensure that oil exploration and development will not dry up sacred sink holes or desecrate holy places and burial sites within the concession areas.

30. In addition to directly desecrating holy sites and damaging forests upon which the Maya culture relies, petroleum exploration has been noted for opening up access to areas for unplanned development, adding to the threats to indigenous cultures. Indirect impacts from squatters, such as

²⁷ See *id.* at 91. See also Samples taken by Steve Kretzmann in Ukepeide, Nigeria in April, 1997 from the community's drinking water found levels of hydrocarbons of 34 ppm - 680 times higher than the European Community standard. Results available from steve@moles.org.

²⁸ Petition at 32 - 34.

²⁹ See Richard Wilk, *Mayan People of Toledo: Recent and Historical Land Use* (February, 1997) (Appendix B.5 to the Petition) (hereinafter the "Wilk report") at 4.

³⁰ See Affidavit of Leonardo Acal (February 1997) (Appendix B.18 to the Petition), at para. 11.

³¹ See Affidavit of Santiago Chub (February, 1997) (Appendix B.16 to the Petition), at para. 7.

deforestation for agriculture and social pressures on indigenous people, can be considerable. If oil is discovered, producing and exporting it will have significant direct and indirect impacts.³²

31. Oil exploration, and the development of any oil deposits discovered, requires the building of roads to exploit the resource. As a general pattern globally, for each new mile of road built by the oil industry, 400 to 2,400 hectares of land are colonized.³³ The entry of substantial new populations into an area that is being denuded of its resources bodes ill for the Maya communities.

32. Historically, settler populations following new roads have tended to displace local indigenous populations. In Colombia, the Constitutional Court found that “The project of exploration, and eventual future exploitation, of hydrocarbons [within]... indigenous territories naturally and predictably will have important and profound consequences for their ecology, culture, economy, and social order. It is not difficult to foresee that the work carried out will affect not only the geological structure of those territories and the flora and fauna found there, but will also impact the customs, language, traditions, cosmology and family and tribal institutions.”³⁴ Maya culture is similarly rooted in culturally specific forms of organization and land use. Displacement from the area would undermine their cultural cohesion.

33. Belize’s actions to allow and actively promote these attacks on the viability and culture of the Maya people by allowing large scale oil development on Maya land violate the right to culture as affirmed in the American Declaration through article XXIII (right to property), article III (right to religious freedom), article VI (right to family and protection thereof), and article XIV (right to take part in the cultural life of the community). Maya cultural integrity is also protected by other international law as detailed in the original petition.³⁵

C. Irreparable Harm to Economic Development Opportunities

34. Health and well-being are often directly affected by the economic situation of a people. The destruction of tropical forests can eliminate the potential for sustainable economic development based on renewable natural resources.³⁶ In addition to possible sustainable commercial use of forest products, the Maya people may also lose the opportunity to develop eco-tourism in their area. The Maya people have embarked on efforts to develop eco-tourism, and these efforts have already earned them a tourism industry prize for “sustainably responsible tourism.” In Belize, almost sixty percent of the domestic economy is based on eco-tourism. Environmentally sensitive tourism, and commercial exploitation of forest products at a sustainable level, may both be forms of profitable economic development compatible with the maintenance of the transitional Maya way of life.

³² See “Trip Report from the USAID Affirmative Investigation of the Proposed IDB Southern Highway Project and Associated Ongoing IDB Loan for the Environmental and Technical Assistance Project (ESTAP) in Belize” (Appendix B.23 to the Petition).

³³ See G. Ledec, “Preparing Environmental Manuals for Petroleum Exploration and Development in Tropical Forest Areas of Latin America and the Caribbean,” presented at the XXV Ordinary Assembly of ARPEL, L Paz, Bolivia, May 1990.

³⁴ Constitutional Court Judgement No. SU-039 (1997) (Case of Grupo Etnico U’wa) (Colombia), at para. 4, citing judgement of the Tribunal Superior de Santafe de Bogota of Sept. 12, 1995.

³⁵ Petition at 29 - 32.

³⁶ See James D. Nations, “Terrestrial Impacts in Mexico and Central America,” *supra* note 19, at 196.

35. By permitting the environmental destruction of their lands through oil exploration activities, the State is precluding the Maya from developing this economic activity, which sustains much of the rest of the country, for their own benefit in the future. Despite its own recognition that “the Belizean economy will be able to maintain fast economic growth only if the forests are protected,”³⁷ the State of Belize is denying the possibility of such growth to the Maya communities, and in so doing is threatening their future well-being. By these actions Belize is also violating the Maya people’s rights to property in their traditional lands (article XXIII of the American Declaration) and equality under the law (article II of the American Declaration).³⁸

V. Petition

Request for Precautionary Measures

36. The Maya communities of the Toledo District are facing irreparable harm to their lives, health, culture, property, and future as a result of the imminent oil exploration by AB Energy Limited under the concession granted by the State of Belize. This is in addition to the extensive and on-going damage caused by logging activities in the District, as detailed in TMCC’s request for precautionary measures of October 26, 1999. Precautionary measures are necessary in order to minimize the immediate, grave, and irreparable harm that is occurring and will worsen if Belize does not alter its present course of action and neglect.

37. The TMCC respectfully requests that the Commission renew its consideration of the petitioner’s request for precautionary measures of October 26, 1999 in conjunction with this supplemental request. Based on the irreparable and imminent harm from logging and petroleum activities outlined in the October 26 request, and the acceleration of petroleum activities described in the current request, TMCC respectfully requests the Commission to call upon Belize to:

1. Immediately suspend all permits, licences, and concession for logging, oil exploration and other natural resource development activity on lands used and occupied by the Maya in the Toledo District (as those lands are defined in the exhibits to the petition), pending a resolution of the complaint before the Commission;
2. Take specific measures to ensure that logging, oil exploration and other natural resource development activity in fact ceases; and
3. Provide the Commission and the TMCC with a full accounting of all granted and pending concession proposals, agreements, and plans with respect to the exploitation of any natural resources and other development projects within the Toledo District; and in regard to other plans or initiatives that will affect the communities and Maya traditional lands.

³⁷ See Government of Belize, *National Environmental Action Plan*, (last modified June 1996) <www.ccad.org.gt/ccad/Planes.ncap.htm>.

³⁸ See Petition for an in-depth discussion of these rights and their relationship to the right of cultural integrity.

Request for On-Site Visit

38. The TMCC, furthermore, respectfully requests that the Commission conduct an on-site visit to Belize, pursuant to article 18(g) of the Commission's Statute, in order further investigate the facts of this case and to assist, if possible, in an amicable resolution of the problems that are set forth in this and previous submissions by the TMCC.

Dated: October 3, 2000

List of Appendices

1. Charlene Smith, "Seismic studies underway in southern Belize," *Amandala*, July 16, 2000.
2. AB Energy - Belize Ltd., Production Sharing Agreement for Petroleum Exploration, Development and Production, Block 12 - Belize, April, 1998.