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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 78/00; Case 12.053
Session: Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause: Maya Indigenous Communities v. Belize
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 5 October 2000
Citation: Maya Indigenous Communities v. Belize, Case 12.053, Inter-Am. C.H.R., Report No. 78/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANTS: Deborah Schaaf, Steven Tullberg and S. James Anaya of the Indian Law Resource Center
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I. SUMMARY

1. This Report concerns a petition presented to the Inter-American Commission on Human Rights (hereinafter “the Commission”), by attorneys Deborah Schaaf, Steven Tullberg, and S. James Anaya of the Indian Law Resource Center, (hereinafter referred to as “attorneys of record in the case”)[FN1] by letter dated August 7, 1998 against the State of Belize (hereinafter referred to as “the State” or “Belize”) for alleged violation of Articles of the American Declaration of the Rights and Duties of Man (hereinafter referred to as “the Declaration”), on behalf of the Toledo Maya Cultural Council of Belize (hereinafter referred to as the “petitioner”).

[FN1] The petitioner has appointed the Attorneys of record in the case to act on all matters for it before the Commission.

2. The petitioner is a non-governmental organization which represents the Mopan and Ke’ekchi Maya people of the Toledo District of Southern Belize (hereinafter referred to as “the victims”), which include people who live in or are otherwise members of the following villages: Medina Bank, Golden Stream, Indian Creek, Silver Creek, San Miguel, San Pedro Columbia, Crique Jute, San Antonio, Na Luum, Caj, San Jose, Santa Elena, San Vicente, Jalacte, Pueblo Viejo, Aguacate, San Benito Poite, San Pablo, Otoxha, Doleres, Corazon, Hicatee, Crique Sarco, Sunday Wood, Conejo, San Lucas, Mabil Ha, Santa Teresa, Jordan, Blue Creek, Laguna, San Marcos, Santa Anna, San Felipe, Boom Creek, Midway, San Marcos, and Big Falls.

3. The petitioner claims that the State has violated the Rights of the Toledo Maya indigenous communities in relation to their lands and natural resources. The petitioner contends that the State granted numerous concessions for logging and oil development to developers on a total of over half a million acres of land that are traditionally used and occupied by the Maya communities in the Toledo District. The petitioner alleges that these concessions are causing, and are threatening to cause further environmental harm to the Maya communities. The petitioner reports that the State has refused to recognize the rights of the Maya people in connection with their traditional lands and to participate in decision making concerning the same.

4. The petitioner alleges that the State's actions constitute violations of the victims' rights guaranteed in Articles of the American Declaration, namely, the right to life (Article I), the right to equality before the law (Article II) the right to religious freedom and worship (Article III), the right to a family and protection thereof (Article VI), the right to the preservation of health and to well-being (Article XI), the right to judicial protection, (Article XVIII), the right to vote and to participate in government (Article XX), and the right to property (Article XXIII).

5. The petitioner states that a lawsuit was filed on December 3, 1996, over three and a half years in the Supreme Court of Belize to stop the logging and to gain judicial affirmation of Maya land and resource rights. The petitioner maintains that the lawsuit has not produced any results because of the Court's failure to render any substantive decision in the case. The petitioner indicates that it is seeking the Commission's assistance in reversing the acts and omissions of Belize that violate the human rights of the victims and in safeguarding those rights in the future. In this regard the petitioner requests that the Commission call upon Belize to adopt precautionary measures and suspend the logging and oil concessions in order to avoid irreparable harm to the victims.

6. The petitioner requests that the Commission find the petition admissible and find that the State violated the human rights of the Maya people and communities guaranteed under the American Declaration. The petitioner also requests that the Commission should recommend that the State: 1) suspend all future and current concessions in the Toledo District until a suitable arrangement is negotiated between the State and the indigenous communities concerned; 2) engage in dialogue with the Maya communities; 3) establish a legal mechanism under domestic law recognizing Maya customary land tenure and resource use; 4) implement a plan with the affected communities to reduce environmental harm caused by logging and oil development activities; 5) pay moral and pecuniary damages incurred by the Maya communities as a result of the concessions and all costs incurred by the communities and petitioner in defending the communities' rights; and 6) provide any other relief that the Commission considers appropriate and just.

7. To date, the State has not responded to any of the Commission's communications nor has it provided the Commission with information concerning the issues on the admissibility and merits of the petition.

8. In this Report, the Commission concludes that the petition is admissible pursuant to Articles 37 and 38 of the Commission's Regulations.

II. PROCEEDINGS BEFORE THE COMMISSION

9. On September 24, 1998 pursuant to Article 34 of its Regulations, the Commission forwarded the pertinent parts of the petition to the State and requested its observations with regard to the exhaustion of domestic remedies and the claims raised in the petition, within 90 days.

10. In a Memorandum to the Commission dated November 18, 1998, the State requested that the Commission monitor and facilitate a negotiation process in connection with the case, within the framework of its friendly settlement procedure. By letter dated November 18, 1998, the petitioner made the same request to the Commission. On November 25, 1998, the Commission received a copy of the "Memorandum of Understanding" reached between the parties. In summary, the "Memorandum of Understanding explained the negotiation procedure which addressed the matters set forth in the petition submitted to the Commission, and the petitioner's Application for Constitutional redress in the Supreme Court of Belize. The Memorandum of Understanding also suspended the State's original deadline of December 23, 1998, to reply to the petition.

11. In addition, the Memorandum of Understanding provided that both the petitioner and the State would enter into a joint Motion to suspend consideration of the merits of their Application for Constitutional Relief in the Supreme Court of Belize while negotiations were proceeding. The Memorandum of Understanding indicated that the State and the petitioner would endeavor to hold an initial meeting within the friendly settlement procedure with a representative of the Commission at its headquarters in Washington, D.C., no later than December 20, 1998, and that negotiations would proceed in appropriate venues in Belize, unless exceptional circumstances dictate otherwise. Paragraph seven of the Memorandum of Understanding stated that "the foregoing terms are without prejudice" to the petitioner's right to continue efforts to secure interim emergency relief from the Supreme Court of Belize, or interim precautionary measures from the Commission, if circumstances so require.

12. On February 16, 1999, the parties attended a meeting at the Commission to initiate the friendly settlement procedure and to establish the "Terms of Negotiation" of the same. On May 4, 1999, the petitioner wrote to the Commission expressing its concern regarding the State's failure to engage in a meaningful dialogue towards a just resolution of the victims' grievances, and to meet its obligations under the terms of the negotiation and friendly settlement process. Appended to the petitioner's letter to the Commission of May 4, 1999, was a copy of the petitioner's letter of the same date addressed to the State expressing their concerns about the same issues raised before the Commission. On May 14, 1999, the Commission forwarded the pertinent parts of the petitioner's correspondence to the State and requested that the State take whatever measures are deemed necessary so that the Commission could receive all the information relevant to the case, within 30 days.

13. On July 20, 1999, the petitioner informed the Commission that the petitioner and the State were prepared to resume friendly settlement negotiations. By letter dated August 24, 1999, the petitioner informed the Commission inter alia that the Government had failed to establish the

conditions the petitioner believed to be necessary in order for the friendly settlement talks to proceed in a fruitful manner. The petitioner also stated in its letter of August 24, 2000, that it remained committed to renewing discussions with the State aimed at resolving the issues presented in this important case, and looked forward to the hearing at the Commission's next period of Sessions. On September 2, 1999, the Commission informed both the petitioner and the State that a hearing had been scheduled in the case before the Commission on October 4, 1999, at its 104th period of Sessions.

14. On October 4, 1999, a hearing was held before the Commission. Both the State and the petitioner attended the hearing together with their representatives.[FN2] At the hearing the petitioner and its attorneys of record presented arguments to the Commission on the issue of exhaustion of domestic remedies, the merits of the case, the futility of continuing with the friendly settlement procedure, and the conditions under which the petitioner was willing to continue with the friendly settlement process. The Commission granted the parties fifteen days from October 8, 1999, to agree to the terms under which the friendly settlement process would continue.

[FN2] The petitioner's representatives: Mr. Pio Co, of the Toledo May Cultural Council of Belize, Mr. Martin Shal, of Toledo Alcaldes Association, attorneys of record of the Indian Law Resource Center: Messrs. S. James Anaya, Deborah Schaaf, Steven Tullberg, Armstrong Wiggins, June Lorenzo, Alex Page, Michele Chebat, and Mr. John Allen of the University of Iowa Law School. The State's representatives: Ambassador/Permanent Representative James Murphy and Counselor/Alternate Representative Georgia Brown Williams Esq.

15. On October 7, 1999, the petitioner wrote to the Commission and in summary informed it that continuing with the friendly settlement procedure with the State would be futile, and that the petitioner wished to terminate the friendly settlement procedure. The petitioner also requested that the Commission continue with its consideration of the petition in accordance with the Commission's Statute and Regulations, unless the State acceded to certain conditions. In addition, in its letter of October 7, 1999, the petitioner asked the following questions directed to the State, and requested that the Commission forward the pertinent parts of its letter to the State:

1. Will the Government of Belize immediately alter its course of action in regard to development activities on Maya traditional lands?
2. Will the Government of Belize immediately suspend any initiatives, including legislative initiatives that affect Maya communities on Maya traditional lands?
3. Does the Government of Belize recognize that the Maya have rights to lands and natural resources in Southern Belize based on their traditional use and occupancy of those lands?

16. On October 8, 1999, the Commission forwarded the pertinent parts of the petitioner's correspondence of October 7, 1999, to the State, and requested that the State take whatever measures are deemed necessary so that the Commission may receive all of the information relevant to the case within 15 days. On October 22, 1999, the State wrote to the Commission and requested an additional 14 days to submit its reply to the Commission's correspondence of

October 8, 1999, and a “follow-up meeting.” On October 27, 1999, the Commission granted the State an extension of 15 days commencing October 27, 1999, in which to submit its reply to the Commission’s communication of October 8, 1999.

17. By letter dated October 26, 1999, the petitioner in summary, requested that the Commission immediately terminate the friendly settlement process, and immediately examine the evidence and prepare a report stating the facts and conclusions regarding the case pursuant to its Regulations. In addition, the petitioners requested that the Commission issue precautionary measures pursuant to Article 29 of its Regulations against the State to avoid irreparable harm to the Maya communities and their members. The petitioner argued that these measures were 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.

18. The Commission forwarded the pertinent parts of the petitioner’s request to the State on October 28, 1999, and requested that the State provide the Commission with information in respect of the petition within 10 days of the same date.

19. By letter dated November 8th 1999, the State responded to the petitioner’s letter of October 7, 1999,[FN3] and stated the following:

[FN3] 1. Will the Government of Belize immediately alter its course of action in regard to development activities on Maya traditional lands?

2. Will the Government of Belize immediately suspend any initiatives, including legislative initiatives that affect Maya communities on Maya traditional lands?

3. Does the Government of Belize recognize that the Maya have rights to lands and natural resources in Southern Belize based on their traditional use and occupancy of those lands?

1. The government is prepared to commit to negotiating with the petitioner’s immediate interim measures that would address Maya concerns and change the terms under which the government permits activities.

2. The government would not be able to immediately suspend the proposed legislation but is prepared to fully negotiate and discuss the provisions of the proposed legislation.

3. The Government of Belize is entirely open to recognizing Maya traditional land resource tenure patterns.

20. On November 10, 1999, the Commission received the petitioner’s response to the State’s note of November 8, 1999. The petitioner stated that it was not entirely satisfied with the answers of the Government of Belize to the three questions posed as conditions for continuing the friendly settlement process. The petitioner also stated that it was disappointed that the State had refused to suspend its consideration of proposed legislation that would affect Maya rights and interests in lands. The petitioner indicated that it considered that the State’s proposed legislation for the creation of a “Southern Development Corporation” undermined Maya rights to lands and natural resources.

21. The petitioner contended that the Government's commitment to "fully negotiate and discuss the provisions of the proposed legislation" meant little if the consideration of the legislation by the legislature continues during the discussions. In addition, the petitioner indicated that it was unclear about the nature of the Government's commitment to "recognize Maya traditional land and resource tenure patterns." The petitioner stated that it noted that the Government avoided a commitment to acknowledge any "rights" on the basis of traditional patterns, as it had requested.

22. Moreover, the petitioner stated that it was encouraged by the Government's willingness to negotiate interim measures that would immediately address Maya concerns over the use and exploitation of lands and natural resources. The petitioner indicated that as an initial step towards establishing a new framework of negotiations under the auspices of the Inter-American Commission's friendly settlement procedure, it proposed agreement on the following:

1. The parties will meet in the immediate future, at a place and time to be determined, to discuss and attempt to reach agreement on interim measures. At the meeting the Government of Belize will be represented by a person or persons who is/are informed about the subject matter and who are able to make decisions on behalf of the Government.

2. Pending the outcome of negotiations on interim measures, the Government of Belize will immediately suspend all logging and oil exploration within the lands identified as "Maya traditional lands" in the petitioner's exhibits to its petition to the Inter-American Commission on Human Rights. Such suspension shall continue until the petitioner and the Government agree to interim measures establishing conditions by which the logging and oil development may proceed.

23. The petitioner indicated that agreement on the foregoing would allow the parties to establish the specific terms for a new framework of negotiation, and would prevent the petitioner from having to continue its request to the Inter-American Commission for precautionary measures. The petitioner stated that it respectfully requested the State's response to the foregoing proposed points of agreement no later than Monday, November 22, 1999.

24. By letter dated December 13, 1999, the petitioner wrote to the Commission and informed the Commission that the petitioner had become convinced in recent days that to continue the friendly settlement process under the Commission's auspices would not be fruitful. The petitioner also confirmed that it wished to terminate the friendly settlement process with the State. In addition, the petitioner requested that the Commission proceed to find that the petition is admissible, and upon such finding, consider the merits of the petition. On December 16, 1999, the Commission forwarded the pertinent parts of the petitioner's letter of December 13, 1999, to the State and requested that it take whatever measures that are deemed necessary so that the Commission may receive all of the information relevant to the case within 30 days.

25. On August 31, 2000, the petitioner wrote to the Commission and reiterated the claims referred to in its original petition concerning the attempts which the petitioner has made to exhaust domestic remedies in Belize. The petitioner *inter alia* stated that the Motion which it filed in the Supreme Court of Belize on December 3, 1996, for Constitutional redress was adjourned indefinitely at the request of the Attorney-General's office. In addition, the petitioner

stated that on February 25, 1999, the petitioner and the attorneys of record in the case filed a notice in the Supreme Court of Belize, informing the Court that it had obtained new local counsel. However, the petitioner maintains that the Supreme Court of Belize has not rescheduled a hearing in the case, nor has the Court taken any decision on any aspect of the case, which is still pending.

26. The Commission reiterated its request for information from the State on February 2, and June 20, 2000, and requested that it provide the said information within 30 days of receipt of the letters. On August 24, 2000, the Commission again reiterated its request for information from the State and gave it a period of 15 days to respond to the Commission's communication. To date, the State has not responded to the Commission's initial communications for information on the issue of admissibility and merits of the petition dated September 24, 1998, May 14, 1999, February 2, June 20, and August 24, 2000, nor has the State responded to the Commission's communication dated October 7, 1999, on the issue of the petitioner's request for precautionary measures.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. Position of petitioner

a. Historical Background

27. The petitioner claims that people who live in Belize and are identified as being "Maya" have for centuries formed organized societies that inhabited a vast territory which includes the Toledo District of Southern Belize, long before the arrival of Europeans and colonial institutions that gave way to the modern State of Belize. The petitioner states that among the historical and contemporary Maya people of the Middle American region encompassing Belize, distinct linguistic subgroups and communities have existed and evolved within a system of interrelationships and cultural affiliations. The petitioner reports that the contemporary Mopan and Ke'kchi speaking people of the Toledo District are the descendants or relatives of the Maya subgroups that inhabited the territory at least as far back as the time of European exploration and incursions into Toledo in the seventeenth and eighteenth centuries.

28. The petitioner informs that each Maya village has an elected alcalde, or village leader, who oversees community affairs in coordination with other leadership figures and a village council. The petitioner claims that the alcaldes were part of the governance structures that evolved under European colonial administrations, and that the Maya adapted the alcaldes system to their own governance practices of pre-colonial origins. The petitioner states that the alcaldes continue to be recognized as part of the municipal system of governance of Belize. The petitioner indicates that the 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, which include "swidden agriculture," hunting, fishing, gathering, and religious uses of specific sites.

29. The petitioner reports that concentric zones of land use surround each of the Maya villages that are scattered throughout the inland parts of the Toledo District, and that the village

is that area where dwellings are clustered and where villagers raise fruit and other trees and graze livestock. The petitioner states that the village zone typically extends up to two square kilometers, and beyond the village zone is the main agricultural zone where crops are planted within a rotational system, typical of forest dwelling people throughout the hemisphere. The petitioner informs that Maya agricultural practices are based on traditional management techniques that have developed from a reservoir of knowledge of the forest and its soils.

30. The petitioner claims that the Maya employ a long-fallow rotation system that requires extensive forested areas to remain undisturbed for years at a time. The petitioner explains that under the fallow-system some fertile spots are permanently under cultivation, however, most fields are cleared only every eight to fifteen years, cultivated with rotational crops used for grazing purposes, and then allowed to lie fallow and regenerate until the next clearing. The petitioner indicates that the agricultural zone of each village can extend up to ten kilometers from the village center. The petitioner reports that the other zone includes large expanses of forest lands used for hunting and gathering, and that these activities provide additional sustenance for the Maya. The petitioner claims that the forest products gathered for food and medicinal purposes include numerous wild plant species, and that the Maya also rely on the forest for building materials for their homes and other structures.

31. The petitioner states that the many streams that meander through each of the village zones are important to the Maya. The petitioner indicates that the rivers and creeks are not only employed by the Maya for fishing, but are also sources of water for drinking, washing clothes, bathing, and as conduits for transporting product to markets. The petitioner claims that the Maya regard numerous sites throughout the agricultural areas and the more remote permanently forested lands as being "sacred." The petitioner informs that these sacred lands include caves, steep hills, and sink holes, which are used for ceremonial purposes and as burial grounds.

32. The petitioner indicates that the Maya land use patterns are governed by a system of customary rules that form part of the social and political organization of Maya communities, and that within this traditional land tenure system, Maya villages hold land collectively, while individuals and families enjoy subsidiary rights of use and occupancy. The petitioner maintains that earlier in this century, the British colonial administration established "reservations" for the benefit of several of the Maya villages. The petitioner claims that these reservations continue to exist under the laws of Belize, but that they only include roughly half of the Maya villages. The petitioner informs that the customary land tenure patterns of the Maya communities, including those of villages that were granted reservations, extend well beyond the reservation boundaries.

33. In addition, the petitioner maintains that the traditional land use and occupancy of each of the Maya villages of Toledo are illustrated by maps that are included in the Maya Atlas. The petitioner states that the illustrated village land areas adjoin with each other and with other areas that are used in common by two or more Maya villages and form a larger territorial unit, and that this composite territory or traditional Maya land use and occupancy is also illustrated in the Maya Atlas.

b. Petitioner's Claims

34. The petitioner contends that since 1993, the Ministry of Natural Resources of Belize has granted numerous oil and logging development concessions on a total of over half a million acres of land in the Toledo District of Southern Belize on lands traditionally used and occupied by Maya communities in the Toledo District. The petitioner maintains that the State granted a single logging concession for 159,018 acres of land to a Malaysian logging company. The petitioner claims that this single concession includes a third of the Maya villages of the Toledo District and endangers roughly half of the Maya population of the District. The petitioner indicates that another Malaysian logging company began operations in September of 1995 in the Columbia River Forest Reserve and finished construction of one of Central America's largest sawmills in February of 1996, in an area used by the Maya for hunting and gathering.

35. The petitioner claims that none of the Maya villagers agreed to any of the logging concessions and no accommodations have been made to consider Maya interests or rights. The petitioner claims that the logging activities are damaging essential water supplies, threatening access to and use of Maya sacred sites, and straining plant and wildlife population, and that some of the concessions also allow clear-cutting for eventual "conversion" into commercial agricultural lands. The petitioner alleges that the State of Belize does not adequately monitor the logging or enforce its environmental standards, intensifying the threat of future environmental damage to the Maya people and communities.

36. The petitioner maintains that the Ministry of Energy, Science, Technology and Transportation of Belize has approved the application of the AB Energy company to engage in oil exploration activities in Block 12 which covers 749,222 acres in the lowland Toledo District. The petitioner indicates that industry practice and laws of Belize dictate that a contract for petroleum operations guarantees oil extraction rights, which may last up to 25 years, if commercially viable oil deposits are located. The petitioner claims that the State has placed a substantial portion of Maya traditional territory in a potential position of long term oil development and production activities without consulting the Maya people.

37. The petitioner alleges that the State violated the rights of the Mopan and Ke'kchi Maya people of the Toledo District, and argues that the current logging and oil concessions are creating irreparable environmental damage to the Maya people and their communities. The petitioner claims that the State's action constitutes violations of the victims' rights guaranteed in Articles of the American Declaration, namely, the right to life (Article I), the right to equality under the law (Article II) the right to religious freedom and worship (Article III), the right to a family and protection thereof (Article VI), the right to the preservation of health and to well-being (Article XI), the right to judicial protection, (Article XVIII), the right to vote and to participate in government (Article XX), and the right to property (Article XXIII). In addition, the petitioner contends that as member of the Organization of American States ("OAS") and a party to the OAS Charter, the State is legally bound to promote the observance of human rights.

c. Petitioner's argument on Exhaustion of Domestic Remedies

38. According to the petitioner, the Maya people have consistently attempted to have the government address and resolve their concerns, administratively and judicially from 1995 to the present time but to no avail. The petitioner claims that on December 3, 1996, the petitioner filed

a Motion for Constitutional Redress in the Supreme Court of Belize on the grounds that Sections 3, 16, and 17 of the Constitution of Belize “have been and are being” violated”. The petitioner claims that the petitioner and the victims are seeking a decision from the Court, which would find that the logging licenses granted by the State were in violation of Maya aboriginal property rights, thereby suspending all licenses for resource extraction. The petitioner maintains that on January 13, 1997, a brief procedural hearing was held before Justice Meerabux for redress pursuant to section 20 of the Constitution of Belize.

39. The petitioner indicates that on January 13, 1997, Justice Meerabux ordered that the trial should be by affidavit and that the affidavits be filed and served within 45 days of this order. The petitioner states that the Court’s order required that the petitioner and victims, and the State file an affidavit of documents within 21 days of notice and that inspection of those documents should follow within 21 days of service of the affidavit of documents. The petitioner claims that subsequently, the Court ordered that the action should be tried in Belize City with a Judge as opposed to a Jury, giving either party the option to file an application regarding the mode of trial. The petitioner maintains that on March 17, 1997, the petitioner and victims filed a Notice to Produce Documents requiring the State to produce certain documents for the petitioner’s and victims’ inspection. The petitioner claims that on April 17, 1998, the petitioner and victims filed a Summons for an injunction hearing before Justice Meerabux in Chambers to suspend all logging and resource extraction concessions, granted within the land over which the petitioner and victims claim property rights. The petitioner informs that the hearing for the injunction was scheduled for May 19, 1998, but was adjourned indefinitely at the request of the Attorney-General’s office.

40. The petitioner indicates that on February 25, 1999, the petitioner and the attorneys of record in the case filed a Notice in the Supreme Court of Belize, informing the Court that it had obtained new local counsel. However, the petitioner maintains that the Supreme Court of Belize has not rescheduled a hearing in the case, nor has the Court taken any decision on any aspect of the case which is still pending. In addition, the petitioner contends that it has attempted to partake in a friendly settlement aided by the Commission, but that the State failed to make a good faith effort. The petitioner argues that the determination of the Government of Belize to evade responsibility for addressing the issues set forth in the petition filed at the Inter-American Commission (and in the domestic litigation) especially in light of the political influences on the judiciary in Belize has convinced the TMCC that further efforts to press the Motion for Constitutional redress would be fruitless at this time, and that this statement was consistent with the advice of local counsel.

41. In addition, the petitioner claims exemption from the exhaustion of domestic remedies requirement under Regulations Article 37(2)(c) because the lawsuit filed in the Supreme Court of Belize to stop the logging and gain judicial affirmation of Maya land and resource rights has not produced any results. The petitioner argues that there has been undue delay in the case because the Supreme Court has failed to render any substantive decision on the case, despite the fact the case was presented to the Court over three and a half years ago (December 3, 1996). The petitioner contends that the petition has been submitted within a reasonable time as provided for by Article 38(2), which refers to cases in which the exhaustion requirement does not apply.

Moreover, the petitioner claims that the current petition or subject matter is not pending in any other international proceeding.

B. Position of the State

42. On September 24, 1998, pursuant to Article 34 of its Regulations, the Commission forwarded the pertinent parts of the petition to the State and requested its observations with regard to the exhaustion of domestic remedies and the claims raised in the petition, within 90 days. Both parties requested that the Commission suspend consideration of the petition during the friendly settlement negotiations. During the pendency of this case before the Commission, the State communicated with the Commission with regard to the friendly settlement negotiations.

43. However, the Commission has not received a reply to its communication dated October 28, 1999, to the State in which the Commission requested that the State provide the Commission with information concerning the petitioner's request for precautionary measures. Nor has the State replied to the Commission's communication dated December 16, 1999, in which the Commission informed the State that the petitioner wished to terminate the friendly settlement negotiations. The Commission also requested that the State provide it with information it deemed relevant to the case within 30 days of receipt of its communication, so that the Commission may continue with its processing of the case. On February 2, and June 20, 2000, the Commission reiterated its requests to the State to provide it with information that it deemed relevant within 30 days of receipt of its letters so that it could continue processing the case. On August 24, 2000, the Commission again reiterated its requests to the State to provide it with all relevant information in the case within 15 days of receipt of its letter.

44. To date, the State has not responded to any of the Commission's communications nor has it provided the Commission with information concerning the issues on the admissibility and merits of the petition.

IV. ANALYSIS ON ADMISSIBILITY

A. Commission's Competence

45. In its petition, the petitioner alleges violations of Articles I, II, III, VI, XI, XVIII, XX, and XXIII, of the Declaration. Article 26 of the Commission's Regulations provides that "[a]ny person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may submit petitions to the Commission, in accordance with these Regulations, on one's own behalf or on behalf of third persons, with regard to alleged violations of a human right recognized, as the case may be, in the American Convention on human Rights or in the American Declaration of the Rights and Duties of Man." The petition in this case was lodged by the petitioner, Toledo Maya Cultural Council of Belize on behalf of the victims, the Mopan and Ke'ekchi Maya people of the Toledo District of Southern Belize, nationals of the State of Belize.

46. The Declaration became the source of legal norms for application by the Commission[FN4] upon Belize becoming a member a Member State of the Organization of

American States in 1981. In addition, the Commission has authority under the Charter of the Organization of American States, Article 20 of the Commission's Statute,[FN5] and the Commission's Regulations to entertain the alleged violations of the Declaration raised by the petitioner against the State, which relate to acts or omissions that transpired after the State joined the Organization of American States. Consequently, the Commission has jurisdiction *ratione temporis*, *ratione materiae*, and *ratione personae* to consider the violations of the Declaration alleged in this case. Therefore, the Commission declares that it is competent to address the petitioner's claims relating to the alleged violations of the Declaration.

[FN4] I/A Court H.R., Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights), 14 July 1989.

[FN5] Article 20 of the Commission's Statute provides as follows: In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in Article 18:

- (a) To pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the rights and Duties of Man;
- (b) To examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,
- (c) To verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

B. Other Grounds of Admissibility

a. Exhaustion of Domestic Remedies

47. This case raises two issues pertaining to the exhaustion of domestic remedies. The first is, whether the petitioner is excused from exhausting domestic remedies pursuant to Article 37(2)(c) of the Commission's Regulations. Second, whether the State's silence by not responding to the Commission's communications constitutes a waiver to object to non-exhaustion of domestic remedies as established by the Inter-American Court's and the Commission's jurisprudence. The issue of exhaustion of domestic remedies is governed by Article 37 of the Commission's Regulations. Article 37(1) of the Commission's Regulations provides that: "For a petition to be admitted by the Commission, the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law. Article 37(2) of the Commission's Regulations provides that the provisions of the preceding paragraph shall not be applicable when:

- (a) The domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;

(b) The party alleging violation of his rights has been denied access to the domestic law or has been prevented from exhausting them;

(c) There has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

48. Article 37(3) of the Commission's Regulations provides that: "When the petitioner contends that he is unable to prove exhaustion as indicated in this Article, it shall be up to the government against which this petition has been lodged to demonstrate to the Commission that the remedies under domestic law have not previously been exhausted, unless it is clearly evident from the background information contained in the petition."

49. The State is not a party to the American Convention, however, for purposes of analysis, the Commission refers to the Inter-American Court of Human Rights Advisory Opinion OC-11/90 on the issue of exhaustion of domestic remedies, in which the Court in construing Article 46(1)(a) and 46(2) of the American Convention[FN6] which provisions are similar to Article 37(1) and 37(2) of the Commission's Regulations stated the following waiver of domestic remedies rule:

[FN6] Belize is not a party to the American Convention. Article 46(1) of the American Convention provides that: "Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: (a) that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international Law."

Article 46(2) of the American Convention provides: The Provisions of the paragraphs 1(a) and 1(b) of this Article shall not be applicable when:

(a) The domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

(b) The party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

(c) There has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Under Article 46(1) of the Convention and in accordance with general principles of international law, it is for the state asserting non-exhaustion of domestic remedies to prove that such remedies in fact exist and that they have not been exhausted (Velásquez Rodríguez Case, Preliminary Objections, supra 39, para. 88; Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra 39, para. 87, and Godínez Cruz Case, Preliminary Objections, supra 39, para. 90.) [FN7]

[FN7] Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2) and 46(2)(b) American Convention on Human Rights), at 32, para. 41. Advisory Opinion OC -11/90, Series A. Judgments and Opinions, No. 11.

50. The Inter-American Court of Human Rights in the Case of Godínez Cruz Case opined the following on the issue of exhaustion of domestic remedies:

Generally recognized principles of international law indicate, first, that this is a rule that may be waived, either expressly or by implication, by the state having the right to invoke it, as this Court has already recognized (see Viviana Gallardo et al. Judgment of November 13, 1981, no. G 101/81. Series A, para. 26). Second, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed. Third, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.[FN8]

[FN8] Preliminary Objections, (Judgment of June 28, 1987), Decisions and Judgments No. 3.

51. It is also important to note the Commission's jurisprudence concerning the issue of waiver of exhaustion of domestic remedies. The Commission's rulings on this issue are illustrated in some cases from the Caribbean, namely, the cases of Rudolph Baptiste, Report No. 38/00,[FN9] Omar Hall, Report No. 25/00,[FN10] and Brian Schroeter and Jeronimo Bowleg, Report No. 123/99 the Commission found that where the States were given the opportunity to respond to the issue of exhaustion of domestic remedies and failed to do so, those States had tacitly waived their rights to object to the admissibility of those petitions based upon the exhaustion of domestic remedies rule.

[FN9] Case 11.743, (Grenada), Annual Report of the Inter-American Commission on Human Rights, 1999, Volume I, pp. 721, and 737.

[FN10] Case 12.068, (The Bahamas), Id. Annual Report of the Inter-American Commission, pp. 184, and 187.

52. The Commission notes that to date, the State has not provided the Commission with information concerning the issues relating to the admissibility and merits of the petition.

53. In light of the foregoing the Commission finds first, that in accordance with generally accepted principles of international law that the State tacitly waived its right to object to the admissibility of the petition based upon the exhaustion of domestic remedies rule.

54. Second, in the alternative, the Commission finds that based on the record of the case, that there has been unwarranted delay by the Supreme Court of Belize in rendering a final decision on the lawsuit which was filed by the petitioner seeking Constitutional redress on behalf of the victims on December 3, 1996, on the claims raised in the petition.

55. Moreover, the State has failed to demonstrate to the Commission that there has been no delay on its part, rendering the application of Article 37(2)(c) of the Commission's Regulations

inapplicable. Further, the State has not provided the Commission with information which would tend to establish that the remedies under domestic law have not been exhausted or remain to be exhausted as provided by Article 37(3) of the Commission's Regulations. Therefore, the Commission finds that based on the foregoing analysis of Article 37 of its Regulations the petitioner and victims are excused from exhausting domestic remedies pursuant to Article 37(2)(c) and 37(3) of the Commission's Regulations.

56. The Commission concludes first, that this case is admissible pursuant to the waiver of exhaustion of domestic remedies rule as established by the Inter-American Court's and the Commission's jurisprudence. Moreover, in the alternative, the Commission concludes that the provisions of Article 37(1) of the Commission's Regulations are inapplicable as provided by Article 37(2)(c) of its Regulations, and finds this petition admissible.

b. Timeliness of petition

57. As concluded above, in accordance with Article 38(1) of the Commission's Regulations, a petition must be presented within a period of six months from the date on which the complaining party was notified of the final judgment at the domestic level. Where no such judgment has been issued because it has not been possible to exhaust domestic remedies, pursuant to Article 37(2) of the Commission's Regulations,[FN11] Article 38(2) of the Commission's Regulations becomes applicable. Article 38(2) of the Commission's Regulations provides that: "In the circumstances set forth in Article 37(2) of these Regulations, the deadline for presentation of a petition shall be within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case."

[FN11] 1. Article 37(2) of the Commission's Regulations provide that the provisions of the preceding paragraph shall not be applicable when:

- (a) The domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
 - (b) The party alleging violation of his rights has been denied access to the domestic law or has been prevented from exhausting them;
 - (c) There has been unwarranted delay in rendering a final judgment under the aforementioned remedies.
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58. In the present case, the State has failed to provide any observations in respect of the admissibility or merits of the petition and has failed to demonstrate to the Commission that the petition has not been timely filed.[FN12] Moreover, the Commission finds that the petition was filed within a reasonable time as established by the provisions of Article 38(2) of the Commission's Regulations. Therefore, the Commission concludes that the petition is admissible pursuant to Article 38(2) of its Regulations.

[FN12] I/A Court H.R., Neira Alegría Case, Preliminary Objections, Judgment, 11 December 1991 pp. 44-45, at paras. 25-31.

c. Duplication of Procedures

59. The petitioner states that the claims raised in its petition on behalf of the victims have not been submitted for examination under any other procedure of international investigation or settlement. The record before the Commission does not indicate that the subject of the petitioner's claims is pending in another international procedure, or duplicates a petition pending or already examined by the Commission or another international organization. The State has not provided any observations on the issue of duplication of procedures. The Commission therefore finds that the petition is admissible pursuant to Article 39(1) of its Regulations.[FN13]

[FN13] Article 39(1) of the Commission's Regulations provides that the Commission shall not consider a petition in cases where the subject of the petition is pending in another procedure under an international governmental organization of which the State concerned is a member, or essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member.

d. Colorable Claim

60. The petitioner has alleged that the State has violated the victims' rights under Articles I, II, III, VI, XI, XVIII, XX, and XXIII, of the Declaration. In addition, the petitioner has provided factual allegations that if proven would tend to establish that the alleged violations might be well founded. The Commission therefore concludes, without prejudging the merits of the case, that the petition is not barred from consideration under Article 41(c) of its Regulations.[FN14]

[FN14] Article 41(c) of the Commission's Regulations provides that the Commission shall declare a petition inadmissible if the petition is manifestly groundless or inadmissible on the basis of the statement by the petitioner himself or the government.

61. In accordance with the foregoing analysis, and without prejudging the merits of this petition, the Commission decides to declare admissible the alleged violations of the Declaration presented on behalf of the victims.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. Declare that the petition is admissible with respect to the claimed violations of Articles I, II, III, VI, XI, XVIII, XX, and XXIII of the American Declaration.

2. Transmit this Report to the State of Belize and to the petitioner.
3. Place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter.
4. To publish this report and include it in its Annual Report to the General Assembly.

Done and signed in Washington, D.C., on the 5th day of the month of October, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman, Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo, Commissioners.