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## I. SUMMARY

1. This report concerns a petition presented to the Inter-American Commission of Human Rights (the "Commission") against the State of Belize (the "State" or "Belize") on August 7, 1998 by the Indian Law Resource Center and the Toledo Maya Cultural Council (the "Petitioners"). The petition claims that the State is responsible for violating rights under the American Declaration of the Rights and Duties of Man (the "American Declaration") that the Mopan and Ke'kchi Maya People of the Toledo District of Southern Belize (the "Maya people of the Toledo District" or the "Maya people") are alleged to have over certain lands and natural resources.[FN1]

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[FN1] According to the petition, the Mopan and Ke'kchi Maya people of the Toledo District of Southern Belize are represented by the Toledo Maya Cultural Council, a non-governmental organization, and include the individuals 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, Dolores, 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.  
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2. The Petitioners claim that the State has violated Articles I, II, III, VI, XI, XVIII, XX and XXIII of the American Declaration in respect of lands traditionally used and occupied by the Maya people, by granting logging and oil concessions in and otherwise failing to adequately

protect those lands, failing to recognize and secure the territorial rights of the Maya people in those lands, and failing to afford the Maya people judicial protection of their rights and interests in the lands due to delays in court proceedings instituted by them. According to the Petitioners, the State's contraventions have impacted negatively on the natural environment upon which the Maya people depend for subsistence, have jeopardized the Maya people and their culture, and threaten to cause further damage in the future.

3. The State has indicated before the Commission that applicable law and the facts presented by the Petitioners are unclear as to whether the Maya people may have aboriginal rights in the lands under dispute, although at the same time it has recognized in negotiations outside of the Commission proceedings that the Maya people have rights in lands in the Toledo District based upon their longstanding use and occupancy of that territory. Concerning the concessions referred to by the Petitioners, the State claims that it has taken steps to suspend, review and monitor logging licenses, and that there has been no oil exploration activity in the Toledo district since 1998. The State also asserts that the Petitioners have failed to produce sufficient evidence that logging and oil concessions have caused environmental or other harm or otherwise violated any of the rights of the Maya people of the Toledo District under the American Declaration. Finally, the State contends that the Maya people have not been denied their right to judicial protection, but rather claims that they have chosen not to pursue domestic litigation to its fullest.

4. In Report N° 78/00 adopted by the Commission on October 5, 2000 during its 108th regular period of sessions, the Commission decided to admit the Petitioners' petition with respect to the claimed violations of Articles I, II, III, VI, XI, XVIII, XX and XXIII of the American Declaration and to proceed with consideration of the merits of the complaint.

5. In the report, having examined the evidence and arguments presented on behalf of the parties, the Commission concluded that the State violated the right to property enshrined in Article XXIII of the American Declaration, and the right to equality enshrined in Article II of the American Declaration, to the detriment of the Maya people, by failing to take effective measures to delimit, demarcate, and officially recognize their communal property right to the lands that they have traditionally occupied and used, and by granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated and titled, without consultations with and the informed consent of the Maya people. The Commission also concluded that the State violated the right to judicial protection enshrined in Article XVIII of the American Declaration to the detriment of the Maya people, by rendering judicial proceedings brought by them ineffective through unreasonable delay.

6. Based upon these findings, the Commission recommended that the State provide the Maya people with an effective remedy, which includes recognizing their communal property right to the lands that they have traditionally occupied and used, without detriment to other indigenous communities, and to delimit, demarcate and title the territory in which this communal property right exists, in accordance with the customary land use practices of the Maya people. The Commission also recommended that the State abstain from any acts that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the

existence, value, use or enjoyment of the property located in the geographic area occupied and used by the Maya people until their territory is properly delimited, demarcated and titled.

7. In the present report, the Commission ratifies its conclusions, reiterates its recommendations and decides to make public the report.

## II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT N° 78/00

8. On October 5, 2000 during its 108th regular period of sessions, the Commission adopted admissibility report N° 78/00 in which it declared that the petition was admissible with respect to the claimed violations of Articles I, II, III, VI, XI, XVIII, XX and XXIII of the American Declaration and placed itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter. In separate notes of the same date, the Commission informed the parties that it had decided to issue precautionary measures pursuant to Article 29(2) of its former Regulations, requesting that the State take appropriate measures to suspend all permits, licenses, and concessions for logging, oil exploration and other natural resource development activity on lands used and occupied by the Maya communities in the Toledo District until the Commission had the opportunity to investigate the substantive claims raised in the case.

9. By letter dated October 24, 2000, the Petitioners informed the Commission that on October 12, 2000, the State had entered into an agreement with the Petitioners and other Maya leaders in Belize entitled “Ten Points of Agreement”. According to the Petitioners, this agreement resulted from discussions initiated by the Government outside of the framework of the friendly settlement process before the Commission.

10. On February 6, 2001, the Petitioners reiterated a previous request that the Commission conduct an on-site visit to Belize pursuant to Article 18(g) of the Commission’s Statute. In a note dated March 19, 2001 to the State, the Commission requested a meeting with the State’s representatives and the Petitioners to better facilitate a possible settlement of the case and to visit the Maya Indigenous Communities in Belize. By letter dated April 23, 2001, the State accepted the Commission’s proposal and offered May 9 and 10, 2001 as possible dates for the Commission’s visit. In letters dated April 25, 2001, the Commission informed the State and the Petitioners that it accepted the dates proposed for the visit.

11. On May 9 and 10, 2001, the Commission, through its Rapporteur for Belize, Dr. Peter Laurie, and members of its Secretariat, traveled to Belize where it held meetings, individually and jointly, in Belize City with the Government of Belize, the Petitioners, and members of some of the Maya communities. The Commission delegation also traveled to Punta Gorda, Belize where it visited the Maya Indigenous Community of Santa Teresa as well as a logging site between Santa Teresa and Midway. During the Commission’s visit, the State presented a written “Preliminary Response” dated May 8, 2001 to the Petitioners’ petition together with maps and other supporting documentation.

12. Following its visit to Belize, the Commission informed the parties by letter dated May 25, 2001 that, based upon their discussions during the visit, it believed that grounds existed for achieving a friendly settlement in the matter. The Commission also provided recommendations

for pursuing an amicable settlement of the matter and stipulated that in the event that there was no agreement between the parties by July 19, 2001 to enter into discussions for a friendly settlement, the Commission would proceed to consider the merits of the case and issue a report.

13. In a letter dated June 30, 2001, the Petitioners informed the Commission that pursuant to the Commission's May 25, 2001 communication, they submitted to the State a proposed framework for the re-initiation of the friendly settlement process on May 7, 2001. They also indicated that on June 7, 2001, the State responded with a counter proposal and that there had not yet been agreement on all of the terms of the framework. By note dated July 9, 2001, the State similarly informed the Commission that there had been some progress with settlement discussions between the parties.

14. On July 18 and 20, 2001, the Commission met with the parties in Belize City concerning their friendly settlement negotiations in the case. At that meeting the Petitioners and the State agreed to re-initiate the friendly settlement process under the auspices of the Commission, with the parameters of the agreement set forth in a "Framework to Re-initiate the Friendly Settlement Process" signed by the parties.

15. In notes dated August 16, 2001, the Commission requested confirmation from the parties of their availability for a meeting in Belize on September 4, 2001 in order to continue discussions to implement the Framework to Re-initiate the Friendly Settlement Process. In a responding letter dated August 24, 2001, the Petitioners requested a postponement of the September 4, 2001 meeting.

16. By communication dated December 17, 2001, the Petitioners submitted their response to the State's May 8, 2001 preliminary observations on their petition and requested that the Commission terminate the friendly settlement process that was re-initiated in July 2001 and issue a report on the merits of the case. In a letter dated December 20, 2001, the Commission transmitted the pertinent parts of the Petitioners' response to the State with a request for observations within 30 days. In a note dated March 25, 2002, the State presented inquiries to the Commission as to the nature of the response requested.

17. In a letter dated November 5, 2002, the Petitioners reiterated their request that the Commission adopt a report on the merits of the case expeditiously.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioners

18. In their initial petition and subsequent observations, the Petitioners have contended that the State is responsible for violations of the rights of the Maya people under Articles I (right to life), II (right to equality before the law), III (right to religious freedom and worship), VI (right to a family and to protection thereof), XVIII (right to a fair trial), XX (right to vote and to participate in government) and XXIII (right to property) of the American Declaration in respect of lands traditionally used and occupied by the Maya people.

19. In particular, the Petitioners claim that the State has granted logging concessions and oil concessions on the Maya lands without meaningful consultations with the Maya people and in a manner that has caused substantial environmental harm and threatens long term and irreversible damage to the natural environment upon which the Maya depend, contrary to Articles I, III, VI, XIV and XXIII of the American Declaration. The Petitioners also contend that these measures form part of a broader failure on the part of the State to recognize and provide adequate protection for the rights of the Maya people to land in the Toledo District based upon Maya customary land use and occupancy, in violation of Articles II, XX and XXIII of the American Declaration. Further, the Petitioners argue that the State has failed to provide adequate judicial protection through the domestic legal system for their alleged violations of rights regarding lands and resources, contrary to Article XVIII of the American Declaration, due to delays in court proceedings instituted by them.

1. Factual Allegations of the Petitioners

20. In support of the claims in their petition, the Petitioners have provided numerous factual allegations concerning the circumstances of the Maya people and the land and resources to which they claim rights, together with corresponding affidavit, documentary and other evidence. These allegations relate to four main areas: the traditional use and occupancy by the Maya people of territory in the Toledo District of southern Belize; logging and oil concessions and their impact on the natural environment; lack of recognition and adequate protection of indigenous lands; and unreasonable delay in domestic judicial proceedings.

a. Traditional Occupancy and Use of Land and Resources by the Maya People of the Toledo District

21. The Petitioners state that people who are identified as Maya have formed organized societies that inhabited the Toledo District of southern Belize and the surrounding region long before the arrival of the Europeans and the colonial institutions that gave way to the modern State of Belize. They also claim 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. According to the Petitioners, the alleged victims in this case, who are comprised of individuals who live in or are otherwise members of communities of the Mopan and Ke'kchi-speaking people of the Toledo District of southern Belize, are the descendents or relatives of 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.

22. In support of their contentions concerning these and other aspects of the Maya people's relations with the territory at issue in this case, the Petitioners refer to the writings and evidence of historians and other experts who have studied the origins, development and present status of the Maya people in the Toledo District.[FN2] The Petitioners also refer throughout their submissions to the 150-page Maya Atlas, which was prepared by the Toledo Maya Cultural Council and the Toledo Alcaldes Association with the assistance of professional geographers from the University of California at Berkley, and which contains detailed information on the villages and demographics of the Maya people of southern Belize.[FN3]

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[FN2] Petitioners' petition dated August 7, 1998, pp. 3-6, paras. 12-22, citing Appendix B.2 (Richard M. Leventhal, *Maya Occupation and Continuity in Toledo* (February 1997), annexed as Exhibit R.M.L.1 to the affidavit of Richard Mishel Leventhal, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510)) [hereinafter "Leventhal Report"]; Appendix B.3 (Grant D. Jones, *Maya Resistance to Spanish Rule: Time and History on a Colonial Frontier* (Albuquerque: University of New Mexico Press, 1989), pp. 93-94); Appendix B.4 (Grant Jones, *Historical Perspectives on the Maya Speaking Peoples of the Toledo District, Belize* (1997), annexed as Exhibit G.J.1 to the Affidavit of Grant D. Jones, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510)); Appendix B.5 (Richard Wilk, *Mayan People of Toledo: Recent and Historical Land Use* (February 1997), annexed as Exhibit R.W.1 to the Affidavit of Richard R. Wilk, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510)); Appendix B.6 (Second Affidavit of Grant D. Jones, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510)); Appendix B.7 (Second Affidavit of Richard R. Wilk, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510)) [hereinafter "Wilk Report"]; Appendix B.8 (Charles Wright, *Analysis of Forestry Concessions in Toledo District*, at 16, annexed as Exhibit C.S.W.1 to the Affidavit of Charles S. Wright, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510)) [hereinafter "Wright Report"]; Appendix B.9 (Bernard Q. Nietschmann, *System of Customary Practices of the Maya in Southern Belize* at 11-12 (July 1997), annexed as Exhibit B.N.1 to the Affidavit of Bernard Q. Nietschmann, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510)) [hereinafter "Nietschmann Report"]; Appendix B.10 (Second Affidavit of Santiago Club at para. 12, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510)).

[FN3] Petitioners' petition dated August 7, 1998, p. 2, Appendix A "The Toledo Maya Cultural Council and Toledo Alcaldes Association, *Maya Atlas: The Struggle To Preserve Maya Land in Southern Belize*" (Berkeley, California: North Atlantic Books, 1997)) [hereinafter "Maya Atlas"].  
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23. Based upon these supporting materials, the Petitioners also provided details of the political organization, land use, land tenure and religious practices of the Maya communities of Toledo, particularly as they relate to the territory that they are said to have occupied and used for centuries. The Petitioners indicate, for example, that under the government structures that evolved under European colonial administrations and have continued as part of the municipal system of the governance of Belize, each Maya village has an elected alcalde, or village leader, who oversees community affairs in coordination with other leadership figures and a village council.

24. The Petitioners also claim that the land use practices of the Maya people are comprised of both subsistence and cultural elements that form a foundation for the life and continuity of the Maya communities. These elements include the use of concentric and broadening zones of land and streams surrounding the Maya villages for dwelling and subsistence purposes as well as swidden agriculture, hunting, fishing, gathering and transportation activities, as well as numerous sites throughout the agricultural area and the more remote forested lands that are regarded as sacred and used for ceremonial purposes and as burial grounds. The Petitioners claim in particular that three principal zones surround each Maya village: the "village zone" that typically

extends to two square kilometers and is used for dwellings, raising fruit and other trees and grazing livestock; the “agriculture zone” extending up to 10 kilometers from the village center where crops are planted on a rotational system and agriculture practices are based on traditional management techniques that have developed from a reservoir of knowledge of the forest and its soils; and a yet broader zone that includes large expanses of forest lands and waterways used for hunting and gathering for food, medicinal, construction, transportation and other purposes.[FN4]

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[FN4] Petitioners’ petition dated August 7, 1998, pp. 4-5.

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25. According to the Petitioners, the customary land use patterns of the Maya people are governed by a traditional land tenure system by which Maya villages hold land collectively, while individuals and families enjoy subsidiary rights or use and occupancy.[FN5] This customary system exists alongside a system of “reservations” established by the British colonial administration that pertains to Maya villages and that continues to exist under the laws of Belize.[FN6] The Petitioners note, however, that the reservations include only roughly one-half of the Maya villages in the Toledo District and that the customary land tenure patterns of the Maya communities extend well beyond the reservation boundaries. They refer in this regard to maps within the Maya Atlas, which they claim illustrate the composite territory of traditional Maya land use and occupancy and the continuous nature of individual Maya villages of Toledo, by which the villages adjoin with each other and with other areas that are used in common by two or more Maya villages.[FN7]

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[FN5] See, e.g., Petitioners’ petition dated August 7, 1998, p. 5, paras. 17-21, citing, inter alia, Nietschmann Report, supra; Wilk Report, supra.

[FN6] Petitioners’ petition dated August 7, 1998, p. 6, para. 21, Appendix B.11 (National Lands Act, 1992 6/1992 (Belize), [hereinafter “National Lands Act”], Section 6).

[FN7] Petitioners’ petition dated August 7, 1998, p. 6, para. 22, citing Maya Atlas, supra, at 18 (“Maya Land Use in the Toledo and Stann Creek Districts, Southern Belize”), 43-115 (“Village maps”), 126 (“Sanctuaries, Reserves and Parks”).

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26. In this connection, in their December 17, 2001 reply to the State’s Preliminary Response to the petition, the Petitioners refer to a map provided by the State during the Commission’s May 2001 on-site visit as “graphic evidence” of the State’s failure to effectively guarantee indigenous land and resource rights in southern Belize.[FN8] The Petitioners note that according to this map, a majority of the lands to which the Maya communities claim rights are designated as “National land”, and that the map makes reference only to the Maya reservations that were established by the British colonial government. The Petitioners also contend that, with its continued designation of the lands in question as National lands, the State has continued to authorize and promote development activities on the lands without agreement or consultation with Maya communities and without accommodations for Maya resource use and cultural patterns, and refer in this connection to seven additional major development activities in or near Maya traditional territory.[FN9] The Petitioners suggest that these projects constitute further evidence of the

State's failure to recognize and respect the rights and interests of the Maya people in their traditional lands.

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[FN8] Petitioners' reply dated December 17, 2001, p. 8, para. 28, Appendix E (map "ESTAP Project Area, Land Tenure").

[FN9] Petitioners' reply dated December 17, 2001, pp. 8-12, para. 30(a)-(g) (referring to: the Guatemala-Belize Highway-Puebla-Panama Plan (a highway linking southern Belize with north-eastern Guatemala); Debt-for-Nature Swap (August 2001 initiative by which the U.S government reduced by approximately one-half Belize's debt obligation to the U.S. in exchange for the "protection" of 23,000 acres of forest in the Maya Mountains); Community-Initiated Agriculture and Resource Management Rural Development Project (CARD) (project to assist small and medium-sized farmers to diversify production and cultivate more ostensibly marketable crops and to move away from the rotational slash and burn form of agriculture traditionally practiced by the Maya and adopt more sedentary farming practices); Free Trade Zone Feasibility Study (study undertaken by the Ministry of Economic Development in the summer of 2001 on the feasibility of creating a free trade zone in the Toledo District); Land Management Program (project funded by the Inter-American Development Bank that will expand land adjudication and registration activities country-wide and provide other reforms of the land system in Belize); Toledo Development Corporation (designed to be the primary vehicle for land management and development in the Toledo District, which the Petitioners claim has been established without the consultation or agreement of the Maya communities of the District); Issuance of Private Interests in Maya Lands (instances in which the State has conveyed private interests in lands traditionally used and occupied by the Maya communities).

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b. Logging and Oil Concessions and their Impact on the Natural Environment

27. In the context of the foregoing description of the traditional use and occupancy by the Maya people, the Petitioners contend that the State has violated the rights of the Maya people under Articles I, III, VI, XIV and XXIII of the American Declaration by granting logging concessions and oil concessions on the Maya lands in the Toledo District without meaningful consultations with the Maya people and in a manner that has caused substantial environmental harm and threatens long term and irreversible damage to the natural environment upon which the Maya depend.

28. Concerning logging concessions, the Petitioners argue that since 1993, the Ministry of Natural Resources of Belize has granted numerous concessions for logging on a total of over half a million acres of land in the Toledo District, including sizeable concessions granted to two Malaysian timber companies, Toledo Atlantic International, Ltd. and Atlantic Industries, Ltd.[FN10] the Petitioners claim that logging under these concessions is ongoing or imminent and that the areas of ten of the concessions include reservation and non-reservation lands that are traditionally used and occupied by the Maya people.[FN11] The Petitioners also claim that none of the affected Maya villages agreed to any of the logging concessions and that no meaningful consultations with the Maya people preceded the granting of the concessions. Also according to the Petitioners, there is no indication that government officials considered Maya land use



patterns or cultural practices in the affected areas when they granted the concessions, and no accommodations for Maya interests or rights have been made as the logging has proceeded.[FN12]

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[FN10] See Petitioners' petition dated August 7, 1998, pp. 6-7, paras. 23-24, Appendix B.12 ("Toledo District Forest Licenses", September 30, 1997, prepared by the Land Information Centre, Ministry of Natural Resources, Belize); Maya Atlas, *supra*, at 123 ("Maya Communal Lands, Reservations, and Logging Concessions").

[FN11] The Petitioners claim, for example, that the area of one 159,018 acre concession granted to Toledo Atlantic International, Ltd. included one third of the Maya Villages of the Toledo District and endangered roughly half of the Maya population. Petitioners' petition dated August 7, 1998, p. 6, para. 23, citing Appendix B.13 (Forest License 1/93 (Belize)).

[FN12] The Petitioners acknowledge that forest officers from the Ministry of Natural Resources held meetings that involved Maya villagers prior to the approval of the management plan that governs the concession to Atlantic Industries Ltd. for logging in the Columbia River Forest Reserve, but claim that the meetings only provided the Maya with limited information on the planned logging, did not include in depth consideration of traditional Maya land uses, and did not afford Maya representatives the opportunity to influence the decision to grant the concession. Petitioners' petition dated August 7, 1998, p. 7, para. 25.

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29. In their December 17, 2001 reply to the State's Preliminary Response to the petition, the Petitioners recognize that the State provided evidence of a process established in or about May 2001 by which the Southern Alliance of Grassroots Empowerment (SAGE) would facilitate meetings between the Forestry Department and the communities near prospective logging concessions, but claim that this process is "too little too late" and does not cure the absence of any consultation prior to the logging that already has occurred and that continues to the detriment of members of Maya communities.[FN13]

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[FN13] Petitioners' reply dated December 17, 2001, p. 6, para. 22 and Appendix C (Letter from Oswald Sabido, Chief Forest Officer, Ministry of Natural Resources, the Environment and Industry, to Ms. Tanya Longworth, Attorney General's Ministry (20 May 2001), tendered to the Petitioners by the State).

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30. Concerning the concessions for oil development, the Petitioners claim that in late 1997, they learned that the Ministry of Energy, Science, Technology and Transportation of Belize had approved an application by a company, AB Energy, Inc., to engage in oil exploration activities in oil development Block 12, which includes 749,222 acres of land in the Toledo District. The area covered by the permit is said to include land used and occupied by the Maya and to encompass most, if not all, of the Maya villages in the Toledo District.[FN14] The Petitioners state that the Government, citing confidentiality concerns, has refused to release detailed information about the concession, and therefore that further details concerning the concession are unclear. According to the petition, industry practice and the laws of Belize provide that if commercially

viable oil deposits are located, a contract for petroleum operations guarantees oil extraction rights, which may in turn continue for a period of up to 25 years.[FN15] The Petitioners therefore argue that as a consequence of the AB Energy, Inc. concession, Belize has handed over a substantial portion of Maya traditional territory to potential long term oil development and production activities, without any consultation with the Maya people and apparently without any regard for Maya traditional land tenure.

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[FN14] Petitioners' petition dated August 7, 1998, p. 11, para. 36, citing, inter alia, Appendix B.23 (Excerpts from Trip Report from the USAID Affirmative Investigation of the Proposed IDB Southern Highway Project and Associated Ongoing Load for the Environmental and Technical Assistance Project (ESTAP) in Belize), January 5, 1998.

[FN15] Petitioners' petition dated August 7, 1998, p. 11, para. 37, citing Appendix B.26 (Petroleum Act, 1991 8/1991 (Belize), subsections 16(1), 19(4)).

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31. Further, the Petitioners contend that the logging concessions have been put into effect and have caused and will continue to cause negative environmental effects, while the oil concessions threaten to cause similar damage. More particularly, the petition states that the logging concessions cover areas of land that include critical parts of the natural environment upon which the Maya people depend for subsistence, including vulnerable soils, primary forest growth and important watersheds. The Petitioners also claim that the logging activities have affected essential water supplies, disrupted plant and animal life, and, accordingly, affected Maya hunting, fishing and gathering practices that are essential to Maya cultural and physical survival.[FN16]

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[FN16] Petitioners' petition dated August 7, 1998, p. 7, para. 26, citing, inter alia, Appendix B.15 (Pascal O. Girot, Logging Concession in Toledo District: Current Situation and Perspectives (1998), annexed as Exhibit P.O.G.1 to the Affidavit of Pascal Girot, TMCC v. Attorney Gen. of Belize [1996] (Belize) (N° 510) [hereinafter "Girot Report"]; Wright Report, supra (Exhibit C.S.W.1 to Appendix B.8); Wilk Report, supra, at 4, 8 (Exhibit R.W.1 to Appendix B.5); Appendix B.16 (First Affidavit of Santiago Chubb), TMCC v. Attorney Gen. of Belize [1996] (Belize) (N° 510); Appendix B.17 (Affidavit of Sebastian Choco at paras. 4-12, TMCC v. Attorney Gen. of Belize [1996] (Belize) (N° 510); Appendix B.18 (Affidavit of Leonardo Acal at paras. 7-13, TMCC v. Attorney Gen. of Belize [1996] (Belize) (N° 510); Appendix B.19 (Affidavit of Julian Cho at para. 5, TMCC v. Attorney Gen. of Belize [1996] (Belize) (N° 510)).

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32. In support of their arguments, the Petitioners provide examples of environmental damage caused and threatened by the concessions granted to Toledo Atlantic International, Ltd. and Atlantic Industries, Ltd. They claim, for example, that the Atlantic International, Ltd. concession explicitly allows clear-cutting for eventual conversion of the forest to commercial agricultural lands and that the Government contemplates converting all of the land in this concession to agricultural use.[FN17] They also state that in the area upstream from the Maya villages of

Conejo and Sunday Wood, several stream beds have been choked with discarded logs and timber which completely impeded the flow of streams that the Maya depend upon for multiple purposes.[FN18] With respect to the Atlantic Industries, Ltd. concession, the Petitioners claim that in September 1995 that company commenced operations by using bulldozers and heavy logging equipment to clear approximately three acres of forest and to upgrade logging roads, without any prior consultation with the Maya people, and that logging has continued to disturb land used by the Maya communities despite public protests.[FN19] The Petitioners also claim that the concessions have yet to be logged to their full capacity and that further damage from both concessions will likely continue and expand in the future. According to the petition, a bridge across the Moho River at the village of Santa Anna was, at that time, under construction and, when completed, will dramatically increase logging under the Toledo Atlantic concession,[FN20] while Atlantic Industries completed the construction of a sawmill in February 1996 without an environmental impact assessment or informing the affected Maya people, signaling the onslaught of logging on a large scale.

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[FN17] Petitioners' petition dated August 7, 1998, p. 8, para. 27, citing Appendix B.13 (Forest License 1/93). The Petitioners state that according to paragraph 9 of the Supplementary Conditions to the license, "Approval is given for clear felling in areas designated for future agricultural development." They also indicate that officials at the Forest Department have taken the position that all land in this concession will be converted to agricultural use. *Id.*, citing Appendix B.20 ("Forestry Planning a Mystery" in *The Reporter*, July 14, 1996, at p. 2).

[FN18] Petitioners' petition dated August 7, 1998, p. 8, para. 27, citing Girot Report, *supra*, at 11-12; Maya Atlas, *supra*, at 74.

[FN19] Petitioners' petition dated August 7, 1998, pp. 8-9, para. 29, citing Choco Affidavit, *supra*, at paras. 5-12.

[FN20] Petitioners' petition dated August 7, 1998, p. 8, para. 28, citing Girot Report, *supra*, at 11-12.

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33. In their December 17, 2001 reply to the State's Preliminary Response to the petition, the Petitioners acknowledge that license 1/93 issued to Toledo Atlantic Industries was suspended, but claim that the new license issued to the same company suffers from the same infirmities as the earlier one, in that it was not the result of an agreement or consultation with the affected Maya communities and did not account for their property and other human rights.

34. In light of the foregoing developments, the Petitioners claim that the logging activities in the Toledo District threaten long term and irreversible damage to the natural environment upon which the Maya depend. This includes in particular top soil erosion caused when land is stripped of forest cover, which, owing to the permeability of the soil and the drainage patterns of the Toledo region, also allows the characteristics of the soil to change very rapidly and impairs the capacity of the forest to regenerate. According to the Petitioners, this in turn would injure the rotational system of farming used by the Maya people, and could further, and possibly permanently, diminish the availability of wildlife and plant resources. These developments could also permanently damage stream flows that are vital to water supplies, which in turn could also result in siltation threatening coastal areas, including mangroves and coral reefs.[FN21]

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[FN21] Petitioners' petition dated August 7, 1998, p. 9, para. 32.

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35. Further, the Petitioners argue that the threat of future and greater environmental damage is intensified by the alleged inability or unwillingness of the State of Belize to adequately monitor the logging and enforce environmental standards. The Petitioners refer in this regard to, among other materials, a 1995 report by Dr. Winston McCalla on environmental protection and natural resource management legislation commissioned by the State of Belize for its Department of Environment. Dr. McCalla's report noted, inter alia, that management in the forest ranges was not very intensive because of a shortage of Forest Guards and other staff and therefore that "neither protection nor management of the forest can be carried out effectively." [FN22] The Petitioners argue that these inadequacies in supervision and management would only compound as logging activities in the concessions increase.

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[FN22] Petitioners' petition dated August 7, 1998, p. 10, para. 34 and Appendix B.22 (McCalla, Winston, "Compendium on Environmental Protection and Natural Resource Management Legislation in Belize") (August 1995)), at 157.

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36. Moreover, the Petitioners argue that the oil concession granted by Belize threatens to amplify the environmental damage caused by the logging concessions. Relying in part upon this Commission's observations in its 1997 report on the situation of human rights in Ecuador, the Petitioners claim that in other regions of the Americas where oil development has occurred on lands inhabited by indigenous peoples, the effects of the oil activities have had a devastating impact on the health of individuals and the wildlife and plant resources upon which they depend, as well as adverse social impacts caused by the influx of non-indigenous workers and settlers who move onto their lands in connection with the oil development activities. [FN23] The Petitioners assert that the threat of similar damage to the Maya is substantial, in part because other concessions in addition to that granted to AB Energy for Block 12 have been granted or may be granted in the future for oil development that would affect the Maya people. [FN24]

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[FN23] Petitioners' petition dated August 7, 1998, p. 12, para. 39, citing IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc 10 rev. 1, April 24, 1997 at 77-117.

[FN24] The Petitioners claim, for example, that another oil development block including Maya traditional land, Block 10, has been designated by the government as "available for concession". They also allege that the entire offshore area of the Toledo District was already granted prior to the Block 12 concession to AB Energy, to a holder whose identity is unknown to the Maya, and without public knowledge or consultation with the affected communities. Petitioners' petition dated August 7, 1998, p. 12, para. 40, citing Appendix B.25 (map attached to December 29, 1997 letter from Ms. Smith, Inspector of Petroleum, Geology and Petroleum Unit, Ministry of Energy, Science, Technology and Transportation, to Steven M. Tullberg).

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c. Lack of Recognition and Adequate Protection of Indigenous Lands

37. The Petitioners also allege that the State's practice in granting logging and oil concessions without adequate consultation with the Maya people, and apparently without consideration of their customary land tenure, form part of a larger pattern of neglect on the part of the State, whereby government officials have uniformly refused to recognize Maya rights or interests in lands on the basis of Maya customary land use and occupancy. Rather, officials have narrowly interpreted interests in lands and resources within the State's formal system of land titling, leasing and permitting.

38. In particular, the Petitioners argue that the reservation system established by the British colonial government in Belize in the early 1900's falls short, in both its geographic extent and its qualitative attributes, of providing recognition or adequate protection of Maya customary land tenure. For example, according to the petition, only approximately one-half of the Maya villages, including only a portion of the villages to which the present petition relates, fall within the reservations, and further, the boundaries of those reservations remain unclear.[FN25] To the extent that the boundaries can be discerned, the Petitioners contend that it is apparent that the reservation areas encompass only a fraction of the land areas used by the reservation villages for cultivation and for other subsistence and cultural activities.[FN26] The Petitioners also argue that qualitatively, the reservation regime provides inadequate security for Maya land tenure, as lands within the reservations are deemed under relevant Belize legislation as "National lands" and are given up to the discretionary authority of government with no specific guarantees for Maya interests.[FN27]

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[FN25] Petitioners' petition dated August 7, 1998, p. 13, para. 42, citing Wilk Report, *supra*, at 6.

[FN26] Petitioners' petition dated August 7, 1998, p. 13, para. 42, citing Maya Atlas, *supra*, at 126 (map - "Sanctuaries, Reserves, and Parks"). It is apparent from the Maya Atlas that several of the villages encompassed by the present petition do not fall within the boundaries of the reservations system, including, for example, San Jose, San Marcos, San Felipe, Santa Anna and Boom Creek.

[FN27] Petitioners' petition dated August 7, 1998, p. 13, para. 42, citing National Lands Act, *supra*, Sections 2 and 6.

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39. Moreover, the Petitioners provide descriptions of numerous efforts that Maya people have made for the Government of Belize to address and resolve their concerns about Maya land tenure and natural resource concessions in the Toledo District, including written correspondence and proposals, meetings with government officials, lobbying, and public demonstrations.[FN28] They claim that despite these efforts, "government officials have remained entrenched in a pattern of neglect that keeps them from seriously and responsibly addressing these concerns." [FN29]

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[FN28] See Petitioners' petition dated August 7, 1998, pp. 14-18, paras. 46-62.

[FN29] Petitioners' petition dated August 7, 1998, p. 18, para. 63.

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40. The Petitioners also note that in its Preliminary Response to their petition, the State acknowledged its admission under the "Ten-Points Agreement" that the Maya people have inhabited the Toledo District area and that they have rights to land and resources in southern Belize based upon this long-standing use and occupancy, and argue that the State should be held to that admission for the purposes of the proceedings before the Commission.[FN30] Further, the Petitioners take the position that the Maya have aboriginal rights to land under common law, but also argue that the domestic common law of Belize is not ultimately determinative of the existence or scope of Maya rights for the purposes of the present proceedings, which are governed by international standards to which the common law must conform.[FN31]

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[FN30] Petitioners' reply dated December 17, 2001, p. 5, para. 20, citing Ten-Point Agreement, Point 6.

[FN31] Petitioners' reply dated December 17, 2001, p. 15, para. 38, citing IACHR, Advisory Opinion OC-14/94 "International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)," Ser. A N° 14 (1994); *Mabo v. Queensland* [N° 2] (1992) 175 C.L.R. 1 (Aust.).

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d. Unreasonable Delay in Domestic Judicial Proceedings

41. A further complaint raised by the Petitioners in their petition is the contention that judicial proceedings initiated by Maya communities to address their concerns have been fruitless because the proceedings have been unduly prolonged.

42. According to the petition, on December 3, 1996, TMCC and the Toledo Alcaldes Association filed a motion for constitutional redress in the Supreme Court of Belize pursuant to section 20 of the Constitution of Belize,[FN32] naming the Attorney General of Belize and the Minister of Natural Resources of Belize as Respondents.[FN33] In the motion, the Applicants sought a court order declaring the existence and nature of Maya interests in the land and resources and the status of those interests as rights protected under the Constitution, as well as declarations of violations of those rights by the Government because of the licenses to log within Maya traditional lands.[FN34] The motion also requested that the Government be ordered to cancel or suspend the logging licenses and any other licenses for resource extraction within the lands held by Maya aboriginal rights, and an injunction was requested to restrain the Government from granting further concessions except pursuant to an agreement negotiated with and entered into by the Maya leadership.[FN35]

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[FN32] According to the Petitioners, section 20(1) and (2) of the Constitution of Belize provides:

(1) If any person alleges that any of the provisions of section 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of

a person who is detained, if any other person alleged such a contravention in relation to the detained person), then without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction –

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section...

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 19 inclusive of this Constitution.

Petitioners' petition dated August 7, 1998, p. 41, para. 137, n. 172.

[FN33] Petitioners' petition dated August 7, 1998, p. 18, para. 65, citing Appendix B.44 (Notice of Motion for Constitutional Redress), *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510). According to the petition, the motion for constitutional redress sought a court order declaring that: a. the Maya people of Toledo District hold rights to occupy, hunt, fish, and otherwise use the areas within the Toledo District traditionally held by the Maya in accordance with common law and relevant international law; b. the aboriginal rights of the Maya constitute a form of property protected by articles 3 and 17 of the Constitution of Belize; c. the government's granting of licenses to log within Maya traditional lands violated the aboriginal rights of the Maya; d. the logging operations authorized by the government are likely to result in further infractions of the constitutionally protected property rights of the Toledo Maya by interfering with customary land tenure patterns and by damaging the environment on which those customary land uses rely; and e. the failure of the government to recognize and respect the aboriginal rights of the Maya denied the Maya equal protection of the law and thus violates article 16 of the Constitution of Belize.

[FN34] Petitioners' petition dated August 7, 1998, p. 18, para. 66.

[FN35] *Id.*

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43. The Petitioners allege that the procedural history of this litigation has unfolded in a way that has led to unreasonable delay in the resolution of the claims raised by the Maya people. In particular, they suggest that despite the existence of an order issued by the court as to the procedure and deadlines through which the litigation was to be conducted and the Petitioners' compliance with the requirements,[FN36] the Government has not complied with all of those stipulations.[FN37]

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[FN36] Petitioners' petition dated August 7, 1998, p. 19, para. 68, citing Appendix B.46 (Order, *TMCC v. Attorney Gen. of Belize* [1996] (Belize) (N° 510). This Order, issued by Justice Meerabux, the judge to whom the action for constitutional address was assigned, provided that the adjudication of the case would occur as a trial by affidavit, with leave to all parties to cross-examine and re-examine the affiants, and set out the schedule for filing affidavits and the procedures for discovery.

[FN37] For example, the Petitioners claim that on March 17, 1997, the applicants filed and served on the respondents a Notice to Produce Documents in an effort to obtain further information on the granting of natural resource concessions in Toledo. Despite the fact that the

Order of Justice Meerabux stipulates that any party receiving such a notice must file an affidavit of documents within twenty-one days of receipt, the government has not filed an affidavit of documents nor has it provided the applicants with any of the material that was requested in the Notice to Produce Documents. Petitioners' petition dated August 7, 1998, p. 21, para. 73 and Appendix B.53 (Notice to Produce Documents, TMCC v. Attorney Gen. Of Belize [1996] (Belize) (N° 510)).

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44. In addition, the Petitioners claim that in the course of the litigation, logging has continued on the lands used by the Maya people and has had a serious impact on the environment of the region and consequently on the inhabitants of several Maya villages. As a result, on April 17, 1998, the applicants filed a motion for interlocutory relief in which they requested an immediate injunction suspending all logging concessions within their claimed lands and an injunction against the Minister of Natural Resources restraining the Minister from granting additional logging concessions or any other concessions for resource extraction. Despite the urgency of the matter and the existence of three affidavits filed in support of the request, the May 19, 1998 hearing of the motion was adjourned at the request of the Attorney General's office, and as of today, the hearing had not been re-scheduled. The Petitioners also assert that the Court has yet to take any action on the motion for interlocutory relief, or indeed on any aspect of the merits of the case.

## 2. Legal Allegations of the Petitioners

45. The Petitioners contend that the State of Belize is responsible for violations of the following human rights of the Maya people under the American Declaration, in conjunction with assorted other international instruments, in connection with each of the four circumstances outlined above: Articles XXIII (right to property), III (right to religious freedom), VI (right to family and protection thereof), XIV (right to take part in the cultural life of the community), I (right to life), XI (right to preservation of health and well-being) and XX (right to participate in government) all in relation to the logging and oil concessions granted by the government on lands used and occupied by the Maya in the Toledo District; Articles II (right to equality under the law) and XXIII (right to property) and general principles of international law concerning the failure of Belize to recognize and secure Maya territorial rights more broadly; and Article XVIII (right to a fair trial) in respect of the ineffectiveness of efforts by the Maya people to obtain domestic redress for their situation.

### a. Rights Connected with the Logging and Oil Concessions

46. The Petitioners argue that the State's practice in granting numerous logging concessions and at least one oil concession on lands used and occupied by the Maya people in the Toledo District have the Maya people's right to property under Article XXIII of the American Declaration, their right to cultural integrity as reflected in Articles XXIII (right to property), III (right to religious freedom), VI (right to family and protection thereof) and XIV (right to take part in the cultural life of the community) of the American Declaration, their right to a healthy environment in connection with Articles I (right to life) and XI (right to preservation of health



and well-being) of the Declaration, and their right to consultation found in part under Article XX (right to participate in government) of the Declaration.

47. Concerning the right to property, the Petitioners contend that Article XXIII of the Declaration, which provides for the “right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home,” embraces those forms of individual and collective landholding and resource use that derive from the customary land tenure system of the Maya of the Toledo District. The Petitioners emphasize in this regard that the Maya people’s customary land tenure system described in their petition, and the usages it sanctions, give rise to forms of property that are no less essential to a decent living and dignity of the home than formal State-granted property rights are for others.

48. The Petitioners also note that as a former British colony, Belize is a common law jurisdiction, and assert that in the absence of domestic judicial authority to the contrary, the common law of Belize should be deemed to incorporate the common law doctrine that upholds the property rights of indigenous peoples on the basis of customary land tenure,[FN38] referred to by common law courts as “aboriginal rights” or “title.”[FN39]

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[FN38] The Petitioners claim that this proposition follows from the practice of the courts in Belize, which is to look to precedents of other common law countries especially in the absence of controlling local judicial authority. Petitioners’ petition dated August 7, 1998, p. 27, para. 93, citing, *inter alia*, *San Jose Farmers’ Coop. Soc’y Ltd. v. Attorney General*, 43 W.I.R. 63, 77 (Belize C.A.) 1991).

[FN39] In this regard, the Petitioners refer to the jurisprudence of the domestic courts of other common law jurisdictions as well as the provisions of related international instruments. In particular, the Petitioners cite the decisions of superior courts in Australia, Canada, the United States, the United Kingdom and Malaysia, which they claim uphold property rights of indigenous peoples on the basis of traditional land tenure. In particular, they claim that these courts have recognized the existence of “aboriginal rights” to lands by virtue of historical patterns of use or occupancy, which may in turn give rise to a level of legal entitlement in the nature of full ownership, referred to as “native” or “aboriginal title.” Petitioners’ petition dated August 7, 1998, p. 26, para. 92, citing *Mabo [Nº 2] v. Queensland* (1992), 175 C.L.R. 1, 69 (Aust.); *Delgamuukw v. British Columbia* (1997), 153 D.L.R. (4th) 193 (S.C/C.) (Can.); *R. v. Van Der Peet* (1996), 137 D.L.R. (4th) 289, 109 C.C.C. (3d) 1 (S.C.C.) (Can.); *U.S. v. Shoshone Tribe of Indians*, 304 U.S. 111, 116-118 (1938); *Amodu Tijani v. Secretary, Southern Nigeria*, 2 A.C. 399, 3 N.L.R. 21 (P.C. 1921); *Adong bin Kuwau & ors v. Kerajaan Negeri Johor & Anor*, [1997] 1 M.L.J. 418 (H.C.)(Malaysia).

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49. The Petitioners also base their claim of existence of Maya property rights on the content of Article XXIII of the Declaration, which they claim embraces and affirms property interests that arise from indigenous systems of land tenure independently of the common law of domestic legal systems, and which in turn are reflected in several draft and final international instruments concerning the rights of indigenous peoples, including Article XVIII of the proposed American Declaration on the Rights of Indigenous Peoples,[FN40] Article 26 of the Draft United Nations

Declaration on the Rights of Indigenous Peoples,[FN41] and Article 14(1) of the International Labour Organisation's Convention (N° 169) on Indigenous and Tribal Peoples.[FN42] The Petitioners also refer in this regard to the fundamental principle of nondiscrimination, which they claim prevents an interpretation of Article XXIII of the Declaration that would discriminate against indigenous peoples with regard to their own modalities and forms of landholding and resource use.

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[FN40] Proposed American Declaration on the Rights of Indigenous Peoples, approved by the IACHR during its 1333rd sess. on Feb. 26, 1997, OEA/Ser.L/V/II.95 doc 7 rev. 1997, at 654-676, Article XVII (providing: 1. 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. 2. 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).

[FN41] Draft United Nations Declaration on the Rights of Indigenous Peoples, adopted by the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, 26 August 1994, E.CN.4/Sub.2/1994/45, at 105, Article 26 (providing "Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora, fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights").

[FN42] International Labour Organisation Convention (N° 169 of 1989) concerning Indigenous and Tribal Peoples in Independent Countries (entered into force Sept. 1991) [hereinafter "ILO Convention (N° 169)"], Article 14.1 (providing: The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the rights of the people concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities). The Petitioners contend that although Belize is not among the several American states that have ratified ILO Convention (N° 169), pertinent articles of this Convention, like the land rights provisions of the Proposed American Declaration and the Draft U.N. Declaration, are appropriately considered as articulating the implications of the right to property which is found in Article XXIII of the American Declaration.

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50. Based upon these arguments, the Petitioners claim that the Maya people of the Toledo District have rights of property over the lands and resources that they have traditionally used and occupied based upon customary patterns, and that these property rights include rights of occupancy as well as rights of access to and use or ownership of natural resources. They also argue that the State of Belize has violated the Maya people's property rights by granting logging and oil concessions and allowing logging to proceed on Maya traditional lands without any

consideration of Maya rights within those lands, without Maya consent, and without any compensation or mitigation for the adverse impacts caused by the logging.

51. Further, the Petitioners claim that the State of Belize is responsible for violations of the right of the Maya to cultural integrity. The Petitioners argue in this regard that the Maya agricultural and other land use patterns are linked with familial and social relations, religious practices, and the very existence of Maya communities, and therefore implicate their rights to religious freedom, family and protection thereof, and to take part in the cultural life of the community under, respectively, Articles III, VI and XIV of the Declaration. In support of their arguments, the Petitioners refer to the provisions of several international instruments which they claim recognize the obligation of states to protect minority groups, including indigenous peoples, in the enjoyment of all of the aspects of their diverse cultures and group identities.[FN43]

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[FN43] Petitioners' petition dated August 7, 1998, p. 30, paras. 102-108, citing Charter of Civil Society for the Caribbean Community, adopted by heads of government of the State members of the Caribbean Community on February 19, 1997, as stipulating that "[t]he States recognize the contribution of the indigenous peoples to the development process and undertake to continue to protect their historical rights and respect the culture and way of life of these peoples."; American Declaration on the Rights of Indigenous Peoples, *supra*, Article VII 1. Indigenous peoples have the right to their cultural integrity, and their historical and archeological heritage, which are important both for their survival as well as for the identity of their members. 2. Indigenous peoples are entitled to restitution in respect of the property of which they have been dispossessed, and where that is not possible, compensation on the basis not less favorable than the standards of international law. 3. The states shall recognize and respect indigenous ways of life, customs, traditions, forms of social, economic and political organization, institutions, practices, beliefs and values, use of dress, and languages; Case 7664 (Nicaragua), Inter-Am. C.H.R., Report on the Situation of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62, doc. 10 rev 3, at 76-78, 81 (1983); Case 7615 (Brazil), Inter-Am. C.H.R., OEA/Ser.L/V/II.66, doc. 10, rev.1, at 24, 31 (1985); IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96 Doc. 10 rev. 1 (April 24, 1997) [hereinafter "Ecuador Report"], at 103-4; International Covenant on Civil and Political Rights, Article 27 ("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, and to use their own language."); U.N. Human Rights Committee General Comment N° 23(50)(Article 27), adopted April 6, 1994, para. 7 "[C]ulture manifests itself in many forms, including a particular way of life associate with the use of land resources, especially in the case of indigenous peoples. That right may include traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of these rights may require positive measures of protection and measures to ensure the effective participation of members of minority communities ion decisions which affect them."); L.E. Länsmann v. Finland, Communication N° 671/1995, CCPR/C/58/D/671/1995; Ominayak Chief of the Lubicon Lake Band of Cree v. Canada, Communication N° 167/1984, Hum. Rts. Comm., A/45/40, vol. II, annex IX.A [hereinafter "Ominayak Decision"]].

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52. In light of these authorities, the Petitioners argue that Maya land and resources uses lie at the core of Maya culture and are imperiled by ongoing and planned resource extraction activities in the Toledo District without any apparent consideration or protection of Maya cultural patterns, and therefore that the State is responsible for denying the right of the Maya to enjoy their culture and maintain its integrity under Article 27 of the ICCPR and related provisions of the American Declaration.

53. The Petitioners also claim that the logging being permitted by Belize is causing substantial environmental harm, as particularized in their factual allegations, and that this harm has threatened the physical well-being of the Maya people, contrary to the right to life under Article I of the American Declaration and the right to preservation of health and well-being under Article XI of the American Declaration. The Petitioners claim that both the proposed American Declaration on the Rights of Indigenous Peoples[FN44] and the draft U.N. Declaration on the Rights of Indigenous Peoples,[FN45] as well as the Rio Declaration adopted following the United Nations Conference on Environment and Development in Rio de Janeiro in 1992,[FN46] acknowledge the need for states to protect the natural environments upon which indigenous peoples depend, and that these norms are implicit in the provisions of the American Declaration in the context of indigenous land claim issues.

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[FN44] Proposed American Declaration on the Rights of Indigenous Peoples, *supra*, Article XIII.1 “Indigenous peoples have a right to a safe and healthy environment, which is an essential condition for the enjoyment of the right to life and collective well-being.”

[FN45] Draft United Nations Declaration on the Rights of Indigenous Peoples, *supra*, Article 28 “Indigenous peoples have the right to conservation, restoration and protection of the total environment and the productive capacity of their lands, territories, and resources.”

[FN46] Declaration of the UN Conference on Environment and Development, U.N. Doc. A/CONF.151/26 (1992), Principle 1 “Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.” The Petitioners also refer to chapter 26 of the Rio Conference’s detailed program of action, known as “Agenda 21”, Chapter 26.1 of which recognized that “indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands.” U.N. Conference on Environment and Development, Agenda 21, ch. 26, U.N. Doc. A/CONF.151/26 (1992), ch. 26.1

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54. In the circumstances of the present case, the Petitioners argue that the environmental damage caused by the logging concessions in the Toledo District have undermined Maya food sources and threaten contamination of soils and waters which would have adverse direct health consequences for the Maya. They also claim that Belize has been unwilling or unable to enforce environmental norms against these damaging logging practices and, indeed, has actively facilitated the environmental threat, and therefore that Belize has failed to meet its obligation to

guard against the degradation of the natural environment upon which Maya physical and cultural survival depend.

55. Finally, the Petitioners contend that Belize has denied the Maya meaningful consultation in connection with the logging and oil concessions in the Toledo District in violation of the “right to consultation.” In particular, the Petitioners argue that the right to be consulted in a meaningful way about any decision that may affect Maya interests in lands and natural resources is implicit in the human rights provisions that protect these interests, including Article 27 of the ICCPR, the right to participate in government under Article XX of the American Declaration, and the principle of self-determination. According to the Petitioners, self-determination is a principle of general international law that is affirmed in multiple international instruments, and at its core means that human beings, individually and collectively, have a right to be in control of their own destinies under conditions of equality. The Petitioners argue that for indigenous peoples, this principle establishes at a minimum the right to be genuinely involved in all decision-making that affects them.

56. The Petitioners also rely in this regard on Articles XIII and XVI of the proposed American Declaration on the Rights of Indigenous Peoples[FN47] and ILO Convention (Nº 169), which they claim clarify the right of indigenous peoples to consultation and, in the case of the latter, even to decisions about resources that remain under state ownership.[FN48] The Petitioners assert that the required consultation with indigenous peoples must be more than formalities or simply processes by which they are given information about development projects, but must also provide indigenous peoples a full and fair opportunity to be heard and to genuinely influence the decisions before them.[FN49]

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[FN47] Proposed American Declaration of the Rights of Indigenous Peoples, *supra*, XIII.2 “Indigenous peoples have the right to be informed of measures which will affect their environment, including information that ensure their effective participation in actions and policies that might affect it.”; Article XVI.1 “Indigenous peoples have the right to participate without discrimination, if they so decide, in all decision-making, at all levels with regard to matters that might affect their rights, lives and destiny.”;

[FN48] ILO Convention (Nº 169), *supra*, Article 15.1 “In cases in which the State retains ownership of minerals or sub0surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or meriting any programmes for the exploration or exploitation of such resources pertaining to their lands.”

[FN49] In this regard, the Petitioners cite Article 6.2 of ILO Convention (Nº 169), which provides that consultations “shall be undertaken in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”  
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57. In the circumstances of the present case, the Petitioners argue that meaningful consultations with the Maya of the Toledo District have not been held in relation to the logging and oil concessions, but rather that most of the concessions were granted without public

knowledge, much less in direct consultation with the affected Maya communities. They also claim that any public meetings that have been held in respect of the concessions provided only vague and incomplete information[FN50] and that any attempts by the Maya themselves to engage in a meaningful dialogue with the Government have consistently been rebuffed, resulting in a denial of the Maya's human right to consultation.

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[FN50] Petitioners' petition dated August 7, 1998, p. 36, para. 120, referring to public meetings held by the Belize Forest Department about the management plan for the concession to Atlantic Industries Ltd. for logging in the Columbia River Forest Reserve.

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b. State Responsibility to Recognize and Secure the Territorial Rights of the Maya People

58. The Petitioners also contend that the State of Belize is responsible for violations of the right to equality under the law and the obligation to effectively secure rights concerning the Maya territorial lands more broadly. The Petitioners argue that the legal system of Belize and its governing officials do not recognize Maya customary land tenure as a source of property rights, and the State does not otherwise provide adequate protection for the matrix of Maya cultural and subsistence practices related to land and resources.

59. According to the petition, the failure to recognize as legally valid indigenous peoples' own systems of landholding and resource use is a form of discrimination that is prohibited under Article II of the American Declaration and contravenes the State's obligation to adopt the legislative and administrative measures necessary to ensure the full enjoyment of the Maya people's property rights. In support of this contention, the Petitioners refer to the work of bodies of the United Nations that have concluded that indigenous peoples historically have suffered racial discrimination and that one of the greatest manifestations of this discrimination has been the failure of state authorities to recognize indigenous customary forms of possession and use of land.[FN51] The Petitioners also argue that the patterns of discrimination against indigenous peoples cannot be allowed to persist in a modern world and suggest that states have an obligation to eradicate the legacies of historical discrimination through adherence to the principle of equality.[FN52]

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[FN51] Petitioners' petition dated August 7, 1998, pp. 36-37, paras. 122-123, citing Committee on the Elimination of Racial Discrimination, General Recommendation XXIII, on indigenous peoples, adopted at the Committee's 1235th meeting, 18 August 1997, CERD/C/51/misc.13/Rev.4 (1997), para. 3 (observing that "[i]n many regions of the world indigenous peoples have been, and are still being, discriminated against, deprived of their human rights and fundamental freedoms and...have lost their land and resources to colonists, commercial companies and State enterprises. Consequently the preservation of their culture and their historical identity has been and still is jeopardized."); Report of the United Nations Seminar on the effects of Racism and Racial Discrimination on the Relations Between Indigenous Peoples and States, E/CN.4/1989/22, HR/PUB/89/5, at 5 (1989) (concluding that "[r]acial discrimination against indigenous peoples is the outcome of a long historical process of

conquest, penetration and marginalization, accompanied by attitudes of superiority and by a projection of what is indigenous as ‘primitive’ and ‘inferior’.” The discrimination is of a dual nature: on the one hand, gradual destruction of the material and spiritual conditions [needed] for the maintenance of their [way of life], on the other hand, attitudes and behavior signifying exclusion or negative discrimination when indigenous peoples seek to participate in the dominant society”).

[FN52] The Petitioners argue in this regard that the decision of the Australian High Court in the case *Mabo v. Queensland* [N° 2] exemplifies the type of adherence to the principle of equality necessary to eradicate the legacies of historical discrimination. The Petitioners state that in the *Mabo* case, the Court recognized “native title”, namely a right of property based upon customary indigenous land tenure, and thereby reversed over a century of Australian jurisprudence and official policy, partly on the basis that the past failure of the Australian legal system to embrace and protect native title was “unjust and discriminatory”. Petitioners’ petition dated August 7, 1998, p. 38, para. 126, citing *Mabo v. Queensland* [N° 2] (1992), 175 C.L.R. 1, 41-43 (Aust.).

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60. In the present case, the Petitioners assert that the Maya of the Toledo District are among the segments of humanity that have suffered this history of discrimination, and that the Government of Belize has accorded negative differential treatment of indigenous customary land tenure by maintaining an administrative and formal legal apparatus that fails to recognize Maya rights to lands and resources on the basis of customary land tenure. They also contend that, at a minimum, the State of Belize is obligated to adopt legislation or other appropriate measures to identify the geographic extent of Maya traditional lands and specifically define the legal attributes of Maya land tenure and resource use, in accordance with Maya custom.[FN53]

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[FN53] Petitioners’ petition dated August 7, 1998, p. 39, paras. 129, 130, citing *Miskito Case*, supra, at 76; *Ecuador Report*, supra, at 106; UN Human Rights Committee General Comment on Article 27 of the ICCPR, supra; ILO Convention (N° 169), Article 14.2-3 (stating that “Governments shall take steps as necessary to identify the lands which [indigenous] peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession...Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned”). The Petitioners also refer in this regard to Articles XVIII.4 and XVIII.8 of the proposed American Declaration on the Rights of Indigenous Peoples and Chapter 26 of the U.N. Conference on Environment and Development’s Agenda 21.

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61. In their reply to the State’s preliminary response in this matter, the Petitioners also refer to the merits judgment of the Inter-American Court of Human Rights in the *Case of the Mayagna (Sumo) Community of Awas Tingni v. Nicaragua*, issued on August 31, 2001,[FN54] and rely on several aspects of the Court’s judgment as pertinent in the present proceeding. These include the Court’s finding that the indigenous Mayagna community of Awas Tingni had a property right founded under international human rights law over certain lands on the basis of its traditional land tenure, and that the State of Nicaragua had violated that right by failing to take measures to demarcate and otherwise secure the land in favor of the community and by granting a concession for logging on the land at issue without any consultation or agreement with the community. The

Petitioners note that the Court reached these findings despite the fact that the community did not have a government-issued title to that land, and notwithstanding the absence of evidence that the logging activity ever actually got under way on the community's land. The Petitioners therefore claim that the Awas Tingni case is firm precedent for the conclusion that the Maya communities have property rights over their traditional lands and that the State of Belize has violated those property rights by authorizing multiple development activities in Maya traditional lands.

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[FN54] Petitioners' reply dated December 17, 2001, p. 16, para. 41, citing IACHR, Case of the Mayagna (Sumo) Community of Awas Tingni v. Nicaragua, Judgment of 31 August 2001 [hereinafter "Awas Tingni Case"]. The Petitioners recognize that the decision in the Awas Tingni Case was based upon the right to property under Article 21 of the American Convention, but argue that the need for coherence in the inter-American human rights system requires that the same interpretation hold for the right to property that is similarly affirmed in Article XXIII of the American Declaration. Petitioners' reply dated December 17, 2001, p. 16, para. 42.  
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c. State Responsibility for Lack of Judicial Protection

62. The third claim raised by the Petitioners is the contention that the State of Belize has failed to provide effective judicial protection for Maya rights, because the Maya people have attempted, without success, to obtain redress through the domestic avenues for their alleged violations of rights regarding lands and resources.

63. As noted above, the Petitioners state that on December 3, 1996, the TMCC and the Toledo Alcaldes Association, as the major Maya representative organizations in the Toledo District, filed an action for constitutional redress with the Supreme Court of Belize pursuant to a procedure provided for under Article 20 of the Constitution of Belize. The proceeding alleged violations of the constitutionally-protected rights to property and equality under the law, and requested corresponding relief, in connection with the logging on Maya traditional lands and against the failure of government officials to recognize Maya land rights on the basis of customary land tenure. The lawsuit also included a motion for emergency interlocutory relief against the logging, and the proceedings were supported by affidavits, expert reports and other documentary evidence submitted by the applicants.

64. At the time of filing their petition with the Commission in August 1998, the Petitioners indicated that over a year and a half had passed since the lawsuit was initiated and four months since the motion for emergency interlocutory relief was filed, and that the Belize Supreme Court had not yet reached a decision on the merits of the suit or on the motion for interlocutory relief. The Petitioners have also alleged that the efforts of the Maya people have been met with dilatory tactics on the part of the government and that the Belize Supreme Court has acquiesced in these tactics, including adjourning the hearing date for the motion for interlocutory relief at the government's urging and failing to set another hearing date or otherwise taking action on the motion.



65. Based upon these circumstances, the Petitioners argue that the State is responsible for failing to provide the Maya with an effective right to judicial protection under Article XVIII of the American Declaration, which they claim requires a state to take affirmative steps to ensure that the remedies provided by the state through its courts are effective in establishing whether there has been a violation of rights and in providing redress. The Petitioners also note that an essential element of effectiveness is timeliness, which requires that courts adjudicate and decide cases expeditiously, particularly where alleged human rights violations are ongoing and threaten to be irreparable.

66. In the case of Belize, the Petitioners argue that although the Constitution of Belize provides for a judicial procedure to protect constitutional rights, that procedure has been ineffective as a means of protecting Maya rights. They claim that despite the amount of time that has passed and the voluminous evidence that has been submitted to the Belize Supreme Court, the court has not progressed toward a determination of the rights or violations alleged by the Maya and redress for any determined violations. On this basis, the Petitioners argue that, due to its international obligation to provide effective judicial remedies, Belize is internationally responsible for this shortcoming of its judicial system.

67. On the basis of the allegations contained in their petition, the Petitioners have requested that the Commission declare that the State of Belize is internationally responsible for violations of rights affirmed in the American Declaration. The Petitioners also ask that the Commission recommend, *inter alia*, that Belize take measures, in consultation and coordination with the affected Maya communities, to suspend current and future permits, licenses and concessions for logging, oil exploration or extraction and any other natural resource development within the lands traditionally used and occupied by the Maya people of the Toledo District, and to establish and institute a legal mechanism under domestic law that will result in the official recognition of and specific guarantees for Maya customary land tenure and resource use, and lead to the prompt demarcation of Maya traditional lands.

#### B. Position of the State

68. In its May 8, 2001 “Preliminary Response” to the Petitioners’ petition, the State provides observations, arguments and documentation concerning the merits of the complaints raised on behalf of the Maya indigenous communities of the Toledo District. The State first provides information concerning the chronology of events in the matter after the filing of the Petitioners’ petition. This includes a description of the efforts to reach a friendly settlement through the assistance of the Commission.

69. As with the Petitioners, the State also refers to a process of negotiation between the Government of Belize and the Petitioners that took place outside of the procedures before the Commission, which resulted in a “Ten-Point Agreement” signed by the parties on October 12, 2000.[FN55] According to the State, this agreement became the new basis for the resolution of the claim of the Maya people of Toledo. The State also specifically notes that under Point 6 of this agreement, the Government of Belize recognized that “the Maya People have rights to lands and resources in southern Belize based on their long-standing use and occupancy.” The State also suggests that the Petitioners acted prematurely in moving ahead with their litigation before

the Commission while these negotiations were outstanding and while the terms of the Ten-Point Agreement had not yet been implemented.

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[FN55] State's Preliminary Response to the Petitioners' Petition dated May 8, 2001, p. 4, paras. 15, 16 and Appendix N. In its preliminary response, the State also provided a detailed accounting of the status of these negotiations as of the date of their submissions. *Id.*, pp. 17-21, paras. 65-78.

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70. Further, the State emphasizes as a general matter that the issue of land and resource use in Toledo is of extreme complexity for Belize, as there are at least four clearly defined ethnic groups in Toledo and more in the country as a whole. According to the State, this kind of ethnic diversity in such close proximity makes the discussion and negotiation of issues along ethnic lines extremely sensitive. The State refers in this regard to the principle of equality enshrined in Article II of the American Declaration, and asserts that this principle dictates that Belize consider the interests of all of its citizens and take a balanced approach to the resolution of the Maya, maintaining at all times its neutrality as the representative of all Belizeans.[FN56]

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[FN56] State's Preliminary Response to the Petitioners' Petition dated May 8, 2001, p. 5, paras. 19-21.

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71. With respect to the specific issues raised by the Petitioners before the Commission, the State expressed its hope that the issues could be resolved through negotiations between the parties, but, if those negotiations proved unsuccessful, reserved the right to fully argue the merits to the case before the Commission.

72. In this regard, the State suggests that the issue of whether the Mayas of Southern Belize have aboriginal rights in the area remains unclear. The State expressed its agreement with the Petitioners' proposition that Commonwealth jurisprudence that would be either binding or of significant persuasive influence on the Courts in Belize has recognized the existence of "aboriginal rights", but claims that there is difference of opinion between the parties on the precise elements of the test required by law. In particular, the State asserts that four criteria are necessary for the establishment of aboriginal title: 1. that the applicants and their ancestors were members of an organized society; 2. that the organized society occupied the specific territory over which they assert the aboriginal title; 3. that the occupation was to the exclusion of other organized societies; and 4. that the occupation was an established fact at the time sovereignty was asserted.[FN57] The State contrasts these criteria with those it suggests are advocated by the Petitioners, namely 1. the existence of a culturally distinctive community or society with historical origins that predate the effective exercise of sovereignty by the Government or its colonial precursor; and 2. customary or traditional land tenure or resource use that can be identified as part of the cultural life of the community or society.[FN58]

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[FN57] State's Preliminary Response to the Petitioners' Petition dated May 8, 2001, p. 5, para. 29, citing *Hamlet of Baker Lake v. Minister of Indian Affairs and Northern Development* [1979] 3 CNLR 17 and applied in *Mabo v. Queensland* [1992] 5 CNLR 70.

[FN58] State's Preliminary Response to the Petitioners' Petition dated May 8, 2001, p. 5, para. 28, citing S. James Anaya, "Aboriginal Land and Resource Rights of the Maya People of Toledo District."

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73. Moreover, the State argues that it is not clear whether the facts asserted by the Petitioners are sufficient to establish that they have satisfied the elements required for aboriginal rights to be recognized. In this regard, the State contends as follows:

31. Equally unresolved is the question whether or not the facts as asserted by Petitioners are sufficient to establish that they have satisfied the elements required for aboriginal rights to be recognized. Further to the affidavits submitted on its behalf, the Government draws attention to the dates of foundation Maya Atlas [sic] of the villages alleged to be affected by the acts and omissions complained of. Medina bank – 1989; Golden Stream – 1970; silver creek 1969; Jordan – 1980; Na Luum Caj – 1986; Jalacte – 1972; San Vicente - 1986; Santa Teresa – 1933; Sunday Wood – 1983; Boom Creek – early 1990; Santa Anna 1973; Midway – 1992. With the exception of San Antonio and San Pedro Columbia claimed to have been founded in 1850, all the villages in this case were founded in the 1900's some as late as 1992.

32. It is one of the fundamental arguments of the Government that the dates of foundation of most of the Mayan villages illustrates a significant break in the continuity of occupation of the area over which title is asserted. Furthermore, when those dates are compared with dates for foundation for other non-Mayan villages in the area such as Barranco it becomes evident that the Maya did not occupy that region to the exclusion of other organized societies. It is the Government's position that in the absence of continuous exclusive occupation the claim of the Petitioners cannot be established.

33. Finally, the issue of possible extinguishment of any existing aboriginal rights by certain acts of the Sovereign over British Honduras is also unresolved.[FN59] [footnotes omitted]

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[FN59] State's Preliminary Response to the Petitioners' Petition dated May 8, 2001, p. 5, paras. 31-33.

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74. Based upon these submissions, the State argues that any decision on the merits of the petition must first answer the question of whether the Maya of Toledo have aboriginal rights in the lands in the Toledo District, and that any decision on this issue must be taken based on the common law and all relevant domestic legislation.

75. Specifically with respect the two main logging concessions mentioned in the petition, license 1/93 granted to Toledo Atlantic International Ltd.[FN60] and license 6/95 granted to Atlantic Industries Ltd.,[FN61] the State claims that the newly-elected government in Belize suspended both licenses on October 9, 1998, and that on October 13, 1998 the Deputy Prime Minister and the Minister of Natural Resources and the Environment appointed a

multidisciplinary committee to review these licenses. According to the State, the Committee found that the logging practices under license 6/95 were strictly monitored by the Forest Department and could not be severely criticized, and therefore that it was recommended that Atlantic Industries Ltd. could continue to operate under the supervision carried out by the Forest Department. Atlantic Industries Ltd. was subsequently notified on March 1, 1999 that its operations under license 6/95 could resume immediately.

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[FN60] The State indicates that the license issued to Toledo Atlantic Industries International was classified “not for sustainable yield” and that the original license covered 224,000 acres in the Toledo District but was subsequently reduced to 160,000 acres primarily to exclude Indian Reservations. The land tenure covered by the license was national lands and originally Indian Reservations but it also included the smaller areas of leased land and private land, and even other forest license areas previously allocated to other license holders. State’s Preliminary Response to the Petitioners’ Petition dated May 8, 2001, p. 10, para. 39.

[FN61] State’s Preliminary Response to the Petitioners’ Petition dated May 8, 2001, p. 12, para. 48 and Appendix J.

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76. Also according to the State, the Committee found that the operations of license 1/93 issued to Toledo Atlantic International Ltd. negatively impacted on the social and environmental well-being of various rural communities in the Southern Toledo District, and that supervision by the Forest Department of the operations relating to the license was very inadequate. The Committee also found that the person in authority who caused the license to be issued did so in a “clandestine” manner and deliberately ignored the expertise of the other skilled professions in the Ministry of Natural Resources as well as in other relevant Government offices. As a consequence, the Committee recommended immediate revocation of the license. Because the ultimate responsibility for the issuance of the license rested with the entity issuing it and the company had made considerable investments with regard to the license, and because the members of the Review Committee expressed a willingness to participate in the negotiations of any such new application, the Committee recommended that Toledo Atlantic Industries Ltd. be allowed to negotiate a new license.

77. The State indicates that the Cabinet of Ministers approved the findings and recommendations of the Review Committee and license 1/93 was revoked on March 2, 1999. As of the date of the State’s preliminary response, no new application for an equivalent license had been approved for Toledo Atlantic Industries. At the same time, two smaller interim licenses had subsequently been approved in favor of Toledo Atlantic Industries, license 45/99 covering 4,700 acres and license 17/00 covering 5,400 acres.[FN62] The State claims that the Forest Department imposed a pre-requisite that Toledo Atlantic Industries Ltd. provide evidence of consultation with the communities likely to be directly affected by the proposed interim licenses, and that in both instances, the company complied with this requirement by submitting to the department signed memoranda of understanding between themselves and the communities. The State also claims that license 45/99 was never worked and that license 17/00 represented a transfer of license 45/99 to another area. According to the State, the company stated that the reason for the

abandonment of license 45/99 related to difficulties obtaining community support, in the context of discussions in which TMCC was said to have participated.

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[FN62] According to the State, the license to Atlantic Industries Ltd. covered 24,000 acres in the Columbia River Forest Management area. It was a license for “sustainable yield” which, unlike a license “not for sustainable yield”, means that the logging area is divided into smaller plots to be logged selectively one plot per year and where the operator cannot move to another plot until the first has been completed. The licenses for sustainable yield are also governed by specific management plans implemented by the Forest Department aimed at sustainable timber harvesting. State’s Preliminary Response to the Petitioners’ Petition dated May 8, 2001, p. 10, para. 40.

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78. With regard to oil exploration, the State indicates that the AB Energy Contract was separated and is now divided between two companies, US Capital Ltd. and Island Oil Ltd. The State also indicates that there has been no actual oil exploration activity in the Toledo District since the original AB concession was issued in 1998 and that, as of the date of the State’s response, there continued to be none.

79. Based upon these circumstances, the State argues that the Government has taken into account the concerns of the Belizean public, including the Maya people of Toledo, with regard to logging activity in the Toledo District in a way consistent with a respect for those concerns. The State also contends that its ongoing efforts to negotiate a resolution to the Petitioners’ concerns should be considered. According to the State:

The attempts at putting in place the proper mechanisms to secure the interest of all Belizeans with regard to land matters, evidenced by the pattern of behavior described above are significant. Their significance should not be slighted especially when it is considered that Belize is a small, recently independent, developing country, still grappling with the remnants of a colonial system not appropriately suited to local realities. It is unrealistic to expect that an issue that has at its core, control of resources in a significant portion of the country will be resolved quickly and without difficulty.[FN63]

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[FN63] State’s Preliminary Response to the Petitioners’ Petition dated May 8, 2001, p. 13, para. 51.

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80. With respect to the Petitioners’ allegations concerning the effects of the logging and oil exploration concessions, the State contends that the Petitioners have failed to provide evidence that the actions and omissions complained of have, in fact, resulted in the alleged violations of their rights to life, property, cultural integrity, a healthy environment, consultation or equality before the law. In particular, the State argues that the Maya people continue to live in the villages that they have occupied since the dates of foundation recorded in their Maya Atlas and have never been removed or threatened with removal. The State also asserts that the Maya people

continue to live in their customary way, including continued governance by the traditional Alcalde system, which the State claims is the only ethnic group whose traditional system of governance has been incorporated into Belizean law. In addition, the State claims that it has on repeated occasions issued leases to inhabitants of the villages for farmland surrounding the villages, and that issues of health, education and social welfare in Maya Communities are accorded the same treatment as those of other Belizean communities. The State also argues that the Petitioners have failed to establish any real interference with the Maya's customary way of life by the acts and omission complained of, particularly in view of the fact that there has been no actual oil exploration in the Toledo District.

81. Further, the State asserts that the Petitioners have provided insufficient evidence of decreased availability of farmland or that the Maya people are unable to hunt or gather medicinal plants or otherwise provide for themselves in the traditional way. Similarly, the State claims that there is no evidence that it is likely that resources will be so diminished in the immediate future as to make it impossible for them to survive in their customary way, that sacred grounds have been violated or ancestral relics destroyed, or that any Maya person has died or is likely to die as a result of the actions complained of. According to the State, the three affidavits of the Mayan villagers raising allegations of insufficiency of natural resources and submitted in the motion for constitutional redress and to this Commission are "anecdotal at best," represent the experiences or perceptions of specific individuals, and cannot be taken to represent the status quo for all Mayan villages in the area claimed.

82. Concerning the Petitioners' allegation of a violation of the right to judicial protection, the State contends that the Petitioners have chosen not to pursue domestic litigation to its fullest, and argues that it has always been open to the Petitioners, in accordance with accepted practice in the region, to petition the Chief Justice of Belize for an early hearing to be given to their case on basis of the urgency of the relief claimed. The State notes that the Petitioners were, as of the date of the State's preliminary response, availing themselves of domestic avenues for resolution by engaging in negotiations with the State on the basis of an agreement signed by both parties.

83. With regard to the delay in the domestic proceedings, the State indicates that this is not a unique occurrence, and that in recent endeavors to improve access to justice in Belize, the Government of Belize has recognized that the civil justice system suffers from systemic delay.[FN64] The State also argues that several steps have been taken to improve the situation, including appointing three new judges to the Supreme Court and the appointment by the Bar Association of Belize of a committee chaired by the Chief Justice to review the existing rules of procedure with a view to reducing unnecessary delay and expense.

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[FN64] State's Preliminary Response to the Petitioners' Petition dated May 8, 2001, p. 16, para. 61, Appendix K ("Delivering Justice: A Three Year Plan for Improving the Administration of Justice in Belize", a publication by the Attorney General's Ministry, October 1999).

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84. In summary, the State contends that the concerns raised by the Petitioners about land use and tenure, negative environmental impacts, and greater participation in government, are not

uniquely Maya issues, but affect the entire country and more specifically the traditionally less developed Southern Region. The State also asserts that the Petitioners must assume responsibility for the impact of their own agricultural practices on the environment, including their traditional “slash and burn” method of agriculture, the unsafe use of pesticides by farmers, and deforestation caused by small farming, which the State claims has been equivalent to the forest cover lost to logging.[FN65] The State therefore contends that the Petitioners have failed to show that they have suffered any harm that uniquely impacts on Maya life and culture, and have equally failed to establish that they have suffered any harm or change of circumstances as a result of the actions complained of so as to amount to a violation of their human rights. To the contrary, the State argues that it has taken significant steps to address the concerns raised by the Petitioners and to recognize the indigenous populations of Belize as unique sectors of the population and their status as equal citizens in the eyes of the government. These steps are said to include a recent amendment to the Constitution of Belize to explicitly recognize in its preamble that “the People of Belize – [ . . . ] require policies of state [ . . . ] which protect the identity, dignity, and social and cultural values of Belizeans, including Belize’s indigenous people.”[FN66]

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[FN65] State’s Preliminary Response to the Petitioners’ Petition dated May 8, 2001, p. 16, para. 63, Appendix M (excerpt of study entitled Deforestation in Belize, 1989/92-1992/96).

[FN66] State’s Preliminary Response to the Petitioners’ Petition dated May 8, 2001, p. 22, para. 40, Appendix S (copy of the existing preamble to the Constitution of Belize and a copy of the relevant portions of the Belize Constitution) (Third Amendment) Act, 2001).

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#### IV. ANALYSIS

##### A. Application and Interpretation of the American Declaration of the Rights and Duties of Man

85. The Petitioners in the present case have alleged that the State of Belize is responsible for violations of the rights of the members of the Mopan and Ke’kchi Maya people of the Toledo District of southern Belize under Articles I, II, III, VI, XVIII, XI, XIII, XX, and XXIII of the American Declaration of the Rights and Duties of Man. As the Commission indicated in its admissibility report in this matter, the American Declaration constitutes a source of international legal obligation for all member states of the Organization of American States, including Belize.[FN67] Moreover, the Commission is empowered under Article 20 of its Statute and Articles 49 and 50 of its Rules of Procedure to receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration in relation to OAS member states that are not parties to the American Convention.[FN68]

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[FN67] Belize deposited its instrument of ratification of the OAS Charter on January 8, 1981.

[FN68] See also 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, July 14, 1989, Ser. A N° 10 (1989) [hereinafter

“Advisory Opinion OC-10/89”], paras. 35-45; I/A Comm. H.R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49; OAS Charter, Articles 3, 16, 51, 112, and 150.

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86. According to the jurisprudence of the inter-American human rights system, the provisions of its governing instruments, including the American Declaration, should be interpreted and applied in context of developments in the field of international human rights law since those instruments were first composed and with due regard to other relevant rules of international law applicable to member states against which complaints of human rights violations are properly lodged.[FN69]

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[FN69] See Advisory Opinion OC-10/89, *supra*, para. 37; I/A Court H.R., Advisory Opinion OC-16/99, *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Ser. A N° 16 (1999) [hereinafter “Advisory Opinion OC-16/99”], para. 114 (endorsing an interpretation of international human rights instruments that takes into account developments in the corpus juris gentium of international human rights law over time and in present-day conditions; Report N° 52/02, Case N° 11.753, Ramón Martínez Villareal (United States), Annual Report of the IACHR 2002 [hereinafter “Martínez Villareal Case”], para. 60. See also American Convention, Article 29(b) (“No provision of this Convention shall be interpreted as: [. . .] b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party”).

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87. In particular, the organs of the inter-American system have previously held that developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration may be drawn from the provisions of other prevailing international and regional human rights instruments.[FN70] This includes the American Convention on Human Rights which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.[FN71] Pertinent developments have also been drawn from the provisions of other multilateral treaties adopted inside and outside of the framework of the inter-American system, including the Geneva Conventions of 1949,[FN72] the United Nations Convention on the Rights of the Child,[FN73] the Vienna Convention on Consular Relations[FN74] and, of particular pertinence to the present case, International Labour Organisation Convention (N° 169) concerning Indigenous and Tribal Peoples in Independent Countries and other instruments concerning the rights of indigenous peoples.[FN75]

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[FN70] See Advisory Opinion OC-10/89, *supra*, para. 37; Advisory Opinion OC-16/99, *supra*, para. 115; Report N° 52/01, Case 12.243, Juan Raul Garza (United States), Annual Report of the IACHR 2000 [hereinafter “Garza Case”], para. 89.



[FN71] See IACHR, Report of the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Doc. OEA/Ser.L/V/II.106, Doc. 40 rev. (February 28, 2000), para. 38; Garza Case, *supra*, paras. 88, 89 (confirming that while the Commission clearly does not apply the American Convention in relation to member states that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the principles of the Declaration).

[FN72] See, e.g., Report N° 55/97, Case 11.137, Juan Carlos Abella (Argentina), Annual Report of the IACHR 1998, paras. 157-171.

[FN73] See, e.g., I/A Court H.R., Villagrán Morales Case, Judgment of November 19, 1999, Ser. C, N° 63 (1999), para. 188; Report N° 62/02, Case 12.285, Michael Domingues (United States), Annual Report of the IACHR 2002, para. 56.

[FN74] See, e.g., OC-16/99, *supra*, para. 137; Martinez Villareal Case, *supra*, para. 77.

[FN75] See, e.g., Report N° 75/02, Case 11.140, Mary and Carrie Dann (United States), Annual Report of the IACHR 2002 [hereinafter “Dann Case”], para. 127.

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88. Accordingly, in determining the present case, the Commission will, to the extent appropriate, interpret and apply the pertinent provisions of the American Declaration in light of current developments in the field of international human rights law, as evidenced by treaties, custom and other relevant sources of international law.

**B. The Maya Communities of the Toledo District of Belize and International Human Rights Pertaining to Indigenous Peoples**

89. In determining the norms and principles of human rights law that are properly applicable in the present case, the Commission first observes that the Petitioners claims relate to human rights violations that are alleged to have been committed against the members of an indigenous people located in the Toledo District of Belize.

90. According to the information available, the Toledo District is one of two administrative districts in Southern Belize, which together are home to approximately 14,000 Mopan and Ke’kchi-speaking Maya people. The Toledo District encompasses an area of approximately 1,500 square miles, bordered roughly by the Monkey River and the Maya Mountains in the north, the Gulf of Honduras in the East, and Belize’s border with Guatemala to the West and South.[FN76]

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[FN76] See Maya Atlas, *supra*, pp. 12-15.  
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91. The petition states that it has been lodged on behalf of the Mopan and Ke’kchi Maya people who live in or are otherwise members of 38 communities in the Toledo District of Southern Belize: 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.[FN77]

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[FN77] According to the official website of the Government of Belize, the population of Belize is comprised of diverse ethnic groups which include the Mopan and Ke'kchi Maya people: "The population census shows that the main ethnic groups: Mestizo, Creole, Ketchi, Yucatec and Mopan Mayas, Garifuna and East Indian maintains a large percent of Belize's population. Other ethnic groups: German and Dutch Mennonites, Chinese, Arabs and Africans accounts for a small percentage of the population. The ethnic groups, however, are heavily intermixed." See <http://www.belize.gov.bz/> (visited October 14, 2003).

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92. The Petitioners have also alleged that the members of the above Mayan communities are descendents or relatives of Maya subgroups that have inhabited the territory at least as far back as the time of European exploration and excursions into Toledo in the seventeenth and eighteenth centuries. This claim has been supported with evidence from authorities who have studied the origins and history of the Maya-speaking people of the Toledo District. The Maya Atlas states:

Southern Belize has two administrative districts, Toledo and Stann Creek. Bordering Guatemala on two sides, Toledo is comprised of thirty-six Mayan villages located in the lowlands and uplands throughout the region; twenty-four are Ke'kchi villages, six are Mopan, and six are mixed Mopan and Ke'kchi. The Toledo District has been Mayan territory for many centuries. Mayan people were first to occupy and use the land for subsistence agriculture. Four thousand years ago, the Maya were occupying the land that is now known as Belize.[FN78]

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[FN78] Maya Atlas, *supra*, p. 14. See also Leventhal Report, *supra*, p. 7 (stating that "[c]learly, the modern population of Mopan and Ke'kchi speaking people can be documented in the region going back to the 19th Century").

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93. While the State has raised issues concerning the dates of establishment of particular Maya villages within the Toledo District, which are addressed in further detail below, the State has not presented evidence contradicting or otherwise disputing the long-standing ancestral connections of the members of the communities at issue to the Maya people in the southern area of Belize. Indeed, information published by the State itself confirms the Petitioners' allegations in this regard. According to the official website of the Government of Belize:

Numerous ruins indicate that for hundreds of years Belize was heavily populated by the Maya Indians, whose relatively advanced civilization reached its height between A.D. 250 and 900. Eventually the civilization declined leaving behind small groups whose offspring still exist in Belize contributing positively to the culturally diverse population.[FN79]

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[FN79] See <http://www.belize.gov.bz/> (visited October 14, 2003).

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94. In light of the above information, the Commission finds that the petition in this matter has been lodged on behalf of the members of a people indigenous to the territory that presently comprises the Toledo District of Southern Belize.[FN80] Consistent with the interpretive approach outlined above and its previous jurisprudence,[FN81] therefore, the Commission will pronounce upon the possible violations by the State of Belize of Articles I, II, III, VI, XI, XVIII, XX, and XXIII of the American Declaration of the Rights and Duties of Man with due regard to the particular principles of international human rights law governing the individual and collective interests of indigenous peoples.

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[FN80] Without limiting the terms and characteristics by which indigenous peoples may be identified, the Commission notes that prevailing authorities include among such peoples those who are descendent from the populations that inhabited the territory prior to colonization and who retain some or all of their own traditional institutions. See, e.g., ILO Convention (N° 169), *supra*, Article 1 (stating that the Convention applies to, *inter alia*, “peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”).

[FN81] See, e.g., *Dann Case*, *supra*, para. 131.

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95. In this regard, a review of pertinent treaties, legislation and jurisprudence reveals the development over more than 80 years of particular human rights norms and principles applicable to the circumstances and treatment of indigenous peoples.[FN82] Central to these norms and principles has been the recognition of the need for special measures by states to compensate for the exploitation and discrimination to which these societies have been subjected at the hands of the non-indigenous.[FN83]

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[FN82] For an historical overview of international human rights developments concerning indigenous peoples, see IACHR, *The Human Rights Situation of the Indigenous People in the Americas*, OEA/Ser.L/V/II.108, Doc. 62 (October 20, 2000), pp. 21-25.

[FN83] *Id.*

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96. In the context of the inter-American human rights system, this Commission has long recognized and promoted respect for the rights of indigenous peoples of this Hemisphere. In the Commission’s 1972 resolution on the problem of “Special Protection for Indigenous Populations - Action to combat racism and racial discrimination,” for example, the Commission proclaimed that “for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the states.”[FN84] This notion of

special protection has also been considered in a number of country and individual reports adopted by the Commission and has been recognized and applied in the context of numerous rights and freedoms under both the American Declaration and the American Convention on Human Rights, including the right to life, the right to humane treatment, the right to judicial protection and to a fair trial, and the right to property.[FN85] In its 1997 report of the human rights situation in Ecuador, the Commission stated that

[w]ithin international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions.[FN86]

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[FN84] Resolution on “Special Protection for Indigenous Populations. Action to Combat Racism and Racial Discrimination”, cited in IACHR, Yanomami Case, Report 12/85, Annual Report of the IACHR 1984-85, [hereinafter “Yanomami Case”], para. 8.

[FN85] See e.g. Yanomami Case, *supra*; IACHR, Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62, Doc. 10 rev. 3 (29 November 1983); IACHR, Second and Third Reports on the Human Rights Situation in Colombia 1993, 1999; Proposed American Declaration on the Rights of Indigenous Peoples, approved by the IACHR, 95th regular session, February 26, 1997, Annual Report of the IACHR 1997, Chapter II.

[FN86] IACHR, Report on the Situation of Human Rights in Ecuador, OAS/Ser.L/V/II.96.Doc.10 rev 1, April 24, 1997, Chapter IX [hereinafter “Ecuador Report”].

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97. The Commission’s approach in acknowledging and giving effect to particular protections in the context of human rights of indigenous populations is consistent with developments in the field of international human rights law more broadly. Special measures for securing indigenous human rights have been recognized and applied by other international and domestic bodies, including the Inter-American Court of Human Rights,[FN87] the International Labour Organisation,[FN88] the United Nations through its Human Rights Committee[FN89] and Committee to Eradicate All Forms of Racial Discrimination,[FN90] and the domestic legal systems of states.[FN91]

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[FN87] *Awas Tingni Case*, *supra*.

[FN88] See e.g. ILO Convention (Nº 169), *supra*.

[FN89] See e.g. UNHRC, General Comment 23, ICCPR Article 27, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994) [hereinafter “UNHRC General Comment 23”], para. 7.

[FN90] See e.g. CERD General Recommendation XXIII(51) concerning Indigenous Peoples (August 18, 1997).

[FN91] For a compilation of domestic legislation governing the rights of indigenous peoples in numerous OAS member states, see IACHR, *Authorities and Precedents in International and*

Domestic Law for the Proposed American Declaration on the Rights of Indigenous Peoples, OEA/Ser.L/V/II.110 Doc. 22 (1 March 2001).

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98. In deciding upon the complaints in the present petition, therefore, the Commission will afford due consideration to the particular norms and principles of international human rights law governing the individual and collective interests of indigenous peoples, including consideration of any special measures that may be appropriate and necessary in giving proper effect to these rights and interests.

C. Right to Property

99. In their complaint, the Petitioners contend that the State's practice in granting numerous logging concessions and at least one oil concession on lands used and occupied by the Maya people in the Toledo District has violated the Maya people's right to property under Article XXIII of the American Declaration. The Petitioners also contend that this practice of granting concessions is a component of a more general failure of the State of Belize to recognize and effectively secure the territorial rights of the Maya people, also contrary to their right to property.

100. Article XXIII, of the American Declaration provides:

Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.[FN92]

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[FN92] The right to private property is also recognized in Article 21 of the American Convention on Human Rights, which provides: 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society; 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law; 3. Usury and any other form of exploitation of man by man shall be prohibited by law.  
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101. In analyzing the right to property in the context of the present case, it is first instructive to articulate the manner in which the domestic legal system in Belize currently provides for the right to property and the manner in which the territory of the Toledo District of Southern Belize is regulated within that system. This will be followed by a more specific analysis as to whether the members of the Maya people of the Toledo District have property rights in the territory at issue under applicable international human rights norms and principles, as well as any corresponding obligations on the part of the State to recognize and protect those rights. Finally, the Commission will address whether the State is responsible for violations of any determined rights and obligations in respect of the Maya people of the Toledo District.

102. As both parties have noted in their submissions to the Commission, Belize is a former British colony whose legal system is based upon the common law tradition.[FN93] Upon achieving its full independence on September 21, 1981, Belize adopted a written Constitution,

Chapter II of which includes the protection of numerous fundamental rights and freedoms.[FN94]

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[FN93] The Government of Belize is a Parliamentary Democracy modeled upon the Westminster System. Her Majesty Queen Elizabeth II is the constitutional Head of State, who is represented in Belize by a Governor-General, who must be a Belizean. The Executive Branch is comprised of a Prime Minister and Cabinet, and the Legislative Branch is bi-cameral, with a 29-member elected House of Representatives and a 9-member appointed Senate. See <http://www.belize.gov.bz/>

[FN94] Belize Constitution, Act N° 14 of 1981, Chapter II “Protection of Fundamental Rights and Freedoms.”.

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103. Among the rights protected under Chapter II of the Constitution of Belize is the right under section 3(d) to protection against the arbitrary deprivation of property:

3. Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

[. . .]

(d) protection from arbitrary deprivation of property,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.[FN95]

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[FN95] Id., s. 3(d).

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104. Further, Article 17 of the Constitution of Belize places certain conditions upon the compulsory taking of property:

17(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that-

a. prescribes the principles on which and the manner in which reasonable compensation therefore is to be determined and given within a reasonable time; and

- b. secures to any person claiming an interest in or right over the property a right of access to the courts for the purpose of-
  - i. establishing his interest or right (if any);
  - ii. determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorizing the taking of possession or acquisition;
  - iii. determining the amount of the compensation to which he may be entitled; and
  - iv. enforcing his right to any such compensation.

105. The Commission also notes that neither of the parties has identified internal legislation of Belize that specifically regulates the situation of its indigenous peoples. However, as the State indicated in its observations, the Preamble to the Constitution of Belize was recently amended to explicitly recognize that “the People of Belize – [ . . . ] require policies of state [ . . . ] which protect the identity, dignity, and social and cultural values of Belizeans, including Belize’s indigenous people.”

106. The information available indicates that the State’s formal system of land titling, leasing and permitting is regulated principally by the Law of Property Act of Belize,[FN96] which in turn was based upon the British plan prescribed under the United Kingdom Law of Property Act of 1925.[FN97] According to this system, owners of land in Belize include private persons as well as the State itself,[FN98] whose rights and interests are documented by leases and deeds from the Department of Lands and Surveys.[FN99] Lands held by the State may be designated as “national lands” governed by the National Lands Act,[FN100] which are owned by the State but may be the subject of leases granted by the Government.[FN101] National lands in turn may include officially-designated sanctuaries, reserves and parks, and encompass a system of “reservations” established by the British colonial administration with respect to certain Maya villages in the Toledo District in Southern Belize.[FN102]

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[FN96] Law of Property Act, Statutes of Belize, Ch. 190.

[FN97] Velma Newton, *Commonwealth Caribbean Legal Systems: A Study of Small Jurisdictions* (1989), at 25.

[FN98] Petitioners’ reply dated December 17, 2001, p. 8, para. 28, Appendix E (map “ESTAP Project Area, Land Tenure”) (identifying land tenure in the Southern region of Belize as including “Forest Reserve”, “National Park”, “Nature Reserve”, “National Land”, “Private Land”, “House Lots”, and “Water Bodies”).

[FN99] See Nietschmann Report, *supra*, p. 7.

[FN100] National Lands Act, *supra*, section 2 (defining “National lands” as “all lands and sea beds, other than reserved forest within the meaning of the Forest Act, including cayes and parts thereof not already located or granted, and includes any land which has been or may hereafter become escheated to or otherwise acquired by the Government of Belize”).

[FN101] National Lands Act, *supra*, Section 7.

[FN102] National Lands Act, *supra*, Section 6(1) (providing that “Nothing contained in this Act shall prevent the Minister from excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of in a manner as for the public interests may seem best, such lands as may be required as reserves, public roads or other internal communications,

or commons, or as the sites of public buildings, or as places for the internment of the dead, or places for the education, recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, wharves or landing places on the sea coast or shores of streams, or for the construction of tram or railways or railway stations or canals, or for the purpose of sinking shafts and digging for minerals, or for any purposes of public defence, safety, utility, convenience or enjoyment, or for otherwise facilitating the improvement and settlement of Belize, or for special purposes.” See also Petitioners’ reply dated December 17, 2001, p. 8, para. 28, Appendix E (map “ESTAP Project Area, Land Tenure”).

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107. Further, both the Petitioners and the State refer to a body of jurisprudence that has developed within common law systems with origins similar to that of Belize, according to which “aboriginal title” may be recognized. More particularly, the parties have cited decisions of the Supreme Court of Canada and the Australian High Court, among others, according to which “aboriginal rights” to lands have been recognized based upon historical patterns of use and occupancy and corresponding traditional land tenure.[FN103]

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[FN103] See, e.g., Petitioners’ petition dated August 7, 1998, p. 26, para. 92, citing, *inter alia*, *Mabo [N° 2] v. Queensland* (1992), 175 C.L.R. 1, 69 (Aust.); *Delgamuukw v. British Columbia* (1997), 153 D.L.R. (4th) 193 (S.C/C.) (Can.); State’s Preliminary Response dated May 8, 2001, citing *Hamlet of Baker Lake v. Minister of Indian Affairs and Northern Development* [1979] 3 CNLR 17; *Mabo v. Queensland*, *supra*.

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108. In the context of the alleged victims in the present case, it is apparent that members of the Maya people of the Toledo District may, like other Belizeans, hold property privately in accordance with the formal system of land titling, leasing and permitting, and are protected in this regard by the corresponding provisions of the Constitution protecting the right not to be arbitrarily deprived of property.[FN104] This system governs property held by members of Maya communities outside of the State’s reservation system.[FN105] Some of the villages encompassed by the present petition also fall within the State’s reservation system,[FN106] which is regulated under a distinct regime of domestic law. According to the record, the State, rather than the Maya people, owns the reservation property as “national lands.”[FN107] At the same time, expert information indicates that as a matter of practice, the Maya people have, through the tacit approval of the State, been afforded a certain degree of autonomy in regulating reservation land use through their own written and customary rules and regulations.[FN108] Consequently, the nature or extent of any interest that the Maya people may have in reservation land is uncertain. This lack of clarity is amplified by the fact that, according to the Petitioners’ information, the boundaries of the reservations have never been defined clearly in practice and were never surveyed or demarcated on the ground.[FN109]

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[FN104] See, e.g., Petitioners’ December 17, 2001 reply to the State’s Preliminary Response, p. 12, para. 31 (acknowledging that at least some of the private interests in land in the Toledo



District authorized by the Government of Belize have been made to individual members of the Maya communities themselves).

[FN105] It is apparent from the Maya Atlas that several of the villages encompassed by the present petition do not fall within the boundaries of the reservations system, including San Jose, San Marcos, San Felipe, Santa Anna and Boom Creek. Maya Atlas, supra, at 126 (map - “Sanctuaries, Reserves, and Parks”).

[FN106] It is apparent from the Maya Atlas that several of the villages encompassed by the present petition do not fall within the boundaries of the reservations system, including San Jose, San Marcos, San Felipe, Santa Anna and Boom Creek. Maya Atlas, supra, at 126 (map - “Sanctuaries, Reserves, and Parks”).

[FN107] See National Lands Act, supra, section 6; Maya Atlas, supra, at 126; Petitioners’ Reply dated December 17, 2001, Appendix E (map “ESTAP Project Area, Land Tenure”).

[FN108] See Wilk Report, supra, pp. 5-6.

[FN109] See Wilk Report, supra, pp. 5-6.

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109. In this context, the Petitioners argue that the formal system governing real property in Belize does not properly respect their land rights in several respects. As discussed in further detail below, the Petitioners argue that the Maya people of the Toledo District have developed a customary system of land tenure, which exists along side the State’s reservation system, according to which the Maya villages hold land collectively, while individuals and families enjoy subsidiary rights of use and occupancy.[FN110] The Petitioners also claim that the system of reservations does not extend to all of the villages in respect of which the petition was lodged and that the customary land tenure patterns extend well beyond the reservation boundaries, to the extent that those boundaries are discernable.[FN111] Further, the Petitioners argue that the State has failed to recognize and provide proper protection to the Maya’s customary system of land tenure, whether inside or outside of reservation lands, and that the issuance by the state of logging and oil concessions in the Toledo District without consultations with and the informed consent of the Maya people, is a specific manifestation of the State’s omissions concerning Maya land rights.

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[FN110] Petitioners’ petition dated August 7, 1998, p. 5, para. 20; Wilk Report, supra, at 5-7, Nietschmann Report, supra, at 7-12; Maya Atlas, supra, at 19.

[FN111] Petitioners’ petition dated August 7, 1998, p. 6, para. 22, citing Maya Atlas, supra, at 18, 43-115, 126.

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110. Also in connection with the application of existing domestic law to the Maya people, it is not clear whether the Maya may be said to have aboriginal title to lands in the Toledo District under applicable domestic constitutional or common law. The Petitioners contend that the Maya people have aboriginal rights to the territory of the Toledo District under common law. The State, on the other hand, suggests that neither applicable legal principles nor the facts asserted by the Petitioners support a finding that the Maya of Toledo have aboriginal rights under common law in the land they occupy. The Petitioners raised these issues with the domestic courts for

determination in their December 1996 motion for constitutional redress, but as of the date of this report, the motion had not been decided.

111. Having articulated its understanding of applicable internal law relating to property and its present application to the territory of the Toledo District, the Commission will next address the status of the property interests of indigenous peoples under applicable international human rights law and the corresponding implications for the present case.

#### 1. The Right to Property and Indigenous Peoples under Contemporary International Human Rights Law

112. In evaluating the nature and content of the right to property under Article XXIII of the American Declaration in the context of the present case, several aspects of the evolution of international human rights protections pertaining to indigenous peoples are particularly pertinent.

113. Among the developments arising from the advancement of indigenous human rights has been recognition that rights and freedoms are frequently exercised and enjoyed by indigenous communities in a collective manner, in the sense that they can only be properly ensured through their guarantee to an indigenous community as a whole.[FN112] The right to property has been recognized as one of the rights having such a collective aspect.

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[FN112] See Dann Case, *supra*, para. 128, citing IACHR, The Human Rights Situation of Indigenous Peoples in the Americas 2000, OEA/Ser.L/V/II/108, Doc. 62 (October 20, 2000), p. 125; Yanomami Case, *supra*. See also ILO Convention (Nº 169), *supra*, Article 13 (providing that “[i]n applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.”).

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114. More particularly, the organs of the inter-American human rights system have acknowledged that indigenous peoples enjoy a particular relationship with the lands and resources traditionally occupied and used by them, by which those lands and resources are considered to be owned and enjoyed by the indigenous community as a whole[FN113] and according to which the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities and the effective realization of their human rights more broadly.[FN114] As observed by the Inter-American Court of Human Rights in its seminal judgment in the Case of the Mayagna (Sumo) Community of Awas Tingni v. Nicaragua[FN115]

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.[FN116]

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[FN113] See, e.g., *Awas Tingni Case*, *supra*, para. 149 (observing that “[a]mong indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community”).

[FN114] The Commission has observed, for example, that continued utilization of traditional collective systems for the control and use of territory are in many instances essential to the individual and collective well-being, and indeed the survival of, indigenous peoples and that control over the land refers to both its capacity for providing the resources which sustain life, and to the geographic space necessary for the cultural and social reproduction of the group. *Ecuador Report*, *supra*, p. 115.

[FN115] On June 4, 1998, the Commission submitted to the Inter-American Court an application in the *Case of the Mayagna (Sumo) Community of Awas Tingni against the State of Nicaragua* in which it requested the Court to decide that the State had violated Articles 1, 2, 21, and 25 of the Convention, because Nicaragua had not demarcated the communal lands of the Mayagna (Sumo) Community of Awas Tingni, had not taken effective measures to ensure the property rights of the Awas Tingni Community in respect of their ancestral lands and natural resources, had authorized a concession in the lands of the Community without their consent, and had not guaranteed an effective remedy for addressing the Community’s claims to rights in their territory. In addition, the Commission requested that the Court declare that the State must establish a judicial procedure that would permit the prompt demarcation and official recognition of the property rights of the indigenous Mayagna Community, as well as abstain from authorizing or considering the authorization of any concession for the utilization of natural resources in the lands used and occupied by the Awas Tingni until the issues relating to the Community’s land has been resolved.

[FN116] *Awas Tingni Case*, *supra*, para. 149.

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115. The Commission, through its reports on individual petitions and on the general situation of human rights in member states, as well as in its authorization of precautionary measures, has pronounced upon the necessity of states to take the measures aimed at restoring, protecting and preserving the rights of indigenous peoples to their ancestral territories.[FN117] It has also held that respect for the collective rights of property and possession of indigenous people to the ancestral lands and territories constitutes an obligation of OAS member states, and that the failure to fulfill this obligation engages the international responsibility of the states.[FN118] According to the Commission, the right to property under the American Declaration must be interpreted and applied in the context of indigenous communities with due consideration of principles relating to the protection of traditional forms of ownership and cultural survival and rights to land, territories and resources. These have been held to include 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, and the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied.[FN119]

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[FN117] See, e.g., *Yanomami Case*, *supra*; *Dann Case*, *supra*; *Precautionary measures, De Vereniging van Saramakaanse (Suriname)* (August 8, 2002).

[FN118] See, e.g., Dann Case, *supra*.

[FN119] See Dann Case, *supra*, paras. 129-131, citing Draft Inter-American Indigenous Declaration, *supra*, Article XVIII; Ecuador Report, *supra*; Awas Tingni Case, *supra*, paras. 134-139; ICCPR, Article 27; ICCPR, General Comments 23, *supra*, para. 7; CERD General Recommendation XXIII (51) concerning Indigenous Peoples (August 18, 1997) (calling upon states parties to the Race Convention to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.”); ILO Convention (Nº 169), *supra*, Article 14(1) (providing that “[t]he rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. 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.”); Article 15(1) (stating that “[t]he rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources”).

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116. The Inter-American Court has taken a similar approach to the right to property in the context of indigenous peoples, by recognizing the communal form of indigenous land tenure as well as the distinctive relationship that indigenous people maintain with their land. According to the Court

[a]mong indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community [. . .] 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.[FN120]

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[FN120] Awas Tingni Case, *supra*, para. 149.

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117. Accordingly, the organs of the inter-American human rights system have recognized that the property rights protected by the system 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.[FN121] 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. Consistent with this approach, the Commission has held that the application of the American Declaration to the situation of indigenous peoples requires the taking of special measures to ensure recognition of the particular and collective interest that indigenous people have in the occupation and use of their traditional lands and resources and their right not to be

deprived of this interest except with fully informed consent, under conditions of equality, and with fair compensation.[FN122]

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[FN121] The European Court of Human Rights has afforded a similar interpretation to the concept of “possessions” under Article 1 of Protocol N° 1 to the European Convention on Human Rights. See *Matos E Silva, Ltd v. Portugal* (1997) 24 E.H.R.R. 573. The Court declared that “the notion of ‘possessions’ in Article 1 of Protocol N° 1 has an autonomous meaning. In the present case the applicants’ unchallenged rights over the disputed land for almost a century and the revenue they derive from working it may qualify as ‘possessions’ for the purposes of Article 1”. See also *Latridis v. Greece* (1999) E.C.H.R. 31107/96 Hudoc REF00000994, March 25, 1999 (affirming the interests relating to possession and functioning of a cinema for eleven years, although under domestic law there was a dispute over the title to the cinema.); *The Holy Monasteries v. Greece*, (1995) 20 E.H.R.R. 1 (recognizing property rights based in occupation for centuries).

[FN122] *Dann Case*, supra, para. 131. The Inter-American Court has similarly recognized that “[i]ndigenous peoples’ customary law must be especially taken into account for the purpose of this analysis. As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration.” *Awas Tingni Case*, supra, para. 151.

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118. This interpretive approach is supported by the terms of other international instruments and deliberations, which serve as further indicia of international attitudes on the role of traditional system of land tenure in modern systems of human rights protection. The International Labour Organisation Convention (N° 169) concerning Indigenous and Tribal Peoples, for example, affirms indigenous peoples’ rights of ownership and possession of the lands they traditionally occupy, and requires governments to safeguard those rights and to provide adequate procedures to resolve land claims.[FN123] Additionally, both the Proposed American Declaration on the Rights of Indigenous Peoples[FN124] and the Draft United Nations Declaration on the Rights of Indigenous Peoples affirm the rights of indigenous people to own, develop, control and use the lands and resources they have traditionally owned or otherwise occupied and used.[FN125]

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[FN123] ILO Convention (N° 169), supra, Arts. 13-17. See also *Awas Tingni case*, Concurring Opinion of Judge Garcia Ramírez, supra, para. 7. While the Commission acknowledges that Belize is not a state party to ILO Convention (N° 169), it considers that the terms of that treaty provide evidence of contemporary international opinion concerning matters relating to indigenous peoples, and therefore that certain provisions are properly considered in interpreting and applying the articles of the American Declaration in the context of indigenous communities. See similarly *Dann Case*, supra, paras. 127-131.

[FN124] See generally *Awas Tingni Case*, Concurring Opinion of Judge Garcia Ramírez, supra, para. 9.

[FN125] Draft United Nations Declaration on the Rights of Indigenous Peoples, Article 26, adopted by the Sub commission on the Prevention of Discrimination and Protection of

Minorities, August 26, 1994, E/CN.4/Sub.2/1994/45, p. 105 (rights to lands, etc., that they “have traditionally possessed or occupied”) (hereinafter “UN Draft Declaration”). See also *Awas Tingni Case*, Concurring Opinion of Judge Ramírez, *supra*, para. 8.

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119. In this connection, the Commission believes that respect for and protection of the private property of indigenous peoples on their territories is equivalent in importance to non-indigenous property, and, as discussed further below, is mandated by the fundamental principle of non-discrimination enshrined in Article II of the American Declaration. As the Commission has previously observed in the context of the interests of indigenous peoples in their territories:

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 [...][FN126]

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[FN126] IACHR, Report on the Situation of Human Rights in Guatemala, 1993.

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120. For the organs of the inter-American system, the protection of the right to property of the indigenous people to their ancestral territories is a matter of particular importance, because the effective protection of ancestral territories implies not only the protection of an economic unit but the protection of the human rights of a collective that bases its economic, social and cultural development upon their relationship with the land. It 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.”[FN127]

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[FN127] *Miskito Case*, *supra*, at 81, Part II, para. 15. See also *Yanomami Case* *supra*, at 24, 431; *Ecuador Report*, *supra*, at 103-4.

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## 2. The Situation of the Maya People of the Toledo District

121. In the context of the norms and principles outlined above, it is necessary to determine whether the Maya people of the Toledo District are the beneficiaries of a right to property under Article XXIII of the Declaration in respect of lands in the southern region of Belize and, if so, the nature of the State’s obligations concerning respect for and protection of this right.

### a. The Right to Property and the Traditional Lands of the Maya People in the Toledo District

122. As indicated previously, the Commission is satisfied, based upon the information available, that the members of the Mopan and Ke’kchi Maya communities of the Toledo District of Southern Belize constitute an indigenous people whose ancestors inhabited the Toledo District

prior to the arrival of the Europeans and the colonial institutions that gave way to the present State of Belize.

123. In this connection, the Petitioners have also alleged that the Maya people have engaged in customary land use patterns, according to which the lands and their natural resources are used and occupied by the members of the Maya community in a variety of ways that are distinct from those recognized under the formal system governing real property in Belize. In particular, the information presented by the Petitioners indicates that land occupation and use by the Maya people is comprised of a village zone, that typically extend to two square kilometers and is used for dwellings, raising fruit and other trees and grazing livestock, an agriculture zone, that extends up to 10 kilometers from the village center where crops are planted on a rotational system, and a yet broader zone that encompasses large expanses of forest lands and waterways used for hunting and gathering for food, medicinal, construction, transportation and other purposes. The information also indicates that the ancient and modern land use patterns of the Maya people have necessitated some degree of periodic movement by communities within the region at issue in order to maximize the use of their land and the quality of their crops. [FN128]

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[FN128] See, e.g., Leventhal Report, *supra*, p. 7.

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124. The Petitioners claim that these land use patterns have been and continue to be governed by a traditional land tenure system, by which Maya villages hold land collectively, while individual and families enjoy subsidiary rights of use and occupancy in that land. Further, the Petitioners claim that these land use practices are significant not only for the subsistence of the members of the Maya communities, but also provide a foundation for the cultural life and continuity of the Maya people. According to Leonardo Acal, a Maya leader who has lived in the Toledo District throughout his life:

I hunt in the CRFR [Columbia River Forest Reserve] to have enough meat to feed my family. I hunt gibbon, warrie, carasow, quam, and picare in the CRFR, among other things. I learned to hunt when I was very small. I learned by traveling from Maya village to Maya village to learn the secret way of Maya hunting. This is the way of our ancestors, the ancient Maya people. I still hunt this way, in keeping with Maya religious beliefs. In accordance with our traditional ways, I burn incense to the patrons of the animals of the forest. I observe the limits of the gods of nature, as dictated by the rules of Maya hunting law.[FN129]

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[FN129] Petitioners' petition dated August 7, 1998, Appendix B.18 (affidavit of Leonardo Acal, sworn on February 26, 1997, para. 8).

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125. For its part, the Government of Belize has stated in negotiations with the Petitioners outside of the procedures in the inter-American system that it recognizes that the Maya people of the Toledo District have rights in the lands and resources that they have historically used and

occupied. Point 6 of the “Ten-Point Agreement” signed by the State and Maya leaders on October 12, 2000 provides

That the GOB [Government of Belize] recognizes that the Maya People have rights to lands and resources in southern Belize based on their longstanding use and occupancy.[FN130]

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[FN130] See State’s Preliminary Response dated May 8, 2001, p. 17, para. 67 and Appendix N “Ten-Points Agreement”, dated October 12, 2000, Point 6.

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126. In its response to the Petitioners’ petition, the State acknowledges this admission,[FN131] but at the same time contends that it is unclear whether the Maya people of southern Belize have aboriginal rights, as defined under applicable common law, in the area claimed. In particular, the State claims that several of the villages falling within the Petitioners’ complaint were established in the 1900’s, and some as late as 1992, and that this illustrates a significant break in the continuity of occupation of the area over which title is asserted. The State also argues that a comparison of these dates of establishment with the dates for foundation of other non-Mayan villages in the area reveals that the Maya did not occupy the region to the exclusion of other organized societies. Finally, the State indicates that the issue of possible “extinguishment” of any existing aboriginal rights by certain acts of the Sovereign over British Honduras is also unresolved, without providing any further submissions on this point.

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[FN131] See State’s Preliminary Response dated May 8, 2001, p. 17, para. 67.

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127. Based upon the arguments and evidence before it, the Commission is satisfied that the Mopan and Ke’kchi Maya people have demonstrated a communal property right to the lands that they currently inhabit in the Toledo District. These rights have arisen from the longstanding use and occupancy of the territory by the Maya people, which the parties have agreed pre-dated European colonization, and have extended to the use of the land and its resources for purposes relating to the physical and cultural survival of the Maya communities.

128. The Commission notes in this connection that the State has not submitted any independent evidence in support of the Petitioners’ arguments, and in particular has not provided any evidence indicating that the Maya people have not historically inhabited the territory of the Toledo District or that they have not exercised collective property rights in respect of that territory. Rather, in respect of its submissions concerning the dates of establishment of Mayan villages, the State has relied upon evidence provided by the Petitioners, specifically the Maya Atlas, which was prepared by the Toledo Maya Cultural Council and the Toledo Alcaldes Association with the assistance of professional geographers from the University of California at Berkley. Further, the State has not presented any arguments or evidence to refute the Petitioners’ arguments concerning the land use patterns practiced by the Maya people in the Toledo District or the customary land tenure system alleged to have been developed and followed by them.



129. In reaching its conclusion concerning the existence of Maya communal property rights, the Commission has taken into account the State's admission in the Ten-Point Agreement, which, together with the State's more general recognition of the long-standing presence of the Maya people in the Toledo District, constitutes formidable evidence of an enduring connection between the Maya people and lands in the Toledo District. Although the State raises doubts concerning the continuity of Maya occupation based upon the dates of establishment of 13 of the 38 villages encompassed within the present petition, the information presented by the Petitioners indicates that the use and occupancy of territory by the Maya people extend beyond the settlement of specific villages to include lands that are used for agriculture, hunting, fishing, gathering, transportation, cultural and other purposes. This is confirmed by the Maya Atlas itself, which illustrates the boundaries of Maya communal lands in the Toledo District to extend beyond the settlement of specific villages and to include areas surrounding all of the villages at issue in the present complaint, including those referred to by the State.[FN132] It is also supported by experts on historical and modern land use practices by the Maya people of the Toledo District, who confirm that the Maya have, through their agricultural, land tenure and other systems, occupied on a longstanding and continuous basis large areas of land beyond specific villages. These experts have also observed that most of the villages that have been founded in recent years are located in land that was already controlled by another community in order to accommodate population growth.[FN133]

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[FN132] See Maya Atlas, *supra*, p. 123 "Maya Communal Lands, Reservations, and Logging Concessions."

[FN133] See, e.g., Leventhal Report, *supra*, at 8-9; Wilk Report, *supra*, p. 6.

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130. Accordingly, in the Commission's view, there is significant evidence that the Maya people, through their traditional agriculture, hunting, fishing and other land and resource use practices, have occupied significant areas of land in the Toledo District beyond particular villages since pre-colonial times and that the dates of establishment of particular Maya villages, in and of themselves, are not determinative of or fatal to the existence of Maya communal property rights in these lands. Beyond this, the Commission must clarify that it does not purport through this report to define and demarcate the precise territory to which Maya property rights extend. Rather, as discussed below, this is an obligation that must be fulfilled by the State in full collaboration with the Maya people and in accordance with their customary land use practices.

131. The Commission also considers that this communal property right of the Maya people is the subject of protection under Article XXIII of the American Declaration, interpreted in accordance with the principles outlined above relating to the situation of indigenous peoples, including the obligation to take special measures to ensure recognition of the particular and collective interest that indigenous people have in the occupation and use of their traditional lands and resources.[FN134] In this connection, the Maya people's communal property right has an autonomous meaning and foundation under international law. While the Commission has considered the legislation and jurisprudence of certain domestic legal systems in identifying international legal developments relating to the status and treatment of indigenous people, the communal property right of the Maya people is not dependent upon particular interpretations of

domestic judicial decisions concerning the possible existence of aboriginal rights under common law.

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[FN134] See similarly Dann Case, *supra*, para. 131.

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132. Accompanying the existence of the Maya people's communal right to property under Article XXIII of the Declaration is a correspondent obligation on the State to recognize and guarantee the enjoyment of this right. In this regard, the Commission shares the view of the Inter-American Court of Human Rights that this obligation necessarily requires the State to effectively delimit and demarcate the territory to which the Maya people's property right extends and to take the appropriate measures to protect the right of the Maya people in their territory, including official recognition of that right.[FN135] In the Commission's view, this necessarily includes engaging in effective and informed consultations with the Maya people concerning the boundaries of their territory, and that the traditional land use practices and customary land tenure system be taken into account in this process.

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[FN135] In its judgment in the *Awas Tingni Case*, the Inter-American Court determined that the failure of the State to effectively delimit and demarcate the collective property of the Mayagna Community of Awas Tingni had created a climate of constant uncertainty among the members of the Awas Tingni Community, insofar as they do not know for certain how far their communal property extends geographically and, therefore, they do not know until where they can freely use and enjoy their respective property. *Awas Tingni Case*, *supra*, para. 153. Although phrased in somewhat different terms, the right to property affirmed in Article XXIII of the American Declaration is essentially the same human right as that provided for in Article 21 of the American Convention. The value of coherence and consistency within the Inter-American system for the protection of human rights mitigates in favor of extending a similar interpretation to both instruments.

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133. It is also apparent to the Commission that despite its recognition of the property right of the Maya people in their traditional lands, the State has not delimited, demarcated and titled or otherwise established the legal mechanisms necessary to clarify and protect the territory on which their right exists. In this regard, the record indicates that the present system of land titling, leasing and permitting under Belizean law does not adequately recognize or protect the communal rights of the Maya people in the land that they have traditionally used and occupied. According to the information provided by the Petitioners, which has not been refuted by the State, the regime governing the ownership of private property does not recognize or take into account the traditional collective system by which the Maya people use and occupy their traditional lands. While the British colonial administration established a system of reservations that pertain to several Maya villages, the boundaries of the reservations remain unclear. To the extent they can be discerned, they do not include all of the communities on whose behalf the present petition was lodged, nor do they encompass much of the territory that the Maya people have traditionally used and occupied in the Toledo District.[FN136] While the status of the Maya

people on reservation land is unclear as a matter of practice,[FN137] it is apparent that under domestic legislation, ownership of the reservation lands lies with the State as “national lands”[FN138] and there are no provisions recognizing or protecting Maya communal land interests in the lands.

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[FN136] See, e.g., Maya Atlas, *supra*, pp. 18, 43-115, 126.

[FN137] As observed previously, the expert information provided by the Petitioners indicates that although the State owns reservation lands, the Maya people have, through the tacit approval of the State, been afforded a certain degree of autonomy in regulating reservation land use through their own written and customary rules and regulations. See Wilk Report, *supra*, pp. 5-6.

[FN138] See National Lands Act, *supra*, section 6; Maya Atlas, *supra*, at 126; Petitioners’ Reply dated December 17, 2001, Appendix E (map “ESTAP Project Area, Land Tenure”).

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134. Finally, the Petitioners have asked the domestic courts to recognize and define their property rights under the Constitution of Belize and applicable common law, but this litigation remains unresolved. The Commission is mindful of the considerable attempts made by the State and the Petitioners to reach an amicable resolution of the Maya land claim issues. However, in light of the failure of these efforts, this Commission is now obliged to define the rights of the Maya people under international law, as well as the positive steps that the State must take to respect and ensure those rights.

135. The Commission therefore concludes that the Mopan and Ke’kchi Maya people have demonstrated a communal property right to the lands that they currently inhabit in the Toledo District, that this communal property right of the Maya people is the subject of protection under Article XXIII of the American Declaration, and that the State has failed to delimit, demarcate and title or otherwise establish the legal mechanisms necessary to clarify and protect the territory on which their right exists. Accordingly, the Commission finds that the State of Belize violated the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people.

b. The Granting of Concessions in the Toledo District

136. The Petitioners have also argued that by granting concessions to companies to extract logging and oil resources from the traditional lands of the Maya people, without properly delimiting and demarcating those lands and without any effective consultation with or agreement by the affected communities, the State has similarly violated the right to property of the Maya people under Article XXIII of the American Declaration.

137. In its submissions, the State has not denied the Petitioners’ allegation that since 1993, numerous concessions have been granted on land in the Toledo District, including land that could correspond with the property traditionally used and occupied by the Maya people. According to the Petitioners, these concessions included four licenses for logging, License Nos. 1/93, 6/95, 45/99 and 17/00. In its observations, the State confirmed that License N° 1/93 was granted to the Toledo Atlantic Industries International “not for sustainable yield” and that this

license initially covered over 224,000 acres in the Toledo District but was subsequently reduced to 160,000 acres. According to the State, License N° 6/95, classified for “sustained yield,” was granted to Atlantic Industries in respect of 24,000 acres in the Columbia River Forest Management Area. The State has not addressed the Petitioners’ claim regarding Forest License N° 17/96, which the Petitioners allege was granted to Marion Tulcey, near the village of Mabil Ha. Based upon this information, the Commission finds that the State granted Licenses N° 1/93, 6/95, 45/99, 17/00, and 17/96 for logging in the Toledo District and that these lands coincided in whole or in part with lands traditionally used and occupied by the Maya people.

138. The State has similarly acknowledged that it granted oil exploration concessions to AB Energy Corporation for a region covering 749,222 acres in the lowland portion of Toledo, an area that the Maya Atlas indicates encompasses most of the Maya villages in the Toledo District. The State clarified in this regard that the AB Energy Corporation concession was separated and is now divided between two companies, US Capital Ltd., and Island Oil Ltd., and has stated that no actual exploration activity has been undertaken in connection with this oil concession.

139. While admitting to the existence of the concessions, the State has contended that it has taken appropriate measures to supervise the impact of these concessions on the environment and communities affected by them. These efforts included canceling concession 1/93 issued to Toledo Atlantic International, after a state-created interdisciplinary committee concluded that the operations of the license negatively impacted upon the social and environmental well-being of various rural communities in the Southern Toledo District. The State has also indicated that the issuance of a new interim license to Toledo Atlantic International included a prerequisite that the company provide evidence of consultation with the communities likely to be directly affected by the license. The State has not denied the Petitioners’ allegation that no effective consultations were held with the Maya people prior to the approval of the existing logging and oil concessions.[FN139]

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[FN139] The Commission recalls in this regard that the Petitioners acknowledged the existence of meetings between forest officers from the Ministry of Natural Resources and Maya villagers prior to the approval of the management plan that governs the concession to Atlantic Industries Ltd. for logging in the Columbia River Forest Reserve, but have claimed that the meetings only provided the Maya with limited information on the planned logging, did not include in depth consideration of traditional Maya land uses, and did not afford Maya representatives the opportunity to influence the decision to grant the concession. Petitioners’ petition dated August 7, 1998, p. 7, para. 25.

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140. In evaluating this aspect of the Petitioners’ complaint, the Commission considers that the right to use and enjoy property may be impeded when the State itself, or third parties acting with the acquiescence or tolerance of the State, affect the existence, value, use or enjoyment of that property without due consideration of and informed consultations with those having rights in the property. In this regard, other human rights bodies have found the issuance by states of natural resource concessions to third parties in respect of the ancestral territory of indigenous people to contravene the rights of those indigenous communities. In the Awas Tingni Case, for example,

the Inter-American Court found Nicaragua responsible for violating the right to property under Article 21 of the American Convention, based in part on concessions granted in relation to lands that were the subject of the communal property right of the Awas Tingni people. The Court concluded in this regard that

in light of article 21 of the Convention, the State has violated the right of the members of the Mayagna Awas Tingni Community to the use and enjoyment of their property, and that it has granted concessions to third parties to utilize the property and resources located in an area which could correspond, fully or in part, to the lands which must be delimited, demarcated, and titled.[FN140]

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[FN140] Awas Tingni Case, *supra*, para. 153.

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141. Similarly, in its views in the case of Ominayak Chief of the Lubicon Lake Band of Cree v. Canada, the UN Human Rights Committee determined that Canada was responsible for violating Article 27 of the International Covenant on Civil and Political Rights by allowing the government of the province of Alberta to grant leases for oil and gas exploration and for timber development within the ancestral territory of an indigenous people, the Lubicon Lake Band.[FN141]

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[FN141] Ominayak Decision, *supra*.

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142. The Commission also observes in this connection that one of the central elements to the protection of indigenous property rights is the requirement that states undertake effective and fully informed consultations with indigenous communities regarding acts or decisions that may affect their traditional territories. As the Commission has previously noted, Articles XVIII and XXIII of the American Declaration specially oblige a member state to ensure that any determination of the extent to which indigenous claimants maintain interests in the lands to which they have traditionally held title and have occupied and used is based upon a process of fully informed consent on the part of the indigenous community as a whole. This requires, at a minimum, that all of the members of the community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives.[FN142] In the Commission's view, these requirements are equally applicable to decisions by the State that will have an impact upon indigenous lands and their communities, such as the granting of concessions to exploit the natural resources of indigenous territories.[FN143]

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[FN142] See similarly Dann Case, *supra*, para. 140.

[FN143] See similarly Awas Tingni Case, *supra*, para. 153. The significance of preserving the interests of indigenous people in the resources of their traditional lands has also been recognized in the proposed American Declaration on the Rights of Indigenous Peoples, Article XVIII(4) of

which provides that “[i]ndigenous peoples have the right to an effective legal framework for the protection of their rights with respect to the natural resources on their lands, including the ability to use, manage, and conserve such resources; and with respect to traditional uses of their lands, interests in lands, and resources, such as subsistence.”

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143. Based upon the record in the present case, the Commission finds that the State granted logging and oil concessions to third parties to utilize property and resources that could fall within the traditional lands of the Maya people of the Toledo District, and that the State failed to take appropriate or adequate measures to consult with the Maya people concerning these concessions. There is no evidence that the State conducted effective consultations with the Maya indigenous communities prior to granting logging licenses 1/93 or 6/95, or in issuing the concession now held by US Capital Ltd. and Island Oil Ltd. for oil exploration in the Toledo District. The Commission is encouraged by the State’s indication that, as a prerequisite to granting more recent logging license numbers 45/99 and 17/00, Toledo Atlantic International was required to provide evidence of consultation with the communities likely to be directly affected by the concession[FN144] and that Toledo Atlantic complied with this requirement by submitting signed memoranda of understanding between themselves and certain communities.[FN145] At the same time, the Commission is concerned that, according to the information available, the State did not prescribe clear standards or requirements for these consultations, including, for example, information that must be shared with the communities concerned or the extent of community support necessary to permit a license to be issued.

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[FN144] State’s Preliminary Response dated May 8, 2001, para. 48 and Appendix H (License 17/00, para. 23 “The licensee shall hold community meeting [sic] in all communities adjacent to or which have traditionally use [sic] those areas within this license. The purpose of these meetings is to obtain community support for the harvesting of timber by the licensee on these land [sic] previously mention [sic]. Such meetings should be held prior to the commencement of timber extraction operation. A copy a [sic] document showing community support for the timber working shall be forwarded to the Chief Forest Officer before timber extraction can occur”).

[FN145] State’s Preliminary Response dated May 8, 2001, para. 48 and Appendix J.

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144. The Commission therefore concludes that logging and oil concessions were granted by the State to third parties to utilize property and resources that could fall within the traditional lands of the Maya people of the Toledo District and that the State failed to take appropriate or adequate measures to consult with the Maya people concerning these concessions. Based upon these acts and omissions, the Commission finds that the State of Belize further violated the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people.

145. Concerning environmental damage alleged to have been caused by concessions, the Petitioners have claimed that the logging concessions granted by the State cover areas of land that include critical parts of the natural environment upon which the Maya people depend for subsistence, including vulnerable soils, primary forest growth and important watersheds. They

also claim that the logging activity undertaken pursuant to the concessions has affected essential water supplies, disrupted plant and animal life, and, as a consequence, have affected Maya hunting, fishing, and gathering practices essential to the Maya cultural and physical survival. In support of these allegations, the Petitioners have provided reports prepared by experts familiar with the environmental status of lands in the Toledo District,[FN146] as well as affidavits from members of the Maya people themselves concerning the effects of the logging activities on their communities.[FN147] According to experts who have studied the environmental situation in southern Belize, logging activities are damaging essential water supplies and straining plant and wildlife populations in various parts of the Toledo District. In the area upstream from the Maya villages of Conejo and Sunday Wood, for example, stream flows have been completely impeded by discarded logs and timber residue that have choked several stream beds, and siltation caused by logging has damaged streams near Conejo.[FN148] Further, logging and ensuing deforestation near the village of Mabil Ha has caused excessive run-off of rain, widespread erosion of soil and the overflow of creeks with sediment-loaded water that has flooded villages farther downstream.[FN149]

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[FN146] See, e.g., Petitioners' Petition dated August 7, 1998, Exhibit P.O.G.1 to Appendix B.25 (report by Pacal O. Girot, "Logging Concession in Toledo District: Current Situation and Perspectives" (1998) (providing an eyewitness account of logging activity in the Toledo District during 6 days of fieldwork and a one-hour overflight of the entire district).

[FN147] See, e.g., Petitioners' Petition dated August 7, 1998, Appendix B.16 (Affidavit of Santiago Chub, sworn on February 26, 1997), Appendix B.17 (affidavit of Sebastian Choco, sworn on February 26, 1997), Appendix B.18 (affidavit of Leonardo Cal, sworn on February 26, 1997).

[FN148] See, e.g., Girot Report, *supra*, at 11.

[FN149] See, e.g., Wright Report, *supra*, at 10.

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146. For its part, the State has asserted that the Petitioners have failed to provide evidence that the concessions have resulted in any adverse effects to their environment. The State claims, for example, that the Petitioners have failed to provide sufficient evidence of decreased availability of farmland or that the Maya people are unable to hunt or gather medicinal plants or otherwise be able to provide for themselves in the traditional way. The State also argues that the affidavit submitted by the Maya villagers are "anecdotal at best" and cannot be taken to represent the status quo for all Mayan villages in the area claimed. At the same time, the State has not presented any evidence indicating that the environmental condition of the lands at issue remain unaffected by the licenses that it has authorized. To the contrary, the State informed the Commission that logging license 1/93 granted to Toledo Atlantic International Ltd. was cancelled in part because it "negatively impacted on the social and environmental well being of various rural communities in the Southern Toledo District," and because the supervision by the Forest Department of the operations relating to that license was "very inadequate." [FN150]

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[FN150] See State's Preliminary Response dated May 8, 2001, p. 11, para 43.

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147. Based upon the information presented, the Commission concludes that the logging concessions granted by the State in respect of lands in the Toledo District have caused environmental damage, and that this damage impacted negatively upon some lands wholly or partly within the limits of the territory in which the Maya people have a communal property right. The Commission also considers that this damage resulted in part from the fact that the State failed to put into place adequate safeguards and mechanisms, to supervise, monitor and ensure that it had sufficient staff to oversee that the execution of the logging concessions would not cause further environmental damage to Maya lands and communities.

148. As a consequence, the Commission finds that the State's failure to respect the communal right of the Maya people to property in the lands that they have traditionally used and occupied has been exacerbated by environmental damage occasioned by certain logging concessions granted in respect of those lands, which in turn has affected the members of those communities.

149. The Commission notes that in a complaint involving the Ogoni People and their communities in the State of Nigeria,[FN151] the African Commission on Human and Peoples' Rights was also presented with issues concerning the impact of resource development activities on an indigenous community. In that case, it was alleged that the Nigerian Government caused grave environmental damage to the Ogoni People's right to property and their cultural way of life by participating in irresponsible oil development in their communities, and allowing the private oil companies to destroy the Ogoni People's homes, villages, and food sources. In finding the State of Nigeria responsible for violations of several articles of the African Charter on Human And Peoples' Rights (Banjul Charter),[FN152] including the right to property as protected under Articles 14[FN153] and 21[FN154] of that instrument, the Commission indicated that it did not "wish to fault governments that are labouring under difficult circumstances to improve the lives of their people,"[FN155] but at the same time emphasized that

[t]he intervention of multinational corporations may be a potentially positive force for development if the State and the people concerned are ever mindful of the common good and the sacred rights of individuals and communities. [FN156]

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[FN151] Communication N° 155/96, African Comm. Num. & Peoples' Rights, Done at the 30th Ordinary Session, held in Banjul, The Gambia from 1327 October 2001 [hereinafter "Ogoni Case"]].

[FN152] June 27, 1981, 21 I.L.M. 59 (1981).

[FN153] Article 14 enunciates: "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

[FN154] Article 21 of the African Charter states that:

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.



3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States Parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

[FN155] Ogoni Case, *supra*, para. 69.

[FN156] *Id.*

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150. This Commission similarly acknowledges the importance of economic development for the prosperity of the populations of this Hemisphere. As proclaimed in the Inter-American Democratic Charter, “[t]he promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy of the states of the Hemisphere.”[FN157] At the same time, development activities must be accompanied by appropriate and effective measures to ensure that they do not proceed at the expense of the fundamental rights of persons who may be particularly and negatively affected, including indigenous communities and the environment upon which they depend for their physical, cultural and spiritual well-being.

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[FN157] Inter-American Democratic Charter, adopted by the OAS General Assembly at its special session held in Lima, Peru on September 11, 2001, Article 13.

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151. In summary, based upon the foregoing analysis, the Commission concludes that the Maya people of southern Belize have a communal property right to the lands that they have traditionally used and occupied, and that the character of these rights is a function of Maya customary land use patterns and tenure. The Commission also considers that this right is embraced and affirmed by Article XXIII of the American Declaration.

152. The Commission further concludes that the State has violated the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people, by failing to take effective measures to recognize their communal property right to the lands that they have traditionally occupied and used, and to delimit, demarcate and title or otherwise establish the legal mechanisms necessary to clarify and protect the territory on which their right exists.

153. In addition, the Commission concludes that the State, by granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated and titled or otherwise clarified or protected, without effective consultations with and the informed consent of the Maya people and with resulting

environmental damage, further violated the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people.

154. Finally, the Commission notes the Petitioners' contention that the failure of the State to engage in meaningful consultation with the Maya people in connection with the logging and oil concessions in the Toledo District, and the negative environmental effects arising from those concessions, constitute violations of several other rights under international human rights law, including the right to life under Article I of the American Declaration, the right to religious freedom and worship under Article III of the American Declaration, the right to a family and to protection thereof under Article VI of the American Declaration, the right to preservation of health and well-being under Article XI of the American Declaration, and the "right to consultation" implicit in Article 27 of the ICCPR, Article XX of the American Declaration, and the principle of self-determination.

155. In its analysis in this case, the Commission has emphasized the distinct nature of the right to property as it applies to indigenous people, whereby the land traditionally used and occupied by these communities plays a central role in their physical, cultural and spiritual vitality. As the Commission has previously recognized in respect of the right to property and the right to equality, "[f]or indigenous people, the free exercise of such rights is essential to the enjoyment and perpetuation of their culture." [FN158] Similarly, the concept of family and religion within the context of indigenous communities, including the Maya people, is intimately connected with their traditional land, where ancestral burial grounds, places of religious significance and kinship patterns are linked with the occupation and use of their physical territories. [FN159] Further, the Commission has specifically concluded in its analysis in this case that the duty to consult is a fundamental component of the State's obligations in giving effect to the communal property right of the Maya people in the lands that they have traditionally used and occupied.

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[FN158] Ecuador Report, *supra*, at 103.

[FN159] See, e.g., Wilk Report, *supra*, at 4, 5-7 (indicating that portions of the land included in the logging and oil concessions granted by the Government of Belize in the Toledo District are considered sacred by the Maya and contain ancestral burial grounds, and stating that Maya traditional subsistence practices and customary law regarding land use are closely and inextricably tied to family relations as understood by the Maya).

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156. Accordingly, in light of its analysis of the nature and content of the right to property in the context of indigenous peoples, including the Maya people of the Toledo District, the Commission considers that the additional claims raised by the Petitioners are subsumed within the broad violations of Article XXIII of the American Declaration determined by the Commission in this case and therefore need not be determined.

### C. Right to Equality Before the Law

157. The Petitioners have argued that the State is responsible for violating the right to equality before the law under Article II of the American Declaration for violations of the right to equality

under the law, based upon the State's failure to recognize as legally valid the Maya people's own system of landholding and resource use.

158. Article II of the American Declaration provides:

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

159. Article 3 of the Constitution of Belize similarly provides for the right to equality in the guarantee of the fundamental rights and freedoms of every person, including the right to property:

Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –

- (a) life, liberty, security of the person, and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association;
- (c) protection for his family life, his personal privacy, the privacy of his home and other property and recognition of his human dignity; and
- (d) protection from arbitrary deprivation of property.

160. In its responding observations, the State noted that the preamble to the Belize Constitution had recently been amended to explicitly recognize that “the People of Belize – [. . .] require policies of state [. . .] which protect the identity, dignity, and social and cultural values of Belizeans, including Belize's indigenous people.” According to the State, this amendment

marks the government's official recognition of the indigenous populations of Belize as unique sectors of the population and their status as equal citizens in the eyes of the Government and that it also provides a basis for enforcement of rights in the Supreme law of Belize.

161. This development is consistent with the State's recognition that the Maya Communities in the Southern region of Belize comprise 47% of the population of Belize and reflects the country's greater ethnic diversity.[FN160] This amendment also illustrates to the Commission that the State has taken certain legal measures to comply with its obligation to guarantee through law equal protection of the law to all persons within its jurisdiction.

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[FN160] In its response, the State indicates that according to the Southern Regional Development Plan, “[t]he southern region of Belize reflects the country's greater ethnic diversity. The main ethnic groups include Maya (74%), Mestizo (19%), Garifuna (13%), Creole (12%), and East Indian (7%), based on the 1997 estimates. The ethnic composition of the Southern region has changed considerably over the past 15 years.”

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162. As with all fundamental rights and freedoms, however, it is not sufficient for states to provide for equal protection in its law. States must also take the legislative, policy or other measures necessary to ensure the effective enjoyment of these rights. In the circumstances of the present case and for the reasons outlined below, the Commission must conclude that the State of Belize has not fully complied with its obligations under Article II of the American Declaration by failing to establish the legal mechanisms necessary to clarify and protect the communal property right of the Maya people, in contrast to the treatment of property rights arising under the formal system of titling, leasing and permitting provided for under the law of Belize.

163. As the Commission has previously observed, the principle of non-discrimination is a particularly significant protection that permeates the guarantee of all other rights and freedoms under domestic and international law and is prescribed in Article II of the American Declaration and Articles 1(1) and 24 of the American Convention.[FN161]

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[FN161] IACHR, Report on Terrorism and Human Rights, Doc. OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. (22 October 2002) [hereinafter “Report on Terrorism and Human Rights”], para. 335. The Inter-American Court has stated that the notion of equality under the provisions of the American Convention:

[s]prings directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. It is impermissible to subject human beings to differences that are inconsistent with their unique and congenerous character.

I/A Court H.R., Advisory Opinion OC-4/84, Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, January 19, 1984, Series A N° 4, para. 54.

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164. The Inter-American Court of Human Rights recently expressed similar views on the fundamental nature of the right to equality and non-discrimination:

Non-discrimination, together with equality before the law and equal protection of the law for all persons, are constituent element of a basic and general principle related to the protection of human rights. The element of equality is difficult to separate from non-discrimination. Even the instruments previously cited (*supra*, para. 71), which speak of equality before the law, indicate that this principle must be guaranteed without any discrimination. This tribunal has indicated that “recognition of equality before the law prohibits all discriminatory treatment.[FN162]

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[FN162] I/A Court H.R., OC-18/03, Juridical Situation and Rights of Undocumented Migrants (17 September 2003), para. 83 [translation by the Commission].

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165. In the same opinion, the Court concluded, *inter alia*:

3. That the principle of equality and non-discrimination possess a character fundamental for the safeguarding of human rights in international law as well as internal law
4. That the fundamental principle of equality and non-discrimination constitute a part of general international law, which is applicable to all states, independent of whether or not they are a party to a particular international treaty. In the present stage of the evolution of international law, the fundamental principle of equality and nondiscrimination has entered the realm of *jus cogens*
5. That the fundamental principle of equality and non-discrimination, given its imperative character, gives rise to *erga omnes* obligations of protection that bind all states and generates effects to third parties, including private persons.[FN163]

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[FN163] *Id.*, paras. 173 (3) (4) and (5) [translation by the Commission].

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166. The Commission has also observed that the right to equality before the law does not mean that the substantive provisions of the law will be the same for everyone, but that the application of the law should be equal for all without discrimination.[FN164] The protection is intended to ensure equality, not identity of treatment, and does not necessarily preclude differentiations between individuals or groups of individuals.[FN165] Further, according to the Commission,

[t]he principle of equality may also sometimes require member states to take affirmative action as a temporary measure in order to diminish or eliminate conditions which cause or help to perpetuate discrimination, including vulnerabilities, disadvantages or threats encountered by particular groups such as minorities and women.[FN166]

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[FN164] Report N° 57/96, William Andrews Case (United States), Annual Report of the IACHR 1999, p. 615, para. 173, citing Article 26 of the International Covenant on Civil and Political Rights which provides: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status." See *Travaux Préparatoires* of the ICCPR, Annotation on the Text of the Draft International Covenant on Human Rights, 10. U.N. GOAR, Annexes (Agenda item 28, pt. II)1, 61, U.N. Doc. A/2929 (1955).

[FN165] *Id.* See also Report on Terrorism and Human Rights, *supra*, para. 338.

[FN166] Report on Terrorism and Human Rights, *supra*, para. 338, citing IACHR Report on the Status of Women in the Americas 1998, OEA/Ser.L/V/II.100 Doc. 17 (13 October 1998), Part I(A)(1); Annual Report of the IACHR 1999, OEA/Ser.L/V/II.106 doc. 6 rev. (April 13, 1999), Ch. VI "Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-discrimination"; UNHRC General Comment N° 18, *supra* note 803, para. 10.

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167. With regard to indigenous peoples in particular, various international studies have concluded that indigenous peoples historically have suffered racial discrimination, and that one of the greatest manifestations of this discrimination has been the failure of state authorities to recognize indigenous customary forms of possession and use of lands. The U.N. Committee on the Elimination of Racial Discrimination has observed:

[i]n many regions of the world indigenous peoples have been, and are still being, discriminated against, deprived of their human rights and fundamental freedoms and... have lost their land and resources to colonists, commercial companies and State enterprises. Consequently the preservation of their culture and their historical identity has been and still is jeopardized.[FN167]

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[FN167] Committee on the Elimination of Racial Discrimination, General Recommendation XXIII, on indigenous peoples, adopted at the Committee's 1235th meeting, 18 August 1997, CERD/C51/Misc. 13/Rev. 4 (1997), para. 3 (hereinafter "CERD General Recommendation on indigenous peoples").

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168. For these reasons, the U.N. Committee on the Elimination of Racial Discrimination, in elaborating upon the nondiscrimination norm in the context of indigenous peoples, admonished states to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources." [FN168] The domestic courts of states have reached similar conclusions.[FN169]

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[FN168] CERD General Recommendation on indigenous peoples, *supra*, para. 5.  
[FN169] See, e.g., *Mabo v. Queensland* [Nº 2], *supra*, at 41-43.

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169. This Commission has echoed these requirements in its studies of indigenous peoples of the Americas, indicating that

[w]ithin international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions.[FN170]

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[FN170] Ecuador Report, *supra*, Chapter IX.

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170. In the circumstances of the present case, the Commission has concluded that the Maya communities of southern Belize, as an indigenous people, constitute a distinct group in the Toledo District which warrants special protection from the State. It has also concluded that, in

contrast to the treatment of property rights arising under the formal system of titling, leasing and permitting provided for under the law of Belize, the State has not established the legal mechanisms necessary to clarify and protect the communal property right of the Maya people. Indeed, the State has recognized that the Maya people have right to the lands and resources on southern Belize based on their longstanding use and occupancy and has acknowledged the need for state policies to protect the identity, dignity and social and cultural values of Belize's indigenous people, but has failed to take the steps necessary to recognize and guarantee those rights, resulting in a climate of uncertainty among the members of the Maya communities.

171. In light of the principles discussed above, the Commission finds that Belize violated the right to equality before the law, to equal protection of the law, and to nondiscrimination enshrined in Article II of the American Declaration to the detriment of the Maya people of the Toledo District, by failing to provide them with the protections necessary to exercise their right to property fully and equally with other members of the Belizean population.

#### D. Right to Judicial Protection

172. The Petitioners argue that the State of Belize has failed to provide effective judicial protection for the rights of the Maya communities of the Toledo District contrary to Article XVIII of the American Declaration, because the Maya have attempted, without success, to obtain redress through the domestic avenues for their alleged violation of rights regarding lands and resources.

173. Article XVIII of the American Declaration provides:

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

174. The right to judicial protection acknowledged by Article XVIII of the American Declaration is affirmed in similar terms by Article 25 of the American Convention on Human Rights,[FN171] with regard to which the Inter-American Court of Human Rights has stated:

States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)) [. . .] According to this principle, the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking.[FN172]

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[FN171] Article 25 of the American Convention provides: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the

competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and c. to ensure that the competent authorities shall enforce such remedies when granted.

[FN172] I/A Court H.R., Advisory Opinion OC-9/87, Judicial Guarantees in States of Emergency, Arts. 27(2), 25 and 8 American Convention on Human Rights, Ser. A N° 9 (1987), paras. 27, 28.

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175. The Commission has similarly found that the lack of an effective judicial remedy implies, not just an exception to the exhaustion of domestic remedies, but also a violation of the substantive right to judicial protection which is upheld by the inter-American human rights system.[FN173]

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[FN173] See, e.g., Case 11.233, Report N° 39/97, Martín Javier Roca Casas (Peru), Annual Report of the IACHR 1998, paras. 98, 99.

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176. The jurisprudence of the inter-American system has also established that an essential element of effectiveness is timeliness. The right to judicial protection requires that courts adjudicate and decide cases expeditiously,[FN174] particularly in urgent cases. The Commission has emphasized in this regard that

[t]here is no question but that the duty to conduct a proceeding expeditiously and swiftly is a duty of the organs entrusted with the administration of justice.[FN175]

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[FN174] See Case 11.218, Report N° 52/97, Arges Sequeira Mangas (Nicaragua), Annual Report of the IACHR 1997, para. 106 (stating that one of the components of judicial protection is the right to a simple and swift remedy). See also *Awas Tingni Case*, supra, para. 134 (indicating that the remedies will be illusory and ineffective if there is unjustified delay in reaching a decision on them.)

[FN175] *Sequeira Mangas Case*, supra, paras. 133-134.

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177. In this connection, it is well-established that three factors are to be taken into account in determining the reasonable time within which a judicial proceeding must be conducted: (a) the complexity of the case; (b) the procedural activity of the interested party; and (c) the conduct of the judicial authorities.[FN176]

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[FN176] See I/A Court H.R., *Genie Lacayo Case*, Judgment of January 29, 1997, Annual Report 1997, para. 77. See also Report 2/97, Cases 11.205, 11.236, et al. (Argentina), Annual Report of the IACHR 1997, at 241, 245-6.

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178. According to the Petitioners, on December 3, 1996, TMCC and the Toledo Alcaldes Association filed a motion for constitutional redress in the Supreme Court of Belize pursuant to section 20 of the Constitution of Belize,[FN177] seeking an order declaring, inter alia, the existence and nature of Maya interests in the land and resources and the status of those interests as rights protected under the Constitution, as well as declarations of violations of those rights and interests by the government because of the licenses to log within Maya traditional lands.[FN178]

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[FN177] Petitioners' petition dated August 7, 1998, p. 18, para. 65, citing Appendix B.44 (Notice of Motion for Constitutional Redress, TMCC v. Attorney Gen. of Belize [1996] (Belize) (N° 510)).

[FN178] Petitioners' petition dated August 7, 1998, p. 18, para. 66.

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179. The Petitioners allege that the procedural history of this litigation has unfolded in a way that has led to unreasonable delay in the resolution of the claims raised by the Maya people. In particular, they suggest that despite the existence of an order issued by the court as to the procedure and deadlines through which the litigation was to be conducted and the Petitioners' compliance with the requirements,[FN179] the Government has not complied with all of those stipulations.[FN180]

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[FN179] Petitioners' petition dated August 7, 1998, p. 19, para. 68, citing Appendix B.46 (Order, TMCC v. Attorney Gen. of Belize [1996] (Belize) (N° 510)). This Order, issued by Justice Meerabux, the judge to whom the action for constitutional address was assigned, provided that the adjudication of the case would occur as a trial by affidavit, with leave to all parties to cross-examine and re-examine the affiants, and set out the schedule for filing affidavits and the procedures for discovery.

[FN180] As indicated in the descriptions of the parties' position in this case, the Petitioners claim that on March 17, 1997, the applicants filed and served on the respondents a Notice to Produce Documents in an effort to obtain further information on the granting of natural resource concessions in Toledo. Despite the fact that the Order of Justice Meerabux stipulates that any party receiving such a notice must file an affidavit of documents within twenty-one days of receipt, the Petitioners claim that the government has not filed an affidavit of documents nor have they provided the applicants with any of the material that was requested in the Notice to Produce Documents. Petitioners' petition dated August 7, 1998, p. 21, para. 73 and Appendix B.53 (Notice to Produce Documents, TMCC v. Attorney Gen. Of Belize [1996] (Belize) (N° 510)).

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180. In addition, on April 17, 1998 the applicants filed a motion in the suit for interlocutory relief in which they requested an immediate injunction suspending all logging concessions within lands claims by the Maya and an injunction against the Minister of Natural Resources restraining the Minister from granting additional logging concessions or any other concessions for resource extraction. The Petitioners claim that, despite the urgency of the matter and the existence of three affidavits filed in support of the request, the May 19, 1998 hearing of the motion was adjourned

at the request of the Attorney General's office and the hearing has not been re-scheduled. The Petitioners also assert that the Court has yet to take any action on the motion for interlocutory relief, or indeed on any aspect of the merits of the main litigation.

181. The State has not disputed the Petitioners' allegations that the proceedings described above were lodged. The State has also not denied the Petitioners' contention that the State has failed to comply with certain deadlines and procedures stipulated by the court in the context of those proceedings, or that the hearing of the motion on the Petitioners' request for interlocutory relief was adjourned at the request of the Attorney General's office and has not been re-scheduled. Moreover, the State has admitted that the delay complained of by the Petitioners is not unique and points in this regard to studies undertaken by the State itself indicating that the civil justice system suffers from "systemic delay."

182. At the same time, the State has argued that the Petitioners have chosen not to pursue domestic litigation to its fullest. In particular, the State argues also that it has always been open to the Petitioners to petition the Chief Justice of Belize for an early hearing to be given to their case on basis of the urgency of the relief claimed, which it alleges is the accepted practice in the jurisdiction. The State also points to the fact that the applicants in the domestic proceedings have availed themselves of domestic avenues for resolution by engaging in negotiations with the Government on the basis of a signed agreement by both parties, which have aimed at reaching a negotiated settlement of pending litigation.

183. Article 20(1) of the Constitution of Belize provides persons with the right to seek redress before the Supreme Court for alleged violations of their rights that are protected under that instrument in the following terms:

If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

184. As the Commission has previously held, a state's obligation to provide effective judicial remedies is not fulfilled simply by the existence of courts or formal procedures, or even by the ability to resort to the courts. Rather, a state must take affirmative steps to ensure that the remedies provided by the state through its courts are "truly effective in establishing whether there has been a violation of human rights and in providing redress." [FN181]

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[FN181] See, e.g. Case 10.606, Report N° 11/98, Samuel de la Cruz Gómez (Guatemala), Annual Report of the IACHR 1997, para. 52, citing I/A Court H.R., Advisory Opinion 9/87 of October 6, 1987, Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights), Ser. A N° 9, para 24.

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185. The Commission notes in this regard that, as of the date of this report, almost 8 years have passed since the motion for constitutional relief was initiated, and over 5 years have transpired since the motion for emergency interlocutory relief was lodged. Despite this considerable delay, no decision has been forthcoming in either proceeding. In evaluating these delays in light of the three factors cited above, the Commission acknowledges that the subject matter of the case raises complex matters of fact and law that may reasonably require some delay in litigating and deciding upon the issues. Concerning the conduct of the parties and judicial authorities, the Commission notes that some of the delay in the matter is attributable to the fact that the parties endeavored to reach an amicable settlement of the litigation. At the same time, there is no evidence that under applicable laws and procedures, the settlement negotiations had the effect of suspending the litigation. It is also apparent that the lack of progress in the proceeding has also resulted from the State's failure to comply with certain procedural requirements established by the Court, with the result that the proceedings have not advanced beyond the initial stages of the filing of pleadings and evidence. Further, the State has admitted that progress in the case has been affected by systemic delay inherent in the civil justice system generally. In light of these circumstances, together with the lengthy period for which domestic proceedings have been outstanding, the Commission considered that unreasonable delay has been demonstrated in this case.

186. Based upon the foregoing considerations, the Commission finds that there has been unwarranted delay in rendering judgment in the domestic proceedings commenced by the Maya people, and accordingly, that the State of Belize violated the right to judicial protection enshrined in Article XVIII of the American Declaration to the detriment of the Maya people.

## V. PROCEEDINGS SUBSEQUENT TO MERITS REPORT 96/03

187. The Commission examined this case in the course of its 118th regular session and on October 24, 2003 adopted Report N° 96/03 pursuant to Article 43 (2) of the Commission's Rules of Procedure.

188. By note dated October 30, 2003, the Commission transmitted Report N° 96/03 to the State and requested the Government of Belize to inform the Commission within 60 days of the date of transmission of the Report as to the measures adopted to comply with the recommendations made to resolve the situation denounced.

189. By note dated December 8, 2003 and received by the Commission on the same date, the Permanent Mission of Belize to the Organization of American States replied to the Commission, requesting the Commission's authorization for the State to publicize Report N° 96/03 "to ensure its customary transparency and widest dissemination as it begins consultation on this matter..."

190. By note dated December 11, 2003, the Commission granted the authorization requested by the State. The Commission advised that "the requirement of confidentiality under Article 43 (2) exists for the benefit of the State..." and that in granting the State's request, the Commission understood that "the State of Belize has explicitly waived compliance with this aspect of the Commission's procedures."

191. Except for the State's request to publish the report, Commission has not received a response to Report N° 96/03 within the 60 day period following the transmission of the Report.

## VI. CONCLUSIONS

192. Based upon the foregoing analysis and in light of the absence of the State's response, the Commission hereby ratifies its conclusions that:

193. The State violated the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people, by failing to take effective measures to recognize their communal property right to the lands that they have traditionally occupied and used, without detriment to other indigenous communities, and to delimit, demarcate and title or otherwise established the legal mechanisms necessary to clarify and protect the territory on which their right exists.

194. The State further violated the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people, by granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated and titled or otherwise clarified and protected, in the absence of effective consultations with and the informed consent of the Maya people.

195. The State violated the right to equality before the law, to equal protection of the law, and to nondiscrimination enshrined in Article II of the American Declaration to the detriment of the Maya people, by failing to provide them with the protections necessary to exercise their property rights fully and equally with other members of the Belizean population.

196. The State violated the right to judicial protection enshrined in Article XVIII of the American Declaration to the detriment of the Maya people, by rendering domestic judicial proceedings brought by them ineffective through unreasonable delay and thereby failing to provide them with effective access to the courts for protection of their fundamental rights.

## VII. RECOMMENDATIONS

197. In accordance with the analysis and conclusions in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES TO THE STATE OF BELIZE THAT IT:

1. Adopt in its domestic law, and through fully informed consultations with the Maya people, the legislative, administrative, and any other measures necessary to delimit, demarcate and title or otherwise clarify and protect the territory in which the Maya people have a communal property right, in accordance with their customary land use practices, and without detriment to other indigenous communities.

2. Carry out the measures to delimit, demarcate and title or otherwise clarify and protect the corresponding lands of the Maya people without detriment to other indigenous communities and, until those measures have been carried out, abstain from any acts that might lead the agents of

the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the Maya people.

3. Repair the environmental damage resulting from the logging concessions granted by the State in respect of the territory traditionally occupied and used by the Maya people.

## VIII. PUBLICATION

198. By communication dated October 30, 2003, the Commission transmitted Report N° 96/03 to the State in accordance with Article 43 of its Rules of Procedure and requested the Government of Belize to inform the Commission within 60 days as to the measures adopted to comply with the recommendations made to resolve the situation denounced. By communication of October 30, 2003, the Commission also notified the Petitioners of the adoption of the report.

199. Except for the State's request to publish the report, Commission has not received a response to Report N° 96/03 within the 60 day period following the transmission of the Report, or at all.

200. In light of the above, and given the exceptional circumstances of the present case, where the State has not informed the Commission of any measures adopted to comply with its recommendations and where the State has expressly requested authorization to make public Report 96/03, the Commission has decided pursuant to Article 45(2) and (3) of its Rules of Procedure, to set no further time period prior to publication for the parties to present[FN182] information on compliance with the recommendation; to ratify its conclusions and reiterate the recommendations in this Report; to make this Report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the State of Belize with respect to the above recommendations until they have been complied with by Belize.

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[FN182] See similarly *Michael Domingues v United States*, Case 12.285, Report 62/02, Annual Report of the IACHR 2002, para. 114; *Case 11.753*, Report 52/02, *Ramon Martinez Villareal v United States*, Annual Report of the IACHR, 2002, para. 102; *Case 12.240*, Report 100/03, *Douglas Christopher Thomas vs. United States*, Annual Report of the IACHR 2003, para.54.

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Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 12th day of the month of October, 2004. (Signed): Clare Roberts, First Vice-President; Susana Villarán, Second Vice-President; Evelio Fernández Arévalos, Paulo Sérgio Pinheiro, Freddy Gutiérrez Trejo and Florentín Meléndez, Commissioners.