

**CULTURE'S TIES TO THE LAND: THE BELIZE-
GUATEMALA BORDER CONFLICT'S IMPLICATIONS
FOR THE MAYA COMMUNITIES IN LIGHT OF THE UN
DECLARATION**

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ABSTRACT

The border dispute between Belize and Guatemala is one of the oldest territorial conflicts in the Americas. Presently, Guatemala asserts a territorial claim to the southern half of Belize where many indigenous communities live. Focusing specifically on the Maya communities due to the ground-breaking land rights decisions of 2008 and 2010, this paper argues that territorial concessions granting this region of Belize to Guatemala would be an injustice to the Belizean Maya Communities for the following reason. Title to land and recognizing the Maya communities' rights to the subsoil of the land better protects the cultural integrity of the Maya communities, as realized in Belize, than the promise of protecting the cultural rights of the Maya communities in Guatemala. Guatemala should reevaluate its societal problem of land inequality before requesting any sort of territorial concession. Therefore, any border resolution from the International Court of Justice should not grant territorial concessions to Guatemala. Such a decision would be out of compliance with the United Nations Declaration on the Rights of Indigenous Peoples.

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I. INTRODUCTION

The dispute between Belize and Guatemala over Belizean territory, and by extension, access to the Caribbean Basin, is one of the oldest, ongoing border disputes in all of the Americas.¹ This conflict has prompted the two countries to agree to submit a final resolution on the conflict to the International Court of Justice (hereinafter ICJ) at The Hague.² However, the populations of both countries have to concede to The Hague's jurisdiction through the democratic processes within each country's respective national governmental institutions.³ Guatemala continues to assert a historic claim to Belize based on the argument that they inherited the land from the Spanish Crown, and that the British colonizers violated treaties that would allow Guatemala to recognize the

¹ Arlenie Perez, Chaung Chin-Ta & Farok Afero, *Belize-Guatemala Territorial Dispute and Its Implications for Conservation*, 2 TROPICAL CONSERVATION SC. 11, 12 (2009).

² Adele Ramos, *Guatemala Reasserts Challenges to Belize's Sovereignty*, AMANDALA ONLINE, Dec. 3, 2010, <http://www.amandala.com.bz/index.php?id=9627>.

³ *Id.*

former British Empire's colonial holdings in Central America.⁴ Although Guatemala previously asserted a claim to the whole country of Belize, at present, it is only claiming a right to the southern half of Belize where many indigenous communities live, including two Maya ethnic groups and the Garifuna.⁵ Belize, as a sovereign nation-state, on the other hand, views this territorial claim as an infringement upon its sovereignty.⁶

Two recent occurrences have prompted Guatemala to assert this claim. The first occurrence is the recent discovery of oil.⁷ The governments of both countries seek economic development opportunities stemming from this. The second is the migration of mainly Q'eqchi Maya people from Guatemala into southern Belize, where Belizean communities of the Q'eqchi Maya tend to live.⁸ This migration from Guatemala into Belize has resulted in border clashes between Guatemalan and Belizean security forces leading to deadly confrontations in some instances.⁹ Security forces in Belize view these indigenous migrants as illegal immigrants from Guatemala and often respond with violence.¹⁰ Operating under assumptions that these individuals are planting their footing in Belize as loyal citizens of Guatemala, the Belizean government has portrayed the illegal immigration problem as a threat to Belizean sovereignty.¹¹

This article will argue that instead of granting territorial concessions to Guatemala as a way to solve the problems stemming at the border, the borders should remain intact and that a bilateral agreement between Guatemala and Belize, with the involvement and consent of the Maya communities, should allow Guatemala access to the

⁴ RONALD WRIGHT, *TIME AMONG THE MAYA: TRAVELS IN BELIZE, GUATEMALA, AND MEXICO* 62 (1991).

⁵ *Id.*

⁶ See Ramos, *supra* note 2.

⁷ Simon Romero, *Touched by Oil and Hope in Belize*, N.Y. TIMES, Feb. 21, 2006, <http://www.nytimes.com/2006/02/21/business/worldbusiness/21belize.html>.

⁸ Liza Grandía, *Unsettling: Land Dispossession and Enduring Inequity for the Q'eqchi' Maya in the Guatemalan and Belizean Frontier Colonization Process* (Spring 2006) (unpublished PhD dissertation, University of California-Berkeley) (on file with ProQuest Learning and Information Company) 1–2.

⁹ Frances Robles, *Guatemala-Belize Fight on Border Turns Deadly*, MIAMI HERALD, Dec. 20, 2001, <http://www.latinamericanstudies.org/guatemala/border.htm>.

¹⁰ Adele Ramos, *Why "Special Treatment" of 31 Illegal Guat[emalan]s?*, AMANDALA ONLINE, Jan. 16, 2009, <http://www.amandala.com.bz/index.php?id=8016>.

¹¹ See Romeo Tiu Lopez, *Mayan Spirituality and Lands in Guatemala*, 21 ARIZ. J. INT'L L. & COM. L. 223–224 (2004).

Caribbean Basin. Granting territorial concessions to Guatemala in the form of ceding Belizean Maya lands to Guatemala would be a grave injustice to the Belizean Maya. The Maya communities located in southern Belize have secured substantial rights under the Belizean Constitution, vocalized loyalty to the Belizean government, and camaraderie with the rest of the Belizean Citizenry.¹² The legal system in Belize has more favorable land-holding rights for the Maya communities in the contested area, as opposed to the legal system in Guatemala. Favorable landholding rights leads to a situation that is conducive to the protection of the cultural rights of the various Maya communities.¹³

The Supreme Court of Belize was the first court to formally refer to the United Nations Declaration for the Rights of Indigenous People (hereinafter “UNDRIP” or “the Declaration”) in a court opinion.¹⁴ Even though Guatemala adopted policies respecting the cultural rights of the various ethnic groups within its borders,¹⁵ such cultural rights provisions cannot be actualized on the ground when many of the Maya communities in Guatemala still have not secured the appropriate land rights.¹⁶ Such

¹² See TOLEDO MAYA CULTURAL COUNCIL & TOLEDO ALCADES ASS'N, *MAYA ATLAS: THE STRUGGLE TO PRESERVE MAYA LAND IN SOUTHERN BELIZE* (1997) [hereinafter *Maya Atlas*]; see Greg Choc, *Belize Maya Reject Guatemalan Claim*, Jan. 12, 2012, CHANNEL5BELIZE.COM, <http://edition.channel5belize.com/archives/19798>.

¹³ See Press Release, Lorena Vaca, *Guatemala Court's Landmark Ruling is Best Kept Secret*, Indian Law Resource Center (July 14, 2011), <http://www.indianlaw.org/content/guatemala-court-s-landmark-ruling-best-kept-secret>.

¹⁴ Kim Petersen, *Indigenous Rights and the Mayan Victory in Belize: Implications for Indigenous Title Rights in Canada*, THE DOMINION: NEWS FROM THE GRASSROOTS, Jan. 23, 2008, <http://www.dominionpaper.ca/articles/1616>.

¹⁵ See Hugo Escobedo, *Situation of Economic, Social and Cultural Rights in Guatemala* in THE SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN GUATEMALA 4 (FIAN International Secretariat ed., 2003) (parallel report to Comm. on Econ., Soc. & Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Addendum to the Second Reports submitted by States*, U.N. Doc. E/1990/6/Add.34 (July 26, 2002), available at <http://www.unhcr.org/refworld/docid/3f6c56a04.html>), available at <http://www.fian.org/resources/documents/others/the-situation-of-economic-social-and-cultural-rights-in-guatemala/pdf>.

¹⁶ Michael Holley, *Recognizing the Rights of Indigenous People to Their Traditional Lands: A Case Study of an Internally-Displaced Community in Guatemala*, 15 BERK. J. INT'L L. 119, 124 (1997). However, the Guatemalan Constitutional Court has recently recognized a Q'eqchi Maya community's title to land, but the Government of Guatemala has resisted institutionalizing this right to be realizable on the ground because the land in question is rich with nickel deposits. Press Release, Indian Law Resource Center, *Q'eqchi Maya Seek Help to Gain Justice in Guatemala* (Aug. 22, 2011), available at http://www.indianlaw.org/content/Agua_Caliente_files_IACHR_petition. The Government of Belize has followed the 2007 decision of the Belize Supreme Court and ceased disruptive activity on Maya lands but wants to challenge the 2010 decision at the Caribbean Court of Justice because that decision recognized the land rights of all the Maya communities in southern

cultural rights are merely celebratory rather than having any tangible effects.¹⁷ This is evident in the practice of the Guatemalan government reserving the right to evict whole communities to make room for development projects benefitting transnational capital.¹⁸ Relocation of Maya communities to accommodate transnational capital leads to uprooted communities.¹⁹ This situation threatens the cultures of the various Maya peoples since there is a deep cultural emphasis on maintaining close ties with the land.²⁰ In contrast, the Supreme Court of Belize has adopted its first Aboriginal Rights precedent that provides for the legal protection of the Maya communities' customary land tenure.²¹ It is the first country to apply the principles in the United Nations Declaration for the Rights of Indigenous Peoples.²²

This paper argues that such title to land, and rights to the subsoil of the land, better protects the cultural integrity of the Maya communities than the promise of protecting the cultural rights of the Maya communities in Guatemala. Guatemala should reevaluate its societal problem of land inequality before attempting to make such requests from its neighbor. Therefore, any border resolution from the ICJ should not grant territorial concessions to Guatemala.

The practical manifestation of the border conflict is the migration of Q'eqchi Maya into southern Belize because of the situation of land inequality in Guatemala. These migrants are, in fact, landless. While this particular border conflict is overshadowed by other global/cross-border conflicts, it is significant in that it highlights the gap between the rhetoric respecting the rights of indigenous peoples and the practical reality of states making decisions that disregard the rights of

Belize. Adele Ramos, *Maya Leaders Call on GOB to Withdraw Appeal – Recognize Customary Maya Land Rights*, AMANDALA ONLINE, Aug. 30, 2010, <http://www.amandala.com.bz/index.php?id=10251>.

¹⁷ Rachel Sieder, *Legal Cultures in the (Un)Rule of Law: Indigenous Rights and Juridification in Guatemala*, in *CULTURES OF LEGALITY: JUDICIALIZATION AND POLITICAL ACTIVISM IN LATIN AMERICA* 161, 165 (Javier A. Couso et al. eds., 2010). I credit Professor Richard Monette for helping me to understand the importance of securing property rights to land for the preservation of a community leading to the maintenance and continuation of a given cultural system.

¹⁸ See Vaca, *supra* note 13.

¹⁹ BILL WEINBERG, *WAR ON THE LAND: ECOLOGY AND POLITICS IN CENTRAL AMERICA* 45 (1991).

²⁰ *Id.*; The practice of *milpa* production plays a central role in preserving the economic and spiritual underpinnings of the Maya cultural system. Liza Grandia, *Milpa Matters: The Maya Community of Toledo versus The Government of Belize*, in *WAGING WAR, MAKING PEACE: REPARATIONS AND HUMAN RIGHTS* 163, 163–72 (Barbara Rose Johnston & Susan Slyomovics, eds., 2009).

²¹ See Petersen, *supra* note 14.

²² Megan Davis, *Restorative Justice in South Australia: An Indigenous Bill of Rights?*, in *COMING TO TERMS: ABORIGINAL TITLE IN SOUTHERN AUSTRALIA* 241 (Shaun Berg, ed., 2010).

indigenous peoples. While many countries have signed onto relevant international agreements promising the securing of rights to indigenous peoples, much of these promises are not entirely secured.²³ In general, granting territorial concessions should not occur when the state making that request has not made efforts to address the underlying problems of a given border dispute.

Part II of this paper will provide the relevant historical background of the dispute and the history of Maya migration in the Belize-Guatemalan region that harkens back to pre-Columbian times. Part III will provide a brief overview of the United Nations Declaration for the Rights of Indigenous Peoples of which both Belize and Guatemala are parties. Part IV will delve into a discussion of the cultural rights provisions in the Guatemalan Constitution and into an overview of the problem of land ownership in Guatemala. Part V provides a brief overview of the Caribbean legal systems and the land dispute cases involving the Maya Communities of southern Belize that lead to the development of the indigenous rights jurisprudence in Belize. Part VI will discuss the policy and practical implications of the property and cultural rights in Guatemala and Belize, and provide an alternative solution to granting territorial concessions to Guatemala. Finally, part VII will conclude the paper.

II. HISTORICAL BACKGROUND

Contemporarily, most of the Mayan region is divided into three countries: mainly, southern Mexico, Guatemala, and Belize.²⁴ K'iche Maya imperialism dominated much of the Maya region in pre-Columbian times.²⁵ The Q'eqchi Maya escaped the K'iche colonial influence by pushing further and further into the Manche Ch'ol Maya territory.²⁶ Various individuals and family groups among the Q'eqchi Maya have migrated in and out of what is now Guatemala and Belize since pre-Columbian times.²⁷ The Manche Ch'ol is an ethnic group of Maya that have traditionally lived in what is now known as the Toledo

²³ See U.N. DEP'T. OF ECON. & SOC. AFFAIRS, STATE OF THE WORLD'S INDIGENOUS PEOPLES, U.N. DOC. ST/ESA/328, U.N. Sales No. E.09.VI.13 (2009).

²⁴ See PETER CANBY, THE HEART OF THE SKY: TRAVELS AMONG THE MAYA 2 (1992).

²⁵ *Id.* at 51.

²⁶ See Grandia, *supra* note 8, at 60–61.

²⁷ See *id.*

District in southern Belize.²⁸ This ethnic group is distinct from the Yucatec, Mopan, and Q'eqchi Maya who occupy Belize and from all of the ethnic groups of Maya in Guatemala.²⁹ Through Q'eqchi Maya migration, intermarriage with a minority of Ch'ol Maya resulted.³⁰ Due to Spanish imperial largesse, this distinct group of Maya suffered a complete genocide except for the handful of Ch'ol Maya who intermarried with the Q'eqchi Maya to form the contemporary Q'eqchi Maya.³¹

The Spanish laid claim to the Maya Region.³² Belize, however, remained a neglected outpost of the Spanish empire.³³ This is due to the fact that the Spanish failed to suppress the Maya populations and the Spanish crown refused to commit the amount of troops necessary to fight off the powerful British navy who wanted to protect their logging interests and settlements in Belize.³⁴ Furthermore, Spain failed to see the economic value that Belize would later have.³⁵ Under the colonial rule of the British, the Maya communities maintained occupancy of significant portions of southern Belizean lands and maintained the customary land management systems.³⁶ However, with the encroachment of British loggers, the Maya communities still had to respond to the reality of being subsumed under a colonial government. This led communities and individuals alike to resist the British government's attempts to change the cultural systems.³⁷ It must be emphasized that the Maya cultural systems are directly connected with the practice of milpa cultivation.³⁸ The loss of this type of livelihood would lead to the loss of many cultural traditions.³⁹ Therefore, the erosion of land leads to the erosion of this

²⁸ *Id.* at 61.

²⁹ *See id.* at 61 n.32 (citing ERIC J. THOMPSON, *THE MAYA OF BELIZE: HISTORICAL CHAPTERS SINCE COLUMBUS* (1972)).

³⁰ *Id.* at 65–66.

³¹ *See id.*

³² WEINBERG, *supra* note 19, at 6–7.

³³ WRIGHT, *supra* note 4, at 62.

³⁴ Krista E. Wiegand, *Nationalist Discourse and Domestic Incentives to Prevent Settlement of the Territorial Dispute Between Guatemala and Belize*, 11 *NATIONALISM & ETHNIC POL.* 349, 351 (2005).

³⁵ *Id.*

³⁶ Grandia, *supra* note 20, at 155.

³⁷ JOEL WAINWRIGHT, *DECOLONIZING DEVELOPMENT: COLONIAL POWER AND THE MAYA* 59 (2008).

³⁸ Grandia, *supra* note 20, at 168.

³⁹ *Id.*

cultural system which supports the need to protect the land rights for the protection of the cultural rights.

Guatemala and Mexico both laid claims to Belize as heirs of the Spanish empire.⁴⁰ Mexico no longer has the desire to absorb Belize as part of southern Mexico, but Guatemala still holds such ambitions.⁴¹ Much of the Guatemalan populace has been socialized to believe that the entire country of Belize belongs to Guatemala.⁴² Such beliefs were at the heart of Guatemala's official policy until 1999.⁴³ British settlements in Belize expanded after Spain and Great Britain signed a treaty on May 23, 1667, granting Great Britain freedom to trade in the region in exchange for British assistance and cooperation in the suppression of piracy that wrecked havoc upon Spanish economic interests.⁴⁴ In response, Spain continued to attack the British in the British-occupied Maya region.⁴⁵ After failing to succeed in ousting the British, Spain signed a series of peace treaties with Great Britain in the late 1700s.⁴⁶ Among the outcomes of these peace treaties included Spain ceding to Great Britain the right to exploit the timber resources in the Belizean region.⁴⁷ Spain retained sovereignty over the region even as the British settlements obtained "de facto sovereignty."⁴⁸ On the other hand, the Maya communities did not consent to these logging practices and resisted the British colonial government's attempts to carve out Maya community lands into reservations.⁴⁹

With Central American (save Belize) and Mexican independence achieved in 1821 when Spain removed its colonial rule from the region, a federation of the United Provinces of Central America was formed.⁵⁰ The rulers of this federation eyed the British settlements based on their supposed rights as successors of the Spanish empire in Central America.⁵¹ Responding to the existence of the federation, the British attempted to clarify the legal claims to Belize with Spain to prevent

⁴⁰ See PETER ELTRINGHAM, *THE ROUGH GUIDE TO BELIZE* 246 (2010).

⁴¹ *Id.*

⁴² See Wiegand, *supra* note 34, at 349–50.

⁴³ See *id.* at 349–51.

⁴⁴ *Id.* at 351.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 351–52.

⁴⁹ WAINWRIGHT, *supra* note 37, at 54, 59.

⁵⁰ Wiegand, *supra* note 34, at 351–52.

⁵¹ *Id.*

unnecessary disputing with Guatemala, but Spain essentially gave up the right to clarify the territorial boundaries through abrogating sovereignty over Central America.⁵²

By 1839, Guatemala gained independence from the federation and eventually signed a treaty with Great Britain in 1859 that solidified the boundaries between Guatemala and Belize.⁵³ A key article in this treaty still in dispute today is Article 7, which specifies that a road be built connecting Guatemala City to the Caribbean Sea so that Belize and Guatemala would develop a cooperative bilateral trade relationship.⁵⁴ Around 1867, Guatemala later renewed its claim to the entire country of British Honduras through unilateral abrogation of the 1859 treaty based on the allegation that Great Britain failed to build the road that Article 7 of the 1859 treaty stipulated.⁵⁵

Guatemala implemented a new constitution in 1945 which openly stated that British Honduras was a part of Guatemala.⁵⁶ Great Britain initially ignored Guatemala's claim as they had other pressing matters at hand.⁵⁷ In the 1960s, however, Great Britain started to enter into negotiations with Guatemala and the two countries almost resolved the dispute in 1981.⁵⁸ Guatemala agreed to drop the claim and recognize Belizean independence in exchange for Guatemalan access to the Caribbean Sea along with territorial rights to some islands in southern Belize, and economic aid from the United Kingdom.⁵⁹ Settlement of the dispute failed when the Belizean public protested the economic concessions.⁶⁰ With Belize establishing its independence in 1981, the Guatemala's right-wing public protested.⁶¹ This prompted the Guatemalan government to refuse to recognize Belizean sovereignty until 1999.⁶² Even with recognition of Belizean's sovereignty, Guatemala maintained its claim to the southern half of Belize, which is

⁵² P.K. Menon, *The Anglo-American Territorial Dispute over the Colony of Belize (British Honduras)*, 11 J. LATIN AM. STUDIES 343, 351 (1979).

⁵³ Wiegand, *supra* note 34, at 352.

⁵⁴ *See id.*

⁵⁵ *Id.* at 353; WEINBERG, *supra* note 19, at 137; Menon, *supra* note 52, at 356–57.

⁵⁶ Wiegand, *supra* note 34, at 353.

⁵⁷ *See id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *See id.*

⁶¹ *See id.*

⁶² *See id.* at 349.

the part of Belize that would grant Guatemala access to the Caribbean basin and the part of Belize where many Maya communities reside.⁶³

After independence, the Guatemalan government, based on implementing liberal reforms, unilaterally extinguished much of the title that the Maya communities once had in the name of “progress”.⁶⁴ This process took on a nuanced character, because many Maya communities and landholders had lawful title in the form of deeds, but the courts in Guatemala at the time misplaced the information.⁶⁵ Unable to prove lawful ownership, much of the land became consolidated into the hands of the landholding elites and various companies with varying development goals.⁶⁶ Despite the continuing problem of land inequality,⁶⁷ Guatemala has taken steps to protect the rights of the indigenous communities through active participation in signing various Human Rights instruments.⁶⁸

III. BRIEF OVERVIEW OF THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

An overview of the international instruments to which Guatemala is a party would lead one to assume that Guatemala strongly protects the rights of its indigenous populations, such as the Maya.⁶⁹ Among a number of such instruments, Guatemala has signed and ratified the International Covenant on Economic, Social, and Cultural Rights, the United Nation Declaration on the Rights of Indigenous Peoples, and the International Labor Organization Convention No. 169.⁷⁰ In comparison,

⁶³ See *id.* at 351–52.

⁶⁴ See Grandia, *supra* note 8, at 76–78; The Liberal reforms were designed to eradicate difference among the main ethnic groups in Guatemala by attempting to assimilate the indigenous populations into a Ladino mainstream. See Corinne Caumartin, *Racism, Violence and Inequality: An Overview of the Guatemalan Case* 17 (CRISE: Ctr. for Research on Inequality, Human Sec., & Ethnicity, Working Paper No. 11, 2005), available at <http://www.crise.ox.ac.uk/pubs/workingpaper11.pdf>.

⁶⁵ See generally Grandia, *supra* note 8, at 69.

⁶⁶ See generally *id.*

⁶⁷ See Caumartin, *supra* note 64; Danilo Valladares, *Forgotten Promises Leave Indigenous Peoples Poorer and Hungrier*, INTER PRESS SERV. NEWS AGENCY, Dec. 12, 2010, <http://ipsnews.net/news.asp?idnews=53843>.

⁶⁸ *Human Rights Treaties – Guatemala*, UNIV. OF MINN. HUMAN RIGHTS LIBRARY, <http://www1.umn.edu/humanrts/research/ratification-guatemala.html>.

⁶⁹ Escobedo, *supra* note 15, at 4.

⁷⁰ Press Release, General Assembly, General Assembly Adopts Declaration on Rights of Indigenous People, ‘Major Step Forward’ Towards Human Rights for All, Says President, U.N. Press Release GA/10612 (Sept. 13, 2007), available at

Belize is also a party to The Declaration, and the International Labor Organization Convention No. 169, but Belize has signed and not ratified the International Covenant on Economic, Social, and Cultural Rights.⁷¹ Guatemala's progressive stance towards the indigenous population, however, is not actualized on a practical level.⁷² The Guatemalan Constitutional Court recently institutionalized the consultation principle of the International Labor Organization Convention No. 169 as a constitutionally protected right for the indigenous communities.⁷³ This is the principle to consult indigenous communities before undergoing a particular development on community lands or severely affecting community lands.⁷⁴

The Declaration basically guarantees that the states aspire to secure these rights to their populations.⁷⁵ As international instruments are generally non-binding, the states, through their lawmaking branch of government, have to pass laws to institutionalize the provisions in the international agreements in order to make the agreements enforceable.⁷⁶ Before they are guaranteed protection, the populations have to wait for the legislatures to pass laws in congruence with the specific provisions of these international agreements.⁷⁷

Belize and Guatemala voted in favor of adopting the Declaration.⁷⁸ Since both nation-states endorsed The Declaration, the nation-states have made the promise to implement the provisions of the Declaration into national laws that will be readily enforceable through the national court systems.⁷⁹ Article 26 deals directly with the Right to

<http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>; *Alphabetical Listing of ILO Member States*, INT'L LABOUR ORG., <http://www.ilo.org/public/english/standards/relm/country.htm> [hereinafter *ILO Members*]; *International Treaties Adherence: Guatemala*, RULE OF LAW IN ARMED CONFLICTS PROJECT, http://www.adh-geneva.ch/RULAC/international_treaties.php?id_state=78.

⁷¹ *ILO Members*, *supra* note 70.

⁷² Valladares, *supra* note 67; Lopez, *supra* note 11, at 224–25; See RICHARD WILSON, *MAYA RESURGENCE IN GUATEMALA: Q'EQCHI' MAYA EXPERIENCES* 31 (2d ed. 1999).

⁷³ See Vaca, *supra* note 13.

⁷⁴ *Convention No. 169*, INT'L LABOUR ORG., <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>.

⁷⁵ Generally Assembly, *supra* note 70.

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ *Id.*

⁷⁹ See James Anaya, Hearing on "Setting the Standard: Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples" Testimony before the Senate Committee on Indian Affairs (June, 10, 2011), available at <http://unsr.jamesanaya.org/statements/testimony-before-the-senate-committee-on-indian-affairs>.

Property.⁸⁰ Subsection 1 of Article 26 states “indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise acquired.”⁸¹ Also, subsection 3 of Article 26 says that “States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”⁸² This means that indigenous peoples have a basic human right to their traditional lands and lands they are currently occupying, along with the resources stemming from these lands. The Declaration implicitly stipulates a duty upon states to give formalized recognition of these rights through each state’s respective national legal systems. Although the international community recognizes these rights as universal and inherent, the individual nation-state has to make these rights realizable on the ground. Furthermore, the Declaration stipulates that states should consider the land tenure institutions of the indigenous peoples involved in determining the exact parameters of that property right. This means that the states should formally recognize the indigenous peoples’ cultural institutions in regards to property ownership and distribution.

In the case of Belize, this provision became realized on the ground through the national court system. The court not only recognized the Maya peoples’ right to their traditional lands and lands currently occupied, but also rights to both surface and subsoil resources.⁸³ The court reasoned that not considering the Maya peoples’ system of land tenure and cultural traditions related to land cultivation constituted racial discrimination that is a direct violation of the Belizean Constitution.⁸⁴ The court considered both The Declaration and the Belizean Constitution in determining the rationales behind the ground-breaking decision.⁸⁵ In brief terms, the Belizean Court made Article 26 of The Declaration enforceable law within the national legal system of Belize,⁸⁶ and this

⁸⁰ G.A. Res. 61/295, ¶ 26, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

⁸¹ *Id.*

⁸² *Id.*

⁸³ See Petersen, *supra* note 14.

⁸⁴ See *Maya Villages Back in Belize Supreme Court*, <http://www.law.arizona.edu/depts/iplp/international/pdf/MAYA%20VILLAGES.pdf>.

⁸⁵ See Petersen, *supra* note 14.

⁸⁶ *Observations on the State of Indigenous Human Rights in Light of the UN Declaration on the Rights of Indigenous Peoples: Guatemala* [hereinafter “*Observations of Guatemala*”], CULTURAL SURVIVAL, 4–5, available at <http://www.culturalsurvival.org/files/Guatemala.pdf>; Petersen, *supra* note 14.

particular provision became realizable on the ground.⁸⁷ In contrast, while Guatemala aspires to promote tolerance and give the various indigenous communities the full force of the rights under The Declaration and the Guatemalan Constitution,⁸⁸ political and social realities on the ground have generally prevented the national court systems of Guatemala from taking such dramatic steps even as the Guatemalan Constitutional Court has started to institutionalize these principles as law.⁸⁹

IV. CULTURAL RIGHTS IN GUATEMALA

A. CONSTITUTIONAL PROVISIONS IN GUATEMALA

Guatemala has institutionalized the “right to culture” into the Guatemalan Constitution.⁹⁰ There are two provisions in the Guatemalan Constitution that establish the recognition of cultural rights of the Guatemalan citizenry. The first provision called “Article 58 states that ‘the right of people and communities to their cultural identity in accordance with their values, language and customs shall be recognized.’

⁹¹ And

Article 66 states that Guatemala is formed by diverse ethnic groups amongst whom are indigenous groups of Mayan descent. The state recognizes, respects, and promotes their ways of life, customs, traditions, forms of social organization, use of indigenous dress by men and women, languages and dialects.⁹²

Due to the contentions surrounding land reforms and rights to title to sacred sites,⁹³ much of the politically active Maya have focused on the issue of formalized recognition of customary law rather than the issue of

⁸⁷ See generally Rachel Sieder, *The Judiciary and Indigenous Rights in Guatemala*, 5 INT’L J. CONST. L. 211, 220 (2007); Petersen, *supra* note 14.

⁸⁸ Sieder, *supra* note 87, at 220; See Concluding Observations of the Human Rights Committee: Guatemala, U.N. Doc. CCPR/CO/72/GTM (2001); Sieder, *supra* note 17, at 165–66.

⁸⁹ See Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission Against Impunity on Guatemala (“CICIG”), available at http://cicig.org/uploads/documents/CICIG_AGREEMENT_EN.pdf; Vaca, *supra* note 13.

⁹⁰ *Observations of Guatemala*, *supra* note 86, at 4–5.

⁹¹ Sieder, *supra* note 87, at 220–21.

⁹² *Id.* at 219.

⁹³ Lopez, *supra* note 11, at 229–30, 246.

securing title to land and rights to the resources stemming from the subsoil.⁹⁴

While “forms of social organization” could be broadly interpreted to include the recognition of indigenous legal authorities and customary law, this portion of the Constitution has not been interpreted that way.⁹⁵ The Guatemalan Constitution grants the state judiciary exclusive jurisdiction despite the practical reality of legal pluralism within Guatemalan society.⁹⁶ The Guatemalan judiciary still reserves the right to overturn the decisions of indigenous legal authorities and apprehend individuals who violate national law in carrying out local justice.⁹⁷

Despite these portions of the Constitution, the Guatemala legislature has not institutionalized specific indigenous rights provisions into binding laws enforceable on the ground.⁹⁸ The Agreement on the Identity and Rights of Indigenous Peoples that the Guatemalan state and a group of guerrillas negotiated as part of the peacemaking process was the initial attempt to institutionalize indigenous rights.⁹⁹ As a part of agreement, the Guatemalan state had to implement the official recognition of the collective rights of the indigenous people, which included the “right to be subject to customary law, the right to bilingual education, and protections for communally held lands but excluded territorially based autonomy arrangements.”¹⁰⁰ Indigenous groups drafted constitutional referendums, which the legislature had to approve before

⁹⁴ Rachel Sieder, *Building Mayan Authority and Autonomy: The “Recovery” of Indigenous Law in Post-Peace Guatemala*, 55 *STUDIES IN LAW, POL. & SOC’Y* 43, 43 (2011); Jan Arno Hessbruegge & Carlos Fredy Ochoa Garcia, *Mayan Law in Post-Conflict Guatemala*, 32, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/event/wcms_084059.pdf.

⁹⁵ See U.N. Secretary-General, Letter dated Apr. 5, 1995 from the Secretary-General to the President of the General Assembly and to the President of the Security Council, U.N. Doc. A/49/882-S/1995/256 (Apr. 10, 1995) (containing text of the Agreement on Identity and Rights of Indigenous Peoples between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca, dated Mar. 31, 1995); Sieder, *supra* note 87, at 218–19.

⁹⁶ Sieder, *supra* note 87, at 218–19.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 227; Agreement on Identity and Rights of Indigenous Peoples, Guat.-URNG, UN Doc. A/49/882--S/1995/256, 36 *ILM* 285 (Mar. 31, 1995) [hereinafter Agreement on Identity and Rights], [available at http://daccess-ddsny.un.org/doc/UNDOC/GEN/N95/095/91/PDF/N9509591.pdf?OpenElement](http://daccess-ddsny.un.org/doc/UNDOC/GEN/N95/095/91/PDF/N9509591.pdf?OpenElement) (last visited Mar. 3 2011).

¹⁰⁰ See Agreement on Identity and Rights, *supra* note 99.

being subjected to a popular referendum.¹⁰¹ The legislature agreed with the proposals, but the constitutional referendum was sharply rejected by the public.¹⁰²

In Guatemala, multiculturalism is not a policy instituted from the ground up, but a top down imposed policy based off of a highly internationalized peace process.¹⁰³ During the civil war in Guatemala, the Maya communities appealed to international human rights bodies and allies in other countries.¹⁰⁴ While such international allies are sympathetic to the cultural preservation causes of the Maya in Guatemala,¹⁰⁵ the Maya communities' fellow citizens are not entirely sympathetic to a broad application of the cultural rights provision.¹⁰⁶ Much of the Guatemalan citizenry is sympathetic and relatively tolerant to the Maya communities' appeals to the right of difference, religious freedom, and bilingual education.¹⁰⁷ However, the majority are still uneasy about the ways in which the Maya communities have further interpreted the cultural rights provisions as requiring rights such as self governance, rights to the land and subsoil, and the recognition of local lawmaking, law enforcing, and law adjudicating authorities.¹⁰⁸

The Guatemalan state may be warranted in expressing concern about recognizing the Maya community authorities. With recognition of self-governance, the Guatemalan state would essentially allocate a portion of its monopoly over the use of force to Maya community leaders.¹⁰⁹ This could pose challenges based on due process concerns,

¹⁰¹ Sieder, *supra* note 87, at 217–18.

¹⁰² *Id.* at 218–219.

¹⁰³ See CHARLES R. HALE, *MÁS QUE UN INDIO (MORE THAN AN INDIAN): RACIAL AMBIVALENCE AND NEOLIBERAL MULTICULTURALISM IN GUATEMALA* 75 (2006); KAY B. WARREN, *INDIGENOUS MOVEMENTS AND THEIR CRITICS: PAN-MAYA ACTIVISM IN GUATEMALA* 199 (1998).

¹⁰⁴ See for example DOUGLAS LONDON & TAXA LONDON, *WE WERE TAUGHT TO PLANT CORN NOT TO KILL: SECRETS BEHIND THE SILENCE OF THE MAYAN PEOPLE* (2007).

¹⁰⁵ See HALE, *supra* note 103, at 74. Rigoberta Menchú Tum, *Nobel Lecture*, NOBELPRIZE.ORG: THE OFFICIAL WEBSITE OF THE NOBEL PRIZE, http://www.nobelprize.org/nobel_prizes/peace/laureates/1992/tum-lecture.html.

¹⁰⁶ HALE, *supra* note 103, at 31.

¹⁰⁷ *Id.* at 74–75.

¹⁰⁸ *Id.* For a discussion on neoliberal multiculturalism and the Ladino response to Maya ascendancy, see generally *id.* Neoliberal multiculturalism, as Charles Hale describes, focuses on selective recognition of indigenous rights that results in a multiculturalism that fits within a neoliberal economic structure. *Id.* at 35. Sieder summarizes neoliberal multiculturalism, succinctly, as “a project that recognizes certain aspects of cultural difference while advancing economic policies that contradict indigenous rights to autonomy in practice.” Sieder, *supra* note 87, at 214.

¹⁰⁹ See generally Sieder, *supra* note 87, at 212–14.

individual rights concerns, and complex jurisdictional problems.¹¹⁰ The Guatemalan Mayan peoples tried to argue that the right to culture as guaranteed by the Guatemalan Constitution includes the right to govern and adjudicate disputes and criminal activities within the Maya communities.¹¹¹ Without express title to land and legally enforceable territorial boundaries, many questions could arise with regard to jurisdiction and identity.¹¹² Would Maya jurisdiction be applicable only to Maya people? Who would be defined as Maya? What would happen when Maya individuals refuse the authority of the Maya community leaders? Would the Maya community leaders be able to adjudicate cases involving companies, whether foreign or domestic, which cause injury to Maya lands or people?

The broader application of cultural rights in Guatemala would recognize the self-determination of the Maya communities.¹¹³ But, without sufficient territorial boundaries stemming from having title to the land, such recognition of Maya community leadership has the potential to cause a host of problems which the Guatemalan courts have implicitly recognized. Maya jurisdiction cannot just apply to Maya people only since there are mixed Maya/Ladino communities¹¹⁴ and many individuals self-identify as either Maya or Indigenous or Ladino.¹¹⁵ While Maya cultural activism takes on a pan-Maya character,¹¹⁶ there are still enough differences between Maya groups that simple Maya jurisdiction over Maya people could lead to a host of challenges.¹¹⁷

The Guatemalan public has largely been against extending recognition of cultural rights of the Maya communities beyond bilingual education, and depthless celebratory aspects of public displays of Maya material culture.¹¹⁸ The public, in a referendum, voted against adopting

¹¹⁰ *Id.* at 168–69.

¹¹¹ Sieder, *supra* note 87, at 220.

¹¹² Caumartin, *supra* note 64, at 9–10.

¹¹³ See Sieder, *supra* note 87, at 211–15.

¹¹⁴ Anne R. Pebley, Noreen Goldman & Arodys Robles, *Isolation, Integration, and Ethnic Boundaries in Rural Guatemala*, 46 THE SOCIOLOGICAL QUARTERLY 213, 219 (2005), available at <http://ccp.ucr.ac.cr/bvp/pdf/indigenas/ARobles-01.pdf>.

¹¹⁵ Caumartin, *supra* note 64, at 9–10.

¹¹⁶ See Evelyn Gere & Tim MacNeil, *Radical Indigenous Subjectivity: Maya Resurgence in Guatemala*, 8 INT'L J. DIVERSITY IN ORG., COMMUNITIES & NATIONS 97, 97 (2008), available at http://uoit.academia.edu/TimMacNeil/Papers/436582/Radical_Indigenous_Subjectivity_Maya_Resurgence_In_Guatemala.

¹¹⁷ See *Rural Poverty in Guatemala*, GUATEMALA TIMES, Apr. 15, 2010, <http://www.guatemalatiimes.com/news/guatemala/1504-rural-poverty-in-guatamala.html>.

¹¹⁸ See HALE, *supra* note 103.

specific indigenous rights into the Guatemalan Constitution.¹¹⁹ Furthermore, Guatemalan courts refused to interpret “the right to culture” to broadly include the recognition of local adjudicating forces.¹²⁰ This refusal on the part of the Guatemalan courts runs in sharp contrast to other Latin-American states that have similarly signed onto international instruments that recognize cultural rights and rights of the indigenous populations.¹²¹

For example, the courts in Colombia have interpreted cultural rights obligations broadly enough to favor the self-determination interests of various indigenous groups.¹²² As in Colombia, the court in Belize interpreted the Constitution in a manner than favored the interests of the indigenous groups.¹²³ The Constitutional Court in Guatemala is still limited by the political realities that still pervade much of Guatemala.¹²⁴ The legislature appoints the judges for the Constitutional Court.¹²⁵ In addition, the judges in the Guatemalan Constitutional Court still face violent threats from the military sector for judgments unfavorable to that sector’s interests.¹²⁶

B. LAND RIGHTS IN GUATEMALA

The Belizean and Guatemalan Governments are not entirely different in their motives to exploit the natural resources on the Maya lands while integrating the communities into a system of cash crop production.¹²⁷ Both national governments continue to attract foreign investors and engage in highly unsustainable economic development schemes with short-term, limited gains and long-term human and environmental costs.¹²⁸ Similar to Guatemala, the Belizean Government

¹¹⁹ Sieder, *supra* note 87, at 219.

¹²⁰ *Id.* at 220–23.

¹²¹ *See id.*

¹²² *Id.*

¹²³ Petersen, *supra* note 14.

¹²⁴ *See* Sieder, *supra* note 87, at 220–23.

¹²⁵ Shin Imai, Ladan Mehranvar & Jennifer Sander, *Breaching Indigenous Law: Canadian Mining in Guatemala*, 6 *INDIGENOUS L. J.* 101, 127 (2007).

¹²⁶ *Id.*

¹²⁷ *See* Grandia, *supra* note 8, at 385; *cf. Maya Land Rights Appeal in Court*, RAINFOREST FOUND. U.S. (last updated Mar. 18, 2011), <http://www.rainforestfoundation.org/pt-br/article/maya-land-rights-appeal-court>.

¹²⁸ *Cf.* Imai et al., *supra* note 125, at 128; *see* Grandia, *supra* note 8.

has emphasized individual ownership of land based upon Western notions of land ownership.¹²⁹

The national governments continue to emphasize Western notions of land ownership even though The Declaration stipulates that such land organizing should conform to a given indigenous peoples' notions of land ownership and distribution.¹³⁰ Furthermore, the Guatemalan and the Belizean Government prioritized the needs of the foreign and the elite in their respective societies above the needs of much of the majority of the populace, whether indigenous or non-indigenous.¹³¹

In comparison with Belizean society, Guatemala still remains a starkly unequal society.¹³² Sharp critiques of Guatemalan's society have likened the society as the "apartheid state of the Americas."¹³³ One journalist of a Belizean newspaper indicated that without land reform in Guatemala, and the resulting poverty alleviation stemming from efforts to equitably distribute the land, many poor Guatemalans of mainly Q'eqchi Maya origin will continue to flee to Belize to grow food in the rain forests.¹³⁴ A census regarding statistics on agriculture revealed that even in 2003, 3.2 percent of landowners at the highest strata in the Guatemalan society owned 66 percent of the land.¹³⁵

With Guatemala's millions of individuals, one would assume that Guatemala is overcrowded and much land is already utilized, but that is not case. Approximately less than 40 percent of Guatemala's land remains idle without any cultivation and this statistic includes arable land.¹³⁶ Therefore, an argument that Guatemala does not have enough land is without merit based on the statistical facts of the inefficient use of land that plagues Guatemala. With the elite owning too much of the land in Guatemala, the landless Q'eqchi Maya are forced to enter Belizean rain forests and engage in the more preferable economic practice of labor autonomy through subsistence farming and hunting.¹³⁷

¹²⁹ See Grandia, *supra* note 8, at 386.

¹³⁰ Adele Ramos, "Status Quo" in Toledo Remains! – PM Barrow!, AMANDALA.COM, Apr. 7, 2010, <http://www.amandala.com.bz/index.php?id=10023>.

¹³¹ Cf. Grandia, *supra* note 8, at 385; see generally Maya Land Rights Appeal, *supra* note 127.

¹³² See Grandia, *supra* note 8, at 318–19.

¹³³ *Id.* at 318.

¹³⁴ "Guatemala's Crisis," AMANDALA NEWS ONLINE, Aug. 10, 2009, <http://www.amandala.com.bz/index.php?id=9135>.

¹³⁵ Grandia, *supra* note 8, at 321.

¹³⁶ *Id.* at 323.

¹³⁷ Grandia, *supra* note 8, at 321; "Guatemala's Crisis", *supra* note 134.

Much of these Guatemalan citizens resting on the Belizean disputed territory entered Belize precisely to avoid the situation of working under the largest landholders.¹³⁸ With access to land to cultivate, thus investing in their own food security, these particular settlers from Guatemala entered Belize to avoid the economic circumstances and land inequality that plague Guatemalan society.¹³⁹ Guatemala may try to use the presence of the Q'eqchi Maya peoples in the Belizean rain forests as a key reason to assert the claim over the disputed area since many Guatemalans occupy those border regions.¹⁴⁰ However, the excuse to protect the Guatemalan Q'eqchi Maya from security forces in Belize seems disingenuous in light of the structural realities in Guatemala that compelled these Guatemalan Mayan individuals to flee into Belize in the first place. The Guatemalan state needs to examine its society and political realities before even hinting at any request for territorial concessions from its neighboring country.

Land distribution in Guatemala has undergone several different phases throughout the country's history.¹⁴¹ After independence from the Spanish Empire, the "liberal" reformers seized much of the communal lands that indigenous peoples held. The primary beneficiaries of this land reform effort were foreign investors for cash crops.¹⁴² In the late 1950s, the presidential elect, Jacobo Arbenz, attempted to distribute the land equitably to peasants.¹⁴³ The US, based on fears of communism, orchestrated a coup to oust Arbenz and such efforts became substantially reversed in the 1960s with the military and societal elite primarily benefiting from the reversal of Arbenz's policies.¹⁴⁴

With structural adjustment economic reforms beginning in the 1980s, land reform is undergoing another phase which may lead to regressive or progressive land distribution depending on whether or not Guatemala will maintain the status quo, allocate more land to foreign

¹³⁸ See Grandia, *supra* note 8, at 325.

¹³⁹ See *id.*

¹⁴⁰ See Ch'oc, *supra* note 12; Prime Minister Said Musa, P.M lashes Guatemala but still hopeful on talks, CHANNEL5BELIZE.ORG, Jan. 12, 2001, <http://edition.channel5belize.com/archives/19797>.

¹⁴¹ See Grandia, *supra* note 8, at 323–325.

¹⁴² See *id.* at 326.

¹⁴³ *Id.*

¹⁴⁴ *Id.*; Jacobo Arbenz was actually a supporter of Belize's leftist party, People's United Party of Belize. See WEINBERG, *supra* note 19, at 45. Arbenz based his leftist political agenda on land reform and despite the popularized notion of Arbenz being ousted due to being "communist" the irony here was that Arbenz viewed land inequality as a situation that needed the capitalist model because he viewed the status quo as a situation akin to feudalism. *Id.* at 43–45.

interests, or equitably distribute the land.¹⁴⁵ Despite Guatemala's signing of the Declaration, Guatemalan government resists the granting of communal/collective titles even though issuing individual titles seems to fit well within Guatemala's laws.¹⁴⁶ More equitable land distribution would lead to poverty alleviation for many Ladinos and territorial integrity for various Maya communities wanting to implement customary law and govern the communities based on Maya norms, values, and customs.¹⁴⁷ What would result out of territorial integrity of Maya communities arising out of more equitable distribution of land ownership is more indicative of the kinds of cultural rights that the Maya communities in Guatemala continue to clamor for.

V. RIGHT TO PROPERTY AND PROHIBITION AGAINST RACISM IN THE BELIZEAN CONSTITUTION

A. OVERVIEW OF THE LEGAL SYSTEMS IN THE CARIBBEAN

The legal system of the English-Speaking Caribbean Countries is characterized by the wholesale adoption of English laws into a completely different cultural and social context from that of England.¹⁴⁸ The vast majority of Caribbean countries are pluralistic societies where "several diverse ethnic, religious and class groups existing within these societies. While these groups make up one society, their cultural and social differences can still be identified."¹⁴⁹ But, "with few exceptions, such pluralism is not evident within the law and legal systems of the region. From a legal perspective, the Commonwealth Caribbean region itself can be seen as a homogenous entity, joined by strong British legal ties."¹⁵⁰ This means that the legal system in many Caribbean countries does not acknowledge the laws of the Caribbean Aboriginal communities or the laws and religious customs of the Hindu and Muslim communities within the state-based court systems.¹⁵¹ Since laws tend to evolve in Common law jurisprudences, the courts of the Caribbean have to come to

¹⁴⁵ See Grandia, *supra* note 8, at 326.

¹⁴⁶ *Id.*

¹⁴⁷ See *id.*

¹⁴⁸ ROSE-MARIE BELLE ANTOINE, COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS 5 (2006).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 7–8.

realize the absurdity or even the cultural myopia of just applying the English-derived laws through the national court systems. For example, the court in Barbados chose to abandon an English common law principle on child custody rights in favor of acknowledging the African cultural roots of the majority of Caribbean peoples, which emphasizes the importance of the extended family.¹⁵² In that case, the court acknowledged the rights of the grandparents to child custody, which is not readily recognizable in the English Common Law.¹⁵³

While the courts of the Caribbean have yet to recognize the laws of its Hindu and Muslim populace,¹⁵⁴ the courts have started to recognize the rights of the various indigenous communities.¹⁵⁵ For example, the Government of Barbados and the Indigenous Communities of Dominica and Guyana signed a treaty as recently as 1998 to provide for provisions of self-governance.¹⁵⁶ Within the Caribbean region, the Central American country of Belize has the second largest population of indigenous peoples, the vast majority of which are the three Maya communities whom are the Yucatec, Mopan, and Q'eqchi, while the South American country of Guyana has the largest population.¹⁵⁷ The court system of Belize started to acknowledge the rights of the southern Belizean Maya communities through a series of court cases regarding title to land and by extension, the rights to the subsoil.¹⁵⁸

In addition to the Belizean constitutional provisions protecting the right to property, Belize constitutionally mandates the prohibition of racial discrimination.¹⁵⁹ The courts in Belize ruled that the policy of neglect towards the Belizean Maya communities constituted racial

¹⁵² AB v. Social Welfare Officer, 3 W.I.R. 420 (1961); ANTOINE, *supra* note 148, at 42.

¹⁵³ ANTOINE, *supra* note 148, at 42.

¹⁵⁴ *Id.* at 7.

¹⁵⁵ *Id.* at 7–8.

¹⁵⁶ *Id.*

¹⁵⁷ For a statistical list of indigenous populations numbers by ethnic group and numbers of speakers of indigenous languages, See *Caribbean Endangered and Indigenous Languages*, UNIV. OF THE W. INDIES, AT MONA, JAMAICA, <http://www.mona.uwi.edu/dllp/jlu/ciel/pages/appendix.htm>. This list shows that Guyana has the largest population of indigenous people while Belize has the second largest population.

¹⁵⁸ See Aurelio Cal et al. v. Attorney General of Belize, Supreme Court of Belize, Claim no. 171 of 2007, dated Oct. 18, 2007, available at http://www.law.arizona.edu/dept/iplp/international/maya_belize/documents/ClaimsNos171and172of2007.pdf; The Maya Leaders Alliance et al. v. Attorney General of Belize, Supreme Court of Belize, Claim no. 366 of 2008, dated June 28, 2010, 58–59 available at http://www.law.arizona.edu/dept/iplp/international/maya_belize/documents/Claim_366_of_2008.pdf.

¹⁵⁹ See Aurelio Cal et al., Supreme Court of Belize, Claim no. 171 of 2007, 56–57.

discrimination in recognizing one culture's type of property ownership and not another culture's type of property ownership.¹⁶⁰

B. ABORIGINAL RIGHTS JURISPRUDENCE IN BELIZE

A groundbreaking legal case guaranteed the Maya communities of southern Belize the right of aboriginal title to community lands using a form of property ownership originating in the Maya cultural system. The Belizean legal system, with its aboriginal rights precedent, is in a better position than Guatemala to give the various indigenous people rights through a legally binding title to the land. On the other hand, Guatemala has established cultural and linguistic rights detailed in the revised Constitution.¹⁶¹ The Guatemalan Constitutional Court institutionalized the principle of consultation with indigenous communities before undergoing economic development projects, but this principle has yet to be actualized on the ground.¹⁶² Furthermore, the Guatemalan Constitutional Court recognized a Q'eqchi Maya community's title to land in a place called Agua Caliente, but has yet to extend this recognition beyond this particular case. In contrast, with the 2010 decision in the Belize Supreme Court, the land rights recognition extended to all the Maya villages in southern Belize.¹⁶³

The government of Belize continues to challenge the collective granting of these titles in favor of individual titles.¹⁶⁴ Such efforts of a national government to impose individual titles to collective landholdings led to disastrous results in other contexts. For example, in the United States, the national government imposed a policy of Allotment on the lands of many Native American Tribes.¹⁶⁵ The Allotment Act forced individual Tribal members to have individual titles

¹⁶⁰ See S. James Anaya, *Reparations for Neglect of Indigenous Land Rights at the Intersection of Domestic and International Law – The Maya Cases in the Supreme Court of Belize*, 25–26, available at http://www.law.arizona.edu/depts/iplp/international/maya_belize/documents/ReparationsChapter.pdf.

¹⁶¹ *Observations of Guatemala*, *supra* note 86, at 4.

¹⁶² See Vaca, *supra* note 13.

¹⁶³ Adele Ramos, *CJ Rules for Maya: Implications “huge”*, AMANDALA NEWS ONLINE, June 6, 2010, <http://www.amandala.com.bz/index.php?id=10012>.

¹⁶⁴ See *Maya Land Rights Appeal*, *supra* note 127.

¹⁶⁵ Jessica A. Shoemaker, *Like Snow in the Springtime: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 WIS. L. REV. 729, 729-30 (2003).

in Tribally-held land.¹⁶⁶ This Act led to a significant reduction in the acreage of Tribal land, and contentious inheritance issues where several fractionated interests in a single parcel have occurred.¹⁶⁷ This led to inefficient usages of land that has impeded economic development goals of various communities. This problem has adversely affected the policy objective of self-governance.¹⁶⁸ In the case of the Belizean Maya, the problems of erosion of traditionally-held Maya land and fractionated interests in a single parcel have the potentiality to occur with a national government imposed form of property that does not respect Maya norms of property ownership and land use rights. With respecting the right to self-determination, the community can decide how to develop the land in accordance with both Maya ways and modern realities.¹⁶⁹

Governmental treatment of indigenous populations in the Caribbean countries, before the recognition of Aboriginal rights, was neglect.¹⁷⁰ The communities in Guyana and Belize were largely left alone to live rather autonomously.¹⁷¹ This had positive ramifications since the indigenous populations in other settler-based common law countries had the children taken away for coercive assimilation.¹⁷² However, the negative ramifications of this governmental neglect is that when the indigenous populations made the choice to adapt to modern circumstances, such as wanting the children to go to school or university or allowing men or women to work in other types of jobs, the infrastructure was not in place to provide easy access to city centers.¹⁷³ Governmental neglect not only meant leaving people alone, but it also meant that the government did not recognize community lands by issuing titles or leases to individuals or foreign companies without the consent of those who living in the affected lands.¹⁷⁴

¹⁶⁶ *Id.* at 737.

¹⁶⁷ *Id.* at 729–30, 733, 743.

¹⁶⁸ *Id.* at 731.

¹⁶⁹ See Maya Atlas, *supra* note 12, at 5.

¹⁷⁰ S. James Anaya, *Reparations for Neglect of Indigenous Land Rights at the Intersection of Domestic and International Law – The Maya Cases in the Supreme Court of Belize*, in REPARATIONS FOR INDIGENOUS PEOPLES: INTERNATIONAL AND COMPARATIVE PERSPECTIVES 567, 567 (Federico Lenzerini ed., 2009); ANTOINE, *supra* note 148, at 8.

¹⁷¹ Anaya, *supra* note 172, at 567; ANTOINE *supra* note 148, at 8.

¹⁷² See JEFFREY SISSONS, *FIRST PEOPLES: INDIGENOUS CULTURES AND THEIR FUTURES* (2005) (summary of relocation in the North America, Australia and New Zealand).

¹⁷³ See Maya Atlas, *supra* note 12, at 5.

¹⁷⁴ Grandia, *supra* note 20, at 156–58.

C. THE LOGGING CONCESSION AND THE INTER-AMERICAN COURT OF HUMAN RIGHTS

During the middle of the 1990s, the Belizean government granted huge logging concessions to multinational corporations to log in forests in the Toledo District, which directly overlapped with the indigenous lands.¹⁷⁵ The Maya leaders of the Toledo District tried to appeal the government.¹⁷⁶ The government of Belize ignored them.¹⁷⁷ Without recourse to the national courts, the Maya leaders, with the help of foreign experts and lawyers, turned to the Inter-American Commission on Human Rights to bring forth a cause of action alleging racial discrimination and violation of their right of property.¹⁷⁸ The Commission found that the Belizean government had violated Article XXIII of the American Declaration of the Rights and Duties of Man by not securing the Maya customary land tenure by parceling out Maya lands to individual lease holders and by granting the concession to the large logging company.¹⁷⁹ In addition, the commission found that Belize violated the right of equality by recognizing various other forms of property ownership but not the kind recognized in the Maya communities.¹⁸⁰

Despite this finding, government officials stressed the fact that the decision from the supranational body was not binding.¹⁸¹ Even though the victory was solely symbolic, this decision would have significant persuasive authority when such a similar case reached the Belizean Supreme Court.

¹⁷⁵ *Id.* at 156.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See Anaya, *supra* note 170, at 572–73.

¹⁷⁹ *Id.* at 571.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 572.

D. THE BELIZEAN SUPREME COURT CASES

1. THE FIRST CASE

The first of two court cases in a series of court battles that culminated in victories for the Southern Belizean Maya communities were the cases for the title of the villages Conejo and Santa Cruz in the Toledo District.¹⁸² The event that catapulted the need to secure the rights attached to recognizing customary land tenure occurred when the government allowed US Capital Energy-Belize LTD to conduct seismic testing for oil exploration in a national park in the Toledo district.¹⁸³ This “national park” is on Maya lands and this is one of the property arrangements that the Belizean government created without consulting with the Maya leadership.¹⁸⁴ Seismic testing occurred on this same land without the permission of the Maya authorities.¹⁸⁵ The Maya community leaders sought judicial review of the Oil Exploration in the Belizean Supreme Court.¹⁸⁶ This judicial review avoided the issue of Maya customary rights to land and resources by focusing on the fact that the seismic testing was allowed without conducting an environmental impact assessment.¹⁸⁷ The failure to address the land rights question led to lawsuits by the communities of Santa Cruz and Conejo.¹⁸⁸ The trial went on for four days and the court was inundated with expert testimony while the government’s arguments languished.¹⁸⁹

On October 18, 2007, the Supreme Court of Belize, with Chief Justice Abdulai Conteh presiding, found in favor of the Maya parties and

¹⁸² Grandia, *supra* note 20, at 153.

¹⁸³ *First Joint Affidavit of Gregorio Choc, Cristina Coc, & Martin Chen, in the Supreme Court of Belize A.D 2007, Claim No. 2007, between Aurelio Cal et. al. & the Attorney General of Belize & the Minister of Natural Resources and Environment*, 9, ¶ 35, available at http://www.law.arizona.edu/depts/iplp/advocacy/maya_belize/documents/AffidavitfromtheMayaLeadersAlliance.pdf; The government’s decision to reserve land for the national park was quite controversial because this was done without consulting the affected indigenous communities (Q’eqchi Maya and Garifuna) residing in and bordering the park grounds. Grandia, *supra* note 20, at 157–58.

¹⁸⁴ Grandia, *supra* note 20, at 157–58.

¹⁸⁵ *First Joint Affidavit of Gregorio Choc, Cristina Coc, & Martin Chen*, *supra* note 183.

¹⁸⁶ Anaya, *supra* note 170, at 573.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 574.

held that the customary land tenure is a form of property that is protected under the Belizean Constitution, and the court outright rejected the government's contentions that the Maya parties did not have any title.¹⁹⁰ Justice Conteh also found that the Maya parties continually utilized and occupied the land and that title had not been extinguished upon the ascendancy of the former British colonial authority.¹⁹¹

Among the persuasive authorities utilized by the court were two Malaysian cases. In *Kerajaan Negeri Selangor & Ors v. Sagong Bin Tsai & Ors*, the court found that the government has a fiduciary duty to protect land of the aboriginal populations.¹⁹² In *Nor Anak Nyawai v. Borneo Pulp Plantation*,

[s]uch constitutionally protected property was held to exist even where the claimant indigenous community had moved, as late as 1955, into a previously unsettled portion of its traditional territory. The Malaysian court noted that movement within a broader territory in response to population growth or environmental factors was part and parcel of the indigenous customary land-use patterns.¹⁹³

The legal principles developed from this Malaysian case are in compliance with The Declaration. The Malaysian Court recognized that the states have a duty to protect the Indigenous peoples' property interests, and this includes the recognition of migratory patterns that are part of an indigenous community's land tenure system. In comparison with the Q'eqchi Maya in Guatemala, the Q'eqchi Maya of Belize maintained much of the customary land management practices which allowed for a healthier community.¹⁹⁴ In addition, the Maya communities did not request compensation as a form of relief, but rather for the government to recognize the land rights and to allow for land management decisions to remain among community members.¹⁹⁵

¹⁹⁰ *Id.* at 575; See Grandia, *supra* note 20, at 154–56.

¹⁹¹ Anaya, *supra* note 170, at 575–76.

¹⁹² *Id.* at 590.

¹⁹³ *Id.*

¹⁹⁴ Grandia, *supra* note 20, at 167.

¹⁹⁵ *Id.* at 177.

2. THE SECOND CASE

The second constitutional claim for title to villages in the Toledo District occurred in 2008.¹⁹⁶ A Maya Leaders Alliance (MLA) coordinator articulated the claim under the framework of the Belizean Constitution as a way for the Maya, like the other Belizeans, to have the same rights recognized and protected.¹⁹⁷ The MLA coordinator articulated the harm that the Belizean government committed as a violation of the constitutional stipulation that protects the property rights of Belizean citizens.¹⁹⁸ The plaintiffs requested two forms of relief, protection of the community property rights through an efficient means to secure the title and a stipulation that the government has to acquire consent and consultation from the community before undergoing a development project on community lands.¹⁹⁹ The MLA coordinator pointed out that clarifying the exact parameters of property ownership is better for Belizean economic development than leaving property rights uncertain.²⁰⁰

The decision from the first court cases in 2007 is the first decision of its kind to directly reference the UN Declaration on the Rights of Indigenous Peoples.²⁰¹ A key reasoning behind the Supreme Court's decision is summarized below:

Conteh found the Maya had a

“complex traditional set of land tenure regulations.” Furthermore, all attempts to divide up the customary village land into arbitrary-sized parcels are doomed to fail to establish a stable land-tenure regime” because the Mayan lifestyle “requires access to a variety of land types in order to grow and gather all the crops and resources they need to survive in any given year.”²⁰²

¹⁹⁶ *The Maya Come Back to Court*, AMANDALA ONLINE, Nov. 14, 2008, <http://www.amandala.com.bz/index.php?id=7704>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Maya Leaders and Toledo Alcades Explain Court Action Against GOB*, AMANDALA ONLINE, July 3, 2008, <http://www.amandala.com.bz/index.php?id=7140>.

²⁰¹ Petersen, *supra* note 14.

²⁰² *Id.*

The Supreme Court in Belize interpreted property in the previous court case broadly enough to encompass both western and non-western notions of property, which seems more of a proper exercise of legal authority than just recognizing western notions of property when the country is a pluralistic society. The former Chief Justice, Abdulai Conteh, is from Sierra Leone and one can speculate that as a native Sierra Leonean turned Belizean citizen, he had the widened perspective to realize that the government of Belize recognized western forms of property and not non-western forms of property.²⁰³ In 2010, the Supreme Court confirmed its decision made in 2007 which led to the recognition of the land rights of the rest of the Maya communities.²⁰⁴

VI. MULTICULTURALISM AND POLICY IMPLICATIONS IN BELIZE AND GUATEMALA

While Belize and Guatemala are both culturally pluralistic societies, official recognition of multiculturalism emanated from the ground up in Belize. On the other hand, the official policy of multiculturalism and the resulting abandonment of the assimilating policy of *mestizaje* in Guatemala occurred as a top-down policy generally imposed under incentives by the international donors sympathetic to the Maya cause.²⁰⁵ In addition, overt and subtle racial discrimination still plague Guatemalan society.²⁰⁶

Granting territorial concessions to Guatemala would adversely affect the Belizean Maya communities. They would lose the rights guaranteed under the Belizean Constitution and be governed under a nebulous cultural rights regime. Granting such territorial concessions to Guatemala would make the Belizean Maya communities worse off because the heavy emphasis on property ownership would have to be abandoned to adapt to the Guatemalan societal circumstances. The Belizean Maya already have the cultural rights that the Guatemalan

²⁰³ See Aaron Humes, *The End of an Era: Chief Justice Dr. Abdulai Conteh Retires*, AMANDALA NEWS ONLINE, Oct. 1, 2010, <http://www.amandala.com.bz/index.php?id=10367>.

²⁰⁴ *Maya Land Rights & Resources in Belize*, RAINFOREST FOUND. U.S., <http://www.rainforest.org/maya-rights-land-resources-belize> (last visited Nov. 17, 2011); *MRG Welcomes Supreme Court Decision Upholding Maya Land Rights in Belize, but Deplores Government Decision to Appeal*, MINORITY RIGHTS GRP. INT'L (Aug. 20, 2010), <http://www.minorityrights.org/10202/press-releases/mrg-welcomes-supreme-court-decision-upholding-maya-land-rights-in-belize-but-deplores-government-decision-to-appeal.html>.

²⁰⁵ See HALE, *supra* note 103.

²⁰⁶ *Id.*; *Observations of Guatemala*, *supra* note 86, at 3.

Maya are continuing to clamor to secure.²⁰⁷ Belize already grants its many communal groups the right to difference, bilingualism, and religious freedom, allows community groups to own property along with individual ownership of property.²⁰⁸

The cultural right to self governance that the Guatemalan Maya want recognized is based on an assumption that the Guatemalan courts are still beholden to powerful interests such as the military, the political branches, and transnational capital.²⁰⁹ With crime and acts of violence plaguing Guatemala, the Maya communities want to enforce their own laws and exercise law adjudicating powers to further implement order where there is a vacuum.²¹⁰

It is also not safe to assume that the Guatemalan Maya and the Belizean Maya would get along.²¹¹ Linguistic differences and subtle cultural differences among Maya groups could lead to conflict. It does not need reiterating that the Maya are a vast and diverse group. Quite recently in Belmopan, Belize, a blood feud between a Guatemalan Maya family and a Belizean Maya family erupted in violence with machete fighting.²¹² Among the motivations of this blood feud was the alleged “disrespect” that the Guatemalan family showed to the Belizean community.²¹³ Belizean Maya and Guatemalan Maya have been socialized to be loyal to their respective countries. It is highly probable that the “disrespect” that the Guatemalan family showed was based off of a lack of understanding of the proper cultural mores within this specific Belizean community. Such cultural misunderstandings can lead to conflict.

Furthermore, even though Guatemala has a substantially larger population than Belize, ceding territory to Guatemala does not mean that the dispossessed people in Guatemala would have the freedom to occupy the contested area and live more economically productive lives.

²⁰⁷ See WRIGHT, *supra* note 4.

²⁰⁸ CONSTITUTION, art. 3(d), 17 (1981) (Belize).

²⁰⁹ See Sieder, *supra* note 87, at 231–32.

²¹⁰ See *id.*; *Observations on Guatemala*, *supra* note 86, at 2; Hessebruegge & Garcia, *supra* note 94, at 2.

²¹¹ See Michael C. Stone, *Becoming Belizean: Maya Identity and the Politics of Nation* 131–133, in *THE MAYA DIASPORA: GUATEMALAN ROOTS, NEW AMERICAN LIVES* (James Loucky & Marilyn M. Moors, eds., 2000).

²¹² See Michael C. Stone, *Becoming Belizean: Maya Identity and the Politics of Nation*, in *THE MAYA DIASPORA: GUATEMALAN ROOTS, NEW AMERICAN LIVES* 31 (James Loucky & Marilyn M. Moors, eds., 2000).

²¹³ *Id.*

Territorial concessions to Guatemala do not mean that the poverty alleviation for the downtrodden from Guatemala would be in the foreseeable future. It is still a reality that elite families own the vast majority of the land in Guatemala.²¹⁴ The possibility that more land in Guatemala would mean more economic opportunities for the dispossessed does not seem plausible, particularly when land reform efforts in Guatemala have been met with violent resistance and the contested area in Belize contains valuable natural resources.²¹⁵ It is reasonable to assume that these natural resources will not be up for the taking for the poorest of the poor in Guatemala. Thus, arguments in favor of supporting territorial concessions to support the poor in Guatemala do not seem realistic in light of the structural, political, and legal realities in Guatemala.²¹⁶

Despite being within the strongest body of law in the land of Guatemala, cultural rights do not necessarily have practical consequences for communal groups on the ground.²¹⁷ The cultural rights provisions in the Guatemalan Constitution could be interpreted as an acknowledgement that multiculturalism can be compatible with nationalism. However, without community spaces protected through economic policies directly instituted through the state, cultural rights are rendered null because cultural expression cannot come about if community members can be evicted at will to make room for development projects.²¹⁸

One must understand that Maya mobilizing within Guatemala have received attacks from both the far right and far left in Guatemalan domestic politics.²¹⁹ The popularized discourse in Guatemala focuses more on an abstract struggle between Maya and Western ways.²²⁰ Many of the non-Maya, whether on the right or the left of the political spectrum, still insist that Western civilization should provide the

²¹⁴ Holley, *supra* note 16, at 128.

²¹⁵ See Romero, *supra* note 7; Robles, *supra* note 9.

²¹⁶ See E. Rainbow Willard, Note, How to Get Less Than What You Bargain for: Adjudicating the Guatemala-Belize Territorial Dispute at the I.C.J., 23 EMORY INT'L L. REV. 739 (2009) (a thorough history of the border dispute and also an example of an untenable position that implicitly suggests that Belize should give Guatemala some territorial concessions in order for the Guatemalan government to help its indigenous subsistence workers).

²¹⁷ Sieder, *supra* note 17, at 170–71.

²¹⁸ Holley, *supra* note 16, at 124.

²¹⁹ See WARREN, *supra* note 103, at 39.

²²⁰ See *id.* at 37.

substantive cultural foundation for the Guatemalan society.²²¹ Asserting this complex struggle into rather simplistic terms, Maya mobilizing in Guatemala generally focuses on the right for Mayan civilization to also influence the national culture or the right to allow for autonomous spaces for Mayan culture to flourish.²²² This took the form of promoting institutions such as bilingual education.²²³

Structurally speaking, Guatemala has a larger proportion of indigenous communities with over twenty groups among the Maya alone.²²⁴ This means that Guatemala has a legitimate concern about national fragmentation.²²⁵ In contrast, granting the right of collective land ownership in the Maya communities does not threaten to fragment the population of Belize. The only drawback to this grant of collective title is that it prevents the Belizean government from implementing development based contractual agreements without consulting the community first.²²⁶ With granting collective title, the government is forced to consult the community and does not have a right to recourse if the community decides through democratic processes to say no to such development projects.²²⁷

Fears of national fragmentation are a weaker argument in the Belizean context as opposed to the Guatemalan context. The Maya communities of southern Belize have maintained much of the traditional land management practices. Collective property rights are more of a reinforcement of the status quo coupled with legally binding protection. In Belize, the Mopan/Q'eqchi communities have lawful collective land right title to the villages.²²⁸ Any type of development would have to occur with the permission, consent and approval of community leaders.

Despite the institutionalization of cultural rights in the Guatemalan Constitution, if community groups can be evicted or forcibly removed to make room for development projects, this leads to the destruction of the economic and spiritual underpinnings of the Maya cultural systems.²²⁹ The Supreme Court in Belize broadened the

²²¹ HALE, *supra* note 103.

²²² See WARREN, *supra* note 103, at 37, 78.

²²³ *Id.* at 38.

²²⁴ Sieder, *supra* note 17, at 172–73.

²²⁵ See WARREN, *supra* note 103, at 68.

²²⁶ Ramos, *supra* note 163.

²²⁷ Imai et al., *supra* note 125, at 129–30.

²²⁸ Ramos, *supra* note 16.

²²⁹ *Observations on Guatemala*, *supra* note 86, at 4; Grandia, *supra* note 20, at 167–72.

parameters of what constitutes property consistent with the “right to property” provisions of the Belizean Constitution, and made them consistent with the practical realities of the cultural plurality in Belize society. The Guatemalan Constitutional Court would not interpret the Constitution in the Belizean Maya’s favor in light of the realities that Guatemala is an immensely impoverished country beholden to foreign interests. Ruling against the Belizean Maya’s favor could make the Guatemalan state gain an upper hand in exploiting resources in Belizean Maya land. The court would not interpret the Constitution in a manner, which might infringe upon the interests of transnational capital and by extension, the economic development of Guatemala. Guatemala is interested in southern Belize for economic reasons and the Constitutional Court would not rule in the Belizean Maya’s favor if doing so would impede that goal.

A. ALTERNATIVES TO GRANTING TERRITORIAL CONCESSION

The main purpose behind Guatemala continuing to reassert this historic claim is access to the Caribbean basin for trade.²³⁰ Such an economic objective can be achieved without resorting to granting territorial concessions. While leaving Belize’s territorial boundaries intact, Guatemala and Belize need to negotiate the building of this interstate commercial road that would grant Guatemala access to the Caribbean basin in an economically efficient manner. Since this road could transverse Maya lands, the two governments would still have to negotiate with the Maya communities about the construction of this road. As citizens of Belize, one cannot automatically assume that the Belizean Maya would not give their consent, because such a road could benefit the economic development of both countries and improve the general relationship between the two countries.

²³⁰ *See supra* Part II.

VII. CONCLUSION

The territorial dispute between Belize and Guatemala has been ongoing since the initial British presence in the Americas.²³¹ While the Spanish Crown did not actively settle the territory later known as Belize nor suppress the local populations, the Spanish Crown still operated under the belief that it exercised sovereignty over that territory.²³² With Guatemala inheriting this claim from the Spanish Crown, Guatemala has revised its request for the southern half of Belize where numerous indigenous communities are settled.²³³ Granting this request at the expense of Belizean sovereignty and the wishes of the Belizean Maya communities would cause a grave injustice because the Belizean Maya have secured their property rights, and by extension, their cultural rights, under the Belizean Constitution. Through two court cases in the Belizean Supreme Court, the Mopan/Q'eqchi Maya communities' collective land rights were affirmed as constitutionally protected under the Belizean Constitution.²³⁴

With the granting of territorial concessions to the Guatemalan state, this would not lead to a resolution of the on-the-ground conflicts since much of the Q'eqchi Maya immigrants into Belize were motivated to escape the situation of land inequality and endemic poverty in Guatemala. The structural realities of inequality in Guatemala prompted the immigrants to seek land and labor autonomy in the lands of southern Belize.²³⁵ Furthermore, the populations in the region in conflict prefer to remain under the governance of the Belizean government.²³⁶ Instead of granting territorial concessions, a decision from an international body such as the ICJ should allow for the status quo in terms of the borders to remain intact. The focus needs to be on the underlying purpose as to why

²³¹ See *supra* Part I.

²³² See *supra* Part II.

²³³ See *supra* Part V.

²³⁴ *Id.*

²³⁵ See *supra* Part IV.

²³⁶ See *supra* Part I.

Guatemala would want rights to the southern Belize region. This purpose is access to the Caribbean basin as a vital and efficient trade route.

While Guatemala has an institutionalized cultural rights regime and embraced the concept of multiculturalism, Guatemala still continues to grant transnational capital access to Maya lands without the proper authorization from the Maya communities.²³⁷ While the Belizean government has been implicated for this as well, what tempers this is the constitutionally protected recognition of the Maya communities' rights to land and to the subsoil.²³⁸ This compels the Belizean government to negotiate with Maya communities unless the Belizean government stoops to the level of violating its own laws.²³⁹ Guatemala needs to reexamine the inequality and economic realities of its society and not just focus on hollow multiculturalism. The Declaration provides a framework for signatory states to transcend hollow multiculturalism by recognizing the inherent rights of the indigenous communities. Article 26 of the Declaration stipulates that states have a duty to recognize the indigenous peoples' varied land tenure institutions and provide the necessary legal protections. A case in Malaysia illustrates this. The case in Belize illustrates this legal principle on a grander scale. These indigenous rights common law doctrines in two developing countries could provide an example for approaches to land claims in other common law jurisdictions, and this includes the developed countries with significant indigenous populations.

²³⁷ See *supra* Part IV.

²³⁸ See *supra* Part V.

²³⁹ *Id.*