Briefing

Plunder via Violation of FPIC: Land Grabbing, State Negligence, and Pathways to Peace in Central America and the Caribbean

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This briefing provides an explicatory synopsis of tensions that emerge at the nexus of state power, corporate extraction, and struggles for Indigenous self-determination in Central America and the Caribbean. Specifically, it offers an overview of the ongoing land rights conflict taking place in Toledo District, Southern Belize, between Maya communities, the Westminster-modelled Government of Belize (GoB), and extractivist corporations. In doing so, we draw from both on-the-ground realities and recent human rights reports to illustrate how violations of Free, Prior, and Informed Consent (FPIC) in conjunction with state refusals of the duty to consult are facilitating the damage, dispossession, and plunder of Maya lands. The piece concludes with a series of key questions and cogent solutions that are oriented towards correcting historical wrongs, contemporary injustices, and creating pathways towards peace in Belize and beyond.

Gaining independence in 1981 makes Belize, formerly “British Honduras” and currently a constitutional monarchy whose head of state remains the Queen of the United Kingdom, one of the youngest members of the Caribbean Community. Rather uniquely, Belize is at once a part of Central America and the Caribbean. Notably, Central America remains one of the most dangerous places in world vis-à-vis the repression of environmental activists and killing of land defenders, the vast majority of whom are Indigenous. This means it is not insignificant that the GoB has agreed and is party to a multitude of conventions aimed at protecting and preserving human rights. These include the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights; and the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, the GoB has articulated its support for the adoption of both the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Since the nation-state’s postcolonial advent, however, the Westminster-modelled governance system that constitutes the GoB has adversely affected, routinely and for decades, the Maya
people of the Toledo District, Southern Belize (Gahman et al., 2020). That is, whilst the aforementioned human rights instruments continue to be recognised by the GoB on paper and in prose, in practice, a different story emerges. The GoB has and continues to fail to protect the rights of the Maya as Indigenous people on a host of fronts. These include, inter alia, collective land ownership, freedom from racial discrimination and of religious and cultural practice, equality before the law, and their right to self-determination (Maya Leaders Alliance [MLA], 2018).

In short, Indigenous life in Belize is equally being negatively racialised, as well as has been both hampered and harmed by the discriminatory behaviour of the GoB. Foreign capital, state functionaries, and corporate investors continue to respectively be allowed to encroach upon, offer concessions to, and extract resources from lands they have no rights to (Campbell & Anaya, 2008). Consistently, this is being carried out in the name of economic “development.” On material, economic, and environmental levels, land grabbing and resource expropriations of this nature damage both Maya communities and livelihoods. On psychosocial, cultural, and spiritual levels, they disrupt the relationships and uses the Maya enjoy with the territories and ecosystems they and their ancestors have lived in for generations. Notably, GoB-sanctioned acts of dispossession are occurring without the FPIC of the Maya villages that are being impacted (Anaya, 2008). FPIC is the right Indigenous people have to refuse/permit development projects that may adversely impact their communities or ancestral lands. Whilst an aspect of safeguarding and self-determination, FPIC is a highly contested, imperfect, and politically loaded premise and process that, whilst oft-necessary, legitimises both the state and Western worldviews.

**Violations of FPIC and the Duty to Consult**

Documented GoB violations of FPIC against the Maya have been ongoing for decades (Anaya, 2008). In 1994, without having either consulted any communities or followed ancestral protocols apropos consent, the GoB requisitioned over 40,000 acres of traditional Indigenous land. It was turned into the Sarstoon-Temash National Park (Purvis, 2013). Subsequently, the GoB opened the newly minted public land to oil exploration by U.S. Capital Energy Belize Ltd, a domestic subsidiary of the American corporation U.S. Capital Energy Inc. (Etchart, 2019). The legitimacy of these actions was promptly challenged by Maya activists in national (Supreme Court of Belize) and international (Inter-American Commission on Human Rights) bodies. The decisions rendered by each entity—issued in multiple instances over a sequence of years—have been as explicit as they are definite. As Purvis (2013) reports:

First the (IACHR) in 2004, and then the Supreme Court of Belize in 2007 and 2010 instructed Belize to abstain from oil exploration in Toledo. These bodies concluded that the Belize government must recognize Maya collective land ownership in Toledo and obtain the free, prior and informed consent of Maya communities before awarding concessions.

Afterwards, in 2015, following 30 years of grassroots organising and a protracted series of litigations in domestic and intraregional courts, the Maya were granted an unprecedented legal victory in the Caribbean Court of Justice (CCJ). The CCJ judgement confirmed that the Maya communities’ communal land ownership systems are equal in status to any property rights upheld by the constitution of Belize. This set a precedent in the region for the recognition of Indigenous people’s land rights. Since these decisions, the GoB has been persistent in non-compliance, as well as absconded from the processes of delimiting, demarcating, titling, and otherwise protecting Maya lands as was ordered by the CCJ (MLA, 2018).

The GoB’s refusal to adhere to FPIC directives from the CCJ Consent Order and the Supreme Court appreciably deprives the Maya of the right to self-determination. State negligence related to duty to consult (i.e., the obligation a government has to engage with Indigenous communities about projects that will affect their lands)
similarly weakens the protections the Maya are entitled to as Indigenous people according to the various international declarations and resolutions mentioned at the outset. Following the introduction of the GoB’s Toledo Maya Land Rights Commission (TMLRC) in 2016, there were no meaningful plans implemented by the GoB to delimit, demarcate, or title land according to the terms and preferences of the Maya communities. The TMLRC is the government body that was created to make good on the 2015 CCJ order.

In addition, in March 2016, the GoB Ministry of Economic Development, Petroleum, Investment, Trade, and Commerce granted a 1-year extension of an oil concession in Maya territory to U.S. Capital Energy Ltd without following FPIC protocols (Amandala News, 2016). Later, in a 2017 follow-up CCJ hearing, the TMLRC proclaimed that, “it does not see the demarcation and documentation process as being within its mandate of work, and it does not expect the development of such a process to occur for several more years.” A human rights report submitted to the ICCPR in September 2018 by the Maya Leaders Alliance, an autonomous social movement comprised of Indigenous organisers, is indicative of the impunity with which the state acts:

In January 2016, the government established the Toledo Maya Land Rights Commission under the authority of the Belize Attorney General as the government’s mechanism to implement the CCJ Consent Order. The TMLRC... was tasked with developing a draft implementation plan by 30 June 2016. The plan has not been completed.

State Negligence, Equivocation, and Impunity

Although there have been direct orders from the Supreme Court of Belize (2007, 2010), and more recently the CCJ (2015), the GoB continues to encroach upon Maya lands (MLA, 2018). Dismissing FPIC, as contended by critical legal scholars, is a distinct violation of human rights (Fontana & Grugel, 2016). Over the past decade, social movement scholars are arguing that FPIC violations constitute a form of “slow violence” (Nixon, 2011). This is discernible in how profit-driven extractive activities that occur as a result of non-consultation and FPIC violations are destroying Indigenous cultural heritage and spiritual sites—as well as fracturing community/eco-system relations. The failure to engage in good faith FPIC with the Maya communities of Toledo District on the part of both the state and private capital disavows their ancestral system of communal ownership. More broadly, it breaches the Mayas’ right to self-determination as Indigenous people.

In rendering its 2015 land rights decision, the CCJ allocated US$150,000 to the Maya people for the rights violations and harm they experienced. Despite this, the GoB has since declared that this remedial money was spent on the establishment of the TMLRC, meaning the funds were not transferred directly to the Maya communities that were aggrieved. The TMLRC, again, is a state entity that did not fulfil its mandate of meaningful consultation with representatives selected by Maya communities (Penados, 2018). The TMLRC, however, did meet with non-Maya groups and select Maya individuals, although these meetings, which took place to set the parameters of the delimitation and demarcation of Maya lands, did not prove beneficial as the invited parties were not directly affected by the GoB violations in question. Further, representatives from the Toledo Alcaldes Association (TAA), an organization comprised of traditional Maya leaders (Alcaldes) from differing villages, were expelled from a TMLRC meeting—a repudiation of good faith consultation (Penados, 2018). Barring Alcaldes constitutes a denial of effective remedy, given that the process of resolution the GoB was required to engage in as a result of the CCJ ruling (and parameters outlined by the IACHR) was not guided by the terms of the Maya communities (Wickeri & Kalhan, 2010). Thus far, nothing has been done by the GoB to rectify the injustices the Maya peoples have faced.

In sum, Indigenous self-determination is effectively a non-starter for the GoB. That a Westminster-modelled state (i.e., mode of governance devised
by the British Empire) refused to acknowledge village-sanctioned Indigenous representatives during a court mandated consultation process is also telling apropos the ongoing colonial logics and liberal Western ideology with which it governs. Moreover, the GoB, which has prioritised placing itself in the service of foreign multinational corporations that are grabbing land and resources (Purvis, 2013), has continually dismissed the Maya peoples’ right to self-determination and is operating—with impunity—in contravention of numerous principles expressed in the UNDRIP.

**Necessary Questions for a Peaceful Solution**

Whilst the situation between the Maya communities and the GoB is seemingly a conflict-laden affair on account of the litany of state-sanctioned rights violations, there are numerous avenues for a peaceful resolution. Charting a course towards conflict-attenuating concrete action and eventual lasting peace, however, must begin with finding some earnest answers to a host of necessary questions. A partial list of these queries, which can be derived by looking to grassroots land defenders (MLA, 2018), are as follows:

1. Why has the GoB persisted in failing to recognise and publicly support the validity of Maya customary rights over lands and resources, in accordance with the report of the IACHR and judgements of the Supreme Court and CCJ?
2. What is preventing the GoB from acting in good faith and consulting Maya communities, on their terms and preferences, on issues of land and resource use?
3. What can be done to ensure that the GoB’s TMLRC works in partnership with the MLA and TAA to adopt meaningful consultation policies related to the court-ordered land delimitation, demarcation, and titling processes?
4. What is needed in order for the GoB to recognise Maya customary governance (the Alcaldes) and adapt the consultation framework the Maya have developed apropos FPIC?
5. What might motivate the GoB to repair the environmental damage that has resulted from logging concessions and oil leases it has offered sans FPIC on Maya lands?

Ultimately, the escalating tension resulting from land grabbing, FPIC violations, and human rights infringements on the part of the GoB and corporate extractors will persist until each is disciplined by a recognition of Indigenous sovereignty and good faith commitment to Maya autonomy. In terms of solutions, then, the most effective starting point begins with consulting the Maya communities—on their terms and preferences. Here, the onus for a fulsome peace-building process is on the state. That is, the GoB must cease from encroaching upon and/or permitting third parties to intrude into the lands of the Maya people, not to mention must acknowledge and endorse the Maya customary form of governance—the Alcaldes.

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