

‘Suddenly we have no more power’: Oil drilling on Maya and Garifuna land in Belize

By Chelsea Purvis

Key findings

- 1 Toledo District, Belize, is the ancestral land of indigenous Maya people and Afro-descendant Garifuna people. Under human rights law, the government of Belize is obliged to protect and ensure Maya and Garifuna land rights. Private businesses operating in the area also have a duty to respect these rights.
- 2 However, the Belizean government has allowed USCapital Energy Belize, Ltd to explore for oil on Maya and Garifuna land without consultation or the free, prior and informed consent of these communities. USCapital Energy Belize, Ltd has further undermined the ability of local communities to exercise their free, prior and informed consent to development.
- 3 The government of Belize must halt oil exploration in Toledo and delineate and title Maya and Garifuna lands. USCapital Energy Belize, Ltd should suspend its oil exploration immediately and resume activities only if the Belizean government obtains the free, prior and informed consent of Toledo’s Maya and Garifuna peoples.

Summary

For centuries, Belize’s Toledo district has been home to indigenous Maya people and Garifuna, an Afro-descendant people. They have relied on the natural resources of Toledo’s forests and rivers to preserve their way of life – but recently the government of Belize has allowed foreign companies to extract resources from their ancestral land without their consent.

In 1994, without consulting Toledo Maya or Garifuna peoples, the government converted almost 42,000 acres of their ancestral territory into government land, the Sarstoon-Temash National Park (STNP). The government then opened the STNP to oil exploration by USCapital Energy Belize, Ltd, a wholly owned Belizean subsidiary of American company USCapital Energy, Inc. (together referred to as US Capital in this briefing).

The legality of these actions has been challenged by both national and international bodies. First the Inter-American Commission on Human Rights (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. The government of Belize has refused to comply with these decisions, however, and recently awarded US Capital a permit to begin drilling in Toledo.

Meanwhile, Maya and Garifuna residents argue that US Capital has campaigned aggressively to build its popularity in Toledo, interfering with their right to freely consent to development on their ancestral land. Maya and Garifuna communities fear that they will gain no benefits from oil exploration and that drilling will further damage the resources on which their survival depends.

This briefing is based on primary field research and an extensive review of relevant law. It concludes that the Belizean government must fulfil its obligations under domestic and international law to recognize and protect the land rights of indigenous peoples and minorities. US Capital should also comply with international standards on business and human rights by respecting the rights of Maya and Garifuna.

Background

Maya and Garifuna of southern Belize

Belize is a small Central American country located between Mexico and Guatemala. Formerly British Honduras, Belize became independent from the United Kingdom in 1981. Maya people are indigenous to Belize and have lived in the area for 4,000 years.¹ The Mopan and Q'eqchi' groups of Maya permanently settled in Toledo by the 19th century. There are 40² villages of Mopan and Q'eqchi' Maya in Toledo District, which lies in Belize's far south. Toledo is also home to one village of Garifuna people, who identify themselves as Afro-indigenous: they are descended from Africans and indigenous Carib-Arawak.³ Garifuna have lived in Belize for over 200 years, in distinct communities where they observe their traditional cultural practices.⁴

Maya and Garifuna peoples in Belize are dependent on local natural resources to practise their culture and support their livelihoods. While Maya specialize in a subsistence agriculture known as *milpa*, a form of shifting cultivation,⁵ Garifuna have traditionally engaged in subsistence fishing and small-scale farming.⁶ Both groups have depended on the land and natural resources not only for their physical and economic survival, but also for the continuation of their spiritual lives and unique cultures.⁷

Upon colonization, however, the British government suppressed indigenous cultures and livelihoods. Foreigners controlled and exploited the vast majority of land for logging and cash crop farming.⁸ By independence, the indigenous peoples of Toledo found themselves economically and socially marginalized in an export-based economy, with land and other natural resources increasingly scarce.⁹ Today, Toledo is Belize's most impoverished and marginalized district,¹⁰ while Maya and Garifuna now have some of the lowest incomes and highest unemployment rates in the country.¹¹

Discrimination against indigenous peoples in Belize is further compounded by gender inequalities. Maya women's high rates of poverty, particularly when they are single heads of households, are a leading cause of violations of their rights.¹² Afro-descendant women in the Americas, like Garifuna women, experience intersecting discrimination based on their gender, poverty and identity as Afro-descendant.¹³ Both groups of women experience limited access to health care.¹⁴ Throughout the Americas, indigenous and Afro-descendant women face barriers in accessing justice, including when they have been victims of violence.¹⁵

The economic basis of the survival of indigenous groups is increasingly under threat. The state provides no financial support for Maya or Garifuna farmers to practise their traditional farming.¹⁶ Furthermore, since the 1990s, the government has granted logging concessions to foreign companies covering hundreds of thousands of acres of land in Toledo. These concessions have impacted heavily on indigenous communities and their way of life.¹⁷

Against this backdrop of rights violations, indigenous groups in Toledo now face acute challenges to their culture, society and traditional livelihoods. Several organizations advocate on behalf of Maya and Garifuna in the area. These include the Sarstoon Temash Institute for Indigenous Management (SATIIM); Maya advocacy umbrella organization Maya Leaders Alliance (MLA); the Toledo Alcaldes Association (TAA), an association of traditional Maya leaders; and the National Garifuna Council of Belize. They say that now, more than ever, access to land and natural resources is critical for the survival of Toledo's Maya and Garifuna peoples.

International standards on resource extraction

Under international law, the government of Belize is obliged to protect and ensure the human rights of its indigenous and Afro-descendant peoples, including their land rights. Pursuant to the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights,¹⁸ Belize must 'preserve, protect and guarantee the special relationship that [indigenous groups] have with their territory'.¹⁹ Belize is also obliged to protect the rights of its minorities and indigenous peoples, including Maya and Garifuna communities, under the International Covenant on Civil and Political Rights (ICCPR)²⁰ and the Convention on the Elimination of All Forms of Racial Discrimination.²¹

International Labour Organization Convention No. 169 enshrines the right of ownership to indigenous and tribal peoples over their traditionally occupied land. It obliges governments to formally recognize and protect their land rights, consult them when extracting natural resources from tribal lands, and seek their consent when considering legislative or administrative measures that may affect them directly.²² Although Belize is not a party to this convention, the IACHR views it as 'a relevant factor in interpreting Inter-American human rights norms'.²³

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognizes indigenous peoples' right to traditionally owned or occupied lands, obliges states to formally recognize and protect these lands, and requires that states consult with indigenous communities 'in order to obtain their free, prior and informed consent prior to the approval of any project affecting their lands or territories and other resources'.²⁴ UNDRIP does not legally bind states directly, but both the IACHR and the Supreme Court of Belize consider it accurately represents international legal guidelines in this area.²⁵ The government of Belize voted in favour when the UN General Assembly adopted UNDRIP in 2007.

When extractive activities such as oil exploration are carried out within the territories of indigenous peoples, 'Indigenous peoples' free, prior and informed consent is required, as a general rule,' states the Special Rapporteur

on the rights of indigenous peoples.²⁶ The Inter-American Court of Human Rights (IACtHR), in its case law, has made it clear that states must seek the full consent of indigenous communities and Afro-descendant communities when a large-scale project will have a major impact on community resources.²⁷ When a state wishes to permit resource extraction on the ancestral land of an indigenous community, it must ‘ensure the effective participation of the members of the [community], in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan’.²⁸ It must also guarantee that an autonomous organization with the necessary capacity performs – with guidance and supervision from the state – an environmental and social impact assessment (EIA) in full consultation with the indigenous group. In addition, it must negotiate a benefit-sharing arrangement with the affected community and make special efforts to ensure that minority women are included in decision-making.²⁹

These rights apply not only to indigenous communities, but also to Afro-descendant communities such as Garifuna people, whom the IACHR considers tribal peoples with the same rights to their traditionally occupied land as indigenous peoples.³⁰ Moreover, as ethnic minorities, Garifuna people have the right to participation in decision-making. This right is based in instruments that directly bind Belize, including the ICCPR.³¹ The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities affirms that minorities have ‘the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live’.³² For participation to be meaningful and effective, minorities must have access to information so that they can make informed decisions, and this must be transmitted in ways that are relevant to them, including in their own languages.³³

Furthermore, under the UN ‘Protect, Respect and Remedy’ framework, corporations have a responsibility to respect human rights.³⁴ They should not rest on compliance with state laws and policies if these fall short of international standards.³⁵ To fulfil their responsibility to protect the rights of indigenous peoples and minorities, corporations ‘must exercise due diligence to mitigate power imbalances and avoid outcomes that are not compliant with human rights standards’, according to the Special Rapporteur on the rights of indigenous peoples.³⁶ For example, if a state has failed to officially recognize (through demarcation or land titling) indigenous communal ownership, a corporation must exercise due diligence and conduct its own assessment of the rights of indigenous communities under international law.³⁷ Extractive companies ‘should conduct due diligence to ensure that their actions will not violate or be complicit in violating indigenous peoples’ rights’.³⁸

Fair and adequate consultation should be at the heart of the negotiation process between extractive companies and

indigenous peoples.³⁹ ‘Necessary features of an adequate consultation or negotiation over extractive activities,’ explains the Special Rapporteur on the rights of indigenous peoples, ‘include the mitigation of power imbalances’ between a company and indigenous groups.⁴⁰ Adequate consultation requires that indigenous communities have full access to information gathered in EIAs, and that they have the opportunity to participate in these assessments.⁴¹ Consultations and agreement with indigenous peoples should take place *prior* to the state authorizing, or the company undertaking, any activity within indigenous territory – including exploratory activity.⁴² Consultations should not ‘be bound to temporal constraints imposed by the State’.⁴³ Finally, adequate consultation requires the ‘assurance of indigenous peoples’ participation through their own representative institutions’.⁴⁴ According to the UN Global Compact, businesses should not ‘interfere in indigenous governance processes by politicizing a project or offering special benefits to politically powerful groups or individuals to gain support’.⁴⁵ The perspectives of women and marginalized groups should always be taken into account during consultation.⁴⁶

Businesses have a duty to communicate potential human rights impacts to affected individuals or groups as quickly and directly as possible.⁴⁷ All communications must be accurate and honest; communications that are ‘obviously an exercise in obfuscation or self-promotion’ do not qualify.⁴⁸ When businesses have caused or contributed to human rights impacts, they should also provide remediation to affected groups.⁴⁹

Oil exploration in the Sarstoon-Temash National Park

In 1994, the government converted an area of nearly 42,000 acres between the Temash and Sarstoon Rivers into state land, the Sarstoon-Temash National Park (STNP). The Sarstoon-Temash area is composed of broadleaf, wetland and mangrove forest and encompasses 13 different ecosystems. It is home to plant species and ecosystems found nowhere else in Belize.⁵⁰

Five Maya villages and one Garifuna village border the STNP: Graham Creek, Conejo, Crique Sarco, Midway, Sunday Wood and Barranco. For centuries, members of these ‘buffer communities’ have accessed the Sarstoon-Temash area to hunt, fish, and collect building materials and traditional medicines. Contravening international law and practice, the government did not consult with these villages when converting their ancestral land into a park. In fact, the communities did not even discover that the area had been turned into a park until three years after the fact.⁵¹

Nevertheless, buffer communities have worked in good faith with the government to conserve the park. SATIIM, on behalf of Garifuna and Maya communities, entered into

a co-management agreement with the government and took over day-to-day management of the park. Maya and Garifuna rangers patrol the park to monitor its health and protect against poachers.⁵²

Maya communities also managed to reach an agreement with the government to protect their lands. In 2000 the government signed the Ten Points of Agreement between the Government of Belize and the Maya Peoples of Southern Belize, which ‘recognizes that the Maya People have rights to lands and resources in southern Belize based on their long-standing use and occupancy’.⁵³ The government and Maya communities agreed to work together to ensure the sustainable management of natural resources within Maya traditional land use areas, with equitable distribution of their benefits among Maya communities.⁵⁴

In 2001, however, communities were shocked to discover that the government had agreed to allow an American oil company to begin exploring for oil in the park. Belize entered into a production-sharing agreement (PSA) with US Capital to explore for oil in the area that covers the STNP and surrounding communities.⁵⁵ This was again undertaken in violation of international law, without consulting Maya and Garifuna communities or seeking their free, prior and informed consent.

Government violation of land rights decisions

Maya communities of Toledo in 1996 filed a claim in the Supreme Court of Belize challenging various government concessions over their land and seeking legal recognition of their customary land rights. Domestic litigation was prolonged by government failures to appear and produce documents. Maya communities responded to this delay by seeking assistance from the IACHR: in 1998, they submitted a petition asking it to mediate a settlement between the communities and the government or, if no settlement could be reached, to declare Belize responsible for violating the human rights of Toledo’s Maya people.⁵⁶

In 2004, the IACHR issued a report recognizing Maya people’s collective rights to land traditionally used and occupied in Toledo. The IACHR found that the government had violated Maya people’s right to property enshrined in Article XXIII of the American Declaration on the Rights and Duties of Man, and the right to equality enshrined in Article II of the American Declaration, by failing to consult with them and seek their informed consent before granting logging rights and oil concessions on their ancestral land. It recommended that the government delimit, demarcate and title Maya ancestral land.⁵⁷ The government of Belize failed to implement the IACHR decision, however, taking the position that the decision was not legally binding in Belize.

In 2007, two villages – Santa Cruz and Conejo – challenged the government’s failure to recognize, respect

and protect their customary land rights by taking a case to the Supreme Court of Belize. The Supreme Court ruled in the communities’ favour, finding that (1) indigenous Maya people have interests in their collectively held traditional lands and (2) that these interests are protected under the Constitution of Belize. The court ordered the government to recognize Maya land rights, demarcate and title their land, and cease and abstain from interfering with their right to property.⁵⁸ The government never appealed this decision. In 2010, all Toledo Maya villages returned to court to clarify that the 2007 judgment applied to Maya throughout Toledo. The court affirmed the 2007 decision and issued an injunction prohibiting further concessions throughout Toledo.⁵⁹

In spite of this clear legal message, the government ignored the decisions of the IACHR and its own Supreme Court. Violating the 2007 and 2010 injunctions, the government awarded US Capital a new permit for seismic testing in late 2011.⁶⁰ Prime Minister Dean Barrow announced he had a ‘drill we will’ approach to Toledo.⁶¹

Andre Cho, Director and Inspector of Petroleum for Belize, was the only Belize government official willing to speak with MRG about the government’s policy on Toledo land rights. He denied that the STNP is Maya land. Furthermore, he incorrectly stated that ‘if a company wants to go onto Maya land, it [just] needs to ask permission [from] the [village] chairman and alcalde’.⁶² Contrary to Cho’s suggestion, in Maya culture leaders cannot enter into binding agreements with corporations on behalf of their communities without the consent of the majority of their community members.⁶³ More fundamentally, under the Supreme Court and IACHR decisions, the Belize government cannot allow companies to interfere with Maya land rights without legally recognizing and delimiting their traditionally occupied land, which includes the STNP.

Social and environmental effects of seismic testing

In 2010, 2011 and 2012, US Capital conducted seismic testing in and around the STNP. This controversial form of oil exploration, in which explosives are detonated underground, generates seismic waves to map an image of a subsurface area. The company set up its base of operations in tiny Barranco, home mostly to elderly retirees. Community members woke up one morning to find that over 100 US Capital workers had come to the village – ‘like a thief in the night’, recalls a Barranco resident.⁶⁴ Staff flew a helicopter in and out of the settlement, while trucks tore up the already poor roads: the company’s efforts to repair them, community members complain, left them barely usable. Niall Gillett, public relations consultant for US Capital, says that Barranco residents had notice before the company’s arrival, and that logging companies are responsible for damaging the roads.⁶⁵

Other villages claim that the company caused significant damage and disruption. The opening up of the seismic line in Conejo village, for example, is estimated to have caused or threaten in the near future between BZ\$25,000 and \$50,000 in lost natural resources.⁶⁶ SATIIM alleges that US Capital employees caused a serious fire in the STNP that ‘destroyed more than 300 acres of forest and the unique ecosystem of sphagnum moss which is the last of its kind in the Central American region’.⁶⁷ Trail-cutting made the park easier to access and led to increased illegal clearance.⁶⁸ ‘Neither US Capital nor the government of Belize has paid for this damage,’ says Gregory Ch’oc, Executive Director of SATIIM.⁶⁹

US Capital undermining free, prior and informed consent

Maya and Garifuna residents of Toledo argue that US Capital has engaged in aggressive campaigning to increase its popularity. ‘Because of the court case, the company learned that it was a mistake to rush in like they did’ during seismic testing, a Barranco resident believes. ‘So they changed tactics and now are building a presence here. They’re working their way in, getting people on their side.’⁷⁰ US Capital has made unrealistic promises of employment, provided large gifts to communities, aired radio advertisements, visited communities frequently without sharing accurate information, and lobbied traditional leaders. Furthermore, community members feel that the company has intimidated critics by rewarding those who support oil drilling and marginalizing those who do not. By engaging in this behaviour, US Capital has interfered with Maya and Garifuna communities’ right to exercise their free, prior and informed consent to development on their ancestral land.

Unrealistic promises of continued employment

Businesses should respect human rights by providing accurate, honest information about the benefits and risks of their activities for affected indigenous and minority communities. This way, communities can exercise free, prior and informed consent in authorizing any development activities on their ancestral land. Maya and Garifuna in Toledo, however, say that the company has misled them into believing that it will provide long-term jobs for many people in the communities, when in fact it can provide only a few short-term jobs for manual labourers.

Seismic testing required large numbers of unskilled labourers for clearing and blasting. US Capital hired dozens of Maya and Garifuna men, paying them slightly above minimum wage. In this deeply impoverished area,

explains a Barranco resident, ‘many people had never seen that kind of money’.⁷¹ However, US Capital cannot employ significant numbers of Maya and Garifuna during the subsequent phase of oil drilling. This activity is performed by skilled technicians, so only a handful of labourers will be required from each Maya and Garifuna village – and only temporarily. ‘When it comes to drilling, you hire way less people [than for seismic testing], probably not more than 20 people,’ explains Cho. ‘If it takes a month [to drill a well], it’s done – not long-term jobs. That’s how it works.’⁷²

Gillett insists that the company has always been open about this. ‘In community meetings – and I’ve conducted many – we’ve made it clear’ that US Capital cannot employ everyone, he says.⁷³ Maya and Garifuna people interviewed, on the other hand, have a very different perspective. Many said that the company has led them to believe it will continue to employ villagers during the next phase of oil exploration. ‘The company has promised jobs, and people want them,’ said a resident of Midway.⁷⁴ Even people from villages outside buffer communities believed that US Capital would employ them. Residents of Santa Cruz, Columbia and San Antonio villages say that representatives have visited their communities and promised employment.⁷⁵

Several people complained that US Capital stirs up unrealistic hopes of employment by visiting villages and generating excitement about the possibility of jobs with the company. ‘They create a network of rumours,’ says a Barranco community member. ‘When a staff person drives into town, people get excited – people say, “The company’s here! That means we’ll start work soon!” But no one has all the information.’⁷⁶

The author visited Toledo in spring 2013 and observed US Capital staff visiting villages. According to residents in Conejo, Midway and Crique Sarco, staff told them that they were collecting the social security numbers of local residents. This created the impression that US Capital was preparing to employ the villagers.⁷⁷

When questioned about this activity, Gillett admitted that some numbers had been collected and said that the lists were indeed in preparation for potential future employment. ‘No one can say specifically how many jobs, how many people,’ he acknowledged.⁷⁸ He criticized the leaders of Crique Sarco for refusing to sign the social security list – but then admitted that there were actually no jobs available at this time for residents.

In deeply impoverished, underserved communities, promises of long-term work are powerful incentives for people to support US Capital. When interviewed, employment was the most important reason that community members listed for supporting US Capital. By creating misplaced hopes of employment, therefore, US Capital is undermining the ability of communities to make a clear and meaningful decision about the benefits of their ancestral land being developed.



A HEALTH CENTRE BUILT BY US CAPITAL IN MIDWAY. CHELSEA PURVIS/MRG.

Contributions and advertising

US Capital has made highly visible contributions to communities, such as constructing public buildings and donating computers to schools and libraries. This has created the impression that US Capital will invest in Toledo's communities over an extended period, although it currently has no plans to do so. Like promises of long-term employment, these contributions undermine the ability of communities to exercise free, prior and informed consent. Furthermore, by building and upgrading public infrastructure, US Capital politicizes its work and demonstrates its resources and influence, exacerbating the power imbalance between the company and communities.

For example, throughout Toledo – even far outside of the buffer village area – US Capital has repainted public schools, community centres and libraries in its signature yellow and green colours. It also delivered oil barrels carrying US Capital's logo to serve as rubbish bins in villages. In addition, US Capital built the second floor of a school in Crique Sarco; a library in Sunday Wood; and a small health post in Midway. The company has also made contributions to villages far from previous company activity. All projects, even public buildings, bear large company logos and slogans such as 'Working for the Community' and 'Energy That Becomes Life'. US Capital has also engaged in direct advertising, with a 30-second advertisement for the company on a Mayan language radio station.⁷⁹

Gillett says that US Capital is required by the government of Belize to make contributions,⁸⁰ but communities do not appear to know this. Nor are they aware that if US Capital discovers oil, it could potentially qualify its contributions as operational expenditures and thus deduct them from royalties owed to the state.⁸¹ Instead, communities view the contributions as charitable gifts. Victoriano Ackpop, Alcalde of Graham Creek, recalls his village's response when two US Capital staff people visited and promised to build a school in the village. 'The company said, "Because we're working here, we want to help you like we did in Crique Sarco." Everyone in the village was supposed to get a job working on the school.' Graham Creek has many Guatemalan Maya residents without permission to work. 'Everyone was supposed to get a job to build. I asked, "The Guatemalans too?" "Yes!" they said "Everyone will get jobs. All of you need to eat."⁸²

In this impoverished district, where the government has failed to provide much-needed infrastructure and social services, many see US Capital's contributions as promises that the company will invest long-term in the region. A resident of one buffer village, for example, pointed to US Capital's contributions as evidence of how the company was committed to supporting her community. The company has no current plans to do so, however. 'At this point, it's all short-term,' says Gillett. 'If the company doesn't find oil it doesn't want to do long-term work, because it will leave.'⁸³ Nor is the company's investment, as

it stands, likely to have a durable benefit for the community without a sustained commitment of resources. The company is not providing staff for any of the buildings it has constructed or painted, for instance, and it has not provided equipment for these buildings beyond the donated computers.⁸⁴

Not only do US Capital's contributions create unrealistic expectations among local residents, they also exacerbate the power imbalance between the company and communities. By painting its slogan on public buildings and road signs, US Capital inappropriately demonstrates its close relationship with the government of Belize.

Visiting communities without sharing accurate information

US Capital has a duty to consult Toledo communities about its activities in the area, sharing accurate information about the risks and benefits to the communities. According to Gillett, the company has hired Mayan language-speaking staff and visits communities in the area 'all the time'.⁸⁵ He says that staff visit the villages regularly to inform residents about the company's ongoing programmes. However, community members themselves largely disagree. They complain that US Capital does not communicate honestly with communities: instead, staff create excitement about potential work or contributions but refuse to answer difficult questions from villagers.

Staff frequently visit villages to speak with individual leaders or community contacts. Community members try to take advantage of these opportunities to ask them about US Capital's long-term plans in Toledo. 'When we ask them questions, they write down the questions and say they'll answer them "next time". But when they next visit, they say, "We're just here to tell you that we've started this-or-that,"' says a Midway community member.⁸⁶ Enrique Makin, Chair of the Conejo Village Council, agrees. 'They don't give us all the information about what is happening or going on.'⁸⁷ Alvin Loredo, Barranco resident, founding member of SATIIM, and member of the National Garifuna Council, agrees. He feels that US Capital staff primarily visit to 'make their presence felt' in Toledo, not to share information.⁸⁸

US Capital occasionally holds community-wide meetings, but community members complain that these are biased. Raymundo Sho, former alcalde of Santa Cruz, recalled, 'The company held a public meeting in our community centre. They said, "Don't believe the rumours, we're not going to hurt the environment."' Nor did these events provide community members with answers to their questions. 'We asked how many unskilled labourers they'll need. They said, "We'll tell you later."' But they never came back to tell us.'⁸⁹

Gillett says that US Capital has 'people in the villages', because 'We have to know... it doesn't matter if oil or politics or what, you must know who's who and what's

what.' He explains that in each village, 'I already know who the supporters are and who might be against particular projects, and I have a good idea of why they feel that way. This is human nature.'

Local political lobbying

Businesses should respect human rights by recognizing traditional leadership structures, and they should not offer special benefits to powerful individuals to gain support. Maya and Garifuna community members allege that US Capital has undermined traditional leadership structures, however, by lobbying and influencing local leaders.

Each village in Toledo has an elected Village Council headed by a chair. In addition, in Maya communities two traditional leaders – the alcalde and second alcalde – work with the Village Council to govern the village. Residents of several communities complain that when US Capital visits to scout for labourers, work on projects or conduct meetings, they engage only with community leaders perceived as 'pro-company', excluding other community leaders from discussions. Gillett says the US Capital respects traditional leaders, but he admits that when the leader of Barranco opposed US Capital hosting a community meeting, the company simply went ahead and held it without him.⁹⁰

Community members further argue that leaders perceived as 'pro-company' personally benefit from close relationships with US Capital staff. In one buffer community, a resident explains that a previous leader was closely allied to US Capital. When company staff came to the village, the previous leader made agreements with the company without consulting other community leaders. 'He wanted to benefit personally,' says the resident. Company staff reportedly paid the previous leader directly for using his property during one work project.

In late 2012, Maya communities prepared to elect their traditional leaders, or alcaldes. According to the MLA and the TAA, US Capital worked to influence the results of the election by influencing leaders and contributing money to candidates perceived as pro-oil. In October 2012, Ligorio Coy – the former alcalde of Santa Ana village and a long-time advocate for Maya land rights – stepped down from his position as MLA Chair. Coy now reportedly works for US Capital.⁹¹ After the election, Coy attended the swearing-in ceremonies of alcaldes; there are allegations that he offered money to those who were newly elected. Alfonso Cal, elected President of the Alcaldes Association, became concerned that a number of members of the executive board of the TAA were influenced by US Capital. He brought this as an urgent matter of concern to all alcaldes, and it was decided by majority decision to remove those leaders who were found to be compromised.⁹²

Gillett says that allegations of bribery and lobbying are 'totally unfounded', but he acknowledged that US Capital paid for food and drinks at ceremonies for outgoing alcaldes in some villages.⁹³

Rewarding supporters and marginalizing critics

To respect the right of communities to exercise their free, prior and informed consent to development, businesses should communicate accurately and transparently, without offering benefits to powerful or vulnerable individuals. Furthermore, they should respect their right to participate in the decisions that affect them. But Maya and Garifuna community members argue that US Capital does the opposite: it engages in opaque hiring policies that reward only its supporters, and it marginalizes critics by denying them jobs and other benefits.

US Capital's hiring practices reward community members for supporting petroleum development. Instead of issuing transparent, open calls for employment, villagers say that the company sends scouts to individual contacts in villages who may then offer work to their friends and family members.

Gillett denies that US Capital shows bias in hiring workers. 'The company has a list of all eligible workers so that when we send a contractor in, they can go down the list.' He says this has been company policy since 2006 and that, while it was not possible to guarantee everyone employment, US Capital tried to be 'as fair as possible' in its recruitment. According to Gillett, US Capital liaises with what he calls 'community workers' who 'already know which people in the community want to work'.⁹⁴

However, some community members who have questioned or criticized US Capital claim that they are effectively punished for doing so – interfering with their right to freely participate in decision-making. One woman from a buffer village believes she was turned down for a job with US Capital because her family has been critical of the government's failure to consult Maya communities on development in Toledo. 'I applied for a job, but I didn't get it, and the village says it's because they think my family doesn't like the oil company,' she explains. Residents in another buffer community similarly worried that by advocating for themselves, they were jeopardizing their employment opportunities.

Government gives permission to drill – without consultation or consent

The government of Belize must protect the rights of its indigenous and minority communities. As outlined above, this includes consultation and participation, an independent EIA, a collectively negotiated benefit-sharing agreement, and the legal titling of Maya ancestral land before granting any concessions to private developers. US Capital should respect the human rights of Maya and Garifuna communities by consulting them and seeking their free, prior and informed consent for proposed

projects. Contravening international and domestic law, however, the government of Belize did not take any of these steps before granting permission to US Capital to drill. It did not recognize Maya land rights, nor did it ensure that an independent EIA was prepared with the involvement of Toledo Maya and Garifuna. Though an EIA was prepared, this was undertaken by consultants on behalf of US Capital and included no information on safeguarding the rights of indigenous peoples. The government failed to consult communities or provide them with information during the preparation of the EIA, and US Capital reportedly did not share any possible risks of drilling with communities.

No consultation or information during EIA preparation

US Capital hired an agency to prepare its EIA in 2012 and submitted it to the government on 31 August. The lengthy, technical document details US Capital's plans for oil exploration. US Capital informed SATIIM via email that it was undertaking a study only two weeks before submitting the EIA, giving SATIIM little time to contribute input. The email included only 'the provisional [terms of reference] for the study and a map of the propose[d] drill sites'.⁹⁵

Moreover, US Capital did not provide the EIA to non-governmental organizations (NGOs) and communities until mid-October – again, two weeks before the deadline for government approval (31 October). US Capital distributed only one or two copies of the EIA to each village. 'They said, "We need your views," but they only gave us two copies! And they said there was a copy online,' recalls a Barranco community member. 'There are seven people on our Village Council alone.'⁹⁶

The 300-page document is written in highly technical English. 'In the EIA, there was a lot we didn't understand,' says a Crique Sarco resident.⁹⁷ A Midway resident agrees: 'The EIA was very thick. The community didn't finish reading it. It was very difficult – most don't understand English.'⁹⁸ Neither US Capital nor the government provided translations.

US Capital claims to have consulted buffer communities during the preparation of its EIA, but its own EIA contradicts this: according to the EIA's authors, the Conejo community 'claim not to have been consulted'.⁹⁹ They also acknowledge that the Crique Sarco, Midway and Barranco communities say they want more information on the impact the project will have or wish for more consultation from the company.¹⁰⁰

The EIA further fails to contain safeguards recommended by the Special Rapporteur on the rights of indigenous peoples. It does not, for example, 'provide adequate attention to the full range of indigenous peoples' rights, the establishment of mitigation measures to avoid or minimize impacts on the exercise of those rights, benefit-

sharing and compensation for impacts in accordance with relevant international standards'.¹⁰¹ In fact, the authors of the EIA deny that SATIIM has the legal authority to co-manage the STNP.¹⁰²

In response to the government's failure to consult them, Crique Sarco, Barranco, Midway, Conejo and Graham Creek unanimously passed community resolutions appointing SATIIM as their legal representative. Each declared, 'Our community has not been consulted and has not granted our free, prior and informed consent' for oil exploration.¹⁰³

'Farcical' consultation meeting one week before EIA submission

US Capital and the government of Belize agreed to hold a single public consultation meeting on the EIA on 25 October 2012. This was the first and only time that any government representative met with the communities of Toledo to 'consult' them on oil exploration.

The meeting did not provide an opportunity for consultation, however. Only a small portion of attendees could fit inside the building where the meeting was held. The Department of Energy and US Capital gave two and a half hours of presentations, which attendees say did not explain the risks of oil drilling. When critics of US Capital asked questions, they were limited to a minute each.

Then, as Ch'oc was beginning to give a presentation on behalf of the villages SATIIM was asked to represent, Belize Chief Environmental Officer Martin Alegria grabbed his microphone and cut him off.¹⁰⁴ Maya and Garifuna organizations denounced the meeting as 'neither free nor fair'.¹⁰⁵ One attendee from Barranco described it as 'farcical' and 'like a circus'.¹⁰⁶

The government's last-minute meeting with the communities left them no real time to participate in the EIA process, undermining their right to consent. 'The point at which consultation takes place is a key factor [in determining whether communities have been effectively consulted],' explains Professor Sheldon Leader, Director of the Essex Business and Human Rights Project. 'If consultation is done at the last minute, after key decisions have already been made, this leaves communities with their backs against the wall. Last-minute consultation defeats the purpose of requirements for consultation.'¹⁰⁷ Communities made repeated requests to the government for an extension of the EIA approval deadline, noting their inability to contribute and respond to the EIA. The government denied these requests.¹⁰⁸

Permission to drill

Without conducting a single additional meeting with communities, the Ministry of Forestry, Fisheries and Sustainable Development accepted the EIA and granted US Capital's permit for oil drilling.¹⁰⁹ At a meeting with

community representatives in early 2013, a government minister said that there was 'no room for negotiation' on Maya land rights and that the government '[has] all intentions to proceed with oil exploration in the Sarstoon Temash National Park'.¹¹⁰ The Forestry Department subsequently informed SATIIM that, with the passing of a new government framework on co-management agreements, it considered all previous agreements with co-management organizations 'null and void'.¹¹¹ SATIIM refused to sign a new agreement without the consent of the buffer communities, and the Forestry Department informed SATIIM that it 'is to refrain from ... the usual park management'.¹¹² The complete absence of meaningful consultation with indigenous communities or information-sharing on the part of the government has effectively silenced any discussion on the future development of their ancestral land.

Communities return to court

As noted above, the government of Belize appealed the 2010 Supreme Court decision recognizing Toledo Maya communities' land rights and requiring the government to protect these rights. Maya communities waited nearly three years for Belize's Court of Appeal to reach a decision. After the Court of Appeal closed its summer session in June 2013, advocacy groups brought two new cases to the Supreme Court challenging the government's failure to comply with domestic and international law. In July the MLA and TAA filed suit 'to hold the government of Belize to its responsibilities and to find the government in contempt of orders issued by the Supreme Court in the Maya Land Rights cases of 2007 and 2010'.¹¹³ In late July, SATIIM filed its own lawsuit at the Supreme Court and has requested an injunction to stop US Capital from operating in STNP. 'We have concluded that the government as duty bearer ... has abandoned its obligation to protect and safeguard our constitutional rights and instead has chosen to protect the interest of US Capital Energy,' says Ch'oc.¹¹⁴

Shortly after the MLA, TAA and SATIIM filed these cases, the Court of Appeal met out of session to issue its judgment on the government's 2010 appeal. In a 2-1 decision, the court affirmed that Maya of Toledo possess rights to land and resources in the district based on their long-standing use and occupancy. The court further concluded, however, that the Supreme Court erred in finding that the Constitution of Belize imposes a positive obligation on the government to adopt affirmative measures to protect the rights of the respondents. Based on this conclusion, the Court of Appeal struck out the Supreme Court's injunction against government interference with Maya land.¹¹⁵ The MLA and TAA withdrew their contempt application based on the appeal decision. But on 29 July, over 300 leaders of Maya villages met to learn about the decision and voted to appeal to the

Caribbean Court of Justice, the court of last resort for Belize.¹¹⁶ SATIIM is continuing with its Supreme Court case. It recently adjourned its request for an injunction against US Capital and instead requested an expedited trial date.

Fear and frustration as drilling begins

US Capital is expected to begin drilling as early as November, and it is already engaging in pre-drilling activity. The company has built a 4.8 mile access road from a junction between two Maya villages and into the park, where it is constructing a 2-acre drill pad within the park.¹¹⁷ US Capital has placed a barrier on the road, and US Capital security guards are reportedly preventing Maya leaders from passing beyond the barrier unless they seek special permission from the company's distant Punta Gorda office.¹¹⁸

Maya and Garifuna communities of Toledo express great apprehension about how drilling will affect them. The government's Environmental Compliance Plan with US Capital allows the company to use the Temash River as a water source and to drill one of its four wells in the STNP. The plan notes that risks of drilling include possible risks of contamination of groundwater and soil; noise impacts; dust disturbance; impact from land use changes; and disruption to wildlife and their habitat.¹¹⁹

Many Maya and Garifuna worry about environmental contamination. A community member from Santa Cruz, who uses the river and creek for bathing, washing and fishing, fears pollution of the waterways.¹²⁰ Enrique Makin from Conejo worries about forest and soil destruction. 'This is where we farm, hunt and fish,' he explains.¹²¹ In Crique Sarco, villagers 'are afraid of getting sick and of their animals getting sick', says a resident. 'Then how will [we] make a living?'¹²² In Graham Creek, 'Our long-term

fear [is that] the soil will become dust,' says Alcalde Victoriano Ackpop.¹²³

Community members also worry that they will not enjoy lasting benefits from the oil drilling. Mr Makin of Conejo explains that he would not be satisfied by the opportunity to do temporary unskilled work. 'I don't want just me working, and my older people not working. I want all people cared for – the older people, the children.'¹²⁴

In an effort to secure some benefits, communities have repeatedly requested that US Capital establish a trust, paying Maya and Garifuna families directly for its use of their ancestral land. US Capital has refused, arguing that any benefits to Toledo communities must come through the Belize government. Prime Minister Dean Barrow has said that the government will consider turning over a small fraction of funds received from oil revenue¹²⁵ – but to the entire Toledo District, and on the condition that Maya communities do not return to court.¹²⁶

The Committee on the Elimination of Racial Discrimination has indicated to the government of Belize that the Committee 'deplores the fact that the State party appears to continue to deny customary land rights to the Maya people.'¹²⁷ The Human Rights Committee in March 2013 expressed concern about allegations that Belize was not complying with the decision of the IACHR and Supreme Court of Belize, and it instructed Belize to desist from awarding oil concessions on Maya land.¹²⁸ The IACHR recently expressed its concern about the government's continued failure to recognize Maya land rights, stating that oil exploration in Toledo without consultation would represent a violation of human rights.¹²⁹

Meanwhile, Maya and Garifuna continue to advocate for their rights in Toledo. 'We must act,' says Egbert Valencio, a Barranco resident and SATIIM Community Ranger. 'The community changes overnight when the company comes. Suddenly we have no more power.'¹³⁰

Recommendations

To fulfil its obligations under human rights law, the *government of Belize* must:

1. Recognize and protect the land rights of Maya and Garifuna peoples by delimiting, demarcating and titling Maya and Garifuna ancestral land.
2. Compensate Maya and Garifuna communities for damages caused during petroleum development and logging activities on their land.
3. Halt resource extraction in Toledo where permits were given without consultation and without the free, prior and informed consent of Maya and Garifuna; this includes US Capital's petroleum exploration.
4. Consult Maya and Garifuna communities when considering whether to issue further permits for resource extraction, and obtain their free, prior and informed consent before issuing any further permits.
5. Ensure that Maya and Garifuna communities share benefits from development on their lands.
6. Communicate all information regarding land development and concessions in Toledo to Maya and Garifuna in a manner suitable to these communities.
7. Honour its co-management agreement with SATIIM and amend the co-management agreement framework to protect the land rights of traditional users, including Maya and Garifuna communities.

To comply with international standards on business and human rights, *US Capital* should:

1. Suspend its operations in Toledo, since these operations were permitted by the government in contravention of international law and applicable domestic law.
2. Resume oil exploration only if the Belizean government obtains the free, prior and informed consent of Maya and Garifuna peoples of Toledo.
3. Engage in a constructive dialogue with representatives of Maya and Garifuna, including local advocacy organizations SATIIM, MLA and the TAA.
4. Develop and implement a comprehensive corporate social responsibility policy with a focus on respecting the rights of minorities and indigenous peoples, and conduct due diligence to carry out that policy.
5. Interact positively and transparently with affected communities through their own established local and traditional decision-making bodies, while striving to ensure that all vulnerable or marginalized groups are included in these processes.

Notes

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- 12 Committee on the Elimination of All Forms of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Belize, 2007, New York, UN Doc. CEDAW/C/BLZ/CO/4, para. 15.
- 13 See IACHR, The Situation of People of African Descent in the Americas, 2011, OEA/Ser.L/V/II. Doc. 62, para. 61.
- 14 Health care is generally inaccessible to rural Maya and Garifuna women. Some villages have government health posts, but these posts frequently lack medical supplies. Those who live in villages without health posts must travel to other villages for assistance. Women in villages without health posts must walk to neighbouring villages for pre- and postnatal care, and they must attempt to travel to Punta Gorda for hospital delivery and other emergencies. Additionally, many Maya women cannot speak English or Spanish, so when they seek medical treatment they cannot understand their physicians.
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- 16 The government offers agricultural finance loans, but Maya and Garifuna farmers explain that these are inaccessible to them, as they lack sufficient collateral and cannot afford interest payments. Smallholders with surplus products cannot easily reach markets because public infrastructure in Toledo is poor.
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- 29 *Ibid.*
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- 31 ICCPR, *op. cit.*, Art. 25. See also Report of the Independent Expert on Minority Issues, Gay McDougall, 2010, A/HRC/13/23, paras 35–51 (hereinafter McDougall Report).
- 32 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, UN Doc. A/RES/47/135, Art. 2(3). This includes the elements of free, prior and informed consent. Lennox, C., 'Natural resource development and the rights of minorities and indigenous peoples', in B. Walker (ed.), *State of the World's Minorities 2012*, London, MRG, 2012, p. 17.
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