

# CAL V ATTORNEY GENERAL (BELIZE)

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Supreme Court of Belize (Conteh CJ)  
18 October 2007  
Claim Nos 171 and 172 of 2007

**Belize – customary land rights and interests – whether held by Maya people – extinguishment – nature of Maya customary land rights and interests – constitutional protection – definition of property under ss 3(d), 17, *Constitution of Belize* – effect of international law on Maya customary rights and interests**

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## **Facts:**

The claimants brought claims to customary land rights based on the traditional land use and occupation of the Maya people over two villages, Santa Cruz and Conejo, in the Toledo District of southern Belize. The claimants alleged that, in refusing to recognise their customary land rights to their ancestral lands, the Government of Belize had violated protections accorded to them by the *Constitution of Belize* in respect of property (ss 3(d), 17), equality (ss 3, 16) and life, liberty and security (ss 3(a), 4). The claimants invoked international obligations, and made reference to the decision of the Inter-American Commission on Human Rights in *Maya Indigenous Communities of the Toledo District v Belize* [2004] IACHR Case 12.053, Report No 40/04, which had upheld the claimants' communal property rights. Against this, the Government of Belize in defence submitted that no customary land rights existed in respect of the claimed lands, or that any such customary land rights had been extinguished. Moreover, the Government argued that no regard should be had to international legal obligations and the decision of the Inter-American Commission on Human Rights.

## **Held, that Maya customary land tenure in southern Belize exists:**

1. The burden of proof lies with the claimants: [28].
2. Based on the overwhelming evidence (presented at [29]–[39]), the claimants have established the existence of Maya customary land tenure in the areas subject of the claims.

The defendants have not produced any credible argument or evidence refuting the claimants' argument and evidence: [40]–[44].

3. The Government of Belize has, in fact, recognised the existence of the Maya people's rights to land and resources in southern Belize based on their long-standing use and occupation. This recognition was by way of an agreement, signed by the Prime Minister in 2000, with several Mayan organisations: [45]–[48].

## **Held, that the members of the villages in question have interests in land based on Maya customary land tenure, and as to the nature of those interests:**

4. The evidence supports the conclusion that the members of the villages in question have interests in those villages based on Maya customary land tenure. The relatively recent dates of establishment of the villages are not necessarily determinative of or fatal to the existence of customary land tenure or interests. The evidence establishes that the Maya communities in southern Belize exist in areas that are part of the ancestral and historic territory of the Maya people since time immemorial: [55], [59], [61]–[63].

5. The nature of the claimants' rights in land based on Maya customary land tenure is usufructuary. In respect of Santa Cruz, those rights are collective; and in respect of Conejo, those rights are individual. The claimants' interests encompass rights to occupy the land, take and use its resources, farm, hunt and fish. The nature of the claimants'

customary title is communal: [67]–[68], [136]; *Amodu Tijani v The Secretary, Southern Nigeria* (1921) 2 AC 399 cited, *Alexkor Ltd v Richtersveld Community* [2003] ZACC 18 cited.

6. The acquisition of sovereignty over Belize, and later changes in sovereignty, did not displace, discharge or extinguish the pre-existing rights and interests in land. Settlement did not extinguish those rights and interests and the system of Crown grants was not brought about with a view to altering substantive title already existing: [77], [81], [84], [86], [92]; *Mabo v Queensland (No 2)* (1992) 175 CLR 1 cited, *Amodu Tijani v The Secretary, Southern Nigeria* (1921) 2 AC 399 cited, *Adeyinka Oyekan v Musendiku Adele* [1957] 1 WLR 876 cited, *Attorney General of British Honduras v Bristowe* (1880) 6 AC 143 cited.

7. The Maya people were never wholly removed from their land so as to make the land *terra nullius*, and continued to live there in fluctuating numbers, despite periods of upheaval and conflict involving the British, Spanish and Guatemalans: [79].

8. Extinguishment of rights to or interests in land should not be lightly inferred. There must be clear and plain legislative intent and action to effect extinguishment. There was nothing to support such a finding in the present case: [89]–[92]; *Mabo v Queensland (No 2)* (1992) 175 CLR 1 cited.

**Held, as to the constitutional implications of the claimants’ interest in land based on Maya customary land tenure:**

9. The claimants’ customary rights and interests in land fall within the meaning of property in the *Constitution of Belize*, ss 3(d), 17: [96]–[102]; *Maya Indigenous Communities of the Toledo District v Belize* [2004] IACHR Case 12.053, Report No 40/04 considered, *Amodu Tijani v The Secretary, Southern Nigeria* (1921) 2 AC 399 cited, *The Queen v Reyes* (2002) 2 WLR 1034 cited.

10. On the evidence, the Government’s disregard for the claimants’ rights to property does not accord with the protective regime of the *Constitution of Belize*, ss 3(d), 17. While in the present case there has been no arbitrary deprivation or compulsory acquisition of a level contemplated by the *Constitution*, the granting of interests in respect of the claimants’ land to third parties violates the protections in ss 3(d), 17: [107]–[110]; *Mabo v Queensland (No 2)* (1992) 175 CLR 1 cited.

11. The Government’s failure to recognise the Maya customary land tenure system, and particularly the failure to provide the claimants with the mechanism or protection necessary for them to exercise their rights to property fully and equally with other Belizeans, does not accord with the *Constitution’s* guarantees of equality and non-discrimination in ss 3, 16: [113]–[114].

12. The Government’s disregard of the claimants’ interests in their customary lands, and the failure to provide legal protection of those rights, seriously compromises the claimants’ enjoyment of their right to life, liberty, security and protection of the law under the *Constitution*, ss 3(a), 4: [117].

**Held, as to the Government’s international obligations in relation to the claimants:**

13. While the decision in *Maya Indigenous Communities of the Toledo District v Belize* [2004] IACHR Case 12.053, Report No 40/04 is not binding, it may be found to be persuasive in appropriate places: [22], [42].

14. In the present case, the provisions of relevant international treaties to which Belize is a party are influential factors in interpreting the *Constitution*: [126].

15. Both customary international law and the general principles of international law are binding on states: [127].

16. Given the Government’s support of the *Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, UN Doc A/RES/47/1 (2007), which embodies the general principles of international law relating to Indigenous peoples and their lands and resources, the Government will not disregard the *Declaration*: [132].