

Cultural Survival's contribution to UN Special Rapporteur in the field of cultural rights' consultation on the intentional destruction of cultural heritage as a violation of human rights

I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*, and on its website: www.cs.org. Cultural Survival has been working with the Maya Leaders Alliance in Belize since 2013 in their efforts to defend their lands and resources.

II. Uxbenka Case Study

Intentional destruction of cultural heritage is a violation of human rights, in particular cultural rights, yet Indigenous communities around the world are faced with these violations on a daily basis.

The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage defines intangible cultural heritage as “the practices, representations, expressions, knowledge, skills — as well as the instruments, objects, artefacts and cultural spaces associated therewith — that communities, groups and, in some cases, individuals recognize as part of their cultural heritage” (art. 2). Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states “The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life;” and Article 25 states, “Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.” A study by the Expert Mechanism on the Rights of Indigenous Peoples states “that concerned communities and individuals should be consulted and be able to actively participate in the process of identification, selection, classification, interpretation, preservation/safeguard, stewardship and development of cultural heritage. Furthermore, States have the duty not to destroy, damage or alter cultural heritage, at least not without the free, prior and informed consent of concerned communities, and to take measures to preserve/safeguard cultural heritage from destruction or damage by third parties.”¹ The case of Uxbenka Archaeological Site in Santa Cruz village, Toledo, Belize demonstrates how the destruction of cultural heritage impacts the inalienable right to self-determination.

Background

In 2007, after decades of fighting through domestic and international court systems, the Maya of southern Belize won ownership of their customary lands and the right to protect said lands. The Caribbean Court of Justice (CCJ), the highest appellate court in the region, determined that the Maya of Southern Belize enjoy property rights in accordance with their traditional land tenure

¹E. (n.d.). Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage. Retrieved June 10, 2016, from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/185/41/PDF/G1518541.pdf?OpenElement>

system. Despite multiple appeals by the government of Belize, the CCJ has twice upheld this ruling, most recently in April 2015.

However, on June 24, 2015, thirteen Maya leaders from southern Belize were arrested for alleged unlawful imprisonment, including prominent Mayan rights defender Cristina Coc. The charges stemmed from their detainment of a man who was illegally building on the Uxbenka Archaeological Site in Santa Cruz village. The non-Maya man, Mr. Rupert Myles, bulldozed significant portions of the sacred site, which led the Santa Cruz alcaldes to seek police intervention. Their calls for help were ignored, and they took action themselves. Myles' detainment followed customary Mayan law and he was later released. Four days later the police raided the village, accused the Maya leaders of wrongdoing, and arrested them.

Coc has served as spokesperson for the Maya Leaders Alliance for the last decade. She has been a central voice and key figure in the fight to protect Maya lands, and is well respected among the Maya community. Having no role in the physical detainment of Myles, the charges against her demonstrate Belize's overt discrimination and propensity to criminalize Indigenous leaders. Her crime is not assault; rather, she is guilty of being an outspoken advocate for the rights of her people and their lands.

The incident caused a maelstrom in the community and across Belize. Comments made by the president ignited passions along ethnic lines. Eleven of the thirteen leaders are presently standing trial; a trial that has been adjourned nine times in the last year due to lack of evidence.

Cultural Rights Violations

UNDRIP Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

UNDRIP Article 11.1: Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

According to the UN Declaration on the Rights of Indigenous Peoples, which Belize voted for in 2007, the Maya have the right to protect past manifestations of their culture such as the Uxbenka Archaeological Site. In addition, in 2015, the CCJ ruling gave the Maya customary ownership of their communal lands in Santa Cruz and across the Toledo district of Belize. It officially gave them the right to determine how to use their traditional territory. Maya customary law, which forms part of the law of Belize, requires that people apply for residence in the village. Myles at no point applied for residency.

In 2014, Myles began building a house on the sacred Uxbenka site without any permission or authority. The Maya authorities alerted the Punta Gorda Police, the Belize Defense Force and the Belize Institute of Archeology about the situation, but Myles continued construction, causing

irreparable damage to the sacred site by bulldozing a road to the structure. In May 2015, a letter was sent to the Belize Institute of Archaeology (NICH) from the Director of the Uxbenka Archaeological Project, in which he expressed his concern that Myles had: "bulldozed into the archaeological platform (...). He has also built new buildings, and has burned vegetation to the very edge of the steel plaza, further endangering the ruin. The bulldozing activity has irreparably damaged the platform."

Uxbenka, as a part of Santa Cruz village, is protected under UNDRIP and the CCJ ruling. International law dictates that the Maya of southern Belize own this land and have the right to maintain and protect it from outside agitators like Myles. Uxbenka is also officially listed as an archaeological site by the Belize Institute of Archaeology, which means that the Government of Belize has a responsibility to protect it from destruction. The government has thus far failed to respect international law and defend Mayan cultural heritage..

UNDRIP Article 11.2: States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

The April 2015 CCJ ruling required the Government of Belize to work with the Toledo Alcaldes Association (TAA) and the Maya Leaders Alliance (MLA) to demarcate Mayan customary lands. It stipulated that 12 months later the parties would be required to report on the implementation process. The court also awarded damages to the Maya people in compensation for the moral and physical harm wrought by the bulldozing of crops and destruction of rainforests and watersheds caused by outside concessions granted by the State for logging, oil exploration, and other development without the Free, Prior and Informed Consent of Maya communities.

This was a momentous victory for the Maya of southern Belize, but one that was short-lived. Just a month later the community was thrust back into legal turmoil after the Santa Cruz incident. To date, no progress has been made on demarcating traditional Mayan lands or protecting their cultural rights. To the contrary, the progress of the CCJ decision has been obfuscated by the government's reaction to Myles' detainment. The government criminalized the Mayan leaders by charging them with unlawful detainment and later assault. It has attempted to delegitimize the Maya and their rights by publicly demonizing them, claiming that Myles was targeted for his race as a non-Maya black man. Over a year later he has yet to be evicted, and his structure still stands atop the Uxbenka site. These actions deny the Toledo Maya their self-determination. They imperil not only the Uxbenka site, but also intangible cultural heritage associated with the enjoyment of their communal lands, free from interference.

UNDRIP Article 34: Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

According to the CCJ decision, Mayan customary law comprises part of the laws of Belize. The court's ruling and UNDRIP protect the right of the Toledo Maya communities to carry out justice and protect themselves in accordance with their traditions.

After ignoring several eviction requests, Myles was asked to attend a *fajina*, a traditional community meeting, in Santa Cruz. He disrespected the village leaders by speaking out of turn and became threatening when repeatedly told to return to his seat and wait his turn. The situation continued to escalate, so the alcaldes decided to detain Myles in order to protect the community. He was released after signing an agreement to remove his structure from Uxbenka.

Four days later, on June 24, 2015, Belize Defense Force police raided Santa Cruz and arrested a dozen village leaders. They were charged with the unlawful arrest of Myles. Belizean President Dean Barrow commented on the situation, calling the treatment of Myles was "outrageous" and "absolutely intolerable." Yet when asked by the media about the illegal destruction of the sacred site by Myles, Barrows said he was unaware.

The Santa Cruz village leaders acted on their right to self-determination, to protect themselves and their cultural heritage. International and domestic laws give them the right to practice customary justice, yet they were criminalized and arrested for doing so. President Barrow demonized the entire Mayan community with his statements while ignoring the responsibility his government had to that community. The Mayan leaders rightfully stand by their actions in defense of their culture from outside agitation. However, a sacred cultural site has been irreparably damaged. More than a year later, mothers and fathers still do not know if their trumped up charges will take them away from their families. The entire Mayan community is living with a criminal stigma, as their traditional ways of life are being attacked rather than defended.

III. Recommendations:

- Cultural Survival calls on the Government of Belize to:
 - Acquit the remaining Santa Cruz villagers and absolve them of any wrongdoing
 - Demarcate and respect customary Mayan lands in coordination with the Mayan villages of southern Belize
 - Pass legislation that specifically protects human rights and environmental defenders

- Consider UN Expert Mechanism On the Rights of Indigenous Peoples' Study on the Promotion and Protection of the Rights of Indigenous Peoples with Respect to their Cultural Heritage: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/30/53
As well as contributions submitted to the study:

<http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Studyonculturalheritage.aspx>