ALTERNATIVE REPORT TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)

REVIEW OF THE PERIODIC REPORT OF THE UNITED STATES OF AMERICA

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The **Sarstoon Temash Institute for Indigenous Management (SATIIM)** is a community-based environmental and human rights organisation working in southern Belize, in a region of the Toledo District bounded by the Sarstoon River and the Temash River. In accordance with Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, four indigenous communities of the Sarstoon Temash Region (Midway, Crique Sarco, Graham Creek and Conejo) passed village resolutions in 2012 electing and authorizing SATIIM to act on their collective behalf to safeguard their rights and interests. In this role, SATIIM has been at the forefront of a litigation and advocacy campaign seeking to oblige the Government of Belize and international corporations operating in the country to fully comply with their obligations under domestic and international law to respect the rights of indigenous peoples.

The **Maya Leaders Alliance (MLA)** is an umbrella organisation which represents the rights of the Maya villages in the Toledo District of Belize. It is composed of leaders from a variety of Maya organisations. These organisations include the Toledo Alcaldes Association (TAA), formed by the *alcaldes* (traditional elected leaders) of all Maya villages in the Toledo District.

Minority Rights Group International (MRG) is an international non-governmental organisation working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organisations in nearly 50 countries. MRG has consultative status with the United Nations Economic and Social Council, observer status with the African Commission on Human and Peoples' Rights and registration as a civil society organisation with the Organization of American States.

The **Indigenous Peoples Law and Policy Program (IPLP)** at the James E. Rogers College of Law, University of Arizona is an educational and advocacy organization that offers legal assistance to indigenous peoples and their communities, and trains lawyers and advocates. IPLP Program faculty, staff and students advise or directly represent indigenous communities in matters before domestic courts and international human rights forums.

I. Introduction

1. This submission focuses on the failure of the Government of the United States to fulfil its obligations under Article 2, paragraphs 1(d) and 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination. Specifically, the Government of the United States has failed to regulate the economic activities carried out by transnational companies registered in its territory, resulting in ongoing violations of the rights of indigenous peoples outside of the United States. This submission draws in particular on the Government of the United States's failure to regulate the activities of US Capital Energy Belize Ltd ("US Capital") and to mitigate the adverse effects of these activities on the Q'eqchi' Maya people of southern Belize.

II. State Accountability for Corporate Wrongdoing

2. In its concluding observations on the fourth, fifth and sixth periodic reports of the United States, this Committee noted with concern the reported adverse effects of U.S. registered transnational corporations' economic activities related to the exploitation of natural resources outside of the United States. The Committee cited specific concerns regarding the effects of such activities on the rights of the indigenous peoples residing in these areas to land, health, living environment and their way of life (paragraph 30). The Committee called upon the State party to take appropriate legislative or administrative measures to prevent such corporations from infringing upon the rights of indigenous peoples in territories outside the United States. In particular, the Committee recommended that the United States explore ways of holding transnational corporations registered in the U.S. accountable. The Committee further requested that the State party include information in its current periodic report describing (a) the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad; and (b) on measures taken by the State party regarding this issue.

3. Such conclusions of the Committee are fully consistent with the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, in particular Principle 24 (obligation to regulate), read in conjunction with Principle 25(c), whereby:

> All States must take necessary measures to ensure that non-State actors which they are in a position to regulate ... such as ... transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures.

4. In response to the Committee's request, in its current periodic report, the United States expresses its strong support for "accountability for corporate wrongdoing regardless of who is affected," and states that it "implements that commitment through its domestic legal and regulatory regime, as well as its deep and on-going engagement with governments, businesses and NGOs in initiatives to address these concerns globally" (para. 177). The report goes on to state that the United States is "a strong supporter of the business and human rights agenda, particularly regarding extractive industries whose operations can so dramatically affect the living conditions of indigenous peoples." The agenda referenced concerns the obligations that both businesses and states hold to respect human rights, and the further obligation on states to protect human rights, including by abuses by private actors, and to ensure that the victims of business-related human rights abuses enjoy access to effective remedies.

5. Despite the United States' stated support for corporate accountability and the business and human rights agenda, it focuses exclusively in its report on its participation in the Voluntary Principles on Security and Human Rights Initiative. As its name suggests, this initiative is concerned with only a limited aspect of a company's operations (security) and not other critical human rights issues such as the lawfulness of the company's operation in the first place.

6. In its periodic report, the State party also references its growing use of its annual Country Reports on Human Rights Practices to highlight the impacts and lack of accountability surrounding the extraction of natural resources, particularly with regard to indigenous peoples. While we agree with this call for increased accountability, the State party's highlighting of the need for accountability is a poor substitute for fulfilling its own obligation under the Convention to pursue "administrative, legislative, investigative, adjudicatory and other measures" to improve corporate accountability.

7. As will be apparent from the specific example discussed in Section III of this Alternative Report, there exists a disconnect between the State party's declared policy of support for corporate accountability for human rights abuses and the State party's failure to implement this policy in practice. The Committee may therefore wish to ask the State party the following questions:

   Q1: What specific domestic legal and regulatory mechanisms does the State Party have in place to ensure that U.S. registered companies are held accountable for corporate wrongdoing arising from activities conducted outside of the territory of the United States?

   Q2: How does the State party monitor and seek to ensure the effectiveness of existing legal and regulatory mechanisms in mitigating, reducing and preventing the commission of rights violations by U.S.-registered companies operating overseas against indigenous peoples?

III. US Capital Energy Belize Ltd and the Maya of the Toledo District, Southern Belize

8. US Capital is a subsidiary of US Capital Energy Partners LP, which is headquartered in Texas, United States and has a registered office in Punta Gorda Town, Toledo District, Belize. The approximately 1500-square-mile Toledo District of southern Belize is home to approximately 14,000 Mopan and Q'eqchi'-speaking Maya people whose residence in their 38 communities predates European settlement in the region.

9. In 1994, the Government of Belize established the Sarstoon Temash National Park (STNP) on the lands of five indigenous villages (four Maya and one Garifuna). The Government did not seek or obtain the free, prior and informed consent of the indigenous communities prior to establishing the park. The five communities jointly formed SATIIM in 1997 to advocate for their rights and, in 2004, SATIIM entered an agreement with the Government of Belize to co-manage the STNP on behalf of the indigenous communities.[i]

10. In 2001, US Capital entered into a production sharing agreement with the Government of Belize allowing the company to explore for oil in an area known as Block 19 which covers the lands of 38 Maya villages and includes the STNP. Once again, neither US Capital nor the Government of Belize sought or obtained the free, prior and informed consent of the local Maya communities prior to entering into this production sharing agreement.

11. The focus of US Capital's oil exploration activities to date has been within the STNP. In 2006, the Government of Belize granted US Capital a licence to conduct seismic testing in the park. This licence was successfully challenged by SATIIM and the indigenous communities in the domestic courts on the basis that an environmental impact assessment had not been conducted as required by law. In addition, in separate cases in 2007 and 2010, the Supreme Court of Belize recognised the Maya communities' property rights to the land and resources that they had traditionally used and occupied in accordance with Maya customary practices. The Court further ordered the Government of Belize to title this land and, in the interim, to abstain from any acts which would affect the existence, value, use and enjoyment by the Maya of their lands.[ii] Though the Court specifically forbade the Government of Belize from issuing any concessions for resource exploitation, the Government nonetheless issued new licenses to US Capital. In open defiance of the court rulings, US Capital carried out seismic testing, cutting over 200 miles of five-foot-wide trails on indigenous land and territories in and around the STNP in 2010, 2011 and 2012.

12. In 2012, US Capital entered into discussions with the Government of Belize to begin oil drilling in the STNP. In early 2013, the Government of Belize granted the company permission to survey a proposed well site and to construct an access road. Subsequently in January 2013, the government granted US Capital permission to conduct petroleum exploration drilling. On 22 July

[i] This co-management agreement with SATIIM was revoked by the Government on 5 June 2013, shortly ahead of SATIIM instigating a case in the domestic courts challenging the Government's grant of a licence for petroleum exploration drilling to US Capital.

[ii] The Government of Belize appealed the 2010 decision. In July 2013, the Court of Appeal upheld the lower court's finding regarding Mayan property rights but did not direct the government to take specific steps to enforce them. Both MLA and TAA and the Government of Belize have appealed this decision to the Caribbean Court of Justice in Trinidad and Tobago, where the case remains pending.

2013, SATIIM, together with four Q'eqchi communities, challenged the legality of these permits in court.

13. On 3 April 2014, the Honourable Madam Justice Michelle Arana of the Supreme Court of Belize held that the decision by the Government of Belize to allow oil drilling and road construction in STNP was unlawful, having been made without obtaining the free, prior and informed consent of the indigenous Maya communities as stipulated by the United Nations Declaration on the Rights of Indigenous Peoples. The Court further ordered the Government of Belize to "obtain free, prior and informed consent from the claimants with respect to any contract permit or license that falls within the National Park." However on 8 May 2014, Justice Arana issued a "perfected ruling" that materially altered and substantially weakened the original ruling. The perfected order directs the government of Belize to "seek and *make good faith efforts* to obtain free, prior and informed consent from the claimants" [emphasis added].

14. Notwithstanding the alteration to the original ruling, the Government of Belize and US Capital persisted in their refusal to comply with the rulings of the Belizean courts. Rather than accepting the Supreme Court's ruling that the oil drilling permit was illegal and seeking to obtain the free, prior and informed consent of the claimant Maya communities, the Government waived the expiration date of the original oil permit, which was due to expire on 30 April 2014. At the time of submitting this report, US Capital is continuing to engage in activities under a permit which has been declared by the local courts to be unlawful but which the court did not formally quash. In defiance of Justice Arana's ruling, US Capital and the Government of Belize have failed to seek to obtain the free, prior and informed consent of the claimant communities. Instead, the company and the Government have embarked on a campaign to attempt to gain consent from other villages who were not a party to the claim.

15. While the actions of US Capital and the Government of Belize have so far avoided criticism from the State party, other members of the international community have devoted considerable attention and concern to this issue. To cite a few prominent examples:

(i) The Committee expressed its concern regarding the situation under its urgent action and early warning procedures in letters from 2007, 2008 and 2012. Additionally, in its 2013 Concluding Observations on Belize (issued in the absence of a report), the Committee urged the Government of Belize to "stop granting leases and oil concessions without obtaining the prior, free and informed consent of Maya people, in full compliance with the ruling of the Supreme Court and the recommendations of the Inter-American Commission on Human Rights" (para. 10).[iii]

(ii) The Human Rights Committee in 2013 concluded that Belize "should desist from issuing new concessions for logging, parcelling for private leasing, oil drilling, seismic surveys and road infrastructure projects in Mayan territories without the free, prior, and informed consent of the relevant Mayan community" (2013 Concluding Observations on Belize para. 25).

(iii) In the most recent Universal Periodic Review of Belize, Spain recommended that Belize "monitor continuously the extractive activities of oil companies in Mayan territory, which must always

[iii] The Inter-American Commission had, in 2004, instructed Belize to abstain from all acts that might lead the agents of the government, or third parties such as private companies acting under its permission, to affect the existence, value, use or enjoyment of the property located within the Maya territories.

respect human rights." This recommendation enjoyed the full support of Belize (2013 Report of UPR Working Group on Belize para. 98.23).

16. As these examples and the preceding chronology demonstrate, both the Belizean courts and leading international human rights bodies have consistently concluded that the Government of Belize and, by implication, US Capital have violated and continue to violate the rights of indigenous peoples in southern Belize. The Government of Belize has continuously failed to abide by the rule of law: it has neither implemented the rulings of its courts, nor complied with treaty body recommendations, nor upheld its agreed-upon obligations under those treaties.

IV. Response of the United States to the actions of US Capital

17. The State party is fully aware of the activities of US Capital in southern Belize. The United States reported on the issue in its most recent Country Report on Belize (covering the events of 2013), which makes reference both to the appeal now pending before the Caribbean Court of Justice, as well as to the case brought by SATIIM and the indigenous communities against the Government of Belize and US Capital in relation to the oil permit. However, despite what the United States says in its State party report, it makes no reference in the Belize Country Report to the fact that the oil permit in question was granted to the subsidiary of a U.S. registered company. Nor does the Country Report describe any measures that the United States is undertaking to prevent companies within its jurisdiction from violating the rights of indigenous peoples, including their property rights to the ancestral lands so intrinsic to their identity and survival. Finally, the Country Report fails to detail any steps the State party has taken to ensure the availability of effective remedies for violations that have already occurred or may occur in the future.

18. The United States has also been made aware of the situation regarding US Capital by the MLA through letters written to the Embassy of the United States in Belmopan on 5 April 2013 and 24 April 2014 (both prior to and following the issuance of the most recent Country Report). In a reply letter dated 2 May 2014, Embassy officials stated that they have been following the court cases closely and addressing them with officials of the Belize Government. However, the letter did not acknowledge the involvement of a U.S. registered company nor recognize the United States' obligations to address human rights violations committed against local Maya communities by a company it was in a position to regulate.

19. In light of the above, the Committee may find it useful to ask the State Party the following:

Q3: What steps – whether administrative, legislative, investigative, adjudicatory or other – has the State party taken to address the activities of US Capital given that such activities are in violation of the rights of the local Maya population under both domestic and international law?

V. Recommendations

20. Given the continued violations by the Government of Belize of the property rights of the local Maya population in respect of the activities of US Capital and having regard to the extraterritorial obligations of the United States, as clarified by the Maastricht Principles, as well as to its commitment in relation to the Committee's previous concluding observations concerning extractive industries and indigenous peoples' human rights (see para. 177 of the State party report), the United States has a specific responsibility in relation to the activities of US Capital in Belize. We therefore urge the Committee to hold the United States to its commitment and to its responsibilities.

21. In particular, we recommend that the Government of the United States:

    a. Takes step to ensure that US Capital Energy Partners and its subsidiaries:
        i. Suspend any activities which are being carried out in contravention of international law, most notably where there has been a failure on the part of the local government granting permission for such activities to obtain the free, prior and informed consent of indigenous peoples whose traditional territories would be affected by such activities; and
        ii. Abstain from engaging in any further activities unless they are in conformity with international law, most notably the requirement that free, prior, informed consent has been obtained from the local indigenous peoples whose territories stand to be affected.

    b. Ensure that US registered companies operating overseas (whether directly or through locally registered subsidiaries) can be held accountable in United States courts for human rights abuses committed outside the territory of the United States.

    c. Remove any limited liability for US-registered parent companies with wholly owned subsidiaries operating abroad.

    d. Enact legislation to limit or remove the financial barriers that prevent victims of human rights abuses by US registered companies from pursuing litigation in the US courts, including allowing for the recoupment of attorney fees.