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## As Ye Sow, So Shall Ye Reap: Granting Maya Women Land Rights to Gain Maya Land Rights

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AS YE SOW, SO SHALL YE REAP:  
GRANTING MAYA WOMEN LAND RIGHTS  
TO GAIN MAYA LAND RIGHTS<sup>1</sup>

INTRODUCTION

- I. THE TERM “INDIGENOUS” AND ITS IMPLICATIONS
- II. THE HISTORY OF INDIGENOUS RIGHTS LAW
- III. A BRIEF HISTORY OF THE BELIZE MAYA
- IV. MAYA LAND DISTRIBUTION AND MANAGEMENT
- V. HISTORY OF THE BELIZE MAYA MOVEMENT
  - A. *Political Representation*
  - B. *The Pan-Maya Identity/Movement*
- VI. THE EVOLUTION OF MAYA LAND RIGHTS
- VII. GRANTING MAYA WOMEN LAND RIGHTS TO GAIN MAYA LAND RIGHTS
  - A. *The Traditional Role of a Maya Woman*
  - B. *Effect of Maya Customary Laws of Property*
  - C. *The Changing Role of Maya Women*
  - D. *Women Owning Land*
  - E. *Women’s Involvement in the Maya Movement*
  - F. *Ways to Improve Maya Women’s Rights/Involvement in Belize*

CONCLUSION

INTRODUCTION

*[If you’re a woman and] you’re poor and you’re indigenous, you’re always discriminated against.*

—Vivian, Belize Maya woman<sup>2</sup>

Like many colonial powers, the Spanish and the British of Belize left the indigenous people of their former colony with few resources, crippling its communities through the use of an arbitrary land reservation system and cultural degradation.<sup>3</sup> The Maya people still lack land and resources, remaining among the poorest group in the country, with a seventy-seven percent rate of poverty.<sup>4</sup> The Belize

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1. The names of all participants interviewed for this Note have been changed to protect their privacy, except Pulcheria Teul.

2. Interview with Vivian, in Toledo, Belize (Jan. 5, 2011).

3. See O. NIGEL BOLLAND, COLONIALISM AND RESISTANCE IN BELIZE: ESSAYS IN HISTORICAL SOCIOLOGY 128, 139–40 (2d ed. 2003) (describing the Crown Lands Ordinance).

4. NAT’L HUMAN DEV. ADVISORY COMM., 2002 POVERTY ASSESSMENT REPORT 24 (2004), available at <http://www.ncabz.org/Portals/0/docs/2002%20Poverty%20Assessment%20Report.pdf>.

Maya also seem to have fewer land rights and little political power compared to other countries with large Maya populations. Since 2006, however, the Belize Maya movement has been victorious in securing recognition of Maya communal land titles in the Belize Supreme Court and in the Inter-American Commission of Human Rights.<sup>5</sup> Currently, the Belize Supreme Court case granting the Maya customary land rights is being appealed.<sup>6</sup>

In addition to the problems that the government and political maneuvering bring to the Maya movement, its chronic lack of resources and the lack of a unified voice contribute to difficulties in implementing its legal victories. The Maya movement must work hard to ensure that these victories are tangible—not merely symbolic.

One possible reason for the general lack of Maya empowerment is the lack of Maya female empowerment. Many Maya women are not traditionally given a lot of power in their communities.<sup>7</sup> Yet in many other countries with large Maya populations, such as Guatemala and Mexico, Maya women have been major players in indigenous movements and revolutions.<sup>8</sup> Incorporating the Maya women of Belize by directly involving them in the struggle for land rights may help the Maya in their fight for property rights against the government by making them stakeholders in the important process. Granting, or at least encouraging, women's access to property rights may provide a degree of unity, maximize resources, and ensure that the Maya movement, and Maya culture generally, endures in the next generation.

### I. THE TERM "INDIGENOUS" AND ITS IMPLICATIONS

The U.N. has defined indigenous peoples as those with "a historical continuity with pre-invasion and pre-colonial societies."<sup>9</sup>

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5. *Cal v. Attorney Gen. of Belize*, No. 171, slip op. ¶ 67 (Sup. Ct. Oct. 18, 2007) (Belize); *Maya Indigenous Cmty. of Toledo Dist. v. Belize*, Case 12.053, Inter-Am. Comm'n H.R., Report No. 40/04, OEA/Ser.L/V/II. 122, doc. 5 rev. ¶ 6 (2004).

6. Interview with Mary, a female Maya leader, in Toledo, Belize (Jan. 5, 2011).

7. MEEYLYN LORENA MEJIA LOPEZ, CANADIAN FOUND. FOR THE AMERICAS (FOCAL), *INDIGENOUS WOMEN AND GOVERNANCE IN GUATEMALA 3* (2006), available at [http://www.focal.ca/pdf/mujer\\_indigena\\_e.pdf](http://www.focal.ca/pdf/mujer_indigena_e.pdf).

8. *Id.* at 2; Alena Hontarava, *Women's Rights in Chiapas: Future Made Possible by the Revolutionary Law*, COUNCIL ON HEMISPHERIC AFF. (July 18, 2011), <http://www.coha.org/womens-rights-in-chiapas-future-made-possible-by-the-revolutionary-law/>.

9. U.N. Secretariat of the Permanent Forum on Indigenous Issues, *Workshop on Data Collection & Disaggregation for Indigenous Peoples*, New York, N.Y., Jan. 19–21, 2004, *The Concept of Indigenous Peoples: Background Paper Prepared by the Secretariat of the Permanent Forum on Indigenous Issues*, ¶ 2, U.N. Doc. PFII/2004/WS.1/3 (Jan. 19–21, 2004) (quoting United Nations, Special Rapporteur of the Sub-Commission on Prevention of Discrimination & Protection of Minorities, *Study on the Problem of Discrimination Against Indigenous Populations*, ¶¶ 379–82, U.N. Doc. E/CN.4/Sub.2/1986/7 (1986) [hereinafter *Special Rapporteur*]).

Historical continuity can mean continuous occupation of land, common ancestry with original occupants, culture, or language.<sup>10</sup> Additionally, the two terms “indigenous peoples” and “tribal peoples” have sometimes been used interchangeably, under the premise that there are tribal peoples who are not literally indigenous, but “nevertheless live in a similar situation” as indigenous peoples.<sup>11</sup>

When a people define themselves as indigenous, they send a powerful political message to their government—namely, that their claim to land is superior to the government’s claim to land and that their property rights overrule the government’s property rights. Indigenous societies are often “based . . . on [livelihoods] that are at odds with the economic and institutional requirements of statehood.”<sup>12</sup> For example, many indigenous peoples of the New World, including the Maya, customarily believe in communal land ownership.<sup>13</sup> Governments thus rarely officially recognize a people as indigenous, especially publicly.<sup>14</sup> Instead, governments often choose to retain the power to allocate rights to certain groups of their choosing; then, group membership is “an ascribed status, not a voluntary choice” and indigenous peoples must compete with other groups for resources, political power and privilege.<sup>15</sup>

## II. THE HISTORY OF INDIGENOUS RIGHTS LAW

Indigenous law has developed to protect indigenous peoples’ right to territory and natural resources. Within the last few decades, more people have become aware of indigenous issues and more indigenous peoples themselves have actively advocated for their rights.<sup>16</sup> Indigenous peoples can and have used many international legal instruments in making claims.<sup>17</sup> For example, the Universal Declaration of Human Rights cites the right to equality.<sup>18</sup> Several other U.N. instruments

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10. *Id.* (quoting Special Rapporteur, *supra* note 9, ¶¶ 379–82).

11. *Id.* ¶ 6.

12. RONALD NIEZEN, *THE ORIGINS OF INDIGENISM: HUMAN RIGHTS AND THE POLITICS OF IDENTITY* 214 (2003).

13. First Joint Affidavit of Gregorio Choc, Cristina Coc, & Martin Chen ¶ 45, *Cal v. Attorney Gen. of Belize*, No. 171 (Sup. Ct. Oct. 18, 2007) (Belize) [hereinafter *Choc Affidavit*].

14. Press Release, Econ. & Soc. Council, *Despite Progress in Recognizing Rights, Indigenous Peoples Continue to Face Serious Human Rights Violations on a Daily Basis, Permanent Forum Told*, U.N. Press Release HR/5056 (May 18, 2011).

15. Jan Nederveen Pieterse, *Ethnicities and Multiculturalisms: Politics of Boundaries*, in *ETHNICITY, NATIONALISM, AND MINORITY RIGHTS* 27, 34, 43 (Stephen May et al. eds., 2004).

16. Press Release, Econ. & Soc. Council, *supra* note 14.

17. *Id.*

18. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 217 (Dec. 10, 1948).

have also recognized the right to self determination, or at least the right of a people to enjoy its own culture.<sup>19</sup> Some might claim that this is evidence that the right to self determination is *jus cogens*—a law that states must respect and from which they must not derogate.<sup>20</sup> Yet, there are many cases where governments have successfully denied groups the right to self determination, showing that currently there is no international consensus on the issue.<sup>21</sup>

In 1989, the International Labour Organization (ILO) created ILO Convention 169, which recognized that indigenous peoples should “enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.”<sup>22</sup> In order to apply the Convention, the ILO requires a people to self-identify as indigenous.<sup>23</sup> The Convention encourages indigenous peoples’ social, economic, political and cultural development, though it emphasizes that this should be done “within the framework of the States.”<sup>24</sup> Under ILO 169, “governments are obliged to take the necessary steps not only to identify the lands which indigenous peoples traditionally occupy, but also to guarantee effective protection of their rights of ownership and possession.”<sup>25</sup>

Indigenous peoples have also worked with the U.N. to create declarations and resolutions that specifically address indigenous peoples’ rights.<sup>26</sup> Stemming from a movement started by leaders of indigenous groups in the Americas, an initial declaration on principles for the defense of indigenous nations was presented at a United Nations conference in 1977.<sup>27</sup> Subsequently, the U.N. Sub-Commission

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19. See, e.g., U.N. Charter pmb.; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, U.N. Doc. A/RES/47/135, pmb., arts. 1–2 (Feb. 3, 1993); International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. Doc. A/RES/21/2200A, pmb. (Dec. 16, 1966); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, U.N. Doc. A/RES/21/2200A, art. 1 (Dec. 16, 1966).

20. Sally Engle Merry, *Anthropology and International Law*, 35 ANN. REV. ANTHROPOLOGY 99, 101–02 (2006).

21. See, e.g., Reference re Secession of Quebec, [1998] 2 S.C.R. 217 ¶ 154 (Can.) (holding that the people of Quebec were not entitled to self determination because they were not oppressed by the government and self determination was subordinate to sovereignty).

22. International Labour Organisation (ILO), *Indigenous and Tribal Peoples Convention*, art. 3, ILO No. 169 (Sept. 5, 1991) [hereinafter ILO Convention].

23. Special Rapporteur, *supra* note 9, ¶ 5; ILO Convention, *supra* note 22, art. 1.

24. ILO Convention, *supra* note 22, pmb.; see also Rachel Sieder & Jessica Witchell, *Advancing Indigenous Claims Through the Law: Reflections on the Guatemalan Peace Process*, in CULTURE AND RIGHTS: ANTHROPOLOGICAL PERSPECTIVES 201, 206 (Jane K. Cowan et al. eds., 2001).

25. Roger Plant, *Latin America’s Multiculturalism: Economic and Agrarian Dimensions*, in MULTICULTURALISM IN LATIN AMERICA: INDIGENOUS RIGHTS, DIVERSITY AND DEMOCRACY 208, 219 (Rachel Sieder ed., 2002); see also ILO Convention, *supra* note 22, arts. 13–19.

26. Merry, *supra* note 20, at 104.

27. *Id.*

on the Prevention of Discrimination and Protection of Minorities, part of the U.N. Human Rights Commission, created the Working Group on Indigenous Populations in 1982.<sup>28</sup> The Working Group became a leading international forum for indigenous leaders, meeting annually in Geneva.<sup>29</sup> During the negotiations, indigenous groups sought self-determination under international law, although they did not generally seek statehood.<sup>30</sup>

Following much discussion among indigenous groups and U.N. representatives in the Working Group on Indigenous Populations, the Draft Declaration on the Rights of Indigenous Peoples was finalized in 1994.<sup>31</sup> The official U.N. Declaration on the Rights of Indigenous Peoples was then passed by the General Assembly in 2007.<sup>32</sup> The Declaration's definition of the right to self-determination is wide in scope, including "the right to create and maintain indigenous peoples' own governments and their own laws and legal systems."<sup>33</sup> The Declaration also proclaims that indigenous peoples have the right not to be forcibly removed from their lands.<sup>34</sup>

Like the ILO Convention, however, the Declaration upholds the principle of territorial integrity, as enshrined in customary international law.<sup>35</sup> Specifically, it emphasizes that people should pursue self-determination within the avenues provided for by the State and should only seek secession under extreme forms of oppression.<sup>36</sup> In 2007, the Human Rights Council established an Expert Mechanism on the Rights of Indigenous Peoples to implement the Declaration by "providing thematic expertise and making proposals to the Council pertaining to the rights of indigenous peoples."<sup>37</sup> Five experts are appointed to the Expert Mechanism; it is open to states, U.N. mechanisms, bodies, agencies, as well as indigenous peoples' organizations,

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28. *Id.*

29. *Id.* at 104–05.

30. *Id.* at 105; see also Robert T. Coulter, *The Law of Self-Determination and the United Nations Declaration on the Rights of Indigenous Peoples*, 15 UCLA J. INT'L L. & FOREIGN AFF. 1, 10 (2010).

31. Sub-Comm'n on Prevention of Discrimination & Prot. of Minorities, Draft United Nations Declaration on the Rights of Indigenous Peoples, pmbl., U.N. Doc. E/CN.4/Sub.2/RES/1994/45 (Aug. 26, 1994), available at <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.SUB.2.RES.1994.45.En>.

32. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. GOAR, 61st Sess., U.N. Doc. A/RES/61/295 (Sept. 13, 2007) ("[T]he right of self-determination does not include a right to independence, that is, a right to separate statehood.").

33. Merry, *supra* note 20, at 105 (citation omitted).

34. Declaration on the Rights of Indigenous Peoples, *supra* note 32, art. 10.

35. Coulter, *supra* note 30, at 7.

36. *Id.* at 5–6, 26.

37. *The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)*, INT'L WORK GROUP FOR INDIGENOUS AFF. (IWGIA), <http://www.iwgia.org/human-rights/un-mechanisms-and-processes/expert-mechanism-on-the-rights-of-indigenous-peoples> (last visited Mar. 30, 2012).

non-governmental organizations, national human rights institutions and academics.<sup>38</sup>

Regional documents addressing human rights also abound. One such document, the American Declaration of the Rights and Duties of Man, emphasizes the right to life, liberty, and property, among other rights.<sup>39</sup> As scholars have noted, the Declaration implicitly recognizes the right to autonomy in local affairs, and indigenous law “within the state’s legal, economic and social systems.”<sup>40</sup> In 1969, the OAS adopted the American Convention, which is a multilateral treaty binding member countries.<sup>41</sup> The Convention affirmed the American Declaration rights and established the Inter-American Commission on Human Rights, charging it with the tasks of promoting human rights and making relevant recommendations to governments.<sup>42</sup> Finally, the Convention established the Inter-American Court of Human Rights to enforce the provisions of the Convention against State parties that submit to its jurisdiction.<sup>43</sup>

Belize has adopted many of the relevant global documents but not the regional documents; specifically, it has ratified the Universal Declaration of Human Rights and the Draft Declaration.<sup>44</sup> Belize has not ratified ILO 169, however, or the American Convention, despite its OAS membership.<sup>45</sup>

### III. A BRIEF HISTORY OF THE BELIZE MAYA

Fifty-one million indigenous peoples comprise eleven percent of the Central and South American region’s population.<sup>46</sup> A plethora of

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38. *Id.*

39. *American Declaration of the Rights and Duties of Man*, INTER-AM. COMM’N ON HUM. RTS., <http://www.oas.org/en/iachr/mandate/Basics/declaration.asp> (last visited Mar. 30, 2012).

40. Sieder & Witchell, *supra* note 24, at 206.

41. *American Convention on Human Rights*, pmbl., INTER-AM. COMMISSION ON HUM. RTS., <http://www.cidh.org/Basicos/English/Basic3.American Convention.htm> (last visited Mar. 30, 2012).

42. *Id.* arts. 34, 41.

43. *Id.* art. 63.

44. *See Do You Think That Belize Should Adopt a Convention on the Rights of Older Persons?*, NAT’L COUNCIL ON AGEING BELIZE (Sept. 20, 2010), <http://www.ncabz.org/news.aspx?ctl=ViewContent&mid=469&ItemID=30> (“Belize has adopted many UN agreements such as . . . [t]he Universal Declaration of Human Rights . . .”).

45. *Convention No. C169*, INT’L LAB. ORG., <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169> (last visited Mar. 30, 2012) (listing the ratifiers of ILO 169); *Multilateral Treaties: B-32: American Convention on Human Rights “Pact of San Jose, Costa Rica.”* DEPT INT’LL. ORG. AM. STATES, <http://www.oas.org/juridico/english/sigs/b-32.html> (last visited Mar. 30, 2012) (listing the ratifiers of the American Convention on Human Rights).

46. Donna Lee Van Cott, *Indigenous Peoples’ Politics in Latin America*, 13 ANN. REV. POL. SCI. 385, 386 (2010).

indigenous peoples have populated the Americas; in fact, the Maya have common origins with a larger indigenous group of Mesoamerican people.<sup>47</sup> They principally inhabited parts of Yucatan and the modern states of Chiapas and Tabasco in Mexico, as well as Guatemala, Belize, and the western parts of El Salvador and Honduras.<sup>48</sup> The society probably developed as early as 1000 BC and collapsed as late as 1500 AD.<sup>49</sup> There are at least three Maya groups, the Q'eqchi', Mopan, and Yucatan Maya, together speaking some 28 languages.<sup>50</sup>

In Maya, *belikin* means "road to the sea" and is probably the origin of the name Belize.<sup>51</sup> Belize is one of the smallest countries in Latin America and the second smallest in Central America, covering a mere 8,867 square miles.<sup>52</sup> Belize is a nation of mixed ethnicity, including Black/African, Caucasian/White, Chinese, Creole, East Indian, Garifuna, Maya Q'eqchi', Maya Mopan, Maya Yucatec, Mennonite, Mestizo, Spanish, Creole, Garifuna, Chinese, and Syrian-Lebanese.<sup>53</sup>

The Spanish first settled the area in the seventeenth century. Due to forced relocations, by 1697 the Maya in Belize had split into small groups living in hamlets, or *alquillos*, away from the main roads that connected their territory to the Spaniards.<sup>54</sup> The Spanish were soon followed by British pirates and merchants specializing in mahogany exports.<sup>55</sup> By the eighteenth century, the two nations actively competed for power in the country until, finally, the country was formally declared the Colony of British Honduras in 1862.<sup>56</sup>

The British established a hierarchy of groups that placed the Maya at the bottom of the socioeconomic pyramid.<sup>57</sup> This low status survives to this day.<sup>58</sup> When the British moved inland in search of

47. ROBERT J. SHARER WITH LOA P. TRAXLER, *THE ANCIENT MAYA* 26 (Stanford Univ. Press, 6th ed. 2006).

48. *Id.*

49. *Id.* at 79.

50. *Id.* at 26–27 fig. 1.3.

51. *Information and Links*, PERMANENT MISSION OF BELIZE TO THE UNITED NATIONS, <http://www.un.int/belize/info.htm> (last visited Mar. 30, 2012).

52. Ralph Premdas, *Belize: Identity and Ethnicity in a Multi-Ethnic State* 1 (2001) (unpublished paper), available at <http://www.cavehill.uwi.edu/BNCCde/belize/conference/papers/premdas.html>.

53. CARICOM CAPACITY DEV. PROGRAMME (CCDP), 2000 ROUND OF POPULATION AND HOUSING CENSUS DATA ANALYSIS SUB-PROJECT: NATIONAL CENSUS REPORT: BELIZE 16 tbl. 2.2 (2009), available at <http://www.caricomstats.org/Files/Publications/NCR%20Reports/Belize.pdf>.

54. ANGEL CAL, *BELIZE: MAYA CIVILIZATION* 19 (2004).

55. O. NIGEL BOLLAND, *BELIZE: A NEW NATION IN CENTRAL AMERICA* 12 (1986).

56. *Id.* at 12–14.

57. BOLLAND, *supra* note 3, at 128 (“[T]he British . . . incorporated the indigenous Maya as a defeated and dispossessed people, sometimes on native reservations.”).

58. LAURA J. MCCLUSKY, “HERE, OUR CULTURE IS HARD”: STORIES OF DOMESTIC VIOLENCE FROM A MAYAN COMMUNITY IN BELIZE 28 (Univ. of Texas Press 2001).



resources, particularly timber, the Maya were forcibly induced to leave their villages.<sup>59</sup> This displacement deprived them of their means of livelihood and—because they were simultaneously denied the right to own land—made them dependent upon their timber employers.<sup>60</sup>

The colonial masters of Belize, along with the modern government, deny that the Maya are indigenous to the region.<sup>61</sup> The origin myth propagated by the British contains elements of the doctrine of discovery, claiming that “the [indigenous] Maya[] deserted the area long before the arrival of the British who occupied an uninhabited land,” or *terra nullis*.<sup>62</sup> The Maya have been described as “immigrants who came after the British” in official government documents.<sup>63</sup> In this manner, the colonial power “removed . . . the stigma attached to the process of conquest, dispossession and colonization.”<sup>64</sup> While mass migrations occurred during the colonial conquest, most likely some of the Maya escaped the forced relocation and epidemics and continued to live in southern Belize until they intermarried with the Q’eqchi’ Maya who came to Belize from Guatemala during the nineteenth century.<sup>65</sup>

#### IV. MAYA LAND DISTRIBUTION AND MANAGEMENT

While the government may not have specifically targeted the entire Maya population for resettlement, the Maya migrations resulted in a discriminatory land policy.<sup>66</sup> Essentially, this mass relocation weakened the population and any efforts to assert their indigenous claim. Thus, although ten percent of the Belizean population is indigenous Maya, native tribes have been denied full title or sovereign rights over their homelands.<sup>67</sup> Overall, by the end of 1986, less than two percent of landowners owned more than eighty-five percent of privately owned land, while eighty-five percent of landowners held less than four percent.<sup>68</sup>

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59. BOLLAND, *supra* note 3, at 19.

60. *Id.* at 125.

61. *Id.* at 17.

62. *Id.*

63. Carla Barnett, *Defining Ethnicity in Belize: Understanding Our History 7* (2001) (unpublished paper), available at <http://www.cavehill.uwi.edu/BNCCde/belize/conference/papers/Barnett.html>.

64. BOLLAND, *supra* note 3, at 101.

65. CAL, *supra* note 54, at 18.

66. Barnett, *supra* note 63, at 6.

67. *Main Results of 2010 Population and Housing Census*, STAT. INST. OF BELIZE, [http://www.statisticsbelize.org.bz/dms20uc/dynamicdata/docs/20110505004542\\_2.pdf](http://www.statisticsbelize.org.bz/dms20uc/dynamicdata/docs/20110505004542_2.pdf) (last visited Mar. 30, 2012).

68. Barnett, *supra* note 63, at 8.

The Maya were collectively denied the right to own lands under the Crown Lands Ordinance of 1872 and were pushed into small reserves created for them.<sup>69</sup> The British government established indigenous reserves between 1912 and 1934, attempting to restrict Maya shifting cultivation, although it apparently “never intended to grant indigenous communities autonomy over those lands.”<sup>70</sup>

The Belizean reservation system allotted each village several hectares of land, or approximately 22,000 acres, to be held communally.<sup>71</sup> As one scholar noted, however, the exact size of the reserve is difficult to determine because the Belizean government has not maintained accurate records, “and frequently produces contradictory reports.”<sup>72</sup> Additionally, “the government can change reservation boundaries or revoke reservation land at any time.”<sup>73</sup> Unfortunately, as one observer noted, “[t]he confused state of information about the reserves . . . makes the Mayas’ tenure and hold on the reservations all the more insecure.”<sup>74</sup>

Maya reserves, and Maya villages before that, are traditionally ruled by a council of elders led by a leader, or *alcalde*.<sup>75</sup> The *alcaldes* apply Maya customary law, which includes adjudicating land disputes within the community.<sup>76</sup> Currently, the *alcaldes* of the 38 Maya villages in the Toledo District are organized into the Toledo Alcaldes Association.<sup>77</sup>

In 1999, the government passed the Village Council Act, establishing village councils to deal with development issues requiring interaction with the village and national government officials.<sup>78</sup> The Village Councils are led by a chairman.<sup>79</sup> The Village Council system effectively limited the jurisdiction of the *alcaldes*.<sup>80</sup> Additionally, the

69. BOLLAND, *supra* note 3, at 139–40.

70. Charles Clark, Land, Ethnicity, and Development in Belize 9 (May 15, 2002) (unpublished paper) (on file with author).

71. MCCLUSKY, *supra* note 58, at 27.

72. *Id.* (citation omitted).

73. *Id.* (citation omitted).

74. CURTIS G. BERKEY, INDIAN LAW RES. CTR., MAYA LAND RIGHTS IN BELIZE AND THE HISTORY OF INDIAN RESERVATIONS, REPORT TO THE TOLEDO MAYA CULTURAL COUNCIL 30 (1994).

75. First Affidavit of Richard Wilk ¶ 42, *Cal v. Attorney Gen. of Belize*, No. 171 (Sup. Ct. Oct. 18, 2007) (Belize).

76. *Id.* ¶ 43.

77. Choc Affidavit, *supra* note 13, ¶¶ 3, 20.

78. MCCLUSKY, *supra* note 58, at 33; Liza Grandia, Unsettling: Land Dispossession and Enduring Inequity for the Q’eqchi’ Maya in the Guatemalan and Belizean Frontier Colonization Process 235 (Spring 2006) (unpublished Ph.D. dissertation, University of California–Berkeley) (on file with author).

79. Interview with Chris, in Stann Creek, Belize (Jan. 4, 2011).

80. MCCLUSKY, *supra* note 58, at 32.

Belize government has used the Act to “formalize[] village oversight on lease distribution” through locally elected Land Lot committees.<sup>81</sup> These committees are responsible for land allocation and consist of two members from the Village Council and five nominated by the national governing party.<sup>82</sup> For an applicant to receive land, the committee has to recommend him/her to the Ministry of Natural Resources Department, and then the district representative has to confirm the recommendation before the applicant can apply to the National Registry for a land title.<sup>83</sup> Sometimes applicants can appeal the committee’s failure to recommend them, but practically speaking, it is final.<sup>84</sup>

The nature of reservation management has changed during the past century, and so has the nature of reservations themselves, for they have been slowly privatized.<sup>85</sup> Currently, individuals can lease or even own land inside the reservation.<sup>86</sup> As made clear through research and interviewing locals, however, leasing land does not ensure private ownership. According to one source, to buy land, the lessee must make improvements to the land for five years, although no one mentioned this time requirement during interviews.<sup>87</sup> Regardless, to own land, the applicant must procure an expensive survey of his/her land.<sup>88</sup> Until the actual purchase and survey, the government continues to own the property and can apparently cancel the lease at any time “without compensation to the lessee for improvements made.”<sup>89</sup>

Obtaining land title can thus be a time consuming and expensive process which many Maya do not desire but feel pressured to obtain.<sup>90</sup> One Yucatec Maya family living in an inland Maya village felt pressured to obtain title to their land because the Village Council Chairman had done a land survey and informed them that their land did not belong to them.<sup>91</sup> They claimed that they had spent three years traveling to and from the capital trying to obtain proper land title from the National Land Registry.<sup>92</sup> Fred, the head of the family, first had to pay BZ \$4500 (US \$2250) to get the private survey done, and then had to bribe officials at the National Registry to ensure that

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81. Grandia, *supra* note 78, at 235.

82. Interview with Chris, *supra* note 79.

83. *Id.*

84. *Id.*

85. Clark, *supra* note 70, at 11.

86. MCCLUSKY, *supra* note 58, at 28.

87. *Id.*

88. *Id.*; *see also* Interview with Fred, in Cayo, Belize (Dec. 29, 2010).

89. *Id.*

90. *Id.*

91. Interview with Maria, in Cayo, Belize (Dec. 29, 2010).

92. *Id.*

his claim would be processed.<sup>93</sup> This situation is especially unfortunate because many Maya do not understand that the Village Council Chairman no longer wields power over land distribution (as noted, under the new law, the Land Lots Committee distributes land).<sup>94</sup> Furthermore, even the Land Lots Committee apparently lacks the power to force people to obtain land titles.<sup>95</sup>

Fred added that because the government had doubled the property tax, some of the villagers were losing their land because they had to mortgage their land to pay the tax, and then lost it to the bank when they could not pay the interest.<sup>96</sup> Compounding the scarcity of Maya land is the fact that sometimes the bank sells their repossessed land to non-Maya people.<sup>97</sup>

## V. HISTORY OF THE BELIZE MAYA MOVEMENT

Somehow, the Maya have maintained their “sense of permanence and . . . their cultures and homelands despite almost insurmountable odds,” including colonial and current government claims to their land.<sup>98</sup> Chris, a local Mopan Maya man, expressed his frustration with the government’s denial of indigenous claims to land, saying that the State prefers “to do what it can to walk on us and make us into nothing, [though] we have a claim as the first [people] here.”<sup>99</sup> As Maya teacher and advocate Martin echoed, “the government doesn’t recognize communal land ownership or indigenous rights to land,” because these concepts challenge the state’s right to the land, including the subsoil and airspace.<sup>100</sup> The Maya are among the poorest people in the country, even though Martin claimed that they often live in areas “with high natural and cultural resources.”<sup>101</sup>

### A. Political Representation

There has only been one Maya person active in the Belizean government, and that has only been fairly recently. Members of the national government tend to be mostly Mestizo.<sup>102</sup> A Q’eqchi’ Maya man, Juan Coy, is currently the Toledo East district representative, but is

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93. Interview with Fred, *supra* note 88.

94. Interview with Chris, *supra* note 79.

95. *Id.*

96. Interview with Fred, *supra* note 88.

97. MCCLUSKY, *supra* note 58, at 28–29.

98. NIEZEN, *supra* note 12, at xi–xiii.

99. Interview with Chris, in Stann Creek, Belize (May 22, 2006).

100. Interview with Martin, in Stann Creek, Belize (May 29, 2006).

101. *Id.*

102. Interview with Oman, in Stann Creek, Belize (May 26, 2006).

viewed as ineffective.<sup>103</sup> For example, a fellow Maya man involved in politics in the Toledo district, Ken, expressed disappointment in Mr. Coy, noting that having him as a representative for the Maya is “just like having none, because he won’t speak for [anybody]” and does not attend government meetings when invited.<sup>104</sup> Chris added, “I wish [Juan Coy] would do more but I don’t know if he just [does not] intend to do more or [if] he is not getting enough resources from [his superiors] to do what he wants.”<sup>105</sup>

### *B. The Pan-Maya Identity/Movement*

Many have attempted to define “culture,” “nation,” and “state.”<sup>106</sup> These are contentious categories not only due to their political implications, but also because identity—even collective identity—is extremely personal. Nationhood is “an aspect of culture that is created, challenged and redefined by people *even while it constrains them*.”<sup>107</sup>

Some have argued that nationhood can be interpreted as “chiefly a property of social relations, not of ideology.”<sup>108</sup> Thus the identity of a group can become fluid, with variations across place and time. Due to natural migrations and forced migrations imposed by the Spanish and the British, the Maya have split into different subgroups.<sup>109</sup> As noted, Belize has Maya Q’eqchi’, Maya Mopan, and Maya Yucatec people, and though there is disagreement about the extent to which they are culturally related, they all claim to be the descendants of the ancient Maya.<sup>110</sup>

Historically, scholars have tended to place all of the Maya groups, past and present, in one category, identifying one group’s problem as a Maya problem.<sup>111</sup> Yet essentialism can be dangerous, for it makes simplistic assumptions about people; for instance, anthropologists and tourists have created a romanticized version of a single Maya culture covering all countries with Maya populations.<sup>112</sup>

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103. Interview with Chris, *supra* note 79.

104. Interview with Ken, in Toledo, Belize (Jan. 5, 2011).

105. Interview with Chris, *supra* note 79.

106. See, e.g., LORI F. DAMROSCH ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 300, 458 (5th ed., 2009) (discussing nationality and statehood in the contexts of international law).

107. BOLLAND, *supra* note 3, at 199 (emphasis added).

108. Thomas Hylland Eriksen, *Ethnicity, Class, and the 1999 Mauritian Riots*, in ETHNICITY, NATIONALISM, AND MINORITY RIGHTS, *supra* note 15, at 78, 93.

109. First Affidavit of Elizabeth Mara Grandia ¶ 13, *Cal v. Attorney Gen. of Belize*, No. 171 (Sup. Ct. Oct. 18, 2007) (Belize).

110. *Id.*

111. Laurie Kroshus Medina, *History, Culture, and Place-Making: ‘Native’ Status and Maya Identity in Belize*, in PERSPECTIVES ON LAS AMÉRICAS: A READER IN CULTURE, HISTORY, & REPRESENTATION 195, 209 (Matthew C. Gutmann et al. eds., 2003).

112. *Id.*

Proponents of anti-essentialism are also extreme in claiming that there is no clear link between the contemporary and the ancient Maya.<sup>113</sup> This is the argument proposed by the Belize government in denying Maya claims to land.<sup>114</sup> Proponents also claim that there is no pan-Maya movement and that Maya people do not identify with pan-Mayanism.<sup>115</sup> Instead, they claim that Maya people identify with their local community or language group.<sup>116</sup>

The Maya people in Belize believe in a core Maya identity and, at the very least, desire to work together, even if the political reality prevents them from doing so in many cases. Maria, a Yucatec Maya woman, commented that she considers the Maya in Belize one people because they share many of the same traditions.<sup>117</sup> Her husband, Fred, distinguished Belize Maya from Guatemalan Maya people because they are culturally distinct; however, he emphasized that all Maya have the same political problem, namely, a lack of land rights.<sup>118</sup> Vivian, a Yucatec Maya woman, explained that many of the Yucatec discontinued speaking their language long ago, and thus many consider themselves more Mestizo than Maya.<sup>119</sup> She added that this may be because the Yucatec were originally from Yucatan, Mexico, and came into contact with the Spanish before Belize Maya came into contact with foreigners.<sup>120</sup> Generally, it may be that the Yucatec Maya were more exposed to colonialism than the other Maya groups, which may have affected how they relate to other Maya groups.<sup>121</sup>

John, an older Mopan Maya man, acknowledged that the Q'eqchi' and Mopan Maya cultures are different, although they are trying to cooperate in some sort of pan-Maya movement.<sup>122</sup> He added that cooperating was difficult due to party politics.<sup>123</sup> In fact, many people lamented that the intense party politics of the country are the largest obstacle to uniting the Maya rather than any internal cultural conflicts. Jerry, a Mopan Maya man, thought that although the Maya in Belize were somewhat united over their land claims, they were

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113. EDWARD F. FISCHER, *CULTURAL LOGICS & GLOBAL ECONOMIES: MAYA IDENTITY IN THOUGHT & PRACTICE* 10 (2001).

114. First Affidavit of Elizabeth Mara Grandia, *supra* note 109, ¶ 14.

115. MCCLUSKY, *supra* note 58, at 12–13.

116. BETSY KONEFAL, *FOR EVERY INDIO WHO FALLS: A HISTORY OF MAYA ACTIVISM IN GUATEMALA, 1960–1990*, at 14 (2010) (noting that “self-identity for most Mayas was and is tied to their local community or language group, and only to a limited extent to a broader indigenous population.”); MCCLUSKY, *supra* note 58, at 12–13.

117. Interview with Maria, *supra* note 91.

118. Interview with Fred, *supra* note 88.

119. Interview with Vivian, *supra* note 2.

120. *Id.*

121. *Id.*

122. Interview with John, in Toledo, Belize (Jan. 1, 2011).

123. *Id.*

not united when it came to politics and religion.<sup>124</sup> He added that “politics keeps us [the Maya] uninformed” about other Maya villages and movements because different Maya villages are allied with different political parties.<sup>125</sup>

In the last twenty years, the Maya have engaged in a process of revivalism and regeneration in an attempt “to write its own experiential narratives and record its historical memory.”<sup>126</sup> Although the movement is not united by any means, the Maya are trying to control their image and empower themselves.<sup>127</sup> Only when disenfranchised peoples participate in national dialogue as equal stakeholders and take control of these discourses can they become advocates.

Although the Belize pan-Maya movement has not officially agreed on whether the Maya people are “one nationality or many,” the Belize Maya have tried to form groups representing the interests of the Maya of Belize.<sup>128</sup> In 1978, the Toledo Maya Cultural Council (TMCC) was founded to address problems facing the Maya in the Toledo district of Belize and became the Maya movement’s central organization.<sup>129</sup> Its mission was to “work for the recognition of the Mayas as the country’s indigenous people, and [realize their] right to their traditional lands.”<sup>130</sup> The TMCC became a member of the General Assembly of the World Council of Indigenous Peoples and joined the regional organization CORPI (Coordinadora Regional del Pueblos Indios).<sup>131</sup> The Toledo Alcaldes Association is another Maya organization, comprising alcaldes of the thirty-eight Maya villages in Toledo District.<sup>132</sup> The Tumul K’in Center of Learning is a non-governmental Maya organization that founded a school in 2001 that focuses on teaching Maya culture and values.<sup>133</sup>

Together, these groups comprise the Maya Leaders Alliance (MLA).<sup>134</sup> Although currently the Toledo Maya Women’s Council is

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124. Interview with Jerry, in Stann Creek, Belize (Jan. 3, 2011).

125. *Id.*

126. Premdas, *supra* note 52, at 29.

127. *Id.*

128. Rodolfo Stavenhagen, *Indigenous Peoples and the State in Latin America: An Ongoing Debate*, in *MULTICULTURALISM IN LATIN AMERICA: INDIGENOUS RIGHTS, DIVERSITY AND DEMOCRACY* 24, 40 (Rachel Sieder ed., 2002) [hereinafter *MULTICULTURALISM IN LATIN AMERICA*].

129. *The Toledo Maya Cultural Council*, MAYAATLAS, <http://oldweb.geog.berkeley.edu/ProjectsResources/MayanAtlas/MayaAtlas/TMCC.htm> (last visited Mar. 30, 2012); see also JOEL WAINWRIGHT, *DECOLONIZING DEVELOPMENT: COLONIAL POWER AND THE MAYA* 246 (2008).

130. *Id.*

131. *Id.*

132. Choc Affidavit, *supra* note 13, at 6.

133. Interview with Vivian, *supra* note 2.

134. Choc Affidavit, *supra* note 13, at 2.

not part of the MLA, historically it was a part of the Movement.<sup>135</sup> The Toledo Maya Women's Council (TMWC) started in 1997 when a group of Maya women from Toledo formalized a group that had been meeting since 1980.<sup>136</sup> The group organized around small business projects and lobbied for different Maya organizations.<sup>137</sup>

In practice, therefore, the Maya have attempted to forge a national identity. As the TMCC said, "[a] sense of Maya identity is growing stronger and cultural forms which may be called 'neo Maya' are appearing and in some cases thriving."<sup>138</sup> This national identity is essentialist and responds to the government's "reductionist orientation of law."<sup>139</sup> In this manner, the Belize Maya movement's pan-Mayanism "represents both a self-generated revitalization of culture and a critique of dominant culture and non-Maya world-views."<sup>140</sup>

Through court cases, the Belize Maya movement argues that the Maya have been united enough across place and time to make a legitimate claim to land. For example, scholars have argued that the Mopan and Q'eqchi's environmental and land management practices in Belize "are similar enough to disregard the linguistic differences that anthropologists use to formally separate them into two ethnic groups."<sup>141</sup> Additionally, they showed that the Q'eqchi' Maya "clearly assert their national allegiance as citizens of Belize," while "maintain[ing] ties and affinities with a broader Q'eqchi' community" and "a broader pan-Maya movement."<sup>142</sup> As discussed, this sentiment was expressed during recent interviews with Belize Maya people as well.<sup>143</sup>

Additionally, while the Belize Maya maintain certain linguistic and cultural differences, history has brought them together.<sup>144</sup> As a result of the forced migrations, there has been "significant . . . mixing, including intermarriage, and the sharing of cultural customs."<sup>145</sup> In fact, the subgroup names given to the Maya were not established until the end of the nineteenth century, and, before then, "indigenous people [apparently] did not recognize these 'tribal' or linguistic divisions."<sup>146</sup>

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135. Interview with Mary, a female Maya leader, *supra* note 6; Telephone Interview with Pulcheria Teul, Belize Senator (Mar. 7, 2011).

136. *Toledo Maya Women's Council*, SUMMIT OF THE AMERICAS, <http://svc.summit-america.org/organizations/toledo-maya-womens-council> (last visited Mar. 30, 2012).

137. *Id.*

138. *The Toledo Maya Cultural Council*, *supra* note 129.

139. Sieder & Witchell, *supra* note 24, at 207.

140. Clark, *supra* note 70, at 5.

141. First Affidavit of Elizabeth Mara Grandia, *supra* note 109, ¶ 15.

142. *Id.* ¶ 17.

143. See *supra* notes 117–33 and accompanying text.

144. First Affidavit of Elizabeth Mara Grandia, *supra* note 109, ¶ 14.

145. First Affidavit of Richard Wilk, *supra* note 75, ¶ 18.

146. *Id.* ¶ 40.



Overall, the Belize Maya movement focuses less on differences among Yucatec, Mopan, and Q'eqchi' Maya, and more on land rights for all Maya. Specifically, one of the Maya movement's leaders, Mary, notes that the movement desires a limited autonomy "to maintain the security of the lands we want . . . to live on."<sup>147</sup> She emphasized that the movement is not just about land—"it's about surviving" and "the right to life."<sup>148</sup> She qualified this by saying that the Maya people are not asking to be privileged above other Belizean citizens; instead, they are asking for their basic right to land.<sup>149</sup>

Mary has been involved in the Maya movement for over five years.<sup>150</sup> She became involved when she met one of the original leaders of the movement, Julian Cho.<sup>151</sup> Julian Cho came to Toledo in 1995 as a teacher.<sup>152</sup> Mary explained that at that time, the Maya movement already existed, but its leaders "lacked the skills to organize and lobby internationally."<sup>153</sup>

Julian Cho was unanimously elected chairman of the TMCC in 1995 and brought attention to the Maya of Belize in the international sphere, i.e., at the U.N. and the OAS.<sup>154</sup> Julian Cho was chosen for his position because of his work as Chairman of the Reservation Lands Committee, a new group commissioned to investigate the Maya land rights situation.<sup>155</sup> Each Sunday, six members of the Committee would speak in two communities about the status of Maya reservations and "argue for a movement for collective, indigenous land rights."<sup>156</sup>

In 1996, the TMCC and the TAA filed a claim against the government in the Belize Supreme Court.<sup>157</sup> This action was in response to the many logging concessions granted by the government in Maya-occupied areas in the mid 1990s despite Maya protests.<sup>158</sup> The government never addressed the case, so, in 1998, the TMCC filed a petition to the Inter-American Commission on Human Rights on behalf of the Maya communities of Toledo against the government.<sup>159</sup> The petition

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147. Interview with Mary, a female Maya leader, *supra* note 6.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. Interview with Mary, a female Maya leader, *supra* note 6.

154. *Id.*; Julian Armando Cho, JULIAN CHO SOC'Y, <http://www.jcsbelize.org/pages/JCbio.php> (last visited Mar. 30, 2012).

155. WAINWRIGHT, *supra* note 129, at 246.

156. *Id.*

157. Cal v. Attorney Gen. of Belize, No. 171, slip op. ¶ 15 (Sup. Ct. Oct. 18, 2007) (Belize).

158. *Id.* ¶ 9.

159. *Id.* ¶ 1.

alleged violations of the American Declaration of the Rights and Duties of Man and other international treaties.<sup>160</sup> Cho also signed a Memorandum of Understanding on November 25, 1998 with the Prime Minister of Belize to negotiate a solution to the Maya land rights struggle.<sup>161</sup>

Under the leadership of Julian Cho, the TMCC, TAA, the Indian Law Resource Center—an American nonprofit organization—and the University of Berkeley Geography Department created the Maya Atlas, which was a mapping of Maya lands and culture.<sup>162</sup> Maya villagers were elected to act as researchers and cartographers.<sup>163</sup> The Maya Atlas describes the Maya customary laws of property, including communal land rights, and claims a Maya Homeland based on these principles.<sup>164</sup>

## VI. THE EVOLUTION OF MAYA LAND RIGHTS

It is important to understand the Maya customary system of property before investigating the current Maya demands regarding land. As Mary explained, “Maya villages [traditionally] hold land collectively, while individuals and families enjoy derivative, subsidiary rights of use and occupancy.”<sup>165</sup> The Maya had a system of collective land ownership in order to ensure that everyone had access to land and that resources could be shared effectively.<sup>166</sup> The land was managed and distributed by an elected village leader in consultation with villagers.<sup>167</sup>

In this way, tradition “recognize[s] ownership as a negotiated relationship between peoples or between communities, rather than as a relationship between people and objects.”<sup>168</sup> One scholar described the traditional land use as a “tripartite geography,” where the village center is surrounded by an agricultural and forest zone, which is in turn surrounded by a zone dedicated to hunting, agriculture,

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160. *Id.*

161. *Julian Armando Cho, supra* note 154.

162. WAINWRIGHT, *supra* note 129, at 247.

163. *Id.*

164. *The Toledo Maya Cultural Council, supra* note 129.

165. Choc Affidavit, *supra* note 13, at 7; Interview with Mary, a female Maya leader, *supra* note 6.

166. *The Toledo Maya Cultural Council, supra* note 129.

167. *Id.*

168. Erich Fox Tree, *Global Linguistics, Mayan Languages, and the Cultivation of Autonomy*, in *INDIGENOUS PEOPLES AND AUTONOMY: INSIGHTS FOR A GLOBAL AGE 80, 97–98* (Mario Blaser et al. eds., 2010).

and collecting forest products.<sup>169</sup> Village men would work the communal areas in work groups called *faginas*.<sup>170</sup>

The derivative individual property rights were usufruct, whereby people could claim their parcel of land within the community as long as they worked it.<sup>171</sup> In this manner, although the village land could be lent, inherited, or rented, it could not be sold.<sup>172</sup> Furthermore, people had to belong to the community to be able to gain these rights and these communities sometimes charged entrance fees to newcomers.<sup>173</sup>

The TMCC and TAA used the Maya Atlas as a vehicle to protect, manage, and claim Maya land. Specifically, in the Maya Atlas, Julian Cho described an ideal Belizean “Maya Homeland” managed by the Maya, which would include areas that they traditionally occupied.<sup>174</sup> The Maya Homeland would be governed by a Maya Land Trustee, which could parcel out land within the homeland for economic development to individuals or groups.<sup>175</sup> Similar community-based land systems exist in other Maya communities—for example, in Guatemala, a unique system of community forest management exists among the Q’eqchi’ Maya, with as much as “twenty-five percent of one region being held communally.”<sup>176</sup>

There were many obstacles to implementing the concept of the “Maya Homeland,” including government resistance.<sup>177</sup> The Maya people themselves also lacked faith in some of the TMCC leadership; the TMCC’s efforts to mobilize a pan-Maya movement around the concept of the “Maya Homeland” in the 1980s and 1990s suffered because apparently many TMCC leaders owned lease land taken out of Maya reservations in the early 1980s, and therefore support for the Homeland “was predicated on leadership promises to return private lands to collective property should the proposal receive government acceptance.”<sup>178</sup> People were understandably skeptical of these promises.<sup>179</sup>

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169. First Affidavit of Joel Wainwright ¶ 29, *Cal v. Attorney Gen. of Belize*, No. 171 (Sup. Ct. Oct. 18, 2007) (Belize).

170. RICHARD R. WILK, *HOUSEHOLD ECOLOGY: ECONOMIC CHANGE AND DOMESTIC LIFE AMONG THE KEKCHI MAYA IN BELIZE* xiii (1991).

171. First Affidavit of Elizabeth Mara Grandia, *supra* note 109, ¶¶ 25–26, 59.

172. WILK, *supra* note 170, at 88.

173. *Id.*

174. *The Toledo Maya Cultural Council*, *supra* note 129.

175. *Id.*

176. THORSTEN TREUE ET AL., *PARTICIPATORY FOREST MANAGEMENT COMPENDIUM* 25 (2010).

177. *The Toledo Maya Cultural Council*, *supra* note 129.

178. Clark, *supra* note 70, at 19 (citation omitted).

179. *See id.* (noting this arrangement in relation to other failed institutions that led to skepticism).

The real blow to the Maya movement came in 1998, when, at the height of his activism, Julian Cho was killed under mysterious circumstances.<sup>180</sup> Mary explained that as a result, other leaders became fearful, and “the movement became dormant for awhile.”<sup>181</sup> Regardless, Maya people still often speak of Julian Cho in reverent tones. Chris spoke of him as the true leader of the Maya people who had a great vision “about where he wants to put the Maya people.”<sup>182</sup> Mary evidently felt the loss as well and stated that the movement “needed to fill the gap” so that the Maya could continue “the struggle.”<sup>183</sup> In an effort to fill that gap, she began talking to other leaders about Julian Cho’s vision and working with the Maya Leader’s Alliance (MLA).<sup>184</sup>

After some time, Greg Choc, the leader of the Q’eqchi’ Council of Belize and director of the Sarstoon-Temash Institute for Indigenous Management, helped form and lead the MLA in carrying out negotiations with the government.<sup>185</sup> On October 20, 2000, the MLA signed the Ten Points of Agreement with the Belize government, where the government acknowledged the Maya’s rights to lands and resources “based on their long-standing use and occupancy.”<sup>186</sup> The TMCC also followed up with their case before the Inter-American Commission on Human Rights, ultimately winning against the government.<sup>187</sup> In its Final Report, issued in 2004, the Commission found that the Belize government had violated the American Declaration of the Rights and Duties of Man, and that the Maya had communal property rights to their traditional land.<sup>188</sup>

In 2007, with the support of Mary and others within the MLA, two Maya villages in Toledo filed lawsuits in the Belize Supreme Court against the Belize Government, claiming that the government still failed to recognize the Maya communal right to property.<sup>189</sup> One of these villages, Santa Cruz, was the last remaining piece of land in

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180. See Interview with Mary, a female Maya leader, *supra* note 6; *Julian Armando Cho*, *supra* note 154.

181. Interview with Mary, a female Maya leader, *supra* note 6.

182. Interview with Chris, in Stann Creek, Belize (Jan. 3, 2011).

183. Interview with Mary, a female Maya leader, *supra* note 6.

184. *Id.*

185. S. James Anaya, *Reparations for Neglect of Indigenous Land Rights at the Intersection of Domestic and International Law—The Maya Cases in the Supreme Court of Belize*, in REPARATIONS FOR INDIGENOUS PEOPLES: INTERNATIONAL AND COMPARATIVE PERSPECTIVES 567, 571 (Federico Lenzerini ed., 2008).

186. *Ten Points of Agreement Between the Government of Belize and the Maya Peoples of Southern Belize*, [http://www.law.arizona.edu/depts/iplp/international/maya\\_belize/documents/TENPOINTSOFAGREEMENT.pdf](http://www.law.arizona.edu/depts/iplp/international/maya_belize/documents/TENPOINTSOFAGREEMENT.pdf) (last visited Mar. 30, 2012).

187. *Maya Indigenous Cmty. of Toledo Dist. v. Belize*, Case 12.053, Inter-Am. Comm’n H.R., Report No. 40/04, OEA/Ser.L/V/II. 122, doc. 5 rev. ¶ 17 (2004).

188. *Id.*

189. *Cal v. Attorney Gen. of Belize*, No. 171, slip op. ¶ 2 (Sup. Ct. Oct. 18, 2007) (Belize).

Toledo that was “unfragmented” (not privately subdivided already).<sup>190</sup> In other words, the Maya people living there maintained customary land usage and agreed on the idea of communal land.<sup>191</sup> Both of the claims’ causes of action were based on the Belize Constitution, which recognizes the right to property, as well as the judgment of the Inter-American Commission.<sup>192</sup> The Supreme Court affirmed that the Maya have communal property rights to their traditional lands, and thus ordered the government to “determine, demarcate and provide official documentation” of the land to the Maya based on use and occupation, and to refrain from interfering with these land rights in the future.<sup>193</sup>

The government did not appeal this decision within the allotted time; instead, it interpreted the judgment narrowly, as only limiting the land concessions and titling of Maya land in Santa Cruz and Conejo.<sup>194</sup> When the new government came to power in 2007, for example, it gave 2000 acres of Maya farmland in Golden Stream to a gas station owner who had financed the campaign despite MLA protests.<sup>195</sup> The MLA and TAA then filed a class action suit in June of 2008, where thirty-six Toledo Maya communities claimed that the 2007 judgment applied to all communities; their argument was recognized by the judge.<sup>196</sup> The government appealed this judgment, and the case will be heard before the Court of Appeals.<sup>197</sup>

Although these court cases were powerful victories, there has been opposition to the idea of communal land title as a solution for the Maya.<sup>198</sup> The Concerned Advocacy Group has been vocal in opposing communal land title, claiming that the MLA did not properly consult with the Maya before advocating the idea.<sup>199</sup> Ken, a Maya man involved in Toledo politics, noted that the group consisted of cacao growers and teachers who “want to understand about the [land rights] situation.”<sup>200</sup> He explained that many Maya people do not understand

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190. Interview with Mary, a female Maya leader, *supra* note 6.

191. *Id.*

192. *Cal.* No. 171, slip op. ¶ 2.

193. *Id.* ¶ 136.

194. Interview with Mary, a female Maya leader, *supra* note 6.

195. *Id.*

196. *Maya Leader’s Alliance v. Attorney Gen. of Belize*, No. 366, slip op. ¶¶ 45–46 (Sup. Ct. June 28, 2010) (Belize); Interview with Mary, a female Maya leader, *supra* note 6.

197. Interview with Mary, a female Maya leader, *supra* note 6.

198. *See, e.g.,* Adele Ramos, *Concerned Advocacy Group—Rival of Maya Leaders Alliance—Staging Rally in Toledo*, AMANDALA (Belize), July 7, 2009, <http://www.amandala.com.bz/index.php?id=8849> (describing that there has been opposition to the idea of communal land title as a solution for the Maya).

199. *See id.* (discussing the fact that the Concerned Advocacy Group has been outspoken concerning its opposition to communal land title).

200. Interview with Ken, *supra* note 104.

the benefits and drawbacks of communal land title as compared to purely individual ownership, adding that this demonstrates “the weakness of the leaders, who went through without consulting the entire community.”<sup>201</sup>

Pulcheria Teul, a Senator, was critical of the MLA’s approach of going through the courts to obtain Maya communal land title.<sup>202</sup> Ms. Teul argued that there should be “meaningful consultation with all communities” when it comes to discussing land, not just consultation with Maya communities.<sup>203</sup> Furthermore, she argued that land was a Belize issue, not just a Maya issue, and that the Maya should not get priority just because they have an ancestral claim.<sup>204</sup> Thus, the MLA needs to adopt a more “holistic point of view” that takes into account the views of the Cacao Grower’s Association and other agricultural groups.<sup>205</sup> Finally, as leader of the Toledo Maya Women’s Council, she claimed that the group was no longer part of the MLA because her and the group’s criticism of the MLA was not well received.<sup>206</sup>

Mary countered that the Concerned Advocacy Group mainly exists because its members, who are mostly teachers, are paid by the government, so they are afraid to go against its policies.<sup>207</sup> She noted that the Congress of Maya Teachers was formed in an attempt to depoliticize teacher involvement in the Maya movement, although she lamented that it was generally true that the only groups that can support the Maya Movement are those that are not connected to the government.<sup>208</sup> Regarding the Toledo Maya Women’s Council, Mary claimed that it is no longer part of the MLA because it works with and is funded by the Belize government.<sup>209</sup>

## VII. GRANTING MAYA WOMEN LAND RIGHTS TO GAIN MAYA LAND RIGHTS

The Maya have made significant progress in claiming their rights as indigenous peoples, with the court cases being the most recent and prominent examples.<sup>210</sup> Yet, as noted, the Maya are not united in their

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201. *Id.*

202. Telephone Interview with Pulcheria Teul, *supra* note 135.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. Interview with Mary, a female Maya leader, *supra* note 6.

208. *Id.*

209. *Id.*

210. See Kim Petersen, *Indigenous Rights and the Mayan Victory in Belize*, DOMINION (Montreal), Jan. 23, 2008, <http://www.dominionpaper.ca/articles/1616> (describing one of the court cases that helped the progress of the Maya people in claiming their rights as

struggle for land rights against the government, and if they are not united it will be difficult to affect long term changes.<sup>211</sup> Providing Maya women with more property rights, either individually or as derivative property rights within the communal system, may be a way to unite the Maya people. One reason is that for the Maya, “women are powerful metonymic representations of community” because they are central to Maya culture in their roles as mothers and “the socializers of . . . children in [their native] language.”<sup>212</sup> Unfortunately, development efforts have not historically focused on indigenous women despite the key role that they play “in the transmission of indigenous languages and cultures.”<sup>213</sup>

Encouraging female property ownership may help the Maya because if women own land, they may gain a sense of agency and pride, both for themselves and for their people. As one historian discovered in a case study of Q’eqchi’ Maya women, when women are excluded from politics, their own sense of agency is diluted and “political commitment fades from their stories.”<sup>214</sup> Overall, therefore, empowering Maya women by directly involving them in the struggle for property rights may help the Maya in their fight against the government by making them powerful contributors and stakeholders in the process.

It is worth noting that, generally, improving female access to land can benefit society as a whole.<sup>215</sup> For instance, domestic violence may decrease if women have their own plot of land and control the economic resources it may provide.<sup>216</sup> Women with more resources are healthier and can protect against poverty in old age.<sup>217</sup> Additionally, non-governmental organizations have recognized that women “often enhance the welfare of the family” if they control the family’s

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indigenous peoples).

211. Ramos, *supra* note 198 (discussing that the Maya are not united in their struggle for land rights).

212. KAY B. WARREN, *INDIGENOUS MOVEMENTS AND THEIR CRITICS: PAN-MAYA ACTIVISM IN GUATEMALA* 108 (1998).

213. See Shelton H. Davis, *Indigenous Peoples, Poverty, and Participatory Development: The Experience of the World Bank in Latin America*, in *MULTICULTURALISM IN LATIN AMERICA*, *supra* note 128, at 227, 238.

214. SUSAN KELLOGG, *WEAVING THE PAST: A HISTORY OF LATIN AMERICA’S INDIGENOUS WOMEN FROM THE PREHISPANIC PERIOD TO THE PRESENT* 170 (2005) (quoting historian Greg Grandin).

215. See Radhika Coomaraswamy, *Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women*, 34 *GEO. WASH. INT’L L. REV.* 483, 504 (2002) (showing the benefit that women having access to land might have on women as well as society as a whole).

216. See *id.* (explaining that a woman owning her own plot of land and subsequently the economic resources that come from ownership of said land may decrease domestic violence).

217. See *id.* (describing that women who have obtained resources are healthier and less likely to face poverty in old age than their female counterparts who do not own resources).

finances and property, because they are more likely to provide for the children.<sup>218</sup>

Many studies have recognized the link between women's empowerment and general human development. The UNDP's Policy Note on Gender Equality noted that "[w]omen's empowerment is central to human development."<sup>219</sup> It added that "[h]uman development . . . cannot occur when the choices of half of humanity are restricted."<sup>220</sup> Furthermore, "[p]oor women in the South suffer from a 'triple divide'—as citizens of low-income countries, as poor residents within their own societies, and as women."<sup>221</sup>

Recognizing the effect of the limited roles women play in some cultures is important; in advocating for gender mainstreaming, the UNDP has emphasized that "[t]he fact that gender involves power relations and cultural beliefs should not be sidestepped but rather acknowledged and addressed."<sup>222</sup> A government should not legislate for equality without considering "the socio-economic and ideological structures that exclude women and construct them as passive victims."<sup>223</sup>

In reflecting on cultural practices, it is challenging to ensure that indigenous communities are tolerant "without legitimizing external imposition by state authorities or 'new colonialism' in the name of equality or human rights."<sup>224</sup> In many indigenous cultures, women do not traditionally enjoy property rights, including in Maya culture.<sup>225</sup> In evaluating the role women could play in current Maya politics, understanding Maya women's traditional role and how it is changing is therefore essential.

#### A. *The Traditional Role of a Maya Woman*

*The women are very industrious, rising usually at 3 or 4 o'clock in the morning to prepare the day's supply of tortillas or corn cake.*<sup>226</sup>

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218. *Id.*

219. NADIA HIJAB & KRISTEN LEWIS, U.N. DEV. PROGRAMME, TRANSFORMING THE MAINSTREAM: GENDER IN UNDP 8 (2003).

220. *Id.*

221. *Id.* at 25.

222. *Id.* at 40.

223. R. Aída Hernández Castillo, *National Law and Indigenous Customary Law: The Struggle for Justice of Indigenous Women in Chiapas, Mexico*, in GENDER JUSTICE, DEVELOPMENT, AND RIGHTS 384, 406 (Maxine Molyneux & Shahra Razavi eds., 2002).

224. Seider & Witchell, *supra* note 24, at 219 (footnote omitted).

225. See Coomaraswamy, *supra* note 215, at 504 (discussing how Maya women do not traditionally enjoy property rights and the steps that are being made to change this).

226. THOMAS W. F. GANN, THE MAYA INDIANS OF SOUTHERN YUCATAN AND NORTHERN BRITISH HONDURAS 17 (1918).



This description written by an anthropologist in the 1930s seems to have captured the traditional role of Maya women quite well. Maya women are responsible for cooking, cleaning, taking care of children and helping their husbands farm.<sup>227</sup> In this sense, Maya society is typically patriarchal, incorporating a set gender hierarchy.<sup>228</sup> At the same time, however, the archaeological record indicates that in Maya cosmology, men and women are viewed as complementary.<sup>229</sup> Their fluid concept of gender prevents a reduction of their view to “a single form of gender representation.”<sup>230</sup> Additionally, “gender cannot be considered in isolation from questions of class, ethnicity, or other factors.”<sup>231</sup>

Maya society is typically patrilocal.<sup>232</sup> Thus, upon marriage, the bride moves into the husband’s parents’ house.<sup>233</sup> This tradition is still strong in many villages, and demonstrates a “male-centered authority structure within and beyond the household.”<sup>234</sup>

### *B. Effect of Maya Customary Laws of Property*

Maya society has historically followed a pattern of patrilineal inheritance, where land is passed from fathers to sons.<sup>235</sup> Many scholars “believe that patrilineality is a deeply rooted, ancient feature of Maya society.”<sup>236</sup> This may not only be related to Maya views of gender, but may also exist because Maya customary property centers around a usufruct system of ownership (because mainly men work the land, they are entitled to it).<sup>237</sup> In this manner, usually only if there are no

227. See First Affidavit of Marcelina Cal Teul ¶¶ 5–6, *Cal v. Attorney Gen. of Belize*, No. 171 (Sup. Ct. Oct. 18, 2007) (Belize) (describing contemporary Maya women’s daily tasks); First Affidavit of Melina Makin ¶¶ 3–4, *Cal v. Attorney Gen. of Belize*, No. 171 (Sup. Ct. Oct. 18, 2007) (Belize) (same).

228. Marvin Cohodas, *Multiplicity and Discourse in Maya Gender Relations*, in ANCIEN MAYA GENDER IDENTITY AND RELATIONS 11, 17 (Lowell S. Gustafson & Amelia M. Trevelyan eds., 2002) (describing patriarchy as implied “when gender does not simply privilege men above women, but instead differentiates among men to produce a position of power and authority, often involving household heads”).

229. *Id.* at 35, 44–45.

230. *Id.* at 44–45.

231. See Julia A. Hendon, *Household and State in Pre-Hispanic Maya Society: Gender, Identity, and Practice*, in ANCIEN MAYA GENDER IDENTITY AND RELATIONS, *supra* note 228, at 75, 84 (citation omitted).

232. See KELLOGG, *supra* note 214, at 40 (discussing the patrilocal nature of Maya society).

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.* (explaining reasons why land is typically passed from fathers to sons in Maya society, including the fact that Maya customary property centers around a usufruct system of ownership).

sons is land left to daughters.<sup>238</sup> Although some Maya communities exhibit bilateral inheritance patterns, “even when women inherit land . . . they tend to receive small amounts or poorer quality land.”<sup>239</sup>

Scholars also emphasize that the Maya system of inheritance is “the product of circumstances and pragmatic choice more than normative rules.”<sup>240</sup> This pragmatism seems to govern what happens to property when a man dies—his widow “has rights to dispose of the property however she . . . wants,” although certain limitations exist.<sup>241</sup> Widows, for instance, may inherit land, but “generally do so in trust for minor sons, or they inherit a small share through which they can support themselves.”<sup>242</sup> When a widow dies, her share reverts to her husband’s family.<sup>243</sup> The widow also inherits any “furniture, domestic animals, corn, and plantations,” while “other possessions . . . are divided equally between the widow and the older children.”<sup>244</sup>

Maya women historically have not owned land within the communal villages, but they do own other types of property such as plants and small livestock on the homestead surrounding their houses.<sup>245</sup> Apparently, if the husband tries to take this property away from his wife, she has the right to leave him.<sup>246</sup> Chickens and ducks are also owned by women, who are given chicks and ducklings by their mothers and mothers-in-law after marriage.<sup>247</sup>

### C. *The Changing Role of Maya Women*

Although there are many traditional Maya villages and Maya families, the role of women is rapidly changing. Overall, Maya culture has become more receptive to women changing their roles; one woman at the Maya Center, a Belize Maya village, said that “a lot of men respect women now,” and that this sentiment was “going through the village.”<sup>248</sup> Maya women are getting more education, getting more involved in politics, running their own businesses, and are even starting to own land.<sup>249</sup>

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238. Interview with Maria, *supra* note 91.

239. KELLOGG, *supra* note 214, at 117.

240. WILK, *supra* note 170, at 206.

241. *Id.*

242. KELLOGG, *supra* note 214, at 117.

243. *Id.*

244. GANN, *supra* note 226, at 33.

245. FELICITAS D. GOODMAN, *MAYA APOCALYPSE: SEVENTEEN YEARS WITH THE WOMEN OF A YUCATAN VILLAGE* xviii (2001).

246. *Id.*

247. WILK, *supra* note 170, at 143.

248. Interview with Sara, in Stann Creek, Belize (Jan. 3, 2011).

249. See Adriana M. Manago & Patricia M. Greenfield, *The Construction of Independent Values Among Maya Women at the Forefront of Social Change: Four Case Studies*, 39 *ETHOS: J. SOC’Y FOR PSYCHOL. ANTHROPOLOGY* 1, 13 (2011) (discussing the fact that Maya women are gaining more access to education).

In Belize, mandatory education covers ages five through fourteen.<sup>250</sup> Although families do not pay tuition, sending children to school is expensive, especially in rural areas where schools are scarce and families have to cover transportation costs.<sup>251</sup> Therefore, if a Maya family sends children to high school, it tends to send boys.<sup>252</sup> Many older women spoke lamentably of the fact that they had never had a proper education because their parents were too poor.<sup>253</sup> An increasing number of families are now sending their girls to school, as well.<sup>254</sup>

Second, women are getting more involved in politics. As Chris noted, historically, the majority of Maya people thought that women should work at home, that women should not go into public service or head an organization or entity.<sup>255</sup> Yet, increasingly, people are just focusing on party politics, on whether the candidate—man or woman—has a chance of winning.<sup>256</sup> In this way, “some windows start opening” for Maya women desiring a political career.<sup>257</sup> Thus, if a woman “overcomes those [traditional] mentalities then [she’s] going to be a big success.”<sup>258</sup>

The prime example of such a pioneer is Mary, who has become a leader within the Maya movement. She is powerful, but is an anomaly. On the local level, Jerry said that in the Maya Center, one out of the seven members of the government’s local political party’s committee is a woman, and Chris said that one member of the local Village Council was a woman.<sup>259</sup> In recent Toledo *alcalde* elections, two women were elected for the first time.<sup>260</sup> A member of the Maya Center’s Women’s Co-op also commented hopefully that, “one of these days there’s going to be a [female] village chairman.”<sup>261</sup>

Although in the past, some Maya women sold produce as well as some small arts and crafts, it was usually on a small scale and the

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250. INT’L LABOUR ORG., IN-DEPTH ANALYSIS OF CHILD WORK AND EDUCATION IN BELIZE 7 (2003), available at [http://www.statisticsbelize.org.bz/dms20uc/dynamicdata/docs/20070418172742\\_2.pdf](http://www.statisticsbelize.org.bz/dms20uc/dynamicdata/docs/20070418172742_2.pdf).

251. *Id.* at 9.

252. Interview with Maria, *supra* note 91.

253. Interview with Anne, in Stann Creek, Belize (Jan. 3, 2011); Interview with Maria, *supra* note 91.

254. Interview with Jerry, *supra* note 124; Interview with Maria, *supra* note 91; Interview with Wendy, in Stann Creek, Belize (Jan. 3, 2011).

255. Interview with Chris, *supra* note 182.

256. *Id.*

257. *Id.*

258. *Id.*

259. Interview with Chris, *supra* note 182; Interview with Jerry, *supra* note 124.

260. Interview with Mary, a female Maya leader, *supra* note 6.

261. Interview with Wendy, *supra* note 254.

women were still largely dependent on their husbands.<sup>262</sup> For example, in Toledo, Maya women have established “highly productive home orchards and gardens and improved their household’s well being through the sale of fruit and vegetables” at the farmer’s market in Punta Gorda, the capital of Toledo.<sup>263</sup> In a Q’eqchi’-speaking rural settlement in western Guatemala, Maya women “run small stores,” but they “are usually owned with [their] husbands.”<sup>264</sup> Thus, they “have control over what they earn, but usually this is a relatively small amount.”<sup>265</sup>

Today, in contrast, many women are starting their own businesses and earning their own money. Chris’s sister, Victoria, started her own sewing business out of her home, for instance.<sup>266</sup> This is a good arrangement because it does not conflict with her traditional role as mother and homemaker—she can maintain her household duties while conducting her business.<sup>267</sup> She said that it was also good that she could “find [her] own money.”<sup>268</sup> Sara is another Maya woman at the Maya Center who started her own business by gaining title to a piece of land and opening a business there.<sup>269</sup> The biggest catalyst for change, however, has been the spread of women’s cooperatives. These women’s groups are “getting prosperous,” enabling many women to get involved and learn new skills.<sup>270</sup> For example, Maria indicated that a few years ago the government gave a few women in her village land to build a bakery.<sup>271</sup> Other women in the village also formed an arts and crafts cooperative.<sup>272</sup> One of the women who works there explained that the cooperative was a positive force “because we can earn our own money, help ourselves, and bring ourselves up.”<sup>273</sup> She added that her husband and many husbands of the co-op women treated them well, but other women in the village experienced domestic violence, implying that the village women who worked at the co-op were more empowered than the other women.<sup>274</sup>

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262. Interview with Victoria, in Stann Creek, Belize (Jan. 3, 2011).

263. First Affidavit of Elizabeth Mara Grandia, *supra* note 109, ¶ 41.

264. Sheila Cosminsky & Mary Scrimshaw, *Sex Roles and Subsistence: A Comparative Analysis of Three Central American Communities*, in *SEX ROLES AND SOCIAL CHANGE IN NATIVE LOWER CENTRAL AMERICAN SOCIETIES* 44, 47 (Christine A. Loveland & Franklin O. Loveland eds., 1982).

265. *Id.*

266. Interview with Victoria, *supra* note 262.

267. *Id.*

268. *Id.*

269. Interview with Sara, *supra* note 248.

270. Interview with Anne, *supra* note 253; Interview with Maria, *supra* note 91.

271. Interview with Maria, *supra* note 91.

272. *Id.*

273. Interview with Rachel, in Cayo, Belize (Dec. 29, 2010).

274. *Id.*

In Toledo, where most of the poorest and most traditional Maya women live, a successful cooperative called the Chairladies Fajina has formed.<sup>275</sup> Also, the Fajina Craft Center was organized in October 1995 by the leaders of a village women's group in Punta Gorda to sell traditional Maya crafts.<sup>276</sup> "Fajina" is a word used by Mopan and Q'eqchi' Maya meaning "[c]oming together in one place to work for the good of the community."<sup>277</sup>

The Maya Center's Women's Co-op is very impressive in its organization and impact on the village. As one of the members, Wendy, told me, sixteen years ago, when the Cockscomb Nature Wildlife Preserve was being formed, the Village Council Chairman gave four women land to start the cooperative.<sup>278</sup> All fifty members are women, and Wendy guessed that it represented about ninety-five percent of the village families.<sup>279</sup> The members work two day shifts, and each member has her own shelf to sell her crafts.<sup>280</sup> The cooperative uses ten percent of the proceeds to sustain the group and to help the local school (funding field trips and supporting teachers).<sup>281</sup> Depending on sales, the women sometimes receive an annual bonus.<sup>282</sup>

This women's cooperative has given the women of the Maya Center a real sense of empowerment. As Wendy noted, "the village is moving on" because of the cooperative.<sup>283</sup> For example, since the women have the chance to make money, families can afford to send more children to high school.<sup>284</sup> The cooperative gives women of all ages the opportunity to earn money, including elderly women who may have no other way to earn money.<sup>285</sup> Wendy also emphasized that the cooperative has exposed the women to the outside world and has opened their minds. She said the women are "no longer at home behind the door knowing nothing" and have learned about their freedom and rights.<sup>286</sup> Wendy thought that the cooperative had

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275. See Lisa Wartinger, *Plenty 2000 Projects Review*, 17 PLENTY BULL., no. 1, Spring 2011, available at [http://www.plenty.org/PB17\\_1/review2000.html](http://www.plenty.org/PB17_1/review2000.html) (explaining the formation of the Chairladies Fajina).

276. *WIN Members*, WOMEN'S ISSUES NETWORK BELIZE, <http://www.winbelize.org/about-win-belize/win-members.html> (last visited Mar. 30, 2012) (describing that the Fajina Craft Center was organized by leaders of a village women's group where traditional Maya crafts could be sold).

277. *Id.*

278. Interview with Wendy, *supra* note 254.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

284. Interview with Wendy, *supra* note 254.

285. *Id.*

286. *Id.*

made the women more outspoken and willing to bring up issues affecting the village: “the ladies are first to hear things and stand up for it.”<sup>287</sup> In this sense, she acknowledged, “I don’t think we are sticking to our culture [in the Maya Center],” especially as compared to the rural Maya women of Toledo.<sup>288</sup>

#### *D. Women Owning Land*

Perhaps the most striking trend, however, is that women are starting to own land. One example of the fading male-dominated property system is occurring in the Maya Center.<sup>289</sup> The Maya Center’s Village Council bought land for a new expansion of the village, and apparently many women have applied for pieces there.<sup>290</sup> Victoria claimed that the women were applying for land in their names because they “want land for their children,” not for themselves.<sup>291</sup> Even if this is true, the fact that women are taking initiative in owning property is definitely a deviation from custom.

An increasing number of families are also willing land to their daughters as well as their sons.<sup>292</sup> Instead of just deferring to custom, more families are handling the issue of inheritance on a case-by-case basis. For example, Fred, the Yucatec Maya from the inland village, explained that he was planning to give each of his children, boys and girls, a piece of his land.<sup>293</sup>

#### *E. Women’s Involvement in the Maya Movement*

Few women have been involved in the Maya movement thus far.<sup>294</sup> Maria noted that this is because in Maya tradition, the Maya “think rights are just for men.”<sup>295</sup> As Rigoberta Menchú, a Maya woman leader in Guatemala and Nobel Peace Prize winner, echoed, “[i]t has been difficult for me as an indigenous woman to find the confidence to speak publicly . . . . If you broke with [the traditional female] role, you were seen as abandoning tradition and you would lose the respect of your people. . . . [W]omen as leaders were always something exceptional.”<sup>296</sup>

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287. *Id.*

288. *Id.*

289. *Id.*

290. Interview with Wendy, *supra* note 254.

291. Interview with Victoria, *supra* note 262.

292. Interview with Fred, *supra* note 88; Interview with Maria, *supra* note 91.

293. Interview with Fred, *supra* note 88.

294. Interview with Maria, *supra* note 91.

295. *Id.*

296. DAVID CAREY, JR., *ENGENDERING MAYAN HISTORY: KAQCHIKEL WOMEN AS AGENTS AND CONDUITS OF THE PAST, 1875–1970*, at 57 (2005) (second alteration in original).

In the Belize Maya movement, gender issues have been subsumed by the fight for land rights, and women have barely been given a voice at all. In the Maya movement, women's desire to be involved "has often been dismissed and suppressed as a legitimate heterogeneity that would diversify indigenous political interests."<sup>297</sup> This was most clearly seen in the creation of the Maya Atlas, which only involved men.<sup>298</sup> It is telling that women were grouped into a "special topics" section, as "an abject marker of a 'Maya tradition' that they embody but cannot speak of."<sup>299</sup>

Mary acknowledged that few women have historically been involved in the Movement, but argued that there were a few young women currently involved.<sup>300</sup> For example, several Maya women testified in the 2007 case against the government.<sup>301</sup> She claimed that this shows that the Maya "all have [the same land] rights" and that the Maya "can all participate at some level."<sup>302</sup> Mary said that the movement "need[s] to build on the capacity of women," but thought that this focus "gets shadowed when brought" into the land rights fight.<sup>303</sup> Instead, she thinks that there needs to be an independent focus on women's rights.<sup>304</sup> Pulcheria Teul, on the other hand, believes that the Toledo Maya Women's Group, and Maya women generally, should be more involved and "given respect."<sup>305</sup>

In contrast to the Belize Maya movement, pan-Maya movements in several neighboring countries incorporated women as leaders, and directly or indirectly fought for women's rights.<sup>306</sup> For example, in 1994 in Chiapas, Mexico, the Zapatista Army of National Liberation (EZLN), a group of indigenous people including the Maya, protested against the government's neoliberal policies, linking them to the historic repression of indigenous people.<sup>307</sup> The EZLN made claims to "cultural autonomy, political self-determination, and land."<sup>308</sup>

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297. WARREN, *supra* note 212, at 146.

298. WAINWRIGHT, *supra* note 129, at 257.

299. *Id.* at 258.

300. Interview with Mary, a female Maya leader, *supra* note 6.

301. *Id.*; see also First Affidavit of Marcelina Cal Teul, *supra* note 227, ¶¶ 1–11 (testifying about her life and Maya ancestry in a case against the Attorney General of Belize and the Minister of Natural Resources and the Environment); First Affidavit of Melina Makin, *supra* note 227, ¶¶ 1–9 (testifying about her Q'eqchi' Maya ancestry in a case against the Attorney General of Belize and the Minister of Natural Resources and the Environment).

302. Interview with Mary, a female Maya leader, *supra* note 6.

303. *Id.*

304. *Id.*

305. Telephone Interview with Pulcheria Teul, *supra* note 135.

306. See, e.g., KELLOGG, *supra* note 214, at 122 (stating that in Guatemala, forty percent of the Zapatista Liberation Army's soldiers in the 1980s were women).

307. R. AÍDA HERNÁNDEZ CASTILLO, HISTORIES AND STORIES FROM CHIAPAS: BORDER IDENTITIES IN SOUTHERN MEXICO xiii (2001).

308. Medina, *supra* note 111, at 195 (citation omitted).

The Zapatista Army was also the first guerilla movement in Latin America “to advocate and prioritize gender demands,”<sup>309</sup> with indigenous women—including Maya women—making up around forty percent of its membership.<sup>310</sup> In addition to demands for general indigenous rights, these women demanded personal rights, which included the right “to decide how many (if any) children to have, the right to choose a partner and whether or not to marry, the right to serve the revolutionary struggle in a way of their own choosing, . . . the right to be able to hold public office” and the right to inherit land.<sup>311</sup> These rights were then codified in the Women’s Revolutionary Law, which was distributed by the EZLN.<sup>312</sup>

In Guatemala, the military’s repression of indigenous peoples in the 1980s created “an indigenous pan-Mayan countermovement.”<sup>313</sup> This Movement united the Maya in a struggle for limited Maya self-determination, “for a restructuring of social services along ethnic or linguistic lines.”<sup>314</sup> In contrast to Mexico, the Guatemala Movement’s demands for land were part of a broader agenda.<sup>315</sup>

With the exception of the actions of Rigoberta Menchú, who won the Nobel Peace Prize in 1992,<sup>316</sup> the Guatemalan indigenous women’s actions was fairly covert. The rationale was that their adoption of subtle roles were less likely to cause alarm than if they took on roles traditionally attributed to men.<sup>317</sup> In this sense, these Maya women “reclaim[ed] tradition in order to advance their own demands for greater participation and independence.”<sup>318</sup>

At the same time, the Guatemala Maya women also organized national groups to demonstrate, advocate for democratization, increase women’s political participation, and express “their specific rights as [indigenous] women.”<sup>319</sup> The women were also instrumental in supporting the movement on the home front. For example, by 1986,

309. Castillo, *supra* note 223, at 385.

310. KELLOGG, *supra* note 214, at 122.

311. Alex Khasnabish, *The International Order of Hope: Zapatismo and the Fourth World War*, in *INDIGENOUS PEOPLES AND AUTONOMY: INSIGHTS FOR A GLOBAL AGE* 221, 227 (Mario Blaser et al. eds., 2010); *see also* CASTILLO, *supra* note 307, at 222–23 (“We demand our right to the land; even when marriages split, we want an equal share . . .” (footnote omitted) (internal quotation marks omitted)).

312. Khasnabish, *supra* note 311, at 227.

313. Jan Hessbruegge & Carlos Fredy Ochoa García, *Mayan Law in Post-Conflict Guatemala*, in *CUSTOMARY JUSTICE AND THE RULE OF LAW IN WAR-TORN SOCIETIES* 77, 83 (Deborah H. Isser ed., 2011).

314. Plant, *supra* note 25, at 210.

315. Rachel Sieder, *Recognising Indigenous Law and the Politics of State Formation in Mesoamerica*, in *MULTICULTURALISM IN LATIN AMERICA*, *supra* note 128, at 184, 194–95.

316. Hessbruegge & Garcia, *supra* note 314, at 83.

317. KONEFAL, *supra* note 116, at 95.

318. Sieder, *supra* note 316, at 193.

319. Castillo, *supra* note 223, at 393; *see also* KELLOGG, *supra* note 214, at 172–73.



eighty-five percent of the Mutual Support Group (GAM), founded in 1984 by people whose family members had disappeared at the hands of the oppressive regime, were Maya women.<sup>320</sup> Additionally, in 1988, a widow's organization called CONAVIGUA was set up, with almost all of its 11,000 members consisting of Maya people.<sup>321</sup>

The indigenous movements' successes were bolstered by the intense female involvement. In Mexico, the government revised the Constitution in 2001 to officially acknowledge the nation's multiculturalism.<sup>322</sup> The indigenous people attained some degree of self-determination in the successful creation of *de facto* "pluri-ethnic autonomous regions" encompassing large areas covering different official municipalities with several communities.<sup>323</sup> In Oaxaca, which is almost fifty percent indigenous,<sup>324</sup> the state's constitution allows indigenous people to have jurisdiction in dispute management—"the right to impart justice in accordance with local customs."<sup>325</sup> Apparently, women were "the main defenders" of the idea of autonomous regions, although they advocated for an all-inclusive idea of autonomy that would "open new spaces of participation for women."<sup>326</sup> Since the EZLN uprisings, there have also been many national women's meetings.<sup>327</sup>

Guatemala's 1995 Peace Accords, or Agreement on the Identity and Rights of Indigenous Peoples, is a binding agreement recognizing indigenous rights.<sup>328</sup> The Agreement set forth a vision of a pluricultural state guaranteeing the right of access to lands and resources that the Maya have historically used.<sup>329</sup> Additionally, the Guatemalan government developed FODIGUA, an organization that nominates an indigenous person to work with people in development—operating as an "indigenous development fund."<sup>330</sup>

Guatemala has also made considerable progress in recognizing indigenous women's rights. First, the 1995 agreement specifically recognized the "twofold discrimination" against indigenous women

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320. Sieder & Witchell, *supra* note 24, at 210.

321. *Id.*

322. Eveline Durr, *Translating Democracy: Customary Law and Constitutional Rights in Mexico*, 2 SITES 91, 97 (2005).

323. CASTILLO, *supra* note 307, at 213; Van Cott, *supra* note 46, at 388.

324. Van Cott, *supra* note 46, at 388.

325. Durr, *supra* note 322, at 101.

326. CASTILLO, *supra* note 307, at 223.

327. Castillo, *supra* note 223, at 393.

328. Sieder & Witchell, *supra* note 24, at 217.

329. WARREN, *supra* note 212, at 13; *see also* Agreement on Identity and Rights of Indigenous Peoples, U.N. GAOR, 49th Sess., Agenda Item 42, Annex, § 4(F)(6), U.N. Doc. A/49/882, S/1995/256 (Apr. 10, 1995).

330. Plant, *supra* note 25, at 211.

(being both indigenous and women), and undertook several measures to improve the situation, including creating an Office for the Defense of Indigenous Women's Rights.<sup>331</sup> Separately, the government solidified both "joint titling of land" and "titling of land for female heads of household."<sup>332</sup>

These two case studies demonstrate that the fight for indigenous rights and the fight for indigenous women's rights are not mutually exclusive. In fact, in both cases, women made invaluable contributions to the acquisition of some degree of autonomy, including the recognition of land rights.<sup>333</sup> The participation of women in indigenous movements may not, therefore, detract from the overall momentum, but may instead empower indigenous advocacy.<sup>334</sup>

#### *F. Ways to Improve Maya Women's Rights/Involvement in Belize*

One way to inspire Maya women to rise up and claim their rights as women and rights to land is through government programs focusing on women. The Belize government is already focusing on women's rights pursuant to its own Constitution as well as several human rights instruments.<sup>335</sup> The Belize Constitution proclaims a right to be free from discrimination based on gender as well as a universal right to property.<sup>336</sup> International instruments include the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>337</sup> Under CEDAW, states are required to "incorporate the principle of gender equality and non-discrimination in their legal systems, and abolish discriminatory laws."<sup>338</sup> CEDAW expressed concern about the "widespread poverty among women" in Belize, "particularly in the rural

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331. Agreement on Identity and Rights of Indigenous People, *supra* note 330, § 2(B)(1).

332. KELLOGG, *supra* note 214, at 176.

333. See CASTILLO, *supra* note 308, at 222–23 (explaining that women in Mexico expressed their views about women's land rights); KELLOGG, *supra* note 214, at 176 (stating that Guatemala has made progress in obtaining titling of land for women).

334. See CASTILLO, *supra* note 308, at 223 (stating that women in Mexico have actively promoted the idea of autonomous regions for indigenous populations).

335. See *infra* notes 340–41 and accompanying text.

336. See CONSTITUTION OF BELIZE, art. II, § 3 (recognizing a general freedom from discrimination, without an explicit reference to gender).

337. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, arts. 15–16, U.N. Doc A/RES/34/180 (Dec. 18, 1979) ("State Parties shall accord to women equality with men before the law."); Universal Declaration of Human Rights, *supra* note 18, art. 7 ("All are equal before the law . . . without any discrimination . . ."); *id.* art. 17 ("Everyone has the right to own property alone as well as in association with others.").

338. UNITED NATIONS DEV. FUND FOR WOMEN, WOMEN PEACE AND SECURITY: CEDAW AND SECURITY COUNCIL RESOLUTION 1325: A QUICK GUIDE 6 (2006).

areas and among Mayan women,” and urged the government to do more to enable its women.<sup>339</sup>

In 1997, the U.N. Economic and Social Council defined gender mainstreaming as “a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of the policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.”<sup>340</sup> Specifically, the Belize government has focused on gender mainstreaming by creating the National Commission of Women, which works closely with the Women’s Department and the Women’s Issues Network (WIN) in achieving “gender equality, equity and women’s empowerment in Belize.”<sup>341</sup> So far, the Belize government has instituted a National Gender Policy and appointed Women Development Officers in each district.<sup>342</sup> Additionally, in its “Women’s Agenda 2003–2008,” it set the goal of increasing women’s involvement in politics and “the number of women and youth participating in development plans and projects by [thirty percent].”<sup>343</sup> Wendy in the Maya Center Women’s Co-op also cited several recently enacted laws supporting women, including setting eighteen as the minimum age for marriage.<sup>344</sup>

The government should support microfinance initiatives, which have consistently improved women’s land rights.<sup>345</sup> The government has, however, provided some resources and financial support for Maya women cooperatives and women-run businesses in general.<sup>346</sup> For example, the Women’s Department has held trainings for members of the Maya Center Women’s Co-op on domestic violence, arts and crafts, cooking, and business administration.<sup>347</sup> Vivian, who works at the Tumul K’in Center of Learning, noted that the Women’s Department also conducted some sessions at the school focusing on women’s rights.<sup>348</sup> The Toledo Maya Women’s Council, which is partially funded

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339. U.N. Comm. on the Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Belize*, ¶ 15–16, U.N. Doc. CEDAW/C/BLZ/CO/4 (Aug. 10, 2007) [hereinafter *Concluding Comments*].

340. Hijab & Lewis, *supra* note 219, at 3 (footnote omitted) (internal quotation marks omitted).

341. *What Is the National Women’s Commission?*, NAT’L WOMEN’S COMMISSION, <http://www.nationalwomenscommission.org/> (last visited Mar. 30, 2012).

342. *Concluding Comments*, *supra* note 339, ¶ 5.

343. *Id.* ¶ 7.

344. Interview with Wendy, *supra* note 254.

345. See, e.g., Flynn Coleman, Note, *Pan-African Strategies for Environmental Preservation: Why Women’s Rights Are the Missing Link*, 23 BERKELEY J. GENDER L. & JUST. 181, 205 (2008) (discussing the success of microfinance initiatives focusing on women in Africa).

346. See *supra* notes 343–48 and accompanying text.

347. Interview with Maria, *supra* note 91.

348. Interview with Vivian, *supra* note 2.

by the government, also works with the school to promote Maya women's rights, and the school is planning to collaborate on literacy/radio projects for girls.<sup>349</sup>

Overall, education is a key means to empower Maya women. The Tumul K'in Center for Learning has emphasized female education and women empowerment in a number of ways.<sup>350</sup> As Vivian noted, the school provides an "opportunity for young women to empower themselves [by] being a part of the program," including in leadership roles.<sup>351</sup> Girls participate in agricultural activities, and "work just as boys."<sup>352</sup>

Similarly, Maya leaders should focus on increasing awareness of the value of women in promoting Maya culture and rights. As Vivian noted, valuing land "comes from the participation of women . . . because they're the ones who teach the young children at home, who transmit the values at home."<sup>353</sup> She added that "women may not be the ones . . . at the forefront, but . . . their role [is] equally important or more important because they advocate at the grassroots level."<sup>354</sup> Even the Maya Atlas, with its limited discussion of gender, recommended that women be encouraged to become leaders and "speak for the benefit of [the] group or community."<sup>355</sup>

Finally, the government and Maya leaders should support initiatives granting women more economic opportunities, including owning land. As UNIFEM has recognized, restrictions on women owning land "severely limit [women's] productivity and ability to leverage economic resources."<sup>356</sup> Scholars have observed that Maya women's lesser access to land "contributes to their secondary social position."<sup>357</sup> The poorest people in the village are often the elderly and single women.<sup>358</sup>

When securing property schemes in national law, it is important to consider gender in management and legislation.<sup>359</sup> Before undertaking any initiatives, the government, or the Maya leaders if they gain collective title to their land, should undertake a "gendered resource mapping" project. This type of project would involve creating a mapping project similar to the Maya Atlas, although this attempt

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349. *Id.*

350. *Id.*

351. *Id.*

352. *Id.*

353. *Id.*

354. Interview with Vivian, *supra* note 2.

355. *Maya Women*, MAYA ATLAS, <http://oldweb.geog.berkeley.edu/ProjectsResources/MayanAtlas/MayaAtlas/women.htm> (last visited Mar. 30, 2012).

356. UNITED NATIONS DEV. FUND FOR WOMEN, *supra* note 338, at 26.

357. KELLOGG, *supra* note 214, at 117.

358. MCCLUSKY, *supra* note 58, at 44.

359. TREUE ET AL., *supra* note 176, at 69.

should focus on land owned or managed by women.<sup>360</sup> This type of approach seeks to construct “countermaps” with women, presenting women’s views on the use and representation of landscapes that are typically excluded from political discourse.<sup>361</sup>

Once a land policy is devised, leaders could implement it by focusing on membership organizations with individual, rather than household, membership policies.<sup>362</sup> They could also include “gender quotas in governing bodies,” and initiatives with female only membership like land management committees.<sup>363</sup> In this vein, the current government could also promote a temporary affirmative action type of program to encourage women to become politically active, especially on Village Councils and Land Lots Committees.

Finally, if Maya women, as a whole or individually, truly desire more rights, including some form of a right to property, they should lobby the Belize government to do more to ensure women’s rights pursuant to its own constitution as well as international human rights instruments. If this is not enough, the women can then take their case through the Inter-American human rights system. This type of advocacy requires resources and time that many of the women unfortunately lack,<sup>364</sup> but every push begins with a first step.

#### CONCLUSION

*All of the [Belize Maya] organizations are representing one people, which is the Maya of Toledo, [but if we do not] unite we won't be successful.*

—Ken, Belize Maya political leader<sup>365</sup>

This sentiment has been widely echoed by the Maya people.<sup>366</sup> Judging from examples set by neighboring countries with Maya populations, it appears that if the Maya want to affect change and take control of their ancestral lands, they will have to form some semblance of a coalition. Considering that historically, the Maya have been forcibly divided by colonial powers, however, this will be a

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360. Barbara Rocheleau et al., *Gendered Resource Mapping: Focusing on Women's Spaces in the Landscape*, CULTURAL SURVIVAL Q., Fall/Winter 1994, available at <http://www.culturalsurvival.org/ourpublications/csqa/article/gendered-resource-mapping-focusing-womens-spaces-landscape>.

361. *Id.*

362. TREUE ET AL., *supra* note 176, at 69.

363. *Id.*

364. See *Concluding Comments*, *supra* note 339, ¶ 15 (stating that women in Belize suffer from widespread poverty).

365. Interview with Ken, *supra* note 104.

366. Interview with Chris, *supra* note 79; Interview with Jerry, *supra* note 124.

challenge. Of course, a pan-Maya movement has already been formed with the establishment of the Toledo Maya Cultural Council, and the formation of the Maya Leader's Alliance. This pan-Maya movement has made great inroads into the morass that characterizes Belizean politics by winning cases at the Belize Supreme Court and at the Inter-American Commission on Human Rights.<sup>367</sup> Yet, as Mary herself admitted, the movement is not united—there are many that are opposed to the idea of traditional, communal land rights.<sup>368</sup>

One way to provide some momentum to collaboration among the Maya may be to give Maya women more of a stake in the political process. Historically, many indigenous women have been discriminated against by their own people and the state, and the Maya women of Belize have been no exception.<sup>369</sup> In Belize, this is the case because Maya culture traditionally places women in a subordinate role and does not generally allow them to own land within the communal property of the village.<sup>370</sup> This tradition has been slowly changing, for as Maya women become increasingly empowered by owning businesses and working in women's cooperatives, they have more resources with which to acquire property. The Maya leadership would benefit from encouraging this trend, for if Maya women have more property, they have more at stake in the Maya struggle for land. Because Maya women are traditionally seen as personifying Maya culture in many ways, particularly in their roles as mothers, they could become invaluable as symbols of the Maya movement. In this way, Belizean Maya could learn from the Maya movements of Guatemala and Mexico. Ultimately, the chronic lack of unified leadership in the Belize Maya movement may be mitigated by harnessing the untapped potential of the emerging propertied, powerful Maya women.

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367. Interview with Mary, a female Maya leader, *supra* note 6.

368. *Id.*; *see also* Telephone Interview with Pulcheria Teul, *supra* note 135 (noting that there was a Concerned Advocacy Group working against the collective property ideal).

369. *See Concluding Comments*, *supra* note 339, ¶ 15 (stating that poverty is one of the reasons women have long been discriminated against in Belize).

370. *See KELLOGG*, *supra* note 214, at 117 (stating that Maya women have a secondary social position which is linked to their lack of property rights).

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