

IN THE SUPREME COURT OF BELIZE A.D. 2016

CLAIM NO. 190 OF 2016

BETWEEN (JOSE ICAL ON HIS OWN BEHALF FIRST CLAIMANT

(AND ON BEHALF OF THE MAYA

(VILLAGE OF JALACTE

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(ESTEVAN CAAL SECOND CLAIMANT

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(AND

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(THE ATTORNEY GENERAL FIRST DEFENDANT

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(THE MINISTER OF SECOND DEFENDANT

(AGRICULTURE, FISHERIES,

(FORESTRY, THE ENVIRONMENT,

(AND SUSTAINABLE DEVELOPMENT,

(AND

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(THE MINISTER OF WORKS, THIRD DEFENDANT

(TRANSPORT,

(NATIONAL EMERGENCY ORGANIZATION

*BEFORE THE HONORABLE MADAM JUSTICE MICHELLE ARANA*

Mrs. Magali Marin Young S.C. together with Ms. Monica Coc Magnusson and  
Allister Jenkins for the Claimants

Mr. Nigel Hawke, Solicitor General along with Mrs. Samantha Matute Tucker for the Defendants

## **FACTS**

1. This is a Claim for damages and other relief sought by the villagers of Jalacte against the Government of Belize as compensation for the acquisition and use of their lands without first obtaining prior consent of the villagers of Jalacte. The residents of the village of Jalacte use and occupy land in and around the village in accordance with Maya customary land use. The area which is used and occupied by Jalacte residents in accordance with Maya customary land tenure includes both sides of the old road between Rio Negro Bridge and the Belize –Guatemala border. Mr. Estevan Caal is one of the Jalacte residents who used and occupied lands on both sides of the road. Prior to any works being carried out by CISCO Construction Ltd. (“CISCO”), a public hearing was held in San Antonio Village, Toledo District, where persons from neighboring villages, including Jalacte Village, were present for a presentation on the EIA (Environmental Impact Assessment) and the road upgrade project itself. This hearing occurred approximately in 2010 with all the villages within the immediate environment of the proposed works.
2. In March or April 2013, the Defendant, Minister of Works, contracted CISCO to upgrade the existing rural road, which ran from the Dump

to Jalacte Village lands near the Belize/Guatemala border, and which was at that time a one-lane dirt road measuring less than 25 feet in width. The road upgrade included straightening and widening about three (3) miles in length, beginning at the Rio Negro Bridge all the way to the Belize-Guatemala border. It is this aspect of the road upgrade that is involved in this claim. The highway construction activities authorized by the Defendant, Minister of Works, are now complete, including the construction of the bridge over the Jalacte River near Treetop.

3. On or about October/November 2014, the Defendant, Minister of Agriculture, through his Ministry and BAHA, placed two re-fabricated structures on the North side of the road, in lands used and occupied by Mr. Estevan Caal in accordance with Maya customary land tenure. In September or October 2015, the Defendant, Minister of Agriculture, through the Ministry and BAHA, cleared land located on the South side of the road and erected a thatch structure. In October or November 2015, the Defendant, Minister of Agriculture and BAHA placed another structure that appears to be a greenhouse next to the 2 pre-fabricated structures on the North side of the paved highway inside the fenced area. At no time prior to nor after commencing the work on the road between the Rio Negro Bridge and the Belize/Guatemala border, nor before or after the erection of

structures on lands adjoining that road, did any of the Defendants enter into negotiations with Estevan Caal, nor Jalacte Village through its leaders, regarding compensation for the acquisition of the land.

4. On or about November 23, 2015, CISCO sent a letter to Jalacte Village leaders, advising that the company, on behalf of the Defendant, Minister of Works, planned to begin the construction of a bridge and complete the paving of the highway within the three mile corridor. In this letter, CISCO requested permission from the village to occupy approximately 2 acres of land on the South side of the highway beginning at the crossroad leading to the main residential area of Jalacte Village, for the purpose of setting up a campsite for the company's use throughout the duration of the new round of construction. At the time that the November 23, 2015 letter was presented to the village leaders, CISCO had already entered onto the two acre parcel, and placed several items of construction equipment and a trailer home on the land. CISCO continued the occupation and use of the 2 acre parcel and continued the construction of the bridge which is now completed.

## **5. ISSUES**

- 1) Whether the land in issue is national land within the meaning of the National Lands Act.

- 2) Whether the land in issue was used and occupied by the Maya village of Jalacte, in accordance with Maya customary land tenure.
- 3) If the answer to both (1) and (2) above is yes, does the Government have the authority to take up the lands as they have, without complying with the Lands Acquisition (Public Purposes) Act
- 4) Whether the Defendants took possession of the land in issue and/or resources on that land, without the consent of the Maya village of Jalacte and Estevan Caal
- 5) Whether the Defendants have breached any of the Claimants' rights as guaranteed under the Constitution of Belize, particularly section 3 (a), 3 (d) and 17(1)
- 6) Whether the outbreak of the medfly disease invokes the public interest exception as enshrined in section 17(2) of the Constitution trumps the issue of the constitutional rights given the facts and circumstances of this case
- 7) Whether the Claimants ought to be allowed to prosecute this constitutional claim sought six years after the date the issue arose
- 8) Whether the actions of the Defendants were done in breach of the Caribbean Court of Justice order of April 22, 2015 in **TAA, MLA et.al. v The AG of Belize**, in particular paragraph 4 of that order.
- 9) Did the Defendants fail to comply with the requirements of the Land Acquisition(Public Purposes) Act

**10)** Whether in the circumstances, the Claimants are entitled to an award of damages

6. These facts and issues are those agreed upon as undisputed between the parties in the Agreed Statement of Facts and Issues signed by the counsel for the parties on January 26, 2018, pursuant to case management order of this court dated November 3, 2017.

**7. Evidence of Jose Chen**

There were eight witnesses called on behalf of the Claimants; the first witness for the Claimants was Jose Chen. Mr. Chen is one of the leaders of Jalacte Village and he has lived in that village for approximately 32 years. He served as Alcalde of Jalacte Village from 2011 to 2014. An Alcalde is the traditional leader in each Maya village, including Jalacte Village. The roles of the Alcalde include looking after village lands and resources, calling village meetings, dealing with issues that arise in the community, including civil and criminal disobedience. The Alcalde is also the voice of the village to the government and others about issues that affect the village.

8. Mr. Chen stated that Jalacte Village holds collective property rights to lands within and surrounding the village in accordance with the Maya customary land tenure system that exists in southern Belize. Jalacte's property rights in their lands was affirmed by the April 22, 2015 Consent Order of the Caribbean Court of Justice as the village

was a party in the lawsuit involving the *Maya Leaders Alliance et al v the Attorney General of Belize*.

Jalacte's lands are bordered by several other Maya villages, namely San Vicente to the North and San Benito Poite and Aguacate to the South. To the West is the Belize/Guatemala border and the Guatemalan village of Santa Cruz. To the East is Pueblo Viejo village. Pueblo Viejo is the most adjacent village and is connected to Jalacte through the paved highway; the boundary between Jalacte and Pueblo Viejo is marked by Rio Negro Creek.

9. Located within the boundary of Jalacte is the village land used and occupied by Mr. Estevan Caal ("Mr. Caal") which he holds in accordance with Maya customary land tenure practice as a member of the village. Mr. Caal holds an individual customary proprietary right to the parcels of village land used by him and which derives from Jalacte's collective property rights. This particular village land used by Mr. Caal is located near the "UK ba kab Ha" Bridge and the "Chi na Ha" Creek. More specifically, the land is about a quarter mile from the crossroads leading to the border village of Santa Cruz in Guatemala and Jalacte's main residential center. The land is about two and a half miles past the boundary line between Jalacte Village lands and Pueblo Viejo village lands beginning at the Rio Negro Bridge. The land that has now been leveled by the Ministry of Works

and is currently being occupied by the Ministry of Agriculture was Mr. Estevan Caal's *huamil* land. The witness says that he knows this because he was alcalde of Jalacte. Even before he was alcalde, he knew these facts as those were Mr. Caal's lands for many years, and all the farmers in the village know which areas other farmers work

10. The Ministry of Works, through CISCO Construction Ltd., has now leveled the hills on both sides of the narrow dirt road that runs through the village land used by Mr. Caal and other village members, and constructed a wide paved highway in its place leading all the way to Tree Top at the Belize/Guatemala border. CISCO took gravel and other valuable materials from the village land used by Mr. Caal to construct the paved highway. The Ministry of Agriculture currently occupies the village land used by Mr. Caal where it placed two pre-fabricated houses and a greenhouse on the North side of the highway. The Ministry of Agriculture also constructed a fence around these houses.

11. Sometime in 2013, during the beans harvesting season around March/April, Mr. Chen noticed that CISCO had begun converting the then narrow, curvy and bumpy dirt road that ran through the boundaries of Jalacte lands into a paved highway. At the time the road construction work had gone past the Rio Negro Bridge and well within the boundary of Jalacte. The government never came to the



village to seek the permission of the villagers to engage in such construction activities on their lands. Instead, one day an individual called Mr. Hector (the Supervisor in charge of the Construction of the Highway) and came to Jalacte Village and said that he is looking for a place suitable to dump loads of excess dirt that they would be digging up from the highway construction. Since construction of the highway was already underway at the time and the villagers felt that they had no say in the matter, the village Chairman and Mr. Chen, showed Mr. Hector some areas in the village that they thought needed some filling.

12. This witness said he showed Mr. Hector three places in Jalacte. One was a swampy area on the village land used by Mr. Caal, which needed some filling. The swampy area is located on the South Side of the constructed paved highway. Instead of dumping excess dirt in the swampy area, CISCO leveled hills located on village land used by Mr. Caal located on both the North and South sides of the highway, and extracted valuable gravel and rocks for the construction of the paved highway. At no time prior to the construction of the highway or entering the village land used by Mr. Caal to remove valuable material did the government or its agent CISCO ask for our consent, nor did the villagers of Jalacte give consent to occupy or use material from the village land used by Mr. Caal. Mr Chen did not see any

notices posted in public places in the village of the government's intent to take lands in Jalacte.

13. The paved highway constructed on Jalacte lands by the Ministry of Works, through CISCO, used to be a narrow, curvy, one lane dirt road measuring about 25 feet in width. That road was only wide enough in some places for one vehicle to pass at a time. The newly constructed highway is much wider, measuring over 45 feet in width (without other road shoulder extensions) and is best described as a two-lane highway. Mr. Chen has knowledge of the approximate width of the old dirt road versus the new paved road because the Alcalde, Jose Ical and Jose Chen measured the new paved highway and the narrow dirt road that goes to the village main residential area. The dirt road that goes to the village main residential area is identical to the previous narrow dirt road that is now a paved highway. Pictures of the old dirt road are attached as **Exhibit JC1**.

14. In addition to the village land used by Mr. Caal, several acres of village lands were also taken by the Ministry of Works from other village members whose lands are located directly adjacent to the highway being constructed by the Ministry of Works through CISCO. As far as this witness is aware, no one has been compensated for these takings.

15. The length of the highway is more than three miles, beginning at the Rio Negro Bridge leading to Tree Top by the Belize-Guatemala border. The old dirt road used to be narrow and curvy, but the newly constructed highway is wider and straighter. Areas that were once curvy are now straight. Several acres of village land were thereby taken in the process by the Ministry of Works in order to achieve the wider and straighter highway. Other village members use and occupy parts of the village lands directly adjacent to the paved highway beginning at the Rio Negro Bridge but past the village land used by Mr. Caal all the way to the crossroad leading to Jalacte's main residential area.

16. The following village members use and occupy those village lands beginning at the Rio Negro Bridge, past the village land used by Mr. Caal and heading towards the crossroads leading to the main residential area of the village, and in the direction of the Belize-Guatemala border. On the North side of the paved highway are lands belonging to: Antonio Pan; Pablo Ack; Miguel Sho; Santos Oh; Martin Sho; Balbino Cowo; Santos Cho; Pablo Xol; Estevan Caal; Tino Augustino; Antonio Chu, and then Jalacte River. Village members are currently not farming their land beyond this area due to the 1 mile Belize-Guatemala Adjacency Zone recommended by the Organization of American States, but Jalacte lands extend to the

border. The following village members use and occupy those village lands on the South side: Sebastian Kuk; Santos Oh; Manuel Cho; Fernando Sho; Fernando Xol; Marcelino Ical; Alberto Sakul; Estevan Caal; Tino Augustino; Jose Xol; and then the Jalacte River.

17. A few months after CISCO stopped their activities on village land used by Mr. Caal, he came to see Mr. Chen in late October or early November 2014 to complain that the Ministry of Agriculture, through the Agriculture Department and the Belize Agriculture Health Authority (BAHA) had entered his land and placed two pre-fabricated structures on the North side of the paved highway that runs through the middle of his land without his consent or permission and wondered if Mr. Chen knew anything about their activities. As the Alcalde of Jalacte Village at that time, Mr. Chen had not been approached by anyone from the government about permission to use lands in Jalacte. He also did not receive or see any notice posted by the government anywhere in or around Jalacte informing the village of the government's intention to take lands in Jalacte.

18. Mr. Chen says that the only significant contact the villagers had with any government official during the time was when one Mr. Victor Kuk, the extension officer from the Agriculture Department came to his house. He was not at home at the time (Kuk asked for 2 villagers serve as watchmen for materials for his department). Mr. Chen said

he was surprised to later find out that later in October or November 2014 was what Mr. Kuk was referring to earlier as “materials” were in fact pre-fabricated building, and that buildings had been placed on the village land used by Mr. Caal without his permission or consent as well as without the consent as this is a part of the village lands.

As the traditional leader of Jalacte at the time, Mr. Chen felt obligated to look into the matter, since it concerned village lands. So he called a village meeting to find out if anyone in the village knew what was going on. However, no one had information as to why the pre-fabricated structures were placed on village land used by Mr. Caal, and what the intention of the government was.

19. Mr. Chen and the other village leaders decided to seek the assistance of the Toledo Alcaldes Association (TAA) and the Maya Leaders Alliance (MLA) in resolving the matter and to identify who to talk to at the responsible government agency in order to get more information. After the village leaders and Mr. Chen had met with the TAA and the MLA, they wrote a letter to the Agriculture Department of the Ministry of Agriculture, addressed to Mr. Flint Wagner. The letter was dated December 5, 2014 and its purpose was to inquire from the government the purpose for the pre-fabricated buildings that were placed on the village land used by Mr. Caal without consent. Mr. Chen personally delivered the letter on the same day to the

government personnel who were present at the site where the pre-fabricated structures have been placed. A copy of the letter is attached as **Exhibit JC2**.

20. Sometime after Mr. Chen had delivered the letter, around mid-December 2014, he along with other village leaders encountered Mr. Flint Wagner, Mr. Victor Cook and two women (whose names Mr. Chen cannot recall) along the paved highway leading to the village land used by Mr. Caal. Mr. Wagner asked them to sign a form giving consent to the government to take over the village land used by Mr. Caal, where the pre-fabricated structures had been placed. Mr. Chen told Mr. Wagner that they could not give consent and that such consent can only be given after due consultation with the community. He asked Mr. Wagner to respond to their letter of December 5, 2014, since they were still not clear about the plans and intentions of the government with respect to the land. He did not explain to them at the time what the government intended to use the land for. Mr. Wagner and the other government officials left without the villagers signing their document.

21. On or about the end of December 2014, one or two weeks before the change in Alcaldes, Mr. Chen and other leaders were invited to a meeting with the Ministry of Agriculture. Present at the meeting were village leaders from other Maya communities. At this meeting,

government officials told them that they were going to take over the village land used by Mr. Caal. The government officials also said that one Marcelino Ical told them that the Alcalde had given them permission to use the land. Marcelino Ical is a resident of Jalacte and he works for the Ministry of Agriculture as a watchman. Mr. Chen informed the government officials that what Marcelino Chen said was not true, that he had never given anyone permission to occupy the village land used by Mr. Caal, and that the community of Jalacte did not consent to Ministry of Agriculture's use of the land.

22. Mr. Chen's term as Alcalde of Jalacte Village ended on December 31, 2014. At the time he left his position as Alcalde, he had not received any response to the letter of December 5, 2014, and he has had no further contact with the government on this matter since then. He passed on the information about this matter to the new Alcalde, Mr. Jose Ical, who said that he would follow up on this matter.

23. However, the construction of the highway by the Ministry of Works has continued through the present day as the Ministry, through CISCO, has started paving the highway from the crossroad that goes to the village main residential area towards Tree Top at the Belize-Guatemala border. CISCO has also begun the construction of a bridge at Tree Top near the Jalacte River. CISCO has moved from the village land used by Mr. Caal and is now currently occupying another

estimated two acres of land in Jalacte located near Tree Top and about a quarter mile from the village land used by Mr. Caal, again, without the prior consent of the villagers. Several village members use and occupy village lands (including the approximately two acres of parcel currently taken over by CISCO) that are directly adjacent to the area along the new construction from the crossroad leading towards Tree Top at the Belize/Guatemala border. Tino Augustino, Antonio Chun, and Juan Bo use and occupy those village lands on the North side of the highway beginning at the crossroad towards Tree Top at the Belize-Guatemala border, but ending at Jalacte River. Santos Oh, Tino Augustino, Jose Xol and Tino Augustin are on the South side of the highway. Mr. Chen says he knows these facts because he noticed that CISCO had begun constructing these recent construction activities when he visited the area. In addition, as a former Alcalde, he knew that the foregoing village members have used and occupied those village lands for many years. As far as Mr. Chen knows, no one has been compensated for these takings.

24. In his Witness Statement dated December 17, 2017, Mr. Chen states that he is a farmer of the Maya village of Jalacte. He is married and he has 3 sons and 4 daughters. Three of his children have their own household with the remaining four still living with him. Mr. Chen's adult sons are also farmers working their own plots of land. He and



his family need the land for their survival. They grow and find most of their food on the land. Mr. Chen's family also grows corn, beans, pumpkin, and other ground foods. They also raise livestock such as chicken and pigs. Their animals also depend on the crops they grow for feed. Mr. Chen also hunts, fishes, and gathers wild plants for food. Some of the things they hunt and gather include Wetch, Jalaw, Kej, cala, Chaya, cohune cabbage, mushrooms.

25. The Construction of the highway has affected Mr. Chen's livelihood because it has changed the landscape by bulldozing new areas from where the old road used to be. They also expanded the width of the road and split many people's farm lands as a result. While Mr. Chen does not farm in this particular area he has used it to collect many forest foods such as fish and snails in the Uk B'a kab' ha creek. They also hunted in this area regularly but the road has changed and reduced the number of game in the area.

26. Without the land, Mr. Chen and his family would need money to buy food, and medicine and housing for his family. But without the land, how could they make money? The land also allows the Chen family to get a little money to purchase goods that they can't plant or gather. This year Mr. Chen planted anywhere from 4 to 5 'manzanas', equivalent to about eight to ten acres. Since two of his sons who still

lives with him are 18 and 14 years old, together they are able to plant a bigger plot. When his children were small he planted two crops of corn per year, about 2-3 manzanas in size by himself. One manzanas could give about 30 to 40 bags of corn on a good yield every year especially when he uses "awoone" (mukuna beans) to fertilize the soil. Every year he also plants one crop of beans about one manzana in size and he is expecting to harvest anywhere from 25-30 bags of beans. Usually his land is under huamil for about 1-2 years before he cultivates it again.

27. Before the road changed the landscape, there used to be a hole at the Uk b'a kab ha creek where Mr. Chen used to go "pokok Kar", this is a traditional practice where the villagers dig for fish within the holes on the banks of the creek. When the creek was high in the rainy season, he would strike fish. Some of the fish he used to catch include "chkchi", "kob'e", crabs and snails. These were abundant. The fish hole is no longer there because the construction of the road closed the hole with backfill and rocks. Now the water is shallow, about one or two feet deep, and mostly muddy and it dries up in the dry season now, and gets tadpole and "go'ot amoch" (green algae). The big hole was the home of the fish, it was a deep hole.

28. Animals have gone farther away, Mr. Chen believes it is due to noise first from the road machines and then from trucks on the highway. His brother in-law, Emilio Xi, and he used to go hunting sometimes and they used to not have to go far. But shortly before he passed away earlier this year, he told Mr. Chen that he had to go farther away to hunt. Since he owned a gun and I do not, I can no longer go hunting. One of the last times that he went hunting, before he passed away, he told him that he went hunting and on his return he was stopped at the checkpoint, interrogated about his gun, and then the officers tried to take his catch. They ended up letting him go because he was not doing anything wrong. Mr. Chen does not think the agriculture people should be harassing hunters. In fact, it is really the forestry department that deals with hunting issues.

29. This checkpoint is problematic for Mr. Chen because they always question him about his whereabouts. Just this year, he was stopped while he was going to get firewood another time when he was going to his farm land. He along with many other villagers are treated like foreigners on their own lands and are not able to move freely. He believes that if the government had consulted with the village before building the road, maybe it could have been located somewhere where it didn't go through the villagers fields, and the village leaders could

have talked about how officials would deal with villagers so that it wouldn't interfere so much with how they live their lives every day.

30. The road has certainly brought about lots of changes to Mr. Chen's life. Again, Mr. Chen's brother in law, Mr. Xi, and he were close. He used to help Mr. Chen plant his corn during planting season, and Mr. Chen would do the same for Mr. Xi. His land is near the highway and he often spoke to Mr. Chen about passers-by who have been stealing his green corn, sweet potato, and plantains. His parcel of farmland is located near the new highway, making it easily accessible to thieves. Mr. Chen does not farm in the immediate area of the highway and has never experienced this type of stealing of his own crops, so he is convinced that it is the passers-by, brought about by the highway access that has created this pressure on the security of crops. Now Mr. Xi's wife is left to deal with this growing problem.

**31. Cross-Examination of Mr. Chen by Mrs. Samantha Matute**

**Tucker**

Mr. Chen explained that he was elected as the Alcalde of his village in 2011. He had never held any position prior to this.

He had lived in Jalacte for 32 years before he was elected as Alcalde.

The first time that he heard about the highway being built through

Jalacte was in 2003; but he changed his response to say that consultations took place in 2012. He said he did not know of any consultations that took place with Jalacte villagers in 2002. Mr. Chen said he did not know of the highway before 2012 as he did not hear of it when he was the Alcalde of the village. He said he knew that Mr. Caal acquired the land through the village and he knew that Mr. Caal had not been given title to that land. He didn't know how many acres, but he knew it was a big piece of land located on the roadside. The highway passes right through Mr. Caal's land. Mr. Chen said that he served as Alcalde of Jalacte Village from 2011 to 2014, but he could not say if there were consultations held with village leaders during that time in relation to the building for BAHA because he did not know of any. He agreed that perhaps consultations were held with other villagers, and perhaps permission was given in his absence, but he personally was not consulted. As Alcalde he was paid \$100 every two months.

32. Mr. Chen was briefly re-examined by Mrs. Monica Coc Magnusson for the Claimants. He clarified that the Alcalde of a village is normally elected by the villagers. When decisions are made that directly affect the community, those decisions are not made by one person, but by the entire village. Each person would have some input in the decision

made. As far as he knew, Jalacte Village did not give permission to the Government to utilize the site that BAHA currently occupies.

### **33. Evidence of Estevan Caal**

The second witness for the Claimants was Mr. Estevan Caal. He is a resident of Jalacte Village and in his affidavit dated February 19, 2016 testifies that when he first arrived in Jalacte, he went to the Alcalde as is customary in Maya communities, to ask permission to reside in the village. He was given permission and he was shown an area of the village land where he could build his house and farm. After living in Jalacte for about 4 years, Mr. Caal realized that he needed more land for his farming activity. In accordance with Maya customary land tenure practice, he obtained the village land that is at issue in this claim, with the consent of the village, from another village member, Mateo Xol, who was the previous owner. As a member of Jalacte, subject to the consent of the village and in accordance with the Maya customary land tenure practice in Toledo, Mr. Caal says that he has the right to occupy and farm on the parcel of village land that is at issue in this claim, and therefore holds an individual customary property right to that parcel of land which derives from Jalacte's customary collective property rights. The village land that he uses and occupies which is at issue in this claim is about 27 acres. He knows the boundaries of his land. As is practiced in Maya communities, they

use existing landscape features such as rivers and creeks to mark the extent of lands that they use. Where there are no landscape features, they also use plant crops such as the Madre Cacao, along the boundaries of the land that are used as markers.

34. With regards to the land at issue, Mr. Caal says that the Jalacte River marks the southern boundary of the land; the “Uk ba kab Ha” bridge marks the Eastern boundary of the land; a small dry creek that dries up during the dry season marks the northern boundary of the land. The Madre Cacao trees that he planted and a small dry creek mark the Western boundary of his property, and a copy of the map describing his land is exhibited as “E.C.1”. There is a wide paved highway that now runs through the center of Mr. Caal’s land. This road used to be a narrow, rocky, hilly, dirt road. Of the 27 acres of his land, there are approximately 15 acres on the South side of the paved highway and 12 acres on the North side. Within the 27 acres, the government has now damaged a substantial portion of Mr. Caal’s land on both sides of the highway. He says that for the last 18 years, he has used this village land to farm crops such as beans and corn. The corn is for subsistence and the excess is sold at the market. It is a source of income for Mr. Caal and his family. According to his way of farming, which his parents taught him, after farming the land for a number of years, they let the land lay fallow to allow the soil to naturally

regenerate and become fertile once again. Allowing land to lay fallow is also good for the sustainability of wildlife and better crop yields. The Maya customary term used to describe this practice is “*huamil*”. Mr. Caal does not plant on the land every year because it is the Maya traditional practice to give the soil some rest, otherwise it will not produce at high capacity. The last year that he planted on this land was 2011. The last crop planted was beans. His land was *huamil* when the government agents first came unto the property. When one area of land is in *huamil* status, he would use another area of land for cultivation. This other area is referred to as *matambre* or *milpa*. If there is sufficient land, the other area is used for a few years and then it becomes *huamil*. Traditionally, an area of land is *huamil* for about 4 or more years. The longer an area stays *huamil* the better because it produces much higher yields.

35. Mr. Caal says that he decided to leave the land as *huamil* to regenerate in order to pass it on to one of his children. He had no timeline on when the land would be passed on. He has three sons who are 19, 17 and 14 years old. He hoped to make the land available to them for their financial and food security; he also hoped to plant small crops on the land for his own use. Mr. Caal said that while his land was in *huamil* status, he would still go to check on it and maintain boundary lines. His wife would also plant small quantities of cilantro, and



pepper for their home use. The area is also used by Mr. Caal and other villagers to gain access to other parts of the village. His children and other village members use the two creeks that pass through his land to fish, collect snails, and to drink and bathe. During *huamil* status, there are wild edibles that would sprout on the land such as mushrooms, Chaya, and other medicinal plants that they would gather and use. At times he would leave his horse to graze on the land.

36. This is the land that the Ministry of Agriculture took from Mr. Caal without his consent. The Ministry of Works caused their agent, Cisco Construction Ltd. (CISCO) to enter onto his land on the South side of the highway to level the hilly area used by Mr. Caal for farming, and extracted valuable gravel and other materials which were then used to construct the then narrow, rocky, and hilly dirt road that ran through Mr. Caal's land into a wide, paved highway. Mr. Caal repeats that no one asked his permission to utilize his land, nor has he been compensated for the use of his land to date.

37. In his witness statement dated December 17, 2017, Mr. Caal said that he and his family's lives depend on the land. Most of what he plants and tends to feed his family, and almost all of what they eat is what they have grown, hunted, or collected from the land. On average, an acre of milpa land when it is under cultivation produces about forty 100 pound bags of "ishim" or corn for one year. If it is planted in

beans, Mr. Caal says he can usually get about ten 100 pound bags of beans per year.

38. He would sometimes sell some of what he grows to get cash for supplies for his family eg school uniforms, school fees, transportation, and other expenses for his children. As he lives near the border, he often sells his produce to Guatemalans. He would sell a 100 pound bag of corn for \$13 to \$26 BZ and a 100 pound of beans for \$80 to \$93BZ. He has had the land for 18 years and it is about 27 manzanas in all. He does not cultivate all of it at any one time, he practices rotational farming. Mr. Caal usually plants corn two times for the year and one crop of beans for the year. His milpa size on an average year ranges between two or three manzanas and the same for his bean crop. The construction of the bridge in Jalacte is complete and has increased in the number of vehicles and people from outside of Jalacte going to and from the border with Guatemala, resulting in an increase of waste on the highway that eventually enter into creeks and rivers.

**39. Cross-examination of Estevan Caal by Mr. Hawke**

Mr. Caal says that he was living in Jalacte Village for the past 27 years. He has never been an Alcalde of the village. He was given 27 manzanas of land which he said was 53 acres. He has never left the village of Jalacte in the 27 years that he was living there. The witness

said he was not aware that there would have been consultations with the Government of Belize and people of Jalacte in 2002. In explaining how it is that the Government took his land, Mr. Caal said that the highway passed through his land taking 4 acres on each side. The total land that was damaged was 8 manzanas or 8 acres. He said he had 15 acres on the North and 12 on the South, and the amount damaged by the road was 4 manzanas on one side and 4 manzanas on the other; the rest of the land was not damaged. When he entered the village, the Alcalde had given him this land so that he could work it. He agreed that his land is accounted for 12 acres on the South and 15 on the North for a total of 27 acres. He did not agree that the highway does not run through his land.

#### **40. Re-examination of Mr. Caal by Mrs. Coc-Magnusson**

Under re-examination, Mr. Caal explained that one manzana equaled two acres and that he owned 27 manzanas of land in Jalacte.

#### **41. Evidence of Jose Xol**

Mr. Xol is the Chairman of Jalacte Village. He says that sometime in July or August 2012, people from the Government came to the village and told him that they were there to look at a piece of land that had been given to them by the village. They said this land was to be used for immigration and customs purposes. The amount of land they were looking at was about 100 acres. Mr. Xol spoke to the village leaders

as he did not know of any land given to the government by the community. He took the village leaders to meet the government people who were then waiting at the crossroads that lead to Jalacte's main residential area. He says that the land that the government people were talking about when they met the village leaders at that time was land near the river and near the cemetery used by Santa Cruz; it was not the village land used by Mr. Estevan Caal.

42. Mr. Xol says that as far as he knows, the villagers of Jalacte have never consented to giving away any other piece of Jalacte lands. As leaders, they cannot give consent until they first met with their community. In the 23 years he has been living in Jalacte Mr. Xol has never heard of villagers giving consent to the Government to use village lands as such decisions would have to be made collectively.

43. The evidence from this witness is that sometime in late October/ early November, one Mr. Flint Wagner, District Manager for the Agriculture Department of the Ministry of Agriculture visited him at his house. Mr. Wagner informed Mr. Xol that the Ministry of Agriculture was going to build a house on an area of the village near the river. At the time, Mr. Xol thought that Mr. Wagner was speaking about an area near the Belize-Guatemala border; he did not know that Mr. Wagner was referring to the land used by Mr. Estevan Caal. When Mr. Xol realized that the house was being placed on Mr. Caal's

land, he felt that Mr. Wagner had lied to him. He and other village leaders went to the Toledo Alcalde's Association (TAA) and to the Maya Leaders Alliance (MLA) to seek their help and advice in respect to the matter. With the help of the TAA and the MLA, the leaders of Jalacte Village sent a letter dated December 5, 2014 to Mr. Flint Wagner asking him to explain why the building was placed on village land without seeking prior consent or permission. A month later, Mr. Xol and other village leaders met Mr. Wagner, Mr. Kuk along with 2 other persons on the road near the village land used by Mr. Caal, and Mr. Wagner asked Mr. Xol to give consent to the government to use Mr. Caal's land. The Alcalde and the other village leaders refused, informing Mr. Wagner that they should meet with the community to seek permission as these decisions were made collectively. Mr. Xol and the other village leaders also asked that they respond to the letter of December 5, 2014. Shortly after this incident, Mr. Kuk came to Mr. Xol asking for a meeting with the community; Mr. Xol scheduled the meeting but nobody from the government attended the meeting. Mr. Kuk returned and apologized then asked for another meeting, but none occurred.

44. At a meeting held with the Ministry of Agriculture near the end of December, Mr. Xol and village leaders from other Maya communities were told that Government owned the village land used by Mr. Caal

and that they were going to take over the land for agricultural purposes. They also said that one Marcelino Ical had informed them that the Alcalde had already given permission for the use of Mr. Caal's land; at the meeting the Alcalde denied what Mr. Ical had said and repeated that neither he nor any village leader had given consent.

45. In subsequent meeting between government officials and village leaders of Jalacte, the leaders sought endorsement of their actions from the village leaders. However, the villagers refused to give consent or to endorse the actions because they would not give consent to actions that had already taken place. They felt that the consent should have been sought prior to government coming onto their land and using it.

**46. Cross-examination of Mr. Xol by Mr. Hawke**

Mr. Xol said he had lived in Jalacte for 33 years, all his life and he has never left the village. He was aware of consultations in 2002 as he was the Chairman of the village on that date. He then clarified that he was not aware of the consultations. He was the Chair of the village in 2012 until 2016. He knows where the land for Mr. Caal is located. He knew Mr. Caal was given 4 acres; he then said he did not know how many acres were given to Mr. Caal. Mr. Xol knows that the land where the road passes is for Mr. Caal. Mr. Xol said that Mr. Hector had told him in 2013 that there was going to be a road built there. The witness

agreed that Jalacte Village is near Guatemala, and that there is a border outpost for the BDF called Treetop as well as a BAHA outpost. Mr. Xol was not aware that the BAHA site was there because of a Medfly outbreak in that area. All he knows is that CISCO reached the area and dug up the land, then Mr. Wagner told them that they were going to put BAHA building by the river. He said he knew where Mr. Caal's house was but he did not know how many acres of land Mr. Caal had. Mr. Xol said he did not know anything about an EIA done when he was Chairman.

#### **47. Evidence of Jose Ical**

Mr. Jose Ical gave 2 affidavits and 1 witness statement in this matter. In his affidavit dated February 19, 2016, Mr. Ical said that he is the First Alcalde of Jalacte Village; as the traditional leader of his community, his role includes the overall care and management of village land and resources. Mr. Ical says that Jalacte holds collective property rights to lands within and surrounding the village in accordance with the Maya customary land tenure system that exists in the Toledo District of southern Belize. A village member, as a resident of Jalacte, subject to the permission of the village, has the right to occupy and farm on parcels of village lands, and therefore holds an individual customary property right to that parcel of land which derives from Jalacte's collective property rights. Jalacte's

collective property rights were affirmed by the April 22, 2015 Consent Order of the Caribbean Court of Justice in **Maya Leaders Alliance et al v. The Attorney General of Belize**.

48. Mr. Ical states that Jalacte's lands are bordered by several other Maya villages. To the West is the Belize-Guatemala border and the Guatemala village of Santa Cruz. To the North is the village of San Vicente and to the South are San Benito Poite and Aguacate. Pueblo Viejo village is to the East and is the closest village to Jalacte, connected through the paved highway. Jalacte's boundary with Pueblo Viejo is marked by the Rio Negro Creek. Lands beginning at the Rio Negro Bridge make up part of the communal lands of Jalacte. Alcalde Jose Ical says that there is village land over which Mr. Estevan Caal has the right to use and occupy near the "Uk b Kab Ha" bridge and the "Chi na Ha" creek. His land is located within the borders of Jalacte lands and thus is part of the communal lands of Jalacte held in accordance with Maya customary land tenure practice for his individual use and occupation as a member of the village. The village land used by Mr. Caal encompasses both sides of the paved highway that now runs through the land.

49. The highway constructed on Jalacte lands by the Ministry of Works through CISCO Construction Ltd (CISCO) is over three miles long and more than 45 feet wide beginning at the Rio Negro Bridge leading



to Tree Top by the Belize Guatemala border. In addition to Mr. Estevan Caal other village members use and occupy those village lands adjacent to the paved highway. Prior to becoming Alcalde, Mr. Ical was aware of the problem concerning the taking of the village land used by Mr. Caal by the government Ministry of Works, then by the Ministry of Agriculture through BAHA. The problem was discussed at a village meeting in 2014 called by the previous Alcalde Jose Chen. The construction of the narrow dirt road that previously runs through Jalacte into a wide paved road was carried out by the Ministry of Works through CISCO. Mr. Ical believes that the construction started around April 2013; prior to the start of construction this witness had not seen any notices of government's intention to construct a paved highway in Jalacte at any of the public places throughout the village. As far as he knew, no consent was given to the government regarding the construction of the highway on Jalacte lands and for the taking of valuable rocks and other materials from those lands to construct the paved highway.

50. Mr. Ical said that several months after the construction had taken place and after BAHA had placed structures on Mr. Caal's land, government officials held meetings with him and other villagers where government sought to have the villagers endorse the actions after these actions had been taken on Jalacte land. The villagers

refused to endorse the actions as the village had not made any collective decision on the issue and the Government had not sought to consult the villagers prior to taking these actions.

**51. Cross-examination of Jose Ical by Mr. Nigel Hawke**

Mr. Ical said that he lived in the village of Jalacte all his life and he does not recall there being any consultations between the Government and the villagers of Jalacte. He is the current Alcalde for Jalacte and he has been the First Alcalde since around 2016; as First Alcalde he was paid \$100 per month. He said he was aware that Jalacte was part of a Claim in 2015 against the Government for Mayan land rights, and as a result of that claim there was a Consent Order between the Maya people and the Government of Belize, but he does not understand what the terms of that order are.

52. Mr. Ical explained that Mr. Caal's land is not beside the paved highway, but on both sides of the road. The dirt road that existed before was narrow and small but now it was graded and big. He recalls attending a meeting with BAHA when he was First Alcalde; it concerned a Medfly outbreak. He said he was at a meeting with BAHA and Mr. Jose Shal was present. He said sometimes the government would send its people to talk to the Alcaldes, but the other villagers were not present. The government consulted with the

Alcaldes but not with the other people and the land problem is not just with the Alcaldes; the government must consult with all the people. He agreed that he as Alcalde met with Fred Wagner and Victor Cook from Agriculture and BAHA and held talks on January 29, 2015 and on 21 October. Under re-examination, Mr. Ical clarified that prior to BAHA placing a house on Mr. Caal's land there were no talks; talks took place with BAHA after they had already placed the house on his land.

**53.Evidence of Santos Oh**

Mr. Oh says that he is 68 years old and he has been a resident of Jalacte village for thirty-three years. He is a farmer, and that is what he has done his whole life and continues to do.

54.Prior to becoming a resident of Jalacte, he had asked the village, through the Alcalde, for permission to live in the village with his family. They were granted permission. They showed Mr. Oh where he could do his farming and build his house. Mr. Oh moved to Jalacte Village with his wife and their 8 children for easier access to markets where he can sell his produce.

55.Mr. Oh owns two parcels of land near the new highway not too far from Treetop and Near Rio Negro. The new highway took about two acres of his land near Rio Negro; it used to be four acres as the road

ran in the middle of it. The parcel near Treetop was one acre and the road took along the edges; he would estimate about thirty feet inside and two hundred yards in length along the road. So Mr. Oh no longer has use of this land.

56. The actions of the government agents such as CISCO and BAHA, by taking away land from Mr. Caal and Mr. Oh, without asking for permission from the village through the Alcalde, not only undermines the authority of the Alcalde in managing village lands, it also sets a bad example for outsiders. Now people think they can just come in and grab land. For instance, there is a man named Kent Chun, who is not a village resident, he has taken about four acres of Jalacte land without asking the village permission. I know he is from San Antonio. In taking these four acres he took about one acre of another parcel of Mr. Oh's land in Jalacte where he grows rice. Mr. Kent Chun is building a cement house on the front parcel and has planted coconut trees on the back parcel where Mr. Oh used to grow rice. Mr. Chun took this land without first going to the Alcalde to ask for permission and when he was confronted by the village, he claims that he does not need the permission of anyone including the Alcalde.

57. Mr. Oh says that his land is his life. The crops that he grows he uses to feed his family and the excess he sells at the market. Now that so

much of his land was taken away, he is having a hard time making ends meet. He has to keep on using the remainder of his land, but he fears that if he doesn't let it rest, it will lose its fertility. Mr. Oh has had to depend on his children to help feed his wife and himself. They give them corn or groceries since Mr. Oh lost some of his land. But they have their own families to feed, so he is sure he and his wife are an added burden to them.

58. Mr. Santos Oh knows that about one acre of land can give about 40 to 50 bags of corn at 100 to 130lbs pounds for one bag yearly if planted two times. He usually sells his corn to Guatemala because it is closer than coming all the way to Punta Gorda, and he can get anywhere from 50 to 100 Guatemalan quetzals for a sack of corn, this is roughly 13 to 26 dollars Belize. It may not sound like much, but it is a lot for Mr. Oh who doesn't make much money. He can grow maybe ten bags of beans on a one-acre plot, one bag could weigh about 100 to 110 lbs. If he sells a bag he can get about 300 to 350 quetzal per bag, which is about 80-93 BZ dollars. He plants beans in the dry season usually.

59. With the money Mr. Oh gets from what he sells, he uses it to buy goods that he can't grow like soap, clothes, shoes, and medicines for his family. But he and his family also supplement their food by

gathering wild edible foods from the forest. For instance, mushrooms, Chaya, quib, cohune, just to name a few used to grow on his lands that were taken away. Mr. Oh and his wife would collect these to eat. They also fish in the creeks and hunt for food. This shows how important the land is to their very survival. Their lives, culture, identity and spirituality is tied directly to the lands that they use. Without the land they would be nothing.

60. Farmers in Mr. Oh's village and in most Maya communities in Toledo, plant corn at least twice a year. In March they clear land for "Kat Kai", and plant between May-June. Again, in September they clear for Saqi kwaj (Matambre) and in October they plant.

61. Mr. Oh has had to change how he lives because he can't use his land anymore, he can't make a big plantation and have to look to his children for food like groceries.

62. The highway has not only taken up valuable farm land but it is also bringing other problems to Mr. Oh's community. For example, there was a man who was robbed and killed on the highway, Mr. Carlos Pop, from Chial Guatemala. Mr. Pop would come over from Guatemala to trade goods; traders like him are called "Cobanero or aj kaay". The villagers are not sure who did it – but the person who was caught and blamed they say may be a Honduran national from another

community outside of Jalacte; but they don't know for sure. This really scares him because their village used to be peaceful, but he is afraid that more of these kinds of incident will occur. This just happened this year a few months ago about April 2017. After that incident happened, sometimes Mr. Oh does not feel safe on the highway for fear of being robbed or killed.

63. There is a sacred place not too far from the Highway; it is where their spiritual guides use to perform the Maayejak (ceremony). Before, it was close to the road but far enough to be hidden. Now the road cut almost through it, and it is now visible from the road. Now Mr. Oh believes outsiders use it to camp out and sleep there, because he has seen the trash they leave there. He has noticed that it is dug up, they have dug it up as if looking for Maya artifacts or jade. It was never like this before. They should have consulted the villagers of Jalacte, asked them if it was okay to put the road there, because if it was a little ways away then this sacred place could have remained hidden and undisturbed. The area was beautiful as it had sacred significance to us. This makes Mr. Oh really sad that it is being violated in this way.

**64. Cross-examination of Mr. Oh by Mrs. Matute-Tucker**

Mr. Oh confirmed that he has lived in Jalacte Village for 36 years.

He owns land in Jalacte by a hill where the highway is near Rio Negro.

There was no re-examination of Mr. Oh.

**Evidence of Pablo Chun**

65. Mr. Chun said that he is 37 years old and he has lived in Jalacte village for about 36 years. He is a farmer and also the current secretary on the village council. Mr. Chun plants corn, beans, and other ground food. His farmland borders Mr. Estevan Caal's farmland to the north. Mr. Caal's land is located near the highway. Mr. Chun knows that Mr. Estevan Caal was using this land before the Ministry of Agriculture took it away. The Ministry is now using it as a station for the BAHA buildings. Parts of Mr. Caal's land was also taken for the road.

66. Mr. Chun says that he went to a meeting in San Antonio with some leaders when he was the PTA chairman. He was PTA chair in 2010 to 2012. The meeting, held by government officials, was about the road. It was mostly informational. He recalls them saying that they will compensate if land or crops are damaged. However, when Mr.



Chun tried to ask a question, they asked if he was an Alcalde, and when he said no, he was shut down and informed that additional questions should be sent to the Attorney General. At that session the villagers were not given an opportunity to give their feedback or input.

67. Mr. Chun was surprised when he found out that CISCO had bulldozed Mr. Caal's land and didn't want to compensate him for it. Since he works near Mr. Caal's land, he saw when CISCO started to bulldoze the land. At a village meeting, this issue came up and the Alcalde and Chairman said the government was claiming the land as theirs and so they did not need to seek permission from Mr. Caal or the village. Mr. Chun knows that at the San Antonio meeting they said that they would compensate for damages caused by the road.

68. Mr. Chun was further surprised when CISCO let BAHA come onto Mr. Caal's land because the villagers were never informed of any Agricultural station until after they had entered. But he knows that the land in question belongs to Mr. Caal and the village, so they should have asked to use it before entering. They should have consulted the villagers of Jalacte about where they wanted to put the road, and who they would be affecting, and where would be a good place to put their checkpoint and buildings that would cause the villagers fewer

problems. They didn't do any of that, they just came and told the villagers what they were doing, after they had started doing it!

69. The highway has had an effect on the villagers' way of life. Not only has the road taken away valuable land that Mr. Caal used for cultivating food, it is also affecting them in other ways. For instance, the BAHA checkpoint is guarded by the military, police, and agricultural officials, however, these people often behave improperly. Mr. Chun has a small parcel of farmland near Black Creek, so he has to go past the checkpoint to his farm. Sometimes when he goes through the checkpoint he noticed that some of the guards are under the influence of alcohol. He has seen them allow people to bring over contraband cases of beer and liquor. This Mr. Chun saw when he worked as security for CISCO when they were building the bridge over Jalacte creek. But when he once brought over two bottles of soda from Santa Cruz, Guatemala, and tried to cross it past the check point, they took it from him and they said it was contraband. But the bigger problem, villagers at village meetings have also complained that when they try to bring their harvest through the checkpoint, they get harassed and sometimes denied entry, but all this produce are from Jalacte land in Belize, not Guatemala. So the villagers of Jalacte are

sometimes denied the opportunity to take gifts to their families in other villages and or to sell at the PG market due to the checkpoint.

70. Now that the highway and the bridge at Treetop are complete, there has been more traffic and people coming and going, which means an increase in contraband especially alcohol or beer. Mr. Chun now see more drunk people on the roads, more garbage, more crime, including a recent murder that has frightened the villagers.

71. Mr. Chun has noticed that Checkpoint personnel do not treat all people fairly. People appearing “poor” or traveling by bus or on foot are far more likely to be searched than persons traveling in expensive cars.

72. What the government has built on Jalacte Village lands is an agricultural checkpoint. It is well inside the border and is not an immigration checkpoint. But government officials at the checkpoint are stopping Jalacte villagers and preventing them from going about their business. On Monday December 10, 2017 at 3pm, a female villager, Catalina Xol, on her way to the Punta Gorda Hospital was not allowed to cross even though she was in labor pains. She was denied entry because the checkpoint guards claimed that she is Guatemalan. She was coming from Jalacte village and not from Guatemala. While she may have been born outside of Belize, she is

married to a Belizean and she is a registered permanent resident. Mr. Chun found out about this in his capacity as member of the village council as this complaint was brought to their Alcalde and their chairman. While she was eventually allowed to cross, it was only because her doctor was called and he came all the way to Jalacte and pleaded on her behalf to pass. Had the doctor not been willing to travel to Jalacte this woman would not have had access to a medical facility. This treatment was physically dangerous for her, as well as being a humiliating assault on her dignity.

73. The location of the check point is very bad for the villagers of Jalacte who want Belize to stop unauthorized Guatemalans from coming into Belize. They really should have put this checkpoint closer to the border near Treetop if the intent is to check for contaminated agricultural products coming from across the border. If they had consulted with the villagers, they may have put it in a better location. The checkpoint is causing emotional, physical, and moral distress just like that, which is caused by concerns about crime, drug use, and other social problems.

**74. Cross-examination of Pablo Chun by Mrs. Tucker**

He was asked whether he was employed by CISCO while the road construction was being done. He said yes. He said he was not happy that

the road was being built in Jalacte because they did not ask the entire community about the road. He agreed that he did earn some financial benefit from the road construction as he was paid for his job as a security officer.

Mr. Chun was not re-examined.

### **Evidence of Mateo Ack**

75. Mr. Mateo Ack was born in the village of Otoxha but he has been living in Jalacte village for about thirty years. He is 75 years old. He is a farmer. He plants corn, beans, ground food and raise chickens. His way of life is directly tied to the land. The building of the highway definitely has created problems. He has been harassed at the checkpoint by the authorities. One time he caught the bus in Jalacte and was headed to Silk Grass, in Stann Creek, to visit his son. Mr. Ack was taking his son and his family a gift of chickens. When they got to the check point, the officials stopped the bus. They searched Mr. Ack's bags and asked him where he was going when they saw his shoes and under clothing. Then when they saw the chickens, they refused to allow them to pass because they claimed they were sick chickens and that Mr. Ack had to take them back home. Mr. Ack explained to them that he got these chickens from his coop in Jalacte and not from across the border, but they made Mr. Ack take the

chickens back to the village. He was so upset that this ruined his trip, and he was not able to carry gifts to his son. He is a farmer, he doesn't have money so the only things that he can gift is what he produces. If he lived in any other village, he could take his chickens to another village. But here, because they built the checkpoint so far away from the border, on the other side of Jalacte, they treat Jalacte villagers like they are not even part of Belize anymore, just to travel in their own country villagers have to go through this customs checkpoint.

76. Those Chun brother and sister have moved into the village without permission, fencing off the land that the government already took from Jalacte, and they say they don't have to ask the villagers permission because the government of Belize says they can live wherever they want. But Mr. Ack says he is a Belizean too, and the government won't even let him go to another village to give some chickens to his family.

77. The same thing has happened when Mr. Ack tried to take some produce to sell at the PG market, he got harassed because they think he had brought it from across the border, but when he explain to them that these are his livestock, his produce, they do not believe him. Now it is too much trouble to sell his produce in Belize, he pretty well have to sell it in Guatemala. They really should have put this checkpoint closer to the border, near Treetop, so that the whole village of Jalacte

wouldn't be outside of it. But as it is, it seems they ruined their land and then the villagers are the ones who get harassed. Had the villagers of Jalacte been consulted, they could have showed the government officials better places for the checkpoint.

**78. Cross-examination of Mr. Ack by Mr. Hawke**

Mr. Ack confirmed that he is a farmer and that he knows about the BAHA post which has been set up in Jalacte Village. He is 75 years old and has lived in Jalacte for a very long time. He does not know about the Medfly outbreak; he just saw that some Spanish people arrived in the village and that they were spraying plants. He does not know what the spraying was for. He agreed that BAHA checked everyone at the checkpoint. He said he knows people come over from Guatemala but BAHA does not allow them to come in, and send them back. He does not know anything about Mr. Caal.

79. Mr. Ack was briefly re-examined by Mrs. Marin Young SC. When he was stopped by BAHA, it was explained to him that chickens brought over from Guatemala are sick so that is why he could not pass with his chickens to take to his children. He lives in the village of Jalacte and those were his own chickens.

**80. Evidence of the Defendants -Evidence of Jacinto Guterrez**

Mr. Guterrez was the first witness called for the Defence. He said that he is the Project Surveyor of the Project Execution Unit in the

Ministry of Works, and he has been so for about ten (10) years. He has read the Affidavits filed in response to the Affidavits filed on behalf of the Defendants, and he is duly authorized to swear this Affidavit on behalf of the Defendants. To clarify what has been stated in Paragraph 1 of the Second Affidavit of Jose Ical, it was said that there would be compensation **only** if the road had been realigned and diverted through the milpas, and caused damage. The road passing nearby to Jalacte Village was never realigned, and was only widened and paved. Therefore, there was no need for compensation. That further, everyone present at the meeting was given an opportunity to ask questions on any matter that was presented that needed clarification. Therefore, if Mr. Ical was unclear about something, he could have asked for clarification. That further, Jalacte Village was provided with a copy of the Environmental Impact Assessment (the "EIA") prior to the meeting held on July 21, 2010. Mr. Gutierrez says that he personally hand delivered a copy to Jalacte Village. He therefore humbly urge that the reliefs sought by the Claimants be refused.



**81. Cross-Examination of Mr. Gutierrez by Mrs. Magali Marin  
Young SC for the Claimants**

Mr. Gutierrez confirmed that he still worked at the Ministry of Works as Project Surveyor and he agreed that he considered himself to be a Senior Officer at that Ministry. He recalls attending a meeting on July 21, 2010 in San Antonio Village in his capacity as a Project Surveyor representative of the Ministry of Works (MOW). He was there to discuss the EIA pertaining to the Southern Highway Upgrading Project. He said he was not spearheading the meeting for the MOW; he was there to more or less deal with the land issues or whatever would happen. If the road was going to be built and there was some issue with a fence e.g., he would be the one to deal with that part. The witness agreed that there was some discussion at that meeting relating to compensation. He was then referred to Notes of the Meeting entitled “*Southern Highway Upgrading Project, Mile 14 to Guatemala Border: EIA Update*”. Mr. Gutierrez agreed that he is listed in the notes as the Engineer. He agreed that a question was asked about compensation: “*What about compensation for damages, not necessarily in money but for example if roads are being damaged by mining, will that be fixed?*” And another question from Gregorio Choc was “*Who do we address if there is a need for compensation?*” He also agreed that there was no response from the Government officials

in relation to those questions in the notes of that meeting. Mr. Gutierrez agreed that from these notes there is no record that Government would only compensate if the road had been re-aligned.

82. Mr. Gutierrez was shown EIA report Exhibit “EM3” dated May 2010 which was presented at the meeting of July 2010. He did not agree that he was quite familiar with the EIA. At the time it was presented, it was Mr. Meerman who presented it at the meeting. He agreed that the EIA was commissioned by the Ministry of Works and that document would assist the Ministry in terms of studying those lands that were being affected and dealing with the social and environmental factors in relation to the project. Reading a portion of the EIA at paragraph 2 on page 0.11, Mr. Gutierrez said as follows:

*“The population of the project area is largely Mopan Maya with associated land tenure of largely ‘communal’ land. Only Mafredi has a different ethnic composition. The dominant land use in the area is small scale, non-mechanized subsistence farming with a focus on corn and beans. Towards the end of the trajectory, around Jalacte, agriculture is more intensive but still small scale and un-mechanized. Only around Mafredi, the predominant land use is mechanized rice farming.”*

After reading out this passage, Mr. Gutierrez did not agree that Mayan communal lands would be affected by the project. He said that from

his understanding of that document, the road was going to follow the existing road and would not divert from those existing road throughout the project unless there is a reason to do so.

He agreed that the road was previously an unpaved road which was narrower than the road that was built as a result of the project. However Mr. Gutierrez did not agree with the suggestion that if there were lands abutting the original road which was narrower and had to be used for the widening of the road, that those lands would have been affected by this project. He also did not agree that there was never a road reserve in relation to this Jalacte Road; he said that there is a 66 foot reserve. The witness said that to facilitate the road, you would have to use the reserve. There is no road that is smaller than 40 feet. He strongly disagreed that there was no road reserve. He reluctantly agreed that if somebody was planting corn on the side of the road and the road was expanded into that person's cornfield, then that person's use of land would be affected. The witness agreed that there was a road reserve from the Dump to San Antonio and that the Southern Highway Extension Project extended beyond San Antonio to Jalacte. He also agreed that beyond San Antonio village there was only a foot trail. However, Mr. Gutierrez did not agree with the suggestion that there was no road reserve and he said that there may have been an

easement for a 50foot road reserve from San Antonio to Treetop; it is not a declared road but a legal easement. He does not know if the easement was surveyed. After being referred to the government's EIA which stated "*The existing road is not demarcated by a road reserve... that the width of the road will be 3 or 4 times that of the existing road*", he reluctantly agreed that there was no road reserve. He also take concede, after reading portions of the EIA, that it was identified that agricultural fields would have been affected by the widening of this road. He agreed that if government wanted to acquire private property from each side of the road in order to widen the existing road (based on his experience as Surveyor at the Ministry of Works) that would entail his contacting whoever owns the land and asking permission. He would have had to survey the land and calculate how much land is needed, value the land and then compensate the land owner. Mr. Gutierrez also agreed that if the landowner planted corn and other agricultural crops on the land, the valuation would have to take into account the value of the corn and other crops.

83. Mr. Gutierrez said that he delivered EIAs to the Alcaldes and Chairmen of the villages concerned. He also said that he was aware of the Consent Order from the highest court in Belize

where the Government of Belize has signed on to accepting that Mayan customary land tenure has a proprietary right to be protected in Belize. He said that he was aware of this Consent Order while he was conducting this project. He does not know that some of the land through which the road passes constitute the same area affected by the Consent Order; he also does not know if that means that there had to be some form of compensation by the Government of Belize where those lands have been affected. He agreed that if the government was widening the road, it would have to build up the road or that portion which is required for widening. He did not agree with the statement in the EIA that identified one of the impacts of building the road bed as loss of crops, and that the mitigation measure would be compensation; he said he did not think that was accurate. He also agreed after reading a letter sent by Mrs. Magnusson to the Minister of Works dated February 29, 2016 that there had been a demand for compensation made by the village of Jalacte from the Ministry of Works in relation to the road project.

84. **Re-examination of Mr. Gutierrez by Mrs. Tucker**

He agreed that, having read through the minutes of the meeting, that representatives of Jalacte were present. As far as he could

recall, there was no objection raised by Jalacte representatives about the road work. They did not request any compensation at the meeting. He said it seemed to him as if from that meeting, everyone was in favour of the road. The villages who were impacted by the EIA were given a copy of it; Jalacte was far out of that area and not within the range of the area which was to be impacted. Those villages which were to be impacted by the road project were Mafredi, San Antonio, Santa Cruz, Santa Elena and Pueblo Viejo as those were the villages which the road passes through. Mr. Gutierrez said he only delivered a copy of the EIA to Jalacte because they wanted everybody in the area to be aware of the construction that was going to occur.

**85. Evidence of Evondale Moody**

Mr. Moody says that he is a Project Engineer at the Project Execution Unit which falls under the mandate of the Ministry of Works and that he has held this position for eighteen (18) years. In or around 1999, the Government of Belize (the “Government”) considered upgrading the Southern Highway from an unpaved rural road to a two-lane highway. The road upgrade was to be done from the Dump (Junction of the Southern Highway and “Jalacte Road” at Mile 14 on the Southern

Highway) passing through the villages of Mafredi, San Antonio, Santa Cruz, Santa Elena, Pueblo Viejo and ending approximately (one and half) 1 1/2 kilometers from the Belize/Guatemala Border, and about two (2) kilometers south of the village of Jalacte.

86. The upgrade of the unpaved rural road was necessary for two main reasons; to improve access to the rest of the country; and it would increase commerce and trade with other countries in Central America. The road upgrade consisted of the widening and paving of the existing dirt road; the replacement of some small wooden bridges by culverts; and to cut and fill the road.
87. In accordance with Section 7 of the Public Roads Act, Chapter 232 of the Laws of Belize, the Dump to San Antonio Village was declared as a public road by Minister of Works in 1967 by Statutory Instrument (S.I.) No. 2 of 1967. A copy of the SI is exhibited hereto and marked “**EM1**”. That beyond San Antonio Village, there was only a foot trail through the villages, and it was not until the Ministry of Works (the “MOW”) opened a gravel road from Pueblo Viejo Village to Jalacte through to Tree Top to accommodate the Belize Defence Force outpost in 1981. The road could not be declared at the time, as the road could not be classified. The Government intends to declare the road upon

completion as a highway.

88. In or about May 2002, an Environmental Impact Assessment (EIA) was prepared for the upgrade of twenty-two (22) miles of road from the Dump to junction of the village of Jalacte. A copy of the EIA is exhibited hereto and marked “**EM2**”.
89. That pursuant to Regulation 5 of the EIA Regulations, an EIA provides a detailed assessment of the project, including the area that is likely to be affected; the likely or potential environmental impacts on the environment; and the identification and description of measures available to mitigate the adverse impacts on the environment.
90. No works were commenced after the preparation of the 2002 EIA, consequently an updated EIA was prepared in May 2010. A copy of the EIA is exhibited hereto and marked “**EM3**”.
91. The EIAs gave a detailed description of the project, identifying its study area to incorporate the villages of Mafredi, San Antonio, Santa Cruz, Santa Elena and Pueblo Viejo. The village of Jalacte was *not* within the study area. All villages to be affected by the project were provided with a copy of the 2010 EIA, including the village of Jalacte, although the proposed paved highway would not pass through the village itself. A copy of the acknowledgment of receipt by Manuel



Salam, Chairman of the village of Jalacte, is exhibited and marked “**EM4**”.

92. As a requirement of an EIA, pursuant to Regulation 18 of the EIA Regulations, public consultations are to be had with members of the public who fall within or immediately adjacent to the area of the proposed project. In compliance with Regulation 18, on July 21, 2010, a public hearing was held in San Antonio Village, Toledo District, where persons from neighbouring villages, including Jalacte were present for a presentation on the EIA and the road upgrade project itself. At this hearing, concerns were raised about the potential effects of the project, but ultimately, there was support by the villages for the upgrade of the road. At no time were any objections raised by the village of Jalacte at this hearing. A copy of the minutes of this hearing is exhibited and marked “**EM5**”.

93. CISCO Construction Limited (“CISCO”) was awarded the contract by the Government to upgrade the twenty-two (22) miles of unpaved dirt road. By letter dated April 4, 2011, CISCO was given notice of commencement of the contract, and given site possession with effect from March 17, 2011. A copy of the letter giving notice of commencement and possession of site is exhibited and marked “**EM6**”. CISCO commenced the

road works at the Dump in 2012 with no objections being raised. In 2013, the road works continued from the junction at Jalacte. From the Dump to the junction at Jalacte, the materials used consisted of limestone and mud bedrock derived from the surrounding areas. From the junction onwards, passing through Treetop, all materials used were from the existing dirt road and quarries. No new quarry had to be opened, and no other lands in the surrounding area were disturbed.

94. Early in 2015, CISCO consulted with the Chairman of Jalacte Village to establish a temporary camp, of approximately two (2) acres, near the junction at the village of Jalacte. This temporary camp was essential to facilitate the completion of the road works from the junction to the Belize/Guatemala Border. The Chairman expressed that it was necessary for this request to be made in writing. By letter dated November 23, 2015, and addressed to Mr. Jose Shol, Chairman of Jalacte Village CISCO made its request to occupy the two (2) acre site. This letter was copied to the Alcalde, the Second Alcalde, and the Police Alcalde of the village of Jalacte. A copy of the letter is exhibited and marked “**EM7**”.

95. By letter dated December 22, 2015, Mrs. Monica Coc-Magnusson, legal representative for the village of Jalacte,

responded to CISCO's letter stating that its request would be considered by the village of Jalacte, and that the company would be informed accordingly whether permission is granted to occupy the land near the junction in accordance with their customary practice. To date, CISCO has not been informed accordingly. A copy of the letter is exhibited and marked "EM8".

96. At all times the Project was to upgrade an existing dirt road passing through the aforementioned villages, with the exception of Jalacte, and as such, consent was not necessary for the area surrounding the village of Jalacte. Further, the lands were not conducive to farming.

97. The Project preceded the Consent Order of the Caribbean Court of Justice (CCJ), and in any event, there is no evidence that the works 'adversely affected the value, use or enjoyment of the lands' by the aforementioned villages.

98. **Cross-examination of Mr. Moody by Mrs. Magali Marin Young**

Mr. Moody said that he is a Civil Engineer who specialized in highways. During the time of the construction of this road from Dump to Jalacte, he was the Project Engineer in charge of road construction

and there was also a Resident Engineer on site. The road basically commenced at the Dump which is the intersection of the Southern Highway with the road going to Punta Gorda. The road travelled in a Westerly direction towards the Guatemala Border and it terminated at the BDF outpost called Treetop. The total distance is 23 miles. The road passed through several villages: Mafredi, San Antonio, Santa Cruz, Pueblo Viejo, Rio Blanco and Treetop. It also passes two kilometers (approximately 1.4 miles) South of the border of Jalacte Village. Residents have their homes in the center of the village, and their farmlands are located outside that center. He was referred to the 2002 EIA where the author included Jalacte as a part of the sub-region that would be affected by the construction of the new road.

99. Mr. Moody agreed that the authors of the 2002 EIA as well as the 2010 EIA recognized in their report that the village of Jalacte would have been affected by the road construction. He also agreed that this road project was basically done to connect these villages with Dump and Punta Gorda. He agreed that government intends to declare the road a highway upon completion. The widening of the road included widening of the foot trail which existed up to 1981; beyond the foot trail there was a right of way. The BDF would use the foot trail to walk to Treetop. Before this road project, the right of way was approximately 66 feet wide. Before the road project the right of way

was approximately 20 to 22 feet. The non-useable part of the right of way would consist of trees, crops etc. There were also drainage structures including culverts or bridges.

100. Once the road was built, Mr. Moody said the width became 30 feet including the shoulder; this included a two lane highway. The road reserve would normally be 66 feet. He agreed that at the end of the day there would have to have been some clearing of the right of way to accommodate this widened road way; it was a two lane highway. He agreed that there would have had to have been some clearing of the right of way to accommodate the widened road way. In addition to widening the road as part of the construction, Cisco had to establish a base camp, not at Columbia for the first 22 miles. When they did an extension to the road project, a new satellite camp was established to Treetop, they established a satellite camp at the junction of Jalacte. The witness agreed that he exhibited a letter (“EM7”) written by Cisco and copied to the Ministry of Works seeking permission from the Chairman of Jalacte to set up a 2 acre camp. He agreed that permission was sought because the camp was located in the general area known as Jalacte. He also agreed that Cisco had set up a quarry which was closer to the base camp than to Pueblo Viejo village; to set up the camp Cisco would have had to clear out a portion of the land. He said from what he saw the camp did not use up the

entire 2 acres; it was only for a container along with four or five pieces of heavy equipment like a bulldozer, grader, roller, loader and excavator. He said he could not estimate the size of the quarry; it was not on the main road, but was about 2 miles from the main road in a mountainous area. He was shown a 2004 Google map and agreed as the Project Engineer that it looked like the area where the road was built in the Jalacte area. He also identified the 20 foot right of way on the map. Mr. Moody was then shown a 2018 Google map by counsel and he agreed that it looked very similar to the same road path in the 2004 Google map. He also agreed that the 2018 map showed the base camp in the left hand corner. He agreed that the width of the base camp was 4 times the width of the road and the depth goes in at least 5 to 6 times the width of the road. He reluctantly agreed that the size of the area that had been cleared out for the base camp and the road and other cleared out area would be more than an acre. He agreed that he is a Civil Engineer and not an Agronomist; he also agreed with the suggestion that one of the reasons that the EIA had to be procured was to see what lands, who would be affected and to basically study the area in terms of the flora, fauna and soil conditions. He said that in his view the lands were not conducive to farming because he saw that they had to excavate through rock. He was then shown the Ministry's 2010 EIA that stated that portions of the lands affected would be

agricultural lands. After being shown the EIA, he still did not change his view at first. After he was shown the portions of the EIA that spoke to mitigation measure for damage and loss caused by the impact of the project on lands in the area including “loss of vegetation, loss of crops, fruit trees, loss of top soil, dumping of excess materials, destruction of farmland and local crops.” Mr. Moody agreed finally that the farmland was affected by the project. He agreed that in his 18 years’ experience he learnt of land acquisition where the government would negotiate compensation with landowners to compensate them for taking their land. He agreed that the Mayan People in Southern Belize were entitled to certain communal land rights.

101. Mr. Moody was asked about the area called the Jalacte quarry by counsel; he said there was no such quarry, and that there was no need to stockpile materials at a satellite site since the main site was at Pueblo Viejo.

102. **Re-examination of Mr. Moody by Mrs. Tucker**

Mr. Moody explained that on the two days per week that he visited the project site, the material that he would see being dug up was “cut to fill” that is rocky material from cutting the hill that is then used to fill the road; in his opinion that type of material could not be used to farm. The charts at page B.1.6 of the EIA shown to him in cross-examination were not specific to Jalacte and could have

been any other village. He was shown the diagram of an area on page B.1.3 marked “*Potential quarry at Jalacte Hillside*”; he said that looking at the sites identified by the author of the EIA (who is an Environmentalist) as potential sites, these were not done in consultation with the Engineers; this means that when they went on site it did not necessarily mean that they would use these as quarries.

### **Evidence of Roberto Harrison**

103. Mr. Harrison says that he is the Chief Agriculture Officer in the Ministry of Agriculture, Forestry, Fisheries, the Environment and Sustainable Development and he has held this position for the part four (4) years. In 2013, there was an outbreak of the Mediterranean fruit flies (medfly), which the Ministry of Agriculture (the “MoA”) traced to the southern area of Belize, particularly in the Jalacte area. In the interest of public health safety, the MoA thought it prudent to establish formal infrastructure in that area in order to contain the outbreak. Consultations were held with the village of Jalacte in order to inform of the use of less than three (3) acres of land in the area to erect an outreach station for the Belize Agricultural Health Authority (BAHA), shortly after the outbreak in 2013. No objections were raised by the village of Jalacte with the respect to the use of land in the area.



104. The Ministry identified and occupied a parcel of land approximately eight hundred meters (800 m) before the junction at Jalacte. This area was better suited for the placement of the outreach station to monitor all agriculture imports into Belize. With the permission of the Minister of Agriculture, after consultation with the Prime Minister, the MoA commenced construction of the outreach station; that was completed in November, 2014 on that said land. The outreach station includes an office for BAHA, housing for BAHA personnel and a greenhouse and is situated on land owned by the Government. The area where the outreach station is located is not agricultural land as claimed. Rather, it was an abandoned quarry and not land conducive to farming. That contrary to what is averred at paragraph 19 of the Affidavit of Jose Chen, at no time was anyone given a consent form to sign.

**Cross-examination of Mr. Harrison by Mrs. Marin-Young S.C.**

105. Mr. Harrison agreed that he was the Chief Agricultural Officer in 2016, a post that he held from 2013 to September 2016. His evidence was that there was an outbreak of Mediterranean fruit flies commonly known as the medfly in 2013; this outbreak had been traced by the Ministry of Agriculture to Jalacte Village. He agreed that he had not put evidence to prove that the outbreak started in

Jalacte, but Mr. Harrison said that BAHA records show their surveillance records.

106. He spoke of Herman Zetina who was the Coordinator of the Medfly program which was under the Ministry of Agriculture; Mr. Zetina reported to the Managing Director of BAHA. He agreed that any reports prepared by Mr. Zetina he would have had access to as the Chief Agricultural Officer. The witness was referred to a report by Mr. Zetina where he traced the outbreak as starting from Mango Creek caused by the illegal importation of produce such as apples, pears and peaches through neighboring Central American countries; Mango Creek is a major port of entry to Belize. He said that shipments of agricultural produce from countries like El Salvador and Honduras would come not through Mango Creek port but through Big Creek Port. Mr. Harrison agreed that Mr. Zetina would be the more credible source as to where the medfly outbreak originated. He agreed that there was no real threat to public health in terms of infecting humans with any disease, as the threat was to the fruit.

107. Mr. Harrison agreed with counsel that the checkpoint was 1.5 kilometers away from the Guatemala border. He said since mango is a seasonal fruit it would be easy to determine whether mango originates from Belize or elsewhere. He said that it was relatively

easy for Quarantine Inspectors to determine what mangoes are from that vicinity; it was not a conclusive determination, but an opinion based on their experience and knowledge. He said it was a checkpoint to monitor fruits coming from across the border; it was not a border crossing. He said that there was no need to obtain an EIA for this project for the construction of the outreach station housing BAHA as they did not change the physical landscape and simply brought wooden structures and placed them on the land.

108. Mr. Harrison was not aware that this area where the checkpoint was located was affected by a Court Order recognizing Maya customary land tenure rights. While he was Chief Agricultural Officer a letter sent by Attorney Magnusson on behalf of the villagers of Jalacte was not brought to his attention; he just saw the letter as a result of this trial. He was unaware of the objections of Jalacte villagers to the checkpoint. He frequented this area from 2013 to 2016 due to agricultural initiatives as well as building the checkpoint. He could not assist the court with the nature of the land use in that area prior to 2013.

109. **Re-examination of Mr. Harrison by Mrs. Tucker**

Mr. Harrison said the type of crops that were grown near the checkpoint was mainly corn and beans.

110. **Expert Witness Rebecca Adamson**

Ms. Adamson as the Expert on Indigenous Peoples and as the Founder and President of First Peoples Worldwide prepared and presented a report to evaluate the damage caused by the construction of the highway and structures and recommended compensation to the court. The Expert Report includes direct damages stemming from the physical footprint of the highway and structures and indirect damages stemming from the cultural, economic, and social changes that the village is expected to undergo. Ms. Adamson interviewed a group of fourteen residents representing a broad cross-section of Jalacte's population with the aim of depicting a "Typical Subsistence Household" before and after the construction of the highway and structures. She then asked interviewees to estimate the percentage of their households' diet sourced from a) agriculture, b) fishing, c) hunting, d) gathering and e) purchasing. The interviewees were also asked to estimate the percentage of their household's healthcare sourced from traditional medicine.

111. The report then assesses the damages caused by the physical footprint of the highway and structures on the land. The size of the physical footprint was estimated at 44.5 acres. Damages to farming, to the water, to fishing, to hunting, to gathering for food, to gathering for

healthcare, to gathering for non-dietary goods and services, to the cash economy were assessed. Damages to safety and psychological well-being related to the checkpoint, to governance, to culture and spirituality, and to language were also assessed. The total amount of damages owed to the Claimants was assessed at \$8,858,350.00.

#### **112. Cross-examination of Ms. Rebecca Adamson by Mrs. Tucker**

Ms. Adamson explained that she was an Indigenous Economist. This means that she is a Specialist in bridging the similar and dissimilar aspects of the Western Capitalist Economy and the Indigenous Subsistence Economy. She is used by a number of multinational corporations working directly with their boards on valuation and the valuation is specific to how indigenous community economies operate. She has been working in community development within indigenous communities since 1980. This particular specialty evolved within the past 15 years and Ms. Adamson has served as a consultant for the past 15 years on valuations. She has been working with indigenous communities around economic development of indigenous people. She gave examples of the type of companies she has worked with including the Body Shop (identification of raw materials for their products), Royal Dutch Shell, Rio Tinto and Vale

(valuation of stock prices of that company and assessing the good and bad value of the damage caused by their footprints on indigenous communities). She has worked with the Mayas in Toledo in relation to development of grants for economic projects; her organization provided funding and technical assistance to the Mayas in Toledo.

113. Ms. Adamson said she has visited Belize three times and she has visited the Mayas. She was invited into their homes and given walks where they showed her different aspects of the village. She did not come to Belize before preparing her report; health problems prevented her from doing so.

114. Ms. Adamson said that she was able to gather the information for use in her report through the assistance of one of her trainees, Nick Pelosi. She worked with him to develop a methodology and trained him in understanding how a subsistence economy functions before he travelled to Belize to gather the data. She stated that she communicated with him while he was in Belize and guided him wherever necessary. Upon his return to the US, she went over all the data with him and sorted it, then let him do the calculations. She then looked at the overall results and they came to an agreement and worked together on the final results.

115. Ms. Adamson explained that she and Mr. Pelosi focused on the assets vs income within the community as this was the method she had previously used in conducting valuation of damages for corporations. She also stated that in relation to the preparation of the expert report in this matter, counsel for the Claimant's instructions to her were that she had nothing to do with the legal ruling in the case. Her role was as the court's sole expert witness to assess the value of pecuniary and non-pecuniary damages. She said that their technology allowed her foundation to see good reputation and goodwill as an asset and then design a valuation assessment based on that asset. Ms. Adamson stated that in dealing with this type of subsistence economy, they would be collecting raw data. One example of this would be collecting data on how much food the community stored from traditional ways such as hunting, fishing, gathering and agriculture versus how much before the construction and after construction to establish the comparative loss or gain. Mr. Pelosi went into the Maya community and gathered the raw data. In relation to the road, there was no consultation with any government official on the construction of the road. She said that she asked Nick Pelosi to physically walk the road to get a sense of the road from which Mr. Pelosi gave the length of the road, a sense of the erosion taking place on both sides of the road, a sense of how the road ran

through the community, the special footprint of the road and visual pieces of assets he could see along the road. On his walk along the road, Mr. Pelosi was able to determine the majority of the land that ran along the length of the road had been put into the Mayas' traditional practice of land use, a rotation of crop growing. The Mayas would use the land for five years to grow crops then have it lie fallow for five years to have it rest and to replenish itself. She agreed that her report stated that approximately 31.36 acres of land would have been destroyed or damaged as a result of the road construction and the establishment of the BAHA checkpoint and outpost. She said they questioned the various households on the amount of land used prior to and after the construction; their calculations were that there was about a 10 percent decrease in healthcare or traditional medicine.

116. In relation to the cohune trees used by the villagers to build their houses, Ms. Adamson explained that when they looked at the value of the land according to the road, they recognized that while there would be some immediate impact, by and large the majority of the impact would occur over time and the cohune trees were examples of this. She does not know how long it takes for cohune trees to grow back, but she noted that one of the villagers mentioned that he wanted his land for his children who would eventually need the trees



to build their own houses. Ms. Adamson said that she came up with the time period of twenty years for her calculation on the amount of damages because she wanted the damages to include one full generation and 20 years is the generally accepted rule for the first generation. In her past work with corporations, she normally used 20 years as the period in calculating compensation for loss suffered. After being shown the Consent Order of the CCJ, Ms. Adamson said that she does not see anything showing that there was any indication that the CCJ had determined the boundaries of Jalacte.

117. **Re-examination of Ms. Adamson by Mrs. Marin Young SC**

Ms. Adamson clarified that as far as she knew, Nick travelled to Belize twice. The purpose of his trip was to gather the raw data specific to individual assets in regards to the road construction. It was also for him to meet with community leaders and members to get a sense of the impact in their lives from them personally i.e. raw data. She also clarified that when conducting these types of expert reports it is not unusual for her to have someone assist her in gathering raw data, as she was a high priced consultant, and generally preferred that she used her associates in this manner so that the cost of the services she provides is reduced.

118. **Legal Submissions for the Claimant**

The Claimants rely on the arguments in their Skeleton Argument and Reply Skeleton Argument. The following are meant to supplement and elaborate on those arguments in light of the evidence given at trial. This claim involves a government taking of citizens' property. The words of Justice Morrison of the Court of Appeal apply to this case:

*I would ... regard it as a fundamental principle of our constitutional law in this country that the power to compulsorily acquire property is an exceptional one and will in every case attract from the court the most anxious scrutiny to ensure that it has been carried out in accordance with the law,*

[*Attorney General of Belize v. Samuel Bruce*, Civil Appeal No. 32 of 2010 (Ct. of Appeal, 2011), para. 57] [Claimants' Skeleton Submissions & List of Authorities, Book 1.1, tab 9, p.22]

- A. *The land at issue was used and occupied by the Maya village of Jalacte, in accordance with Maya customary land tenure, and the Defendants had no authority to take them up without providing constitutional safeguards.*** The CCJ Order of April 22, 2015 in the second Maya Land Rights case specifically affirmed the Court of Appeal's judgment "*insofar as it holds that Maya customary land tenure exists in the maya villages in the Toledo District and gives rise to collective and individual property rights within the meaning of sections 3(d) and 17 of the Belize Constitution.*"

[*Maya Leaders Alliance v. Attorney General of Belize*, CCJ Appeal No. BZCV2014/002 (Order of April 22, 2015) (hereinafter “*Re Maya Land Rights II (CCJ Order)*”), cover page, para. 1] [Claimants’ Skeleton Submissions & List of Authorities, Book 2, tab 17, pp. 1, 2]

The Court of Appeal judgment upheld by the CCJ itself affirmed Conteh CJ’s declaration that “*Maya customary land tenure exist[s] in all the Maya villages in the Toledo District, and where it exists, gives rise to collective and individual property rights within the meaning of sections 3(d) and 17 of the Belize constitution.*”

[*Maya Leaders Alliance v. Attorney General of Belize*, Civil Appeal No. 27 of 2010 (Ct. of Appeal, 2013), (hereinafter “*Re Maya Land Rights II (Ct. App.)*”), para. 328(a)] [Claimants’ Skeleton Submission & List of Authorities, Book 2, tab 16, p. 191]

The First Defendant, on behalf of the Government of Belize, and Jalacte village were both named parties to that claim, and are bound by those judgments. Therefore, they are both bound by the ruling that where Maya customary land tenure exists in Toledo, it gives rise to collective and individual customary rights, and those rights attract constitutional protection. The CCJ has held that the doctrine of issue estoppel precludes parties from re-litigating an issue already decided by the highest court. Where such a decision addresses a matter of dispute among the parties, it “precluded those matters from being re-opened based on the doctrine of

*issues estoppel. ... there can be no question of re-examining [an issue] that had been specifically addressed by Belize's final Court of Appeal. The only viable issue remaining to the Respondent was to question the scope of [that court's] decision.*

[*Belize Bank Limited v The Attorney General of Belize*, 2017 CCJ 18 (AJ), para. 13 [attached and marked as Tab 2]

Similarly, in this case the government is barred by the doctrine of issue estoppel from re-litigating the question of whether Maya customary use and occupation gives rise to property rights that require constitutional safeguards in the event of expropriation. And, as noted above, the Defendants have admitted in the course of this litigation that Jalacte *villagers* use and occupy the land at issue in this litigation in accordance with Maya customary land tenure.

1. The only viable issue available to the Defendants here is whether the collective entity of Jalacte village used and occupied the lands. They argue that “until there has been a declaration of the boundaries of Jalacte, it cannot be determined that the land in issue is in fact Jalacte lands.”

[Paragraphs 6-9, above] [Written Submissions on Behalf of the Defendants (July 5, 2018), para. 20]

[Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 55-60]

2. The Maya Land Rights cases make clear that customary property rights arise from the kind of use and occupation that the Defendants agree exists in the lands at issue. But those rights necessarily accrue to both the individual residents and to the village of which they are a part. As the Maya Land Rights II trial judgment held:

*The fact that individual members of the community ...enjoy only usufructuary rights that are not proprietary in nature is no impediment to the recognition of a proprietary community title. Indeed, it is **not possible to admit traditional usufructuary rights without admitting a traditional proprietary community title.** There may be difficulties of proof of boundaries or membership of the community or of representative of the community which was in exclusive possession, but those difficulties afford no reason for denying the existence of a proprietary community title capable of recognition by the common law.”*

[*Re Maya Land Rights II (Sup.Ct.)*, para. 86 (emphasis added)] [Claimants’ Skeleton Submission & List of Authorities, Book 2, tab 15, p. 28]

3. Maya customary property rights by their nature are a form of collective title to land: “*The Maya Villages ... hold collective title to the lands their members have traditionally used and occupied within the boundaries established through Maya customary practices; and that this collective title includes the*

*derivative individual rights and interest of Village members which are in accordance with and subject to ... Maya customary law.”*

[*Re Maya Land Rights*, Consolidated Claims 171 and 172 of 2007 (Sup.Ct. 2007) (hereinafter “*Re Maya Land Rights I*”), para. 136(b)] [Claimants’ Skeleton Submission & List of Authorities, Book 3, tab 19, p. 66] [See also Statement of GOB’s Commitment to advance the undertakings contained in the judgment in CCJ Appeal No. 2 of 2014 (hereinafter “GOB Commitment”), paras. 2-4] [Trial Bundle 3, tab 5, p. 1]

4. In fact, the behaviour of government officials confirms that, to the extent they considered there to be *any* Maya interests over the land at issue, they considered Jalacte village, collectively, to hold those interest. The EIAs included Jalacte village in the scope of their review because the environmental effects of the road would affect the village – not simply individual farmers. It did so because Jalacte village would be affected by the environmental – that is, physical - impact of the highway, not merely by the consequences of improved access to a point a couple of miles away from their residential area. The government’s agent, CISCO, wrote to village leaders – not individual farmers - seeking approval from Jalacte village leaders for its occupation of the base camp site. The Ministry of Health spoke with Jalacte village leaders – not individual farmers - to advise of the coming of the BAHA station, not individual occupiers. [Paragraphs 10-12, 32, 48,57, above]

5. Given the admissions and evidence, Jalacte village and its residents hold the lands at issue pursuant to rights arising from Maya customary land tenure, it is irrelevant to this claim where the rest of Jalacte village's lands may lie, or where the boundaries of its entire village lands may be.

6. This customary title is entitled to the protection afforded by the Belize Constitution to all property.

[*Re Maya Land Rights I*, para. 99] [Claimants' Skeleton Submission & List of Authorities, Book 3, tab 19, p. 50] [*Re Maya Land Rights II (Sup.Ct.)*, paras. 84, 126(i)] [Claimants' Skeleton Submission & List of Authorities, Book 2, tab 15, pp. 38, 58] [*Re Maya Land Rights II (CCJ Order)*, para. 1] [Claimants' Skeleton Submissions & List of Authorities, Book 2, tab 17, p. 2]

i. By taking up and occupying Jalacte village's customary land, the Defendants violated sections 3(d) and 17 of the Belize Constitution Act.

7. As detailed in the Claimants' Skeleton Argument, sections 3(d) and 17 of the Constitution require certain procedures and safeguards be followed to make a government acquisition or deprivation of property constitutional.

[Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 64-69]

8. In the present case, the evidence supports a conclusion that the lands taken up for the highway construction, the CISCO base camp, the BAHA site and checkpoint were compulsorily acquired in an unconstitutional fashion by the

Defendants. In addition, Jalacte village was arbitrarily deprived of lands along the road that were damaged by the discarding or extraction of materials during the road construction, and by being prevented from accessing his remaining farmlands, all without constitutional safeguards, Jalacte and Mr. Caal were arbitrarily deprived of that property.

9. As outlined in the Claimants' Skeleton Argument and Reply Skeleton Argument, the Constitution only allows compulsory acquisition for public purposes if they are done pursuant to a law that complies with the requirements of s. 17. That statute is the *Lands Acquisition (Public Purposes) Act*, R.E. 2000, Cap. 184, as amended.

[Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 74-81] [Claimants' Reply Skeleton Argument, para. 26]

10. The Defendants admit that they have never entered into any negotiations with Jalacte, nor Mr. Caal, concerning compensation for their taking, as required by the Act. They were asked to produce any evidence of compliance with the other procedural requirements of the act (Gazetting, public notices, etc.) with respect to any of the construction, and failed to do so. By the Order of this Court made on July 11, 2018, an adverse inference may be made concerning that lack of evidence.

[Claimants' Notice of Application for Specific Disclosure, February 22, 2018] [Trial Bundle 1, tab 18] [Order of this Court dated April 12, 2018] [Trial Bundle 1, tab 19] [Order of this Court dated July 11, 2018][Attached and



marked Tab 3]

- ii. The Defendants' actions with respect to the quarry/BAHA station and checkpoint are also unconstitutional because they do not meet the standard for a "public purpose in accordance with the law."

11. The Constitution requires that a compulsory acquisition be for a "*public purpose in accordance with the law authorising the taking or possession or acquisition.*" The Defendants have asserted that their taking of the lands in question was not unconstitutional because it was carried out for a public purpose.

[Belize Constitution Act, R.E.2000, s.17 (1) (b) (ii)] [Claimants' List of Authorities, Tab 1] [Defendants' Submissions, para. 36-37]

12. The effect of the Defendants' failure to extend constitutional safeguards to the Claimants' property goes far beyond the failure to compensate. The Claimants were also deprived of the opportunity to challenge the "public purpose" for its use either as a quarry or as a BAHA site and BAHA/immigration checkpoint, and could have saved the value of those lands to the community for farming. This possibility makes the Defendants' failure to comply with the requirements for compulsory acquisition more egregious.

13. The public purpose for the road was to improve peoples' livelihoods, facilitate economic development, and make the residents of the Maya

villages feel that they are really part of Belize. The Claimants concede these are valid public purposes, generally.

[Paragraphs 20-21, above]

14. The government never articulated a reason for levelling Mr. Caal's farmlands and extracting roadbuilding materials. It provided no explanation as to why the existing quarry in the area could not have been used, or why Mr. Caal's site in particular was needed. Mr. Moody, a project manager for the highway construction, was not even aware that a new quarry had been opened. Clearly, if the government articulates no public purpose for the arbitrary deprivation of these *particular* lands, it cannot meet the public purpose test.

[*Modiri v. AG Belize*, Claim 188 of 2015 (Sup.Ct. 2015), para. 20]

[Claimants' Skeleton Submission & List of Authorities, Book 3, tab 23, pp. 6, 8]

15. With respect to the BAHA site, in this litigation the Defendants argue that it was built to control the medfly "in the interests of public health safety," but the evidence at trial does not support any public health purpose for the BAHA station. Apart from Mr. Harrison's statement that the station was "in the interests of public safety," the Defendants provided no evidence supporting the assertion that the medfly outbreak was a danger to public health. The medfly is not a "disease," it is an agricultural pest. In cross-

examination, Mr. Harrison admitted that the medfly does not bite humans and poses no immediate or direct threat to public health.

[Paragraph 54-54, above]

16. This Court's order of July 11, 2018 prohibited the Defendants from adducing additional evidence at trial that ought to have been produced, including information concerning the decision about where to place the BAHA site. Mr. Harrison's assertions concerning the medfly counts is such additional evidence, and this Court should therefore disregard it.

[Claimants' Notice of Application for Specific Disclosure, February 22, 2018] [Trial Bundle 1, tab 18] [Order of this Court dated April 12, 2018] [Trial Bundle 1, tab 19] [Order of this Court dated July 11, 2018] [Attached and Marked as Tab 3]

17. Similarly, apart from Mr. Harrison's bare assertion, the Defendants tendered no evidence to support the contention that the outbreak was traced to the Jalacte area in particular. During cross-examination, Mr. Harrison asserted that the government had medfly surveillance records from BAHA supporting the assertion that the outbreak occurred in Jalacte; however, no such records were disclosed to the Claimants nor tendered into evidence to support this contention.

[Cross-examination of Roberto Harrison]

18. The Claimants submit that the Defendants failed to establish a public health purpose for the BAHA site, and argue that such a purpose was not even considered until this claim was brought, in order to retroactively argue a health

exception in section 17(2) of the Constitution.

19. The other purpose of the BAHA station alluded to by the Defendants is that of protecting the Belizean economy by preventing the importation of infected fruit. The Claimants concede that protecting the economy is a reasonable public purpose that would support building a BAHA station and checkpoint at the border. The Claimants submit that it does not, however, support expropriating Mr. Caal's farms in Jalacte lands for the site.

[Paragraph 53-54, above]

20. Mr. Harrison referenced consideration of another site for the BAHA station, and that the ultimate site (Mr. Caal's lands) were "better suited to ... monitor all agricultural imports into Belize," and that it was placed on an "abandoned quarry" that was "not land conducive to farming." Mr. Xol testified that BAHA officials originally told him that the BAHA station was going to be near the border, not where it ended up.

[First Affidavit of Roberto Harrison, para. 8.] [Trial Bundle 2, tab 20, p. 3]

[First Affidavit of Jose Xol, para. 8] [Trial Bundle 1, tab 14, p. 3]

21. The Defendants disclosed no documentation as to what considerations, if any, went into the decision to place the BAHA site on Mr. Caal's lands instead of on a site closer to the border. This Court's order of July 11, 2018 permits this Court to make adverse inferences from that lack of disclosure concerning the considerations of the placement of the BAHA station.

[Claimants' Notice of Application for Specific Disclosure, February 22, 2018] [Trial Bundle 1, tab 18] [Order of this Court dated April 12, 2018] [Trial Bundle 1, tab 19] [Order of this Court dated July 11, 2018][Attached and marked as Tab 3]

22. If the procedure under the *Land Acquisition (Public Purposes) Act* had been followed, the village would have had the opportunity to provide suggestions concerning the location of the inspection station. The village would have suggested the BAHA station be placed at or near the Treetop post, which is at the border west of the intersection with the Jalacte crossroad, for the following reasons:
- a. A site between the border and the Jalacte crossroad would be more suitable for identifying imported produce, as opposed to domestic produce coming from the Jalacte and San Vicente villages inside Belize. Therefore, the BAHA station would not expose Belizeans from those villages to unnecessary and unwarranted interference with transporting their own produce within Belize.
  - b. A site between the border and the Jalacte crossroad would also be able to serve as an immigration checkpoint without requiring Belizeans from Jalacte and San Vicente to pass through it and produce citizenship documentation when travelling within their own country;
  - c. The government already occupies lands at Treetop for a BDF outpost, with the permission of Jalacte village; the BAHA station could be

located at the same lands;

[Letter from Justo Veliz (BDF) to Alcalde of Jalacte, August 29, 2016]

[Trial Bundle 3, tab 21, p. 1] [Letter from Jalacte to Justo Veliz, September 30, 2016] [Trial Bundle 3, tab 22, p. 1-2]

- d. Jalacte village had already agreed to suspend farming activities in the “adjacency zone” between the border and the bridge, where CISCO set up its base camp, in order to assist the BDF to monitor, identify, and remove foreign incursions onto those lands. Thus, a BAHA site in that area would not diminish the amount of land available to the village for active farming.

[First Affidavit of Jose Chen, para. 12] [Trial Bundle 1, tab 11, p. 4]

23. In a very relevant case, the Supreme Court held that the onus is on the government to demonstrate that the particular site expropriated is the most adequate. This is especially so where more than one site is possible:
- ... especially where alternatives are suggested by the land owner some definitive proof should be provided to show that indeed his private land was the most adequate for the purpose. That there was an existing road, seems to completely overlook the advent of that road and the fact that it had been cleared without [the landowner’s] permission. Had anyone taken the time to hold proper discussions with [the landowner], prior to the acquisition, this could easily have been discovered.*

[*Modiri v. AG Belize*, Claim 188 of 2015 (Sup.Ct. 2015), para. 20 (emphasis added)] [Claimants' Skeleton Submission & List of Authorities, Book 3, tab 23, p. 8]

24. There is a BDF post at the border at the end of the highway, which, if not government property at least is occupied by the government with the permission of Jalacte village. Thus the following observation of the Court of Appeal is relevant:

*It must also, it seems to me, be a matter of supreme importance, ... that not only is there another suitable site available but that that very site happens to be in the ownership of the authority that is seeking to exercise compulsory purchase powers.*

*... there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary*

*... that the acquiring authority should have authorisation to acquire the land in question. If, in fact, the acquiring authority is itself in possession of other suitable land - other land that is wholly suitable for that purpose - then it seems to me that no reasonable Secretary of State ... could come to the conclusion that it was necessary for the authority to acquire other land compulsorily for precisely the same purpose.*

*[Attorney General of Belize v. Samuel Bruce, Civil Appeal No. 32 of 2010 (Ct. of Appeal, 2011), para. 53 (emphasis added)] [Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 9, p. 20]*

25. The Claimants submit that the Defendants have not met that onus.

iii. The Defendants' actions are not saved by the exceptions in section 17(2) of the Constitution.

26. The Claimants' Skeleton Argument addresses the Defendants' arguments under section 17(2)(i) of the Constitution. Neither the highway nor the BAHA site were constructed pursuant to a court order.

[Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 67-68]

27. The Claimants submit that, even assuming that the Defendants had proven a valid "public health" purpose for the BAHA site, section 17(2)(k) of the Constitution does not exempt them from providing the normal constitutional safeguards.

28. As argued in the Claimants' Reply Skeleton Argument, section 17(2)(k) of the Constitution does exempt the government from extending constitutional safeguards for an expropriation that is for the general purpose of protecting public health. It only allows the exemption if the property itself is a danger to public health. No evidence was adduced at



trial that any of the expropriated land posed a threat to public health, nor that the construction took place pursuant to a law that provided for public health expropriations.

[Claimants' Reply Skeleton Argument, paras. 20-22]

- iv. The Defendant's actions are not saved by the *National Lands Act*, nor by their constitutional authority over all lands in Belize

29. The Defendants' argument is that their "constitutional authority over all lands in Belize" somehow authorizes them to arbitrarily deprive Belizean Maya of their property is addressed in the Claimants' Reply Skeleton Argument. The Claimants submit that the Constitution does not extend any authority that justifies the Defendants' compulsory acquisition of Jalacte lands.

[Claimants Reply Skeleton Argument, paras. 17-19]

30. The Claimants' argument that Maya customary title lands are not, in fact, national lands under the *National Lands Act*, and if they are, Maya customary rights on those lands still have to be extended the constitutional safeguards if they are taken, is contained in the Claimants' Skeleton Argument.

[Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 92-100]

31. The *National Lands Act* does reserve the government's right to open roads

over “any lands granted or leased under this Act.” However, customary title is not derived from any grant or lease of national lands from the central government; it arises out of Maya customary land tenure system, a system that has been operating in what is now southern Belize since before Belize became a British colony.

[*National Lands Act*, R.E. 2000, Ch.191, s. 29(2)] [Claimants’ Skeleton Submission & List of Authorities, Book 1.1, tab 5, p. 4] [*Re Maya Land Rights I*, paras. 62-68] [Claimants’ Skeleton Submission & List of Authorities, Book 3, tab 19, p. 33-37] [*Re Maya Land Rights II (Sup.Ct.)*, para. 126(I)] [Claimants’ Skeleton Submission & List of Authorities, Book 2, tab 15, p. 58]

32. Thus, the Defendants’ actions are not saved by either the *National Lands Act* or their constitutional authority over lands in Belize.

v. The Defendants actions with respect to the road are not saved by the Public Roads Act

33. The Claimants submit that the requirements of the *Public Roads Act* were not followed, and even if they were, any provisions of that Act permitting the expropriation of private property rights for road building are themselves unconstitutional. That argument is detailed in the Claimants’ Skeleton Argument.

[Claimants’ Skeleton Submission & List of Authorities, Book 1.1, tab 1,

paras. 86-91]

34. The Claimants point out that, given the absence of any public road declaration having been made at the time the footpath through Jalacte lands was widened to a dirt road in 1981, which itself was performed without compensation or formal expropriation, the roadbed of the dirt road continued to belong to the village, with only the creation of a common-law public right of way on it that developed over time through public use of the dirt road. Thus, the claimants could be entitled to compensation for the taking of the entire roadway, not merely the portion more recently taken up by the highway construction. However, the Claimants choose not to assert such a claim here, and seek damages only for the extra acreage taken up by the new highway.

[Paragraphs 13-15, above]

***B. The Defendants' projects violated specific, operative orders of the Supreme Court and the Caribbean Court of Justice***

35. The Claimants' argument is that the Defendants breached the June 28, 2010 order of the Supreme Court and the April 22, 2015 order of the Caribbean Court of Justice as are laid out in the Claimants' Skeleton Argument and Reply Skeleton Argument.

[Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 70-73] [Claimants' Reply Skeleton Argument, paras. 1-4]

36. All of the following actions took place at a time when the government

was under the specific court-ordered obligation of non-interference with Maya lands unless it had their consent and/or had engaged in prior consultations in order to obtain their consent:

- a. the July 21, 2010 public meeting concerning the EIA and road project;
- b. the Notice of Commencement and Possession of Site for the road works on April 4, 2011;
- c. opening of a quarry on Mr. Caal's lands prior to March or April, 2013;
- d. commencement of the road widening work west of the Rio Negro bridge (Jalacte lands) in March or April, 2013;
- e. installation of fencing around of the BAHA structures (Mr. Caal's lands) on the north side of the road in September/October, 2015;
- f. clearing the area of Mr. Caal's lands on the south side of the road across from the BAHA structures, and building of a thatch structure there in October/November, 2015;
- g. building a greenhouse on Mr. Caal's lands on the north side of the road in October/November, 2015;
- h. levelling of two acres on the south side of the road west of the crossroad for a CISCO base camp and placement of a trailer and construction equipment on it, prior to November, 2015.

[Paragraphs 17, 23, 34, 18, 51, 19, above]

- i. The Defendants did not undertake the consultations required to bring

them into compliance with the court orders.

37. The 2010 Supreme Court order permits government actions on lands used and occupied by the Maya villages if the villages consent and constitutional safeguards are extended. The 2015 CCJ Order requires that the government carry out prior consultations to obtain that consent, and also requires constitutional safeguards to be extended.

[*Re Maya Land Rights II (Sup.Ct.)*, para. 126(iv)] [Claimants' Skeleton Submission & List of Authorities, Book 2, tab 15, p. 59] [*Re Maya Land Rights II (CCJ Order)*, para. 4] [Claimants' Skeleton Submissions & List of Authorities, Book 2, tab 17, pp. 2-3]

38. Thus, even if Jalacte had been properly consulted, and consented to the government taking up the lands at issue (which did not happen), these court orders were not complied with because the Defendants did not comply with constitutional safeguards, including reasonable compensation.

39. In any event, as the Claimants argue in their Skeleton Argument and Reply Skeleton Argument, the 'consultations' relied on by the Defendants were insufficient to comply with the consultation and consent requirements of the orders. The villages' consent to the highway and BAHA station was never sought by the defendants except, retroactively, by CISCO with respect to the base camp, and Jalacte did

not extend consent on that occasion.

[Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 78-79] [Claimants' Reply Skeleton Argument, paras. 27-31]

***c. By failing to extend protection to Maya customary rights, the Defendants repeated and exacerbated violations of section 3(a) of the Constitution.***

40. The Constitution guarantees to every person in Belize “the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and from the public interest, to ... the protection of the law.”

[Belize Constitutional Act, R.E. 2000, s.3 (a)]

41. The Defendants acknowledged at trial that compensation would be provided to private landholders—holders of leases or grants—whose lands were taken up by the highway construction. Yet they failed to extend this legal protection to Maya customary property rights.

[Paragraphs 43- 49, above]

42. *The right to protection of the law is ... grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept*

*... includes the right of the citizen to be afforded, “adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.”*

[*Maya Leaders Alliance v. Attorney General of Belize*, CCJ Appeal No. BZCV2014/002 (Judgment of October 30, 2015) (hereinafter “*Re Maya Land Rights II (CCJ Judgment)*”), para. 47] [Claimants’ Skeleton Submission & List of Authorities, Book 2, tab 18, p. 24]

43. Furthermore, *the right to protection of the law encompasses the international obligations of the State to recognise and protect the rights of indigenous people.*

[*Re Maya Land Rights II (CCJ Judgment)*, para. 52] [Claimants’ Skeleton Submission & List of Authorities, Book 2, tab 18, p. 27]

44. As outlined in the Claimants’ Reply Skeleton Argument, the failure of Belizean statutory law to extend protection to Maya customary rights violates the Maya people’s right to protection of the law and “cannot go unchecked.” This case presents the clearest possible example of the effect of the government’s repeated violation of the constitutional guarantee to equal protection of the law.

[Reply Skeleton Argument, paras. 8-10]

45. The decision not to acknowledge, and to even deny, Maya customary property is more egregious because it was made despite the rulings

affirming the constitutionally- protected nature of those rights in the 2007 *Re Maya Land Rights* case, despite the same affirmation in the 2010, 2013, and 2015 judgments in the second Maya Land Rights cases, and despite an operative court order enjoining government interference with those lands at the time of the EIA public meeting when questions about the effect of that case were specifically raised, and when the work began.

46. The principle of the rule of law requires governments to “*act in proper fashion to accord due respect to judgments of the courts and not deprive successful litigants of the fruits of their litigation against Governments.*” Yet in this case it appears that the Defendants made no efforts at all to advise government officials of the Maya Land Rights judgments and guide their behaviour in a way that would ensure the Maya were not deprived of the fruits of their successful litigation. The evidence of the Defendants’ own witnesses – a Ministry CEO and two members of the highway Project Execution Unit - is that they were completely unaware of the Maya Land Rights decisions at the time of the events that gave rise to this litigation.

[*Belize Bank v. Attorney General of Belize*, CCJ Application BZCV2017/001, BZ Civil Appeal 4 of 2005, para.7][Attached and marked as Tab 2]



47. By treating lands used collectively by Maya villages as vacant national lands, government officials continued to deny the Claimants' rights to equal protection of the law when the Defendants knew that to do so violates the Constitution.

[*Re Maya Land Rights I*, para. 114] [Claimants' Skeleton Submission & List of Authorities, Book 3, tab 19, p. 57]

***D. Jalacte Village is entitled to compensatory damages for the losses caused by the Defendants' unconstitutional arbitrary deprivation and compulsory acquisition of their customary property rights.***

i. Compensatory damages for compulsory acquisition of indigenous customary lands are not adequately measured with reference to market value

48. The Constitution requires that, for a compulsory acquisition to be lawful, "reasonable compensation" must be paid.

[Belize Constitution Act, R.E. 2000, s.17(1)(a)]

49. For European-derived cultures, land is primarily an asset and market commodity, and thus reasonable compensation for compulsory acquisition for statutorily-derived property interests can be equated to the market value of the land. The *Land Acquisition (Public Purposes) Act*, which has not (yet) been amended since Maya customary land was recognized, contemplates compensation with reference to the market

value of the land.

[*Land Acquisition (Public Purposes) Act*, R.E. 2000, Cap. 184, Part 4-5]

[Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 3, pp. 17-23]

50. The Maya customary norms that underlie their customary land tenure system from which their property rights derive, however, do not understand land to be a commodity:

*... it is evident that the Maya claimants rely on agriculture, hunting, fishing and gathering for their physical survival. It is also clear that the land they traditionally use and occupy plays a central role in their physical, cultural and spiritual existence and vitality ...*

*... the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations ...*

[*Re Maya Land Rights I*, paras. 116, 121] [Claimants' Skeleton Submission & List of Authorities, Book 3, tab 19, p. 58, 59-60]

51. In coming to the CCJ Consent Order in the *Re Maya Land Rights II* case, the Government of Belize recognized the nature of Maya customary property rights should reflect the nature of their non-commodity view of their relationship to the land:

*The Government of Belize (GOB) reaffirms its commitment ... to provide for the demarcation and registration of all property rights that each of the Maya villages of the Toledo District holds over the lands their respective residents use and occupy in accordance with their customary land tenure system. GOB commits to seeking to provide the greatest lawful protection possible for such property rights against alienation and prescription.*

[GOB Commitment, para. 2 (emphasis added)] [Trial Bundle 3, tab 5, p. 1]

52. There is not, and cannot be, a market for property rights that are inalienable, or as close to inalienable as lawfully possible. It therefore absurd to quantify “reasonable compensation” for such lands with reference to a market in which the property does not and cannot participate, and which does not reflect the value of the village’s relationship with the land.

53. The CCJ held that “*the right to protection of the law encompasses the international obligations of the State to recognise and protect the rights*

*of indigenous people.*” As outlined in the Claimants’ Skeleton Argument, international law holds that compensation for the taking of indigenous peoples’ lands must take their unique context into account. In particular, restoration or replacement of lands should be the preferred method of compensation.

[*Re Maya Land Rights II (CCJ Judgment)*, para. 52] [Claimants’ Skeleton Submission & List of Authorities, Book 2, tab 18, p. 27] [Claimants’ Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 108-115]

54. As noted in the Claimants’ Skeleton Argument, Belizean courts have departed from determining the quantum of damages for unconstitutional compulsory acquisitions where circumstances warrant. These precedents support the Court’s discretion to fashion appropriate remedies to compensate illegal takings of land.

[Claimants’ Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 118-120]

55. They have also held that, when contemplating the concept of equality under the constitution, “[*True justice does not give the same to all but to each his due: it consists not only in treating like things alike, but unlike things as unlike.*.]”

[*Roches v. Wade*, Claim No. 132 of 2004, para. 51][Attached and marked as

Tab4]

56. The court expert, Rebecca Adamson, calculated the value of the losses suffered by Jalacte from the compulsory acquisitions by gathering information concerning all aspects of the village's relationship with and benefit from the land, the effect of the construction on the village, and the value of what has been lost.

[Updated Expert Report 2019, paras.5-8]

57. She calculated a total loss of \$11,827,752 over a span of 20 years (one generation). The Defendants had the opportunity to submit questions and concerns to Ms. Adamson during the course of her preparation of her reports. They did not provide any questions or concerns, and they did not challenge neither the basis for, nor the calculation of those losses at trial.

[Updated Expert Report, p. 6, 34]

58. However, Ms. Adamson's calculations assumed that all of the expropriated land would remain permanently in government hands. If this court orders the return of vacant possession of the lands to the village as indicated by the international jurisprudence, then those losses will be somewhat reduced.

ii. Jalacte seeks an order that the Defendants return the BAHA site and remove the checkpoint to west of the crossroad

59. Given the principle that restoration or replacement of land should be the

preferred remedy for the taking of indigenous' peoples' lands, the Claimants seek an order requiring the Defendants to return vacant possession of Mr. Caal's lands where the BAHA station is located.

60. The Claimants suggest that the BAHA site may be moved to lands already occupied by the Government of Belize, through the Belize Defence Force, at Treetop (at the border), west of the Jalacte crossroad, or if that is not feasible, to such other location between the Jalacte crossroad and the border as may be mutually agreed upon through consultations and constitutional process with the village of Jalacte.
61. Similarly, the Claimants seek an order returning vacant possession of the land formerly occupied by CISCO as a base camp, and specifically return the land vacant of unauthorized persons who have occupied the lands since CISCO left them without advising or discussing its future with the village, nor remediating it, both of which were required by the EIA.
  - iii. Jalacte and Mr. Caal seek compensatory damages of \$999,895.52 for the arbitrary deprivation of Mr. Caal's farmland, and return of those lands to the village
62. In addition to the return of Mr. Caal's lands on the north and south side of the road, the Claimants also seek monetary compensation for the irreparable damage done to that land, and for the loss of use of the land

during the Defendants' occupation of it.

63. According to Ms. Adamson's Report, a total of 8.12 acres of land was taken for the BAHA station, which amounts to 26% of the entire lands (31.36 acres) taken up by the highway construction and BAHA site.

[Updated Expert Report, pp. 10-11, 37-38]

64. The EIA warned that lands that are opened for quarries are irreparably lost for agricultural purposes. Thus, even after they are returned to the village, it will have permanently lost the value of the agriculture, hunting, and gathering that would have derived from those lands.

[Paragraph 33, above]

65. The total loss to Jalacte calculated by Ms. Adamson (for 20 years) for these types of activities on all lands taken is \$1,156,352. The portion of that is attributable to Mr. Caal's lands – 26% - is therefore **\$300,651.52.**

[Updated Expert Report 2019, pp. 10-11, 34]

66. In addition to compensation for the destruction of those lands for those purposes, Jalacte seeks damages for the loss of use of those lands by the village from mid-2013 (when it was turned into a quarry) until they are returned to them, and the effects of that loss of use on the village's cultural integrity, governance, psychological well-being and safety.

67. If we assume that by the time a judgment is rendered in this case and

complied with, it will be mid-2020, the village will have lost the use of that land for 7 years. Ms. Adamson calculated the total loss to the village over 20 years for those kinds of losses (excluding the effect of the check point, which is discussed below) to be \$7,684,000, the annual amount attributable to Mr. Caal's lands would be 26% of one twentieth of that, or \$99,892 annually. For seven years, those losses come to **\$699,244**.

[Updated Expert Report, p. 6, 34]

68. Additionally, Mr. Caal has been prevented from accessing his remaining 45.25 acres since the construction of the BAHA site in November 2014 and installation of armed guards. He should be awarded damages for the loss of agricultural use of those lands at the same rate as the other lands, which is \$435 per acre per year (272,832 divided by 20 years, divided by 31.36 acres). From November 2014 to mid-2020 is about 5½ years, or **\$108,260.62**.

[Updated Expert Report 2019, p. 15]

69. There is no evidence as to how much material was extracted from Mr. Caal's area of Jalacte land for the roadworks, nor the value of that material. Such information would be in the hands of the Defendants, who have not produced it and denied any such extraction. Thus, it has not been included in Ms. Adamson's calculations, and the Claimants have been



unable to quantify. The Claimants respectfully submit that the removal of this material should be considered when setting the amount, if any, of vindictory, moral, and/or aggravated damages.

iv. Jalacte seeks compensatory damages of \$341,074.19 for the arbitrary deprivation of the CISCO base camp site, and the return of that area to the village.

70. According to Ms. Adamson's Report, a total of 4.48 acres of land were taken for the CISCO site, or 14% of the total land taken up by the projects.

[Updated Expert Report, p. 11]

71. Jalacte seeks an order for the return of vacant possession of those lands.

72. Jalacte has not had the use of that site for any purposes since November, 2015, since it was illegally occupied by third parties after CISCO abandoned the site without advising Jalacte village—an occupation the government has tolerated. Again, if judgment in favour of the Claimants is rendered, we assume it will be mid 2020 by the time it has been issued and complied with.

73. If we take the total losses of all types for all the lands taken, excluding those attributable to the checkpoint across the road (which are discussed below), we have \$10,827,752. Fourteen percent of that is attributable to the CISCO camp site, or \$1,515,885.28. That number is for 20 years of

losses, however, so if we divide it by 20 to get an annual amount, and multiply that by 4½ years (November 2015 to mid-2020), we get a loss for that period of **\$341,074.19**. Jalacte therefore requests that amount in damages for the arbitrary deprivation of the CISCO camp site.

[Updated Expert Report 2019, p. 34]

- v. Jalacte seeks compensatory damages of \$1,496,757.17 for the arbitrary deprivation of areas adjacent to the highway that were destroyed by the highway construction.

74. In addition, Ms. Adamson’s Report indicates that 8.76 acres is 27% of the total affected acreage of 31.36 acres over the two parcels that were destroyed by CISCO “dumping sediment and other waste.” There is no evidence that they will rehabilitate to usable form. Nor is there evidence that they will not. If we assume it will take 10 years or more, the total losses attributable to these areas is 27% of half of the total \$10,827,752 (excluding those attributable to the checkpoint), which is **\$1,496,757.17**.

[Updated Expert Report, p. 11]

- vi. Jalacte seeks compensatory damages of \$3,464,880.64 for the permanent compulsory acquisition of the additional, widened roadway

75. According to Ms. Adamson’s Report, a total of 10 acres (14.5 total acres

taken up by the road minus 4.5 acres that overlaps the previous road) of land were taken up by the widening of the roadway for the highway.

[Updated Expert Report 2019, pp. 11, 12]

76. This is 32% of the total lands taken up, [31.36 acres] and has been permanently lost for all purposes outlined in Ms. Adamson's Report. Thus, the total losses attributable to the road widening is 32% of the total losses of \$10,827,752 (excluding those attributable to the checkpoint), which is **\$3,464,880.64**.

[Updated Expert Report 2019, p. 12]

- vii. Jalacte seeks an order to move the BAHA / immigration checkpoint to the Treetop area, or in the alternative, damages of \$1,000,000
77. As noted above, the claimants seek the return of vacant possession of the lands the the BAHA station is on. The Claimants also seek an order that the Defendants move the checkpoint that currently spans the highway in front of that site, to the Treetop area or such other suitable site west of the Jalacte intersection.
78. The current location of the checkpoint does not serve the intended purpose of monitoring and controlling fruit imports to protect Belize's economy from medfly. It is being used to prevent Jalacte villagers from transporting all manner of crops and livestock within Belize. By default, it has also become an immigration checkpoint, one which treats Jalacte

villagers as immigrants who have to prove their citizenship. This situation has on at least one occasion prevented access to timely health care. At the very least, the location of this checkpoint runs directly counter to, and makes a mockery of, the stated purpose of the highway project, of improving Maya villagers' access to Belizean markets, their self-esteem and making them feel like a real part of Belize.

79. In the alternative, if Court declines to order the relocation of the checkpoint outright, the Claimants seek an order requiring the Defendants to either voluntarily move it west of the Jalacte crossroad by July 2020, [or 90 days after the Judgment] or pay compensatory, vindicatory and moral damages of \$1,000,000 to Jalacte village for the losses occasioned by its current location, as calculated by Ms. Adamson.

***E. Jalacte Village is also entitled to additional vindicatory damages for the breach of their constitutional rights.***

80. The Defendants' behaviour in this case has been particularly egregious, in that it not only arbitrarily deprived the Claimants of their customary rights without extending constitutional protections, but they expressly denied the very existence of those rights *despite*:

a. their actual knowledge, as evidenced in the two EIA documents, that Maya villages use and occupy lands along both sides of the proposed highway, and hold customary rights to those lands;

[Paragraph 12, above]

- b. a Supreme Court order, and subsequently an order of the Caribbean Court of Justice, requiring them to obtain the consent of any Maya village prior to acting in any way that might affect the value or use of any lands those villages use and occupy according to custom;

[Paragraph 134, above]

- c. the fact that Maya villagers themselves drew the government's attention to the Maya Land Rights judgments in the public meeting held to present the findings and recommendations of the EIAs about the highway project

[Paragraph 24, above]

- d. the fact that Jalacte villagers and leaders directly advised government officials and agents on the ground that the lands being used belonged to Jalacte according to custom;

[First Affidavit of Estevan Caal, paras. 15, 19-21][Trial Bundle 1, tab 8, pp.4-5] [First Affidavit of Jose Chen, para. 18][Trial Bundle 1, tab 11, p.5]

- e. the fact that Jalacte villagers, through their lawyers, advised the government in writing that Jalacte holds customary rights over the area and was entitled to constitutional protection for any compulsory acquisition.

[Paragraph 48 and 61, above]

- f. the fact that the Government of Belize signed a written Commitment to

the Maya people to accord Maya property rights the same respect and protection that fee simple title is accorded other property rights in Belize.

[GOB Commitment, para. 2] [Trial Bundle 3, tab 5, p. 1]

81. The Defendants callously and willfully denied the Claimants' entitlement to a constitutional process in the face of multiple court decisions affirming that entitlement. The Defendants added injury to insult, first by taking no steps to educate their officials as to the existence and consequences of those court decisions, and then by justifying their compulsory acquisition of Jalacte lands and denial of constitutional protection based on Jalacte's lack of documentary title, the very inability of Jalacte and other Maya villages to obtain grounded the violation of their constitutional rights to equal protection of the law.
82. Where compulsory acquisition is the result of unconstitutional actions on the part of the government, an additional award is appropriate. In *Modiri*, the Court held that the Claimant was entitled to both compensatory and exemplary damages for the government's illegal expropriation of the Plaintiff's land. Although the courts have moved away from the language of punitive or exemplary damages in constitutional cases, an award in addition to compensatory damages is appropriate in the case of oppressive or unconstitutional action by servants of the Government.

[*Modiri v. Attorney General Belize*, Appeal No. 307 of 2014 (Ct. of Appeal, 2016), para. 48] [Claimants' Skeleton Submission & List of Authorities,

Book 3, tab 24, p. 35] [*AG Trinidad and Tobago v. Ramanoop*, [2005] UKPC 15 (23 March 2005), para. 19][Attached and marked as Tab5]

I. CONCLUSION

83. This case should never have arisen. The Defendants were aware of Maya customary land tenure along the route of the road in Jalacte; they were aware that agricultural lands would be damaged, and compensation would be needed; they were aware of Maya fears that the new road would increase pressure on their land tenure by outsiders; and they were aware that it was a constitutional violation to ignore Maya customary rights. Furthermore, they should have been aware of the CCJ's admonishment that:

*Despite being alerted to this deficiency as far back as 1998 the Maya people first filed a petition with the IACHR alleging a breach of the right to property as contained in the American Declaration, the system of Belizean land law remains unchanged.*  
*... the delay of the Government of Belize in resolving the issues of indigenous title cannot go unchecked.*

[*Re Maya Land Rights II (CCJ Judgment)*, paras. 57-58 (emphasis added)]

[Claimants' Skeleton Submission & List of Authorities, Book 2, tab 18, pp. 28-29]

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The law is clear that the government cannot arbitrarily nor compulsorily acquire property rights without due process and compensation, and that when it does so, the courts may award damages beyond the market value of the property so acquired, or craft other remedies, including the return of the property. Like the first European arrivals in the Americas, the Defendants treated these lands as though they were *terra nullius*; empty lands under the jurisdiction of the Crown, in which Maya occupation was of no legal consequence. The Claimants' beg this Court to vindicate the worth and value of the Maya people and their lands in a manner they will no longer be able to ignore.

### **Legal Submissions on Behalf of the Defendants**

#### Introduction

- 1. This is a Claim brought by the Claimant against the Government of Belize (the "Government") for breach of the Caribbean Court of Justice Consent Order 2015 (the "Consent Order"), as well as breach of constitutional rights for the upgrading of the highway, and the establishment of a BAHA outpost to combat the outbreak of medfly in Belize in 2015 and 2014, respectively. The Defendants however, contend that there has been no breach of neither any constitutional rights, nor the Consent Order. The establishment of the BAHA outpost and the**



**road works were done prior to the Consent Order, and the outpost was done in order to maintain public safety and health.** The Constitution of Belize like other constitutions in the commonwealth Caribbean allows for a derogation of fundamental rights on the basis of Public Safety and security.

2. **Further, the Consent Order is very explicit that the constitutional authority remain with the Government over all lands in Belize. The CCJ declared that: “The Constitutional authority of the Government over all lands in Belize is not affected by this order.”**
3. **This claim seeks to emasculate the Constitutional authority of the Government in circumstances where the construction of a highway was necessary and the control of an outbreak of medfly. If the Government cannot setup a BAHA outpost to control an outbreak of a disease that can impact not only the Economy of Belize but the health and well-being of the people? Then who can and what is the Government required to do in these circumstances.**

#### Background

4. **The residents of the village of Jalacte use and occupy land in and around the village in accordance with Maya customary land tenure.**

- 5. Prior to any works being carried out by CISCO, a public hearing was held in San Antonio Village, Toledo District, where persons from neighbouring villages, including Jalacte were present for a presentation on the EIA and the road upgrade project itself. These hearings occurred approximately in 2010 with all the villages within the immediate environment of the proposed works.**
- 6. In March or April 2013, the Defendant Minister of Works contracted CISCO Construction Limited (hereinafter “CISCO”) to upgrade the existing rural road, which ran from Dump to Jalacte village lands near the Belize/Guatemala border, and which was at that time a one-lane dirt road measuring less than 25 feet in width.**
- 7. The road upgrade included straightening and widening about three (3) miles in length, beginning at the Rio Negro Bridge all the way to the Belize-Guatemala border. It is this aspect of the road upgrade that is involved in this claim.**
- 8. In the course of carrying out its contract, in March and April of 2013, CISCO used materials derived from the existing road and quarries in the surrounding areas for use in the road upgrading project.**

9. **The highway construction activities authorized by the Defendant Minister of Works are now complete including the construction of the bridge over the Jalacte River near Treetop.**
10. **That in 2013, there was an outbreak of the Mediterranean fruit flies (medfly), which the Ministry of Agriculture traced to the southern area of Belize, particularly in the Jalacte area, for which, in the interest of public health safety, the Ministry of Agriculture thought it prudent to establish formal infrastructure in that area in order to contain the outbreak.**
11. **Consultations were held with the village of Jalacte in order to inform of the use of less than three (3) acres of land in the area to erect an outreach station for the Belize Agricultural Health Authority (“BAHA”), shortly after the outbreak in 2013.**
12. **On or about October/November of 2014, the Defendant Minister of Agriculture, through the Ministry of Agriculture and BAHA, placed two pre-fabricated structures on the north side of the road, in lands used and occupied by Mr. Estevan Caal in accordance with Maya customary land tenure.**

- 13. In September or October 2015 the Minister of Agriculture, through the Ministry of Agriculture and BAHA, erected a fence around the two pre-fabricated structures.**
- 14. In October or November 2015, the Minister of Agriculture, through the Ministry of Agriculture and/or BAHA, cleared land located on the south side of the road and erected a thatch structure.**
- 15. In October or November 2015, the Defendant Minister of Agriculture, through the Ministry of Agriculture and BAHA, placed another structure that appears to be a greenhouse next to the two pre-fabricated structures on the north side of the paved highway inside the fenced area.**
- 16. At no time prior to nor after commencing work on the road between the Rio Negro Bridge and the Belize/Guatemala border, nor before or after the erection of structures on lands adjoining that road, did any of the Defendants enter into negotiations with Estevan Caal, nor Jalacte village through its leaders, regarding compensation for the acquisition of the land.**
- 17. Early in 2015, CISCO consulted with the Chairman of Jalacte Village to establish a temporary camp, of approximately two (2) acres, near the junction at the village of Jalacte.**

- 18. On or about November 23, 2015, CISCO sent a letter to Jalacte village leaders, advising that the company, on behalf of the Defendant Minister of Works, planned to begin the construction of a bridge and complete the paving of the highway within the three-mile corridor. In this letter, CISCO requested permission from the village to occupy approximately two (2) acres of land on the south side of the highway beginning at the crossroad leading to the main residential area of Jalacte, for the purpose of setting up a campsite for the company's use throughout the duration of the new round of construction.**
- 19. At the time the November 23, 2015 letter was presented to the village leaders, CISCO, had already entered onto the two-acre parcel. CISCO had already levelled and filled the two-acre parcel, and placed several items of construction equipment and a trailer home on the land.**
- 20. Jalacte village responded to the letter through its attorney, asking that CISCO cease its use and occupation of the lands until the village had the opportunity to respond to the request for permission, of which, to date, CISCO has not been informed accordingly.**
- 21. CISCO continued the occupation and use of the two-acre parcel, and continued the construction of the bridge, which is now completed.**

22. At this time, all roadwork and construction is completed, and road work has ceased. It is noted that the Highway benefits the citizens in the south as well as all Belizeans.

Timeline

23. The following dates are important for the proper consideration of the instant claim:

<i>1967</i>	<i>Declaration as public road from Dump to San Antonio Village</i>
<i>1981</i>	<i>Opening of gravel road from Pueblo Viejo to Treetop</i>
<i>1999</i>	<i>Consideration for the upgrading of Southern Highway from Dump to “Jalacte Road”.</i>
<i>May 2002</i>	<i>Environmental Impact Assessment prepared for road upgrade from Dump to Jalacte.</i>
<i>May 2010</i>	<i>Further Environmental Impact Assessment prepared.</i>
<i>July 2010</i>	<i>Public Hearing held in San Antonio Village</i>
<i>March 2011</i>	<i>Road Works commenced at the Dump</i>
<i>April 2011</i>	<i>Notice to commence road works to CISCO</i>
<i>May 2011</i>	<i>Site Possession to CISCO</i>

- 2013**                    ***Outbreak of Mediterranean fruit flies (medfly) in Southern Belize and commencement of construction of BAHA outpost***
- November 2014**   ***Completion of BAHA outpost***
- 2014**                    ***Road works continued from the junction at Jalacte to Treetop***
- 2015**                    ***Consultation with Chairman of Jalacte Village***
- April 2016**           ***Fixed Date Claim Form filed by the Claimants***

Issues

24. **The issues, as agreed by the Parties, to be determined at trial are:**
- i. Whether the land in issue is national land and as a consequence the Government's constitutional authority remains.**
  - ii. Whether the land in issue was used and occupied by the Maya village of Jalacte, in accordance with Maya customary land tenure.**
  - iii. If the answer to both (1) and (2) above is yes, does the Government have the authority to take up lands as they have, without complying with the *Lands Acquisition (Public Purpose) Act*?**

- iv. Whether the Defendants took possession of the land in issue and/or resources on that land, without the consent of the Maya village of Jalacte and Estevan Caal.**
- v. Whether the Defendants have breached any of the Claimants' rights as guaranteed under the Constitution of Belize, particularly section 3(a), 3(d) and 17(1).**
- vi. Whether with the outbreak of the medfly disease that the public and public interest exception as enshrined in our constitution trumps the issue of constitutional rights given the facts and circumstances of this case.**
- vii. Whether the Claimants ought to be allowed to prosecute this constitutional claim sought six (6) years after date the issue arose.**
- viii. Whether the actions of the Defendants were done in breach of the Caribbean Court of Justice of April 22, 2015 in *TAA, MLA et. al v. AG(Belize)*, in particular paragraph 4 of that order.**
- ix. Did the Defendants fail to comply with the requirements of the Lands Acquisition (Public Purposes Act)?**
- x. Whether in the circumstances, the Claimants are entitled to an award of damages.**



## Submissions

**25. It is critical, at this point, to set out the terms of the Consent Order:**

- 1. The judgment of the Court of Appeal of Belize is affirmed insofar as it holds that Maya customary land tenure exists in the Maya villages in the Toledo District and gives rise to collective and individual property rights within the meaning of sections 3(d) and 17 of the Belize Constitution.*
- 2. The Court accepts the undertaking of the Government to adopt affirmative measures to identify and protect the rights of the Appellants arising from Maya customary tenure, in conformity with the constitutional protection of property and non-discrimination in sections 3, 3(d), 16 and 17 of the Belize Constitution.*
- 3. In order to achieve the objective of paragraph 2, the Court accepts the undertaking of the Government to, in consultation with the Maya people or their representatives, develop the legislative, administrative and/or other measures necessary to create an effective mechanism to identify and protect the property and other rights arising from Maya customary land tenure, in accordance with Maya customary laws and land tenure practices.*

4. *The Court accepts the undertaking of the Government that, until such time as the measures in paragraph 2 are achieved, it shall cease and abstain from any acts, whether by the agents of the government itself or third parties acting with its leave, acquiescence or tolerance, that might adversely affect the value, use or enjoyment of the lands that are used and occupied by the Maya villages, unless such acts are preceded by consultation with them in order to obtain their informed consent, and are in conformity with them hereby recognized property rights and the safeguards of the Belize Constitution. **This undertaking includes, but is not limited to, abstaining from: a) issuing any leases or grants to lands or resources under the National Lands Act or any other Act; b) registering any interest in land; c) issuing or renewing any authorizations for resource exploitation, including concessions, permits or contracts authorizing logging, prospecting or exploration, mining or similar activity under the Forests Act, the Mines and Minerals Act, the Petroleum Act, or any other Act.***
5. *The constitutional authority of the Government over all lands in Belize is not affected by this order.*

6. *This Court remains seised of the remaining issue in this case, namely the Appellants' claim for damages.*
7. *There shall be liberty to apply.*
8. *The Appellants' costs of this appeal and in the courts below shall be agreed by 30th April 2015 or taxed.*
9. *The Court retains jurisdiction to oversee compliance with this order and sets 30th April 2016 for reporting by the parties.” (Emphasis added)*

**Acts done prior to the Consent Order 2015**

26. **The Defendants respectfully submit and wish to emphasize to this Honourable Court that all the acts alleged to have been done by or on behalf of the Government were done prior to the Consent Order, and such could not have been in breach of the Consent Order.**

**National Land**

27. **It is the Defendant's respectful submission that the land in issue is national land owned by the Government of Belize (the “Government”).**
28. **The National Lands Act, Chapter 191 of the Laws of Belize governs national lands in Belize.**

**29. Section 2 of the National Lands Act [TAB] defines “national land” as:**

*“all lands and sea bed, other than reserved forest within the meaning of the Forests Act, Cap. 213, including cayes and parts thereof not already located or granted, and includes any land which has been, or may hereafter become, escheated to or otherwise acquired by the Government of Belize”*

**30. Section 5 sets out how national land should be disposed of.**

**31. Section 7 allows for the granting of lease of national land, while section 13 allows for the sale of national land.**

**32. The Claimants have not offered any proof as owner of the said land in issue, whether having been granted a lease or having purchased from the Government. As such, there is the presumption that the land is national land being wholly owned by the Government, and to be used in any manner for the benefit of the public. As such, the establishment of the BAHA outreach station and the upgrade of the road, were done on land belonging to the Government for the interest of the public at large.**

**33. Further, the land being national land, there was no need to comply with the provisions of the Land Acquisition (Public Purposes) Act, as the Government would not need to acquire its own land.**

**Land as Jalacte Land**

**34. The Defendants humbly submit that until there has been a declaration of the boundaries of Jalacte, it cannot be determined that the land in issue is in fact Jalacte lands. As such, it would be premature for the Court to make such a declaration. The procedure for the declaration of a village is clearly outlined in the Village Council Act.**

**35. It is our respectful submission that Parliament's intent was very clear and explicit in section 3 of the Village Council Act, Chapter 88 Laws of Belize. Section 3 specifically prescribes:**

*“The Minister may, by Order published in the Gazette, fix and declare any area of Belize not comprised within any city or town to be a village for the purpose of this Act, provided that at least two hundred persons who would be qualified to vote for village councils **under this Act live in such an area.**”*

**36. In the absence of clear evidence from the Claimant as to the boundaries of the disputed area, the Claimant is indirectly asking this honourable Court to usurp the function of the Minister and find that the boundaries have been declared or at a minimum exists. There is no evidence of any geographic survey executed, there is no evidence of the pals of the**

village boundaries and there is no evidence of a gazetted description of the boundaries.

37. It would also seem that the Claimant is asking this court to enter the realm of ‘policy making’ and that is not the duty and function of the court in a modern democracy. There is no mystery in the language of the law that the village has to be legally declared a village. Because the boundaries are not declared one cannot say with certainty where exactly the land in dispute falls.

**Constitutional Authority over all lands remains with the Government**

38. However, if it is that the Court should find that in fact the lands may form a part of lands used by Jalacte as part of their Maya customary use, the Defendants respectfully submit and maintain that, in accordance with the Consent Order, the *constitutional authority over all lands in Belize remain with the Government*; and as such, where the exigencies of the circumstance requires the Government to act accordingly, there can be no breach of the Consent Order or constitutional rights.

39. Section 17 of the Constitution of Belize [TAB] provides a citizen from the arbitrary deprivation of his property. It prescribes:

*“(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law...*

*(2) Nothing in this section shall invalidate any law by reason only that it provides for the taking possession of any property or the acquisition of any interest in or right over property-*

*(k) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;” (Emphasis added)*

**40. The Defendants contend that the establishment of the BAHA outreach station was done to address the issue of the outbreak of Mediterranean fruit flies (“medfly”), which the Ministry of Agriculture traced to the southern area of Belize; and particularly in the Jalacte area. This outbreak was a threat to the health and safety of the residents and agriculture in the area; therefore, in an act of prudence, it was necessary to establish this outreach station to assist in combatting the outbreak.**

**41. The Defendants humbly submit that taking this step is authorized and provided for in the Constitution as an exception to the protection guaranteed from arbitrary deprivation of property, and confirms that in fact, there has been no breach of the Claimants’ constitutional rights.**

**Authority for this proposition of law is found in the case of B v. Waitamata District Health Board [2017] 4 LRC 478, where a smoking ban in mental institutions was proper as it was for the general preservation of public health and could have derogated from the general bill of rights in the New Zealand Constitution.**

**42. It is worthy to note though, that it is the evidence of the Defendants that in relation to any acts being doing near to Jalacte was done after the Government consulted with Jalacte and there were no objections taken by Jalacte.<sup>1</sup>**

**Delay in prosecuting constitutional Claim**

**43. Section 20 of the Constitution of Belize provides for redress for breach of fundamental rights, but there is no limitation period fixed for access to the courts for breach of such rights. However, where one challenges his breach of constitutional rights, prudence dictates that he must act with promptness in remedying such a fundamental breach. In the matter at bar, the Claimants waited approximately six (6) years before they sought the assistance from the Court in providing relief. With respect, the Defendants submit that this has been an unreasonable delay**

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<sup>1</sup> Paragraph 5 of the Affidavit of Roberto Harrison and Paragraph 14 of the Affidavit of Evondale Moody



by the Claimants, and as such should be barred from seeking the reliefs now.

44. This issue was discussed in the case of *Edwards v Attorney General, Ministry of Public Service* [TAB], where the Caribbean Court of Justice found in dismissing the appeal that it amounted to an abuse of the process of the court due in the inordinate delay of the Claimant prosecuting the claim. It's noteworthy that the position was reinforced recently by the CCJ in the Cedric Richardson v. Attorney General of Guyana , 2018 when the reemphasise the need to act with promptitude.

#### Award of Damages

45. As mentioned above, the Court's jurisdiction to grant redress for breach of any of the fundamental rights under the Constitution of Belize is conferred in the Constitution itself.

46. *Section 20 (1) and (2) of the Constitution* [TAB] reads:

*“(1) If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with*

*respect to the same matter which is lawfully available, that person (or that other person) **may apply to the Supreme Court for redress.***

*(2) The Supreme Court shall have original jurisdiction-*

*a) to hear and determine any application made by any person in pursuance of subsection (1) of this section...*

*and **may make such declarations and orders**, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 19 inclusive of this Constitution.” (Emphasis mine)*

**47. It was laid down by the Privy Council in Maharaj v Attorney-General of Trinidad and Tobago (1979) AC 385 [TAB] that damages were an ‘appropriate’ relief in a claim for ‘redress’ for breach of the fundamental rights entrenched in the Constitution of Trinidad and Tobago. Lord Diplock, defined redress means ‘*satisfaction or compensation for, a wrong sustained or the loss resulting from this.*’**

48. Under Section 20 of the Constitution, an award of damages is not automatic, but is a discretionary award, and should only be awarded on a case by case

basis, and where it is fit to do so. To make such an award automatic would undermine this discretion given to the Court under the Section.

49. This was decided in the case of *James v Attorney General of Trinidad and Tobago* [2010] UKPC 23 [TAB], where the Board found that a declaration was sufficient to vindicate the Appellant's right, as the Claimant did not suffer any material disadvantage from the violation of his constitutional rights, and therefore, did not award any compensation

**50. Further, it was noted in James that since an award of damages is not automatic, it must be contemplated on what grounds will the Court make such an order; in other words, whether damages must be proven.**

**51. The Defendants humbly submit that it is trite law that loss has to be specifically proven. Justice of Appeal Kangaloo at the Court of Appeal and quoted by Lord Kerr at the Privy Council said in James:**

*“[It must first be shown that there has been damage suffered as a result of the breach of the constitutional right before the court can exercise its discretion to award damages...]”* (Emphasis mine)

52. Further, in *Maya Leaders Alliance et al v The Attorney General of Belize* [2015] CCJ 15 (AJ) [TAB], the Court stated that there are three requirements which must be satisfied for an award of damages to be made under section 20 of the Belize Constitution, that is: *“(1) the existence of a constitutional*

*right; (2) a contravention of that right; and (3) that a monetary award is the appropriate remedy or redress for the contravention.”*

53. The Defendants respectfully maintain that they have not breached the Claimants constitutional rights; however, if the Court is mindful to find that there has been breaches, then in applying the Maya case, we say that a monetary award is not the appropriate remedy, and a declaration would suffice to “remedy” the situation.

### **Conclusion**

54. In light of the foregoing, the Defendants humbly ask that the Claim be dismissed in favour of the Defendants with costs as the entire claim is misconceived.

55. All of the above are most respectfully submitted.

### **DECISION**

I have reviewed and assessed all the evidence in this case, oral and written.

I thank all counsel for skeleton arguments and written submissions which have been invaluable in assisting this court in resolving these issues.

**i) The first issue before this court is whether the land in issue is national land within the meaning of the National Lands Act. The Claimants’ position is that these lands which are the subject of this Claim are not**

**National Lands, but are Maya customary lands. The Defendants contend that the land in question is national land until and unless they are demarcated as Mayan customary land by the Government of Belize.**

I find the arguments of Mrs. Young SC for the Claimants to be extremely persuasive and I find myself in agreement with those arguments that Maya customary title lands are not, in fact, national lands under the *National Lands Act*, and if they are, Maya customary rights on those lands still have to be extended the constitutional safeguards if they are taken, as contained in the Claimants' Skeleton Argument.

[Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 1, paras. 92-100]

The *National Lands Act* does reserve the government's right to open roads over "any lands granted or leased under this Act." However, customary title is not derived from any grant or lease of national lands from the central government; it arises out of Mayan customary land tenure system, a system that has been operating in what is now southern Belize since before Belize became a British colony.

[*National Lands Act*, R.E. 2000, Ch.191, s. 29(2)] [Claimants' Skeleton Submission & List of Authorities, Book 1.1, tab 5, p. 4] [*Re Maya Land Rights I*, paras. 62-68]

[Claimants' Skeleton Submission & List of Authorities, Book 3, tab 19, 33-37]

[*Re Maya Land Rights II (Sup.Ct.)*, para. 126(I)] [Claimants' Skeleton Submission & List of Authorities, Book 2, tab 15, p. 58]

I therefore find in favour of the Claimants on this first issue that the land which is the subject of this dispute is not National Land but is in fact land that is customary Mayan land. This matter has already been decided by the highest courts in this country. I find that there is ample evidence detailing the manner in which this land was used by the villagers of Jalacte, through the testimony of witnesses such as Mr. Estevan Caal, Mr. Jose Ical, and other villagers of Jalacte that firmly establishes that the land on which this Project took place was in fact Mayan customary land. In addition, as repeatedly pointed out by learned Counsel for the Claimants in her cross-examination of Defence witnesses such as Mr. Moody, the Defendants' own Environmental Impact Assessment Report alerted the Defendants to the fact that the proposed Project affected Jalacte lands. The failure of the Defendants to therefore abide by the order of this nation's highest court, the Caribbean Court of Justice, by securing the prior informed consent of the village of Jalacte before the commencement of this project is therefore unacceptable.

- ii) Whether the land in issue was used and occupied by the Maya village of Jalacte, in accordance with Maya customary land tenure.**

As I have stated in my answer to the first issue, I find that the Claimants have proven their case on these first 2 issues by providing firm and convincing evidence of the use of this land in Jalacte Village by the villagers which establishes it on a balance of probabilities as Mayan customary land. Mr. Caal spoke in detail of using this land for planting food for his family, for medicinal herbs used to treat ailments, for produce used to sell in order to earn a living, and of the hardship produced to him and his family when the use of his land was disrupted by this road project. He also spoke of the desire, hope and plan to eventually hand this land over to his son in order to help his son to maintain himself and his own family by the use of the land. I find in favor of the Claimants that this land was Mayan customary land.

**iii) If the answer to both (1) and (2) above is yes, does the Government have the authority to take up lands as they have, without complying with the *Lands Acquisition (Public Purpose) Act*?**

Having found in favour of the Claimants on the first two issues, I find that the answer to this third issue is No. To my mind, the CCJ decision was a clear directive to the Government of Belize that these villages in southern Belize contained lands to which Mayan customary title applied. Thus, title to these lands was not derived in the usual manner through the Government process of lease or grant; customary title is derived through traditional use of the lands by the Mayan people for food, hunting, farming, medicinal treatment, etc. It therefore behooved the government to set about, in

consultation with the Mayan people, demarcating the extent to which these lands have been so used. In light of these judgments of the Court of Appeal and the CCJ, especially the Consent Order of the highest court, when dealing with land in this part of the country which has been occupied and used by the Mayans for centuries and which is still used today, the presumption must be that those lands are customary Mayan lands. What follows from this is that the informed prior consent of the affected people must be obtained *before* the commencement of any project that will affect their land. I therefore find in favor of the Claimants on this third issue.

**iv. Whether the Defendants took possession of the land in issue and/or resources on that land, without the consent of the Maya village of Jalacte and Estevan Caal.**

Having reviewed all the evidence presented in this case, I am of the considered view that the Defendants took possession of the land without the consent of the Maya village of Jalacte and Estevan Caal. I believe that this has in fact been conceded by the Defence, especially in light of the fact that the Defendants sought to obtain consent after the fact i.e. after the roadworks had already started and after the buildings were placed on the Claimants' land.



- v. Whether the Defendants have breached any of the Claimants' rights as guaranteed under the Constitution of Belize, particularly section 3 (a), 3 (d) and 17(1)?**

Having taken possession of and used the property of the Claimants without first obtaining permission and compensating the Claimants for the use of their property, I find that the Defendants have breached the constitutional rights of the Claimants under section 3(a), 3(d) and 17(1) of the Constitution of Belize.

- vi. Whether the outbreak of the medfly disease invokes the public interest exception as enshrined in section 17(2) of the Constitution trumps the issue of the constitutional rights given the facts and circumstances of this case.**

The Defendants allege that there was an outbreak of medfly disease in Jalacte which necessitated the installation of booths by the Ministry of Health on the disputed land in order to monitor the influx of fruits from neighboring Guatemala. It was therefore argued that this public interest exception trumped the constitutional rights of the Claimants as the acts complained of were done to protect the welfare of the public, and was therefore a case of the government acting for the greater good. In answer to this contention, the Claimants contend that the Defendants have not presented any evidence to support their contention that the medfly is a danger to public health (as

opposed to a threat to the economy), nor have they provided any evidence of any studies done to indicate a prevalence of medfly in Jalacte Village. I agree with the Claimants argument on this issue. Aside from a bare assertion that there was a medfly outbreak, there was no evidence presented by the Defendants to substantiate this assertion. The Defendants having failed to discharge this evidential burden on a balance of probabilities, I find in favor of the Claimants on this issue.

**vii) Whether the Claimants ought to be allowed to prosecute this constitutional claim sought six years after the date the issue arose**

The Defendants contend that the Claimants should not be allowed to bring this claim six years after their cause of action arose. The Limitation argument advanced by the Defendants is that the Claimants waiting six years before bringing this claim constitutes unreasonable delay. It is the Defendant's case that the Claimants' cause of action arose in 2010 when the EIA was presented in a public meeting. The Claimants respond by saying that no cause of action arose until 2013 when the Defendants took possession of the village lands and started building road without notice, consent or providing compensation to Jalacte. Mrs. Marin Young SC points out, quite correctly, in my respectful view, that the claim commenced even before the road works were completed i.e. within 17 months of the BAHA outpost buildings being erected and within 5 months of the CISCO camp being cleared. In these

circumstances, I agree with the Claimants that there was no unreasonable delay in bringing this claim.

**viii) Whether the actions of the Defendants were done in breach of the Caribbean Court of Justice order of April 22, 2015 in TAA, MLA et.al. v The AG of Belize, in particular paragraph 4 of that order.**

11) The Defendants submit that their actions do not constitute a breach of the CCJ order of April 2015 because all the acts complained of pre-dated the Consent Order, all the lands affected constitute national lands and all the land considered by the Claimants to be Jalacte land have not been demarcated as such by the government of Belize. It is also the argument of the Defendants that the government retains Constitutional Authority over all lands in Belize. The Claimants, in response, say that the terms of the Consent Order itself prohibits the government from carrying out any acts that may affect the value, use or enjoyment of lands used by the Maya People, unless it first obtains the informed consent of the Mayan people. Mrs. Young SC also points out that even before the consent order, Conteh CJ (as he then was) had issued a similar order which extended to all the Maya villages of the Toledo District in 2010. The Court of Appeal partially reversed the 2010 order but the CCJ Consent Order in 2015 affirmed CJ Conteh's order that the rights of the Mayan people to their land must be recognized and respected by the Government of Belize.

Again, I fully agree with the submissions of learned counsel for the Claimants, and I find in favour of the Claimants on this issue.

**ix) Did the Defendants fail to comply with the requirements of the Land Acquisition (Public Purposes) Act**

Considering that the position of the Defendants throughout this entire claim is and has been that the disputed lands are in fact national lands over which constitutional authority remains vested in the government of Belize, it is quite clear that they failed to comply with the requirements of the Land Acquisition (Public Purposes) Act. They took possession of these lands in Jalacte and proceeded to use these lands without first seeking consent or providing compensation to the villagers of Jalacte, because in their view, these were national lands so there was no need to seek permission or to provide compensation. I therefore find for the Claimants on this issue.

**xi. Whether in the circumstances, the Claimants are entitled to an award of damages**

I therefore find that based on all the evidence in this case, the Claimants are entitled to the damages which they seek. I found the evidence of the expert witness Ms. Rebecca Adamson to be sound and extremely helpful in terms of assisting this court in assessing the quantum of damages to be paid to the Claimants for breaches of their

constitutional rights as this Court finds that the failure to obtain prior consent of the villagers of Jalacte was of largely due to a misunderstanding by the Government of the nature of Mayan customary title, no award of vindicatory damages is made.

I therefore grant the Claimants the relief sought as follows:

- (a) A declaration that the Defendants have compulsorily taken possession of 10.5 acres in widening and straightening the road, and an additional 20.86 acres for roadworks and construction of the BAHA outpost, and in doing so have arbitrarily deprived Jalacte village, including Mr. Estevan Caal, of their property, in violation of section 3(a), 3(d) and 17 of the Belize Constitution.
- (b) A declaration that by failing to accord Jalacte and Mr. Caal's property rights the protections accorded by the Belize Constitution and the *Lands Acquisition (Public Purposes) Act*, the Defendants have violated the Claimants' right to protection of the law, guaranteed by section 3 of the Belize Constitution.
- (c) A declaration that by taking possession of the lands at issue in this claim outside of the process permitted by the Belize Constitution, the *Lands Acquisition (Public Purposes) Act*, any other Act, or international law, the

Defendants violated the Supreme Court Order of June 28, 2010 in *MLA/TAA v. AG Belize, Claim 366 of 2008* and the CCJ Order of April 22, 2015 in *MLA/TAA v. AG Belize, CCJ Appeal BZCV2014/002*.

- (d) An order that the Defendants return vacant possession of the land where the BAHA station is located and remove the checkpoint west of the Jalacte crossroad at Treetop along the Guatemalan border, at a location mutually agreed upon through consultations and constitutional process with the village of Jalacte.
- (e) An order that the Defendants return vacant possession to the Claimants of the approximately 8 acres of land located on both sides of the road between the Rio Negro bridge and the intersection with the road leading to the Jalacte village center on which the Defendants have constructed two pre-fabricated structures, greenhouse, a fence, a checkpoint, and thatch structure to support the functions of the BAHA station.
- (f) An order that the Defendants return vacant possession of the land located on the south side of the highway immediately to the east of the bridge over the Jalacte River and west of the intersection with the road leading to the Jalacte village center that was levelled, cleared, and formerly occupied by CISCO as a base camp for the roadworks.

- (g) An order that Defendants pay damages in the amount of \$999,895.52 to Jalacte village for the arbitrary deprivation of the land taken up for the BAHA outpost, for both the irreparable damage done to portions of that land and for the loss of use of land during Defendants' ongoing occupation.
- (h) An order that the Defendants pay damages in the amount of \$341,074.19 for the arbitrary deprivation of Jalacte lands used to establish the CISCO base camp site.
- (i) An order that the Defendants pay damages in the amount of \$1,496,757.17 for the arbitrary deprivation of areas adjacent to the highway that were destroyed by the highway construction.
- (j) An order that the Defendants pay damages in the amount of \$3,464,880.64 for the permanent compulsory acquisition of lands taken up by the straightened and widened roadway.
- (k) Costs of this action;
- (l) Such further and other remedy as this Honourable Court deems just.

Costs awarded to the Claimants to be agreed or assessed.

Dated this                      day of June, 2021

Michelle Arana

Chief Justice (Acting)

Supreme Court of Belize