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**The CCJ Decision in the Maya Leaders Alliance v The  
Attorney General of Belize [2015] CCJ 15**

Lecture by

**the Hon. Mr. Justice C. Dennis Morrison QC**

**Father Ring Parish Hall, Punta Gorda, Belize**

**May 6, 2017**



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## **The CCJ Decision in the Maya Leaders Alliance v The Attorney General of Belize [2015] CCJ 15**

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### **Introduction and Overview of Proceedings**

The lecture was attended by the Hon Justice Kenneth Benjamin, Chief Justice of Belize; Hon. Mr. Justice Courtenay Abel, Supreme Court Judge; the Solicitor General of Belize (Ag) Mr. Nigel Hawke; Her Honour Ms. Ann Marie Smith, Chief Magistrate; Ms. Sandra Miranda, the President of the Garifuna National Council; leaders of the various Garifuna village councils and members of the Garifuna community from Dangriga, Hopkins, Seine Bight/Georgetown, Belize City, Punta Gorda, Barranco and the Cayo District including Belmopan. Altogether 353 persons attended the lecture.

The lecture was also attended by Ms. Cristina Coc of the Maya Leaders Alliance and Dr. Monica Coc Magnusson, sister to Cristina and the first Mayan attorney-at-law in Belize.

Prof. Velma Newton welcomed all to the session, provided background information on IMPACT Justice and its programmes and stated that the lecture was a follow-up activity to a conference on Indigenous Peoples of the Caribbean which IMPACT Justice had sponsored in Belize at the end of April 2016.

Prof. Newton then introduced Justice Morrison, a Jamaican, stating that his first degree was the B.A. (Hons.) in History. He was among the first batch of students to graduate from the Faculty of Law, Cave Hill, in 1973, graduating with First Class Honours. He went on to the Norman Manley Law School, graduating with the Certificate of Legal Education in 1975. In addition to being the holder of the B.A. (Hons.) and the LL.B. (Hons), was a Fellow of the Chartered Institute of Arbitrators. Justice Morrison was in private practice in Jamaica from



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1975 until 2008 when he became a judge of the Court of Appeal of Jamaica. However, from 2004, he had started work as a Court of Appeal Judge in Belize, and continued as such until 2015 (11 years.) Now, he is not only President of the Court of Appeal of Jamaica, a position he has held since early 2016, but a part time Court of Appeal Judge of the Cayman Islands.

In addition to this busy career as a private practitioner and then a judge, Justice Morrison found time to share his knowledge at conferences and lectures and with students whom he taught at the Norman Manley Law School on a full-time basis from 1978-1982, and since then, as a part time tutor.

From 1998-2007, Justice Morrison was Chairman of the Council of Legal Education, the governing body of the Law Schools set up to provide professional training as attorneys-at-law for law graduates of the Faculty of Law after the LL.B. stage. The three law schools are located in the Bahamas, Jamaica and Trinidad and Tobago. He has also sat on a number of boards in Jamaica.

For all his hard work on the legal front, Justice Morrison was made a Queen's Counsel in 1994 and in January 201, was bestowed the highest national honour of Jamaica – membership of the Order of Jamaica.

Justice Morrison is married to Janet, a distinguished attorney-at-law who specialises in Arbitration, and between them, they have 4 adult children and are the proud grandparents of 3.

Justice Morrison started his presentation by providing information on the Mayan concept of land holding which is that it belongs to the community and not to individuals. He then spoke of the various acts which the Mayan considered encroachments, and which, at the Belize Court of Appeal level on two occasions were considered as such. He noted however that while the Court of Appeal found in favour of the Maya Leaders Alliance, it did not award the damages sought. He then explained the issues before the CCJ and its findings and explained what follow-up action it expected.



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After the lecture, there was an extensive question and answer session, with many of the Garifuna noting that they also had outstanding land issues mainly regarding boundaries and urging the Garifuna National Council to take action to have them resolved. The Mayans were congratulated for their perseverance in pursuing their claims.

A copy of Justice Morrison’s presentation will be filed along with this brief report.

After the question and answer period, Mr Cecil Ramirez, chosen by the Garifuna National Council to speak on IL) Convention 169, made a short presentation.

### Participants from the Garifuna Communities

Barranco	13
Belize City	40
Belmopan and Cayo District	40
Dangriga	88
Georgetown/Seine Bight	67
Hopkins	42
Punta Gorda	50
<b>Total</b>	<b>353</b>

Velma Newton

May 7, 2017



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## Lecture by the Hon. Mr. Justice C. Dennis Morrison QC

The genesis of the dispute was the Government of Belize's granting of logging concessions over plots of land occupied by Maya villages in the Toledo District. Some of these were on lands as large as 500,000 acres. The affected villagers felt that their traditional way of life was being threatened by what was happening.

As a first step, they filed a constitutional motion in the Supreme Court of Belize in 1996 to seek recognition of their customary land rights. For reasons which it is not necessary for us to discuss today, that first case was never judicially settled and because of this, the Maya decided to launch a petition to the Inter-American Commission on Human Rights. I am going to call it as we go on, the IACHR.

Belize, as a country in the Central American region in the Americas, is a member of the Organisation of American States, which encompasses pretty much all of the territories in Latin America and the Caribbean. The arm of the Organisation of American States that deals with violations of human rights is the Inter-American Commission on Human Rights. Anyone of us residing in Jamaica, Belize, Trinidad & Tobago, Peru, Nicaragua, who feels that our human rights are being affected by the actions of our Government, can complain to the IACHR. The Maya Communities did that in 1998.

As usual, I know some of us complain about how long court cases take. IACHR cases take a little long too. When a case is filed, it is not just the complainant who has rights. The other side has rights. The claims of both sides must be investigated before they can be brought to trial. Some level of delay is inevitable in every kind of court system or any kind of commission system like the IACHR.

While that petition was pending before the IACHR, the Government of Belize and the Maya leaders here in Belize had discussions and entered into an agreement which has now come to be described as the "Ten Point Agreement". It was a very important agreement because



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it had been presented to the IACHR and showed the efforts the parties had been making to resolve the matter at home.

The “Ten Point Agreement” had a clause in it which I will read to you:

The Government of Belize recognizes that Maya people have a right to land and resources in southern Belize based on their longstanding use and occupation.

That was October 2000. That is to say, fifteen years before the CCJ decision of which we speak today. One may well ask the question, why did things go on for fifteen more years after that? Maybe that too is another story for another day. But we will explore a bit of it as we go along.

So part of what the “Ten Point Agreement” said was that the Government of Belize and the Maya would work out how customary land tenure would be accommodated within the domestic legal system. The basic premise of the national leaders was that individuals own lands. Therefore, when one purchases a piece of land from someone, one can pass it on to one’s heirs.

The other system which I have described to you is a system whereby the community owns the land. Therefore, one would not be free to deed the land. It is a big task to match the two systems and to work out how both are going to be recognised nationally going forward. The “Ten Point Agreement” had a mechanism to do that.

The IACHR, taking its cue somewhat from that, also concluded that the Government of Belize should recognize Maya land rights in Toledo. So the “Ten Point Agreement” was 2000. The IACHR recommendations finally came in 2004.

Again, one might question why it took another over ten years from 2004 for the matter to be resolved? Nothing happened. When I say nothing, people talked to each other and there were some discussions. There were a lot articles in the newspapers and there was some talk on the talk shows and so on. I am sure there were many meetings in the Toledo district. But nothing happened.



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It was in 2007, that what I will call the first Maya land rights case was filed in the Supreme Court. That was a case that was filed on behalf of the residents of two Toledo villages: Santa Cruz and Conejo. They challenged the non-recognition of Maya customary land rights by the Government of Belize.

That matter went before the then Chief Justice, Mr. Justice Abdulai Conteh, who I must say and I think it is right to acknowledge, that the very significant judgments he gave in these matters during his time as Chief Justice went a long way to setting the stage for the resolution that has now come.

In his judgment, Chief Justice Conteh ruled, after hearing a pile of evidence from all kinds of people, that in fact customary land tenure existed in the Toledo district. He came to that conclusion based, (1) on the “Ten Point Agreement”, (2) on the outcome of the IACHR petition. He said that in recent history there have been recognitions; (3) he also based his ruling on the evidence he had heard. He, therefore, concluded that customary land tenure existed in southern Belize.

So again one might ask oneself, why had the matter not ended there, particularly as there was no appeal from Chief Justice Conteh’s judgment. It had looked as if it were a done deal. In the immediate aftermath of the judgment of Chief Justice Conteh, there were some apparently promising discussions between the Government and the leadership of the Maya communities. In fact, a memorandum was issued by the then Solicitor General which ordered all public bodies and entities to have regard to the judgment whereby the Chief Justice of the country had declared that customary land tenure existed in these two districts. It is clear that, initially, the matter was being approached on the basis that although only two villages were involved in those judgments, in fact it was a judgment that affected all of the Maya communities in southern Belize. But life is never as simple as that, of course.

In a little while, the position started to be taken that Chief Justice Conteh’s judgment was limited in its reach to the two villages, Santa Cruz and Conejo, and that it did not affect all of Toledo. That is the background to what brought the matter back to court.



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The matter was somewhat triggered by what everybody now refers to as the “Golden Stream Incident”. The Maya village of Golden Stream is part of the Toledo District. A gentleman by the name of Mr. Johnston, who is now deceased, had been farming lands in Golden Stream. He claimed to have a lease from the Government. The persons in Golden Stream, the Alcalde, and everybody responsible protested against this and they questioned how Mr. Johnston could have acquired a lease for community owned land.

One thing led to another. There was a confrontation between some angry young men of the district and other people. Mr. Johnson himself resisted and a case ended up in court. This was when the Maya Leaders Alliance filed suit again, a second time.

I call them generally the Maya leaders, although the identity of the plaintiffs was different in both cases. This is what I call the *Maya Land Rights Case No.2*. We are still talking about the case that ended up in 2015.

A new suit was filed. It went before Chief Justice Conteh again. It did not seem likely that Chief Justice Conteh was going to change his mind and he did not. However, this time he heard a lot more evidence, including from American, Canadian and Belizean experts about Maya customary land tenure. He felt that in light of his earlier decision, nothing had changed. He, therefore, made the declaration that there was customary land tenure in Toledo.

This was the second time the court declared that customary land tenure existed in Toledo. However, the importance of this second declaration was that Chief Justice Conteh now declared it on behalf of all the Maya villages in the Toledo district so it could no longer be contended that it was restricted in scope to the two villages on whose behalf the first action had been brought.

Again, one might think that might have been the end of the matter. But, Chief Justice Conteh did not take the further step that the Maya had invited him to take. At the heart of the matter was; one, the claim for the recognition of customary land tenure and two, a claim for damages, that is, for financial compensation. Chief Justice Conteh took the case over the



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first hurdle but he declined to do the second. He said that despite his declaration that the Maya have a constitutional right to the land, he did not see where the Government had breached the right. He said he could only give damages if someone had breached the right, so he was not going to award any damages.

Both sides appealed Chief Justice Conteh's second ruling. The Government argued that Chief Justice Conteh was wrong to have declared that customary land tenure existed in all of Toledo. The Maya appealed, arguing that Chief Justice Conteh ought to have given them damages.

I should tell you a little bit about the basis of the Government's contention in the Court of Appeal which is related to the point I made about the span of the area that the Maya people had covered in Central America over hundreds of years. What the Government said in fighting the case, and it was contested most strongly on this basis in the Court of Appeal, was that the evidence showed that the present people, the Maya in Toledo, who are in the main, persons from the Kekchi and Mopan tribes, were not the people who were in Belize when the Spanish first came in the 16<sup>th</sup> century and when the British came in the 18<sup>th</sup> century. It is said that the test for whether one is entitled to land rights is whether one was there at the beginning. So the argument went, in order to attain land rights, one must prove that one's ancestors, through familial, historical, linguistic and cultural connections, were here either from 1540 or thereabouts which was when the Spanish came or somewhere about 1763 which was when the British occupation of some parts of what is now Belize, was first recognized.

One can say that is a tough thing. Most of us cannot remember what we did last week much less trace our families' history back so far. What was contended was that the original indigenous peoples of Belize were the Manche Chol, who had been driven away from Belize and transported into Guatemala, mainly by the Spanish. But the persons who are now here were persons who had started to return to Belize in the 19<sup>th</sup> century, from about the middle of the eighteen hundreds. As recently as the 1970s, records show there were persons who were coming in from Guatemala.



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The argument went that the people who now say they are entitled to land rights in Belize, are not connected to the people who were here back in either the eighteenth century or the sixteenth century. They are a different tribe of people. I think it is important to remember what I said at the beginning. The historical records show in fact that the Maya, as a broad grouping of people, had been moving up and down the very broad region of the Americas over a span of many hundreds of years.

It is a span of history which goes back a very long way. I think it was on this basis the Court of Appeal was able to decide that in fact, that argument could not hold water because the people who are here now, although not the same grouping of people in terms of direct language or in some way custom, were in fact sufficiently related to the original people through ancestry, intermarriage, culture and so on. So that was the first argument.

And on the other side, though, the Maya were still saying they had not been given any damages. The Court of Appeal held that they were not entitled to any damages, more or less on the same ground that Chief Justice Conteh had said, which is that they had not proven a breach of their rights which was necessary if they were to be paid compensation.

So at the end of the Court of Appeal case, Chief Justice Conteh's judgment had in general terms been upheld. There was a little part of his judgment that was, in fact, set aside but it is not important. In broad terms, the result of the Court of Appeal decision was that the right of the Maya to customary land tenure was affirmed and restated. But on the other hand, the claim for damages was rejected on the ground that there was no basis for the claim. So what happened after that is that both sides appealed to the Caribbean Court of Justice.

Now, Belize is a very forward thinking country, in many ways. As someone who lives in a country that still carries its final appeals to the Privy Council in London, I wish to tell you that the decision which was taken in 2010 that Belize should stop going to the Privy Council but should instead go to the Caribbean Court of Justice was one of the most forward thinking decisions that has been made in modern times by any country in the Commonwealth Caribbean. I say that with feeling borne out of experience as a judge of the



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Court of Appeal in this country from 2004 when decisions used to go to the Privy Council through to 2015. So I see on both sides almost an equal period of going to the Privy Council and going to the CCJ.

I can tell you that the CCJ has, without a doubt, revolutionized the legal profession, and the conduct of the system of justice in this country in a way that is unbelievable. Back in the day, if both sides were dissatisfied by the decision of the Court of Appeal and both sides wanted to go to the Privy Council it would have been a long haul to get there. But in fact, the decision of the Court of Appeal was given in 2013 and the parties found themselves before the CCJ in 2015, a mere matter of two years.

Most negotiations of any kind, whether one is negotiating with someone to settle a dispute over the location of a boundary fence, or whether one is negotiating with the Government to recognize the right to damages involve a big step on somebody's side. If one side makes a big step then the other side can make an equally big step or an almost equally big step and a resolution is reached. I think it is to the credit of all persons who were involved that when the matter was to go to the CCJ some big steps were made on both sides.

The first big step was that the Government, though at first filing an appeal against the decision that Maya customary land tenure existed in Toledo, decided not to pursue that appeal. In effect, it withdrew its appeal. The effect of this withdrawal was that the judgment of Chief Justice Conteh and of the Court of Appeal that customary land tenure in the Toledo district was to be recognized by the Government of Belize stood. That was a very big move.

On the other side, the Maya themselves made some big moves. They no longer insisted that there should be an injunction to prevent the Government from doing various things because that would have produced a big fight. Instead, they said they would accept an undertaking from the Government of Belize to do certain things; to recognize their rights, to do things about the titles, to try and promote a system whereby they could create a methodology for recognizing the rights of the Maya to their land.



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So that was a big move on both sides and it meant that the issue before the CCJ was considerably narrower.

At the end of the day, the only issue that remained outstanding was this question of the damages. The Maya insisted that there must be some damages because if the Government is now saying it recognizes that the Maya have the right to land tenure, it means in essence is that the Government is now acknowledging that it had been wrong for all those years.

The Government questioned the Court's ability to quantify the damages requested. So although both parties were able to settle the main part of the case, which is the existence of customary land tenure in southern Belize, they still disputed the issue of damages. That is what remained at the heart of the case and that is in fact what the CCJ ultimately determined.

I will just read for you what the CCJ said about the settlement between the Government and the Maya. They said:

*This is a historic settlement for which both sides should be enthusiastically commended...The immediate effect of the settlement is to undercut the vast majority of grounds of appeal that have been maintained by the parties...There is consensual recognition that Maya customary land tenure exists in the Toledo district and is protected by the Constitution...,thus rendering moot the contest as to the existence of indigenous property rights or the inclusion of these rights within the compass of the constitutional guarantees for protection against the arbitrary deprivation of property....The contest over the award of mandatory and injunctive relief... has been overtaken by the giving and acceptance of the undertakings of the Government to recognize and protect the rights arising from the Maya customary land tenure system.*

Those are the two big steps which I mentioned to you; the Government, on the one hand, saying that it recognized Maya land rights. On the other hand, the Maya saying they will accept the Government's undertaking and would not dispute over injunctions.



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*The parties mutually recognize and have given legal and constitutional effect to the umbilical relationship between the Maya people of southern Belize and the land and its resources that have long provided physical and spiritual sustenance to them and their forebearers.*

The use of the word 'umbilical' gets rid of any talk about whether where one's grandfather was born. It is regarded as an 'umbilical link' because of the ancestral and traditional connection which they had with the people living on the land historically.

So the CCJ said that the only issue that remained between the parties was this question about damages. The problem that Chief Justice Conteh and the Court of Appeal had found with the question of damages was establishing that there had been a breach of the Maya's constitutional rights. It was one thing to say the Maya had customary rights, the Court said, but it was a completely different thing to say that their rights had been breached.

The Maya claimed that their right not to be treated in a discriminatory way was breached. However, the courts felt at all levels, and the CCJ seemed to agree with this, that there was no evidence of discrimination in the sense that the Maya were not singled out to be treated differently on account of their race or ethnicity. So discrimination argument did not stick.

One of the most important aspects of the claim was that the Government had failed to give to the lands the protection of law. Protection of law is a very important term in the Constitution. I have been trying to keep this as non-technical as possible but I will get a little technical here because it is in fact, although a broadly understandable argument, it does start at a technical level.

The Constitution recognizes that every person in Belize is entitled to, among other things, life - the State cannot take away one's life arbitrarily. One is entitled to liberty - so one cannot be locked up arbitrarily. Only if a judge so orders for some reason known to the law, can a person be locked up. Security of the person - the Constitution recognizes that all of us are entitled to enjoy reasonable security of the person. This is the critical bit. The



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Constitution recognizes that every person in Belize is entitled to the protection of law. The Constitution says one is entitled to the protection of the law.

The Chief Justice and certainly, the Court of Appeal to an even more pointed extent, said that the right to the protection of the law had not been breached because the right to the protection of the law was the right to go to court. One should have the right to present one's case as one wishes. The Maya had been before several courts so it cannot be said that their right to present their case had been breached in any way.

As one of the judges who was part of the Court of Appeal decision in the case that went to the CCJ and as the person who said that in fact, the right in the Constitution was limited in that way, I now clearly recognise it, not just because I had been told, but because I see the error of my ways. The CCJ said the Court of Appeal had looked at this constitutional right in a very limited and restricted way. It said that the Constitution was not like a standard legal document which must be read with a microscope. The Constitution is a document to which broad consideration must be given to see the rights that people have been given.

So the CCJ concluded that the protection of the law includes giving the right to go to court, setting up court houses and employing judges to decide the case. But it also goes further than that, it means that if one has rights, those rights must be protected and mechanisms must be put in place to protect the rights.

So the CCJ said that from middle of the nineties, various colonial Governments recognized the rights of indigenous peoples to enjoy their land. And one could go a long way further than that because looking at the 1981 Constitution, one will see that the preamble to the Constitution in fact recognizes the right of indigenous peoples and that surely includes the Maya.

So what the CCJ said was that the Maya had had the rights to their customary land tenure but, no steps had been taken to protect their rights to that tenure. So, therefore, the Government was in breach of the clause of the Constitution that requires it to give to all citizens the protection of the law.



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According to the CCJ, the protection of the law was not just a narrow technical concept that talked about whether there was a court house or a way of getting to court, it spoke about guaranteeing to citizens the full protection of the law in all circumstances in which they have a right that was recognized by the Constitution.

Now when the argument is put that way, it has such an elegance to it that one has to wonder why anybody missed it before. These things happen. It is probably a casualty of the system of how things are argued.

So let me read to you just one more time what the CCJ said:

*The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept 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 goes beyond such questions of access and includes the right of the citizen to be afforded, "adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power." The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights.*

So the CCJ said that, in law persons were entitled to enjoy customary land tenure in their part of Belize as a basic constitutional right. So, the obligation of the State is to afford protection of the law, and it must take steps to protect their constitutional right and more importantly to make it effective; to provide a mechanism whereby it can be made effective.

So where does that leave us? The CCJ said there was a breach. So that is the first step in whether or not one is entitled to damages.



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Right at the end now, the Court looked at how damages would be awarded. Now some of us, I know, have been to court. For example, a man runs into someone's car and is sued. The judge requires the plaintiff to show much money he or she spent to repair the car, including receipts from the repairer or at least an estimate. Unfortunately, sometimes persons have suffered injury and they have to show how much was paid to the doctor, the cost of medical treatment, the surgery, and so on.

Courts have a requirement of proof of damages. The difficulty that the CCJ had was with the computing of damages to pay to the Maya communities. In fact, it was a fairly modest amount. And the question one might ask is why did the Government not just pay it and be done with it, but that is another story.

The claim, as it was put out, was a claim to damage to a certain number of trees, damage to a certain number of crops, and so on. The CCJ did not feel able to make that order. So they decided to do something which they called 'creative'. They decided to do something a bit more radical. They said that the Maya were entitled to what the law calls, 'vindictory damages'. That is, the Maya said they had a right, which the CCJ acknowledged had been breached, and so the court must vindicate them for that breach. It must give them something to show that they had been right all along.

The solution with which they came up was that the Government of Belize should pay a sum of money. They should pay \$300,000 into a fund to start the process (what I described from the very beginning as a difficult process). Conceptually, the system of individual ownership of land recognized under the Registered Land Act (Cap 194) is different from the communal ownership of land. Experts have to think deeply about how to devise a system that recognizes those rights. The two systems must be parallel to each other. The national system must recognise both individual and customary rights. So the CCJ said that the Government must pay \$300,000 into a fund to begin to establish a system of titling, a system of recognition of rights to land that will take into account the Maya's entitlement to customary land tenure.



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And that is really the end of the story. But as I have said, it is really the end of the beginning. There is nowhere else to go now. The CCJ is the highest court in the land. The IACHR has spoken. All the judges, the grey haired men have spoken. And it is left to the Government to give effect to what all the wise men and women have said, which is to recognize the system. So it is not an easy job. It has been twenty years in coming to that end. It may be a longish road still ahead of us. It will take patience and will and a national effort.

I am happy to report that the Solicitor-General was able to fill in a gap in my information on this. He told me that the fund has been established. The Government has paid over the money. That is the first step. The judgment of the CCJ has been complied with.

The second step is that there is now a Maya Land Rights Commission which is working, I am told assiduously, to bring into being this new system that the CCJ says should be brought into being. I think that is a huge step forward on behalf of everybody.

Some may think of the case as a major victory for the Maya. And it is a huge victory. But it is also a victory for Belize. What it demonstrates is that in an area as contentious as this, it is a tribute to the people of Belize that ultimately, slowly, some would say much more slowly than it ought to have been, that we have come to a resolution of this vexed matter. The future lies with everybody. The judgment has huge implications for all the groups that can claim to be indigenous.

One hopes and expects that the kind of litigation that one had in relation to the Maya may not come to pass with any other groupings. It is our future and we have to do our best to secure it.

Thank you so much for your patience.

**-END-**