

**Indigenous identity in a contested land: A study of the
Garifuna of Belize's Toledo district**



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**This dissertation is submitted for the degree of Doctor
of Philosophy**

September 2018

Lancaster University Law School

Declaration

This thesis has not been submitted in support of an application for another degree at this or any other university. It is the result of my own work and includes nothing that is the outcome of work done in collaboration except where specifically indicated. Many of the ideas in this thesis were the product of discussion with my supervisors.

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21st September 2018

Abstract

The past fifty years has seen a significant shift in the recognition of indigenous peoples within international law. Once conceptualised as the antithesis to European identity, which in turn facilitated colonial ambitions, the recognition of indigenous identity and responding to indigenous peoples' demands is now a well-established norm within the international legal system. Furthermore, the recognition of this identity can lead to benefits, such as a stake in controlling valuable resources. However, gaining tangible indigenous recognition remains inherently complex. A key reason for this complexity is that gaining successful recognition as being indigenous is highly dependent upon specific regional, national and local circumstances.

Belize is an example of a State whose colonial and post-colonial geographies continue to collide, most notably in its southernmost Toledo district. Aside from remaining the subject of a continued territorial claim from the Republic of Guatemala, in recent years Toledo has also been the battleground for the globally renowned indigenous Maya land rights case. As such, Toledo is a contested land both internally and externally. However, another people – the Garifuna – have also resided in Toledo since before British colonisation. Despite their long shared history in the Toledo district, the Garifuna absence from the Maya land rights case was notable.

This interdisciplinary thesis places the Garifuna at the centre of the indigenous debate in Toledo, and in doing so, has added new perspectives to the complexity in gaining tangible indigenous recognition, particularly when this leads to control over land and resources. In doing so this thesis has added further perspectives on the Garifuna as a people from both a legal and social anthropological angle, as well as contributing to the indigenous narrative in Belize and the wider Central American and Caribbean region.

Acknowledgements

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List of abbreviations

ADRDM	American Declaration of the Rights and Duties of Man
ACHPR	African Commission on Human and Political Rights
ACHR	American Convention on Human Rights
ADRIP	American Declaration on the Rights of Indigenous People
AU	African Union
BARS	Belize Archives and Records Service
BEPC	Belize Estate and Production Company
BBC	British Broadcasting Corporation
BNA	British National Archives
CARICOM	Caribbean Community
CARIFTA	Caribbean Free Trade Association
CESCR	Committee on Economic, Social and Cultural Rights (UN)
CCJ	Caribbean Court of Justice
CONPAH	Confederation of Autochthonous Peoples of Honduras
G.O.B	Government of Belize
HOA	Head of Agreement document
HRC	Human Rights Committee (UN)

IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labour Organisation
MLA	Maya Leaders Alliance
MLRC	Maya Land Rights Commission
NGC	National Garifuna Council
NGO	Non-Government Organisation
NICH	National Institute of Culture and History
NSG	Non-self-governing territory
OAS	Organisation of American States
ODECO	Organisation for Ethnic Community Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
PACT	Protected Areas Conservation Trust
PG	Punta Gorda
PIS	Participant Information Sheet
PUP	Peoples United Party

SATIIM	Sarstoon-Temash Institute for Indigenous Management
SIB	Statistics Institute of Belize
STNP	Sarstoon-Temash National Park
TSFDP	Toledo Small Farmer Development Project
UDP	United Democratic Party
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Science and Cultural Organisation
UNGA	United Nations General Assembly
UREC	Lancaster University Research Ethics Committee
USCE	US Capital Energy
WCIP	World Council of Indigenous People
WGDD	Working Group on the Draft Declaration
WGIP	Working Group on Indigenous Populations
WGO	World Garifuna Organisation

1. Introduction

The recognition of indigenous identity and responding to indigenous peoples' demands is now a well-established norm within the international legal system.¹ As the legacy of past injustices haunt international law, the modern quest for truth and justice is part of a system founded on the equal dignity of *all* human beings,² and has seen the members of descendants of oppressed groups, including indigenous peoples, press claims for reparations in both domestic and international fora.³ From a historical conceptualisation as '*the other*', which facilitated European colonialism and early international law, now the term *indigenous* is both a legal category and proud expression of identity which reveals something about a person's collective attachments.⁴ This drastic reversal, engendered by the international indigenous movement that crystallised in the 1970s in the wake of the United Nations decolonisation era,⁵ has resulted in a considerable evolution in both the conceptual understanding of what it means to be '*indigenous*', and in the development of the protection and potential benefits of any associated rights within international law.

The term '*indigenous*', when literally interpreted means '*originating or occurring naturally in a particular place; native*,'⁶ similar to the term *aboriginal*, or

¹ Steve Anaya, *Indigenous peoples in international law* (OUP 2004) 7.

² Francesco Francioni, 'Is International Law Ready to ensure redress for historical injustices?' in Federico Lenzerini (ed.), *Reparations for indigenous peoples: international and comparative perspectives* (OUP 2008) 45.

³ Ibid at 27-28.

⁴ Ronald Niezen, *The origins of indigenism: Human rights and the politics of identity* (UCP 2003) 3.

⁵ Alexandra Xanthaki, *Indigenous Rights and United Nations Standards* (CUP 2007) 69.

⁶ Oxford English Dictionary, 'Indigenous' available at <https://en.oxforddictionaries.com/definition/indigenous> accessed 13 September 2018.

'from the beginning'.⁷ Certainly, early conceptualisations of being indigenous were firmly rooted in notions of enjoying 'priority in time' over other peoples in a certain place or space. For example, the initial formation of the World Council of Indigenous Peoples consisted of members representing peoples from the Americas, Nordic region and Australasia.⁸ These regions are notable for the fact that large numbers of Europeans settled on land previously occupied by other peoples, something that did not happen in anything like the same extent in Africa or Asia.⁹

Yet in recent decades, as communities from the Asian and African continents have engaged in international indigenous networks and forums, this has led to an evolution in the understanding of being indigenous from merely 'original inhabitants' to notions of 'inequality and suppression'.¹⁰ For example, the African Commission on Human and Peoples' Rights notes that indigenous now represents a term *and* global movement that fights for the rights of groups marginalised and perceived negatively by mainstream development paradigms, whose cultures are subject to discrimination, and who face the threat of extinction.¹¹ Such a reinterpretation has enabled vulnerable

⁷ Patrick Thornberry, *Indigenous peoples and human rights* (MUP 2002) 39.

⁸ Benedict Kingsbury, 'Indigenous peoples' in international law: a constructivist approach to the Asian controversy' (1998) 92 (3) *American Journal of International Law* 414, 421.

⁹ Maivan Lâm, *At the edge of the state: Indigenous peoples and self-determination* (Vol. 5 Transnational Publishers 2000) 2.

¹⁰ Gabrielle Lynch, 'Becoming indigenous in the pursuit of justice: The African Commission on Human and Peoples' Rights and the Endorois' (2011) 111/442 *African Affairs* 24, 26.

¹¹ African Commission on Human and Peoples' Rights, *Report of African Commissions Working Group of Experts on Indigenous Groups/Populations* (ACHPR 2005) 87.

communities on the continent (and elsewhere) to adopt an indigenous rights discourse in a quest for collective empowerment.¹²

This collective empowerment, enshrined through international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter UNDRIP)¹³ and International Labour Organisation Convention 169 (hereinafter ILO 169),¹⁴ demands that indigenous peoples have numerous rights to a range of interconnected phenomena, fundamental to the preservation of their identities. Included within this collective bundle, the contemporary indigenous rights framework ascribes rights based on a historical and special connection to *land*.¹⁵ This increased possibility of a stake in the ownership and/or control over such valuable resources, ensures that gaining successful recognition as indigenous is highly idealised, inherently difficult to attain, and particularly dependent on different national or regional specificities and the overarching systems that govern them.

Of these regional systems, the Organisation of American States (OAS) has historically been on the vanguard of indigenous rights protection.¹⁶ Over the course of

¹² Felix Ndahinda, 'The future of indigenous rights in Africa: debating inclusiveness and empowerment of collective identities' in Roxanne Dunbar-Ortiz, Dalee Sambo Dorrough, Gudmundur Alfredsson, Lee Swepston and Petter Wille (eds.), *Indigenous peoples' rights in international law: Emergence and application* (IWGA 2005) 371.

¹³ UNGA, *United Nations Declaration on the Rights of Indigenous Peoples* (adopted 13 September 2007) A/RES/61/295 available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf accessed 16 September 2018.

¹⁴ International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention*, C169 (adopted 27 June 1989) available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 accessed 16 September 2018.

¹⁵ Ndahinda (2005) 372.

¹⁶ Mauro Barelli, 'The interplay between global and regional human rights systems in the construction of the indigenous rights regime' *Hum. Rts. Q.* 32 (2010) 951, 958.

recent decades particularly, the Inter-American Human Rights system - the regional human rights system of the Organization of American States (hereinafter OAS) - has played a leading role in both the international and domestic development on the protection of indigenous rights in the region.¹⁷ This is especially true in Central America, a region where former colonial States are composed of culturally and ethnically heterogeneous populations,¹⁸ and one that has played host to two particularly ground breaking rulings in favour of indigenous peoples. The first ruling came in 2001 in Nicaragua, when the Inter-American Court became the first international tribunal to recognise the right of the *Awas Tingni* people to their indigenous *communal* property, regardless of whether they held legal title to that property or not.¹⁹

The second ruling came in 2007, in the former British colony of Belize. As the only English speaking territory on the Central American continent, Belize is the most heterogeneous society in Central America, known for its ethnic, racial and cultural diversity.²⁰ Additionally, Belize's southern regions remain the subject of both an external historical territorial claim from the Republic of Guatemala, as well as an internal territorial claim from its indigenous peoples. This area includes the southernmost district of Toledo, the area of study for this thesis, and a highly contested area both *internally* and *externally* since the early 18th Century. Toledo is

¹⁷ Luis Rodríguez-Pinero, 'The Inter-American System and the UN Declaration on the Rights of Indigenous Peoples: Mutual Reinforcement' in Steve Allen and Alexandra Xanthaki, *Reflection on the UN Declaration on the rights of indigenous peoples* (Bloomsbury 2011) 458.

¹⁸ Dirk Kruijt, *Guerrillas: War and peace in Central America* (Zed 2008) 12.

¹⁹ Gerald Torres, 'Indigenous Peoples, Afro-Indigenous Peoples and Reparations' in Lenzerini (2008) 128.

²⁰ Godfrey Mwakikagile, *British Honduras to Belize: Transformation of a Nation* (New Africa Press 2014) 11.

also notable for having the smallest population in the country (36,695) and the highest percentage of people (83% or 30,547) living in rural areas.²¹

The Maya of Belize's Toledo district have gained worldwide recognition over the past two decades on account of their much publicised legal challenge, triggered by the government's award of concessions on land considered ancestral by the Maya. It is a challenge that has received considerable support from both inside and outside Belize, has accessed both national and international legal forums,²² and saw the first global invocation of the UNDRIP in support of the indigenous Maya communities' rights over their ancestral land.²³ However, the Maya are not the only people who call the Toledo district home. The Garifuna are descendants of a fusion of Island Caribs and Africans on the island of St Vincent. Forcibly removed from the island by the British in 1797, they established themselves across coastal Central America in the immediate aftermath.²⁴

The evolution in conceptual understandings of indigeneity has ensured that peoples considered as *tribal* - peoples who may not enjoy historical primacy, but who possess distinct social and/or cultural and/or economic customs and traditions - be afforded the same rights as those considered *indigenous* in international law. Accordingly, both the United Nations Working Group on Indigenous Peoples (UNWGIP) and the International Labour Organisation refer to both peoples

²¹ Statistics Institute of Belize, *Annual Report 2017* (SIB 2017) 23 available at http://sib.org.bz/wp-content/uploads/AnnualReport_2017.pdf accessed 13 September 2018.

²² Liza Grandia, 'Milpa Matters: The Maya Community of Toledo versus The Government of Belize' in Barbara Rose Johnston and Susan Slyomovics (eds.), *Waging war, making peace: reparations and human rights* (Left Coast Press 2009) 153.

²³ *Ibid* at 173.

²⁴ Joseph Palacio (ed.), *The Garifuna: A nation across borders* (Cubola 2005) 9-10.

collectively as indigenous.²⁵ This has enabled *Afro descendant* or *Afro indigenous* peoples to ‘indigenise’ their collective claims to land rights based on their special relationship to territory,²⁶ even if they cannot claim to enjoy pre-Columbian rights to those territories.

Accordingly, Afro descendant/indigenous communities from South and Central America have been successful in this respect in attaining favourable judgements through the Inter-American system, centred on a special relationship with lands and resources and their right to control them.²⁷ Most appropriately in the context of this thesis, is the fact that Garifuna communities from Honduras have themselves found success with regard to land rights within the same Inter-American system.²⁸ However, when conducting research in Belize in 2013, the Garifuna absence from the Maya land rights campaign in Toledo was unavoidable, despite the two peoples sharing extremely close links in the district.

The Sarstoon-Temash Institute for Indigenous Management, otherwise known as SATIIM, played a leading role in the Maya campaign. A non- governmental organisation (NGO) based in Punta Gorda, the State capital of the Toledo district, SATIIM takes its name from the Sarstoon and Temash Rivers, which form the borders of the Sarstoon-Temash National Park (STNP) in Toledo (See *Figure A1* for map of

²⁵ Lam (2000) 8-9.

²⁶ Torres (2008) 128.

²⁷ Ibid at 126-8.

²⁸ Inter-American Court of Human Rights, *Community Garifuna Triunfo de la Cruz and its members v. Honduras* (judgement of October 8 2015) C 305 available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_305_esp.pdf and *Community Garifuna Punta Piedra and its members v. Honduras* (judgement of 8 October 2015) C 304 available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_304_esp.pdf accessed 15 September 2018.

STNP). Established in 1997 after indigenous communities discovered the government had turned their ancestral lands into this national park,²⁹ the organisation's mission is *"to promote and protect the rights of indigenous peoples and safeguard the ecological integrity of the Sarstoon-Temash region."*³⁰

This promotion and protection of indigenous rights, it is important to note, is *not* limited to the Maya. The Garifuna village of Barranco is one of the associate villages of SATIIM.³¹ This raised questions as to why one of the peoples who fell within the SATIIM remit, and within the geographical periphery of the STNP, had not joined the other in the legal challenge despite SATIIM's primary strategic goal listed as being to advance the rights of indigenous peoples with particular emphasis on Maya *and* Garifuna land rights.³² This spurred a need to investigate potential reasons for this lack of involvement, and in a wider sense to embark on a study of the Garifuna of Belize's Toledo district that may contribute novel academic discourses on the Garifuna as a people, from both a legal and social anthropological perspective.

²⁹ SATIIM, 'About' (n.d.) available at <http://www.satiim.org.bz/about-satiim/> accessed 13 September 2018.

³⁰ Ibid.

³¹ SATIIM, 'Villages' (n.d.) available at <http://www.satiim.org.bz/villages/> accessed 13 September 2018.

³² SATIIM, 'About' (n.d.) available at <https://www.satiim.org.bz/about-satiim/> accessed 13 September 2018.

Figure A1: Map of STNP ³³



In order to achieve this aim this study received joint supervision from Lancaster University Law School and Environment Centre, as an interdisciplinary approach could produce a dialogue between two disciplines, in turn producing new forms of knowledge.³⁴ The legal research element of this thesis followed the central tenets of legal positivism, also referred to as doctrinal/analytical research. Under a legal positivist understanding, the validity of a rule of law lies in its formal legal status, created and implemented by human beings.³⁵

It is commonly accepted that most legal scholarship centres on the analysis of theoretical concepts rather than empirical investigation,³⁶ however whilst legal rules

³³ This map was sourced directly from the SATIIM office in Punta Gorda.

³⁴ Joe Moran, *Interdisciplinarity* (Routledge 2010) 14-15.

³⁵ Tamara Hervey, Robert Cryer, Bal Sokhi-Bulley and Ali Bohm, *Research methodologies in EU and international law* (Bloomsbury Publishing 2011) 37-38.

³⁶ Paul Chynoweth, 'Legal research' in Andrew Knight and Les Ruddock (eds.), *Advanced research methods in the built environment* (John Wiley & Sons 2009) 37.

can be found within the sources of law, they cannot provide a complete statement of law any particular situation. Such an understanding can only emerge by applying those legal rules to the particular situation under consideration.³⁷ Meanwhile, a central premise and primary method within the discipline of anthropology is the employment of fieldwork,³⁸ to facilitate the study of peoples and cultures in their natural habitat. This fieldwork may take the form of ethnography, whereby a case study approach is adopted, facilitating a detailed study of a particular people or community,³⁹ and how they construct meaning in complex socio-cultural contexts.⁴⁰

The interaction between law and anthropology is not a new phenomenon, yet has undergone significant evolution since the 19th century when the fledgling discipline of *legal anthropology* involved little more than comparing the differences between Western and non-Western law. It was not until the 20th century that the employment of ethnographic field studies became normalised amongst socio-cultural anthropologists, eager to understand the particular legal systems used by particular societies worldwide.⁴¹ The latter half of the twentieth century saw the discipline evolve beyond a sub-field of anthropology, which predominantly studied law in non-Western societies. Now legal anthropology includes local, national, and transnational legal issues.⁴² Consequently, researching localised dispute resolution in particular societies no longer dominates the field.

³⁷ Ibid at 29.

³⁸ Jeffrey A. Sluka and Antonius CGM Robben (eds.), *Ethnographic fieldwork: An anthropological reader* (John Wiley & Sons 2012) 5.

³⁹ Ibid.

⁴⁰ Nicholas Clifford, Meghan Cope, Thomas Gillespie and Shaun French (eds.), *Key methods in geography* (Sage 2016) 582.

⁴¹ Laura Nader, *The life of the law: anthropological projects* (UCP 2002) 8-9.

The evolution of the discipline has seen the nature of States, and the transnational and the supra-local fields that States intersect with, become significant areas of interest.⁴³ Now, ‘small-scale’ fieldwork facilitates perspectives on ‘large-scale’ issues. In doing so, anthropology plays a fundamental role in contextualising legal materials more extensively.⁴⁴ A notable feature of this contemporary anthropology of law is the relationship between law and *identity*.⁴⁵ One such area of this relationship which anthropologists have made important contributions to is the study of the relationship between *indigeneity*, international law, and political mobilization.⁴⁶

Accordingly, a legal anthropological approach emerged as the most appropriate for an investigation into the indigenous identity of the Toledo Garifuna and their notable absence from the Maya legal challenge. Doing so engendered vital context that could not have been generated had the study been approached from a solely doctrinal/analytical perspective and enabled an external study of the law as a social entity.⁴⁷ Most importantly, the ethnographic component of this study was fundamental for ethical reasons when considering that imperialism has framed the indigenous experience.⁴⁸ Furthermore, this was particularly important when ensuring

⁴² Sally Falk Moore, ‘Certainties undone: fifty turbulent years of legal anthropology, 1949–1999’ in Eve Darian-Smith (ed.), *Ethnography and Law* (Routledge 2017) 3.

⁴³ *Ibid* at 3–4.

⁴⁴ *Ibid* at 17–18.

⁴⁵ Mark Goodale and Sally Engle Merry, *Anthropology and law: A critical introduction* (NYU Press 2017) 24.

⁴⁶ *Ibid* at 141.

⁴⁷ Chynoweth (2009) 30.

⁴⁸ Linda Tuhiwai Smith, *Decolonizing methodologies: Research and indigenous peoples* (Zed 2013) 20.

that a people marginalised both historically *and* presently, took centre stage in this study.

As discussed at the outset of this chapter, the conceptualisation of what constitutes being *indigenous* has evolved considerably over recent decades. Although definitions of indigenous peoples have been articulated in the past (notably through former UN Special Rapporteur Martinez Cobo),⁴⁹ the theoretical framework for this study will follow the work of founding chairperson of the UNWGIP, Erica Daes.⁵⁰ From the outset, the UNWGIP never felt a necessity to elaborate a definition of indigenous people. This decision was in part a reflection of the desire to avoid imposing any definition upon peoples who had suffered from the imposition of historical categorization. Consequently, this meant that the UNWGIP did not consider it appropriate to develop a definition without full consultation with indigenous peoples themselves.⁵¹

Yet as consultation continued, a range of factors cast a shadow over the issue of definition including; disputes between governments and indigenous peoples, disputes between indigenous peoples themselves, acknowledgement of the different legal definitions that existed in different national contexts, and the importance of the ability to self-identify as indigenous.⁵² These factors led the UNWGIP to concentrate on norms or criteria that might be considered when considering the concept of

⁴⁹ UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study of the problem of discrimination against indigenous populations* E/CN.4/Sub.2/1986/7/Add.4, para 379 available at <https://undocs.org/en/E/CN.4/Sub.2/1986/7/Add.4> accessed 16 September 2018.

⁵⁰ Erica Daes, 'An overview of the history of indigenous peoples: self-determination and the United Nations' (2008) 28(1) Cambridge Review of International Affairs 7, 7.

⁵¹ Ibid at 8.

⁵² Erica Daes, *Note by the Chairperson-Rapporteur on Criteria which Might be Applied when Considering the Concept of Indigenous Peoples* (UN 1995) E/CN.4/Sub.2/AC.4/1995/3 4-6, paras 6-10.

indigenous peoples, rather than any precise definition. This ensured that no definition of indigenous peoples appeared in the final draft of the UNDRIP.⁵³ Instead, continued discussions resulted in the eventual emergence of four norms considered relevant to the concept of being *indigenous*.⁵⁴

The first norm, that of *priority in time, with respect to the occupation and use of a specific territory*,⁵⁵ is arguably the one which is most closely related to traditional understandings of indigenoussness and indigeneity. Whilst not explicitly mentioning “original inhabitants”, this norm gives a clear nod to peoples who can trace their occupation on a specific territory *prior* to other peoples. Daes’ second norm is listed as; *the voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions*.⁵⁶ By stating the ‘voluntary’ perpetuation of cultural distinctness, the norm is careful to ensure *self-identification*, with empowerment therefore remaining a critical part of the process. Furthermore, although examples are given, cultural distinctiveness is never given arbitrary categories of compliance.

The third norm is listed as; *Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collective*.⁵⁷ This norm again places clear importance on the concept of self-identification, through the notions of group membership and distinctiveness. Furthermore, it expands the notion of identification

⁵³ UNDRIP (2007).

⁵⁴ Daes (1995) 6-9, paras 11-18. See also, Erica Daes, *Working Paper by the Chairperson-Rapporteur Mrs. Erica-Irene A. Daes on the Concept of "indigenous people"* (UN 1996) E/CN.4/Sub.2/AC.4/1996/23, para 69.

⁵⁵ Daes (1996) 23, para 69.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

to encompassing recognition by other groups *or* by State authorities. The language within the norm is therefore both expansive in that it suggests that recognition as a distinct collective is not confined to the State, but also extends to recognition bestowed by other groups.

The final norm in Daes' analysis of the term indigenous states that; it may include; *An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.*⁵⁸ This norm builds upon the already discussed issue at the heart of the indigenous narrative. Within the same report, Erica Daes cautioned how these norms did not constitute a comprehensive definition, yet instead consisted of factors that would be present in greater or lesser degrees depending on differing regional, national, and local contexts.⁵⁹

These norms provide an appropriate theoretical framework for this study for two reasons. First, as an international expert, and former chairperson of the WGIP, Erica Daes' expertise is recognised. This reasoning is qualified within the Statute of the International Court of Justice, when stating that the judicial teachings and decisions of the most highly qualified publicists are subsidiary sources of international law.⁶⁰ Furthermore, this framework is appropriate as it summarises the evolution of the conceptual understanding of being indigenous by including both traditional (priority in time/cultural distinctness) *and* modern considerations (self-identification/marginalisation).

⁵⁸ Ibid.

⁵⁹ Ibid at para 70.

⁶⁰ UNGA, *Statute of the International Court of Justice* (adopted 26 June 1945) art 38 i. (d) available at <https://www.icj-cij.org/en/statute> accessed 1st March 2019.

In summary, this study of the Toledo Garifuna is novel in that it draws on methods from both law and anthropology to adapt an international concept of indigenous peoples to a highly localised setting. This methodology was both appropriate and necessary as it places a historically (and continually) marginalised people at the centre of the indigenous debate in both Toledo, Belize and the wider Central American and Caribbean region. In doing so, this approach continues the trend of legal anthropology's role in contextualising law and legal materials in specific settings, whilst also addressing the lack of this kind of study in law in a wider sense.

As a result, this thesis adds previously undocumented perspectives to the indigenous narrative in both Belize and the wider Central American and Caribbean region, through an exploration of the inherent complexity facing peoples striving to receive tangible indigenous recognition, particularly when such recognition can lead to control over land and resources. Additionally, this thesis contributes further perspectives as to how in the face of such complexity, and despite being routinely rendered legal victims throughout history, the Toledo Garifuna represent an extraordinary example of both cultural survival, and indigenous evolution.

2. Study Aim and Methodology

2.1 Aim

2.1.1 Study aim

The overarching aim of this study is to:

Investigate Garifuna identity in Belize's Toledo district, with specific regard to whether they conform to normative legal conceptualisations of indigeneity and are empowered to gain tangible recognition as being indigenous in Belize.

2.1.2 Objectives and structure

In order to achieve the overarching aim, five objectives frame the study:

- *Explore the evolution of the Garifuna as a people in the American-Caribbean region (1492-1945).*
- *Explore the evolution of indigenous recognition within international law in the American-Caribbean region (1945-2018).*
- *Explore the evolution of Belize from a logging settlement to an independent country, with a specific focus on the peoples of the Toledo district.*
- *Investigate Garifuna identity in Belize's Toledo district, with regard to their conformation with normative legal conceptualisations of indigeneity.*
- *Investigate Garifuna identity in Belize's Toledo district, with regard to their ability to receive indigenous recognition and benefit from land and resource rights.*

These five objectives are framed across four chapters, with each chapter tackling a specific objective, the exception being the final chapter that tackles the fourth *and* fifth objectives. The first chapter introduces the Garifuna as a people. The second chapter reviews the evolution of indigenous recognition within international law in the Americas and Caribbean region. The third chapter focuses specifically on the evolution of the country of study - Belize, whilst the fourth chapter focusses specifically on the Garifuna of Belize's Toledo district. The structure therefore builds towards the ethnographic study of the Toledo Garifuna after an appropriate review of relevant literature.

2.2 Methodology

2.2.1 Methods and site selection

Such a study demanded an extensive and interdisciplinary body of secondary research on which to ground discussion. As discussed in the introduction, the legal research element of this thesis followed the central tenets of legal positivism, also referred to as doctrinal/analytical research. This involved an extensive literature review of the history of the relationship between international law and indigenous peoples, including analysis of relevant legal instruments, documents, and cases from printed/online sources including the United Nations (UN), International Labour Organisation (ILO) and Organisation of American States (OAS).

Additionally, Socio-Cultural Anthropology, History (American-Caribbean & Belizean), and Literary Studies provided vital literature for this inter-disciplinary study through the medium of printed/online sources, predominantly books and journals. Archival research was undertaken at the Belize Archives and Records Service (BARC) in Belmopan, Belize, and at the British National Archives (BNA) in

London, England. The research at both BARC and BNA was fundamental in sourcing official documents and recorded communications from the British colonial period. Cumulatively, these methods ensured that an extensive body of secondary data acted as a strong foundation on which to ground discussion.

The primary research element of this project consisted of an ethnographic study. This approach facilitated an in-depth microanalysis, or case study approach,⁶¹ of the Toledo Garifuna. As stated previously, legal anthropology plays a fundamental role in enabling the contextualisation of legal materials more extensively.⁶² In this case, employing ethnography facilitated the study of how a specific group's identity conforms to macro norms of indigenous identity within international law, through the adoption of a conceptual framework on indigenous identity norms in the specific setting of Garifuna communities in Toledo.

The fieldwork sites chosen for this study were the two existing traditional Garifuna settlements in Toledo - *Barranco* and *Punta Gorda*. Fieldwork was undertaken between April-August 2016, with a return trip made in June 2018. The 2010 Belizean census recorded 19,639 of the total population of 322, 453 as identifying as Garifuna (6.1%), with 9309 (47%) aged 19 years old or younger. In Toledo, 1,870 of a total population of 30,785 identified as Garifuna (also 6.1%).⁶³ This means at the time of the census, Toledo was representative of the country as a whole in that the Garifuna population share in Toledo matched the national share. Yet the census only provides ethnicity breakdowns per *district* rather than per *settlement*.

⁶¹ Robben and Sluka (2012) 5.

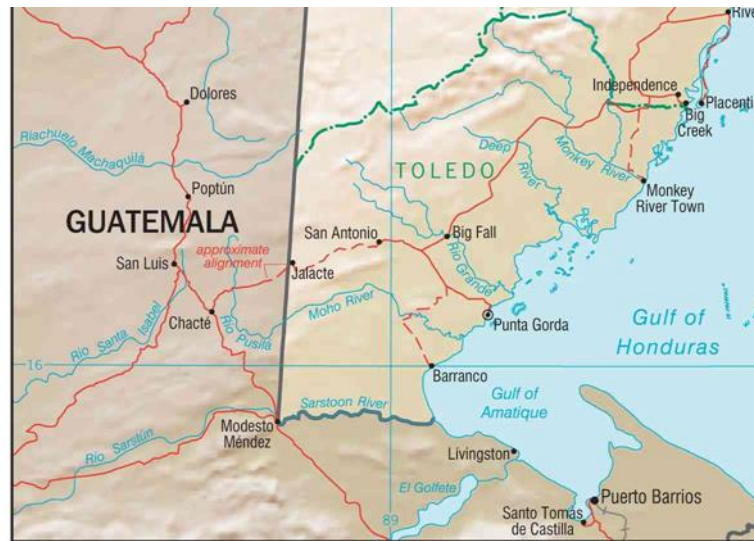
⁶² Falk-Moore (2017) 17-18.

⁶³ Statistics Institute of Belize, *Population and Housing Census 2010* (SIB 2010) 69 available at http://sib.org.bz/wp-content/uploads/2017/05/Census_Report_2010.pdf accessed 13 September 2018.

The 2010 census recorded the population of Barranco at 157 residents, spread across 54 households. Barranco remains an almost exclusively Garifuna settlement, however by contrast, Punta Gorda was a settlement established by the Garifuna yet has grown into the multi-cultural administrative capital of Toledo. The 2010 census listed the population of Punta Gorda as 5,351, while the most recent official population estimate (2017) was 6,148.⁶⁴ The difficulty in gauging accurate numbers of Garifuna in Punta Gorda is compounded by the fact that many Garifuna split time between Barranco and Punta Gorda as well as Belize's other urban areas and overseas, meaning significant portions of the community are out of Toledo for months at a time. This phenomenon emerged as an important fieldwork theme and is discussed in further detail later in this thesis.

⁶⁴ Statistics Institute of Belize, *Annual Report 2017* (SIB 2017) 23 available at http://sib.org.bz/wp-content/uploads/AnnualReport_2017.pdf accessed 13 September 2018.

Figure B1: Map of the Toledo district⁶⁵



A more contextualised use of methods sought to bridge the theory-practise gap in undertaking research in the post-colonial south.⁶⁶ Participant observation was a vital component of fieldwork, as the importance of ethnographers learning the basic premises necessary to engage in new ways of living is paramount.⁶⁷ A further benefit of participant observation was gaining a personal sense of stakeholder lives. As a returning visitor to Toledo, the *participant as observer* role was the most suitable thread to take when conducting participant observation. Relationships had been established with many participants through a previous visit to Belize, therefore it was natural to assume the dual role of being an observer *and* participant.⁶⁸

⁶⁵ US Central Intelligence Agency, 'Physical map of Belize' (2003) available at <https://www.cia.gov/library/publications/resources/cia-maps-publications/Belize.html> accessed 15 September 2018.

⁶⁶ Parvati Raghuram and Claire Madge, 'Towards a method for postcolonial development geography? Possibilities and challenges' (2006) 27(3) Singapore Journal of Tropical Geography 270, 283-4.

⁶⁷ Shawn Lindsay, 'Hand Drumming: An Essay in Practical Knowledge' in Michael Jackson (ed.) *Things as they are: New directions in phenomenological anthropology* (GUP 1996) 196, 196.

⁶⁸ Colin Robson and Kieran McCartan, *Real world research* (John Wiley & Sons 2016) 325.

Participant observation included living within the communities, farming, attending community meetings and events, and immersion in daily village/town life. This method also enabled Garifuna methods of communication such as drumming and traditional dance to play a vital role in the research project. Photography, audio and video recording, were essential in capturing the participant observation experience, samples of which are included in the final chapter. Additionally, documents such as local newspapers and personal documents pertaining to issues such as land ownership, embellished data collection. *Appendix A1* contains an image of local newspapers and a field diary used to record observations and notes from informal conversations and day-to-day living whilst on research.

After solely employing participant observation for the first month of fieldwork, semi-structured interviews became an additional method of data collection. An interview guide provided a checklist of topics to be covered whilst also allowing for significant deviation depending on the narrative provided by the interviewee.⁶⁹ Twenty-five fully recorded, semi structured interviews were conducted with Garifuna participants. Audio recording the interviews enabled a focus on interaction while the interview was actually taking place.⁷⁰ Purposive sampling meant using judgement to identify community members deemed to be ideal for interview, aided by snowball sampling, whereby selected participants then identified other members of the Garifuna community.⁷¹

A household survey was also conducted in Barranco to ensure that every household which was occupied during the research period had the opportunity to be

⁶⁹ Ibid at 285.

⁷⁰ Clifford et al (2016) 150.

⁷¹ Robson and McCartan (2016) 281.

represented in the study should they wish. This survey was primarily directed at households in Barranco who had not participated in a semi-structured interview during the fieldwork period for whatever reason. Surveys were delivered personally door to door and took the form of a *self-completion* survey, which respondents filled in by themselves.⁷² Community brokers played a vital role in identifying participants for interview, in ensuring that certain household surveys were returned, and in ensuring that certain households received assistance in completing the surveys where necessary.

Naturally, issues of bias and rigour are present in all research involving human participants.⁷³ For example, participant observation enabled an extensive understanding of the Garifuna community (particularly in Barranco), however the ability to achieve objectivity in reporting certain situations was naturally called into question.⁷⁴ Employing participant observation, interviews, and the household survey, enhanced the rigour of the research through *data triangulation*,⁷⁵ and countered threats to validity by ensuring an amalgamation of data accumulated through different methods. Whilst this cannot eliminate bias, triangulating the interview/survey responses of Garifuna participants with observational notes ensures a degree of objectivity filters into an inherently subjective research environment.

A *thematic coding approach* was used to establish themes within the data, which were then served as a basis for further data analysis and interpretation.⁷⁶

⁷² Ibid at 250.

⁷³ Ibid at 171.

⁷⁴ Ibid at 326.

⁷⁵ Ibid at 171.

⁷⁶ Ibid at 461.

Themes (and sub-themes) emerged with varying degrees of clarity from the data generated. For example, with regard to objective four (normative conceptualisations of indigeneity), the themes of *priority in time* and *distinct culture* involved drawing the various sub-themes such as *Barranco lineage* or *language/spirituality* etc. and then collating them beneath the overarching theme of *priority in time* or a *distinct culture*. Drawing the overarching theme of an *experience of marginalisation* etc. was more complex, as it covered a far more extensive set of phenomena with varying degrees of incidence within the data. Therefore, structuring this overarching theme involved a more integrated level of data analysis.

Similarly, objective five (ability to achieve indigenous recognition) required first collating data on a variety of associated sub-themes (such as the various forces of de-indigenization) before these were grouped to form the wider overarching themes of *de-indigenization*, *representation/mobilisation* and the *contested land of Toledo*. Thematic coding involved drawing data samples from all methods. *Appendix A2* contains an example page of the thematic coding in progress, showing the process of amalgamating data from different methods. Analysis therefore demanded an iterative approach to ensure the mixed methods approach to ethnography was mirrored by the appropriate levels of breadth and depth at the analysis phase.⁷⁷

⁷⁷ Clifford et al (2016) 581.

2.2.2 *Ethics*

Ethical considerations were at the forefront of the approach to fieldwork at all times. A critical analysis of colonial legacies leads to questions of who will actually benefit from such research. The need to question the research journey to the ‘global south’, and why it is taking place at all, was at the forefront of research design. Paramount to methodological considerations was the reality that imperialism has framed the indigenous experience.⁷⁸ It was therefore necessary to ‘decolonise’ the methodology as much as possible and position the Toledo Garifuna at the direct centre of the project.

This included the already discussed necessity of placing the Garifuna at the centre of the research process through conducting ethnography and of the use of Garifuna methods of communication such as drumming and traditional dance. Furthermore, this also included ensuring the Garifuna played a vital role after primary research had concluded. Keeping this consideration in heart and mind made the return trip in June 2018 essential. The dissemination of the preliminary draft of the finished thesis with community leaders ensured that they continued to play a leading role throughout the lifecycle of the project. Gaining approval from community leaders fostered a feeling of justification that the study results could be disseminated to a wider audience.

The first stage in gaining ethical approval for the project was engaging with Lancaster University Research Ethics Committee (UREC). This process involved submitting a research proposal to the committee containing details such as; the synopsis of the project, risk assessment analysis, fieldwork forms and documentation,

⁷⁸ Tuhiwai Smith (2013) 20.

adherence to confidentiality, anonymity, and data protection protocols. After appearing at a panel chaired by the committee and revising documentation, fieldwork was approved. *Appendix A3* contains a copy of the UREC form. In order to acquire the necessary research permit it was necessary to engage with the National Institute of Culture and History (NICH) in Belize. After submitting the application to NICH, and meeting with senior management, a permit was granted. A copy of the NICH research permit is available in *Appendix A4*.

The final stage of gaining ethical approval rested on the specific relationships with Garifuna research partners in Toledo. As Punta Gorda town is a multi-cultural centre, this involved a personal contract with the participant. However, as Barranco is a small, rural community, a further layer of consent was necessary. It was considered prudent to approach the village council leader before research started in order to outline the project to them, and ensure that they were comfortable with the parameters of the study. The chairperson of Barranco was already an established contact and therefore gave the study their immediate blessing. However, village council elections took place in Barranco shortly after fieldwork began and a change of leadership ensured that further approval was deemed important. The new leader also graciously approved the study and announced my arrival at the first village meeting after elections.

Consent forms acted as a contract with research partners in the field. The consent form provided participants with the security of knowledge that no audio recordings would be shared with any other party, as well as numerous other ethical considerations including; their right to termination of the interview at any time, their right to prevent their information being used, and the anonymization of their identities in any written reports. Furthermore, the consent forms also detailed the secure storage

of data, in line with data protection policy at Lancaster University. A copy of a consent form is available in *Appendix A5*.

Participant information sheets (PIS) were circulated amongst research partners to ensure they were fully aware of the nature and scope of the research project, and provided contextualisation of the aims and objectives. *Appendix A6* contains a copy of a PIS. Within this thesis, all names have been removed and in lieu individual codes affixed to participants to preserve anonymity. For example, codes such as *FP101* and *FP201* have been assigned to participants. Only a private record cross-references the true-identities with the codes. All data was stored securely on the personal file store at Lancaster University.

2.2.3 Note on terminology

- The Garifuna are descendants of the *Carib* people. After their inception on the island of St Vincent, the Garifuna were the subject of a further colonial categorisation, that of *Black Caribs*. Both terms were used by the British and are deemed unacceptable in the modern context. However, both terms appear regularly throughout the early sections of this thesis, when referring to the colonial era in Belize and the wider Caribbean.
- The term *Garifuna* has been used as a means of self-identification for some considerable time, however it has been estimated that 1964 represents the first time that the word *Garifuna* appeared in an academic publication.⁷⁹ The term *Garinagu* is the plural for Garifuna in the Garifuna language.⁸⁰

⁷⁹ Mark Anderson, *Black and indigenous Garifuna activism and consumer culture in Honduras* (MUP 2009) 103.

⁸⁰ Roy Cayetano, *The People's Garifuna Dictionary* (National Garifuna Council of Belize 1993) 44.

- This thesis looks at how the Garifuna are constructed as an *indigenous people*.

This relates to the rights that indigenous peoples can exercise. However, the question of whether these rights include or express a right of self-determination falls outside the scope of the thesis.

3. The evolution of Garifuna identity in the American-Caribbean (1492-1945)

3.1 Introduction

The following chapter seeks to answer the first objective of this study, stated as to: *Explore the evolution of the Garifuna as a people in the American-Caribbean region (1492-1945)*. The chapter consists of three principal sections followed by a summary, and traces Garifuna evolution against the backdrop of the European colonization of the region and corresponding developments in international law. The first section explores how the term *Carib* came into European conscience from the first voyage of Christopher Columbus, and immediately created a legacy of a people identified as the antithesis of European civilisation. The section will go on to explain how as Spanish colonialism in the region expanded, fledgling international law concerning indigenous peoples excluded people identified as ‘Caribs’ from protection, further cementing their reputation as the archetypal ‘*other*’ to European civilisation.

Section two will document how as the Carib island range came under increasing threat from European colonial ambitions, St Vincent became the site of the last large scale native resistance to European colonialism in the Caribbean when a Carib group who had intermingled with Africans found themselves the target of further policies of exclusion. The defeat of this *Black Carib* group would see the survivors exiled, first to Balliceaux (Vincentian Grenadines) and then to Roatan (Honduran Bay Islands). Section three will conclude the story of this evolution by exploring how those that survived as far as Roatan dispersed across Central America, establishing settlements along the Caribbean coast, and encountering new politics of

exclusion in the wake of Central American independence. These survivors would become known as the *Garifuna*.

3.2 Creating the legacy of the Carib

Introducing his seminal bestseller *Culture and Imperialism*, Edward Said offers that a key connection between culture and imperialism⁸¹ is the power to narrate or to block other narratives from emerging.⁸² Within the same chapter, the author offers an interpretation into what he means by ‘culture’ which includes among other things, the arts of description, communication and representation.⁸³ Said’s assertion that the novel, or narrative fiction, was extremely important in the formation of imperial attitudes, references, and experiences,⁸⁴ is particularly pertinent when analysing how European attitudes to the native peoples of the Caribbean developed. Though never intended nor considered as a novel, as a means of description, communication and representation, the observations of the explorer Christopher Columbus formed the basis of lasting narratives of both the Caribbean region and its peoples, and in doing so significantly influenced Spanish imperial attitudes towards both.

Columbus’ four expeditions on behalf of the Castile crown between 1492 and 1504 were undertaken with a quite different objective in mind to the one that he

⁸¹ Imperialism is defined as “the policy, practice, or advocacy of extending the power and dominion of a nation especially by direct territorial acquisitions or by gaining indirect control over the political or economic life of other areas.” See Merriam Webster, ‘Imperialism’ available at <https://www.merriam-webster.com/dictionary/imperialism> accessed 13 September 2018.

⁸² Edward Said, *Culture and imperialism* (Vintage 1993) xiii.

⁸³ Ibid at xii.

⁸⁴ Ibid.

achieved (Columbus had been trying to find the Western passage to Asia).⁸⁵ Instead, his arrival over half a-millennia ago signalled the official beginning of encounters between peoples of the American continent and European arrivals to their shores.⁸⁶ Accordingly, such encounters would bring about principal questions regarding the relationship between Europeans and the peoples of the region.⁸⁷ These questions would ultimately lead to campaigns of slaughter, disease and slavery brought by Europeans upon the populations who would become recognised as *indigenous*, *native*, or *aboriginal*.⁸⁸ Furthermore, this collision of worlds ensured the creation of dubious legacies that often emerged due to the European ignorance of both their geographical location, and of the numerous native peoples who inhabited the region.

A pertinent example of this is the identification of native peoples as *Indians*, a misnomer used by European explorers who in fact believed that they were in the *East Indies*.⁸⁹ For one group in particular, the identification bestowed upon them would lead to them acquiring a legacy as notorious as it is inseparable from the region to this day. The contemporary definition of the term *Caribbean* is defined as “*of or relating to the Caribbean Sea or its islands or to the people of the islands*.”⁹⁰ The phrase contemporarily describes *all* peoples who reside within the Caribbean region. However, the first recorded origins of the phrase *Carib* to enter European society are

⁸⁵ Edwin Williamson, *The Penguin History of Latin America: New Edition* (Penguin 2003) 3.

⁸⁶ Anaya (2004) 3.

⁸⁷ *Ibid* at 16.

⁸⁸ *Ibid* at 3.

⁸⁹ James Lockhart and Stuart. B. Schwartz, *Early Latin America: A History of Colonial Spanish America and Brazil* (Vol. 46 CUP 1983) 31.

⁹⁰ Merriam-Webster, ‘Caribbean’ available at <https://www.merriam-webster.com/dictionary/Caribbean> accessed 13 September 2018.

directly traceable to Columbus' first voyage in 1492. Reporting on his experiences of that first voyage in his logbook, Columbus built an enduring narrative dichotomy regarding the native population. This dichotomy represents the birth of what has been described as the "*radical dualism of the European response to the native Caribbean – fierce cannibal and noble savage.*"⁹¹

Establishing a base called Navidad on the island of Hispaniola,⁹² Columbus' log of that first voyage, summarised in a document known as *the Letter* written on his homeward voyage in April 1493, speaks in glowing terms of his friendly, yet benign native hosts.⁹³ Yet contrastingly, he also reports that the friendly natives have relayed stories of a land where a terrifying people live – an island called '*Carib*', the second at the entrance to the Indies, inhabited by people who eat human flesh.⁹⁴ The conclusions formed by Columbus regarding both his 'benign' hosts and their 'cannibalistic' enemies has been the subject of significant scholarly critique.⁹⁵ For example, when Columbus returned on his second voyage later that year he found his 'benign' hosts had sacked Navidad, and murdered the Spanish who remained.⁹⁶ Seemingly, Columbus' hosts were not as benign as first thought.

However, the dichotomy of the fierce cannibal and noble savage had already been created through Columbus' initial dispatches, and was embellished further

⁹¹ Peter Hulme, *Colonial encounters: Europe and the native Caribbean, 1492-1797* (Methuen 1986) 47.

⁹² Williamson (2003) 7.

⁹³ *Journal of Christopher Columbus* (1492) in Hulme (1986) 42.

⁹⁴ *Ibid.*

⁹⁵ For a critical analysis of Columbus' Carib narrative, see Hulme (1986) at 13-43. See also Peter Hulme and Neil L. Whitehead (eds.), *Wild majesty: Encounters with Caribs from Columbus to the present day: an anthology* (OUP 1992) 17-18.

⁹⁶ Williamson (2003) 9.

through the writings of the ship surgeon Dr Chanca on Columbus' return voyage, which toured the Lesser Antilles from the then uncharted island of Dominica (identified as the Carib homeland) north to the Greater Antilles.⁹⁷ The 'cannibal' narrative would succeed in providing the foundation for securing these *Caribs* the reputation as the archetypal ignoble savages for 16th Century reading audiences.⁹⁸ The legacy left by the emergence in the European conscience of the term *cannibal* as one who ate human flesh, and its implicit association with the people known as *Caribs/Caribes*, is acutely evident in the contemporary Oxford dictionary origin of the term cannibal, which reads;

*"Mid-16th century: from Spanish Canibales (plural), variant (recorded by Columbus) of Caribes, the name of a West Indian people reputed to eat humans (see Carib)."*⁹⁹

⁹⁷ Hulme and Whitehead (1992) 29-34.

⁹⁸ Phillip Boucher, *Cannibal Encounters: Europeans and Island Caribs, 1492–1763* (JHU Press 2009) 19.

⁹⁹ Oxford English Dictionary, 'Cannibal' available at <https://en.oxforddictionaries.com/definition/cannibal> accessed 13 September 2018.

Figure C1: Map of Caribbean Sea and its islands¹⁰⁰



Such a vivid legacy has led to suggestions that European historical or anthropological narratives of the Caribbean are rooted in the same model.¹⁰¹ First, the islands were populated by the ‘peaceful’ natives Columbus encountered on his first voyage (only later identified as *Arawak*). Second, fierce and cannibalistic Caribs renowned for stealing Arawak women then chased the Arawak over centuries up to the Greater Antilles,¹⁰² whilst retaining a Carib stronghold in the Lesser Antilles. The Arawak would prove to be too fragile to survive forced slavery and new viruses,¹⁰³ and as the Spanish colonization of the Greater Antilles (centred on Hispaniola) developed at a rapid pace, the previously flourishing native peoples would soon

¹⁰⁰ Kmusser, ‘Map of Caribbean Sea and its islands’ (2011) available at https://commons.wikimedia.org/wiki/File:Caribbean_general_map.png. Creative Commons license available at <https://creativecommons.org/licenses/by-sa/3.0/deed.en> accessed 13 September 2018.

¹⁰¹ Hulme (1986) 47.

¹⁰² Ibid.

¹⁰³ Ibid at 48.

become the subjects of a further colonial narrative – that of extinction.¹⁰⁴ This left the militant Island Caribs, who defended their island so ferociously, that the Spanish instead concentrated on colonising Mexico and the Southern American continent.¹⁰⁵

Who exactly these Caribs were, remains another source of scholarly contestation. Archaeological evidence identifies the Ciboney, Taino and Kalinago as having migrated to the islands from the American mainland territory now known as the Guianas.¹⁰⁶ It is the latter group - the *Kalinago* - that have been identified as the Island Caribs that defied the Spanish in the Lesser Antilles,¹⁰⁷ and it is a corruption of this word¹⁰⁸ which led to the term Carib and its assorted legacies entering European consciousness. However, further contestation remains as to the specific details of ethnogenesis of these Island Caribs. For example, in terms of language, whilst containing remnants of Cariban linguistics, modern scholarship has demonstrated the predominant Arawak linguistic elements in the Island Carib language.¹⁰⁹ Accordingly, given the paucity of archaeological, linguistic and historical evidence, very little is conclusive regarding the origins of the Island Caribs.¹¹⁰

¹⁰⁴ Lynne Guitar, Pedro Ferbel-Azcarate and Jorge Estevez, 'Ocama-Daca Taino (Hear me, I am Taino): Taino survival on Hispaniola, focusing on the Dominican Republic' in Maximiliano Forte (ed.), *Indigenous Resurgence in the Contemporary Caribbean* (Peter Lang 2006) 41.

¹⁰⁵ Hulme (1986) 48.

¹⁰⁶ Hilary McD. Beckles, 'Kalinago (Carib) resistance to European colonisation of the Caribbean' (2008) 54 (4) *Caribbean Quarterly* 77, 77.

¹⁰⁷ *Ibid* at 79.

¹⁰⁸ Doris Garraway, '*The Libertine Colony: Creolisation in the early French Caribbean*' (Duke University Press 2005) 65, in Anderson (2009) 3.

¹⁰⁹ Boucher (2009) 4.

¹¹⁰ *Ibid* at 5.

What is certain is that native categorisation at the time of Spanish colonization in the region was not founded on linguistic distribution. Instead the term *Carib* was created and reinforced through imagined and then actual hostilities between the Spanish and the native peoples of the region. For example, in later years, as European competition in the region intensified, in Guiana and Venezuela the Kalina/Karina and other peoples who became allied to the Dutch became known as *Caribs*, whilst the Lokono who became allied to the Spanish, were identified as *Arawaks*.¹¹¹ These attributions were not made with reference to Cariban language use, but rather because of hostilities with the Spanish.¹¹² What is also certain is that the Caribs were the only group conceptualised by name to appear in Columbus' logbook (there is no name ascribed to the 'peaceful' Amerindians he meets, only later identified as Taino Arawak).¹¹³

This is further evidence of the Carib tendency to occupy, what Hulme calls an "*anomalous and disquieting position*,"¹¹⁴ and one that was to have a far deeper resonance than mere cultural interest for readers in Europe. To return to Said and the importance he places on how narrative fiction informed imperial attitudes, this ensured that the writings from Columbus' first voyage carried huge political connotations. The identification of the Caribs, like other wild men of medieval legend, as roaming, strong, and bestial were representative of their existing in the animal world, which crucially placed them below men in the chain of natural being.¹¹⁵

¹¹¹ Frank Salomon and Stuart B. Schwartz (eds.), *The Cambridge history of the native peoples of the Americas* (Vol. 3 CUP 1999) 450-451.

¹¹² For a detailed discussion regarding the evolution of the Carib reputation see inter alia; Hulme (1986), Hulme and Whitehead (1992), Boucher (2009).

¹¹³ Hulme (1986) 60.

¹¹⁴ Ibid at 51.

Demonizing the Caribs culturally through written word, facilitated and justified Spanish imperial ambitions.

Ancient Greeks quantified 'life' as having two states of existence. Whilst the term '*zoe*' describes a primal state of life – common to all animals, humans and Gods, the term '*bios*', is indicative of a 'proper' form of living of an individual or group.¹¹⁶ By constructing Carib identity as being a primal state of life, or the '*zoe*', the Spanish were concurrently placing themselves as examples of 'proper' living, or as the '*bios*'. Yet who or what dictated this 'proper' form of living? Where did the separation of *bios* from *zoe* occur? The answer according to Agamben, is found within the State, or sovereign.¹¹⁷ 'Bare life' (or '*zoe*') can be transformed into 'good life' (or *bios*) explicitly through politics. As such, '*zoe*' is both excluded from the higher aims of the State yet is simultaneously included with the intention of transforming it into '*bios*'.¹¹⁸ It is what embodies that supreme power or authority of the sovereign, which will therefore be the catalyst.

The concept of sovereignty remained deeply rooted in the highest conception of power as Columbus made his return voyage to Hispaniola in September 1493. Pope Alexander VI had issued a series of *Papal bulls* granting Castile dominion over *all* lands (yet to be discovered) in the Western Hemisphere,¹¹⁹ ensuring that Christianity would be at the centre of Spanish colonisation and justification. This colonization

¹¹⁵ Boucher (2009) 19.

¹¹⁶ Giorgio Agamben, *Homo sacer: Sovereign power and bare life* (SUP 1998) 1.

¹¹⁷ The Oxford English Dictionary defines sovereignty as "supreme power or authority." Available at <https://en.oxforddictionaries.com/definition/sovereignty> accessed 21 September 2018.

¹¹⁸ Agamben (1998) 9.

¹¹⁹ Williamson (2003) 9.

manifested at an astonishing pace following Columbus' return to Hispaniola with the largest expedition force ever to leave Europe.¹²⁰ The principal aims were extending Spanish control over territory, and the resources within that territory. Accordingly, to muster a workforce for the extraction of natural resources, the Spanish employed two key methods.

The first, a Spanish labour system known as *encomienda*, was in its most generous terms a system whereby Spanish settlers could acquire native services and/or goods through local indigenous authorities.¹²¹ Using pre-existing social norms for their own benefit meant that in return members of the native population would receive decent wages and instruction in the Christian faith. Eventually, the Laws of Burgos of 1512-13 legalised and attempted to regulate the practice of *encomienda* in the region, and in doing so, became the first comprehensive code of Indian legislation,¹²² with a particular emphasis on religious instruction.¹²³ However, European diseases and brutal labour had a devastating effect on the indigenous workforce,¹²⁴ ensuring that the native population of Hispaniola fell dramatically within the first decade of European contact, meaning that by the time this first Indian legislation was introduced it came too late for many on the island.

However, Spanish expansionism across the region continued at a significant rate, and the period between 1508 and 1513 saw the occupations of present day Cuba,

¹²⁰ Lockhart and Schwartz (1983) 62-3.

¹²¹ Ibid at 68.

¹²² Lewis Hanke, *The Spanish struggle for justice in the conquest of America* (Southern Methodist UP 1949) 24.

¹²³ Ibid at 25.

¹²⁴ Williamson (2003) 13-14.

Jamaica, Puerto Rico, as well as the first forceful ventures to the mainland territories of present day Panama and Colombia.¹²⁵ It was on the mainland that the Spanish introduced the *Requerimiento* (*the Requirement*), a manifesto announced to the native peoples via interpreters before any battle could legally begin.¹²⁶ *The Requerimiento* required the Indians to acknowledge the Church as the ruler of the whole world, the Pope as High Priest, and in his stead King Ferdinand and Queen Isabella of Spain as rulers of the land, through the Papal donation. It also required Indians to allow Christianity to be preached to them,¹²⁷ with the refusal to adherence also *theoretically* explained.

Naturally, the manifesto was both impractical as well as open to deliberate distortion. Often, the sight of Spanish swords and dogs, their homes engulfed in flames, was the first impression of Christians that native peoples were presented with.¹²⁸ Accordingly, Spanish methods in the New World were soon receiving criticism from within, both from those who had witnessed them first hand (such as Bartolome de las Casas' condemnation of the brutality of *encomienda* on Hispaniola), as well as those at home. Francisco de Vitoria, primary professor of theology at the University of Salamanca, was concerned with establishing normative legal parameters for conquest.¹²⁹ His conceptualisation of *just war* has thus seen him heralded as the person to whom the primitive origins of international law can be traced.¹³⁰ Vittoria's

¹²⁵ Lockhart and Schwartz (1983) 64.

¹²⁶ Hanke (1949) 33.

¹²⁷ *Ibid* at 34.

¹²⁸ *Ibid*.

¹²⁹ Anaya (2004) 16.

¹³⁰ Anthony Anghie, *Imperialism, sovereignty and the making of international law* (Vol. 37 CUP 2007) 13.

theory reconsidered both the realm of law under which colonialism existed, and the conditions for *just war*.

Normative understanding at the time dictated that there were three realms of law; *divine* law, *human* law and *natural* law.¹³¹ Crucially, Vittoria concluded that the *divine* law which European monarchs depended on to legitimise invasion was not enough to usurp the property rights of the native peoples on earth, as they were non-believers.¹³² Vittoria therefore diminished the Pope's authority to the spiritual dimension of the Christian world. In doing so, Vittoria replaced *divine* law with *natural* law as the principle legal authority, a law that was to be administered by a secular sovereign.¹³³ Adopting the principal of *jus gentium* (law of nations),¹³⁴ which Vittoria regarded as being natural law or derived from natural law,¹³⁵ presented the native populations as being rational, equal human beings, who maintained their own institutions before European arrival, and possessed rights. Crucially however, within *jus gentium* the native populations were deemed to have obligations to allow Europeans to travel and sojourn in their lands, establishing possibilities for fair and rational trade.¹³⁶

¹³¹ Alfred. P. Rubin, 'International Law in the age of Columbus' (1992) 39(1) Netherlands International Law Review 11-14, in Anghie (2007) 17.

¹³² Anghie (2007) 18

¹³³ Ibid

¹³⁴ Merriam Webster defines Jus gentium as "a body of law recognized by nations that is binding and governs their relations with each other." Available at <https://www.merriam-webster.com/dictionary/jus%20gentium> accessed 13 September 2018.

¹³⁵ Francisco de Vitoria, *De Indis Et De Ivre Belli Relectiones Being Parts of Reflectiones Theologicae XII*. (No. 7 Carnegie Institution of Washington 1917) 151, in Anaya (2004) 18.

¹³⁶ Anghie (2007) 20.

Under this reasoning, Spanish presence in the region was legitimized and native resistance to the Spanish penetration could therefore be considered an act of war.¹³⁷ Meanwhile, native resistance to conversion to Christianity could be considered a cause for just war, not because it violates divine law, but because it violates *jus gentium*, or the natural order of the sovereign.¹³⁸ In setting out his conditions for Spanish *just war* Vitoria reverted to the divine, yet critically placed Christianity on earth *within* the natural law paradigm. Although Vitoria urged against the creation of imaginary causes for war amongst the conquering armies,¹³⁹ the sheer scale of land being colonised by the Spanish, meant that this was impossible to police. The Aztec territories centred in Mexico were conquered between 1519-1521, whilst the Inca lands centred in Peru were occupied between 1532-1533. Consequently, all fully sedentary peoples on the continent are reported to have been located and conquered by around 1540.¹⁴⁰

Yet one group had remained particularly resistant to the Spanish hegemony. The colonial legacies of the now deceased Christopher Columbus and the Caribs were irreversibly connected. Returning to Castile, Columbus had implored Queen Isabella and King Ferdinand to permit Carib enslavement.¹⁴¹ Furthermore, his exploration of the Lesser Antilles from Dominica northwards had left Columbus convinced that the islands contained gold.¹⁴² Identified as island raiders who enslaved their women

¹³⁷ Ibid at 22.

¹³⁸ Ibid at 23.

¹³⁹ Anaya (2004) 18.

¹⁴⁰ Lockhart and Schwartz (1983) 83.

¹⁴¹ Boucher (2009) 16.

¹⁴² Ibid at 15.

captors and ate their men,¹⁴³ the Caribs' fierce resistance to both Spanish slaving expeditions and the colonisation of the Lesser Antilles, as well as daring raids on European ships,¹⁴⁴ further earmarked the group as a most significant threat. The Caribs would accordingly give Spanish invaders more trouble than any other hunting people in the region.¹⁴⁵

This resistance demanded a firm response from Castile. In 1503, Isabella had authorised the enslavement of any *cannibals* inhuman enough to resist Spanish arms and evangelism. This was reaffirmed by Ferdinand in 1511, and again by Charles I in 1525.¹⁴⁶ Despite intense raids on the Lesser Antilles in the period between 1512 and 1517 the Spanish failed in their colonization attempts.¹⁴⁷ Consequently, by 1542 male Carib warriors were exempt from the *New Laws*, prohibiting Indian slavery in the region, an exemption extended to include Carib women in 1569.¹⁴⁸ The antipathy between the Spanish and the Caribs was so great it resulted in the latter existing *outside* the protection of formative international law for indigenous peoples.

This antipathy was further fuelled by Carib raids on Spanish interests, which saw them allegedly engage in the retaliatory practise of slave taking. By the late 16th Century, the testimonials of those taken prisoner by the Caribs, such as Luisa de Navarrete, recounted that there were as many as three hundred European prisoners at

¹⁴³ Hulme and Whitehead (1992) 34.

¹⁴⁴ Boucher (2009) 17.

¹⁴⁵ Lockhart and Schwartz (1983) 54.

¹⁴⁶ Boucher (2007) 16.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

the Carib stronghold on Dominica.¹⁴⁹ This animosity eventually manifested to the extent that *anyone* resisting Spanish imperialism in the region was considered a Carib.¹⁵⁰ This shift saw Carib identities transformed from representing *an* enemy of the Spanish in the region, to encompassing *all* enemies of the Spanish in the region. In being branded as such, the Caribs became the ‘*zoe*’ which the ‘*bios*’ could not transform, and against which it was judged.

Coupled with the horror and fascination that the sensationalism of their ‘man-eating’ exploits across attracted across Europe,¹⁵¹ ensured the Carib reputation was imbedded in the Western psyche in a most notorious manner. This reputation ensured that over the course of the centuries that followed, the legacy of Carib “*otherness*” evolved within numerous classic fictional characters, produced for Western audiences.¹⁵² The accuracy of this reputation, as has been discussed, is open to significant levels of contestation on multiple levels. However, in the fledgling years of international law inspired through Spanish colonial exploits, the legacy created ensured that the Caribs, as primary enemies of the Spanish, existed *outside* early normative understandings of international law with regard to indigenous/native peoples. Yet this was to be merely the first politics of exclusion those identified as Caribs would face in the ensuing centuries.

¹⁴⁹ Hulme and Whitehead (1992) 38.

¹⁵⁰ Boucher (2007) 16.

¹⁵¹ Ibid at 19.

¹⁵² See Hulme (1986). For example, The Tempest’s *Caliban* and Robinson Crusoe’s *Friday* are two examples of characters inspired by the Carib narrative.

3.3 Last stand in the Caribbean: The Black Carib wars and birth of the Garifuna

Although early European jurisprudence regarding law and the native peoples of the Americas was deeply rooted in European ecclesiasticism,¹⁵³ the treaties of Tordesillas (1494) and Saragossa (1529) were early examples of monarchs excluding the Pope's dispensation in the division of the 'new world',¹⁵⁴ and settling territorial disputes between themselves. These events were part of a gradual movement, laying the foundations for the political phenomena that would become known as *liberalism* and *nationalism*,¹⁵⁵ and see the *State* replace the divine as the source of legal sovereignty within international legal norms. Accordingly, the late Middle Ages marked the beginning of an era that saw an increasing concern that power be exercised to further the wealth and power of *States*.¹⁵⁶

From the seventeenth century, the idea that States could exert sovereignty gained real traction through a number of theorists, notably Hugo Grotius.¹⁵⁷ Dutchman Grotius, regarded as the "*father of international law*",¹⁵⁸ had begun to ponder the rights and duties of nations in war and peace in his then anonymous *Mare Liberum* (Freedom of the seas) pamphlet published in 1608-9.¹⁵⁹ *De Jure Belli ac Pacis*, written by the same author in 1625, was to become the seminal works as the transition

¹⁵³ Anaya (2004) 16.

¹⁵⁴ James Summers, *Peoples and international law* (Brill 2013) 138.

¹⁵⁵ Ibid at 139.

¹⁵⁶ Stephen J. Neff, *Justice among Nations* (HUP 2014) 144.

¹⁵⁷ For a detailed appraisal of these developments, see Neff (2014) 143-178.

¹⁵⁸ Summers (2013) 140.

¹⁵⁹ Hugo Grotius, *De Jure Belli ac Pacis, (On the Law of War and Peace)*, (Vol. 2, translated by Francis W. Kelsey. Carnegie Endowment for International Peace Washington Introduction 1925) iv.

towards a State centred system of international law gathered pace. Grotius' assertion that the association that bound nations together needed a system of law to govern it,¹⁶⁰ was written at a time of great political upheaval in Europe. The Treaty of Westphalia in 1648 signalled the culmination of the Thirty Years War (1618-1648) and the wider Reformation era conflict between Catholicism and Protestantism, and thus represented a watershed as such.¹⁶¹

As one of the longest, most destructive conflicts in European history,¹⁶² and Europe's longest religious war, the conflict gave the State building monarchs the ability to increase their own independence and centralise power within State borders.¹⁶³ Once peace had been achieved at Westphalia in 1648, a new understanding of international law that had the sovereign *State* at its heart,¹⁶⁴ was ready to be exported to the rest of the world through European colonialism. Works such as Thomas Hobbes' *Leviathan* (1651), which differentiated between a primal state of nature and unity through social contract to form a *State*,¹⁶⁵ continued the movement towards a European State-centric understanding of sovereignty.

The end of large-scale religious wars such as the Thirty Years War ensured that conditions in Europe in the eighteenth century, unlike during the sixteenth and seventeenth centuries, were relatively stable.¹⁶⁶ Religious wars with significant

¹⁶⁰ Ibid at 17, para 23.

¹⁶¹ Summers (2013) 139.

¹⁶² Peter H. Wilson, *Europe's Tragedy: A New History of the Thirty Years War* (Penguin 2009) 787.

¹⁶³ Summers (2013) 139.

¹⁶⁴ Ibid at 141.

¹⁶⁵ Arthur Nussbaum, *A concise history of the law of nations* (Macmillan 1947) 112.

¹⁶⁶ Ibid at 126.

potential to be both highly revolutionary in nature and devastating in character, were replaced by ‘cabinet wars’ which had a greater chance of facilitating diplomacy. Accordingly, most European countries made significant advancements in accumulated wealth and civilization.¹⁶⁷ Meanwhile, the natural law doctrine became associated with the Enlightenment movement,¹⁶⁸ which was particularly pronounced in the works of Christian Wolff and Emer de Vattel.¹⁶⁹ de Vattel has been credited as being responsible for introducing the doctrine of the equality of States into international law.¹⁷⁰

Such developments in Europe were to significantly impact the native peoples of the Americas and Caribbean. Essentially, these developments meant that for the native peoples of the region to enjoy rights as distinct communities, they would have to be regarded as nations or States.¹⁷¹ However, de Vattel seemingly saw differences between the region’s peoples. This is evident in his distinction between the “*civilised Empires of Peru and Mexico*” and “*the peoples of those vast tracts of land who rather roamed over them than inhabited them.*”¹⁷² As a people identified as fully mobile and highly specialised maritime hunters,¹⁷³ such developments presented a further threat to the maligned group identified as the Caribs. This fact would become particularly

¹⁶⁷ Ibid.

¹⁶⁸ Ibid at 134.

¹⁶⁹ Ibid at 135.

¹⁷⁰ Malcolm Shaw, *International Law* (7th Edition) (CUP 2014) 26.

¹⁷¹ Anaya (2004) 21-22. de Vattel used the terms *nation* and *state* interchangeably and without distinction, causing them to converge as a mutually reinforcing concept, hence the term *nation-state*.

¹⁷² Emmerich de Vattel, *The Law of Nations or the Principles of Natural Law* (Classics of International Law Series 1916) (Charles G. Fenwick translation of 1758 ed.) 38, in Anaya (2004) 23.

¹⁷³ Lockhart and Schwartz (1983) 52-54.

apparent as the stage was set for a decisive chapter in the European colonialism of the Caribbean.

The Spanish failure to colonise the Carib territories of the Lesser Antilles had left space for other competing European powers to make their mark both on the islands, as well as other 'blind spots' within the Spanish colonial project.¹⁷⁴ With the backdrop of the Reformation looming large, the competing powers – predominantly the French, English and Dutch - resembled the equivalent of a Protestant crusade to rival Spanish and Portuguese dominance (these two powers were united from 1580-1640).¹⁷⁵ This relationship between these three Western European powers and the Caribs was fraught with complexity and duplicity as the battle to colonise the Lesser Antilles intensified.

Dominica for example, lay directly in the path of the favoured sea route of the European fleets.¹⁷⁶ This ensured that the island became a critical geographical marker, as it had for Columbus on his second voyage. Irregular and sporadic contact, and trading opportunities between Europeans and Caribs, took place both on Dominica and the surrounding islands. The resulting narratives that reached Europe often switched uneasily between Carib nobility and their desperate warrior like nature,¹⁷⁷

¹⁷⁴ For a breakdown of which territories in the American-Caribbean region were conquered, lost and traded, and by which European powers, see Michael Craton, *Empire, enslavement, and freedom in the Caribbean* (Markus Wiener 1997) 34-41.

¹⁷⁵ Craton (1997) 35.

¹⁷⁶ Hulme and Whitehead (1992) 45.

¹⁷⁷ Ibid.

with reports of gold and cannibalism in Carib heartlands ¹⁷⁸ often central to these narratives.¹⁷⁹ Such narrative switches must be considered with relativity to the success of the colonisers in achieving their ambitions, and what resultant image of the Caribs they felt it necessary to project back to Europe at varying times.

As the European presence in the region increased, missionaries and ethnographers began to contribute to narratives regarding language and religious life.¹⁸⁰ This increased contact between the Caribs and European powers as the century progressed only succeeded in accentuating these dualities. For example, the hatred between the Spanish and Caribs provided opportunities for other European powers to recruit them as allies, as the Dutch did on the American mainland.¹⁸¹ Yet the European race to colonise the ‘new world’ meant that all Carib territory remained a target for the European powers. The Caribs would fight tenaciously against predominantly English and French colonisation attempts, yet following the British arrival on St Kitts in 1624,¹⁸² British and French expansionism spread across the Lesser Antilles.

Within thirty-five years, despite fighting fledgling colonisation efforts on Tobago, Grenada and St Lucia, the great Carib island range was effectively reduced to

¹⁷⁸ There remains a strong scholarly opinion that proof of Carib cannibalism remains unsubstantiated. Whilst numerous first-hand accounts throughout history attest to human bones being found in Carib strongholds, Caribs are believed to have killed male prisoners in ritual sacrifice, and are known to have preserved the bones of dead relatives. Some European literary reports attest to Caribs boasting of cannibalism, yet conversely protesting when being accused of cannibalism. As discussed already, European narratives on the peoples they were trying to subjugate, naturally sought to demonize. For further commentary on the subject, see Boucher (2009) 2-11.

¹⁷⁹ Hulme and Whitehead (1992) 62.

¹⁸⁰ Ibid at 81.

¹⁸¹ Craton (1997) 118.

¹⁸² Christopher Taylor, *The Black Carib wars: Freedom, survival and the making of the Garifuna* (St. Martin's Press 2012) 25.

Dominica and St Vincent.¹⁸³ Legal recognition of all these islands as late as the 1748 Treaty of Aix la Chappelle saw them still considered ‘neutral’ in European terms.¹⁸⁴ However, as refugees from other islands poured into St Vincent and Dominica,¹⁸⁵ an Anglo-Franco dispatch concerning a reconnaissance of St Vincent made around 1700,¹⁸⁶ is revelatory on several levels. The dispatch notes how the windward side of the island contained a significant number of ‘negroes’ who had been settled on the island for a considerable time as a result of a ship wreck. Their number was reported to have been augmented by refugees from other islands who had intermingled with the Caribs who lived there previously.¹⁸⁷

This dispatch reveals the three principal issues at the heart of the battles which would come to be known as the *Carib/Black Carib* wars, the last large scale military resistance to European colonialism in the Caribbean. First, the reconnaissance reveals the European intention to disregard the fact that these islands were legally recognised as ‘neutral’ Carib lands. Second, it hints at the varying unsteady allegiances that were to make and break across the ensuing years. Finally, and most significantly, the dispatch makes a distinction between the ‘purer’ yellow/red Caribs of the leeward side and the ‘wild blacks’ of the windward side.¹⁸⁸ Reminiscent of the narrative dichotomy

¹⁸³ Ibid at 26.

¹⁸⁴ Craton (1997) 118.

¹⁸⁵ Taylor (2012) 26.

¹⁸⁶ Hulme and Whitehead (1992) 171-4.

¹⁸⁷ Ibid.

¹⁸⁸ Craton (1997) 118.

created between Arawak and Carib, a new dichotomy was now emerging, only this time between the *Caribs*.

Later that century, 1763 saw the cessation of the *Seven Years War*, and the signing of the Treaty of Paris between Britain and France, which included amongst other things the exclusion of the French from the North American mainland.¹⁸⁹ More pertinently for the Caribs of St Vincent and Dominica, the treaty ensured that Britain gained control of both islands recognised as ‘neutral’ as recently as 1748,¹⁹⁰ yet clearly idealised as the reconnaissance of 1700 showed. A 1763 survey of Dominica divided the land into lots for auction,¹⁹¹ yet the rugged topography of the island meant that the desired macro scale agriculture for sugar plantations was only possible in several places. The potential on St Vincent was significant,¹⁹² yet the desired land was on the underdeveloped windward side,¹⁹³ where the ‘wild black’ Caribs had settled. In order to justify their own claims to the territory, the British embarked on a campaign to dispel the indigenous claims, civility, and the right to the land, of these ‘Black Caribs’.¹⁹⁴

Plantation owner William Young was at the forefront of such efforts. Stressing the uncultivated nature of the land on the island’s windward side, he called for its partitioning befitting of King and country.¹⁹⁵ Furthermore, Young constructed a biased

¹⁸⁹ Ibid at 45.

¹⁹⁰ Ibid at 118. The Treaty of Paris of 1763 saw St Lucia awarded to France and Dominica, St Vincent, Tobago and Grenada awarded to Britain.

¹⁹¹ Hulme and Whitehead (1992) 169.

¹⁹² Ibid at 170.

¹⁹³ Craton (1997) 119.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid at 119.

ethno-history of the island with the overwhelming majority of inhabitants reported as Black Caribs who were *all* reported to have descended from a slave ship bound for Barbados around 1667.¹⁹⁶ The remaining yellow/red Carib population were said to be ‘innocent and timid’, living with Europeans for safety, and not mixing at all with their black enemies. Yet this racial distinction also had a second objective – that of dispelling the indigenous claims of the Black Caribs. In stressing the partial African heritage of the Black Carib group, the British were purporting that even if they were not runaway slaves the Black Caribs were no more indigenous than the Europeans (and also more enslaveable than native peoples).¹⁹⁷

There is also significant scholarly dispute as to when the African influx onto St Vincent began, yet to state all those of African heritage came from one source is plainly incorrect. British dispatches themselves allude to at least two sources – the wrecked slave ship, *and* the refugees from other islands.¹⁹⁸ The latter was likely an augmentation of those who had escaped slaving ships, runaway slaves, and Caribs from other colonized islands. Furthermore, British dispatches of the time at once stress the African heritage of the Caribs on the windward side of the island yet also allude to having foreheads flattened in infancy, an Amerindian not African associated practise.¹⁹⁹ Intermingling between groups had clearly been taking place for considerable time before the campaign to remove them began in earnest.

¹⁹⁶ Ibid at 120.

¹⁹⁷ Ibid at 119.

¹⁹⁸ Hulme & Whitehead (1992) 171-4.

¹⁹⁹ Craton (1997) 120.

Initially, the British drew plans to relocate and compensate the Black Caribs, yet this was conditional on them swearing fidelity to the Crown.²⁰⁰ Yet to Britain's surprise, a parlay between Young and forty Carib chiefs led by Joseph Chatoyer refused to swear allegiance to either the King of Britain or France.²⁰¹ A tinderbox atmosphere exploded in 1772 as the British attacked, yet they were repelled by the wily guerrilla tactics of the Black Caribs.²⁰² A combination of bureaucracy in London, Carib tactics, and British fear of the island's interior, ensured that the British advance was thwarted and a ceasefire signed by Chatoyer was agreed in 1773 guaranteeing the Caribs the northern third of St Vincent.²⁰³

However, 1778 marked the beginning of French involvement in the American War of Independence on the side of the United States, thus resuming hostilities with Britain. France issued orders to seize all British possessions in the Caribbean, including St Vincent, and in 1779 with a force bolstered by mercenaries and brigands joined the Caribs to defeat the British in the First Carib war.²⁰⁴ Until 1783 the Caribs lived relatively unmolested under French rule, but another diplomatic deal in which they had no involvement was to have irreversible consequences. The Peace of Paris conference on American Independence saw St Vincent again passed to Britain.²⁰⁵ Britain decided that the Carib loyalty to the French had placed them in breach of the 1773 treaty, yet France was to play one final card.

²⁰⁰ Ibid at 121.

²⁰¹ Ibid at 122.

²⁰² Taylor (2012) 76.

²⁰³ Craton (1997) 124.

²⁰⁴ Taylor (2012) 102.

²⁰⁵ Ibid at 107-109.

The death of Louis XVI and the turn of events in the French revolution ensured that France again declared war on Britain in 1793,²⁰⁶ and appealing to their ancient friendship with the Caribs, they persuaded Chatoyer to lead the revolt against the English in a Second Carib war.²⁰⁷ The stage for the final battle for St Vincent was set, with the death of Chatoyer at Dorsetshire Hill a telling blow. Fighting alongside the French like a regular army - away from their advantageous jungle interiors - was a significant disadvantage for the Caribs.²⁰⁸ The formal French surrender in June 1796 meant that the Carib attempts to engineer a truce were met with a simple response from the British – they would spare Carib lives but that would be all.²⁰⁹ A period of fierce Carib resistance in the mountains soon gave way to formal surrender, and the forced removal of the Caribs from St Vincent, first considered decades earlier, became a reality.

Africa²¹⁰ and Hispaniola²¹¹ were as considered potential destinations before the small island of Balliceaux was chosen. Between June 1796 and February 1797, around 4500 Black Caribs were shipped to this island with no freshwater streams or springs.²¹² Psychological trauma at their expulsion from St Vincent, and the spread of a disease already hosted by the Caribs, are two (British) reasons given for the dramatic

²⁰⁶ Ibid at 126.

²⁰⁷ Ibid at 129.

²⁰⁸ Ibid at 141.

²⁰⁹ Ibid at 154.

²¹⁰ Craton (1997) 122.

²¹¹ Taylor (2012) 153.

²¹² Ibid at 160.

loss of life that was to occur on Balliceaux.²¹³ By March 3rd 1797 when a flotilla left Balliceaux for the island of Roatan in the Bay of Honduras, only 2248 Black Caribs remained alive. This means that around half of the Black Caribs that were shipped to Balliceaux died there.²¹⁴ More tragedy ensued on the voyage with further disease and the capture of one of the transport ships by the Spanish. By the time Roatan was sighted, as much as 77% of the pre-war Black Carib population may have been lost in just two years.²¹⁵

A little over three hundred years since the first contact between Europeans and the native people of the Caribbean, the British had endured the last major resistance to European hegemony on the Caribbean islands.²¹⁶ That it was a group of Caribs who provided this resistance, is unsurprising. The Carib wars carried many of the hallmarks of the overarching colonial narrative towards the Carib people. That narrative was of a warlike and savage race, worthy only of inclusion within treaties when it suited European powers, unwilling to cultivate the vast tracts of land in a manner the Europeans deemed economically efficient, unwilling to swear sovereignty to any European monarch, and as such unfit to inhabit the lands in which they resided.

Furthermore, the colonization of St Vincent and Dominica again saw European powers placing native inhabitants outside international law. The colonization of the Lesser Antilles also saw a second native dichotomy emerge. The first had been between the Caribs and Arawaks, the second between the *Caribs themselves*.

²¹³ Ibid at 163.

²¹⁴ Ibid.

²¹⁵ Ibid at 165-6.

²¹⁶ Hulme (1986) 225.

Accordingly, this second narrative dichotomy provided the basis for a second politics of exclusion for those on the wrong side of it. The first had ensured that those branded as Caribs were excluded from formative international law. The second now ensured that those branded as Black Caribs were excluded from the land they called home.

With tragic coincidence, the terms cannibal and Carib eventually became distinguishable in the English language with the first Oxford English Dictionary entry in 1796, the year of their exile to Balliceaux.²¹⁷ However, despite their exile from St Vincent the Carib story was unfinished. With the European colonisation of the Americas and Caribbean now complete the paucity of written accounts of the Caribs in the first three quarters of the 18th Century,²¹⁸ is perhaps indicative of a general lack of interest by colonial (and missionary) observers.²¹⁹ Yet those classed as yellow/red Caribs survived in small numbers on St Vincent, and on island ‘reserves’ such as the one soon to be established on Dominica.²²⁰ Those survivors classed as *Black Caribs*, dispersed from Roatan across the Central American mainland. It would be this group who would come to be known as the *Garifuna*, and whose story was just beginning.

²¹⁷ Ibid at 15.

²¹⁸ Hulme and Whitehead (1992) 231.

²¹⁹ Ibid.

²²⁰ Ibid.

3.4 Adapting to new homelands: The Central American dispersal

The colonization of the Lesser Antilles during the late 18th Century ensured that the final unconquered territories in the region fell under European control. However, the close of the 18th Century, notably the Peace of Paris conference in 1783 that concluded the American War of Independence,²²¹ represented a seminal stage in the European colonization of the Americas and Caribbean for opposing reasons. Independence for the United States would trigger a movement of insurrection across the region,²²² in the form of emancipation from slavery, independence from Spanish colonial rule, or in some territories both.²²³ Indeed, the first abolition of slavery in the region stemming from the 1791 Haitian slave rebellion on the then French half of Hispaniola (Saint Domingue), came into effect as early as 1793, with the proclamation of independence on January 1st, 1804 also resulting in the renaming of the territory to Haiti.²²⁴

Yet as the Carib flotilla arrived at Roatan in 1797, some twenty-five years before Central American independence occurred, there was still space for one final round of colonial power politics. The colonial war between the British and French had cost the Black Caribs their homeland and the overwhelming majority of their number. The survivors quickly realised that they were now involved in a further colonial battle

²²¹ On July 2nd 1776, the United Colonies Congress voted for independence. This was declared on July 4th 1776. See Richard Middleton, *Colonial America: A history, 1565-1776* (Wiley-Blackwell 2002) 486.

²²² Antonio Cassese, *International law* (OUP 2005) 27.

²²³ For a summary of the dates of the abolition of slavery and official independence throughout the region, see the *Atlas Caribe*, available at <https://atlas-caraibe.certic.unicaen.fr/en/> accessed 13 September 2018.

²²⁴ Frank Moya Pons, *History of the Caribbean: plantations, trade, and war in the Atlantic world* (Markus Wiener 2007) 169.

as one of the ships in the flotilla was captured (later recaptured by the British) by the Spanish near Guanaja, another of the Bay Islands.²²⁵ Despite events on St Vincent and Balliceaux, the British still hoped that the surviving Caribs would defend Roatan from any potential Spanish attack,²²⁶ yet with the arid southern coast of Roatan proving inhospitable area for settlement²²⁷ the survivors saw other opportunities.

Welcomed by a party of Spanish officers from the mainland port of Trujillo who were (perhaps tactically) accompanied by a number French speaking veterans from the St-Domingue revolution on what would soon become independent Haiti, the Caribs surrendered in May 1797. Their terms for surrender were simple. First, that they were neither subordinate, nor leader to anybody but themselves,²²⁸ and second that they would receive passage to the mainland.²²⁹ When the British returned in October that year, only approximately 200 Caribs remained on Roatan,²³⁰ around 10% of the surviving population who made the journey from Balliceaux. A census taken in Trujillo one month (September 1797) before the British returned to Roatan, recorded 1465 Caribs on the mainland.²³¹

²²⁵ Nancie González, *Sojourners of the Caribbean: Ethno-genesis and Ethno-history of the Garifuna* (UIP 1988) 41.

²²⁶ Ibid.

²²⁷ Taylor (2012) 167.

²²⁸ The statement by a Carib leader was recorded in the diary of Spanish officer - Rossi y Rubi - and was printed in the *Gaceta de Guatemala* later that year. He is recorded as saying “***I do not command in the name of anyone. I am not English, nor French, nor Spanish, nor do I care to be any of these. I am a Carib, a Carib subordinate to no one. I do not care to be more than I have.***” See Gonzalez (1988) 48.

²²⁹ Taylor (2012) 167.

²³⁰ Ibid.

²³¹ Ibid.

It was from Trujillo that the Black Carib dispersal across Central America began. Travelling in small bands of fifty to sixty persons and led by Chiefs as had been the norm in St Vincent, the Carib dispersal saw them form initial settlements in the Costas Arriba and Abajo on modern day Honduras' Lower and Upper coasts. A northern thrust north saw the Caribs establish numerous further settlements between Puerto Cortes (Honduras) and Dangriga (present-day Belize) as early as 1802. Meanwhile, a predominantly later southern thrust saw settlements formed as far south as the Caribbean coast of modern day Nicaragua.²³² However, neither the northern or southern dispersals were isolated events, instead occurring in phases accentuated by the volatile situation the Caribs encountered on the mainland.

For example, despite one hundred Black Caribs helping to defend Trujillo from the British in 1799, their reputation with the Spanish still preceded them. Whether this was due to the historical legacy of their Carib ancestors, or the fact that they were black and regarded as Francophone,²³³ their presence worried the Spanish authorities to the point that in 1804 the governor of Comayagua (pre-independence Honduras) advised that *all* black people should be removed immediately before their number became too numerous.²³⁴ Despite this racial prejudice, the Carib reputation as fearsome warriors saw them stationed in defence of Spanish interests at Trujillo as well as Rio Dulce in Guatemala. Meanwhile, the abolition of the slave trade in 1807

²³² Alfonso Arrivallaga-Cortes, 'Marcos Sanchez Diaz: from hero to hiuraha - two hundred years of Garifuna settlement in Central America' in Palacio (2005) 67-68.

²³³ Taylor (2012) 173.

²³⁴ Ibid.

meant that new sources of labour were required in the British logging camps in the Bay of Honduras (present day Belize).²³⁵

Such events are illustrative of the absence of a default Black Carib allegiance to either Spain or Britain, with employment a far more pertinent consideration than who offered it. Furthermore, within thirty years of arriving on the American mainland, political developments in the region took a drastic turn. The regional insurrection that began with the independence of the United States, and Haiti's independence from France in 1804, continued as the overwhelming majority of Spanish held territories in Central and South America, and Portuguese Brazil, would proclaim independence in the first three decades of the nineteenth century.²³⁶ 1810-1826 marked the period of the Spanish wars of independence,²³⁷ with their cessation leading to a period of unprecedented change in the region. After leading the race to conquer the 'new world' over three centuries earlier, the early nineteenth century marked the decisive end of Spain as a global power.²³⁸

However, despite the obvious tensions in the wider region Central American independence from Spain actually occurred relatively peacefully.²³⁹ In terms of governance, Spanish sovereignty in the Spanish Indies was maintained through the

²³⁵ Ibid at 174.

²³⁶ The major exceptions to the nineteenth century independence movement across the region were the territories that formed the British West Indies and Netherlands Antilles respectively. These islands would not achieve independence until the UN led decolonisation movement of the mid-late twentieth century. For a full list of independence dates across the region, see *Atlas Caribe*, available at <https://atlas-caraibe.certic.unicaen.fr/en/> accessed 13 September 2018.

²³⁷ Jorge Esquirol, 'Latin America' in Bardo Fassbender, Anne Peters and Daniel Högger (eds.), *The Oxford handbook of the history of international law* (OUP 2012) 553.

²³⁸ For a thorough discussion of the decline of the Spanish Empire in the Americas, see Lockhart and Schwartz (1983) 405-426.

²³⁹ Lockhart and Schwartz (1983) 419.

application of the premise of a *patrimonial* State.²⁴⁰ Since colonisation began in the 1490s, the Spanish monarch was deemed to exercise ‘natural lordship’ over all the territories which Spain conquered, and land may only have been granted to his royal subjects at the behest of the sovereign. The States that came into existence in the Spanish Indies were to all intents and purposes, developed to implement the absolute royal will of the Spanish monarch in Castile, on ‘New World’ territory.²⁴¹

The Spanish means of administering this vast area, was initially through the two viceroyalties of Peru (governed from Lima, encompassing all Spanish acquired territory south of Panama), and New Spain, (governed from Mexico City, encompassing all Spanish acquired territory north of Panama).²⁴² These territories were then further divided into smaller administrative units known as *provinces*, governed under the jurisdiction of an *audencia*, which was a court of law situated in the capital cities of the provinces. Yet another layer of authority – *captaincies-general* – enjoyed a status between viceroyalty and *audencia*. These positions were allocated in territories were deemed to be of high economic, military and/or demographic importance

The Central American region known as the *Kingdom of Guatemala*, consisted of the territories shown in *Figure C2*. In 1821, the Mexican war of independence (fought since 1810) ended when Agustin de Iturbide took possession of Mexico City

²⁴⁰ Patrimonialism is a form of political organisation where authority is based on the personal power exercised directly/indirectly by a ruler (in this case the King of Spain). In the Spanish Indies, loyalty was therefore sworn to the Spanish Monarch. See Encyclopaedia Britannica, ‘Patrimonialism’ available at <https://www.britannica.com/topic/patrimonialism> accessed 21 September 2018.

²⁴¹ Williamson (2003) 91.

²⁴² Ibid at 92.

and declared independence, becoming emperor the following year.²⁴³ Then in 1823, the Guatemalan National Constituent Assembly declared independence for those provinces that had comprised the *Kingdom of Guatemala* from Spain, Mexico, and any other power. The provinces of Guatemala, Comayagua (becoming Honduras), San Salvador (becoming El Salvador), Nicaragua and Costa Rica then formed a new federal government which was to be known (briefly) as the United Provinces of Central America (UPCA).²⁴⁴

Figure C2: Map of the Viceroyalty of New Spain and provinces²⁴⁵



²⁴³ P.K Menon, 'The Anglo-Guatemalan Territorial Dispute over the Colony of Belize (British Honduras)' (1977) *Caribbean Yearbook of International Relations* 117, 122.

²⁴⁴ Ibid.

²⁴⁵ Wikimedia commons, 'Map of Viceroyalty of New Spain' (2014) available at https://commons.wikimedia.org/wiki/File:Spanish_Caribbean_Islands_in_the_American_Viceroyalties_1600.png Creative Commons license available at <https://creativecommons.org/licenses/by-sa/3.0/deed.en> accessed 13 September 2018.

However, despite the relative peace that ushered Central American independence, the existence of the UPCA was to be turbulent and short-lived. The first president Jose Manuel Arce, was overthrown in 1829 by Francisco Morazan, and throughout the latter's rule Arce supporters (including numerous Caribs) were involved in multiple counter-insurgencies. Each insurrection was defeated and contributed to a further Carib dispersal across Central America. For example, by means of escape the Caribs augmented their number in the British log cutting settlement in the Bay of Honduras.²⁴⁶ Yet the Carib reputation as excellent workers ensured that this time their exile would not be permanent, and many were encouraged to return in 1836 to resettle a number of places across Guatemala and Honduras including the port cities of Puerto Cortes and La Ceiba, as well as the Caribbean coast of Nicaragua.²⁴⁷

By the middle of the 19th century, Black Caribs were employed in a range of professions across the region including; wood cutting, soldiering, navigators, hunters and sugar/fruit plantation workers.²⁴⁸ The banana trade would prove to be a particularly prominent source of industry for the Caribs. Small-scale *poquitero* banana production in Honduras became popular in the 1870s,²⁴⁹ and by 1899, Honduras was exporting bananas to the United States. This 'banana boom' which grew from the relationship with the United States, ensured that by the outbreak of World War I three major companies – the United States Fruit Company, Vacarros Brothers and Cuyamol Fruit Company (later absorbed by the United States Company) – controlled the fruit

²⁴⁶ Taylor (2012) 175-176.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid at 177.

trade.²⁵⁰ This transformation of Honduras' north coast into a burgeoning regional economic powerhouse saw warships regularly deployed as a threat that intervention was possible should domestic conflicts escalate and threaten US trade interests.²⁵¹

The resulting resentment of US imperialism contributed to an explosion of nationalist fervour that was distinctly pro-Amerindian in nature. Known broadly as *mestizaje*, this manifestation also emerged in other Latin American countries, was a fundamental part of early Central American nation building,²⁵² and focussed on the mixing of Spanish and indigenous bloodlines. Furthermore, this manifested at a time when a national consensus identified the majority of the population as *mestizo*, the Honduran currency named *Lempira* after the heroic Indian leader, and the authentic Honduran racialized as being Indo-Hispanic.²⁵³ This manifested into attacks on 'foreign races', where blacks (amongst others) were erased from colonial history and declared a threat to the purity of the Honduran race.²⁵⁴ For those Black Caribs who had dispersed across Central America, a third politics of exclusion had now manifested.

The imminent decline of the Honduran banana industry, coupled with several other subsequent events such as the outbreak of World War II, and a purge on Black Carib men for their involvement in the return of an exiled political leader, ensured further mass emigration to the United States and Hopkins - in present day Belize -

²⁵⁰ Anderson (2009) 79.

²⁵¹ Tim Merrill (ed.), *Honduras: A country study* (Vol. 550, No. 151 United States Government Printing 1995) XXVI.

²⁵² Charles Hale, 'Does multiculturalism menace? Governance, cultural rights and the politics of identity in Guatemala' (2002) 34(3) *Journal of Latin American Studies* 485, 501.

²⁵³ Anderson (2009) 78-9.

²⁵⁴ Mark Anderson, 'When Afro Becomes (like) Indigenous: Garifuna and Afro-Indigenous Politics in Honduras' (2007) 12(2) *The Journal of Latin American and Caribbean Anthropology* 384, 391.

respectively.²⁵⁵ Such migrations represented a continuation of the pattern of those survivors who arrived at Trujillo – dispersal to escape persecution, ensure cultural survival, secure wilful employment, and retain an element of autonomy. Their arrival in Central America saw the widespread conversion of the Caribs to Christianity and acquisition of the traditional Spanish surnames which most have today.²⁵⁶ Meanwhile, other Miskito or Ladino cultural traits were also absorbed from their new homelands of Guatemala and Honduras.²⁵⁷

Their employment in a range of professions was due to the reputation they held as excellent employees, whether that be as soldiers for hire or working in the booming Honduran banana industry. However, despite some integration, the Black Caribs in Honduras could never fully assimilate into Honduran society, as their blackness always marked them out as different.²⁵⁸ This resulted in them occupying a position within Honduran society that was at once closer to Indians than ‘other’ blacks, due to their language, customs and culture. Yet at the same time, their black identities meant that discourses of *mestizaje* left no space for their full integration.²⁵⁹

In his analysis of what constitutes a ‘*people*’ Giorgio Agamben serves a reminder that any interpretation of the political meaning of the term must be qualified with the understanding that in modern European languages, a ‘*people*’ includes both the constitutive political subject, as well as the class that is excluded.²⁶⁰ For example

²⁵⁵ Taylor (2012) 177.

²⁵⁶ Ibid at 178.

²⁵⁷ González (1988) 70.

²⁵⁸ Anderson (2009) 96.

²⁵⁹ Ibid.

²⁶⁰ Giorgio Agamben, *Means without end: Notes on politics* (Vol. 20 UMP 2000) 28.

in the French language, the phrase '*peuple*', as well as its adjective ('*populaire*') not only describes the wider French citizenry, yet can also be used to represent what might be deemed 'inferior classes'. Phrases such as "*homme du peuple*" ("man of the people"), or "*front populaire*" ("popular front"),²⁶¹ are reminders of how the concept of the term 'people' remains at once a representation of all, yet paradoxically becomes suggestive of a representation of the '*other*'.

Agamben posits how such an ambiguity in the conceptualisation of the term is representative of a wider ambiguity, "*inherent in the nature and function of the concept of people in Western politics.*"²⁶² Rather than describing a unified homogenized mass, the term is a polarity of sorts. At one pole gather the '*People*' - the body politic, the total State of the sovereign, the unified masses. Whilst at the opposite pole we find the '*people*' - the fragmented, oppressed, the vanquished.²⁶³ It is at this pole that we find what Frantz Fanon famously described as the "*wretched of the earth.*"²⁶⁴ In this polar concept, the most inclusive of terms contains within itself the most fundamental of bio-political fractures,²⁶⁵ that which cannot be included in the whole of which it is part, as well as that which cannot belong to the whole within which it is included.²⁶⁶

²⁶¹ Ibid at 29.

²⁶² Ibid at 30.

²⁶³ Ibid.

²⁶⁴ Frantz Fanon, *The wretched of the earth...translated by Constance Farrington* (Reprinted) (Penguin 1969).

²⁶⁵ Agamben (2000) 32.

²⁶⁶ Ibid at 31

As a people in Central America, those who would come to be known as *Garifuna* came to occupy such a position. At once they were both integrated into the lifecycles of the new Central American republics, yet their otherness ensured that they could never be fully integrated. Combined, these phenomena resulted in the *Garifuna* being neither fully integrated nor fully isolated from Honduran and wider Central American society upon their arrival from St Vincent. Central American independence ensured new rulers, however just as borders were inherited from the colonial period, so too were policies and ideologies with racial connotations. Like their *Carib* ancestors before them, the *Garifuna* remained the *people* rather than the *People*, the *zoe* that the *bios* could not transform, and the victims of a further politics of exclusion.

3.5 Summary

This chapter has sought to: ***Explore the evolution of the Garifuna as a people in the American-Caribbean region.*** This evolution has been discussed against the backdrop of the European colonization of the region and corresponding developments in international law. Furthermore, it has been documented how this people have survived and evolved despite facing numerous differing politics of exclusion. First, the dubious legacy of the cannibalistic and man eating *Carib* was created on Columbus' first voyage to the region now known as the Caribbean in 1492. This identity emerged as the antithesis to European ideals of civilisation and was applied to those peoples who dared to resist Spanish colonial ambitions directed towards their homelands. Such resistance would ultimately see those branded as *Caribs* excluded from fledgling international law.

The European quest to colonise the region resulted in a final resistance on the island of St Vincent, which had become a haven for *Caribs* and Africans. Here a

second politics of exclusion manifested where the *Black Carib* group which had come into inception on the island due to the intermingling of Caribs and Africans, resisted British colonization attempts. A series of events which again saw international law exclude peoples of the region in ignoring the island's 'neutral' status, culminated in the defeat and exile of the Black Caribs from their home island. The survivors were transported to the islands of Balliceaux and then Roatan before dispersing across Central America. Adapting to their new homelands, these survivors encountered further change as the Central American republics gained independence from colonial rule.

This change ushered in new political challenges, and as the Central American States sought to establish identities of their own, a third politics of exclusion manifested. Now as black skinned Indians, those that would become to be known as the *Garifuna*, struggled for full recognition in their new homelands. Instead, like their Carib ancestors before them, they became the *zoe* that the *bios* could not transform. However, despite multiple threats, which at varying times placed them on the wrong side of both colonial and post-colonial governments, as a people they have survived. In a remarkable evolution that began on the islands of the Lesser Antilles, manifested on St Vincent, and endured throughout Central America, the people who would become known as the Garifuna are both a fusion of peoples who came together to form the Caribbean, and a legacy of those peoples' resistance against European colonialism in the region.

4. The evolution of indigenous recognition in international law: (1945-2018)

4.1 Introduction

Before discussing the indigenous empowerment era of the mid-late twentieth century it is first necessary to briefly review how international law developed globally once European colonial powers turned their attention to Asia and Africa following the insurrections across the Americas in the early nineteenth century.²⁶⁷ What followed were not confrontations between two sovereign States but confrontations between a sovereign State and a non-European society, regarded at most as being only partially sovereign by European jurists.²⁶⁸ The emergence of the phrase *international law* in the English language stems from Jeremy Bentham, who coined the term in his 1789 thesis *Introduction to the Principles of Morals and Legislation*.²⁶⁹ This development would be pivotal in that the concept of international law came to be understood to include all legal relations among nations whether they fell under the sphere of natural law or not.²⁷⁰

Accordingly, the premise of legal *positivism* became a central tenet of international law. Under a positivist understanding law is created by societies and institutions rather than being a ‘natural’ given.²⁷¹ However, this presented something of a quandary for European powers as they sought to expand hegemonic control over

²⁶⁷ Cassese (2005) 26.

²⁶⁸ Anghie (2007) 5.

²⁶⁹ Mark W. Janis, ‘Jeremy Bentham and the fashioning of “International Law”’ (1984) 78 (2) The American Journal of International Law 405, 408.

²⁷⁰ Nussbaum (1947) 136.

²⁷¹ Anghie (2007) 55.

the rest of the globe throughout the nineteenth century. This quandary involved a reconfiguring of the definition of *sovereignty*, as sovereignty implied a control over *territory*.²⁷² For example, many African and Asiatic States exerted control over territory, yet critically were regarded as being “uncivilised” by Western standards.²⁷³ In order to facilitate continued European primacy over the world, positivist jurists had therefore to construct an apparatus whereby only European States could essentially make sovereign claims.²⁷⁴

Broadly speaking, positivist international law emerged on four key principles; that international law is concerned only with the rights and duties of States, international law upholds the exclusive sovereignty of States and no other political body, and that international law exists between States and not above them. Finally, States that constructed international law and according rights they were deemed to possess, consisted of a limited European conceptualisation of the ideal.²⁷⁵ Accordingly, European powers developed two distinct classes of relations with the rest of the world depending on how similar their systems of governance were to European systems. This distinction essentially occurred between States ‘proper’ such as Japan, and tribal peoples and/or communities led by local rulers, such as those found across Africa and Asia.²⁷⁶

To be considered a State ‘proper’ such as Japan allowed the continuation of nominal independence, provided the State ‘proper’ in question reached perceived

²⁷² Ibid at 57.

²⁷³ Ibid at 59.

²⁷⁴ Ibid at 57.

²⁷⁵ Anaya (2006) 26.

²⁷⁶ Cassese (2005) 26.

European levels of civilization.²⁷⁷ This nominal independence was predominantly dependent on the relationships that the increasingly powerful European trading companies fostered with non-European States.²⁷⁸ Trade, and subsequent profit, was of course at the forefront of European ambitions, and by the close of the 19th Century, colonial States were assuming *direct* control over trade matters.²⁷⁹ Such relationships were fostered with the threat of military action always an option at the negotiating table, should concessions in European interests not be granted.²⁸⁰

For peoples led by local rulers, tribal populations, and/or those not deemed to fit the criteria of a State polity, the 1884-5 Berlin conference on Africa was particularly significant. The conference represented the first time that all the European powers had gathered together with the specific purpose of peacefully resolving colonial disputes.²⁸¹ Whilst the conference also hosted developments in international law such as the consideration of issues such as free trade and the international administration of rivers,²⁸² the lack of any African representation at the conference is telling.²⁸³ Chapter six of the Berlin Act detailed how European powers should notify *each other* when taking possession of African territory and ensure the establishment of

²⁷⁷ Anghie (2007) 84.

²⁷⁸ Arguably, the most influential colonial trading company was the British East India Company who had their own army and were eventually taken under direct control by the British government. See Michael Mulligan, 'The East India Company: Non-State Actor as Treaty Maker' in James Summers and Alex Gough (eds.), *Non State Actors and International Obligations* (Brill 2018) 39-51.

²⁷⁹ Anghie (2007) 67-69.

²⁸⁰ Ibid at 85.

²⁸¹ Jorg Fisch, 'Africa as terra nullius: the Berlin Conference and international law' in Stig Forster, Wofgana Mommsen and Ronald Robinson (eds.), *Bismarck, Europe and Africa: The Berlin Africa Conference 1884-5* (Vol. 1885 OUP 1988) 347.

²⁸² Ibid.

²⁸³ Anghie (2007) 91.

authority.²⁸⁴ The question was not whether European powers should partition Africa, but *how*.²⁸⁵

This global manifestation of positivism ensured that by the conclusion of the 19th century the entire planet was dictated by one European system of international law.²⁸⁶ However, the first half of the twentieth century, and particularly the Great War of 1914-18, ensured that European civilisation had become greatly undermined.²⁸⁷ Perceiving that German militarism had finally been destroyed in November 1918 meant that considerations as to the future conduct of interstate relations became particularly pertinent.²⁸⁸ Accordingly, the final provision of the Treaty of Versailles was that the treaty would come into effect once it had been ratified by '*Germany on the one hand and by three of the Principal Allied and Associated Powers on the other hand*'.²⁸⁹ Included in the peace treaties that confirmed the cessation of hostilities was the Covenant of the League of Nations, and thus on January 10th 1920 the *League of Nations* came into inception.²⁹⁰

This marked the emergence within the international community of a very new form of political organisation that was not a Super-State, a Federation, or an Alliance.²⁹¹ Described as an *instrument of co-operation* and as an agency that

²⁸⁴ Fisch (1885) 348.

²⁸⁵ The conference saw the interior of Africa divided between Britain, France, Portugal, Belgium, Italy and Germany. See Cassese (2005) 28.

²⁸⁶ Anghie (2007) 115.

²⁸⁷ Shaw (2014) 30.

²⁸⁸ Alfred Zimmermann, *The League of Nations and the rule of law, 1918-1935* (MacMillan 1936) 1-2.

²⁸⁹ Ibid at 283.

²⁹⁰ Ibid at 283.

²⁹¹ Ibid at 283-291.

facilitated common action by States motivated by the common spirit,²⁹² ultimately the League failed to maintain the peace that its creation demanded. Despite a life cycle that was characterised by member States withdrawing for a variety of reasons, and the absence of both the United States and Soviet Union for the majority of its existence, the League managed to maintain a degree of international order. However, aggression by numerous parties ultimately contributed to the outbreak of World War II.²⁹³ Soon after the cessation of hostilities in April 1946, the League transferred all its assets to a new global organisation.²⁹⁴

The establishment of the United Nations (hereinafter UN) through the UN Charter in 1945,²⁹⁵ represents a major landmark in international law. Establishing its headquarters in New York away from the traditional European power bases, the principal objective of the UN in replacing the League was to become the world's first truly universal institution.²⁹⁶ This commitment is enshrined in the establishment of fundamental international instruments such as the Universal Declaration of Human Rights.²⁹⁷ Meanwhile, the language of the UN Charter explicitly moved away from State centrism, instead illustrating a growing concern for individuals and groups.²⁹⁸

²⁹² Ibid at 289.

²⁹³ Shaw (2014) 30-31.

²⁹⁴ UN, 'League of Nations Chronology' (n.d.) available at [https://www.unog.ch/80256EDD006B8954/\(httpAssets\)/3DA94AAFE9E8E76C1256F340047BB52/\\$file/sdn_chronology.pdf](https://www.unog.ch/80256EDD006B8954/(httpAssets)/3DA94AAFE9E8E76C1256F340047BB52/$file/sdn_chronology.pdf) accessed 14 September 2018.

²⁹⁵ UN, *Charter of the United Nations* (adopted 26 June 1945) 1 UNTS XVI available at <http://www.un.org/en/sections/un-charter/un-charter-full-text/> accessed 15 September 2018.

²⁹⁶ Shaw (2014) 31.

²⁹⁷ UNGA, *Universal Declaration of Human Rights* (adopted 10 December 1948) A/RES/217(III) available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217\(III\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)) accessed 15 September 2018.

²⁹⁸ Anaya (2004) 49-53.

This shift created the opportunity for a greater recognition of the rights of peoples *within* States, and placed significance on the principle of *self-determination*.²⁹⁹

The UN's two systems of *Trust* and *Non-Self-Governing* territories, and later *Declaration on the granting of independence to colonial countries and peoples* (Colonial Declaration), or Resolution 1514 (and accompanying Resolution 1541), formed the legal apparatus which facilitated colonial territories in eventually attaining formal legal recognition as independent States. This apparatus is discussed in detail in the following chapter, as Belize was one such *non-self-governing territory*. Yet for those territories in the Americas and Caribbean who had long been independent, the development of supranational institutions and associated decolonisation movement was fundamental in ushering in a new age of empowerment for previously subjugated peoples *within* State borders, notably for those peoples that may be classed as *indigenous*.

The following chapter seeks to detail this empowerment and in doing so answer the second objective of this study, stated as to; ***Explore the evolution of indigenous recognition within international law in the American-Caribbean region (1945-2018)***. The chapter consists of four principal sections, followed by a summary section. The first section will focus on *identities of recognition* and details which characteristics of identity have become fundamental to normative understandings of indigeneity within the international legal system. Such characteristics are regarded as fundamental in being able to receive recognition as indigenous, and claim any associated rights stipulated within international instruments. The second section will document these *instruments of recognition*, which have been introduced into

²⁹⁹ UN Charter (1945), art 1(2), available at <http://www.un.org/en/sections/un-charter/un-charter-full-text/> accessed 15 September 2018.

international law in order to give protection to the rights of indigenous peoples, notably the International Labour Organisation (ILO) conventions, and the United Nations declaration on the rights of indigenous peoples (UNDRIP).

The third section will focus on *spaces of recognition*, and how the human rights arm of the Organisation of American States, the Inter American system (consisting of the Inter American Commission and Inter American Court), has played an important role in the advancement of indigenous rights jurisprudence in the region. It will be discussed how the OAS has further expanded the scope of both the range of peoples who may seek recognition as indigenous in the Americas and Caribbean, as well as policing the enforcement of decisions made within the national borders of OAS member States. The final section will document the *contestations of recognition* that have been born from the expansive development of indigenous rights over the previous decades. Notably, the section will focus on the success of the Garifuna in gaining indigenous recognition in Honduras, whilst alluding to the contestation that accompanied such decisions from other indigenous groups and other actors. The chapter will then conclude with a summary.

4.2 Identities of recognition: Building a normative understanding of indigeneity within international law

In his seminal 1992 essay “*Multiculturalism and the politics of recognition*”, Charles Taylor purported that a person’s identity can be defined as “*something like their understanding of who they are.*”³⁰⁰ Establishing a link between a person’s *identity* and other people’s *recognition* of that identity, Taylor posits that a person’s identity is shaped in part by the external recognition of that identity by others, and

³⁰⁰ Charles Taylor, *Multiculturalism and The Politics of Recognition* (PUP 1992) 25.

crucially, this includes the absence of recognition, or misrecognition by others.³⁰¹

Expanding on his premise, Taylor states that identity depends on one's "*dialogical relations with others*",³⁰² and thus the 'public sphere' is an essential component in the discourse of recognition. The crux of Taylor's philosophy is that the absence of recognition, or misrecognition, can inflict significant harm and oppression should the identity mirrored back to the individual by others be one perceived to be demeaning or contemptible.³⁰³

Elaborating further with the example of indigenous peoples, Taylor argues a Western view of them as being 'uncivilised' has been imposed upon 'conquered' indigenous peoples through force of conquest.³⁰⁴ Furthermore, these identities were cultivated by European powers who ultimately sought justification for their colonial ambitions. Accordingly, developing a platform to reverse the centuries of misrecognition created through colonial narratives became central to international law in the latter part of the 20th century. A vital consideration within this philosophy was *empowering* indigenous peoples to articulate *their own* identities.

Since the 1940s Latin American countries in particular, had played a major role in the development of the modern international regime on the rights of indigenous peoples.³⁰⁵ Yet it was in the wake of the UN inspired decolonisation movement, that the 1970s saw a crystallization of an international movement towards common

³⁰¹ Ibid.

³⁰² Ibid at 34.

³⁰³ Ibid at 25.

³⁰⁴ Ibid at 26.

³⁰⁵ Rodríguez-Pinero (2011) 458.

indigenous aspirations.³⁰⁶ The 1975 conference in British Columbia, which saw the creation of the *World council of indigenous peoples* (hereinafter WCIP),³⁰⁷ and the 1977 conference on *Discrimination against indigenous populations in the Americas*, are both examples of this global swell in indigenous mobilisation, which perhaps unsurprisingly, was spearheaded by groups from territories impacted by European invasion and settlement.³⁰⁸

This movement really gathered pace in 1982 when, following the appointment of a Special Rapporteur - Jose Martinez Cobo – to undertake a comprehensive study on discrimination against indigenous populations, the UN created a working group (hereinafter WGIP), whose task it was to advise it on indigenous matters.³⁰⁹ From 1984 onwards, this group was responsible with drafting the UNDRIP. Yet in terms of a definition, the WGIP had from the beginning decided to avoid the issue altogether, for fear that a controversy may interrupt their work of developing global standards on the protection of indigenous peoples everywhere.³¹⁰ Instead, at the WGIP, the description most regularly invoked was the one provided by Cobo himself in his 1986 report, in which he stated that;

³⁰⁶ Xanthaki (2007) 69.

³⁰⁷ Douglas Sanders, *The Formation of the World Council of Indigenous Peoples* (IWGIA Document 29 1977) 18.

³⁰⁸ Kingsbury (1998) 421.

³⁰⁹ Lam (2000) 6.

³¹⁰ Ibid at 7.

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”³¹¹

This definition has been interpreted by some to limit indigenous peoples to those communities, peoples, and nations in post-European settler States, whilst others considered it expansive enough to include those ‘original’ inhabitants of territories colonized by European States *and* tribal/otherwise distinctive peoples who are historically attached to certain territories, if not immemorially so.³¹² This distinction is representative of wider global division in the concept of being ‘indigenous’ in the movement’s formative years. For example, the initial formation of the WCIP was composed of a five regions structure, which consisted of members from North, Central and South America, the Nordic region and Australasia.³¹³ The reluctance of certain members of the original WCIP, to extend membership to the Pacific-Asia region,³¹⁴ is indicative of this division.

³¹¹ UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study of the problem of discrimination against indigenous populations* E/CN.4/Sub.2/1986/7/Add.4, para 379, available at <https://undocs.org/en/E/CN.4/Sub.2/1986/7/Add.4> accessed 16 September 2018.

³¹² Lam (2000) 7.

³¹³ Kingsbury (1998) 421.

³¹⁴ Ibid.

In contrast to the States from the Americas, Australasia and the Nordic countries, colonization in Africa and Asia did not generally involve Europeans ‘settling’ on the land in anything like the same extent.³¹⁵ Instead, the diversity of peoples who could be identified as native or indigenous ultimately *all* became undifferentiated nationals of their respective States during the independence movement, and therefore could *all* be identified as indigenous.³¹⁶ This distinction also provoked reactions from States themselves, and in response, several Asian governments (notably India and China) have maintained that their tribal peoples or national minorities are *not* indigenous, in the sense that they are original occupiers of the land entitled to special protection.³¹⁷ In their view, either the whole population were indigenous or none were.³¹⁸

As discussed in the introduction, the term *indigenous* literally means *originating or occurring naturally in a particular place; native*.³¹⁹ When adapting this phrase to human settlement, as an example, the Kennewick debate identified four different strands of indigeneity; association with a particular place, prior inhabitation (as in we were here before you), original or first inhabitants of a particular territory,

³¹⁵ Lam (2000) 2.

³¹⁶ Ibid.

³¹⁷ Lãm (2000) 3. For a thorough discussion on concepts of indigenous/tribal peoples from the perspective of various Asian governments, see Kingsbury (1988) 414-457.

³¹⁸ Lam (2000) 4.

³¹⁹ Oxford English Dictionary, ‘Indigenous’ available at <https://en.oxforddictionaries.com/definition/indigenous> accessed 13 September 2018.

and distinctive societies.³²⁰ As a further example, the term ‘*aboriginal*’ ‘literally translates as ‘from the beginning’,³²¹ illustrating the significance of the concept of being original/first inhabitants of a particular territory. It is easy to understand how early interpretations of being indigenous were rooted in ideas of original and prior inhabitation of a particular territory.

However, by taking a constructivist approach it is possible to understand the international concept of indigenous peoples as a continuous process rather than a fixed legal category.³²² It would be mutual experiences of *cultural distinctness* (also the fourth strand in the Kennewick debate) in being socially and culturally apart from dominant societies, as well as their experience of some form of *subjugation to the domination/exploitation/territorial appropriation of colonial States*, where a multitude of diverse peoples would find commonality.³²³ Yet despite indigenous peoples themselves finding commonality, the lack of consensus in confining their identities to a specific definition, and hence fixed legal category, would continue to remain a point of contestation for some States as the WGIP continued to work on the UNDRIP.

The issue over whether peoples should be regarded as *indigenous* or *tribal* received closure of some description in 1989, when the International Labour Organisation, an agency of the UN, and the first organisation to introduce global

³²⁰ The Kennewick debate is a debate over a skeleton found in 1996 in the Columbia River near Kennewick, WA, USA. It is one of the oldest human skeletons ever found in North America and became the subject of contestation between American Indians and non-American Indians due to claims regarding the skeleton’s Caucasian origins, and by extension, suggestions in some quarters that Caucasians were actually First Peoples of the Americas. See Thornberry (2002) 35-37.

³²¹ Ibid at 39.

³²² Kingsbury (1998) 414-5.

³²³ Lam (2000) 3-4.

instruments in support of indigenous peoples,³²⁴ adopted Convention 169 (hereinafter ILO 169). The convention and its predecessor ILO 107 are discussed in detail in the following section. However, in terms of the importance in *who* the convention applied to, it specifically includes peoples who are identified as being both tribal *and* indigenous in its opening two articles.³²⁵ The articles state that;

1. This convention applies to:

- (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;³²⁶
- (b) peoples in independent countries who are regarded as indigenous, on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.³²⁷

³²⁴ Thornberry (2002) 320.

³²⁵ International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169* (adopted 27 June 1989), art 1, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 accessed 16 September 2018.

³²⁶ *Ibid* at art 1.1 (a).

³²⁷ *Ibid* at art 1.1 (b).

2. Self-identification as *indigenous or tribal* shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.³²⁸

In objectively stating the definitions of tribal and indigenous peoples within the *same* article, the ILO made a distinction in the definitions, whilst also laying to rest any potential fallout over the terms. In doing so, the ILO made a commitment to protecting “original inhabitants” of a territory, as well as tribal peoples who may not enjoy historical primacy, but who possess distinct social and/or cultural and/or economic customs and traditions. As will be discussed ILO 169 has been ratified by a very small number of States (mainly Latin American), however this belies the influence it had had on jurisprudence (particularly in Latin America) with regard to collapsing the barrier between indigenous and tribal. Accordingly, both the WGIP and the ILO refer to *both* peoples collectively as indigenous.³²⁹

The notion of *self-identification* as indigenous or tribal was also a particularly significant development within ILO 169. Furthermore, self-identification was regarded as fundamental by many of the indigenous representatives who attended the draft sessions within the WGIP. The same indigenous representatives also stressed that there was no need for a formal, universal definition,³³⁰ a position the UN have continued to maintain.³³¹ However, the significant time lag between the WGIP

³²⁸ Ibid at art 1.2.

³²⁹ Lam (2000) 8-9.

³³⁰ Daes (1996) 13, paras 34-36.

³³¹ UN Secretariat of the Permanent Forum on Indigenous Issues, *The Concept of Indigenous Peoples' (Background Paper to Workshop on Data Collection and Disaggregation for Indigenous Peoples, New York, U.S., 19–21 January 2004* PFII/2004/WS.1/3, para 8, available at http://www.un.org/esa/socdev/unpfii/documents/workshop_data_background.doc accessed 15 September 2018.

producing the draft declaration in 1993 and eventual adoption of the UNDRIP in 2007,³³² can be attributed at least in part to the issue of definition. Notably, a number of States actively sought to have a definition included within the document.³³³ For example, one of the critical points of contestation from the African Union (AU) was over the lack of a definition of indigenous people, citing that to have no definition would be both legally incorrect and create ethnic tensions amongst groups.³³⁴

Comparatively speaking, the indigenous rights movement on the African continent has lagged significantly behind those in other regions, such as in the Americas.³³⁵ However, the work of the African Commission on Human and People's Rights (ACHPR) has been vital in advancing jurisprudence, and was critical in persuading the AU regarding the UNDRIP.³³⁶ In response to the concerns of the AU, the ACHPR reiterated there was no single definition that could capture the characteristics of indigenous populations, and that it was far more constructive to establish the characteristics of indigenous populations in communities in *Africa*.³³⁷ In doing so, the ACHPR stressed how this did *not* mean first inhabitants with reference

³³² Allen and Xanthaki (2011) 1.

³³³ Barelli (2010) 958.

³³⁴ ACHPR, *Advisory Opinion of the African Commission on Human and People's Rights on the United Nations Declaration on the Rights of Indigenous Peoples* (ACHPR 2007) 1, 2, paras 3, 9.

³³⁵ The case of the Endorois community v The Republic of Kenya (2010) would prove to be a landmark ruling in favour an indigenous/tribal community in Africa. This seminal ruling centred on the decision by the African Commission on Human and People's Rights (ACHPR), that the expulsion of the Endorois from their ancestral land was illegal. See Lucy Claridge, *Landmark Ruling Provides Major Victory to Kenya's Indigenous Endorois* (Minority Rights Group International 2010) 1. See also, Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, 'Summary paper' (n.d.) available at http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_276_03_eng.pdf accessed 21 September 2018.

³³⁶ Rachel Murray, 'The UNDRIP in Africa: The approach of the regional organisations to indigenous peoples' in Allen and Xanthaki (2011) 485, 485.

³³⁷ ACHPR (2007) 3, para 10.

to aboriginality, as any African could legitimately consider themselves ‘*indigene*’ to the continent.³³⁸

Instead, the ACHPR stressed how *inter alia*; self-identification, a special attachment to ancestral land/territory fundamentally important for their collective physical and cultural survival as peoples, and a state of subjugation, marginalisation, dispossession, exclusion or discrimination based on their cultural difference, were vital for identifying indigenous communities.³³⁹ Notably, the ACHPR summarised contemporary understandings of indigenous peoples as being not only a term, but a global movement fighting for the rights and justice of those groups who are victims of discrimination, inequality and suppression rather than a “who came first mentality.” In doing so, the ACHPR also cited African examples such as hunter-gather groups and pastoralists that had joined this global movement.³⁴⁰

Expanding the notion of marginalisation further, the ACHPR sought to bring concepts of indigeneity further away from aboriginality and colonial era discourse, by emphasising how the indigenous movement in Africa had grown as a response to policies adopted by *post-colonial* African States.³⁴¹ Citing examples such as how settled agriculture and the establishment of national parks had led to stigmatization and relocation of certain groups,³⁴² the ACHPR stressed that a modern analytical

³³⁸ Ibid at 4, para 13.

³³⁹ Ibid at 4, para 12.

³⁴⁰ ACHPR, *Report of African Commissions Working Group of Experts on Indigenous Groups/Populations* (ACHPR 2005) 86-7, available at https://www.iwgia.org/images/publications//African_Commission_book.pdf accessed 14 September 2018

³⁴¹ Ibid at 92.

³⁴² Ibid.

understanding of the term, which encompassed; marginalization, cultural difference and self-identification should be adopted by the African Commission.³⁴³

Furthermore, the ACHPR stated that such a modern analytical understanding of being indigenous was advocated by WGIP Chairperson Erica Daes, who had selected four guiding principles.³⁴⁴ These four guiding principles/norms are the four norms identified in the introduction of this thesis. The first norm is *priority in time, with respect to the occupation and use of a specific territory*. The second norm is *voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions*.

The third norm is *self-identification, as well as recognition by other groups, or by State authorities, as a distinct collective*, with the final norm identified as *an experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist*. As discussed in the introduction, these norms summarise the evolution of the indigenous narrative from its earliest conceptualisations (priority in time/cultural distinctness) to more modern conceptualisations (self-identification/marginalisation). Accordingly, these norms provide the theoretical framework adapted to the Toledo Garifuna in the empirical chapter of this thesis to ascertain how they conform to normative conceptualisations of indigeneity.

³⁴³ Ibid at 93.

³⁴⁴ Ibid. However, the ACHPR made one slight alteration, in that they removed ‘priority in time’ from the first norm as listed by Daes (1996) 23, para 69.

To return to the beginning of this section, Charles Taylor purported that a person's identity can be defined as "*something like their understanding of who they are.*"³⁴⁵ The global indigenous mobilisation has enabled diverse peoples from across the globe to self-identify as indigenous, and gain recognition as a result. This has been a seminal philosophical departure for indigenous peoples, after centuries of having their public identities constructed, demeaned and destroyed by other peoples. Now, being able to self-identify, and articulate the marginalisation/discrimination etc. which they have experienced, are considered vital elements of identity for indigenous peoples.

4.3 Instruments of recognition: ILO 169 (1989) and the UNDRIP (2007)

In just a few decades since the beginning of the 1970s, the term *indigenous peoples* transformed from a description with little significance within the fields of law and politics, to one that wielded considerable power and potential in the form of group mobilisation.³⁴⁶ Through initiatives such as the WGIP,³⁴⁷ indigenous peoples gained a seat at the international table through participation in the construction of international legal instruments outlining specific *rights* for peoples successful in gaining indigenous recognition. Furthermore, honouring such rights became the *obligation* of any States becoming parties to such instruments, which understandably, have become the source of great potential for peoples across the globe who identify as indigenous.

Before discussing the principal indigenous rights instruments in international law, it is also necessary to briefly introduce the broader UN human rights system and

³⁴⁵ Taylor (1992) 25

³⁴⁶ Kingsbury (1998) 414

its interaction with indigenous peoples. This system consists of two main components: *Charter based* bodies deriving authority from the UN Charter, and *Treaty based* bodies deriving authority from specific treaties such as the International Covenant on Economic, Social and Cultural rights (ICESCR), International Covenant on Civil and Political rights (ICCPR), and the International Convention on the Elimination of Racial Discrimination (CERD).³⁴⁸ Both bodies are serviced by the Office of the UN High Commissioner (OHCHR).³⁴⁹ Whilst Charter based bodies specifically dedicated to indigenous peoples are a relatively new phenomenon, Treaty based bodies have been addressing human rights issues concerning indigenous peoples since the mobilisation era of the 1970s.

Charter based bodies are divided between the Economic and Social Council and Human Rights Council. *The Permanent Forum for Indigenous Issues* (est. 2000) comes under the auspices of the former, whilst both the *Expert Mechanism on the Rights of Indigenous Peoples* (est. 2007) and the *Special Rapporteur on the Rights of Indigenous Peoples* (est. 2001) are within the jurisdiction for the latter. Broadly speaking the *Permanent Forum* offers expert advice and co-ordination of indigenous issues across the UN, the *Expert Mechanism* conducts thematic studies on indigenous issues, and the *Special Rapporteur* performs country visits. All three bodies co-ordinate with each other and gather information from a wide range of government and

³⁴⁸ UNGA, *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966) 999 UNTS 3 (ICESCR) available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>
UNGA, *International Covenant on Civil and Political Rights* (adopted 16 December 1966) 999 UNTS 171 (ICCPR) available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
UNGA, *International Convention on the Elimination of all forms of Racial Discrimination* (adopted 21 December 1965) 660 UNTS 195 (CERD) available at <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> all accessed 21 September 2018.

³⁴⁹ UN OHCHR, *Indigenous Peoples and the United Nations Human Rights System Fact Sheet 9/2* (UN 2013) 11.

non-government sources, with a strong indigenous presence both in the composition of its departments and in annual conference sessions at the UN.³⁵⁰

Treaty based bodies monitor the implementation of international human rights treaties. Reviewing State reports on measures they have taken to implement treaties is a primary objective of the various committees, such as those for the ICESCR and ICCPR. Article 1 of these ‘twin covenants’ explicitly states that all peoples have the right of *self-determination*, and to freely determine their political status, and their economic, social and cultural development, including to freely dispose of their natural wealth and not be denied subsistence.³⁵¹ This statement has been interpreted as the most authoritative legal expression of the right of self-determination,³⁵² however the right in a general sense, is both highly contested and ambiguous,³⁵³ particularly when applying it to indigenous peoples, as will be discussed further in this chapter.

Although falling beyond the remit of this thesis, it is important to note that indigenous issues over resources/consultation has been addressed under article 1 by the Committee on Economic, Social, and Cultural rights/CESCR (ICESCR treaty body), in their concluding comments when reviewing State reports.³⁵⁴ Meanwhile, article 27 of the ICCPR, declares that in those States where ethnic, religious or linguistic minorities exist, that persons belonging to such minorities shall not be

³⁵⁰ Ibid at 11-17.

³⁵¹ ICESCR, ICCPR, art 1.

³⁵² Summers (2013) 37.

³⁵³ Ibid at 1.

³⁵⁴ See inter alia UN CESCR, ‘Concluding Observations on Costa Rica’ (7 October 2016) UN Doc. E/C.12/CRI/CO/5, para 9.

denied the right (in community with other members of the group) to enjoy their own culture.³⁵⁵

In a similar vein, the Human Rights Committee (ICCPR treaty body) has addressed indigenous issues under article 27 in their concluding comments when reviewing State reports, when interpreting the right to culture of persons belonging to minorities to encompass indigenous peoples' rights in relation to their customary activities.³⁵⁶ Furthermore, the Human Rights Committee has themselves also found that article 1 may be relevant when interpreting article 27.³⁵⁷ This relevance will be contextualised further later in this section when discussing the Inter-American Human Rights system and its pioneering interpretations of indigenous rights.

In terms of State obligations as pertaining to the ICESCR and ICCPR, parties to the treaties are obligated to report annually how they are implementing rights set out in the treaty. However, the reporting guidelines for parties to the ICESCR are far more specific with reference to indigenous people, as they detail that States include information about how they are respecting indigenous rights, if any, to the lands and territories they traditionally use and occupy. Furthermore, States are asked to report the extent to which indigenous and local communities are duly consulted, and whether their prior informed consent is sought in any decision-making processes affecting their rights and interests under the Covenant, and provide examples.³⁵⁸ In contrast, the

³⁵⁵ ICCPR, art 27.

³⁵⁶ UN HRC, 'Concluding Observations on Australia' (1 December 2017) CCPR/C/AUS/CO/6, paras 51-52.

³⁵⁷ UN OHCHR (2013) 19, See also UN HRC, 'Concluding Observations on Mexico' (23 March 2010) UN Doc. CCPR/C/MEX/CO/5, para 22.

³⁵⁸ UN, *Compilation of guidelines on the form and content of reports to be submitted by State parties to the international human rights treaties* HRI/GEN/2/Rev.6 (UN, 2009) 29.

Human Rights Committee (for monitoring ICCPR) does not specifically mention such State obligations with regard to indigenous peoples.³⁵⁹

Yet to return to the specific international legal instruments with regard to indigenous rights, a full review of the wide range of rights stated in ILO 169 and the UNDRIP is not possible within the context of this thesis. This section will focus primarily on how indigenous rights to consultation and land/resources were conceived within these instruments, as it is these rights that are primarily covered in chapter six on the Toledo Garifuna. Furthermore, it will be discussed how despite potential for empowerment, instruments such as ILO 169 and the UNDRIP have received significant criticism both during their composition, and since completion, from a range of different non-State actors including indigenous representatives, human rights observers, and State officials.

The ILO had undertaken studies on the labour conditions for indigenous and tribal workers as early as the 1920s. The era of decolonisation and the establishment of a UN system of equal human rights and non-discrimination saw indigenous peoples take part in numerous international forums and state their case to the world.³⁶⁰ Yet even before the period of significant indigenous mobilisation, the first international convention to focus on indigenous peoples - *Indigenous and Tribal Populations Convention 107* (hereinafter ILO 107) - was adopted in 1957. This convention represented the first *legally binding* international convention to focus specifically on indigenous peoples.³⁶¹

³⁵⁹ Ibid at 43-7

³⁶⁰ Rodolfo Stavenhagen, 'How Strong Are the Rights of Indigenous Peoples?' (2011) 10 (3) Journal of Human Rights 414, 415.

³⁶¹ Xanthaki (2007) 49.

Yet despite ratification by twenty-seven States, fourteen of which were Latin American,³⁶² ILO 107 received significant criticism, primarily due to the lack of indigenous participation and its theme of indigenous integration within society.³⁶³ The underlying final proposition of this integration was that in the course of time, indigenous societies would actually become *extinct*.³⁶⁴ However, the independence movement and indigenous mobilisation era rendered such notions completely unacceptable. The replacement for ILO 107, *Indigenous and Tribal Peoples Convention 1989* (ILO 169) was adopted on June 26th, 1989 and came into application on 5th September 1991.³⁶⁵ Explicitly rejecting such notions and adopting a non-integrationist approach, ILO 169 has been described as being *diametrically opposed* to its predecessor.³⁶⁶

ILO 169 attracted significant attention, in that it became the first international instrument dedicated to indigenous populations that explicitly used the term *peoples*.³⁶⁷ The nineteenth century had seen the status of indigenous peoples significantly eroded within international law, and thus they had become a group who did not fit easily within recognisable legal categories.³⁶⁸ Saying that indigenous

³⁶² Thornberry (2002) 326.

³⁶³ International Labour Organization (ILO), *Indigenous and Tribal Populations Convention, C107* (adopted 26 June 1957), arts 1, 2, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312252 accessed 16 September 2018.

³⁶⁴ Thornberry (2002) 331.

³⁶⁵ Xanthaki (2007) 67.

³⁶⁶ Athanasios Yupsanis, 'ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries 1989–2009: An Overview' (2010) 79 (3) *Nordic Journal of International Law* 433, 436.

³⁶⁷ Xanthaki (2007) 70.

³⁶⁸ Thomas D. Musgrave, *Self-determination and national minorities* (OUP 2000) 172-3.

populations are *peoples*, is often advanced on the basis that they constitute a *nation* with shared religions, values, customs etc.³⁶⁹ However, affixing the term ‘*peoples*’, garnered significant opposition amongst States, due to the implications that this may have for indigenous peoples to exercise any right to *self-determination*.

Self-determination is to quote Cassese “*a multi-faceted and extremely ambiguous*” term.³⁷⁰ In a broad sense, “*the right of peoples to self-determination is their right to freely determine their political status and freely pursue their economic, social and cultural development.*”³⁷¹ In the age of decolonisation, self-determination had a very simplistic meaning – that alien or colonial rule should give way to the rule of previously colonized people.³⁷² However, the introduction of further human rights instruments such as the ICCPR and ICESCR ensured that the applicability of self-determination was extended to *all* peoples.³⁷³ Consequently, this led to the concept undergoing an evolutionary distinction between an understanding of what constituted *external* self-determination and what constituted *internal* self-determination.³⁷⁴

³⁶⁹ Ibid at 173.

³⁷⁰ Antonio Cassese, *Self-determination of peoples: a legal reappraisal* (No. 12). (CUP 1995) 1.

³⁷¹ James Summers, ‘Self Determination in International Law’ in Oxford Bibliographies online (2017) available at <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0033.xml?rskey=mN8js8&result=1&q=self-determination#firstMatch> accessed 21 September 2018.

³⁷² Rupert Emerson, *Self-Determination Revisited in the Era of Decolonization* (HUP 1964) 25.

³⁷³ Mauro Barelli, ‘Shaping Indigenous Self-Determination: Promising or Unsatisfactory Solutions?’ (2011) 13 (4) International Community Law Review 413, 414. See also, Cassese (1995) 59-62, Helen Quane, ‘The United Nations and the evolving right to self-determination’ (1998) 47 (3) International & Comparative Law Quarterly 537-572.

³⁷⁴ Barelli (2011) 414.

Whilst external self-determination is the act by which a people determines its future international status through the liberation of alien rule,³⁷⁵ internal self-determination is the right to choose one's own political and economic regime.³⁷⁶ Yet the legacy of self-determination as understood with regard to decolonisation ensured that although the phrase itself does not appear explicitly in ILO 169, the Convention was careful not to sanction secession.³⁷⁷ Some quantification of an understanding of the term '*peoples*', was therefore needed. This was achieved by inserting the clause that; "*that the use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.*"³⁷⁸ This clause eliminated the scope for an expansive understanding of the term *peoples*, and any potential accompanying threats to a State's territorial integrity.

Crucially, ILO 169 stresses that *self-identification* as indigenous/tribal is a fundamental characteristic.³⁷⁹ This point is representative of the expansive approach that the convention seeks to take and is further evidence of the ideal of indigenous peoples exercising self-determination in their identity. This identity is articulated expansively throughout ILO 169, as applying in both individual *and* group contexts. As discussed in the previous section, the categories of tribal and indigenous peoples are listed together in the opening article leaving no room for discrimination through

³⁷⁵ Michla Pomerance, *Self-determination in Law and Practice: The New Doctrine in the United Nations* (Martinus Nijhoff 1982) 37.

³⁷⁶ Cassese (1995) 101.

³⁷⁷ Musgrave (2000) 176.

³⁷⁸ ILO 169, art 1.3.

³⁷⁹ Ibid.

regional interpretations of the term indigenous.³⁸⁰ Cumulatively, this results in an expansive set of criteria that *indigenous/tribal* peoples can self-identify with in both individual and group contexts.

The cornerstone of ILO 169, has been heralded as the establishment of appropriate and effective mechanisms for the consultation of indigenous/tribal peoples, regarding matters that concern them,³⁸¹ and the convention's overall participatory nature.³⁸² For example, articles 6 and 7 on consultation and participation are considered key provisions of ILO 169 by the International Labour Standards Dept.³⁸³ These articles refer specifically to the provisions that the government must take with regard to consulting indigenous peoples over proposed development on indigenous territory.³⁸⁴ Among such measures listed are that governments shall consult peoples through appropriate processes whenever consideration is given to legislative/administrative processes which may affect them,³⁸⁵ shall establish means by which these peoples can freely participate in bodies responsible for policies/programmes which concern them.³⁸⁶

Governments shall establish means for the full development of these people's own institutions and initiatives (including resources),³⁸⁷ and that consultations shall be

³⁸⁰ ILO 169, art 1.1.

³⁸¹ International Labour Standards Department, *Indigenous and Tribal Peoples' Rights in Practice: A Guide to ILO Convention 169* (2009) 59.

³⁸² Yupsanis (2010) 438-441.

³⁸³ International Labour Standards Department (2009) 59.

³⁸⁴ ILO 169, arts 6-7.

³⁸⁵ Ibid at art 6.1 (a).

³⁸⁶ Ibid at art 6.1 (b).

³⁸⁷ Ibid at art 6.1 (c).

carried out in appropriate form and faith, with the objective of agreeing *consent*.³⁸⁸

Article 7 meanwhile continues in the same vein stating clearly that peoples concerned have the right to decide their own priorities for development and shall participate in regional and national plans that may affect them.³⁸⁹ As well as their participation in programmes to improve their general well-being which shall be a matter of priority in overall economic development plans for the area,³⁹⁰ governments shall to carry out studies in co-operation with peoples in order to assess the impact of development opportunities, as well as co-operating with peoples to preserve the environment.³⁹¹

Alongside the participatory and consultative tone that ILO 169 seeks to promote, the issue of land and resource rights play a prevalent role. Within this section the issue of indigenous land protection is detailed expansively.³⁹² Notably, this expansive understanding of lands includes respecting the *cultural and spiritual values of peoples* with regard to land, particularly the collective aspect of this relationship, and that lands should include the concept of territories that cover the *total* environment of the areas the peoples concerned occupy or otherwise use.³⁹³ This special relationship gains material substance in article 14,³⁹⁴ when the need for recognition of this relationship is called for, through government safeguarding,

³⁸⁸ Ibid at art 6.2.

³⁸⁹ Ibid at art 7.1.

³⁹⁰ Ibid at art 7.2.

³⁹¹ Ibid at arts 7.3-7.4.

³⁹² Ibid at arts 13-19.

³⁹³ Ibid at arts 13.1-13.2.

³⁹⁴ Yupsanis (2010) 441.

protection, and legal establishment of a mechanism to deal with claims to such lands.³⁹⁵

Further substance regarding the natural resources that pertain to such lands are listed within article 15, including the right of indigenous peoples to participate in the use, management and conservation of such resources. Where the State retains ownership of mineral/sub-soil rights, it is required to consult peoples and compensate wherever possible for any damages such activity may incur.³⁹⁶ Further provisions and procedures with regard to land listed within ILO 169 included safeguarding against the removal of peoples from their lands,³⁹⁷ and against peoples being taken advantage of due to not understanding legal terminology.³⁹⁸ Additionally ILO 169 lists governmental measures to prevent unlawful intrusion on such land, inflicting appropriate penalties,³⁹⁹ and inclusion of peoples within national agrarian programmes on a footing equal to other members of the population.⁴⁰⁰

These are examples of the significant development in indigenous rights recognition within ILO 169. However, the convention has not been exempt from criticism. For example during the numerous revision sessions, only international NGOs could attend official sessions, with indigenous participation informal.⁴⁰¹ This manifested despite the convention's 'apparently' strong commitment to

³⁹⁵ ILO 169, art 14.

³⁹⁶ Ibid at art 15.

³⁹⁷ Ibid at art 16.

³⁹⁸ Ibid at art 17.

³⁹⁹ Ibid at art 18.

⁴⁰⁰ Ibid at art 19.

⁴⁰¹ Xanthaki (2007) 90.

consultation.⁴⁰² Furthermore, the designation of the term '*peoples*' was regarded by some as worthless, due to its quantification as possessing no translation of the rights of the term in international law. Significant concerns over the lack of indigenous 'vetoes' regarding prospective government initiatives on indigenous lands, and the lack of monitoring mechanisms for the implementation of the convention,⁴⁰³ were amongst the other key criticisms to be levelled at ILO 169.

Specifically regarding consultation and consent, a Committee of Experts on ILO 169 observed in 2008 that a major challenge lay in ensuring appropriate consultations were held *prior* to the adoption of all legal and administrative measures, which may impact indigenous peoples. A second major challenge centred on including provisions in legislation, stipulating prior consultation as part of the process, when determining if natural resource concessions should be granted.⁴⁰⁴ Naturally, the political will and level of implementation also varied across States. For example, a 2005 report issued by an indigenous organisation in Guatemala described indigenous participation as sporadic, symbolic, with multiple concessions issued by the government within indigenous territories with no participation at all.⁴⁰⁵ By contrast, Norway has been lauded for agreeing procedures for consultation between the Government of Norway and indigenous Sami Parliament, which places a strong focus on the partnership between the two parties.⁴⁰⁶

⁴⁰² Yupsanis (2010) 445.

⁴⁰³ Ibid at 448-50.

⁴⁰⁴ International Labour Standards Department (2009) 64.

⁴⁰⁵ Ibid at 65.

⁴⁰⁶ Ibid at 66-68.

Nonetheless, the ratification of ILO 169 as a legally binding instrument marked a seminal moment for indigenous peoples within the international legal system. Fifteen of the twenty-three ratifications are from Latin American and/or Caribbean countries,⁴⁰⁷ further emphasising the region's key role within the indigenous movement. By contrast, when the UNDRIP was finally adopted in 2007, one hundred and forty-three States voted in favour, eleven abstained, and four voted against.⁴⁰⁸ Interestingly, the four voting against; The United States of America, Canada, New Zealand and Australia are notable as having large numbers of indigenous peoples within their borders.⁴⁰⁹ No other UN document had been compiled with the level of involvement of its intended beneficiaries as the UNDRIP,⁴¹⁰ with the 1993 session of drafting represented by more than one hundred indigenous nations and organizations.⁴¹¹

However, the contestation of States with regard to numerous matters, particularly the inclusion of the term *self-determination*,⁴¹² facilitated the establishment of the Working Group on the Draft Declaration (WGDD) whereby

⁴⁰⁷ ILO 169, 'Ratifications' available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314 accessed 21 September 2018.

⁴⁰⁸ Allen and Xanthaki (2011) 1.

⁴⁰⁹ Stephen Allen, 'The UNDRIP and limits of the international legal project' in Allen and Xanthaki (2011) 228.

⁴¹⁰ Erica Daes, 'The United Nations Declaration on the Rights of Indigenous Peoples: Background and Appraisal' in Allen and Xanthaki (2011) 39.

⁴¹¹ Stavenhagen (2011) 415.

⁴¹² See inter alia Barelli (2011) 416-430.

States took an active role in amending the final text.⁴¹³ Articles 3 and 4,⁴¹⁴ state that indigenous peoples have the right to self-determination, and that by virtue of that right they may freely determine their political status, economic, social and cultural development, as well as autonomy or self-government in matters relating to their internal and local affairs.⁴¹⁵ However, this ‘internal’ right to self-determination is regarded as merely a residual notion of the original desire of indigenous representatives. Obtaining an explicit recognition of the right to self-determination had been the objective of numerous indigenous representatives since the outset of the drafting process, and was considered a central pillar to the UNDRIP,⁴¹⁶ with any limitation to the right of self-determination, regarded by certain indigenous representatives as an infringement on the principle of equality.⁴¹⁷

Unsurprisingly this was not a view shared by the majority of States,⁴¹⁸ and eventually *self-determination* did appear in the final document, yet was qualified, just as the term *peoples* had been in ILO 169. From the State perspective, this qualification was even more necessary due to the potential for the term *self-determination* to be interpreted in its most expansive sense by some indigenous actors. Even though the overwhelming majority of indigenous groups do not have a secessionist agenda, States simply could not justify incorporating a *carte blanche* definition of self-

⁴¹³ Ibid at 419.

⁴¹⁴ UNGA, *United Nations Declaration on the Rights of Indigenous Peoples* (adopted 13 September 2007) A/RES/61/295, arts 3, 4, available at http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf accessed 14 September 2018.

⁴¹⁵ Ibid.

⁴¹⁶ Barelli (2011) 416-17.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid at 417.

determination,⁴¹⁹ to do so would have posed too great a threat to their territorial integrity.⁴²⁰ Accordingly, the quantification over the interpretation of the term was included within the final declaration.

In terms of content, the UNDRIP reaffirms many of the themes that had been drawn out within ILO 169. For example, the issue of indigenous land is again given significant attention, and indigenous peoples are stated as having; the right to maintain spiritual relationships with their traditionally owned, or otherwise occupied and used lands, territories, waters and coastal seas, and the right those lands, territories and other resources.⁴²¹ Special attention focusses on upholding indigenous responsibilities to future generations in this regard.⁴²² Furthermore, article 26 articulates that indigenous peoples have the right to land territories and resources which they have traditionally owned, occupied, or otherwise used and acquired. It goes on to declare that States should give legal recognition to such lands.⁴²³

The expansive evolutionary understanding of what constitutes indigenous property within the UNDRIP, follows from ILO 169 in that ‘land’ is understood to consist of the *whole territories* that indigenous land covers.⁴²⁴ This land is not limited to that which has been traditionally owned but also encompasses that which has been traditionally *occupied* and *used*.⁴²⁵ This conceptualisation of land looks not only to the

⁴¹⁹ Ibid.

⁴²⁰ Ibid at 416.

⁴²¹ UNDRIP, art 25. For land rights, see arts 25-32 particularly.

⁴²² Ibid.

⁴²³ Ibid at art 26.

⁴²⁴ International Labour Standards Department (2009) 91.

⁴²⁵ UNDRIP, art 26.

past, but also to the future, in that it explicitly makes reference to upholding responsibilities to future generations.⁴²⁶ This reinforces the notion that a central narrative around indigenous land is an awareness that loss of ancestral lands threatens their very survival as distinct communities and distinct peoples.⁴²⁷ This is a notion also reinforced through indigenous rights to participation in the conservation and protection of their environment.⁴²⁸ Notably, control and protection of indigenous *intellectual* property rights over cultural heritage and traditional knowledge,⁴²⁹ are examples of other expansive understandings of land rights within the UNDRIP.

Indigenous intellectual property rights were also recognised at the Rio Earth Summit (1992) and within the resulting UN Convention on Biological Diversity (hereinafter CBD), and accompanying Nagoya Protocol. Although the CBD is not specifically an indigenous rights instrument it was ground breaking, as the significance of traditional indigenous knowledge is explicitly protected within Article 8j.⁴³⁰ Furthermore, indigenous involvement as observers within the Working Group that was set up pursuant to Article 8(j), and as observers in all CBD meetings, was reinforced through the Nagoya Protocol (2010). This supplementary convention established clear *obligations* on States with regard to *access and benefit sharing* resulting from genetic resources on which indigenous peoples have established rights and traditional knowledge. However, as will be discussed later, despite positive

⁴²⁶ Ibid.

⁴²⁷ International Labour Standards Department (2009) 91.

⁴²⁸ UNDRIP, art 29.

⁴²⁹ Ibid at art 31.

⁴³⁰ See Federica Cittadino, 'Shaping the Convention on Biological Diversity: The Rising Importance of indigenous peoples within the Nagoya Protocol on access and benefit sharing' in Summers and Gough (2018) 126-139. See also, Convention on Biological Diversity (adopted 5 June 1992) 1760 UNTS 69 (CBD) available at <https://www.cbd.int/convention/text/> accessed 14 September 2018.

intentions, realisation of the goals relating to the CBD with regard to indigenous peoples has proven difficult in the extreme.

Returning to the UNDRIP, as in ILO 169, participation and consultation are again particularly prominent. For example, the inclusion of the term *free, prior, and informed consent* appears within the UNDRIP numerous times. One such example is with regard to States providing redress through effective mechanisms with respect to cultural, intellectual, religious and spiritual property taken without free, prior and informed consent.⁴³¹ Furthermore, States are required to consult and co-operate with indigenous peoples in order to obtain their free prior and informed consent *before* implementing legislative or administrative measures that may affect indigenous peoples.⁴³² Perhaps the most comprehensive article lists that States shall consult and co-operate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources.⁴³³

The principles of free, prior and informed consent on a basic level are the right of indigenous peoples to make *free* decisions about their land and resources, without coercion, intimidation or manipulation, with consent sought sufficiently *prior* to any authorization or commencement of activities.⁴³⁴ *Informed* consent must be facilitated by extensive and detailed information on any intended projects, and that *consent* must follow consultation and participation.⁴³⁵ Furthermore, implicit within the concept of

⁴³¹ UNDRIP, art 11.

⁴³² Ibid at art 19.

⁴³³ Ibid at art 32.

⁴³⁴ International Labour Standards Department (2009) 63.

⁴³⁵ Ibid.

consent is the ability to *withhold* it.⁴³⁶ The prevalent role of free, prior and informed consent in the UNDRIP, is evidence of the continued emphasis on indigenous empowerment through tangible participation and consultation, as found in ILO 169.

Upon its adoption, the UNDRIP was lauded for advancing indigenous rights in numerous areas, for example the expansion of the right of self-determination, collective rights, and right to culture.⁴³⁷ The relationship between land and culture for indigenous peoples means that where land is essential for cultural survival, the right to territory means that sufficient space is afforded to ensure that cultural reproduction as a people is possible.⁴³⁸ This is further evidence of the perception that the connection between indigenous peoples and their lands, largely defines their identity.⁴³⁹ This connection is representative of a normative understanding that indigenous peoples share a particular social, cultural, and spiritual relationship with the territories they have traditionally inhabited, and therefore such territories are fundamental for their survival.⁴⁴⁰ As such the UNDRIP has been described as a minimum threshold on which future systems of indigenous land protection should be based.⁴⁴¹

Yet despite this praise, the UNDRIP has also received significant scholarly criticism. A full analysis is not possible within this thesis, however selected examples

⁴³⁶ Tara Ward, 'The right to free, prior, and informed consent: indigenous peoples' participation rights within international law' (2011) *Nw. UJ Int'l Hum. Rights* 54, 54.

⁴³⁷ Karen Engle, 'On fragile architecture: The UN Declaration on the Rights of Indigenous Peoples in the context of human rights' (2011) 22 (1) *European Journal of International Law* 141, 141.

⁴³⁸ Jeremie Gilbert, *Indigenous Peoples' Land Rights under International Law* (Brill 2016) 176.

⁴³⁹ Gaetano Pentassuglia, 'Towards a jurisprudential articulation of indigenous land rights' (2011) 22 (1) *European Journal of International Law* 165, 165.

⁴⁴⁰ Jeremie Gilbert and Cathal Doyle, 'A new dawn over the land: shedding light on collective ownership and consent' in Allen and Xanthaki (2011) 289.

⁴⁴¹ *Ibid* at 328.

are particularly worthy of discussion. For example, returning to the issue of *internal self-determination*, the tension surrounding the principle's acceptance by State's, and resulting limitations inherent within its inclusion in the context of the UNDRIP, has been widely discussed.⁴⁴² That self-determination within the UNDRIP does not extend to spaces occupied by trans-national peoples divided by State borders,⁴⁴³ is a further example of the perceived limitation of the principle in the UNDRIP. Alternatively, the fact that the principle is qualified as being 'internal' self-determination means that indigenous communities (and the rights of such groups) potentially stand to be bisected by State borders.

Meanwhile, although expansive on the rights to land, numerous criticisms directed at the UNDRIP include a lack of articles relating to actual land demarcation for indigenous peoples, and potential conflicts over competing land claims between indigenous and non-indigenous peoples. This extends to a lack of specificity regarding redress and restitution, the lack of detail on any economic benefits indigenous peoples may enjoy from sub-surface activities, and the lack of clarity regarding the parameters for free, prior and informed consent, and any *veto* of outside activity.⁴⁴⁴ There is no customary international legal principle, which specifically details the thresholds of the right of indigenous peoples to free, prior and informed consent (hereinafter FPIC).⁴⁴⁵ Such nebulous parameters of FPIC,⁴⁴⁶ lead to questions over where the real power lies

⁴⁴² Engle (2011) 144-148.

⁴⁴³ Timo Koivurova, 'Sovereign states and self-determining peoples: Carving out a place for transnational indigenous peoples in a world of sovereign states' (2010) 12 (2) International Community Law Review 191, 211.

⁴⁴⁴ Pentassuglia, (2011) 168-170.

⁴⁴⁵ Ward (2011) 84.

⁴⁴⁶ Mauro Barelli, 'Free, prior and informed consent in the aftermath of the UN Declaration on the Rights of Indigenous Peoples: developments and challenges ahead' (2012) 16 (1) The International Journal of Human Rights 1, 17.

between State actors and indigenous peoples. For example, the original wording of article 32 in the UNDRIP draft declaration stated that;

“Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”⁴⁴⁷

This is regarded to have represented a wide right to veto for indigenous communities, yet unsurprisingly when States became involved in the drafting process through the WGDD, other versions of text were proposed.⁴⁴⁸ The finished article reads that; “*States shall consult and co-operate in good faith....in order to obtain their free and informed consent prior to the approval of any project...*”⁴⁴⁹

Accordingly, article 32 has been described as being more restrictive than the original version, and should *not* be interpreted as States requiring consent before projects are carried out on indigenous lands.⁴⁵⁰ Therefore, an emergent norm has been described as more ‘*consultation in good faith*’ than actual consent.⁴⁵¹ However, the Inter-American system, inter alia, has played a leading role in creating a distinction *between* potential development projects. In cases where *large-scale* development

⁴⁴⁷ Ibid at 10.

⁴⁴⁸ Ibid.

⁴⁴⁹ UNDRIP, art 32.

⁴⁵⁰ Barelli (2012) 11.

⁴⁵¹ Ward (2012) 84.

projects are likely to significantly affect the lives of indigenous peoples, States are required to not only consult but also obtain their FPIC.⁴⁵²

However, ILO supervisory bodies have examined a wealth of cases where there has been a lack of consultation with indigenous peoples, notably with regard to exploration and exploitation of natural resources.⁴⁵³ Given the potential value of such resources, this is perhaps unsurprising. Although the concept occupies a prominent place within the UNDRIP, it must be remembered that the UNDRIP remains a *legally non-binding* document,⁴⁵⁴ and as such States are not legally obliged to adhere to its contents. Accordingly, there remains a significant and varying potential for an implementation gap at State level with regard to adhering to the articles within the UNDRIP, depending on the political will of the States involved.⁴⁵⁵

This political will also extends to the recognition of indigenous identity at State level. This process is indicative of '*taxonomic States*' whereby administrators are tasked with defining what constitutes racial membership, citizenship, as well as jurisdiction over morality.⁴⁵⁶ In this appraisal, States act as gatekeepers to decide whether citizens conform to pre-conceived conceptualisations of indigenous identity.⁴⁵⁷ Ultimately this role comes as a direct result from not having an agreed

⁴⁵² Barelli (2012) 17.

⁴⁵³ International Labour Standards Department (2009) 108.

⁴⁵⁴ Allen (2011) 225.

⁴⁵⁵ Ibid at 253-6.

⁴⁵⁶ Ann Laura Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (UCP 2002) 206.

⁴⁵⁷ See inter alia; Renisa Mawani, 'Genealogies of the land: aboriginality, law, and territory in Vancouver's Stanley Park' (2005) 14(3) *Social & legal studies* 315, 336, Mariana Valverde, 'The honour of the Crown is at stake: Aboriginal land claims, litigation and the Epistemology of sovereignty' (2008) 3 *Inquiry*, 955, 956, Elizabeth Povinelli, *The cunning of recognition* (Duke University Press 2002) 6.

definition of indigenous peoples within the UNDRIP, and consequently devolves the issue of indigenous recognition back within national borders. Additionally, this process has been considered a continuation of the repression that has characterized the relationship between indigenous peoples and the State for centuries – the oppressed seek recognition from those responsible for oppressing them, meaning the act of recognition is merely repeating the colonial hierarchy.⁴⁵⁸

Such issues are perhaps inevitable when confronted with the unique situation of attempting to reconcile pre and post-colonial geographies, dependent upon specific local and national situations. The unique status of indigenous peoples was commented on by Erica Daes, former chairperson of the WGIP, when stating that; “*indigenous people generally do not aspire to separate Statehood, while at the same time do not see they can ever accept complete integration into States which comprise the United Nations.*”⁴⁵⁹ Such a duality within the text of the UNDRIP can be found within statements such as that indigenous peoples have the right to maintain and strengthen their own distinct institutions whilst also reserving the right to participate (if they chose) in the various lives of the State, be it socially, economically, culturally or politically.⁴⁶⁰ This duality has been regarded as representing a dislocation of indigenous peoples as citizens of both modern *and* ancient nations, and how they are represented as occupying two places at once.⁴⁶¹

⁴⁵⁸ Kirsten Anker, *Declarations of Interdependence: A Legal Pluralist Approach to Indigenous Rights* (Ashgate 2014) 39.

⁴⁵⁹ Erica Daes, ‘Dilemmas posed by the UN Draft Declaration on the Rights of Indigenous Peoples’ (1994) 63 *Nordic J. Int’l L.* 205, 208.

⁴⁶⁰ UNDRIP, art 5.

⁴⁶¹ Colin Perrin, ‘Approaching anxiety: The insistence of the postcolonial in the declaration on the rights of indigenous peoples’ in Eve Darian-Smith and Peter Fitzpatrick (eds.), *Laws of the Postcolonial* (University of Michigan Press 1999) 21.

However, recognition of this legal plurality *has* manifested in tangible action in Latin America, through the incorporation of indigenous customary law into national legal systems and constitutions in certain countries, in turn recognising the multi-cultural/ethnic nature of their societies.⁴⁶² Those countries that have done so are also all parties to ILO 169. There can be little doubt that ILO 169 and the UNDRIP represent the manifestation of a significant evolution in the recognition of indigenous identity. Whilst the former has seen only twenty- three ratifications, support for the latter has risen since its adoption, with even the four countries who voted against it changing their positions,⁴⁶³ and 182 States issuing a document supporting the UNDRIP at the Durban Review Conference in 2009.⁴⁶⁴ However, the quantified support the USA offered to the document it referred to as *non-legally binding*,⁴⁶⁵ perhaps explains the UNDRIP's high levels of support.

Despite the fact the fact that indigenous recognition, and associated rights attached to such recognition, remain largely rooted in specific local and national situations, the regional influence of human rights systems in the global indigenous rights regime cannot be underestimated. Of these regional systems, the Organisation of American States (OAS) has historically been on the vanguard of indigenous rights protection.⁴⁶⁶ Accordingly, this has resulted in parallel developments in the advance of

⁴⁶² International Labour Standards Department (2009) 86. Bolivia, Colombia, Ecuador, México, Nicaragua, Paraguay, Peru and Venezuela have incorporated such recognition within their legal Systems.

⁴⁶³ Elvira Pulitano, *Indigenous Rights in the Age of the UN Declaration* (CUP 2012) 2.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

⁴⁶⁶ Barelli (2010) 962.

indigenous rights at the OAS and UN respectively.⁴⁶⁷ The importance of the OAS is discussed in further detail in the following sub-section. However, one such relevant instance of parallel development is particularly pertinent with regard to *instruments of recognition*, notably the UNDRIP. In 1999, several years after the WGIP completed their draft declaration, the OAS established a Permanent Council Working Group for continuing consideration on the text for the proposed *American Declaration on the rights of indigenous peoples* (hereinafter ADRIP).⁴⁶⁸

Finally, seventeen years of laborious negotiations later, on June 15th 2016 the ADRIP was adopted by the General Assembly of the OAS.⁴⁶⁹ Comprised of forty-one articles divided into six sections,⁴⁷⁰ the ADRIP has been both lauded for addressing rights not covered within the UNDRIP such as indigenous peoples affected by armed conflict,⁴⁷¹ as well as reaffirming rights outlined within the UNDRIP. It is not possible to discuss the full range of these rights within the context of this thesis. However, for example, the ADRIP reaffirms articles 19 and 32 of the UNDRIP in that: States shall consult in good faith in order to obtain their free, prior and informed consent before adopting legislative or administrative projects that may affect them, or to the approval of any project affecting their lands, territories, or resources.⁴⁷²

⁴⁶⁷ Ibid at 963.

⁴⁶⁸ Ibid.

⁴⁶⁹ Stefania Errico, 'The American Declaration on the Rights of Indigenous Peoples' (2017) 21 (7) American Society of International Law. Available at <https://www.asil.org/insights/volume/21/issue/7/american-declaration-rights-indigenous-peoples> accessed 11 September 2018.

⁴⁷⁰ OAS, *American Declaration on the Rights of Indigenous Peoples* (adopted 15 June 2016) AG/RES.2888 (XLVI-O/16) available at <http://www.narf.org/wordpress/wp-content/uploads/2015/09/2016oas-declaration-indigenous-people.pdf> accessed 11th September 2018.

⁴⁷¹ Ibid at arts XXVI, XXX

⁴⁷² ADRIP (2017), arts XXIII (2), XXIX (4).

In terms of land, the ADRIP acknowledges the rights of indigenous people to cultural identity and integrity,⁴⁷³ and explicitly reaffirms their right to maintain and strengthen their spiritual, cultural and material relationship with their lands, territories and resources,⁴⁷⁴ in doing so reaffirming article 26 of the UNDRIP. Yet the ADRIP also inserted a new paragraph providing for the legal recognition of forms of property, possession, and ownership “*in accordance with the legal system of each State and the relevant international instruments The States shall establish the special regimes appropriate for such recognition and for their effective demarcation or titling*”⁴⁷⁵

The interpretation of this paragraph, or indeed of any article within the ADRIP generally remains somewhat unknown at this stage, due to the fact the ADRIP was only adopted in 2016. Like the UNDRIP, this manifested against a backdrop of dissenting voices in the form of the objection of the United States, and ‘non position’ of Canada.⁴⁷⁶ Furthermore, like the UNDRIP, as a declaration, the ADRIP remains a legally non-binding document. Yet its inception within the American-Caribbean region is further evidence of the leading role the region plays in facilitating indigenous recognition, a role particularly apparent in the high percentage of regional parties to legally binding international indigenous rights obligations, such as ILO 169. Unsurprisingly, the OAS has also played a particularly instrumental role in ensuring that legally binding indigenous rights recognition in the region manifests in both

⁴⁷³ Ibid at art XIII.

⁴⁷⁴ Ibid at art XXV (1).

⁴⁷⁵ Ibid at art XXV (5).

⁴⁷⁶ Errico (2017).

national and international spaces, most notably through its Inter-American human rights system.

4.4 Spaces of recognition: The role of the Inter American Commission and Inter American Court of Human Rights

As already discussed, the role of Latin American countries in the global indigenous mobilisation around indigenous rights, has arguably been the most significant of any region on the planet. Over the course of recent decades particularly, the Inter-American Human Rights system, the regional human rights system of the OAS, has played a leading role in both the international and domestic development on the protection of indigenous rights in the region.⁴⁷⁷ The jurisprudence of the system's two main bodies, the Inter-American Commission (hereinafter IACHR), and the Inter American Court (hereinafter IACtHR), has become a point of reference for international norms regarding the rights of indigenous peoples.⁴⁷⁸ Indeed, the IACHR was the body which voted to approve the text on the then *Proposed ADRIP* in 1997, which facilitated the 1999 Permanent Council Working Group.⁴⁷⁹ However, attention to indigenous issues within the Inter-American system can actually be traced to the system's inception in 1948.⁴⁸⁰

As the world's oldest regional organisation, the roots of what would become the OAS can be traced to the First International Conference of American States, held

⁴⁷⁷ Rodríguez-Pinero (2011) 458.

⁴⁷⁸ Ibid at 459.

⁴⁷⁹ Barelli (2010) 963.

⁴⁸⁰ Ibid. See particularly, Inter-American Juridical Committee (1948) *Project of Inter-American Charter of Social Guarantees*, art 26, available at <https://babel.hathitrust.org/cgi/pt?id=mdp.35112101741876;view=1up;seq=25> accessed 13 September 2018.

in Washington, D.C. between October 1889 and April 1890.⁴⁸¹ This meeting approved the establishment of a collective known as the International Union of American Republics. This Union would become known as the Inter-American system, and the oldest international institution system in the world.⁴⁸² The OAS itself came into existence with the signing of the Charter of the OAS in Bogota, Colombia in 1948. Furthermore, it was at the same meeting that States signed the American Declaration on the Rights and Duties of Man (hereinafter ADRDM).⁴⁸³

The OAS accordingly joins all thirty-five independent States of the Americas, and acts as the primary juridical, political, and social governmental forum on the continent. Twenty one States signed the Charter of the OAS at the Bogota meeting of 1948, with a further fourteen States (mainly former British colonies) signing between 1967 and 1991 when Guyana and Belize became the newest independent States to ratify it.⁴⁸⁴ The Inter- American Human Rights system within the OAS is composed of both the Inter-American Commission (hereinafter IACHR), which has been operating since 1960 and sits in Washington D.C, and the Inter-American Court (hereinafter IACtHR), which has been operating since 1979, and sits in San Jose, Costa Rica.⁴⁸⁵

⁴⁸¹ OAS, 'Who we are' (n.d.) available at http://www.oas.org/en/about/who_we_are.asp accessed 14 September 2018. See also, OAS, *American Declaration on the Rights and Duties of Man* (adopted 2 May 1948) (ADRDM) available at <https://www.cidh.oas.org/basicos/english/basic2.american%20declaration.htm> accessed 14 September 2018.

⁴⁸² OAS, 'Who we are' (n.d.) available at http://www.oas.org/en/about/who_we_are.asp accessed 14 September 2018.

⁴⁸³ Ibid.

⁴⁸⁴ Ibid.

⁴⁸⁵ International Justice Resource Centre, 'Inter American Human Rights System' (n.d.) available at <http://www.ijrcenter.org/regional/inter-american-system/> accessed 14 September 2018.

Whilst the IACHR addresses human rights conditions and violations in *all* thirty- five member States of the OAS, the IACtHR has a more limited mandate.⁴⁸⁶ The IACtHR can only decide cases that have been processed by the IACHR and have been brought against OAS Member States who have specifically accepted the IACtHR's jurisdiction. That jurisdiction is limited to countries who have ratified the *American Convention on Human Rights* (ACHR) of 1969, *and* who have accepted that jurisdiction as stated in article 62.⁴⁸⁷ Twenty-three States have ratified the Convention, with twenty of these accepting the jurisdiction of the Court in accordance with article 62.⁴⁸⁸ For those States that have *not* accepted the jurisdiction of the IACtHR as stated in article 62, they have no legally binding obligation to honour any decision by the IACHR. It is important to note in the context of this thesis that Belize is one of the countries to whom this applies, as Belize has *not* signed the ACHR.

Since the first case was submitted by the IACHR in 1986 (*Velasquez Rodriguez v. Honduras*), it is estimated that over the IACtHR's first decades in operation, the annual caseload has doubled.⁴⁸⁹ During this time, the IACtHR has adjudicated a wide range of rights protected by the American convention, to a diverse

⁴⁸⁶ Ibid.

⁴⁸⁷ OAS, *American Convention on Human Rights* (adopted 22nd November 1969) (ACHR) available at <http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed 14 September 2018.

⁴⁸⁸ Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay have ratified the convention and accepted the jurisdiction of the IACtHR through art 62. See International Justice Resource Centre, 'Inter American Court of Human Rights' (n.d.) available at https://ijrcenter.org/regional/inter-american-system/#Inter-American_Court_of_Human_Rights accessed 14 September 2018.

⁴⁸⁹ Ibid.

range of indigenous groups.⁴⁹⁰ Many of these decisions have centred on petitions against the incursion onto lands claimed as ancestral by indigenous peoples through the granting of natural resource concessions and/or the establishment of nature reserves/national parks on such lands. The judgements passed on these cases have been based on a wide range of rights violations including; juridical personality, judicial protection, collective property, consultation, political rights and cultural identity.⁴⁹¹

Furthermore, in passing its verdicts on these cases, the IACtHR has consistently exposed uncertainties reflected within global instruments such as ILO 169 and the UNDRIP regarding indigenous land rights, and taken up such uncertainties within its own jurisprudence.⁴⁹² In doing so the body has significantly advanced the meaning and practical implications regarding the recognition and enjoyment of rights to land which indigenous communities possess or possessed before deprivation.⁴⁹³ In a tangible sense therefore, the IACtHR has played a pivotal role in translating the theory within instruments such as ILO 169 and the UNDRIP into practice on the ground. In doing so, the IACtHR has been responsible for a number of international legal precedents.

⁴⁹⁰ Inter-American Court of Human Rights, 'Decisions and Judgements' available at http://www.corteidh.or.cr/CF/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=en accessed 14 September 2018.

⁴⁹¹ See inter alia; Inter-American Court of Human Rights, *Case of Kichwa indigenous people of Sarayaku v. Ecuador* (judgement of 27 June 2012) C 245 (Official Summary) available at http://www.corteidh.or.cr/docs/casos/articulos/resumen_245_ing.pdf accessed 14 September 2018. Inter-American Court of Human Rights, *Case of Sawhoyamaya indigenous community v. Paraguay* (judgement of 29 March 2006) C 146 (Official Summary) available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf accessed 14 September 2018. Inter-American Court of Human Rights, *Case of Yakye Axa indigenous community v. Paraguay* (judgement of 6 February 2005) C 142 (Official Summary) available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf accessed 14 September 2018.

⁴⁹² Pentassuglia. (2011) 177.

⁴⁹³ Ibid at 170.

For example, the case of the *Awas Tingni* of Nicaragua's Miskito coast,⁴⁹⁴ created an international legal precedent, as the community became the first beneficiaries of an internationally binding legal decision to protect indigenous lands and resources, in the face of a State's failure to do so.⁴⁹⁵ As such, the ruling was a benchmark in terms of a legally binding international decision in favour of an indigenous community. The Awas Tingni are an indigenous Mayagna community who reside on Nicaragua's Miskito Coast, originating from one of three groups in the area who belong to a single linguistic family, widely agreed to have held roots in the region since the 14th Century.⁴⁹⁶ The group comprises of around 150 families (around 650 individuals), who employ communal land tenure, with each family controlling several plots of around half to one hectare of land where they employ a method known as "slash and burn" agriculture.⁴⁹⁷

The case brought by the Awas Tingni, was in response to the Nicaraguan State's granting of concessions to a Korean logging firm which encompassed 94,000 hectares of land, including national hunting, fishing and agricultural areas, on land the group considered their communal territory.⁴⁹⁸ As indigenous peoples in Nicaragua are

⁴⁹⁴ Inter-American Court of Human Rights, *Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (judgement of 31 August 2001) C 79 available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf accessed 14 September 2018.

⁴⁹⁵ Steve Anaya and Claudio Grossman, 'Case of Awas Tingni v. Nicaragua: A Step in the International Law of Indigenous Peoples' (2002) 19 Arizona. Journal. International & Comparative Law 1, 1-2.

⁴⁹⁶ Jonathan P. Vuotto, 'Awas Tingni v. Nicaragua: International Precedent for Indigenous Land Rights' (2004) 22 BU Int'l LJ 219, 226.

⁴⁹⁷ Ibid.

⁴⁹⁸ Anthony Stocks, 'Too much for too few: problems of indigenous land rights in Latin America' (2005) 34 Annual Review of Anthropology 85, 87.

protected under the constitution,⁴⁹⁹ the group were advised to file an injunction against the logging. Despite this petition initially failing, the following year a second injunction was upheld in Nicaragua, yet it was ignored by the government. At this point the community decided to file a petition with the IACHR, seeking recognition of their communal rights, demarcation of territory to guarantee those rights, and reparations for the damage from the logging.⁵⁰⁰

The Nicaraguan government used the defence that the Awas Tingni were not indigenous to the area and that in fact they were of mixed ethnic origin and had splintered off from a “mother” indigenous group.⁵⁰¹ Essentially, the Nicaraguan government sought to dispel Awas Tingni indigeneity by claiming they were not “*pure blooded*”. In response, a team of international lawyers, anthropologists, cartographers and NGOs provided vital supporting evidence to their indigenous claims. In a landmark decision, the IACtHR ruled in favour of the Awas Tingni and in addition to ordering the immediate cessation of activity and paying collective monetary benefits and compensation to the *community*,⁵⁰² also ordered that the Nicaraguan government implement into its own domestic law the necessary processes to demarcate and title indigenous land. The process was eventually completed in late 2008 as the Nicaraguan government formally handed over title of the community’s

⁴⁹⁹ Constitution of Nicaragua (1987) available at https://www.constituteproject.org/constitution/Nicaragua_2005.pdf accessed 14 September 2018.

⁵⁰⁰ Vuotto (2004) 230.

⁵⁰¹ Ibid at 234.

⁵⁰² Diana Contreras-Garduño and Sebastian Rombouts, ‘Collective Reparations for Indigenous Communities before the Inter-American Court of Human Rights’ (2010) 27(2) Utrecht Journal of International and European Law 4, 11.

traditional territory, an area of some 74,000 hectares, or 285 square miles, to the Awas Tingni⁵⁰³

This seminal case essentially hinged on a number of factors that facilitated the Awas Tingni victory. In terms of recognition of the Awas Tingni, the IACtHR's expansive interpretation of article 21 (Right to Property) of the ACHR was essential.⁵⁰⁴ Notably, the IACtHR's interpretation of article 21(a) – "*use and enjoyment of his property*" rejected the notion of private property, instead focussing on the Awas Tingni's model of inter-generational communal land tenure. Additionally, the concept of property is presented as a reflection of both collective and cultural attachments, including those of a spiritual and customary nature, rather than just a physical connection. These connections were not necessarily determined valid by legal land title. Instead, *possession* of the land was regarded as the threshold for recognition.⁵⁰⁵ Furthermore, the IACtHR held that the Nicaraguan State enact a tangible and elaborate process of physical identification and protection of Awas Tingni land.⁵⁰⁶

A further case with particular relevance to this thesis is the IACtHR verdict on the case of the *Saramaka* of Suriname. Here judgements from the Awas Tingni verdict, as well as others within the Inter-American system, contributed to the creation

⁵⁰³ James Anaya, 'Nicaragua's titling of communal lands marks major step for indigenous rights' (5 January 2009) available at <http://unsr.jamesanaya.org/opinions/nicaraguas-titling-of-communal-lands-marks-major-step-for-indigenous-rights> accessed 14 September 2018.

⁵⁰⁴ ACHR, art 21.

⁵⁰⁵ Pentassuglia (2011) 170-172.

⁵⁰⁶ Ibid.

of another international precedent.⁵⁰⁷ The Saramaka are one of six Maroon (the descendants of Africans who escaped from slavery) tribes that have inhabited Suriname since the early 18th Century.⁵⁰⁸ Despite signing a treaty with the Dutch-Surinamese government in 1762 to govern their own territory, the 1990s saw a period of economic decline in Suriname. The resulting intrusion into Saramaka lands resulted in the government granting mining and logging concessions on Saramaka territory without consulting the Saramaka. The Saramaka countered by filing a petition with the IACHR.⁵⁰⁹

The IACtHR had already presided over a case involving a Maroon community several years previous, when the case of the *Moiwana community v. Suriname* came before the Court.⁵¹⁰ This centred on the 1986 massacre of Maroons in the village of Moiwana by State security forces. In the case of the Moiwana, the Court granted formal property recognition to the tribe's right to land, yet the core claim to the case actually centred on the massacre of the community.⁵¹¹ However, in reaching a decision on the Saramaka the IACtHR again broke new international ground in several ways. First, in identifying the Saramaka as a tribal people who shared a necessary ancestral and spiritual connection with their lands and resources,⁵¹² the IACtHR

⁵⁰⁷ Inter-American Court of Human Rights, *Case of the Saramaka people v. Suriname* (judgement of 28 November 2007) C 172 available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf accessed 16 September 2018.

⁵⁰⁸ Lisl Brunner, 'The Rise of Peoples' Rights in the Americas: The Saramaka People Decision of the Inter-American Court of Human Rights' (2008) 7(3) Chinese Journal of International Law 699, 700.

⁵⁰⁹ Ibid.

⁵¹⁰ Inter-American Court of Human Rights, *Case of the Moiwana community v. Suriname* (judgment of 15 June 2005) C 124 available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_ing.pdf accessed 14 September 2018.

⁵¹¹ Brunner (2008) 701.

⁵¹² *Saramaka people v. Suriname*, para 82.

deemed that tribal groups who conformed to these norms were entitled to the same spectrum of rights as indigenous peoples.⁵¹³

In doing so, the IACtHR was following ILO 169 in collapsing the barrier between the terms *indigenous* and *tribal*, and in this case treating them as peoples deserving of the same protection. Furthermore, in reaching its decision, the IACtHR refused to rest on past decisions as it invoked article 29(b) of the ACHR. Article 29(b) states that;

*“No provision of this Covenant shall be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party.”*⁵¹⁴

Essentially, this means that parties to the ACHR are prohibited from any interpretation of the ACHR that would facilitate lesser obligations than other treaties that the State is a party of.⁵¹⁵ By invoking article 29 (b), the IACtHR used article 1 (right to self-determination) of the ICESCR and articles 1 (right to self-determination) and 27 (right of members of minority groups to enjoy culture) of the ICCPR (both of which Suriname has ratified), to interpret article 21 (right to property) of the ACHR.⁵¹⁶ The IACtHR concluded that article 1 (the right to self-determination of all peoples) applied to the interpretation of the Saramaka as a people to enjoy their own social, cultural and economic development (internal self-determination). Accordingly

⁵¹³ Ibid at paras 85-86.

⁵¹⁴ ACHR, art 29b.

⁵¹⁵ Brunner (2008) 702.

⁵¹⁶ *Saramaka people v. Suriname*, paras 92-96.

under article 27 of the ICCPR (inter alia, the right to enjoy one's culture) the Saramaka had the right to enjoy the particular spiritual connection with the land they had always occupied,⁵¹⁷ which constituted property.

The IACtHR decision on the Saramaka case also extended the decision to the *natural resources* located on Saramaka lands, including sub-soil resources, and in doing so established new jurisprudence regarding an expansive interpretation of the rights of indigenous communities to natural resource management.⁵¹⁸ Despite ascertaining that the Saramaka had no particular cultural connection with (and therefore rights to) the gold found within their territory, as gold mining had the potential to affect other natural resources necessary for their survival, such as water, the Surinamese State was deemed to have a duty to consult with the community regarding any concession within Saramaka territory.⁵¹⁹

Further jurisprudence was outlined as being that consultation must be granted through “*culturally appropriate procedures and with the objective of reaching an agreement.*”⁵²⁰ Furthermore, the IACtHR declared that it was the duty of the State to seek the free, prior and informed consent of the Saramaka in order to meet the threshold for *effective participation* of the Saramaka in the decision-making process concerning *large-scale development* projects on their territory.⁵²¹ In such cases then, mere consultation was not deemed to meet the threshold for adequate Saramaka

⁵¹⁷ Ibid.

⁵¹⁸ *Saramaka people v. Suriname*, paras 155, 120, 122. See also, Pentassuglia (2011) 174-6, Brenner (2008) 703.

⁵¹⁹ *Saramaka people v. Suriname*, para 155.

⁵²⁰ Ibid. See also, para 133.

⁵²¹ Ibid at paras 134-137. See also, Barelli (2012) 16-17, Pentassuglia (2011) 176.

participation. Additionally, *benefit sharing*, was outlined as being a fundamental necessity when considering any development on Saramaka land.⁵²²

A third case with particular relevance for this thesis is that of the previously mentioned *Kalina and Lokono peoples v Suriname*.⁵²³ The alleged violations in this case included the establishment of three nature reserves (Wia Wia, Galibi and Wane Kreek) on land that was claimed as ancestral territory by the Kalina and Lokono, as well as issuing mining concessions within the territory. Additionally, the Surinamese State had initiated an urban subdivision project (Garden City Albina), where property titles were granted to non-indigenous third parties on land that bordered indigenous homes.⁵²⁴ Crucially, Suriname's domestic law did not recognise the possibility for indigenous peoples to constitute themselves as legal entities, therefore prohibiting them from holding collective property titles.

The IACtHR ruled in favour of the indigenous communities by again invoking numerous articles from the ACHR with regard to various violations. Notably with regard to a violation in the right of *juridical personality* (Article 3), pertaining to the lack of recognition of indigenous peoples as a legal entity, the IACtHR ruled Suriname had violated this in relation to articles 1 (*Obligation to respect rights*), 2 (*Domestic legal effects*), 21 (*Right to Property*) and 25 (*Right to Judicial Protection*) of the ACHR. Furthermore, the IACtHR again used Suriname's ratification of the ICESCR and ICCPR (specifically the right to self-determination and right to culture)

⁵²² Ibid at paras 138-140, 155.

⁵²³ Inter-American Court of Human Rights, *Case of the Kalina and Lokono peoples v. Suriname* (judgement of 25 November 2015) C 309 available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf accessed 14 September 2018.

⁵²⁴ Ibid at paras 70-99.

when interpreting article 21 – right to property.⁵²⁵ Interpreting article 21 in relation to articles 1 and 2, the IACtHR not only concluded that the failure of the State to delimit, demarcate and title the territory was a violation of article 21, but also that it should delimit these territories through consultation with the Kalina and Lokono peoples.⁵²⁶

This ruling was also particular noteworthy as the State was ordered to also respect the rights of the N’djuka Maroon tribe, who were not plaintiffs in the case, yet lived in adjoining settlements to the Kalina and Lokono. In this regard, it was decided that the State should also establish rules for a peaceful and harmonious co-existence with these communities.⁵²⁷ Furthermore, with regard to the nature reserves, the IACtHR concluded that the protection of natural areas and the right of indigenous and tribal peoples over their natural resources were indeed compatible, as the area in question should be considered for not only its biological composition, but also its *socio-cultural* composition.⁵²⁸ Therefore, the IACtHR ruled that owing to their relationship with nature, indigenous and tribal peoples could make an important contribution to conservation. Thus, effective participation, access to their traditional territories, and possibility of obtaining benefits from conservation, were essential in achieving the compatibility between conservation and indigenous rights over natural resources.⁵²⁹

In engaging with such cases as the three briefly covered here, the Inter-American system relied on standards already established within international law for

⁵²⁵ Ibid at paras 122-128.

⁵²⁶ Ibid at para 141.

⁵²⁷ Ibid at paras 140-141.

⁵²⁸ Ibid at para 174.

⁵²⁹ Ibid at para 181.

interpretation, whilst also going beyond them.⁵³⁰ In doing so, the Inter-American system considered the ACHR as possessing autonomous meaning in international law.⁵³¹ This expansive reading of the right to property within article 21 of the ACHR (and article XXIII of the ADRDM) is based on a wider framework of hard and soft rights based law relevant to indigenous peoples, including ILO 169, UNDRIP, UN covenants such as the ICCPR, and both regional and national jurisprudence.⁵³² In doing so, the Inter-American system has played a vital role in progressing national, regional and international norms with regard to the advocacy and protection of indigenous peoples rights.

With regard to this thesis, the cases discussed advanced a number of interesting concepts. First, all three cases were (at least partially) in response to government granted concessions for raw material extraction within lands considered ancestral by the peoples who resided there, whilst the Kalina/Lokono case also centred on the creation of nature reserves on indigenous land. Other relevant concepts advanced included; expansive considerations of ‘property’, the link between property, culture, and the spiritual/ancestral beliefs of indigenous people, the role of indigenous people in natural resource management, and notably the level of consultation/consent required with regard to development projects. Furthermore, the consideration of tribal peoples’ rights as being equal to indigenous peoples’, the need to respect other neighbouring indigenous groups, and directing governments to implement property demarcation framework within national agendas, were also key in the cases.

⁵³⁰ Pentassuglia (2011) 180.

⁵³¹ Ibid.

⁵³² Ibid at 181-2.

However, despite this significant progression in indigenous rights protection, the IACtHR can only adjudicate cases that have accepted the IACtHR's jurisdiction. This consists of the countries that are parties to the ACHR, and who have accepted that jurisdiction as stated in article 62.⁵³³ Both Nicaragua and Suriname have accepted the IACtHR's jurisdiction, resulting in their legal obligation to abide by the IACtHR's rulings. In recent years the IACtHR has also presided over a range of other disputes involving signatory States and indigenous communities within their borders including inter alia, *Xucuru people v. Brazil*, *Kuna and Embera peoples v. Panama*, and most recently the 2018 submission to the IACtHR of the members of the indigenous *Lhaka Honhat association v. Argentina*.⁵³⁴

After their dispersal across Central America, the Garifuna predominantly settled across four counties, with three of these – Honduras, Guatemala, and Nicaragua - among the leading regional advocates of indigenous rights recognition in terms of being parties to international instruments.⁵³⁵ However, legal obligations notwithstanding, the potential for contestation amongst various State and non-State actors remains significant when both valuable resources and empowerment in the control of them remain at stake. The following section concentrates on such contestation, with a particular focus on the Garifuna in Honduras, where despite an advanced national apparatus for indigenous rights recognition, factors have conspired

⁵³³ ACHR, art 62, available at <http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed 14 September 2018.

⁵³⁴ OAS, 'Cases in the Court' available at <http://www.oas.org/en/iachr/decisions/cases.asp> accessed 13 July 2018.

⁵³⁵ Honduras, Guatemala and Nicaragua all voted for the UNDRIP, and are all parties to ILO 169 and the ACHR, specifically article 62, which recognises the jurisdiction of the IACtHR.

to ensure the Garifuna have been unable to fully counter the politics of exclusion they have continued to face.

4.5 Contestations of recognition: Garifuna recognition in Central America

The IACtHR verdicts on *Moiwana* and *Saramaka*, were landmark decisions for Afro-descendant peoples within the American and Caribbean region. In a wider sense, the rights and identity of those peoples who may be classed as Afro-Latino, has received considerable academic attention, particularly since the latter part of the twentieth century. For example, authors such as Peter Wade have documented the mobilization of Afro-descendants around human rights and land rights in Colombia and how both State agencies and the indigenous movement influenced the mobilization.⁵³⁶ Considering recent estimates suggest that Afro-descendants represent around 30% of the population of Latin America,⁵³⁷ this should not seem surprising.

The majority of these peoples live in Brazil, the northern coast of South America, and across Central America.⁵³⁸ However, despite the fact that the number of Afro-descendants in the region is estimated to be significantly higher than the number of indigenous peoples,⁵³⁹ and although both indigenous peoples and Afro-descendant peoples suffer from racial discrimination, the multi-cultural citizenship reforms

⁵³⁶ Peter Wade, 'The cultural politics of blackness in Colombia' (1995) 22(2) *American Ethnologist* 341, 344.

⁵³⁷ World Bank, 'Afro-descendants in Latin America: Why the Lives of 150 Million People Matter' (23 April 2015) available at <http://www.worldbank.org/en/events/2015/04/17/inclusion-of-afrodescendants-in-latin-america> accessed 16 September 2018.

⁵³⁸ Juliet Hooker, 'Indigenous inclusion/black exclusion: Race, ethnicity and multicultural citizenship in Latin America' (2005) 37(2) *Journal of Latin American Studies* 285, 287.

⁵³⁹ *Ibid.*

adopted in many Latin American countries to explicitly counter such discrimination have not resulted in equal treatment for both groups.⁵⁴⁰ Those classed as *Indians* are generally better placed to claim the collective group ethnic identities that the multi-cultural citizenship reforms of the eighties and nineties have facilitated.⁵⁴¹ Several reasons have been posited for this disparity, and the comparable lack of success that Afro-Latino groups have had in claiming rights.

One mooted factor is that the far greater size of the Afro-Latino community is an inhibiting factor in their ability to mobilise around group rights. Another suggestion is the relatively low levels of political organisation of Afro-descendant groups in comparison to their indigenous brethren. Furthermore, where mobilisation has occurred it has predominantly been within urban rather than rural settings. This is in stark contrast to the indigenous movement, which has not only enjoyed a long and successful history across the region, but has also received significant funding from international organisations such as The World Bank.⁵⁴² Generally speaking the fundamental reason for the disparity between Afro-Latino and indigenous peoples, is that national power brokers in Latin America have viewed Indians as groups who maintain *distinct cultures*.

Those groups that have come to be recognised as deserving of special rights, have generally been those identified as maintaining distinct cultural practises, possessing a distinctly non-European language, and some form of bounded collective

⁵⁴⁰ Ibid at 289.

⁵⁴¹ Ibid at 285.

⁵⁴² Ibid at 292-296.

territory which is rural and/or ancestral.⁵⁴³ This mobilisation has occurred predominantly amongst groups that have represented themselves as members of some form of Maroon community,⁵⁴⁴ who live in rural areas such as the *quilombolos* of Brazil, or the *cimarrones/palenques* of Colombia and Ecuador.⁵⁴⁵ The *Saramaka* (and *Moiwana*) cases discussed in the previous section are also pertinent examples of Afro-descendant groups that have mobilised and been successful in gaining collective recognition as *tribal* peoples and Maroon communities by the IACtHR.

The position of the *Garifuna* within IACHR jurisprudence has been articulated as sharing commonality with these Surinamese groups, and this is recognised within the IACHR norms and jurisprudence on indigenous and tribal peoples. The IACHR report names the *Saramaka* and *Moiwana* as Maroon peoples who descended from self-emancipated slaves and settled in their territories during the colonial period, and are thus not regarded in a strict sense as being indigenous.⁵⁴⁶ However, the report states that the IACtHR considers the Maroon peoples to be *tribal*, and therefore possessing the same rights as those classed as indigenous. A footnote then states:

*“Likewise, the IACHR has considered the situation of the Garifuna people of Central America and the Caribbean from the perspective of the standards applicable to indigenous peoples.”*⁵⁴⁷

⁵⁴³ Shane Greene, ‘Introduction: On Race, Roots/Routes, and Sovereignty in Latin America’s Afro-Indigenous Multiculturalisms’ (2007) 12(2) *Journal of Latin American and Caribbean Anthropology* 329, 346.

⁵⁴⁴ *Ibid* at 348.

⁵⁴⁵ Hooker (2005) 295.

⁵⁴⁶ IACHR, *Indigenous and tribal people’s rights over their land and resources. Norms and Jurisprudence of the Inter-American Human Rights System* (OAS 2009) 11, para 34.

⁵⁴⁷ *Ibid* at para 34, n77.

This wording and reference to the Garifuna within this section of the IACHR report, and in relation to the Surinamese Maroons, indicates that the IACHR view the Garifuna as being *tribal* as opposed to indigenous, yet deserving of the same standards (and therefore rights) as indigenous people. Yet this position is open to a slight degree of ambiguity when compared with a definition in a further IACHR publication. When talking about Afro-descendants it states how:

*“In several countries of the hemisphere, some Afro-descendants remain as ethnically and culturally distinct collectivities that share an identity, a common origin, a common history and tradition, such as for example, the Maroon in Suriname.”*⁵⁴⁸

The paragraph then goes on to state that:

*“In some cases, they went through processes of syncretism with indigenous peoples in the region, leading to distinct ethnic groups like the Garifuna that inhabit the Atlantic coast of Honduras, Guatemala, and Belize, among others.”*⁵⁴⁹

The following paragraph goes on to confirm that such Afro-descendant peoples who are not indigenous to the region, but who share similar characteristics in need of protection, are regarded as *tribal*.⁵⁵⁰ Yet attention to the wording suggests a subtle distinction within the tribal classification. Maroon communities are clearly regarded as tribal due to being ethnically or culturally distinct collectives, descended from emancipated slaves. However, the Garifuna are specifically named as being Afro-descendants who went through processes of *syncretism with indigenous peoples*.

⁵⁴⁸ IACHR, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities* (OAS 2015) 21, para 28.

⁵⁴⁹ Ibid.

⁵⁵⁰ Ibid at para 29.

Whilst overall the document certainly affirms the IACHR view of the Garifuna as a tribal people, the way they are identified as an Afro-descendant population who merged with indigenous peoples is particularly important, as it correctly identifies the Amerindian component of Garifuna identity as well as the Afro-descendant element. In doing so, the IACHR has identified the Garifuna as being a tribal people whose inception was due in part to an indigenous people. In this identification then, the Garifuna share similarity with Maroon communities in that both are tribal, yet they are also different, as Maroon communities are *not* partially incepted from indigenous peoples.

Furthermore, whereas the Suriname cases focussed on particular communities in a particular country,⁵⁵¹ the Garifuna present a different proposition as they reside in four countries across the Central American region. There are only three countries in the entire Latin American region where Indians and Afro-Latinos hold the same collective rights: Honduras, Guatemala and Nicaragua.⁵⁵² These three countries comprise three of the four countries of the Garifuna homeland in Central America. In Honduras and Guatemala, Afro-descendants hold the right to collective ownership of land and bilingual education, whilst in Nicaragua Afro-descendant rights consist of all elements of the multicultural model.⁵⁵³ In both Honduras and Nicaragua there have been cases where Afro-descendant populations have been able to win collective rights

⁵⁵¹ It should however be noted that some *Saramaka* also reside in French Guiana. Minority Rights, 'Maroons' (3 June 2008) available at <http://minorityrights.org/minorities/maroons/> accessed 14 September 2018.

⁵⁵² Hooker (2005) 286.

⁵⁵³ Ibid.

by positioning themselves as *autochthonous*,⁵⁵⁴ or people with an indigenous status and a distinct cultural identity.⁵⁵⁵

The term *autochthonous* is particularly prevalent in Central America, where the term *indigenous* has racial connotations, and a strong connection with the term *Indian*. This is indicative of the already discussed differing regional understandings of the term *indigenous*. The term *autochthonous* does not have the same racial connotations, yet refers to the condition of being native inhabitants to a particular place.⁵⁵⁶ Of fundamental importance is the consideration that race is regarded as being a phenotypical difference, whilst ethnicity is regarded as being a cultural difference. Typically, Afro-descendants in Latin America are regarded as having no distinctive cultural difference and therefore have no particular reason to be able to claim group rights.⁵⁵⁷ However, those classed as *autochthonous* are regarded as having a distinctive cultural difference, and are therefore deserving of group rights in the same vein as *tribal* peoples.

Accordingly, the Garifuna are one of the few Afro-descendant groups who have been able to claim collective rights as an *autochthonous* people, having been successful on this platform in both Nicaragua, and most prominently in Honduras. The previous chapter documented how as the pre-UN era ended, a full one hundred and fifty years since their arrival in Central America, the Garifuna occupied a position in Honduran society whereby they were neither regarded as full members of mainstream

⁵⁵⁴ Merriam Webster defines the term *autochthonous* as being “indigenous, native”. Available at <https://www.merriam-webster.com/dictionary/autochthonous> accessed 14 September 2018.

⁵⁵⁵ Hooker (2005) 293.

⁵⁵⁶ Anderson (2009) 123.

⁵⁵⁷ Hooker (2005) 293.

society, nor fully identifiable as *indigenous*. Furthermore, the manifestation of *mestizaje* within Honduran society, inspired by the Honduran banana boom, was a significant reason for their exclusion from the national tapestry.

The post-war period in Honduras would see the Garifuna grow to a position of far greater acceptance within mainstream Honduran society. This was partially aided by the Honduran State's commitment to incorporate different ethnic identities within their promotion of the national tourism industry.⁵⁵⁸ Racism in the form of prohibition of the Garifuna language at school, or likening spiritual practises to witchcraft did not totally dissipate, yet generally the Garifuna saw their place in national society shift to their positive contribution to Honduran folklore, particularly as a 'tourist attraction.'⁵⁵⁹ The global mobilisation of political activism during the 1970s, was reflected in Honduras, with Garifuna intellectuals such as Armando Crisanto Melendez played a pivotal role in highlighting the role of the Garifuna as part of the Honduran nation.⁵⁶⁰

A key proponent in this movement, were the Garifuna founded group OFRANEH (Black Fraternal Organisation of Honduras), which was established in 1977.⁵⁶¹ Founded by members who had played pivotal roles in groups such as the Honduran Labour Movement, initially as a reaction to racial discrimination, OFRANEH initiated a move to align with other groups of ethnic diversity following a wave of coastal land appropriations in the seventies and eighties, by prominent Hondurans for tourism investment and gain.⁵⁶² What transpired from this was the birth

⁵⁵⁸ Anderson (2009) 111.

⁵⁵⁹ Ibid at 112-114.

⁵⁶⁰ Ibid at 116.

⁵⁶¹ Ibid at 118.

⁵⁶² Ibid at 119.

of the Honduran autochthonous movement, which aligned many ethnic groups, and whose mission was the greater recognition of *collective* rights.⁵⁶³

Article 346 of the Honduran Constitution specifically acknowledges the need for the State “to protect the rights and interests of the indigenous communities in the country, especially of the lands and forests in which they are settled.”⁵⁶⁴ Who exactly qualified as indigenous, was however not explicitly clear. In positioning themselves as ‘blacks’, the Garifuna had no institutional means to claim collective land rights, yet in positioning themselves as an ethnic group similar to indigenous, a land agenda could be pursued.⁵⁶⁵ This co-operation not only bridged peoples who were present both pre and post Spanish colonialism, it also enabled the Garifuna to position themselves alongside other ethnic groups, with common historical, sociological, economic and cultural conditions.⁵⁶⁶

In 1987, the Honduran State planning agency (SECPLAN) sponsored a meeting known as the “*First Seminar with the Autochthonous Ethnic Groups of Honduras*”, drawing a wide representation of State and ethnic representatives, as well as private organisations.⁵⁶⁷ The meeting’s key purpose was how to promote “ethno-development” within the State’s national development plan. Though representation in the taxonomy of groups that were documented in the meeting does not explicitly declare the Garifuna, nor any of the other groups as *indigenous*, they attained a certain

⁵⁶³ Ibid at 119.

⁵⁶⁴ Constitution of Honduras (1982), art 346, available at <http://www.parliament.am/library/sahmanadrutyunner/Honduras.pdf> accessed 14 September 2018.

⁵⁶⁵ Anderson (2009) 120.

⁵⁶⁶ Ibid at 123.

⁵⁶⁷ Ibid at 121.

black-indigenous equivalent, by being named an ethnic autochthonous group.⁵⁶⁸ In positioning themselves under the banner of *autochthonous* rather than *indigenous*, the Garifuna did so alongside numerous other ethnic nations. This swell in autochthonous empowerment within Honduran society continued to grow in the final years of the twentieth century through a number of key events.

Notable advancements in autochthonous recognition continued throughout the latter part of the 20th Century, for example the 1992 establishment of the *Confederation of Autochthonous Peoples of Honduras* (CONPAH) composed of the ethnic federations who were represented at the 1987 SEPCLAN meeting.⁵⁶⁹ The Garifuna organisation ODECO (Organisation for Ethnic Community Development) was created the previous year, and the early nineties were also characterized by vigorous protests against continued land usurpation, support for land titling initiatives, and raising awareness of environmental destruction.⁵⁷⁰ Significant lobbying from CONPAH resulted in the Honduran government ratifying ILO 169.⁵⁷¹ However, this rise in mobilisation was born from the rising contestation on the ground between Honduras' commitment to indigenous rights protection on one hand, and neoliberal economic progression on the other.

In 1996, Garifuna representatives signed an agreement with the National Agrarian Institute (INA), which would see a comprehensive land titling program for Garifuna communities in accordance with ILO 169.⁵⁷² Yet by the end of 1998, only

⁵⁶⁸ Ibid at 124.

⁵⁶⁹ Ibid at 126.

⁵⁷⁰ Ibid.

⁵⁷¹ Ibid.

⁵⁷² Ibid at 130.

fifteen communities had received title, and those titles that were given, received serious scrutiny from groups such as OFRANEH.⁵⁷³ The contestation surrounded the issue of *territoriality* which had been given special attention under ILO 169. Though titles had been given, Garifuna activists protested that they were simply too small and did not include the access to utilize the natural resources which existed within the territory. This played out against a backdrop of continued land appropriations on traditional Garifuna land by a range of actors including elites, the military and Mestizo peasants.⁵⁷⁴

The situation manifested against the backdrop of proposed reform of article 107, which prevented coastal land ownership by foreign nationals.⁵⁷⁵ Proponents of tourism development both within Honduras and regionally (including the U.S) began to see article 107 as a threat to land security, and impediment to foreign investment. The proposed reform allowed for the sale of State, communal and private lands to foreigners.⁵⁷⁶ Organisations such as ODECO and OFRANEH opposed reform on the grounds that under such development, lands within or near to Garifuna communities would be sold, and their collective rights threatened.⁵⁷⁷ CONPAH led demonstrations by indigenous groups ended in tragedy as two protestors were killed when police opened fire on the crowd.⁵⁷⁸ The proposals to amend article 107 were suspended, yet

⁵⁷³ Ibid.

⁵⁷⁴ Ibid.

⁵⁷⁵ See Honduran Constitution (1982), art 107.

⁵⁷⁶ Anderson (2009) 131.

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid at 133.

the killings provided a tragic watershed in the decade of success for the autochthonous movement in Honduras.

The Proyecto de Administración de Tierras de Honduras (PATH) law of 2004 was introduced to Honduran State legislation in an attempt to regulate property ownership in Honduras, yet crucially it also aimed to modernise it as well.⁵⁷⁹ Although the World Bank funded project was marketed as enabling land titling for all sectors of Honduran society⁵⁸⁰ it has been criticised as attempting to place a limited understanding of ethnic land rights, into an efficient system of marketable property.⁵⁸¹ Members of OFRANEH immediately challenged the PATH law on the grounds that it did not respect the ancestral rights of indigenous peoples.⁵⁸² In 2003, the year before its introduction, OFRANEH has sent a petition to the IACHR regarding the incursions on Garifuna land. Yet by now, significant fractures within Honduran society had begun to emerge.

For example, a feeling amongst some indigenous activists had begun to manifest, that despite the unity that had been attained in the previous decades, that blacks and other indigenous peoples shared different cultures and histories.⁵⁸³ Two years previously, a new multi ethnic group emerged under the name of CNIH (Consejo Nacional Indígena de Honduras). Crucially, this organisation excluded blacks, yet is important to note that this exclusion was not wholly maintained on racial

⁵⁷⁹ Anderson (2007) 384.

⁵⁸⁰ Ibid at 385.

⁵⁸¹ Ibid at 399.

⁵⁸² Ibid.

⁵⁸³ Ibid.

lines, moreover, the new organisation sought a more government friendly tone, particularly in the realm of neoliberal policies, which OFRANEH had always been distinctly opposed to.⁵⁸⁴ Division also afflicted OFRANEH and ODECO. Whereas OFRANEH have continued to pursue a policy of “black indigenism” through tying Garifuna activism to indigenous activism and rights, ODECO instead took on the politics of what has been described as “Afro-visibility”.⁵⁸⁵

Additionally, opposition to Garifuna land claims amongst the majority Mestizo population have also risen this century, invoking the narratives of mestizaje from previous years. In 2003, the year before the PATH law was passed, Garifuna mobilisation and advocacy, which had seen petitions sent to the IACHR amongst other organisations, resulted in the Honduran State returning land back to the Garifuna. The Garifuna claimed Mestizos had illegally procured this land from them.⁵⁸⁶ A significant factor in the ensuing land struggle were the competing claims over indigeneity and the conceptualisation of historical roots as a prerequisite to claim land.⁵⁸⁷ A narrative duly emerged whereby the Garifuna were accused of not being *truly* indigenous to the territory. Certain members of the Mestizo class pointed to the fact that, amongst other things, any Garifuna claims to the territory could not be considered pre-Columbian, as their ancestry was in part African.⁵⁸⁸

⁵⁸⁴ Ibid at 401.

⁵⁸⁵ Anderson (2009) 142.

⁵⁸⁶ Keri Vacanti Brondo, ‘When Mestizo Becomes (Like) Indio... or is it Garífuna?: Multicultural Rights and “Making Place” on Honduras’ North Coast’ (2010) 15(1) *Journal of Latin American and Caribbean Anthropology* 170, 171.

⁵⁸⁷ Ibid at 183.

⁵⁸⁸ Ibid.

After the success of the Honduran indigenous movement, to return to the discourses that had prevailed within society fifty years previous seemed unthinkable, yet just as in the banana boom years, a narrative of *mestizaje* had seemingly returned.⁵⁸⁹ This competition between groups is not limited to claims involving Mestizo populations. For example, the case of the Lasa Pulan reserve in Honduras has seen a battle for control over valuable resources between Garifuna and Miskito Indians.⁵⁹⁰ In this case, the anti-black narratives that have risen from the deep antipathy between the two groups see colonial narratives reproduced in the post-colonial period, whilst in return the Garifuna have devalued the customary indigenous claims of the Miskito.⁵⁹¹ Despite this antipathy, competing claims to the land from Mestizos (or Ladinos) could see the two autochthonous groups unite.⁵⁹²

Such competing claims for scarce resources highlight how the Central American multicultural mandate has evolved to include a complex range of stakeholders with vested interests including; regional judicial bodies such as the IACHR, the World Bank, the Inter-American Development Bank and USAID,⁵⁹³ as well as numerous peoples. Inevitably, when attempting to reconcile the objectives of such a wide range of actors representing such a wide range of interests, the contestation that manifests is unavoidable, as it becomes a patent implausibility that all parties will be satisfied with any outcome. For example, the very notion of trying

⁵⁸⁹ Ibid at 185.

⁵⁹⁰ Sharlene Mollett, 'Race and natural resource conflicts in Honduras: The Miskito and Garifuna struggle for Lasa Pulan' (2006) 41(1) Latin American Research Review 76, 77.

⁵⁹¹ Ibid at 78.

⁵⁹² Ibid at 96.

⁵⁹³ Hale (2005) 18.

to marry neo-liberal economics with the issue of indigenous territoriality, as the PATH law had attempted, is one such implausibility.

Twelve years after registering initial petitions through the IACHR, in 2015 the IACtHR made a landmark decision regarding Garifuna land rights in Honduras. The IACtHR ruled that the Garifuna communities of Punta Piedra and Triunfo de la Cruz had seen their rights under the ACHR violated, notably with regard to article 21 – their right to enjoy *collective* property ownership, lack of judicial protection, and the right to cultural identity and free prior and informed consent.⁵⁹⁴ Furthermore, the IACtHR ordered inter alia that the Honduran State should; demarcate the lands outlined by the IACtHR, affix collective ownership titles to those lands, and implement measures to ensure that consultation must be applied to any exploration that may affect the traditional lands of the communities.⁵⁹⁵

Within the ruling, the IACtHR also explicitly referred to ILO 169 and the right to property of indigenous or tribal communities. Furthermore, the IACtHR used the testimony of expert witness – Special Rapporteur on the rights of indigenous peoples James Anaya – asserted that the Garifuna can be described as *tribal*.⁵⁹⁶ In doing so, the IACtHR again reaffirmed the rights of indigenous *and* tribal peoples under the same banner when ruling on the Garifuna case. The severity of the situation had seen representatives of the OAS visit the communities to speak to Garifuna representatives

⁵⁹⁴ Inter-American Court of Human Rights, *Community Garifuna Triunfo de la Cruz and its members v. Honduras* (judgement of October 8 2015) C 305 available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_305_esp.pdf and *Community Garifuna Punta Piedra and its members v. Honduras* (judgement of 8 October 2015) C 304 available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_304_esp.pdf accessed 15 September 2018.

⁵⁹⁵ Ibid. See also, Cultural Survival, ‘Indigenous rights win major steps forward in Honduras’ (14 January 2016) available at <https://www.culturalsurvival.org/news/indigenous-rights-win-major-steps-forward-honduras> accessed 21 September 2018.

⁵⁹⁶ *Community Garifuna Triunfo de la Cruz and its members v. Honduras*, para 52.

about the campaign of intimidation, including five assassinations of members of the Garifuna community. Investigation into these murders was included in the package of reparations ordered by the IACtHR.⁵⁹⁷

Whilst welcomed by the Garifuna community, there remains serious concern as to whether such decisions can receive sustained tangible implementation on the ground, against the backdrop of what has been described as systematic dispossession of Garifuna lands under the flag of neoliberal development.⁵⁹⁸ A recent study has estimated that potentially up to *fifty per cent* of Garifuna aged between 12 and 30 years of age have left Honduras since 2013.⁵⁹⁹ The reasons for this dramatic loss of the population centre around the continued appropriation of Garifuna lands, lack of employment opportunities, the presence of armed gangs which dominate Honduran culture, and a political marginalisation which has intensified with the administration of the new Honduran government.

The same study revealed that the administration of Juan Orlando Hernandez shut down *every* government department related to Afro-descendant and indigenous rights in Honduras.⁶⁰⁰ Such drastic measures threaten the enormous strides that the Garifuna made in their homelands, and present a very real threat to their existence in Honduras, let alone the recognition of their indigenous rights. The situation in

⁵⁹⁷ Cultural Survival (2016).

⁵⁹⁸ OFRANEH, 'Inter-American Court of Human Rights condemns the State of Honduras for violation of the collective rights of the Garifuna people' (21 December 2015) available at <http://jubileosuramericas.net/inter-american-court-of-human-rights-condemns-the-state-of-honduras-for-violation-of-the-collective-rights-of-the-garifuna-people/> accessed 15 September 2018.

⁵⁹⁹ Tim Smyth, 'Garifuna People are risking everything to escape their ancestral homeland' (21 August 2014) available at <https://news.vice.com/article/garifuna-people-are-risking-everything-to-flee-their-ancestral-honduran-homelands> accessed 15 September 2018.

⁶⁰⁰ Ibid.

Honduras remains particularly dangerous for those within the indigenous movement. Founder of CONPINH Berta Caceres Flores, is amongst those to have been assassinated in recent years.⁶⁰¹

The Garifuna victory in the IACtHR is further evidence in the evolution of indigenous recognition within the American-Caribbean region. Particularly, it is evidence of how the Garifuna as a group in Central America have positioned themselves alongside indigenous peoples as an *autochthonous* people within Honduras' tapestry of ethnic groups. Doing so has enabled them to engage the Inter-American system as a people deserving of the same rights as indigenous peoples under international law. However, their victory at the IACtHR is tempered by the contestation that they face on the ground, both through neoliberal development on their lands, and other associated threats in contemporary Honduras. Furthermore, the contestation that occurs *between* ethnic groups is evidence that tension over scarce resources is still prone to divide multicultural communities along ethnic lines.

Furthermore, this was not an isolated case of alleged *mestizaje* in the region. In Guatemala, the process of *mestizaje* became widespread until the mid-twentieth century but was abandoned by the nineties as multiculturalism took hold.⁶⁰² Yet when the raft of Maya indigenous advocacy swept through Central America in the mid-nineties, the response of a section of influential Ladinos was to state that in Guatemala there were only Mestizos.⁶⁰³ A further example in the region of Chimaltenango,

⁶⁰¹ The Guardian, 'Why is Honduras the world's deadliest country for environmentalists?' (7 April 2016) available at <https://www.theguardian.com/environment/2016/apr/07/honduras-environment-killing-human-rights-berta-caceres-flores-murder> accessed 13th July 2018.

⁶⁰² Hale (2002) 502.

⁶⁰³ Ibid at 506.

illustrates how provincial Mestizos in the country began to feel sandwiched between the Euro-Guatemalan elite and an ascendant indigenous majority who were tired of their place on the bottom of the ladder.⁶⁰⁴ Their fear that a lack of a Guatemalan identity was resulting in an over-promotion of Maya rights, at the expense of the Guatemalans.⁶⁰⁵

The response by some mestizos was to deconstruct Maya identity by claiming that when Spain colonized Central America the Maya Empire had disappeared.⁶⁰⁶ Like in Honduras, the Mestizo argument in Guatemala centred on the premise that the indigenous group (in this case the Maya not the Garifuna) held no right to claims over Mestizos in society. These cases are pertinent examples of how identities are constructed and deconstructed by competing groups in the multi-cultural era just as they were in the colonial era. Despite the evolution of the indigenous rights narrative, the post-colonial state of politics remains to varying extents linked to a colonial politics of exclusion, favouring certain groups over others. How deeply rooted that politics of exclusion is, ultimately depends on specific national situations.

Evidence in Central America suggests that despite a significant and heralded programme of multi-cultural reform in the post-UN era, including States becoming parties to numerous instruments of indigenous empowerment, significant challenges remain. These challenges stem primarily from the contestation over the potential benefits that successful recognition of being indigenous/autochthonous can bring, in the form of rights over tangible, scarce and valuable land and resources. For the

⁶⁰⁴ Charles Hale, 'Neoliberal multiculturalism' (2005) 28(1) PoLAR: political and legal anthropology review 10, 21.

⁶⁰⁵ Ibid at 22.

⁶⁰⁶ Ibid.

Garifuna, their black identities have continued to act as a barrier to recognition in some quarters. This barrier becomes particularly difficult to surmount when valuable coastal territory is the prize that comes from successful recognition. That such barriers continue to exist is evidence of the politics of exclusion that continue to afflict the Garifuna in their Central American homelands.

4.6 Summary

This chapter has sought to; *Explore the evolution of indigenous recognition within international law in the American-Caribbean region (1945-2018)*. The first section titled *identities of recognition*, illustrated how indigenous mobilisation in the 1970s, led by peoples of the American and Caribbean region, grew into a global movement. This resulted in normative understandings of indigeneity evolving, and in lieu of any formal definition for indigenous peoples, instead a set of contemporary norms emerged which are considered to be indicators of whether peoples may be recognised as being indigenous. This indigenous mobilisation saw the inception into international law of *instruments of recognition*, which listed an expansive interpretation of rights inherently possessed by peoples classed as indigenous or tribal. Disagreements in interpretation between State and non-State actors characterised the composition process, yet after centuries of being the victim of international law's mechanisms, indigenous peoples had achieved recognition within the international legal system.

The Inter-American system has proven to be a particularly profitable *space of recognition* for the region's indigenous peoples. Both the IACHR and IACtHR have played a key role in contextualising and legally binding the language of human rights instruments in their judgements. The cases of the *Awes Tingni*, *Saramaka* and

Kalina/Lokono are examples of how the Inter-American system has taken an expansive position on indigenous rights, State obligations, and the peoples deserving of such rights. Meanwhile in the Central American region, notably in Honduras, the Garifuna mobilised with a wide variety of other distinct groups to have their place at the indigenous table recognised by the same body. Despite this success, *contestations of recognition*, between the Garifuna, the Honduran State, and other groups, has seen old colonial narratives such as *mestizaje* creep back into society. Furthermore, as in colonial times, the Garifuna face a battle for sheer survival.

There can be little doubt that the global evolution of indigenous recognition in the UN era has been significant. Furthermore, it is hard to argue that any region of the globe has contributed more to the mobilisation and recognition effort than the Americas and Caribbean region. Yet the previous sections have provided constant reminders that ultimately any empowerment over indigenous rights, and resulting recognition that may follow, is highly dependent on specific national, regional and local situations. For it is in the national arena that the intersections of international/national law and colonial/ post-colonial history collide. With regard to this thesis, it is now necessary to turn the focus to the nation State of Belize, and the very specific evolution of this former British colony.

5. Belize: History of a contested land

5.1 Introduction

The nation of Belize (formerly the colony of British Honduras) is located on the Caribbean coast of Central America. Belize is bordered by the Caribbean Sea to the east, the Republic of Guatemala to the south and west, and Mexico to the north, and is the smallest country in Central America with a population of 387,879.⁶⁰⁷ Belize differs markedly from its Central American neighbours in both the historical evolution of the territory, and in its national ethnic composition. Whilst Mestizo comprises the majority of the population (52.9%), Belize is notable for having significant numbers of Creole (25.9%), Maya (11.3%), Garifuna (6.1%) and East Indian (3.9%) peoples, amongst others.⁶⁰⁸ This ethnic diversity is the legacy of a combination of pre and post Columbian indigenous peoples, as well as Spanish and British colonial processes, which resulted in a multicultural influx of peoples to the territory either voluntarily or by forced means. Since gaining independence on September 21st, 1981, Belize has remained part of the British Commonwealth, with Queen Elizabeth II as Head of State.⁶⁰⁹

A notable feature of Belize is its river system,⁶¹⁰ and as many of the colonial boundary agreements used rivers as landmarks, reference to the map in *Figure D1* marking Belize's regions will be useful throughout this chapter. The River *Hondo* lies

⁶⁰⁷ Statistics Institute of Belize, *Annual Report 2017* (SIB 2017) 23 available at http://sib.org.bz/wp-content/uploads/AnnualReport_2017.pdf accessed 15 September 2018.

⁶⁰⁸ Statistics Institute of Belize, *Population and Housing Census Report 2010* (SIB 2010) 19 available at http://sib.org.bz/wp-content/uploads/2017/05/Census_Report_2010.pdf accessed 15 September 2018.

⁶⁰⁹ CIA World Fact Book, 'Belize, People and Society' (n.d.) available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bh.html> accessed 15 September 2018.

⁶¹⁰ O. Nigel Bolland, *Belize: A new nation in Central America* (No. 972.82 B691) (Westview 1986) 3.

on the northern border with Mexico just south of Chetumal. The mouths of the Rivers *Belize* and *Sibun* are in the country's centre, north and south respectively of Belize City. Meanwhile, the *Sarstoon* lies on the southern border of Toledo, and acts as the present day international border with Guatemala. Modern Belize is divided into six states/districts; *Corozal* in the north, *Orange Walk*, *Belize*, *Cayo* and *Stann Creek* in the centre, and *Toledo* in the south. Belmopan is the nation's capital, though in colonial times the capital city was Belize City, which remains the most populated area of the country today.⁶¹¹

With regard to this thesis, it is important to remember throughout this chapter that all land south of the *Sibun* River was not included in the colonial agreements between Spain and Britain that facilitated the establishment of the British settlement. This settlement expanded to become the colony of British Honduras, and later independent nation of Belize. This area includes the southernmost State of Toledo, which is the area of focus for this thesis. As will be documented, Toledo has remained a highly contested area both internally and externally since the early 19th Century. Toledo is also notable for having the smallest population in the country (36,695), and the highest percentage of people (83% or 30,547) living in rural areas. In the same report, the capital of Toledo, Punta Gorda, is recorded as having a population of 6,148.⁶¹²

⁶¹¹ SIB (2017) 23.

⁶¹² Ibid.

The following chapter seeks to answer objective three of this study; *Explore the evolution of Belize from a logging settlement to an independent country, with a specific focus on the peoples of the Toledo district*. The chapter is divided into three principal sections and accompanying subsections, before concluding with a summary. Each section will concentrate on a specific era in the territory which evolved to become the modern day independent State. The first section traces evolution of the *British settlement in the Bay of Honduras*, from its inception as a logging settlement, to the first recognised acts of official British sovereignty over the territory in 1837. This evolution began with Anglo-Spanish accords limiting British interests to a specific area, yet British expansionism beyond these treaties led to both dispute with the emerging Republic of Guatemala, and the British *identifying* ‘other’ peoples in the territory.

The second section traces the evolution of the *colony of British Honduras*, from those first official British moves to exert official sovereignty in 1837, to the beginnings of the native mobilisation in response to colonial subjugation in the 1930s. After gaining international recognition of the colony’s borders, the British developed a system of investment, trade and labour that transferred wealth to London,⁶¹³ and kept power within the colony in the hands of a small number of white settlers and companies. The section will also detail how through *integrating* the Garifuna and Maya populations within the colonial structure in the Toledo district and beyond, ensured that Britain maintained theoretical territorial and cultural control over the population.

⁶¹³ Bolland (1986) 69.

The third section traces the evolution of the *independent State of Belize* both internally *and* internationally, from the collective internal mobilisation in the 1930s that empowered the beleaguered native population towards eventual independence in 1981, to the present day. The section will also detail how despite considerable development in other parts of the territory, the southernmost state of Toledo remained the focus of international capitalist expansion, which provided little tangible benefit to the native peoples who reside there. This continuation of colonial era policies *empowered* the Maya communities to engage with international law over their rights as indigenous people, resulting in Toledo becoming a contested land both *internally* and *externally*. Finally, a summary will conclude the chapter.

Figure D1: Physical map of Belize. ⁶¹⁴



⁶¹⁴ US Central Intelligence Agency, 'Physical map of Belize' (2003) available at <https://www.cia.gov/library/publications/resources/cia-maps-publications/Belize.html> accessed 15 September 2018.

5.2 Establishing a British settlement in the Bay of Honduras (1638-1837)

5.2.1 *A British settlement within Spanish Papal sovereignty*

It is widely agreed that the Maya were the first inhabitants of the territory of what is now Belize, migrating to the region from across Central America between 2000-1000 B.C.⁶¹⁵ At the time of Spanish conquest, lowland Maya speaking peoples occupied a huge region between southeast Mexico and northwest Honduras.⁶¹⁶ The Spaniard Hernando Cortes is credited as being the first European to set foot on Belizean soil in 1524, on one of the great northern colonization thrusts from the island of Hispaniola. After the conquest of the Yucatan peninsula in 1527, the governor Francisco de Montejo travelled the coastline yet deemed the area uninviting for Spanish settlement,⁶¹⁷ in no small part due to the expedition encountering humid insect infected mangrove swamps.⁶¹⁸ The coastline thus became an example of a disease ridden tropical forest on the Spanish Main,⁶¹⁹ overlooked for Spanish settlement.

Despite the Spanish not settling, the territory had already been included in the 1493 Papal donation of Pope Alexander VI to the King and Queen of Spain, as it fell within this area of the 'New World'.⁶²⁰ Spanish reluctance to settle ensured the territory also drew the attention of the British. It is uncertain when exactly the first

⁶¹⁵ Menon (1977) 117.

⁶¹⁶ Grant Jones, 'The Lowland Mayas, from the conquest to the present' in Richard Adams and Murdo MacLeod (eds.), *The Native Peoples of the Americas Volume 2, Mesoamerica, Part II* (CUP 2000) 346.

⁶¹⁷ Ibid.

⁶¹⁸ Bolland (1986) 3.

⁶¹⁹ Craton (1997) 34.

⁶²⁰ Menon (1977) 117.

British began to settle in Belize,⁶²¹ with some historical accounts suggesting 1638 as the year of the establishment of the first British settlement in the region. A ‘Captain’ Peter Wallace (or ‘Balis’⁶²² as the Spaniards called him) is alleged to have been the first Brit to settle on the shores.⁶²³ The abandonment of the Spanish fort at Bacalar (Yucatan peninsula), in 1652, is also cited as a key date, as the fort had previously acted as a deterrent in preventing the British from settling the coast or cayes.⁶²⁴

It is also difficult to confirm the exact date of the first settlement established for the trade that would characterise Britain’s relationship with the territory. The first *official* British record of *logwood cutting* does not appear until 1682, yet by 1705, the Belize River is described as the place where the English loaded the majority of their logwood.⁶²⁵ The frontier was essentially a number of logging camps in the forests that for years would give the future colony of British Honduras the appearance of a vast timber reserve linked to Europe by the primary town.⁶²⁶ This appearance was in no way misleading, as the *modus operandi* of the settlement, and later colony, was the extraction of natural resources for transportation back to Europe.

⁶²¹ Assad Shoman, *Guatemala’s claim to Belize: The Definitive History* (Image Factory 2018) 2.

⁶²² R.A Humphreys, *The Diplomatic history of British Honduras: 1638-1901* (OUP 1961) 1.

⁶²³ It is speculated that the name of *Belize* possibly originates from the fact that the Spanish pronounced Wallace’s name ‘Balis’. However, *Belize* may also derive from the Maya term *belix* (muddy water) or *belikin* (land facing the sea). See Britannica Online, ‘Belize’ available at <https://www.britannica.com/place/Belize> accessed 21 September 2018.

⁶²⁴ Shoman (2018) 2.

⁶²⁵ *Ibid* at 2.

⁶²⁶ Bolland (1986) 5.

The profession of those first British settlers is documented in numerous historical records as that of logwood cutters, who were formerly buccaneers.⁶²⁷ The Bay of Honduras had from the 16th Century, been considered an excellent base from which to plunder Spanish ships sailing between Panama and Mexico. Soon these adventurers established settlements in the haven of river estuaries and mangroves from which they mounted their attacks.⁶²⁸ These Bay of Honduras settlers became known as *Baymen*,⁶²⁹ described as being “*rough and wild loggers*” who operated in the “*no man’s land*” of what is now Belize, and the Yucatan and Campeche in Mexico.⁶³⁰ Furthermore, the two occupations of logwood cutting and buccaneering remained interchangeable until late in the seventeenth century,⁶³¹ when a series of treaties were signed between Britain and Spain seeking perpetual peace.⁶³²

For many, the term ‘buccaneer’ has become synonymous with ‘pirate’, yet there is a crucial distinction that needs to be made explicit in this context. Whilst a pirate was a criminal who robbed ships of all nations in any waters, a buccaneer exclusively hunted *Spanish* ships in the *Americas*.⁶³³ In a time of colonial war in the region, differentiating between the legality of whether one was a licensed ‘privateer’,

⁶²⁷ Humphreys (1961) 3. See also, O. Nigel Bolland, *Colonialism and resistance in Belize: essays in historical sociology* (UWIP 2003) 15.

⁶²⁸ Wayne M. Clegern, *British Honduras: colonial dead-end, 1859-1900* (No. 12) (LSUP 1967) 5.

⁶²⁹ *Ibid* at 3.

⁶³⁰ Colin Woodard, *The Republic of Pirates* (Pan McMillian 2014) 125.

⁶³¹ Humphries (1961) 1.

⁶³² *Ibid*.

⁶³³ Phillip Gosse, *The history of piracy* (Courier Corporation 2012) 142.

‘buccaneer’,⁶³⁴ or simply a ‘pirate’ was made even more difficult with the shifting allegiances of many who worked at sea, and the number of treaties that saw the law change at regular intervals throughout the initial phases of European settlement. It is also very important to stress that the early stages of the British settlement in the Bay of Honduras was, like many colonial beginnings, characterised by a distinct lack of official control on the ground - a phenomenon which will be discussed in further detail throughout this chapter.

The desire for a suppression of privateering, as detailed in the 1667 Treaty of Madrid,⁶³⁵ ensured that Britain made a conscious effort (publicly at least) to suppress the adventurous nature of these ‘frontiersmen of the Caribbean’, so that they either went rogue and turned pirate themselves, or ‘settled’ and became log cutters.⁶³⁶ It was only when these settlers had essentially sacrificed their mobility at sea that the Spanish were able to exert theoretical control over the territory,⁶³⁷ yet keeping the Baymen in check proved far more difficult in practise. Sacrificing their mobility at sea did not mean that they were prepared to do the same on land.

The period between 1660 when the Baymen moved their logging base in the region from Yucatan to the delta of the Belize River, and 1786 when the British signed the Convention of London (and tantamount acceptance of Spanish

⁶³⁴ The term *buccaneer* emanates from a group of predominantly French and English men who lived on the island of Hispaniola in the 17th Century. Their primary activity was hunting wild cattle, which they sold to passing ships. They dried and salted the meat in open wooden cabins called *boucans*, which is where the term buccaneer originates. See Gosse (2012) 143.

⁶³⁵ The 1667 Treaty of Madrid was signed in order to agree that ‘perpetual peace’ should be observed between the Crowns of Spain and Great Britain. A principal article was that Britain should be seen to exert control on her subjects who settled in Spanish territory. In the case of the territory of what now constitutes Belize, like all the American-Caribbean region, a key element of this was suppressing buccaneering. However, this proved far easier in theory than in reality. See Humphreys (1961) 1-2.

⁶³⁶ Ibid at 1.

⁶³⁷ Clegern (1967) 5.

‘sovereignty’ in the region), was one of war and territorial dispute between the colonial powers. The Godolphin Treaty (1670) sought to ease the tensions caused by the Treaty of Madrid, in enabling British loggers to operate without persecution on Spanish territories. Yet the Godolphin Treaty never explicitly named the territory where the Baymen had settled as either being British or Spanish. Such ambiguity in treaties between the two countries would continue well into the 18th Century, when further concessions in the Treaty of Paris (1763) offered British logging concessions in the Bay of Honduras without ever explicitly stating *where*.⁶³⁸

Tensions had continued to rise throughout the 17th and 18th centuries, as Spain’s decision in 1713 to make the logwood trade *illegal*, essentially meant that any British traders sailing from ports in the West Indies without a license from Spain would be branded as pirates.⁶³⁹ This decision was one of the key rulings that would herald the dawn of ‘*The Golden Age of Piracy*’ in the West Indies, and ensure further deterioration in Anglo-Spanish relations. By the time the *Seven Years War* (1756-1763) ceased with the signing of the Treaty of Paris, it was hoped the logging concessions granted to the British in the Bay of Honduras would be enough to see the friction between the countries subside. Yet the ambiguity of the zone in question, ensured that hostilities merely continued as the treaty stipulated that concessions applied to;

“*The Bay of Honduras and other places of the territory of Spain in that part of the world*”⁶⁴⁰

⁶³⁸ Menon (1977) 119.

⁶³⁹ Ibid.

⁶⁴⁰ Treaty of Paris (1763), art XVII, available at http://avalon.law.yale.edu/18th_century/paris763.asp accessed 15 September 2018.

However, whilst the Spanish idealised the concessions to constitute adhering strictly to coastal zones, the Baymen interpreted the concessions as expansively as possible, and endeavoured to head inland. Disagreement and conflict again ensued. In 1778, the Spanish attacked and captured St Georges Caye,⁶⁴¹ and in 1779 joined the American War of Independence fighting against the British,⁶⁴² a war which Britain famously lost. The Treaty of Versailles (1783) was a bitter pill for defeated Britain to swallow, yet it conclusively detailed Spanish sovereignty in the ‘Spanish continent’. British log cutting concessions were detailed in Article VI of the treaty as extending from the *Hondo* River (in the extreme north) to the *Belize* River (in the centre), yet this was in no way to deemed to disrupt Spanish sovereignty in the named territory.⁶⁴³

Yet the Baymen pushed for further expansion, and in 1786, the territory was extended to include the area between the *Hondo* River and the *Sibun* River (also in the centre) with the signing of the Convention of London.⁶⁴⁴ Another outbreak of war between Spain and Britain in 1796, led to the Spanish failing to suppress the Baymen at the Battle of Georges Caye (1798), and it was necessary for the Treaty of Amiens (1802) and another Treaty of Madrid (1814), to reaffirm Spanish sovereignty on the territories it held before 1796.⁶⁴⁵ However, the Spanish wars of independence that erupted across the continent as far north as Mexico and far south as Argentina, merely

⁶⁴¹ Shoman (2018) 3.

⁶⁴² Menon (1977) 120.

⁶⁴³ Treaty of Versailles (1783), art VI, available at http://www.emersonkent.com/historic_documents/treaty_of_versailles_1783_spain_transcript_translation.htm accessed 21 September 2018.

⁶⁴⁴ Menon (1977) 120.

⁶⁴⁵ Ibid at 121.

accentuated the power vacuum across the territory.⁶⁴⁶ British expansionism had reached as far as *Deep* River in 1799 and the *Moho* River (in the south) by 1814. As early as 1825, the British Superintendent in Belize was describing the *Sarstoon* River (the current southern boundary of Belize) as the southern boundary of the British settlement.⁶⁴⁷

It is therefore necessary therefore to stress several points regarding the decades immediately before Central American independence. First, 1798's Battle of Georges Caye (a revered national holiday in Belize), a short military engagement when Spanish forces from Bacalar tried and failed to overcome the Baymen, represents the final time that Spain sought to exert its sovereignty on the territory forcibly.⁶⁴⁸ Second, the Treaty of Versailles (1783) clearly only detailed territory between the Rivers *Hondo* and *Belize*, whilst the Convention of London (1786) extended this area to the territory between the Rivers *Hondo* and *Sibun*. This constitutes the territory of what is now Northern Belize. The territory between the Rivers *Sibun* and *Sarstoon* that constitutes what is now Southern Belize, had not been detailed in any treaties between Britain and Spain, yet the British settlers *had* expanded that far south.

This meant that from 1798, Spain exercised 'Papal' sovereignty over a territory that it neither occupied nor administered in any way. As discussed in the previous chapter, the former provinces of the *Kingdom of Guatemala* declared independence from all rule in 1823, forming the short-lived federation of the UPCA. The question as to how to establish the boundaries of these newly independent

⁶⁴⁶ Shoman (2018) 6.

⁶⁴⁷ Ibid.

⁶⁴⁸ Shoman (2018) 5.

provinces rested upon the controversial principle of *uti possidetis*, from the phrase *uti possidetis, ita possideatis* (as you may possess, so you may possess).⁶⁴⁹ With origins in Republican era Roman law, the principle of *uti possidetis* was used to address property disputes between two parties, and whilst it did not address the final disposition of property, the burden of proof was shifted to the party *not* holding the land.⁶⁵⁰ Therefore, it was a principle of land adjudication that favoured a continued recognition of ownership, by whoever was in *possession*.

Accordingly, *uti possidetis* was employed to determine the size and shape of new States emerging from the decolonisation of Spanish America in the early 1800s,⁶⁵¹ whereby these new States would inherit the internal administrative borders they had held at the time of independence.⁶⁵² The critical date for determining *uti possidetis* for the former Kingdom of Guatemala provinces was set as the year Mexico declared her independence (1821), hence *before* the formation of the UPCA and ensuing hostilities. This meant that the new republics of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica would exist with the external boundaries that had constituted their previous provincial boundaries under Spanish rule. However, although the British settlement in the Bay of Honduras was not a Spanish settlement, Guatemala duly claimed that this territory formed part of the district of Peten, and therefore fell under the former *Captaincy-General* of Guatemala.⁶⁵³

⁶⁴⁹ Menon (1977) 122.

⁶⁵⁰ Steven Ratner, 'Drawing a better line: Uti Possidetis and the borders of new states' (1996) 90 (4) American Journal of International Law 590, 592.

⁶⁵¹ Ibid at 590.

⁶⁵² Ibid.

⁶⁵³ Humphries (1961) 179.

In doing so, Guatemala embarked on a sovereign claim to the territory that has continued to this day. Before countering these claims under the principle of *uti possidetis*, it is necessary make a critical distinction in the principle of *uti possidetis*, that of the distinction between *uti possidetis juris* (legal right of possession through documents acquired in independence), and *uti possidetis de facto* (actual possession of territory).⁶⁵⁴ This distinction emerged due to both emergent States and scholars having a different interpretation as to which form of possession should prevail.⁶⁵⁵ However, adopting either understanding of the term to Guatemala's territorial claim over the British settlement does little to prove that Guatemala inherited any sovereign rights to any of the territory.

In terms of where the British settlement lay territorially, Anglo-British accords covered the area between the Rivers *Hondo* and *Belize*, and later *Hondo* and *Sibun*, (Northern Belize). This area spanned territory within the Captaincy-General of Yucatan and *not* Captaincy-General of Guatemala. Therefore, if applying the principle of *uti possidetis juris*, any potential claim to this territory would seem to favour Mexico and not Guatemala. Alternatively, if applying the principle of *uti possidetis de facto* then the territory was already occupied by the British therefore any Guatemalan claims held no legal basis.⁶⁵⁶ The area between the *Hondo* and *Sibun* does not therefore support any Guatemalan claim under either interpretation of the principle. However, the Anglo-British accords did *not* cover the enlarged area between the Rivers *Sibun* and *Sarstoon* (Southern Belize), which had been the focus of British expansionism.

⁶⁵⁴ Ibid at 180.

⁶⁵⁵ Ratner (1996) 594.

⁶⁵⁶ Humphries (1981) 181.

Seemingly, in the Spanish colonial era, this area *was* considered as falling within the territorial jurisdiction of the Captaincy-General of Guatemala. Therefore, any claim to this territory under the principle of *uti possidetis juris* would seem to favour Guatemala.⁶⁵⁷ However, basing any claim on inherited possession through *documents* acquired at independence was in itself flawed. Southern Belize had no evidence of occupation, administrative control, or any jurisdictional act before 1821.⁶⁵⁸ A distinct lack of reliable information on Spanish controlled territory in Central America⁶⁵⁹ means it is unclear which part of the Spanish Empire in Central America had been responsible for the territory between the Rivers *Hondo* and *Sarstoon*.⁶⁶⁰ Any limits to British settlements described under treaties with Spain had nothing to do with Spain's internal organization of Central America, but were explicitly to do with issues between Britain and Spain,⁶⁶¹ and therefore did not mention within which Captaincy-General any territory fell.

Adopting the principle of *uti possidetis juris* to Guatemalan claims over the area between the *Sibun* and *Sarstoon* was therefore most unconvincing. Adopting the principle of *uti possidetis de facto* to Guatemalan claims over the area between the *Sibun* and *Sarstoon* was also most unconvincing. The British (as throughout their occupation of territory in the Bay of Honduras) had been actively expanding their settlements south of the *Sibun* since the turn of the 19th Century, and well before 1821, therefore if applying *uti possidetis de facto* then the area was occupied by the

⁶⁵⁷ Ibid.

⁶⁵⁸ Ibid.

⁶⁵⁹ Ibid at 180.

⁶⁶⁰ Assad Shoman, *Belize's independence and decolonization in Latin America: Guatemala, Britain, and the UN* (Palgrave Macmillan 2010) 27.

⁶⁶¹ Ibid.

British.⁶⁶² Using this understanding of the principle, the reason therefore that Guatemala could not inherit the territory from Spain, is that Spain had already lost sovereignty of that area through Britain's *adverse possession*.⁶⁶³

Guatemalan claims to the territory between the *Sibun* and *Sarstoon* under *either* legal right of possession through documents, or actual right of possession, were therefore flawed. Instead, it rested entirely on inherited Papal sovereignty over territory Spain had abandoned and neither occupied nor administered. When returning to the origins of the principle and shifting the burden of proof to the party *not* holding the land,⁶⁶⁴ Guatemala's case was unconvincing. In a wider sense, Britain disputed that *any* Central American country could claim title to occupation, possession, or sovereignty over territory that Spain had abandoned *before* the Central American states came into existence.⁶⁶⁵ Spain transferred no rights to the insurgent provinces that formed UPCA, and did not even recognise Guatemala as an independent nation until 1863, over forty years after independence (and one year after Britain officially declared British Honduras a colony).⁶⁶⁶

Although by 1825 Britain had appointed a consul to Guatemala, it maintained at this stage that it was only with Spain, and *not* Guatemala, that Britain could

⁶⁶² Humphries (1961) 180-1. Citing the border dispute that would follow years later between Guatemala and Honduras in 1930, Humphreys notes how The Tribunal of Arbitration concluded that the principle of *uti possidetis* undoubtedly referred to *actual* possession and administrative control of any territory prior to 1821.

⁶⁶³ Adverse possession means that one country holds a piece of land against the wishes or presumed rights of another. See Shoman (2018) 396-7.

⁶⁶⁴ Ratner (1996) 592.

⁶⁶⁵ Humphries (1961) 182.

⁶⁶⁶ *Ibid* at 180-182.

properly entertain the subject of British land tenure in their settlement at the Bay of Honduras. The lack of any attempt at asserting Spanish sovereignty over the region since the Battle of St George in 1798, only added to the confusion. Whilst Guatemalan claims to the territory were certainly unconvincing, although British subjects held *de facto* possession of significant portions of territory between the *Sibun* and *Sarstoon*, Britain remained wary of publicly asserting Crown control over a territory still recognised as being within Spanish sovereignty. In 1817, British authorities ended the practise of land being distributed between the small number of settlers at ‘Public Meetings’, and ruled that all unclaimed lands within the settlement now be vested in the Crown.⁶⁶⁷ Yet Britain was still not ready to flaunt Spanish ‘sovereignty’.

The period between 1832 and 1834 was characterised by Guatemalan concern at the danger Britain posed to the fledgling republic. The land dispute escalated in 1834 when the Guatemalan government purported to make a grant of the entire territory between the *Sibun* and *Sarstoon*.⁶⁶⁸ British representatives responded decisively, and in November 1834 Superintendent Cockburn convened a meeting of judges and magistrates who identified a line bisecting Garbutt’s Falls (present day Cayo) drawn between the *Hondo* and *Sarstoon*, that should provide the western marker to British claims.⁶⁶⁹ Then, in 1837, the British authority in the territory, Superintendent McDonald, made several Crown grants outside the old treaty limits. As such, 1837 is regarded as being the date where effective British sovereignty was

⁶⁶⁷ O. Nigel Bolland and Assad Shoman, *Land in Belize 1765-1871* (No. 6) (Institute of Social and Economic Research UWI 1977) 58.

⁶⁶⁸ *Ibid* at 47.

⁶⁶⁹ Shoman (2018) 8.

exercised outside the old treaty limits,⁶⁷⁰ and as far south as the *Sarstoon* River,⁶⁷¹ the southernmost border of the future colony of British Honduras and State of Belize.

5.2.2 Peoples of the Toledo district in the pre-colonial period:

Identifying the ‘others’

The British settlement in the Bay of Honduras was very different to other colonial ventures in Central America, in that even though it fell under the guise of ‘Papal sovereignty’, it was not colonized and settled by the Spanish in the same way as much of the territory. Accordingly, this period of British settlement was somewhat *pre-colonial*. Where it was no different to any other European colonial venture, lay in the objective of the extraction of materials for the benefit of the mother country. Initially, as outlined in 1763’s Treaty of Paris (Article 17), Great Britain obtained the right to cut, load, and carry away *logwood* unmolested in the Bay of Honduras.⁶⁷² This treaty was significant in detailing that Spanish sovereignty in the territory was at least in part accepted, as well as the entitlement of the British settlement – the trade of logwood. By the end of the 1760s however, the logwood trade had entered a period of sharp decline, and another much sought after resource was providing an attractive alternative to the settlers - *mahogany*.⁶⁷³

The fact that mahogany cutting was not stipulated within the treaty made little difference to the settlers,⁶⁷⁴ and allied with their expansive interpretation of the

⁶⁷⁰ Humphries (1961) 24-25, Bolland and Shoman (1977) 59.

⁶⁷¹ Bolland and Shoman (1977) 48.

⁶⁷² Ibid at 9.

⁶⁷³ Ibid at 11.

⁶⁷⁴ Ibid at 12.

treaties limits of the '*Bay of Honduras*', they made as many inroads into the interior as possible in search of mahogany to fell. The Treaty of Versailles (1783) reaffirmed British rights to cut logwood between the Rivers *Hondo* and *Belize*, however the settlers were already as far south as the *Sibun*. Similarly, when the Convention of London (1786) extended the settlement limits to the *Sibun*, the settlers soon went beyond the boundary.⁶⁷⁵ This pattern of expansionism superseding Anglo-Spanish treaties was a fundamental feature of the British presence in the territory.

The Convention of London (1786) not only affirmed the *Sibun* River as the settlement's southern border, yet it also for the first time granted the English permission to cut *mahogany*,⁶⁷⁶ though as discussed this was already normative practice amongst the settlers. By the time of the 'Battle of St George Quay' in 1798, all Spanish attempts at exerting sovereignty through force or treaty ceased. Essentially, this gave British settlers free reign over the territory, and with the mahogany industry now the *raison d'être* of the settlement, they were required to head farther and farther into the densely forested interior. This in part explains the expansionism, as unlike logwood, mahogany grows in scattered areas farther from the coast, and required a far greater operation (often areas measuring three miles long by eight miles deep).⁶⁷⁷ It was this expansionism, which would bring the settlers into contact with the '*others*.'

As the British had ventured farther and farther into central and north-west Belize (due in part to a steep rise in mahogany demand which from British luxury

⁶⁷⁵ Ibid at 13.

⁶⁷⁶ Convention of London (1786), art 3, in Bolland and Shoman (1977) 128.

⁶⁷⁷ Bolland and Shoman (1977) 17.

furniture companies), they encountered the native Maya. British expansionism westwards deeper into the forest, saw the Maya resist encroachment with intense military action. The 1788 recording of an “*attack of the wild Indians*”⁶⁷⁸ was indicative of the narrative used to describe contact with the Maya at the time. Terms such as “*warlike*”, “*hostile*”, and “*vast hordes*”, were used to describe the Maya in a series of dispatches that also stressed the British military superiority.⁶⁷⁹ As such, the language used was typical colonial rhetoric which at once demonised the peoples whom they encountered, yet stressed their fear of the colonial military, and consequently made their defeat inevitable.

This period is described as the first of four phases of contact between the British and the Maya, with the second phase reported to have begun around 1817, and lasting for around thirty years.⁶⁸⁰ During this second phase, the Maya are reported to have retreated deep into the interior forests and away from contact with the British. Again, colonial rhetoric is used during this period to describe the Maya in a more positive light, once they were no longer threatening British ambitions. For example, an anonymous entry into the British ‘Honduras Almanac’ of 1830, describes the Maya with terms such as “*timid*” and “*inoffensive*”.⁶⁸¹ Here, the language evokes memories of that used by Columbus to describe his impression of the Arawak he encountered on the Greater Antilles, a people who he perceived as no threat to colonial ambitions.

⁶⁷⁸ Journal of Thomas Graham (27th October 1790) C0 123/9 in Bolland (2003) 93.

⁶⁷⁹ Bolland (2003) 100.

⁶⁸⁰ Ibid.

⁶⁸¹ Honduras Almanac (1830) in Bolland (2003) 101.

The first phase Maya narratives are also noteworthy for using language very similar to that used previously to describe the Caribs. Stressing the warlike and antagonistic nature of the Maya clearly marked them out as enemies to British colonial interests in the region, just as the first Spanish (and then British) narratives had identified the Caribs in a similar vein. It was with a certain degree of irony then, that at the same time the British were expanding their mahogany operations around the Bay of Honduras, the ships carrying the exiled '*Black Caribs*' of St Vincent arrived down the coast at Roatan. Colonial dispatches from this period show that the first *official* contact the British had with the Caribs (or *Charibs*), occurred in the territory in 1802. Furthermore, these dispatches reveal two themes that framed British attitudes. First, experiences on the island of St Vincent just five years previously clearly resonate in British minds, as documented in colonial records when describing the views of the British settlement High Constable;

*"...He sees great danger in the presence in this settlement, so far from any assistance, of numerous Charibs, he believes to the number of 150, stating that everyone is aware of the atrocities committed by these people in Grenada, St Vincent etc. ..."*⁶⁸²

This dangerous and warlike identification led the British to ban the '*Charibs*' from entering the British settlement without obtaining a special permit from the British authorities. Meanwhile, even those who had managed to gain rightful employment at logwood or mahogany works were deemed a threat to British interests, as the following dispatches show.

⁶⁸² A Cunningham Esquire to Magistrates, (17 December 1802) in John Alder Burdon, *Archives of British Honduras: From 1801-1840* (Vol. 2) (Sifton, Praed & Company Ltd. 1934) 60.

*“High Constable directed to warn all Charibs who could not produce a permit or a ticket from the Superintendent to quit the settlement in 48 hours...”*⁶⁸³

*“The Magistrates having understood that a number of Charibs have been distributed throughout the settlement and occupied the cutting of mahogany and logwood, and considering their introduction to the interior of the country dangerous to the settlement...”*⁶⁸⁴

Despite being forbidden from entering the British settlement without a permit, contact between the Caribs and the British in what is now Southern Belize occurred from the earliest years of the eighteenth century. Their employment at mahogany works was necessitated by the British abolishment of the slave trade in 1807,⁶⁸⁵ whilst the Carib population around the British settlement in the Bay of Honduras was further augmented by their role in the already discussed revolts in Central America in 1832.⁶⁸⁶ This Carib presence in the region south of the *Sibun* River manifested particularly at settlements such as Stann Creek (now present day Dangriga) and at Punta Gorda, where many remained after the failed insurrections in the UPCA.⁶⁸⁷ By 1835, the Caribs were reported to be maintaining a constant sea traffic between the British settlement and their own settlements to the south, bringing foodstuffs to market such as plantains, maize and poultry.⁶⁸⁸

⁶⁸³ MMB Magistrates Meeting, (11th July 1811) in Burdon (1934) 146.

⁶⁸⁴ MMB Magistrates Meeting, (4th March 1812) in Burdon (1934) 146.

⁶⁸⁵ Gonzalez (1988) 55.

⁶⁸⁶ Ibid at 57-8.

⁶⁸⁷ Ibid at 58.

⁶⁸⁸ Miller to Gladstone, (13 February 1835) Archives of Belize Registry Number 7 in Bolland and Shoman (1977) 54.

Despite this contact with the British it is also clear that the Caribs lived beyond the limits of British administration, maintaining their own systems of land tenure that were only indirectly affected by British settlement during this time.⁶⁸⁹ Although it would be some twenty-five years before official colonisation of the territory, and the boundaries of the Toledo District not even demarcated until 1882,⁶⁹⁰ as discussed 1837 marked the beginning of official Crown land grants outside the old treaty limits, and in the far southern region now known as the Toledo district. *Figure D2* shows a map of one of the earliest grants (for a mahogany works) surveyed in 1837, for a plot of land on the north bank of the *Moho* River, south-west of the present-day Toledo State capital of Punta Gorda.

⁶⁸⁹ Bolland and Shoman (1977) 55

⁶⁹⁰ Joel Wainwright, 'The Colonial origins of the State in Southern Belize' (2015) 43 *Historical Geography* 122, 125

Figure D2 is evidence that while the colonial blind spot of what now constitutes Southern Belize was “*a political space which did not exist*”⁶⁹² to European powers, other peoples had established their own settlements on the territory. Undoubtedly, sites such as (at this stage undiscovered) the ruins of *Lubantuun* and *Nim Li Punit* in the Toledo district, are evidence of the Maya’s ancient occupation of Southern Belize.⁶⁹³ Furthermore, in the modern *pre-colonial* period a group of Caribs had already settled present day Punta Gorda when the first Crown land grants were issued (1837). Furthermore, this was several decades before international agreements would recognise the borders of the British colony. When considering the territory that was to become the part of the colony of British Honduras and future nation State of Belize, Carib, or *Garifuna*, priority in time in what is now Belize’s Toledo district in the pre-colonial period is undeniable.

5.3 Establishing a British colony (1837-1930)

5.3.1 Facilitating British sovereignty: External and internal developments

The issue of successor State sovereignty within the understanding of *uti possidetis* was mired under a series of subjective interpretations as to who could claim rightful control over the territory. This only increased the urgency for Britain to see the borders officially recognised and the territory declared as a British colony. To do so, Britain would have to reach agreement with three key emergent regional powers. As potential successor States via Central American independence, as well as being

⁶⁹² Joel Wainwright, *Decolonising Development: Colonial Power and The Maya* (Wiley Blackwell 2011) 44.

⁶⁹³ Richard M. Leventhal ‘The development of a regional tradition in Southern Belize’ in Elin Danien and Robert Sharer (eds.), *New theories on the ancient Maya Volume 77* (UPenn 1992) 145, 146.

direct neighbours, Mexico and Guatemala would play a critical role in negotiations to the territory achieving British colonial status.⁶⁹⁴ The third country that would play a key role in any agreement was the region's emerging superpower – the United States of America.

Although Britain would not officially recognise Guatemala for some years,⁶⁹⁵ the land grants made by the fledgling Republic to a Captain Galinado in 1834 encompassing all of the land south of the Sibun, certainly spurred Britain into affirmative action.⁶⁹⁶ As discussed, the issuing of Crown grants as far south as the Sarstoon in 1837 was a major statement in terms of exerting official Crown control over the territory. Yet the issue of sovereignty remained particularly complex, with Britain maintaining (at least officially) that Spain remained the sovereign power in the territory as late as 1845.⁶⁹⁷ Furthermore, such brinkmanship was not to be limited to relations between Britain and the emergent Spanish successor States.

In 1849, Nicaragua granted the United States the right to build an inter-oceanic canal across Nicaragua. In addition to the maintained territory at the settlement in the Bay of Honduras, the British also maintained territory on the Mosquito Shore (between Honduras and Nicaragua). Consequently, the British were reluctant to see any American encroachment on that land, whilst also warning the new Central

⁶⁹⁴ A Treaty of Friendship, Commerce, and Navigation was agreed between Britain and Mexico in 1826. Whilst the treaty did not assert either British or Mexican sovereignty, it outlined the rights of the British subjects within the settlement to enjoy the same rights as they had enjoyed under the treaties with Spain. See Humphries (1961) 27-28.

⁶⁹⁵ Britain appointed a consul to the UPCA in 1825. The UPCA dissolved in 1839 and in 1845 Britain and Guatemala entered into a Treaty of Friendship, Commerce and Navigation. See Shoman (2018) 6-14.

⁶⁹⁶ See official dispatches in Burdon (1934) 356-358.

⁶⁹⁷ Shoman (2018) 8.

American nations that they would resist any of their own attempts at encroachment.⁶⁹⁸

In 1850, Britain and the U.S duly signed the *Clayton-Bulwer* treaty, with both countries agreeing not to colonise or occupy any part of Central America.⁶⁹⁹ Crucially however, they agreed that this did not apply to any dependencies in the British settlement in the Bay of Honduras or to the islands in the immediate neighbourhood. Britain however took the ambiguity too far in American eyes,⁷⁰⁰ and in 1852 colonised Roatan (the island where the Caribs landed after their Vincentian exile) as well as five other islands in the Bay of Honduras.

This action angered the United States greatly, and relations between the two countries deteriorated significantly until the signing of the *Dallas-Clarendon* treaty in 1856.⁷⁰¹ The terms of this treaty stipulated that Britain should return the Bay Islands to Honduras (which it did), and in return the United States recognised that the mainland territory was indeed a British settlement.⁷⁰² The treaty is notable for two further points. First, it stipulated that Britain should settle boundary disputes with Guatemala within two years. Second, though there is acceptance that the territory was a British settlement there was no acceptance of any British *sovereignty*. Ultimately, the treaty was mired in the subjective and differing interpretations of Britain and the

⁶⁹⁸ Shoman (2010) 28.

⁶⁹⁹ Ibid at 29. See also, Clayton-Bulwer treaty (1850) available at <https://www.oas.org/sap/peacefund/belizeandguatemala/timelinedocuments/TheClayton-BulwerTreaty-English.pdf> accessed 15 September 2018.

⁷⁰⁰ The Bay Islands off the coast of Honduras (Roatan being the largest) are significantly larger islands than those off the coastline of present day Belize, and hence the British settlement in the Bay of Honduras at that time. The British opportunism in the ambiguity of what constituted islands ‘in the immediate neighbourhood, and hence colonising larger islands significantly farther along the coast, is what angered America.

⁷⁰¹ Although never ratified, both countries adhered to the agreements stipulated within the Dallas-Clarendon treaty. See Shoman (2018) 13.

⁷⁰² Shoman (2010) 29.

U.S.A, which has been mirrored in the differing interpretations that scholars have taken in the ensuing years since the treaty was agreed.

For example, Menon notes that whilst the U.S.A saw the treaty as declaring that neither side would exercise dominion over any part of Central America, Britain contended that she was already in possession of the settlement by the time the treaty was signed, and therefore the settlement should be exempt from consideration. The author notes how conversely the USA pointed to the 1783 and 1786 logging concessions from Spain as evidence that Britain had no sovereign claim to their settlement and the territory in question belonged in fact to either Guatemala or Mexico.⁷⁰³ Shoman meanwhile does not speculate that America maintained such a strong position, merely acknowledging the American recognition of the mainland territory being a British settlement.⁷⁰⁴

What *was* clear was that in order to conclusively settle the boundaries and status of the territory, Britain was now required to deal with Guatemala directly.⁷⁰⁵ Crucially, when Guatemala discovered that the Dallas-Clarendon treaty listed the *Sarstoon* as the British settlement's southern border,⁷⁰⁶ it accepted this for two reasons. First, the fledgling Republic feared that the British woodcutters would expand further into the forests of the Peten district. Second, the actions of American filibusters in the region worried Guatemala enough that they were prepared not to challenge the decision, provided they could secure British protection against any

⁷⁰³ Menon (1977) 123-126.

⁷⁰⁴ Shoman (2010) 29.

⁷⁰⁵ Menon (1977) 126.

⁷⁰⁶ Dallas-Clarendon treaty (1856), Separate Articles (art 2.2), available at <https://www.oas.org/sap/peacefund/belizeandguatemala/historicDocs/Dallas-ClarendonTreaty%201856.pdf> accessed 15 September 2018.

potential threat by such mercenaries. Accordingly, the Guatemalan minister in Paris was sent to London, and in 1857, proposed a treaty in which Guatemala relinquished the territory between the *Hondo* and *Sarstoon* including the entire coast and adjacent islands.⁷⁰⁷

However, the Guatemalan minister (Francisco Martin) asked by way of compensation that the British provide a guarantee to protect Guatemala against the actions of mercenaries or bandits. Britain refused to offer any form of compensation, and furthermore, word reached the Guatemalan Foreign Minister (Pedro Aycienna) from Martin that Britain was urging that the boundary treaty be settled as quickly as possible to avoid potential further incursions. Britain, wary of the fact that the U.S.A was awaiting conclusion to the Central American issue, had the British representative (a man named Wyke) press on with negotiations.⁷⁰⁸ The resulting 1859 Anglo-Guatemalan treaty was to prove (perhaps predictably) both highly contested as well as being remarkably short (only eight articles).⁷⁰⁹

The treaty finally outlined the borders as being those the British had insisted they had occupied since the 1820s,⁷¹⁰ and was ratified on 12th September 1859.

However, the inclusion of the now notorious article 7 ensured that what was supposed

⁷⁰⁷ Shoman (2018) 14.

⁷⁰⁸ Ibid at 15.

⁷⁰⁹ Menon (1977) 126. See also, Anglo-Guatemalan Treaty (1859) available at <https://www.oas.org/sap/peacefund/belizeandguatemala/timelinedocuments/1889TreatyGuatemalaAndBelize.pdf> accessed 15 September 2018.

⁷¹⁰ Article 1 explicitly details the borders between the Republic of Guatemala and the British settlement and possessions in the Bay of Honduras. Notably the boundaries proposed are a significant extension on those listed in any agreement between Spain and Britain in the 1783-86 accords. These borders are detailed as spanning from the rivers Hondo-Sarstoon as opposed to the original Anglo-Spanish accords of the Hondo-Belize/Sibun, meaning that for the first time the whole of present day Southern Belize was included in an international agreement.

to be the conclusion of the dispute over the territory, merely ushered in a new point of contention, which has continued until the present day.⁷¹¹ The British Foreign Office had been clear that the treaty must in no way appear to be a cession of territory by Guatemala. Doing so would be in breach of the Clayton-Bulwer and Dallas-Clarendon treaties, signed to prevent any further colonization of Central America.⁷¹²

However, Wyke not only feared that Britain had potentially encroached on Guatemalan territory, but also believed that Guatemala would want compensation. Wyke therefore made up an additional article – article 7 – and inserted it into the treaty whilst he was in Guatemala.⁷¹³ Seemingly, Wyke had explained to his superiors the previous month that Guatemala considered that there had been encroachment on their territory and would demand compensation. Furthermore, Wyke himself believed that Britain had no legal right beyond actual possession to the territory between the *Sibun* and *Sarstoon*.⁷¹⁴ His solution was to offer British aid in the construction of a cart road that was to ensure the continued friendly relations between the two countries and fuel the facilitation of trade. The construction of the road was stated as being planned for;

*“The fittest place on the Atlantic Coast near the settlement of Belize and the capital of Guatemala.”*⁷¹⁵

⁷¹¹ Shoman (2018) 16.

⁷¹² Shoman (2010) 30.

⁷¹³ Shoman (2018) 17.

⁷¹⁴ Ibid.

⁷¹⁵ Anglo-Guatemalan treaty (1859), art 7.

Despite what must have been an embarrassing episode for the British government, publicly at least, they maintained that they had no problem with the inclusion of article 7. Yet the doubts held by Wyke as to British incursions on Guatemalan territory were mirrored by admissions from Aycienna that neither Spain, nor Guatemala, had either occupied or administered the area between the *Sibun* and *Sarstoon*.⁷¹⁶ Furthermore, he was also particularly concerned about potential filibusters, and the possibility that the British may even abandon the settlement, and leave behind;

*“A motley crew of irresponsible adventurers and pirates”*⁷¹⁷

Crucially, the fact that the road proposal was only included *after* Britain and Guatemala had agreed the boundaries, suggests that article 7 was not at first a major factor.⁷¹⁸ The joint survey of the boundary as per the treaty began in November 1860 and by May 1861 (when the British team were told to cease their survey) several markers had been agreed, notably the boundary marker at the south-west corner (Gracias a Dios Falls). Additionally, with regard to the Sarstoon River, as the current was identified as passing to the *south* of the island in the river, this therefore meant that the island belonged to “Her Britannic Majesty”, and by extension Britain.⁷¹⁹

However, the underestimation of the cost of the cart road that was the subject of article 7 precipitated a dilemma for British authorities who were also concerned that the road may be harmful to the British settlement. The superintendent of the

⁷¹⁶ Shoman (2018) 18.

⁷¹⁷ Shoman (2010) 30.

⁷¹⁸ Ibid.

⁷¹⁹ Shoman (2018) 20.

British settlement, one Franck Seymour, admitted that failure to repudiate the treaty might damage British claims to sovereignty over the territory, as Britain would be in breach of the treaty. However, he countered this by conversely admitting that the payment of a large sum of money may raise the suspicion of America, and the provisions of the Clayton-Bulwer agreement.⁷²⁰ This represented something of a stalemate for Britain with the potential to anger either Guatemala or the United States depending on whichever decision they reached.

Nevertheless, negotiations continued, and in 1863 a supplementary convention was agreed resulting in Britain asking Parliament for a sum of £50,000 to complete the agreement.⁷²¹ However, by this time Guatemala had embarked on a financially ruinous war with El Salvador and could not ratify the convention within the required six-month period. When they were finally ready to ratify in 1865 Britain had no interest, and proclaimed that the convention had lapsed and that it was the fault of the Guatemalan government.⁷²² Enraged, Guatemala claimed that the treaty was a treaty of cession, masquerading in language ensuring Britain would not be seen to be in breach the Clayton-Bulwer treaty of 1850. They claimed that article 7 was compensation for the cession of territory, which now reverted back to Guatemala due to Britain's failure to comply with the terms.⁷²³

Yet by this time British brinkmanship over the territory had prevailed, as in 1862 the British settlement was officially declared as a colony governed from

⁷²⁰ Shoman (2010) 30.

⁷²¹ Ibid at 32.

⁷²² Ibid.

⁷²³ Ibid at 33.

Jamaica, before being formally awarded British Crown colony status in 1871.⁷²⁴

Between 1863 and the 1880s, Guatemala unsuccessfully pressed Britain into re-opening the issue on numerous occasions, but it would not be until 1929 when commissioners from both countries inspected the markers laid during the survey of 1860-1 and replaced them with concrete monuments.⁷²⁵ Yet this seemingly positive development between the two countries would prove to be merely another false dawn. British brinkmanship had won the day in terms of establishing the colony of British Honduras, but Guatemalan contestation to what it perceived to be Britain's obligations was far from over.

Internally, Britain had introduced numerous policies to govern the territory since the first exercising of effective Crown sovereignty in the 1830s. The full range of policies are too numerous for extensive discussion within the context of this thesis, yet control over land and peoples was the primary concern. The British settlement in the Bay of Honduras, later the colony of British Honduras, was from the outset characterised by the fact that a very small percentage of the population maintained control over territory and peoples.⁷²⁶ The fact that the Central American republics, including neighbouring Guatemala, had abolished slavery in 1824 resulted in large numbers of runaway slaves leaving the British settlement and fleeing to neighbouring countries or to the interior.⁷²⁷ Furthermore, as all forms of slavery and apprenticeship

⁷²⁴ Menon (1977) 128.

⁷²⁵ Shoman (2018) 23.

⁷²⁶ The census of 1816 revealed that of a total population of 3824, only 149 were white (less than 4%). By the time of the 1835 census, the population had actually *fallen* to 2543. See Burdon (1934) 88-89. Statistics from the 1816 census estimated that a mere 3% of the population owned 37% of the slaves in the territory. In 1835 meanwhile, 3% of the population owned 40% of the *apprenticed labourers*. See Bolland and Shoman (1977) 50.

⁷²⁷ *Ibid* at 62.

under British dominion neared their full abolition in 1838,⁷²⁸ this left landowners in the colony particularly vulnerable to losing labour.

On the 12th November 1838, the Colonial Office issued a circular in which it directed that all grants of land, which had previously been gratuitous, were now only to be issued upon receipt of payment of £1 per acre.⁷²⁹ Doing so ensured that those recently emancipated would be unable to apply for land grants, as they had earned no/little money whilst enslaved/apprenticed. Such a decision facilitated the continued land monopoly. Additionally, a system of labour laws and practises was introduced. Central to this premise was the practise of paying wages in *advance*. As the hiring period for mahogany works was during the congregation period in Belize City during the Christmas holidays, hired workers often spent most of their wages celebrating the Christmas season in Belize City. Therefore, when workers got deep into the forest to begin work they were forced to pay the exorbitant prices of the forest stores for the clothing and supplies they desperately needed,⁷³⁰ resulting in them becoming indebted and/or tied to their jobs.

After the first grants of land were made in 1837, the £1 per acre tariff introduced the following year meant that no Crown land at all was sold until 1855.⁷³¹ This intermediary period saw significant changes. In 1854, the first settlement Constitution was passed, and in 1855 as Crown land began to be sold, the “*Laws in*

⁷²⁸ On August 1st 1834, slavery was conclusively abolished in British colonies via an Act of Parliament, which came into effect having been passed the preceding year. However, slavery was replaced by a system known as the ‘apprenticeship’ scheme, under which ‘apprentices’ could earn wages in an occupation of their choice, but only *after* giving forty hours of unpaid labour per week to their masters. ‘Apprenticeship’ itself was abolished on August 1st, 1838. See Bolland & Shoman (1977) 58.

⁷²⁹ Ibid at 59.

⁷³⁰ Ibid at 63.

⁷³¹ Ibid at 60.

Force Act” was introduced. This act gave retrospective legitimacy to ownership of land under location laws prior to 1817,⁷³² meaning all land distributed amongst the settlers prior to Crown control was protected. The result of these policies, was that by 1871, almost all privately owned land in the colony was held by the British Honduras Company, Young Toledo & Company, and a handful of other mostly foreign-based companies.⁷³³ This resulted in not only these great landowners holding enormous power in the colony, but also that the vast majority of the population (the non-white population), were almost totally excluded from ownership of the land.⁷³⁴

This was to have particular resonance for those non-white peoples who had managed to live relatively independently, and outside of British administrative control. At particular risk were the Carib settlements south of the Sibun, which had continued growing at a steady rate since the early 1800s. For example, *Carib-town* (formerly Stann Creek, present day Dangriga), is reported as having a Carib population of one thousand people by 1841.⁷³⁵ Meanwhile, the Carib settlement at Punta Gorda was described as consisting of around five hundred inhabitants, and possessing a wealth of tropical vegetation, at around the same time.⁷³⁶ Despite the fact that these Carib settlements had been established by their communities decades

⁷³² Ibid at 72.

⁷³³ Ibid at 93.

⁷³⁴ Ibid.

⁷³⁵ O. Nigel Bolland, *The formation of a colonial society: Belize, from conquest to crown colony* (Doctoral dissertation, University of Hull 1975) 132.

⁷³⁶ John L. Stephens and Frederick Catherwood, *Incidents of Travel in Central America, Chiapas and Yucatan* (2 volumes) (first published by Harper & Brothers 1841) (1969) 27-28.

earlier, it did not accord them the same rights as those white settlers when the Laws in Force Act was introduced in 1855.

For example, in 1857 the Caribs of Stann Creek (present day Dangriga) were issued the notice that they must apply for leases on the land they already inhabited. Whilst it was stated that those present inhabitants did not have to take out a lease, it warned that if they left without having obtained one, then property would revert to the Crown. The reason given by the Crown surveyor of the time was that “*it was generally known that the Caribs are of a very nomadic disposition*” and that in imposing the rents “*we will by this measure attract near Belize a valuable body of labourers.*”⁷³⁷ The latter comment is notable, as again the intention was to secure labour. The Caribs caused serious disturbances over the imposition of rents, and as a result they were not enforced until 1879.⁷³⁸

Meanwhile, to the north of the colony, the Caste War in the Yucatan peninsula of Mexico ensured that large numbers of both Maya and Mestizos crossed the border into the north and west of the territory, resulting in the population of the colony doubling.⁷³⁹ This coincided with what has been described as the third phase of Maya identification, which was contradicted by the positive potential of the Maya acting as wage labourers, versus their increasing aversion to the mahogany trade, and British

⁷³⁷ Faber to Seymour, (21st October 1857) Archives of Belize Record 58 in Bolland and Shoman (1977) 91.

⁷³⁸ Joseph Palacio, Carlson Tuttle, and Judith Lumb, *Garifuna Continuity in Land: Barranco Settlement and Land Use 1862 to 2000* (Producciones de la Hamaca 2001) 27.

⁷³⁹ Bolland (2003) 196.

presence in general.⁷⁴⁰ After establishing control over the land and labour sources, the British now introduced policies to control the native people.⁷⁴¹

The 1830-40s, had seen the idea of *Trusteeship* enjoy powerful resonance in the British Colonial Office.⁷⁴² After the formation of the 1836 Aborigines Protection Society, a Parliamentary Committee followed soon after in order to formulate measures to secure protection, civilization, justice, and Christianisation for native peoples.⁷⁴³ Introducing the *Alcalde Jurisdiction Act, 1858*, was one such measure. A Spanish colonial institution that originated in the town council, and which survived through to the independence period in Mexico and Guatemala ⁷⁴⁴ across Spanish America Alcaldes were traditional military heads as well as judicial and administrative officers at the village level. Their role included land control, and dispute resolution.⁷⁴⁵ By introducing the *Alcalde Act*, the British hoped that colonial rule might effectively extend to rural areas where it would be embodied within village leaders and elders. Similarly, the use of Alcaldes gave the Maya themselves a foil against a more direct form of colonial control.⁷⁴⁶

⁷⁴⁰ Ibid at 101.

⁷⁴¹ The last significant attack on the colony is recorded as being that led by Marcus Canul leader of the Icaiche Maya, who died attacking a mahogany camp at New River in 1872. See Bolland (2003) 130.

⁷⁴² Indigenous integration within colonial societies was facilitated through *Trusteeship doctrines* which were policies created by colonial powers that cast non-European peoples and their ways as inferior and proposed to bring them to conformity with European 'standards'. For example, Britain was regarded a world leader at the time in creating processes whereby the social and cultural patterns of native peoples under her dominion, would be brought in line with her own. See Anghie (2007) 55, Anaya (2004) 31-2.

⁷⁴³ See Bolland (2003) 128.

⁷⁴⁴ Ibid.

⁷⁴⁵ Ibid.

⁷⁴⁶ Ibid at 126.

Interestingly the British implemented the *Alcalde Act* within both Maya *and* Carib communities. By introducing it, the British formalised a hierarchy of power within Carib communities that had not been present in any formalised sense since they settled across Central America. This was because Garifuna authority had been limited to times of warfare, representing a broader lack of hierarchy within Island Carib society, a phenomenon that infuriated Europeans.⁷⁴⁷ This *Alcalde* system has survived in Maya villages to the present day, where villagers continue to vote for their nominated representative, and continued in Garifuna villages until as recently as 1969.⁷⁴⁸ Implementing this system is evidence of the British intention to approach Maya and Carib political organisation in the *same* light.

This *Alcalde Act* was supplemented with a control over the ability of these peoples to purchase land in the colony. In 1868, the British Governor discussed the idea of *reserves* for the native populations in an official dispatch. The reserve system was introduced on 14th December 1872 within a Crown lands ordinance. The ordinance states that wherever either an Indian or Carib settlement has already been made, that land shall be reserved for their use, and permits shall be issued to their *Alcaldes or Headmen*.⁷⁴⁹ The ordinance also stresses that all permits are to be given on the proviso that the land will at no time be sold or leased without the written consent of the Colonial Secretary. However no reserves were actually created, and

⁷⁴⁷ Ibid at 91.

⁷⁴⁸ Mark Moburg, 'Continuity under colonial rule: the *alcalde* system and the Garifuna in Belize, 1858-1969' in Palacio (2005) 93.

⁷⁴⁹ See Crown Lands Ordinance Act 35Y1872 (1872) Lands Ordinance 3412, Belize Archives and Records Service. Accessed 12th July 2016.

after the Carib disturbances in Stann Creek, the act was repealed in 1879. A further ordinance was issued in 1886, again permitting their creation.⁷⁵⁰

The later part of the century eventually saw the obstacles to poorer people owning property lifted in 1883, in a (failed) effort to move the colony towards plantation agriculture.⁷⁵¹ Yet the early restrictions placed on Maya and Caribs from acquiring freehold titles, had been influenced by their potential to be used as sources of wage labour.⁷⁵² It is also a further example of the British intention to approach Maya and Caribs in the same light, this time with regard to land. These policies were implemented alongside religion and church, which were central to integrating native peoples within a colonial society that established its first Catholic church in 1851, and became a Catholic bishopric five years later.⁷⁵³ Cumulatively, these policies and the ones discussed earlier facilitated a white (largely absentee) monopoly over land (and peoples) in the newly established colony of British Honduras, which would endure for decades.

5.3.2 Peoples of the Toledo district in the colonial period:

‘Integrating’ the others

If the colony of British Honduras was characterised from the outset by the fact that a very small percentage of the population maintained control over territory and peoples, then the land now constituting the Toledo district remained something of an enigma. The census of 1861, which recorded the population of Punta Gorda as having

⁷⁵⁰ Palacio (2001) 29.

⁷⁵¹ Ibid.

⁷⁵² Bolland and Shoman (1977) 90.

⁷⁵³ Ibid at 197.

a mere 306 inhabitants,⁷⁵⁴ does not begin to give an accurate representation of the peoples in the district. John Stephens, on his travels to Punta Gorda over twenty years earlier in a work first published in 1841, suggested that Punta Gorda was a settlement of around 500 Caribs alone,⁷⁵⁵ a figure that was qualified in colonial dispatches in 1884, over twenty years *after* the census of 1861.⁷⁵⁶ This disparity signifies that either the British refused to recognise the Caribs as worthy of inclusion in their 1861 census, or (implausibly) somehow forgot to include them in their official figures.

Whichever outcome is true, Toledo was a land populated with peoples who fell *beyond* colonial gaze and control. As discussed, 1837 marked the date when the British had begun to exert sovereign control over the boundaries which would go on to constitute the colony, and later country. However, the first decades after that time signify a distinct lack of control or clarity on the ground. Indeed, the boundaries of the Toledo District were not even demarcated until 1882,⁷⁵⁷ almost *fifty* years later, with the first magistrate Francis Orgill appointed that same year. There is a sparsity of official documentation on what occurred in the region between these periods, but one certainty is that the British administration attempted to attract non-white Confederate soldiers from southern States defeated in the American civil war.⁷⁵⁸

⁷⁵⁴ See 1861 Census in John Alder Burdon, *Archives of British Honduras: From 1841-1884 (Vol. 3)* (Sifton, Praed & Company, Limited 1934) 238.

⁷⁵⁵ Stephens (1841) 27-8.

⁷⁵⁶ CO 123/174/132 (1884) Cultivation of Northern District and General Report on Southern District in Wainwright (2015) 132.

⁷⁵⁷ Wainwright (2015) 125.

⁷⁵⁸ Bolland and Shoman (1977) 87.

Many of these ex-soldiers moved on to Guatemala or Honduras, or returned to the USA, in part due to their refusal to pay the land prices, which by 1867 was being offered to them in the settlement of British Honduras for \$2.50 per acre.⁷⁵⁹ However, Young, Toledo & Company sold large areas of land to the ex-soldiers at vastly reduced rates, with the result being that some Confederates stayed and formed the “*Toledo settlement*”,⁷⁶⁰ which remains to this day just several kilometres north of Punta Gorda. This name *Toledo* came from Phillip Toledo, who invested in the Confederate estate, and from where the wider District takes its name.⁷⁶¹ The sale of lands to Confederates in the Punta Gorda locale motivated the Jesuit Father Jean Genon to write to British Governor Longden in 1868, and express his concern that the Caribs there would soon be left landless.⁷⁶²

As will be discussed later in this section, the threat posed by the Confederate soldiers to the Carib settlement actually precipitated a chain of events that would secure Carib land in Punta Gorda. Furthermore, the Confederate presence was also the spur for the arrival of another of the peoples now synonymous with the Toledo District. Although their number was decimated by a cholera epidemic, those Confederates that remained planted sugar estates yet struggled to attract either the coastal Caribs or rural Maya as sources of labour.⁷⁶³

⁷⁵⁹ Ibid.

⁷⁶⁰ Ibid at 88.

⁷⁶¹ Wainwright (2015) 129.

⁷⁶² Palacio et al (2001) 51.

⁷⁶³ Wainwright (2015) 129.

Accordingly, the Confederates went to the British for assistance, who in turn enabled the importation of labourers from India. The descendants of those labourers are now recognised as East Indians, or colloquially as *Coolies*,⁷⁶⁴ and continue to form a significant part of the population of Toledo to the present day. In addition to importing the East Indian labourers, the Confederates asked the colonial governor if one of their number could be deputized, to enable them to discipline their employees with the force of law.

As natural allies to the Confederates in terms of race, language and capitalist ambitions,⁷⁶⁵ the governor not only supported their application for labour, but also supported their desire for the appointment of a district magistrate. The Confederate soldiers therefore not only increased the ethnic heterogeneity of the region, but also provided the spur for the British to create the position of district magistrate in Toledo in 1882.⁷⁶⁶ The Toledo settlement prospered until around 1890 before falling into a permanent decline from a combination of turbulent markets and a desire of many Confederates to return to the mainland U.S, influenced in part by their racism towards the peoples they were forced to live in close proximity with.⁷⁶⁷ However, their legacy in transforming the Toledo district remains undisputed.

The appointment of a magistrate in Toledo resulted in some administrative and architectural changes to the territory, such as the already mentioned demarcation of

⁷⁶⁴ Ibid. The term East Indian is the legacy of the colonial distinction which was used to differentiate the West Indies (Americas) from the East Indies (Asia). It should also be noted the term *Coolie* is not associated with East Indian people in a strong prejudicial sense.

⁷⁶⁵ Ibid.

⁷⁶⁶ Ibid at 129-30.

⁷⁶⁷ Ibid at 130.

district boundaries in the same year, and the declaration of Punta Gorda as the State capital in 1895.⁷⁶⁸ However, State penetration into the heavily forested interior of the district was rare, and as such, the Maya remained largely hidden from view until the end of the 19th Century, with maps drawn pre-1900 describing Toledo as *unexplored*.⁷⁶⁹ In 1895 for the first time, a governor visited the largest (remaining to this day) Toledo Maya village of San Antonio. Following this visit, State officials would return to the largest villages every couple of years to produce reports for HM Government, yet State officials rarely left the principal settlement at Belize City.⁷⁷⁰

Although the Maya had clearly lived in the territory of Toledo before the arrival of the British, their number had for varying reasons (including Spanish slaving raids),⁷⁷¹ retreated farther into the interior and into neighbouring Republics. However, during the 1870s and 1880s, the flight of landless Maya peasants from Guatemala into Southern Belize led to the establishment of the present day communities of Aguacate and Pueblo Viejo. This influx ensured that by the 1880s, 1500 Kekchi, Mopan, and Manche Chol speaking Maya lived in the Toledo district.⁷⁷² Many Kekchi migrants obtained work with a family called *Cramer*. Bernard Cramer had acquired his lands from the colonial State, who became the largest landowner in Southern Belize in 1881 when the giant Young, Toledo & Company went bankrupt.⁷⁷³ Around 1891, Cramer's

⁷⁶⁸ Ibid at 131.

⁷⁶⁹ Ibid at 126.

⁷⁷⁰ Ibid.

⁷⁷¹ Ibid at 126-128.

⁷⁷² Wainwright (2011) 44.

⁷⁷³ Ibid at 48.

son Herman established what was to become the largest agricultural estate in Southern Belize.⁷⁷⁴

The estate was located between the southern boundary of the Sarstoon River and the settlement of Punta Gorda. This stretch of far southern coastline had also seen the establishment of the Carib village of Barranco (Red Cliff or *Baranco Colorado* in Spanish).⁷⁷⁵ The origins of Barranco can be traced to the early 1860s, when it was settled by first and second- generation Caribs to be born to the 1797 exiles from St Vincent.⁷⁷⁶ The first *recorded* birth in the settlement is dated 1862 (the year of British colonisation), and the first *recorded* marriage in 1865.⁷⁷⁷ However, the first British attempts to integrate the village within the colonial structure did not occur until 1892, when the first village survey was completed. A map of the survey is still available at the Belize Archives and Records Service.⁷⁷⁸ The map is evidence of the colonial method of dealing with forms of settlement irregular to them, as lot lines to British specifications were literally drawn through existing homesteads.

The consequences of this imposition of colonial ideals on Barranco is discussed in detail in the seminal work of Dr Joseph Palacio, who expertly traces the village from inception to 21st century.⁷⁷⁹ This of course led to the imposition of rents on Barranco villagers, as had been the case in Stann Creek earlier in the century.

⁷⁷⁴ Ibid.

⁷⁷⁵ Palacio et al (2001) 45.

⁷⁷⁶ Ibid at 46.

⁷⁷⁷ Ibid at 232-235.

⁷⁷⁸ Plan of Barranco village (1892) Map Draw 4 282, Belize Archives and Records Service. Accessed 13th July 2016.

⁷⁷⁹ Palacio et al (2001)

Furthermore, colonial documents from the early twentieth century illustrate the confusion regarding the legal status of the land on which Barranco was established. In a colonial dispatch some *thirteen* years after the first survey of Barranco was conducted,⁷⁸⁰ the question as to whether Barranco was located on Crown lands or on the lands of the Cramer estate is still being discussed. Although Barranco was confirmed as being on Crown lands, such dispatches highlight the confusion from colonial officials when discussing the legal status of land in the remote south.

The situation in the south, where the State was finding ungoverned (and previously unknown) peoples, made the need for reservations and Alcaldes all the more pertinent, with both policies key to territorialisation and fixing of the colony's boundaries.⁷⁸¹ Yet by 1888, despite the fact three *Indian* reservations had been proposed across the colony (the southern reservation was to be at the village of San Antonio, Toledo), their implementation into the colonial land structure was delayed by questions as to whether the Maya would pay land taxes, and whether any of the three were actually *within* the colony boundaries.⁷⁸² Each reservation was a territorial space set aside for the Maya on the borders of the colony, in a place selected to both minimise conflict with the Maya, and help define the colony's external boundaries.⁷⁸³ Yet the Maya refusal to settle in one place meant that until the 1930s (when the process of creating reservations ceased), the British response was to create new reservations whenever they found Maya communities.⁷⁸⁴

⁷⁸⁰ Reserve at the back of Barranco (1905) Land Minute Papers 1-1350-1905, Belize Archives and Records Service. Accessed 13th July 2016.

⁷⁸¹ Wainwright (2011) 53.

⁷⁸² Ibid at 54-55.

⁷⁸³ Ibid.

In Punta Gorda, a plan of the proposed Carib *reserve* was drawn in 1868, the year Father Genon had expressed his concern over the Caribs losing land.⁷⁸⁵ The exact details of what transpired over the next sixty years will remain open to considerable debate, yet first hand archival work in both the Belize Archives and Records Service, Belmopan and the British Archives, Kew will hopefully contribute additional perspectives to a story which has become part of Garifuna lore. It begins in 1881 when one Jose Maria Nunez, a Carib planter from Punta Gorda, purchased land from Young, Toledo & Company, who were facing bankruptcy.⁷⁸⁶ Nunez died on 9th September 1888, and was reported to have done so intestate and without heirs.⁷⁸⁷

A suitable place to pick up the story is when mention of a Carib *reserve* at Punta Gorda is made in colonial documents, dated in 1916. The documents frame a conversation whereby a request is being made by the Surveyor General to the Colonial Secretary to consider applications made to lease land in the reserve, yet stressing that the “*Caribs do not approve as they require the land to cut sticks and poles for their houses.*”⁷⁸⁸ The same paper contains a memo dated the next month with the notice that the Carib reserve “*should not be interfered with.*”⁷⁸⁹ In documents dated between 1921 and 1924, the story begins to gain more clarity. It begins with a dispatch dated 26th February 1921, requesting that the Crown vindicate certain lands at Punta

⁷⁸⁴ Ibid.

⁷⁸⁵ Plan of Carib reserve at Punta Gorda (1868) Cabinet 1 Map Drawer 3 #276, Belize Archives and Records Service. Accessed 13th July 2016.

⁷⁸⁶ Jose Maria Nunez land title (4 October 1881) Land Titles Register, Belize Archives and Records Service. Accessed 13th July 2016.

⁷⁸⁷ British Honduras Gazette (27 May 1922) 221, Belize Archives and Records Service. Accessed 13th July 2016.

⁷⁸⁸ Application to lease land in Carib reserve (27 November 1916) General Minute Paper 3692/1916, Belize Archives and Records Service. Accessed 13th July 2016.

⁷⁸⁹ Ibid.

Gorda.⁷⁹⁰ It goes on to detail how Jose Maria Nunez purchased the land in question on 4th October 1881, on behalf of around one hundred Caribs.

The dispatch states that Nunez made a will on August 28th 1888, passing the deeds of the land to his cousin (Mr Lopez Nunez), who had been nominated by the Caribs as their head, and four Caribs witnessed this.⁷⁹¹ The dispatch goes on to detail how Jose Maria Nunez died on 9th September 1888, and Lopez Nunez who inherited the deeds died on October 10th 1903. The dispatch states that Jose Maria Nunez expressly told Lopez Nunez *not* to hand the deed to his sons, and that the Caribs were to have the land after his death.⁷⁹² However, it states that in 1912 one of Jose Maria Nunez's sons got hold of the deeds and began renting the land to non-Caribs. Furthermore, the dispatch records that a statutory declaration on behalf of a Carib named Ambrosio Avilez, had been sent to the colonial government outlining the facts and asking for a Court decision to declare the Caribs as the owners of the land.⁷⁹³

The dispatch concludes by stating that Jose Maria Nunez made a general will, yet as it only dealt with real estate probate (and not the land in question), Messrs Franco & Ellis - the solicitors acting on behalf of the Caribs - have advised that it is void for uncertainty. The dispatch concludes by requesting that the lands be vindicated and re-granted to the Caribs and their descendants.⁷⁹⁴ The reply on 18th April 1921 from the British Secretary of State for the Colonies (Winston Churchill), stresses that

⁷⁹⁰ Crown vindication of lands at Punta Gorda (26 February 1921) CO 123/305/49, British National Archives. Accessed 6th January 2017.

⁷⁹¹ Ibid.

⁷⁹² Ibid.

⁷⁹³ Ibid.

⁷⁹⁴ Ibid.

under law it is a very difficult case, yet if there are no heirs to either Jose Maria or Lopez Nunez, then there may be grounds for the Crown to have title to the land under *escheat*.⁷⁹⁵ This process sees the reverting of property for which there is no owner, back to the State.⁷⁹⁶ What transpired from this suggestion was an unlikely partnership between the Caribs of Punta Gorda and colonial authorities, which resulted in the eventual return of the land to the Caribs.

On 21st May 1921, Attorney General Herbert Dunk responded to Mr Churchill, agreeing that due to the complexity of the case, escheat proceedings should begin as soon as possible, and the land returned to the Caribs.⁷⁹⁷ In October 1921, a writ of summons appeared in the British Honduras Gazette stating the said property was to return to the Crown under escheat, and that anybody with claims to the property should do so within three months.⁷⁹⁸ In May 1922, a further notice in the British Honduras Gazette stated as there had been no claims in the three months the said land had been escheated to the Crown.⁷⁹⁹ In the same month, papers detailed that Messrs Michael Daniels and Ambrosio Avilez, had been appointed trustees for all Caribs born in Punta Gorda.⁸⁰⁰

⁷⁹⁵ Ibid.

⁷⁹⁶ Merriam Webster, 'Escheat' (n.d.) available at <https://www.merriam-webster.com/dictionary/escheat> Accessed 21 September 2018.

⁷⁹⁷ Crown vindication of Crown Lands at Punta Gorda (16 May 1921) Land Minute Papers 87/1921, Belize Archives and Records Service. Accessed 17th July 2016.

⁷⁹⁸ British Honduras Gazette (CO 127/19) (19 October 1921) 394, British National Archives. Accessed 6th January 2017.

⁷⁹⁹ British Honduras Gazette (1922).

⁸⁰⁰ Land Minute Papers 87/1921 (16 May 1922).

Then in August 1922, a crown ordinance was issued providing for the surrender and abolition of rights at the Carib *reserve* at Punta Gorda, and those who did would be offered compensatory land elsewhere.⁸⁰¹ The Caribs had been informed that it would take twelve months from the date of judgement before anything further could be done. There is some discrepancy on the dates within the correspondence between 1922 and 1923,⁸⁰² yet proceedings were eventually completed on 27th November 1924, when a fiat for the land was granted to Messrs Avilez and Daniels on behalf of the Caribs.⁸⁰³ An accompanying declaration of trust was logged with Messrs Franco & Ellis, extensively detailing all Carib persons and their relatives who may benefit from the land.⁸⁰⁴ Attached to the document is a map showing 960 acres of land that the fiat represents.

The true story behind what happened in the years when the land fell out of the hands of the Caribs may never be known yet certain aspects of this story are particularly noteworthy. First, the actions of the Caribs, particularly Messrs Avilez and Daniels, were critical in seeing their land returned to them. Second, the actions of the British actually played a crucial role in seeing the land returned. The escheat proceedings and corresponding notices in the British Honduras Gazette had the objective of seeing the land restored to the Crown before it could be *legally* passed back to the Caribs. The confusion surrounding actual possession made this process

⁸⁰¹ Crown ordinance regarding Carib reserve (19 August 1922) Ordinance 2325 Act 28Y1922, Belize Archives and Records Service. Accessed 17th July 2016.

⁸⁰² Land Minute Papers 87/1921.

⁸⁰³ Governors Fiat Grant #31 (27 November 1924), Belize Archives and Records Service. Accessed 17th July 2016.

⁸⁰⁴ I am indebted to a participant in Punta Gorda for providing a copy of the trust as it was not attached to the fiat in the Archives.

necessary. Third, is the issue of whether the land Nunez bought is the same land being referred to in dispatches as the *Carib reserve*.

It seems highly questionable that the 1916 requests to lease out parts of the Punta Gorda *reserve*, and the Crown ordinance of 1922 ordering the abolition of any rights to the *reserve*, were talking about an entirely different piece of land. Furthermore, the map detailing the 960 acres on the land grant fiat, and the map of the reserve on the back of the 1916 request to lease the land are extremely similar. Bearing in mind the confusion surrounding the legal status of the land it is certainly possible to suggest authorities interpreted it to be *reserve* land. Perhaps the most telling sign (literally) is the existing signage on the Southern Highway leading out of Punta Gorda signalling the turnoff for the *Carib reserve*.⁸⁰⁵ This road in fact leads to the land Nunez bought, now known as the St Vincent block or Cerro. The road sign remains to this day and a picture of it is available in *Figure E5*.

Possibly the most astonishing aspect of the story regarding the St Vincent Block, aside from the efforts of those Caribs involved and the assistance from the British Crown, is that the regained land established a unique form of property which continues to be used by the Garifuna to this day. Whilst the purchase of the land integrated the owners within the colonial structure of private property, the shared ownership established it as a unique form of property in both the colonial and post-colonial State. This unique story receives further attention in the following chapter, as the St Vincent Block was a key site for ethnographic fieldwork. In the colonial period, it acts as a further example of the contestation and confusion British authorities

⁸⁰⁵ Amandala, 'J.C Arzu makes a strong Peini statement' (16 April 2014) available at <http://amandala.com.bz/news/j-c-arzu-strong-peini-statement/> accessed 15 September 2018.

encountered when attempting to regulate land ownership with the existence of other peoples.

Although between 1880 and 1930 a wide range of produce was exported from Toledo, there had been almost no local capital accumulation and no tax revenue collected from the land and timber monopolies (and absentee landlords) operating in the district. Accordingly, there is scant evidence in either the local colonial records or on the landscape of any investment in rural Toledo.⁸⁰⁶ State institutions were small in comparison to other parts of the country and ran huge deficits. For example, between 1914 and 1920 the mean average revenue for these institutions was a mere \$6,689 BZD whilst expenses were \$18,373, meaning Toledo was running at a mean average annual deficit of \$11,484.⁸⁰⁷ It would not be until the 1940s that State institutions were firmly in place in the district.⁸⁰⁸

The Toledo district in the colonial era can therefore be categorised as a remote outpost of the colony of British Honduras where institutions remained weak well into the twentieth century.⁸⁰⁹ This was accentuated by the poor reputation that the colony had as one of Britain's unhealthiest (the first magistrate of Toledo died of illness shortly after his appointment),⁸¹⁰ which in turn ensured that it was a district which was largely avoided by the British.⁸¹¹ However, the presence of peoples such as the Maya, Caribs, and East Indians, ensured that some reconciliation was needed when trying to

⁸⁰⁶ Wainwright (2011) 48.

⁸⁰⁷ Ibid.

⁸⁰⁸ Wainwright (2015) 125.

⁸⁰⁹ Wainwright (2011) 48.

⁸¹⁰ Wainwright (2015) 131.

⁸¹¹ Ibid.

accommodate peoples alien to British land and cultural patterns within the colonial structure.

It has been written how Toledo appears as “*if God had shaken the earth and everything that did not fit into some space had spilled into this small pocket.*”⁸¹²

Whether it be the East Indians brought in as indentured labourers by Confederates enticed by land, the coastal Caribs who had settled in the district as war refugees, or the Kekchi and Mopan Maya who were resettling ancestral homelands after centuries of dispossession, Toledo became home to numerous peoples other than the British.⁸¹³

It has also been written that these peoples “*dusted themselves down and made the best of it.*”⁸¹⁴ Accordingly, when the worlds of ‘other’ peoples collided with British ambitions in a remote colonial outpost, competing claims and geographies, mysteries and misunderstandings, were inevitable.

5.4 Establishing an independent country (1930-2016)

5.4.1 The decolonisation of British Honduras/Belize

Although still some fifty years before independence, internal events in the 1930s were a pivotal springboard towards decolonisation. First, the Great Depression shattered the global economy, before on September 10th, 1931 the worst hurricane in the history of the colony killed over one thousand people and destroyed at least three quarters of the housing.⁸¹⁵ The British response to this was regarded as particularly

⁸¹² Ranguy Bismark and Kathryn Staiano-Ross, *Tales from a forgotten place* (No. 23. Dept. of Anthropology University of Kansas 2003) 7, in Wainwright (2015) 133-134.

⁸¹³ Ibid.

⁸¹⁴ Ibid.

⁸¹⁵ Bolland (1986) 31.

poor, which coupled with the labour and political conditions in the colony, resulted in an intense and sustained period of protest.⁸¹⁶ Examples of the horrendous conditions included the *Masters and Servants Act of 1883*, making any breach of contract by a labourer a criminal offence punishable by twenty-eight days of hard labour,⁸¹⁷ and the fact that the working class were unable to vote. The result of this was that in the 1936 election from a population now standing at 56,000, the electorate comprised of only 1,035 people,⁸¹⁸ or about 1.8%.

The decade has therefore been described as the crucible of modern Belizean politics, when centuries of authoritarian colonial relations and exploitative labour conditions were challenged and replaced by political and industrial processes offering representation to *all* classes in society.⁸¹⁹ This period of protest played out against a backdrop of wider regional tension, with sporadic protests against the conditions imposed by colonialism sweeping the British Caribbean territories throughout the 1930s.⁸²⁰ Furthermore, some within the tiny minority allowed to take part in electoral politics within the colony had designs on a more representative government, and crucially, in placing the needs of the many over the few. One of these was a man named George Price, one of several graduates of St John's College who won control

⁸¹⁶ Ibid at 34.

⁸¹⁷ Ibid.

⁸¹⁸ Ibid at 106.

⁸¹⁹ Ibid at 36.

⁸²⁰ Shoman (2010) 36.

of Belize City Council in 1947, and used the *Belize Billboard* publication to critique colonial policies, including the idea of the British West India Federation.⁸²¹

Just two years later the moment seen as *the* decisive rallying point for political awareness in the colony occurred on December 31st, 1949, when the British Governor used his reserve powers to devalue the Belizean dollar.⁸²² The response was swift and co-ordinated. A *People's Committee* formed in response to the devaluation, and a memo was sent to the King over what was deemed to be colonial exploitation.⁸²³ In September 1950, this committee became the People's United Party (PUP), which in November won elections to the Belize City Council after campaigning under the banner of self-government and universal suffrage for all Belizeans. Despite facing colonial harassment, including imprisonment of its leaders and accusations of supporting Guatemala in their longstanding territorial claim for British Honduras, the PUP rose to the forefront of internal affairs in the colony throughout the next decade.⁸²⁴

The constitutional amendment of universal adult suffrage was introduced in 1954, and the PUP swept to victory in the General Elections. Finally, in 1964, the inevitable happened with the introduction of the new constitution and the beginning of full internal self-government for the colony of British Honduras. The Constitution created a bicameral legislative – the National Assembly, which consisted of a House of Representatives (18 elected members) and a Senate (8 nominated members). The

⁸²¹ The British West Indies Federation was a proposed mechanism for Britain to effectively deny its West Indian colonies the opportunity for decolonisation. Instead of decolonisation, the proposal centred on creating one big colony out of several small ones. See Shoman (2010) 36.

⁸²² Bolland (1986) 114-115.

⁸²³ Shoman (2010) 37.

⁸²⁴ *Ibid* at 39-43.

Governor (as the Queen's representative) appointed a Premier, the member of the House of Representatives deemed best able to command majority support, who would then appoint his cabinet.⁸²⁵ George Price, now leader of the PUP, duly became Premier.

This rapid pace of internal change in the colony was mirrored by significant change externally. The UN post-war period facilitated a global human rights agenda, with global decolonisation a primary objective. As a result, the colony of British Honduras would have the advantage of staking their claim for independence during a period in history when both the UN and the '3rd World' were at the height of their influence.⁸²⁶ However, the foundations for this decolonisation movement had actually been laid some decades earlier. Although ill fated in its ability to prevent a resumption of global hostilities in the form of World War II, the *League of Nations* organisation has been credited as being pivotal in helping to lay the foundations of modern international law that exist to this day.⁸²⁷

Notably, the *League* is recognised as paving the way for international human rights through the establishment of its mandate system. Within the mandate system the European Allies administered the colonies of defeated World War I countries so that some form of minority protection would be enforced.⁸²⁸ Despite receiving significant

⁸²⁵ Shoman (2010) 108.

⁸²⁶ Shoman (2010) XVI.

⁸²⁷ Shaw (2004) 31.

⁸²⁸ Ibid.

criticism,⁸²⁹ the mandate system has been recognised as a pioneering step in the movement to end colonialism.⁸³⁰ In distinguishing between stages of development,⁸³¹ the system was essentially a mechanism for grading territories in their ability to achieve *self-determination*.⁸³² However, although mandates first expressed the notion of *trusteeship* towards overseas territories, this was limited solely to former Ottoman and German territories. It would not be until the cession of World War II, and the *League*'s demise, that the successor organisation of the UN would expand the principle of trusteeship.

Emerging from a tumultuous period in global history, the UN Charter contained numerous articles devoted to colonial matters.⁸³³ The mandate system employed within the League ultimately became the model for the *Trust* territory and *Non-self-governing* territory systems that became central to chapters XI, XII and XIII

⁸²⁹ Article 22 of the Covenant describes those States that were affixed mandates, as being not yet ready for full independence, and of their development as peoples being a “*sacred trust of civilisation*”. This language is indicative of the Eurocentric doctrines of *Trusteeship* discussed previously, which cast native peoples as ‘inferior’. See Covenant of the League of Nations, (adopted 29 April 1919), art 22, available at http://avalon.law.yale.edu/20th_century/leagcov.asp. Furthermore, the mandate system is the result of a political compromise between allied countries who wanted no further annexations of foreign lands (such as the USA), and allied countries that desired them (such as Australia in the case of German colonies in the Pacific). The latter group are evidence that colonialism was still desired by some countries. See Summers (2013) 183.

⁸³⁰ Nele Matz, ‘Civilization and the Mandate System under the League of Nations as Origin of Trusteeship’ 9 (1) Max Planck Yearbook of United Nations Law (UN 2005) 47, 55.

⁸³¹ In territories where independence was foreseeable, such as the former territories of the Ottoman Empire, a class A mandate was affixed. Those territories considered less developed and with less chance of becoming imminently independent, such as the former German colonies in Africa, were awarded a class B mandate. Finally, the political compromise between the allied countries saw a final category of mandate awarded. Those territories that received class C mandates, such as South West Africa and the Pacific Islands, were to be administered by successor States such as South Africa and Australia. Officially, this was due to any combination of factors such as sparseness or remoteness, yet with the condition that safeguards for their indigenous peoples were made. See Summers (2013) 183-184.

⁸³² Matz (2005) 55.

⁸³³ Rupert Emerson, *From empire to nation: the rise to self-assertion pf Asian and African peoples* (HUP 1962) 35.

of the UN Charter.⁸³⁴ However, as stated these systems were also a significant development from the mandate system employed by the League,⁸³⁵ as the UN Charter contained *two* forms of trusteeship, which between them placed all colonial territories under the trusteeship principle.⁸³⁶ Chapters XII/XIII (*Trust*) includes territories that were already under mandate, territories that had become detached from enemy States during World War II, as well as territories voluntarily placed under the system by States responsible for their administration.⁸³⁷ This in itself was an extension of those former Ottoman and German territories placed under mandate by the *League*.

Furthermore, at Britain's insistence the separate chapter XI (*Declaration regarding non-self-governing territories*)⁸³⁸ covered *other* colonial territories. British Honduras was included in the list of NSGs added by Great Britain,⁸³⁹ in a move that Guatemala objected.⁸⁴⁰ Chapter XI lists the responsibilities of UN member States that administered overseas territories with regard to matters of; economic, social and educational advancement, development of self-government, further international peace and security, promote development, and to make regular communications to the UN Secretary-General regarding conditions in the territories.⁸⁴¹ The point regarding

⁸³⁴ Francis B. Sayre, 'Legal Problems Arising from the United Nations Trusteeship System' (1948) 42 (2) *American Journal of International Law* 263, 265.

⁸³⁵ *Ibid* at 265-6.

⁸³⁶ Summers (2013) 199.

⁸³⁷ UN Charter, Chapter XII, art 77.

⁸³⁸ Summers (2013) 199.

⁸³⁹ UNGA, *Transmission of information under Article 73e of the Charter* (adopted December 1946, A/RES/66 (I) available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/66\(I\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/66(I)) accessed 16 September 2018.

⁸⁴⁰ James Crawford, *The creation of states in international law* (OUP 2006) 608.

⁸⁴¹ UN Charter, Chapter XI.

communications was particularly pertinent, as it facilitated access to the way in which colonial powers operated in overseas territories for the first time to other members of the international community.⁸⁴²

Meanwhile, chapters XII and XIII of the UN Charter set out the parameters for the *Trust* territory system, which extends beyond the limited language of chapter XI.⁸⁴³ One such area of expansion in chapters XII/XIII is the objective of development towards self-government or *independence*, whereas chapter XI *only* mentions self-government.⁸⁴⁴ Consequently, this expanded international trusteeship system within the UN Charter aimed to protect the well-being of their populations, and progressively develop territories towards self-government.⁸⁴⁵ However, a clear distinction occurred within the system between NSGs such as British Honduras, specifically listed by Britain in the supplementary article 73a, and the wider collection of overseas *Trust* territories covered by chapters XII/III, predominantly composed of previous mandate territories (post WWI) and those recently detached (WWII) as a result of hostilities.

As mentioned earlier, the principle of self-determination in the age of decolonisation had a very simplistic meaning, that alien or colonial rule should give way to the rule of previously colonized people.⁸⁴⁶ This wave of decolonisation that swept the globe in the immediate post-war period swelled first in Asia and continued into the Middle East and Africa, ensuring that a host of new States were added to the growing family of States within the UN in the years immediately following the end of

⁸⁴² Emerson (1962) 35.

⁸⁴³ Emerson (1962) 309.

⁸⁴⁴ UN Charter, Chapter XII, art 76b, Chapter XI, art 73b.

⁸⁴⁵ Summers (2013) 199.

⁸⁴⁶ Emerson (1964) 25.

the 2nd World War.⁸⁴⁷ In December 1960, the *Declaration on the granting of independence to colonial countries and peoples* (Colonial Declaration) or UNGA resolution 1514, was adopted by the UN General Assembly⁸⁴⁸ in conjunction with UNGA resolution 1541 (the options for self-determination).⁸⁴⁹ The adoption of this resolution marked an important step in the evolution from trusteeship to the right to self-determination.⁸⁵⁰ Therefore, resolution 1514 has been interpreted in certain quarters as a legally binding embodiment of the UN Charter.⁸⁵¹

Despite this liberation, the decolonisation process has drawn significant criticism and contestation on numerous levels. For example, in a wider sense the trusteeship system (and earlier mandate system of the League of Nations) was an extension of Europe's role of gatekeeper to the rest of the world, in that it was only through the co-operation of European States that territories were empowered towards self-determination. A second criticism in the decolonisation movement that followed was the fact that it was a European model of Statehood that continued to be recognised as the legitimate form of government in the international arena.⁸⁵²

⁸⁴⁷ Emerson (1962) 296-8.

⁸⁴⁸ UNGA, *Declaration on the granting of independence to colonial countries and peoples* (adopted 14 December 1960) A/RES/1514(XV) available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514(XV)) accessed 15 September 2018.

⁸⁴⁹ UNGA, *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter* (adopted 15 December 1960), A/RES/1541 available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1541\(XV\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1541(XV)) accessed 15 September 2018.

⁸⁵⁰ See inter alia, ICJ Namibia (SW Africa) Advisory Opinion (1971), paras 52, 53. Within the opinion it is noted how resolution 1514 is a development on the mandate and trusteeships systems dedicated to the *sacred trust of civilisation*. The ultimate objective of that *sacred trust*, was recognised by the Court as being self-determination and eventual independence. Available at <https://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-00-EN.pdf> accessed 16 September 2018.

⁸⁵¹ Malcolm Shaw, *Title to territory in Africa: international legal issues* (OUP 1986) 77.

⁸⁵² Martti Koskenniemi, *The gentle civilizer of nations: the rise and fall of international law 1870–1960* (Vol. 14) (CUP 2001) 174-5.

Accordingly, this left little space for any alternative vision of indigenous political organisation that may have accompanied decolonisation.⁸⁵³

Furthermore, contestation was always likely to arise on a host of additional levels depending on regional particularities. The disputed territory of Palestine, the divided peoples of Nigeria and Sudan, and tribal peoples in areas not yet brought within *any* State territory as such, are all examples of contestation when trying to order peoples within national State lines.⁸⁵⁴ A closer inspection of the seven principles included within resolution 1514 reveal a further potential source of contestation when considering the territory in question. The resolution was particularly notable in its intention to balance the principle of self-determination for all peoples (principle II) and that of the national unity and territorial integrity of countries (principle VII).⁸⁵⁵

The wording of the resolution therefore resulted in a considerable amount of ambiguity, notably in differing takes on what the definition of a *country* was.⁸⁵⁶ Essentially the resolution was intended to be a transition of power within the *existing* political framework and territory of colonial States, hence the desire to see self-determination occur whilst maintaining territorial integrity. However, certain States naturally argued that resolution 1514 supported expanded frontiers.⁸⁵⁷ For example, Britain's inclusion of British Honduras as a non-self-governing territory was rejected by Guatemala due to their own continued sovereign claims.⁸⁵⁸ These claims centred

⁸⁵³ Ibid at 176.

⁸⁵⁴ Emerson (1962) 298.

⁸⁵⁵ Summers (2013) 205.

⁸⁵⁶ Ibid at 206.

⁸⁵⁷ Ibid.

⁸⁵⁸ Crawford (2006) 608.

on the re-integration of pre-colonial territory based on the pre-colonial boundaries, which would allow Guatemala to reintegrate Belize within its own borders.⁸⁵⁹ Guatemala now argued that resolution 1514 supported expanded frontiers, and attempted (unsuccessfully) to have a paragraph inserted enabling States to recover national territory.⁸⁶⁰

Regarding Belize's independence movement, detailing the passage of complex negotiations between self-government for Belize in 1964 and eventual independence in 1981 is not possible within this thesis. The full story of how a fledgling self-governing colony negotiated its way to independence with the support of the UN is remarkable in itself.⁸⁶¹ Principally, it was remarkable due to the positions of the other three negotiating parties. In a general sense, as outlined above, the post 1945 era saw a distinct change in Guatemalan ambitions and attitudes. The Republic was no longer interested in a cart road, and convinced that they had been duped by Britain, and with significant support in Latin America, Guatemala now fixated on territory.⁸⁶²

The USA shared a close relationship with Guatemala, with the latter acting as a training ground for the Cuban Bay of Pigs invasion.⁸⁶³ Therefore, when talks between Britain and Guatemala resumed in the 1960s, Britain acceded to Guatemala's request that the U.S.A act as mediator.⁸⁶⁴ For the U.S.A, the desire was for Guatemala

⁸⁵⁹ Samuel K. N. Blay, 'Self-determination versus territorial integrity in decolonization' (1986) 18 NYUJ Int'l L. & Pol. 441, 443-445.

⁸⁶⁰ Summers (2013) 206-7.

⁸⁶¹ Shoman (2010) and Shoman (2018) are the authoritative works on Belize's decolonisation and Guatemala's claim to Belize.

⁸⁶² Shoman (2018) 24-7.

⁸⁶³ Shoman (2010) 47.

⁸⁶⁴ Shoman (2018) 57-63.

to be appeased and that Belize *not* fall into communist hands as a fledgling nation State.⁸⁶⁵ Finally, Britain was by this stage far less interested in British Honduras than it had been in the pre-war years, and was eager to cut ties with the colony.⁸⁶⁶ As the decolonization of British Caribbean territories manifested in the 1960s,⁸⁶⁷ Britain was now prepared to consider what it had never before – some form of territorial adjustment.⁸⁶⁸

The period was notable for frequent deteriorations in relations between Britain and Guatemala resulting in credible military threats from Guatemala, such as the 1972 plot to invade British Honduras that saw 3000 British army and naval service personnel arriving in the colony.⁸⁶⁹ Indeed as the 70s progressed, there would be at least three credible military threats regarding a potential Guatemalan invasion.⁸⁷⁰ Conversely, Belizean international diplomacy was in the ascendancy. The colony was renamed *Belize* through an act of colonial legislature in 1973,⁸⁷¹ and become a member of both CARIFTA in 1971 (Caribbean Free Trade Association), and CARICOM in 1974 (the Caribbean Community). Such moves are evidence that Belize was enjoying functional independence if not formal legal recognition.

⁸⁶⁵ Shoman (2010) 48.

⁸⁶⁶ Britain's overall displeasure and "embarrassment" regarding British Honduras is perhaps best summed up in CO 1031/3690 (Undated, but likely March/April 1962) in Shoman (2018) 54.

⁸⁶⁷ Shoman (2010) 110.

⁸⁶⁸ Throughout negotiations over the next two decades, Britain mooted territorial adjustment within internal correspondence, in meetings with Belizean representatives, and privately negotiated with Guatemala regarding how much territory should be the price of a settlement. See Shoman (2018) 158.

⁸⁶⁹ Thomas M. Franck and Paul Hoffman, 'The Right to Self-Determination in Very Small Places' (1975) 8 NYUJ Int'l L. & Pol. 331, 363.

⁸⁷⁰ Shoman (2018) 192.

⁸⁷¹ Menon (1979) 1.

Furthermore, this period is notable for a marked escalation in calls for Belizean self-determination, in both the UNGA and Security Council. These calls were particularly vociferous amongst countries of the Anglophone Caribbean.⁸⁷² In 1975, Britain mooted the possibility with the resilient George Price that a slice of territory including the villages south of Toledo's Moho River (including Barranco and numerous Maya villages), be partitioned in order to reach a settlement. Yet Price absolutely refused to consider land cession or going to independence without a British defence guarantee.⁸⁷³ Knowing Britain was eager for decolonisation, Price remained steadfast, and later that year the independence process began in earnest.

The *UN Fourth Committee* played a vital role in paving the way for decisions at the General Assembly. Also known as the *Special Political and Decolonization Committee*, it was established to deal with matters specifically regarding decolonisation.⁸⁷⁴ Between 1975 and 1980 a series of resolutions were passed at the UN urging continued negotiations between the parties, with the objective of seeing Belize achieve independence at the earliest possible juncture,⁸⁷⁵ a notion that saw increasing support in both the 4th Committee and General Assembly voting.⁸⁷⁶ *Figure*

⁸⁷² Franck and Hoffman (1975) 364-365.

⁸⁷³ Shoman (2018) 102-105.

⁸⁷⁴ UNGA, 'Fourth Committee' (n.d.) available at <http://www.un.org/en/ga/fourth/> accessed 16 September 2018.

⁸⁷⁵ See UNGA A/RES/3432(XXX) (adopted 8 December 1975), A/RES/31/50 (adopted 1 December 1976), A/RES/32/32 (adopted 28 November 1977), A/RES/33/36 (adopted 13 December 1978), A/RES/34/38 (adopted 21 November 1979) and A/RES/35/20 (adopted 11 November 1980). All available at <http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html> accessed 16 September 2018.

⁸⁷⁶ Critical to this wave of support was the swing in the position of Latin American countries and the OAS member States in general. Having previously sympathised with the Guatemalan position by famously calling Belize a *territory occupied by a foreign power* in 1948, the OAS changed its opinion, in 1977 calling for the self-determination and territorial integrity of Belize, and in 1979 overturning its former ruling, and now regarding Belize as a *colonial possession in the Americas*. Also critical was the increasing number of new States attaining independence themselves. See Shoman (2018) 145, 192 Shoman (2010) 119.

D3 outlines the key amendments to these UNGA resolutions between 1975-9, whilst *Figure D4* outlines the key points of UNGA Res. A/RES/35/20, which saw a hardening of the language in the resolution.

Figure D3: Amendments to UNGA resolutions regarding Belizean independence

(1975-1979)

UNGA Res. (Year)	Key elements of resolution	Key amendments to resolution objectives from previous year
A/RES/3432(XXX) (1975)	<ul style="list-style-type: none"> Notes the input of the Special Committee and requests they continue to examine the Belizean question. Reaffirms UNGA Res. 1514 (1960) and the assurance of the UK to adhere to it. Convinced #1514 applies to Belize and Belizean self determination Belizean territorial integrity must be preserved. Regrets the difference in positions of the UK and Guatemala and considers differences should be resolved in consultation with Government of Belize 	
A/RES/31/50 (1976)	<ul style="list-style-type: none"> As previous year, with the note that negotiations have not resulted in obstacles to independence removed 	<ul style="list-style-type: none"> <i>Reaffirms right of Belizean self-determination with territorial integrity, and calls for early independence</i>
A/RES/32/32 (1977)	<ul style="list-style-type: none"> As previous year, with the note of concern that obstacles to independence have not been removed, and convinced that the Belizean people should be assisted 	<ul style="list-style-type: none"> <i>Refrain from any threats against Belize or territory</i> <i>Urges States to respect Belizean self-determination</i> <i>Requests the Special Committee to assist the people of Belize</i>
A/RES/33/36 (1978)	<ul style="list-style-type: none"> As previous year, with the reiteration that people of Belize should be assisted in their quest for self-determination, independence and territorial integrity 	<ul style="list-style-type: none"> <i>Urges the UK, Guatemala and Belize to settle their differences</i> <i>Recognises the responsibility of the United Kingdom</i>
A/RES/34/38 (1979)	<ul style="list-style-type: none"> As previous year, with the recognition of the special responsibility of the United Kingdom 	<ul style="list-style-type: none"> <i>Reaffirms the inalienable right of people of Belize to self-determination, independence and territorial integrity</i> <i>Urges the UK, Guatemala and Belize to continue negotiations</i>

Figure D4: Amendments to UNGA Res. A/RES/35/20 (1980)

UNGA Resolution (Year)	Key amendments to resolution objectives from previous year
35/20 (1980)	<ul style="list-style-type: none"> - <i>Convinced that any UK-Guatemalan differences do not derogate Belizean rights</i> - <i>Urges all States to render practical assistance necessary for the secure, early exercise of the right of the people of Belize to self-determination, independence and territorial integrity</i> - <i>Declares that Belize should be an independent country before the 36th session of the General Assembly</i> - <i>Calls upon the UK government to convene a constitutional conference to prepare for Belizean independence</i> - <i>Calls upon the UK to ensure security and territorial integrity of Belize</i> - <i>Requests UN organs to take action</i> - <i>Welcomes the Government of Belize to apply for UN membership</i>

In an effort to find a solution, one final round of talks began in February 1981 that came to be known as the “Head of Agreement (H.O.A)” or “Lancaster House Solution.”⁸⁷⁷ Guatemalan attentions now switched to the Ranguana and Sapodilla Cays off the coast of Southern Belize,⁸⁷⁸ with Guatemala’s requests for a permanent lease and full militarisation of the cays amongst the proposals rejected by the Belizean delegation.⁸⁷⁹ With talks deadlocked, the British implored both sides to settle for a H.O.A. document, which in essence was merely a list of points to be worked on. The idea of a lease was replaced with a statement that Guatemala should have use and enjoyment of the cays and rights in those adjacent areas of the Sea as may be agreed.⁸⁸⁰

⁸⁷⁷ Shoman (2010) 172.

⁸⁷⁸ Ibid at 173.

⁸⁷⁹ Ibid at 174.

⁸⁸⁰ Amandala, ‘Head of Agreement’ (1 September 2015) available at <http://amandala.com.bz/news/heads-agreement/> accessed 18 September 2018.

As the 36th meeting of the UN drew ever closer, George Price addressed the Belizean people in July 1981 to state independence had been set for September 21st 1981.⁸⁸¹ The day before the independence ceremony Guatemala closed its consulate in Belize City, denounced Britain for stripping Guatemala of its territory, and stated its intention to continue to fight for its territory peacefully, and using international law to do so.⁸⁸² The independence ceremony duly took place on September 21st 1981, and on September 25th 1981, Belize was accepted as the 156th member of the UN in UNGA Res. 36/3, which briefly summarised that;

*“Having received the recommendation of the Security Council of 23rd September 1981 that Belize should be admitted to membership of the United Nations. Having considered the application for membership of Belize. Decides to admit Belize to membership of the United Nations.”*⁸⁸³

In taking the position it did over Belize, the UN essentially offered their opinion on the relationship between paragraphs two and six of UN Declaration 1514 (Declaration on Granting of Independence to Colonial Countries and Peoples).⁸⁸⁴ In doing so, the UN ruled that the right all people have to be self-determining (Article 2) was in *this case* considered to be a stronger case than the Guatemalan claim for territory (Article 6). Guatemala protested that an indiscriminate application of self-

⁸⁸¹ Shoman (2010) 185.

⁸⁸² Ibid.

⁸⁸³ UNGA, *Admission of Belize to membership in the United Nations* (adopted 25 September 1981) A/RES/36/3 available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/36/3 accessed 21 September 2018.

⁸⁸⁴ A/RES/1514(XV), specifically paras 2 and 6. Available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514(XV)) accessed 15 September 2018.

determination would be incompatible with a State's territorial integrity.⁸⁸⁵ The UN's position is not to say that self-determination *categorically* overrides territorial integrity, yet in this case it was deemed that self-determination *contingently* overrides Guatemala's territorial integrity claim, which the UN declared was unconvincing.⁸⁸⁶

In the formative decades since the former logging settlement achieved sovereign independence, two constants have remained with regard to Guatemala. The first is that as in both the pre-colonial and colonial periods, Guatemala has maintained its territorial claim. The second is that Guatemalan claims to Belize have always stood to have a significant effect on the peoples of the Toledo district, many of whom, as has been discussed, are indigenous. At various times throughout negotiations Toledo (and by extension its peoples) was mooted as being potential territory to be ceded to Guatemala.⁸⁸⁷ Both of these factors are discussed in further detail within the remaining pages of this thesis. Additionally, in the immediate post-independence years, a further layer of geographical contestation was soon to engulf Toledo and the fledgling State of Belize.

5.4.2 Peoples of the Toledo district in the post-colonial era: Empowering the 'others'

The political transformation in the colony that manifested in the 1930s was mirrored somewhat by an industrial transformation. For example, although the mahogany trade had entered a permanent depression as early as the 1850s,⁸⁸⁸ forest

⁸⁸⁵ Summers (2013) 223.

⁸⁸⁶ J. Robert Maguire, 'Decolonization of Belize: Self-Determination v. Territorial Integrity' (1981) 22 Va. J. Int'l L. 849, 874.

⁸⁸⁷ Shoman (2018) 102-5.

⁸⁸⁸ Bolland (1986) 74-5.

products such as mahogany, chicle and lumber still accounted for 85% of the colony's exports at the beginning of the 1950s.⁸⁸⁹ However, the establishment of a small sugar factory in Corozal in 1937 expanded into Orange Walk in the 1960s through British company Tate & Lyle (known in Belize as Belize Sugar Industries Ltd.).⁸⁹⁰ This sugar production in the north of the country, allied with citrus production in the Stann Creek district in the centre, ensured that by 1959 sugar and citrus exceeded forest products as exports for the first time.⁸⁹¹ Indeed, sugar grew to the extent that by 1983 it accounted for 54% of Belize's exports.⁸⁹²

These political and industrial transformations were accompanied by a territorial transformation. The breaking of the export monopoly on forest products was followed by one on land ownership, albeit this took slightly longer as despite the industrial diversification, land monopolisation had actually *increased* in the mid-twentieth century. In 1927, 6% of landowners held 97% of all freehold title in Belize, yet by 1971, just 3% held 94% of all freehold title. Additionally, over 90% of this land was held by foreign, 'absentee landlords',⁸⁹³ such as the 42% held by the Belize Estate Production Company (BEPC, formerly British Honduras Company).

Self-governance in the colony now meant such companies were forced to pay the land tax they had avoided for so long. With many unable/unwilling to do this, the period between 1972 and 1981 saw the government redistribute over 500,000 acres

⁸⁸⁹ Ibid at 71.

⁸⁹⁰ Ibid at 81.

⁸⁹¹ Ibid at 81.

⁸⁹² Ibid.

⁸⁹³ Ibid at 77.

(including substantial BEPC land).⁸⁹⁴ Furthermore, this period saw the cessation of the dominance of ‘absentee landlords’ whose interests lay in exporting forest products.⁸⁹⁵ The construction of a new airport, electrification of rural areas, extension of the road network, and even the construction of a new capital city (Belmopan), was testament to both the efforts of the independent population and the total neglect of the colony in the preceding three centuries.⁸⁹⁶ The general transformation in the colony in the decade before independence far outweighed anything at any time before.

However, in the extreme south Toledo remained particularly isolated and vulnerable. Astonishingly, when the Great Depression hit in the 1930s, taxes for timber and chicle firms had been *reduced*,⁸⁹⁷ with the deficit burden being placed on the shoulders of the Maya and Garifuna peasants. As a result, the district contributed over 50% of Crown rents collected in 1932-3, despite containing only 20% of the colony’s population.⁸⁹⁸ This injustice ensured that despite historically being the poorest region in the colony/country, and one of the poorest in wider Central America,⁸⁹⁹ the poorest households in Toledo paid the highest rate of land tax in the colony.⁹⁰⁰ As people naturally fell into arrears with their tax payments (for example, the Land and Property Ordinance set the tax for Maya on Crown land at \$10 per acre,

⁸⁹⁴ Ibid at 80.

⁸⁹⁵ Ibid at 96.

⁸⁹⁶ Ibid at 97.

⁸⁹⁷ Wainwright (2011) 54.

⁸⁹⁸ Ibid at 56.

⁸⁹⁹ Ibid at 2.

⁹⁰⁰ Ibid at 56.

the equivalent of 2 month's labour), criminal cases in the district per capita were 63% higher than in the rest of the country as the State pursued these arrears.⁹⁰¹

Yet even as change swept the rest of the country, Toledo remained significantly underdeveloped by comparison. Toledo has historically been heavily involved in the banana trade, but it had a turbulent history, including an outbreak of Panama disease in 1914,⁹⁰² and significant hurricane damage in the late 20th century when overall productivity fell from 842,000 boxes in 1979 to 531,000 in 1983.⁹⁰³ The continued lack of capital accumulation in the region with the lowest population density in the country,⁹⁰⁴ further contributed to Toledo's lack of development. Another factor is that many Toledo residents live in isolated, rural settlements, which made large-scale co-operative farming impossible. Instead, small-scale subsistence farming dominates, such as that of the *milpa* as practised by the Maya.

Furthermore, the PUP did not enjoy widespread support in Toledo. Toledo was the only district in both the elections of 1974 and 1979 to elect two opposition UDP representatives,⁹⁰⁵ with one Maya representative in each.⁹⁰⁶ This came at a time where some Toledo Maya questioned the benefit of an independent Belizean State with a PUP government, with some reportedly even endorsing Guatemala's territorial

⁹⁰¹ Ibid at 57.

⁹⁰² Ibid at 63.

⁹⁰³ Bolland (1986) 84.

⁹⁰⁴ Wainwright (2011) 206.

⁹⁰⁵ The United Democratic Party was formed in 1973 through the merger of parties who were opposed to the PUP. They are the present ruling party in Belize. See UDP, 'Our Party' (n.d.) available at <http://www.udp.org.bz/who-we-are/our-party/> accessed 16 September 2018.

⁹⁰⁶ Wainwright (2011) 218.

claim.⁹⁰⁷ The PUP sought to prove their commitment to rural Toledo by instilling a development program - the *Toledo Rural Development Program* (TRDP) of 1978, and successor program, the *Toledo Small Farmer Development Project* (TSFDP). A further objective was transforming Maya slash and burn *milpa* systems into *settled* farming.⁹⁰⁸

As discussed, British attempts to territorially restrict the Maya failed, as they refused to remain in pre-conceived blocks of reserve land. To launch the TRDP, the absence of Maya capital, meant the conversion of the commonly managed reservations into private property, enabling the farmers to use the land as security,⁹⁰⁹ thus enabling them to get loans to buy machinery for rice production. Yet the TRDP ended with no discernible changes in either the method of rice production, volume of rice produced, nor in capital accumulation in Toledo.⁹¹⁰ The proposals for the follow up TSFDP project went even further, and included plans to individualise the Toledo Maya reservations of Pueblo Viejo, San Antonio and San Miguel in order to provide the collateral for the mechanization loans.

However, the State did not deliver on its promises such as assistance with transportation to markets,⁹¹¹ resulting in the farmers not being able to sell their crops. Consequently, many fell into debt, with the Development Finance Corporation (DFC) holding their papers as collateral. The fact that the peak year for mechanised rice production in Toledo was in the final year of the project is telling, with 43% of those

⁹⁰⁷ Ibid at 206. This was however before the peak years of the Guatemalan civil war in which many indigenous people were slaughtered.

⁹⁰⁸ Ibid at 207.

⁹⁰⁹ Ibid at 205.

⁹¹⁰ Ibid at 202.

⁹¹¹ Ibid at 222.

growing mechanised rice stopping by 1998.⁹¹² The result, other than numerous Maya becoming indebted, and milpa rice production in Toledo as a national percentage all but disappearing, was also a failure to bring the Maya within the post-colonial land structure.

Furthermore, such failures contributed to a growing Maya mobilisation in the Toledo district accentuated by the continuation of colonial era policies, namely the prohibition of control over vast swathes of territory considered ancestral lands. One example was the creation of the Columbia River Forest Reserve in Toledo, 132,750 acres of tropical forest, surrounded by Maya communities on three sides.⁹¹³ At around the same time, in 1994, the government created the 41,000 acre Sarstoon Temash National Park (hereinafter STNP),⁹¹⁴ on land traditionally used by Maya and Garifuna communities, including the Garifuna village of Barranco.⁹¹⁵

However, it was the Belizean government award of 500,000 acres of logging concessions across Toledo to two Malaysian firms,⁹¹⁶ which proved the catalyst for Maya mobilisation on a legal footing. Led by local leaders working with Maya and non-Maya activists, the emerging Maya movement both strengthened existing and created new NGOs, and through organisations such as the TAA (Toledo Alcalde Association) and TMCC (Toledo Maya Cultural Council),⁹¹⁷ sought to defend what

⁹¹² Ibid at 220.

⁹¹³ Wainwright (2008) 176.

⁹¹⁴ PACT, 'STNP' (n.d.) available at <https://www.pactbelize.org/tag/sarstoon-temash/> accessed 16 September 2018.

⁹¹⁵ See *Figure A1*.

⁹¹⁶ Richard Leventhal, Carlos Espinoza, and Cristina Coc, 'Modern History and The Maya' (2012) 54 *Expedition: Magazine of the University of Pennsylvania* 46, 50.

⁹¹⁷ Grandia (2009) 156.

they regarded as their ancestral land. In 1996, Maya communities filed a case against the logging concessions with international assistance from the Indian Law Resource Centre, Washington D.C.⁹¹⁸ A comprehensive ethnographic account called the *Maya Atlas* was submitted as support, complete with maps and illustrations documenting the history of Maya customary land tenure in Toledo.⁹¹⁹ However, the Belizean Supreme Court refused to entertain the case.

Regionally, Belize had become an OAS member State through the ratification of the OAS Charter, and therefore adoption of the ADRDM, in 1991.⁹²⁰ Due to the Belizean Supreme Court's refusal to entertain the case, the Maya communities took their claim regionally to the IACHR in 1998. Despite talks ensuing between Maya communities and the Government of Belize (hereinafter G.O.B) regarding the case (mediation was recommended by the IACHR), the G.O.B continued to award logging concessions and refused to allow the case to be heard in court.

The IACHR eventually issued their report on the case, *Maya indigenous communities of the Toledo community v. Belize*, in 2004.⁹²¹ This report represented the culmination of several years' consideration of the case, during which period a 'Ten Points of Agreement' between the G.O.B and Maya communities was drafted in 2000,⁹²² which inter alia recognised Maya rights to lands and resources in Southern

⁹¹⁸ Ibid.

⁹¹⁹ Ibid.

⁹²⁰ OAS, 'Member States' (n.d.) available at http://www.oas.org/en/about/member_states.asp accessed 16 September 2018.

⁹²¹ Inter-American Commission on Human Rights, *Maya indigenous communities of the Toledo District v Belize* (12 October 2004) Report No 40/04, Case 12.053 available at <http://www.cidh.org/annualrep/2004eng/Belize.12053eng.htm> accessed 16 September 2018.

⁹²² Ibid at para 9.

Belize.⁹²³ IACHR representatives also made a site visit to Toledo in 2001, including a visit to the village of Midway, one of the five villages on the periphery of the STNP.⁹²⁴

However, as Belize had *not* (and still has not) signed the ACHR,⁹²⁵ the IACHR report was unable to base its decisions on the ACHR, and instead did so based on the ADRDM.⁹²⁶ The report concluded that the Belizean State had violated article XXIII (right to property) by failing to take effective measures to recognize their communal property rights to land that they have traditionally occupied and used, and to delimit/demarcate/title/otherwise establish the legal mechanisms necessary to clarify and protect the territory on which their rights exists.⁹²⁷ The report concluded a further violation of article XXIII had occurred due to the fact logging and oil concessions were granted on this territory in the absence of effective consultations with, and the informed consent of, the Maya people.⁹²⁸

Additionally, the Belizean State was deemed to have violated article II (right to equality, equal protection and non-discrimination), by failing to provide the Maya with the protections necessary to exercise their property rights fully.⁹²⁹ Finally, the report concluded that the Belizean State violated article XVIII (right to judicial

⁹²³ Chelsea Purvis, *'Suddenly We Have No More Power': Oil Drilling on Maya and Garifuna Land in Belize* (MRG 2013) 4.

⁹²⁴ IACHR (2004), para 11.

⁹²⁵ OAS, 'ACHR ratifications' (n.d.) available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm accessed 16 September 2018.

⁹²⁶ ADRDM, arts II, XVIII, XXIII.

⁹²⁷ IACHR (2004), para 193.

⁹²⁸ *Ibid* at para 194.

⁹²⁹ *Ibid* at para 195.

protection) by rendering domestic judicial proceedings brought by the Maya ineffective through unreasonable delay and thereby failing to provide them with effective access to the courts.⁹³⁰ Furthermore, it recommended there should be no further interfering with the territory and any damage compensated.⁹³¹ However, as Belize is *not* one of countries who are a party to the ACHR, notably Article 62 which accepts the jurisdiction of the IACtHR,⁹³² it meant that the Maya victory was consigned to paper.⁹³³

However, the situation did not escape the attention of the UN Human Rights Council, and in a special communications report in 2007 the Special Rapporteur on the Rights of Indigenous Peoples noted concern at the situation in Belize.⁹³⁴ Of particular concern *inter alia*, were the discrepancies regarding the levels of consultation and consent pertaining to the concessions the G.O.B was issuing to a US-Guatemalan oil company – US Capital Energy – (hereinafter USCE),⁹³⁵ and the continued allegations of the dismemberment of Maya customary land tenure.⁹³⁶ Acknowledging the Belizean government had provided some response to its communications, the report however noted that the G.O.B had not adhered to its latest request for a response, and called on the G.O.B to fully implement the

⁹³⁰ Ibid at para 196.

⁹³¹ Ibid at para 197, n 1-3.

⁹³² ACHR, art 62.

⁹³³ Grandia (2009) 156.

⁹³⁴ UN OHRHC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples* UN Doc A/HRC/4/32/Add.1, paras 18-38 (19 March 2007) available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/119/39/PDF/G0711939.pdf?OpenElement> accessed 11 September 2018.

⁹³⁵ Ibid at paras 31-32.

⁹³⁶ Ibid at para 33

recommendations of the IACHR.⁹³⁷ Despite this, the government continued to award exploratory concessions within the STNP, and (with some irony) began to bulldoze large swathes of vegetation in order to construct a road to Guatemala.⁹³⁸

When the case finally entered a Belizean court (*Aurelio Cal et al. v. Attorney General of Belize*), President Musa maintained that he would not “*Balkanise Belize*”,⁹³⁹ and that Belize was *terra nullius* when the British arrived.⁹⁴⁰ He also claimed that all Belizeans were effectively immigrants, and that to apportion special rights to one group of people could essentially send Belize into a violent internal conflict as in the former Yugoslavia.⁹⁴¹ In defence, the government counsel offered Crown land ordinances from the late nineteenth century as evidence that whatever prior indigenous rights may have existed in the region had long been extinguished, and sought to distinguish between the ‘ancient’ Maya that had lived in the area and the ‘contemporary’ Maya presently residing in Toledo.⁹⁴² The historical border dispute

⁹³⁷ Ibid at para 38.

⁹³⁸ Grandia (2009) 158.

⁹³⁹ Ibid at 159.

⁹⁴⁰ The term *terra nullius* means land that belonged to *nobody* at the time of acquisition, and therefore meant possession of such territory was legal. This was a form of colonial territorial occupation, introduced into international law during the positivist age of the 19th century, to facilitate European rights to land in Africa, when African modes of political organisation were considered unworthy of recognition. However, regarding land as *terra nullius* was not common practise amongst European colonial States. Perhaps the most famous example was the ICJ Advisory Opinion on Western Sahara, a former Spanish colonial territory contested by Morocco and Mauritania. The ICJ declared (after requests by Morocco) Western Sahara could not be regarded as *terra nullius* as people had inhabited the region before Spanish colonization. For further discussion on *terra nullius*, see Fisch (1884) 348-360. See also, ICJ *Advisory Opinion on Western Sahara* (1975), paras 79-80, available at <http://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf> accessed 18 September 2018.

⁹⁴¹ Grandia (2009) 159.

⁹⁴² Ibid at 160.

with Guatemala was also raised to suggest that if victorious the Toledo Maya may potentially look to secede from Belize and join Guatemala.⁹⁴³

This was despite the fact the Maya “Millennium Declaration” both affirmed their indigenous rights *and* rejected Guatemalan claims to Belizean territory.⁹⁴⁴ Additionally, the government sought to highlight Maya modernity through their connections to Punta Gorda town, positing that the Maya were not uniformly rural, poor and downtrodden, and could not reasonably claim indigenous rights. Chief Justice Abdulh Conteh scolded the evidence submitted by the government team. By contrast, leaders from Conejo and Santa Cruz villages representing the wider Toledo community, offered the *Maya Atlas* to illustrate their extensive historical use and understanding of the milpa system. Aided by a range of expert witness affidavits from their network of NGOs, lawyers, and anthropologists, they argued that customary land tenure existed in Toledo, and furthermore, that this form of property was protected under both the Belizean constitution, and international law.⁹⁴⁵

In October 2007, Conteh handed down a decisive victory for the Maya plaintiffs, and in doing so became the first judge worldwide to apply the UNDRIP.⁹⁴⁶ Additionally, Conteh cited *inter alia*; the Inter-American report, Commonwealth law, relevant international cases (including the *Awas Tingni* verdict in Nicaragua), ILO 169, and Belize being party of the ICCPR and CERD.⁹⁴⁷ Conteh ordered the

⁹⁴³ Ibid.

⁹⁴⁴ Shoman (2018) 315.

⁹⁴⁵ Grandia (2009) 160.

⁹⁴⁶ Ibid at 173.

⁹⁴⁷ *Aurelio Cal, et al. v. Attorney General of Belize*, Supreme Court of Belize (Claims No. 171 and 172 of 2007) (18 October 2007), paras 120-136, available at <https://www.elaw.org/content/belize-aurelio-cal-et-al-v-attorney-general-belize-supreme-court-belize-claims-no-171-and-172> accessed 16 September 2018.

demarcation and documentation of Conejo and Santa Cruz's customary title and rights in accordance with customary law. He also ordered the immediate cessation of granting concessions without the *free prior and informed consent* of the communities involved.⁹⁴⁸ The case was arguably most notable for Conteh's seminal ruling on the UNDRIP in declaring that Belize had voted in favour of its adoption, and that States were to promote respect for, and ensure the full application of the provisions within the UNDRIP, according to article 42.⁹⁴⁹ This decision affirmed that despite being non-legally binding, the UNDRIP has the potential to promote and protect indigenous rights.⁹⁵⁰

However, despite the hope generated by Conteh's decision, continued activity by MNCs led the Maya Leaders Alliance to file a second case on behalf of numerous communities against the Attorney General of Belize, *Maya Leaders Alliance and Others v. Attorney General of Belize and Another*.⁹⁵¹ Acknowledging the link with the 2007 case, in 2010 Conteh expanded his previous ruling to declare that Maya customary land tenure existed in *all* Maya villages in Toledo. Furthermore, he insisted this gave rise to individual and collective property rights, and directed the

⁹⁴⁸ Ibid at paras 131-134.

⁹⁴⁹ Ibid. See also Mauro Barelli, 'The role of soft law in the international legal system: The case of the United Nations declaration on the Rights of Indigenous Peoples' (2009) 58 (4) International & Comparative Law Quarterly 957, 982.

⁹⁵⁰ Ibid at 983.

⁹⁵¹ *Maya Leaders Alliance and Others v. Attorney General of Belize and Another*, Supreme Court of Belize (Claim No. 366 of 2008) (26 June 2010) available at <http://belizejudiciary.org/wp-content/uploads/2013/04/Civil-Appeal-No-27-of-2010-Attorney-General-of-Belize-et-al-and-Maya-Leaders-Alliance-et-al-.pdf> accessed 16 September 2018.

Government to develop a system to accord legal protection to Maya customary land tenure.⁹⁵²

Whereas the Government did not appeal the 2007 ruling, it appealed the 2010 ruling. In 2013, the Belizean Court of Appeal handed down a deeply divided verdict in the judgement of *Maya Leaders Alliance and Others v Attorney General of Belize and Another*.⁹⁵³ The majority decision *rejected* the Government case that upon assertion of Spanish and then British sovereignty, the claimants neither occupied nor enjoyed customary land rights over the land.⁹⁵⁴ Furthermore, it declared there was sufficient evidence that the current and original inhabitants of Toledo were connected through historical, social and ancestral links.

Ultimately, the key decision rested on whether the State should take affirmative action to protect Maya customary land tenure within the constitution.⁹⁵⁵ Crucially the Court of Appeal ruled sections 3, 16 and 17 of the Constitution could *not* provide the basis for the ordering the State to take affirmative action for the protection of constitutional rights.⁹⁵⁶ The violation of constitutional guarantees had therefore *not* occurred. The Government challenged the Appeal Court's decision regarding its satisfaction of indigenous title. Meanwhile, in the absence of tangible enforcement

⁹⁵² Ibid at para 126.

⁹⁵³ *Maya Leaders Alliance and Others v Attorney General of Belize and Another*, Court of Appeal of Belize (Claim No.27 of 2010) (25 July 2013), para 98, available at <http://belizejudiciary.org/wp-content/uploads/2013/04/Civil-Appeal-No-27-of-2010-Attorney-General-of-Belize-et-al-and-Maya-Leaders-Alliance-et-al-.pdf> accessed 15 September 2018.

⁹⁵⁴ Ibid at paras 281-304.

⁹⁵⁵ Ibid at paras 305-325.

⁹⁵⁶ This referred to the sections in the Constitution referring to *Fundamental rights and freedoms* (3), *Discrimination* (16), and *Acquisition of Property* (17). See Constitution of Belize (1981), arts 3, 16, 17, available at <http://pdpa.georgetown.edu/Constitutions/Belize/belize81.html> accessed 16 September 2018.

through the IACHR/IACtHR, the Maya launched an appeal regarding the violation of constitutional guarantees to an alternative authority- the Caribbean Court of Justice (CCJ).

The CCJ was established in 2001 as the final court of appeal for former British colonial territories in the English speaking Caribbean, designed to settle disputes from countries within the CARICOM region. As such, the CCJ replaced the Judicial Commission of the Privy Council, which was the final court of appeal for newly independent countries in the English speaking Caribbean who may have believed that their legal traditions were too new to have produced judges with adequate experience to sit on a court of final appellate jurisdiction.⁹⁵⁷ To date Belize is one of only a handful of Caribbean States to have sent cases to the CCJ.⁹⁵⁸ Doing so ensured that the CCJ presided over a case involving indigenous communities for the first time.

However before the case was heard, the CCJ managed to successfully broker an agreement between the two parties by way of a Consent Order dated April 22nd, 2015. Both parties conceded that Maya customary land tenure *did* exist throughout the Toledo district. As such, this gave rise to the collective and individual land rights within sections 3(d) and 17 of the Belize Constitution ⁹⁵⁹ Therefore, the single issue heard for consideration in the CCJ itself, was regarding whether the Maya were entitled to damages for breach of their constitutional rights, and ancillary

⁹⁵⁷ Leonard Birdsong, 'The Formation of the Caribbean Court of Justice: The Sunset of British Colonial Rule in the English Speaking Caribbean' (2005) 36 (2) University of Miami Inter-American Law Review 197, 198-200.

⁹⁵⁸ International Justice Resource Centre, 'CCJ' (n.d.) available at <https://ijrcenter.org/regional-communities/caribbean-court-of-justice/> See also, Caribbean Court of Justice, available at <https://www.ccj.org/> accessed 16 September 2018.

⁹⁵⁹ *Maya Leaders Alliance v. Attorney General of Belize*, Caribbean Court of Justice (CCJ Appeal No BZCV2014/002, BZ Civic Appeal No. 27 of 2010) (30 October 2015), paras 3, 9, available at https://elaw.org/system/files/bz.mayaleaders_0.pdf accessed 15 September 2018.

determination of costs.⁹⁶⁰ With regard to the Consent Order which had been agreed, the CCJ ordered the G.O.B to establish a fund of BZ\$300,000 as a first step to paragraph 3 of the Consent Order,⁹⁶¹ whereby the G.O.B create a mechanism to recognise and protect these rights. This mechanism, explained in further detail in the following chapter, is the *Toledo Maya Land Rights Commission*, and is the framework by which Maya land rights are supposed to be given legal recognition.

5.5 Summary

This chapter has sought to; *Explore the evolution of Belize from a logging settlement to an independent country, with a specific focus on the peoples of the Toledo district.* This evolution was discussed through three stages, as Belize developed from a British logging settlement established through Anglo-Spanish accords, before becoming a British colony in 1862, and finally an independent country in 1981. This lifecycle has been characterised by contestation, notably with regard to the territory between the rivers *Sibun* and *Sarstoon*, claimed throughout by Guatemala as its own. This contestation is born from the fact that unlike the rest of Central America, the territory now encompassing the State of Belize experienced a significantly different evolution, with a markedly British influence, beginning with the rogue Baymen of the seventeenth century and enduring in Belizean membership of the Commonwealth in the present day.

Neither Spain nor Guatemala either occupied or administered the territory or its peoples, as the British settlement expanded in the pre-colonial era, before the colony's borders were enshrined within the 1859 Anglo-Guatemalan treaty. Then, in

⁹⁶⁰ Ibid at para 2.

⁹⁶¹ Ibid at para 80.

1981, the UN declared Belizean independence, affirming the rights to self-determination of its people and of its territorial integrity as a State being contingently superior to Guatemala's territorial claims. However contestable Guatemala's claims may be, the UN proclamation was definitive. Yet Guatemala has continued its contestation, with a perceived entitlement to territory rooted in complex and highly contested pre-colonial and colonial geographies, which also largely ignore alternative geographies.

As the southernmost district in Belize, Toledo's evolution is a pertinent example of a territory of both contested and alternative geographies. Here, distinct peoples (re)migrated from other areas of the American-Caribbean region and established settlements, maintaining their own cultures even after Britain colonized the territory and implemented integrationist techniques. Indeed, Toledo's territory and peoples have often assumed the role of pawns in the colonial power struggle that has manifested around Southern Belize. Yet as the pre-colonial and colonial eras gave way to the post-colonial, Toledo's internal geographies also collided as the Maya were empowered to contest control over the territory regarded as their ancestral lands. Doing so has added a further layer of contestation over rights to Toledo, but also highlighted the issue of indigenous recognition and obligations to respect the rights of such recognition, within the fledgling Belizean State.

However, this indigenous campaign was also notable as another of Toledo's peoples – the Garifuna (formally Caribs) – were absent from staking their own claims to the territory. This chapter documented how British colonial policies towards the Maya and Caribs shared marked similarities, and how the Garifuna not only settled in the Toledo district before British colonisation, but have maintained a constant presence throughout the political evolution of the territory from the pre to post-

colonial period. Their absence in the ensuing legal challenge was notable as the rural Garifuna village of Barranco (the only Garifuna village in Toledo) is in the geographical periphery of the STNP, as well as being an associate member of SATIIM, the NGO who spearheaded the legal challenge. In light of this absence, the following chapter will seek to place Garifuna identity in Toledo at the centre of the debate.

6. Garifuna identity in Belize's Toledo district (April-August 2016)

6.1 Introduction

The following chapter aims to answer objectives four and five of this study, which are outlined as; *Investigate Garifuna identity in Belize's Toledo district, with regard to their conformation with normative legal conceptualisations of indigeneity*, and to; *Investigate Garifuna identity in Belize's Toledo district, with regard to their ability to receive indigenous recognition and benefit from land and resource rights*. Ethnographic fieldwork conducted in Toledo between April-August 2016 forms the basis for the chapter, which is divided into four principal sections with corresponding subsections. The four norms of indigeneity as articulated by Erica Daes provide the framework for the first section. These norms are priority in time, voluntary perpetuation of cultural distinctness, an experience of subjugation/marginalization etc., and self-identification as a member of a distinct collective.

The second section investigates the ability of the Toledo Garifuna to receive indigenous recognition and benefit from land and resource rights in Toledo through a discussion of three emergent themes from ethnographic fieldwork considered inhibiting factors: de-indigenization, representation and the continued contestation over Toledo. The third section acts as a summary discussion of the fieldwork results. This discussion focusses on why despite conforming to the indigenous norms outlined, the Garifuna face significant challenges in their bid to be recognised as indigenous to Toledo with regard to control over land and resources. Finally, the fourth section is a review of relevant developments that have occurred in Toledo in the time since fieldwork in 2016 concluded.

6.2 Positioning the Garifuna as indigenous to Belize's Toledo district

6.2.1 *Priority in time, with respect to the occupation and use of a specific territory*

The previous chapter discussed at length the complex political-legal history of Belize. That the *Carib settlement* at Punta Gorda appeared on land surveys in relation to Crown grants from 1837, is evidence that the settlement predated British sovereign control over the territory, the establishment of the colony of British Honduras (1862), as well as the creation of the current Toledo State boundaries (1882). Meanwhile, the first *recorded* birth in the village of Barranco was in 1862, with the first British survey not occurring until 1892. Cumulatively, these settlements act as examples of a settled, *continuous* Garifuna presence in Toledo, predating colonial control. The Garifuna name for Punta Gorda is *Peini* whilst the name for Barranco is *Barangu*. The entrance to both settlements has a sign acknowledging their Garifuna origins. See *Figure E1* for pictures of these signs.

Fieldwork confirmed strong Garifuna lineage through both settlements. All Garifuna interview participants held intimate links to Barranco through ancestry, residence, and/or marriage. Most participants could directly trace village ancestry through at least three generations (not unusual in a rural setting), with some tracing back to the village's creation, such as the extract in *Figure E2*. Furthermore, a household survey was conducted in Barranco with the help of village residents. All Garifuna survey participants traced lineage in the village, with the majority able to trace three generations or more, whilst several made direct links to the first settlers and founders of the village. Meanwhile, the continued high birth to population ratio suggests a continuing phenomenon.

Figure E1: Photographs of Barangu and Peini monuments.⁹⁶²



Figure E2: Excerpt on Barranco lineage

“My great grandfather was one of the first settlers of the village. And his mother, was also one of the first settlers...So, not only has my family been among settlers, they were also leaders during those years” (FP113)

Punta Gorda (known locally as PG), has grown from an isolated Carib settlement as described by Stephens,⁹⁶³ to the multi-cultural State capital of Toledo. However, Garifuna links to the settlement remain strong, with most interview participants living in PG for at least part of the week depending on their employment patterns. Garifuna heritage is most evident in the area known as *Cerro*, or the Saint Vincent block, the land purchased by Jose Maria Nunez on behalf of the Garifuna. The legendary status of Nunez is immortalised in PG, with one of the main streets

⁹⁶² The Barangu monument in the right hand picture was erected several weeks before fieldwork commenced in 2016. The village council decided 1860 as being the settlement date. The reason for this date is that although the first *recorded* birth was not until 1862, certain oral histories place the village foundations as early as the 1850s. The *Peini* sign was erected in 2017.

⁹⁶³ Stephens and Catherwood (1841) 27-8.

named after him. Participants in Punta Gorda were vitally important in helping to understand the exact nature of land ownership of the Saint Vincent Block, and who exactly is eligible to apply for a piece of land.

Participants included Garifuna who currently farm plots on the block, and past and present committee members who were generous in supplying copies of the rules and regulations for applications and landholders. *Figure E3* contains interview excerpts regarding the unique land management system. The extracts are further evidence of the *continued* lineage in Garifuna land use at the Saint Vincent Block. Only people descended from the original names on the land deeds from the 1920s are eligible to use the land on the Saint Vincent Block. The names on those land deeds represent those Garifuna for whom Jose Maria Nunez purchased the land in 1881. *Figure E4* contains pictures taken at the Saint Vincent Block. These pictures show (clockwise from top left); a Garifuna drumming school, a farm plot, sign above the Southern Highway for the Carib reserve, the Toledo Garifuna wall of fame.

Figure E3: Excerpts on management of Saint Vincent Block

“On the deeds, there are 150 names that were actually owners of the land at that time and today some people have misinformation, they think or assume that the land is communal land, that it is owned by every Garifuna. It is not owned by every Garifuna, the owners, or beneficiaries are the descendants of the 150 people whose names are on the deeds, and the two persons whose name is on the actual land documents.”

“Well you see what happens is there is one deed for 960 acres, so if somebody had say 5 acres, what’s been happening is that maybe the inheritance, they could inherit that 5 acres, but it’s still not owned by them, you can’t mortgage it, you can’t sell, you have no documents to say it’s yours.”

(All information given by FP201)

Figure E4: Saint Vincent block collage



Meanwhile, the confusion as to the *reserve* status of the land (as discussed in the previous chapter), and what exactly happened after the deaths of Jose Maria Nunez and Lopez Nunez, was evident amongst well-informed participants. This is unsurprising given the fact that the only documented record is available within State archives. Furthermore, only by amalgamating information from both Belmopan and London did a complete picture of the correspondence emerge. The interview excerpt in *Figure E5* illustrates the confusion that continues to surround the Saint Vincent block. Whether the documented record available in the archives is the *truth* remains open to interpretation, and significant questions evidently remain in the present. The *Carib reserve* sign remains to this day as shown in *Figure E4*.

Figure E5: Excerpt on the continued confusion surrounding the Saint Vincent block

“I know that for a long time, that people referred to that land that is now referred to as the St Vincent block, as the Carib reserve, and we had to keep telling people that it is not a Carib reserve it is property, land that is bought and paid for. And what is clear is why Jose Maria Nunez did what he did, namely that there was a danger that the Garifuna people would be left landless and so in order to ensure that didn’t happen that they subscribed, contributed money so that the land that could be bought.” (FP206)

The *continuity* of Garifuna settlement in the Toledo district, and corresponding awareness of that continuity, was abundantly clear throughout fieldwork. For the majority of participants this was tacit awareness, such as the ability to trace Barranco lineage or the continued land use at the Saint Vincent block. Further articulations were offered through more impassioned and expansive statements regarding the Garifuna presence in Southern Belize. Such comments focussed on establishing settlements south of the *Sibun* River, before the British colonization of Belize, and the continuity of such settlements. *Figure E6* contains a sample interview excerpt discussing the establishment of Garifuna settlements pre-colonization.

Figure E6: Excerpt on Garifuna settlement in Southern Belize

“The reason our communities were established south of the Sibun is because we were here before Belize. We were south of the Sibun when the southern boundary of Belize was extended from the Sibun to the Sarstoon in 1859.” (FP206)

Another recurring theme throughout fieldwork was of Barranco’s establishment *prior* to other Maya villages in Toledo. Furthermore, Barranco was reported to have previously covered a far larger area than it currently encompasses, with the neighbouring Maya village of Midway established on land traditionally used by Barranco residents. As will be discussed further, the ‘Midway issue’ was

inescapable whilst on fieldwork. Some participants also commented on how Barranco enjoys historical primacy over other Maya villages in Toledo. *Figure E7* contains a sample from an interview commenting on Barranco previously encompassing what is now Midway, whilst *Figure E8* contains an observation regarding Barranco's historical primacy over other Maya villages.

Figure E7: Excerpt on Barranco historical precedence over Midway

“Midway in itself was a traditional farmland of the people of Barranco, and Midway was formed by some farmers of the village, from Barranco, some Garifuna farmers, by inviting some Mayans to assist, meaning providing some employment to them, to help on the farm. So eventually they invited their own families and so now we have Midway.” (FP 108)

Figure E8: Excerpt on Barranco historical precedence over neighbouring villages

“Conejo was here in the 1890s probably so later than Barranco...Barranco was here before San Antonio, Columbia, all of them. Yeah it was the Kramer's, the Germans that brought in the Kekchis.” (FP 112)

Midway not only encompasses land that used to be Barranco farmland but was also reportedly established by Garifuna from the village who invited the Maya to farm there. Proposed dates for Midway's establishment vary, yet one offered within the IACHR report is 1992,⁹⁶⁴ another source lists it as 1989.⁹⁶⁵ In either case, this is over one hundred years *after* Barranco. Meanwhile, *Figure E8* gives an example alluding to

⁹⁶⁴ IACHR (2004), para 73, n31.

⁹⁶⁵ Amandala, 'Buffer Communities in Southern Belize state their position on US Capital's oil exploration for the first time' (13 September 2013) available at <http://amandala.com.bz/news/buffer-communities-southern-belize-state-position-capitals-oil-exploration-time/> accessed 16 September 2018.

the age of Barranco village in comparison to other neighbouring Maya villages in the STNP such as Conejo and Sundaywood as well as the two largest (and oldest) Maya settlements in Toledo, San Antonio and San Pedro Columbia.

When taking the issue of definitive settlement prior to the establishment of *present State borders*, whether those State borders refer to Toledo district or the creation of the colony of British Honduras, Garifuna *priority in time* cannot be ignored. Indeed, both Punta Gorda and Barranco were also settled prior to the Maya villages in the Sarstoon-Temash National Park region and those in the wider Toledo district that are now the focus of the *Maya Land Rights Commission*. The inclusion of these observations is in no way intended to advocate any attempt to counter Maya continuity claims in Toledo. Moreover, they are examples of the various layers of complexity that demand attention when considering indigenous land tenure in Toledo.

6.2.2 The voluntary perpetuation of cultural distinctness

Fieldwork strongly embellished the notion of the Garifuna as a distinct culture with multiple indicators. For example, the distinct form of property that is the Saint Vincent block as discussed in *Figure E3*, is one such example of distinctness. Another is the intimate connection that Garifuna share with land and sea, evident on a daily basis throughout fieldwork. Like all traditional Garifuna settlements in Central America, Barranco and Punta Gorda are located on the Caribbean coast. The overwhelming majority of participants commented on how Garifuna culture is intimately connected to nature, notably through farming and fishing. A strong regeneration of both was deemed necessary to ensure cultural survival. Fisher folk were visible every day in Barranco: in canoes, outboard motors, or casting lines from the pier, as were farmers making their way to their plots within the village boundaries.

Figure E9 contains a sample interview excerpt on the importance of the Garifuna relationship with land and sea.

Figure E9: Excerpt on Garifuna relationship with land and sea

“The men fished, the men hunted, they built houses. But we have never been away from the land, we are people who plant our food, we still do” (FP207)

A sustainable relationship with both land and sea is also central to Garifuna culture, and this was a recurrent discussion theme. The Wagiya foundation,⁹⁶⁶ based in Punta Gorda, is an example of a Garifuna group promoting the conservation of cultural and spiritual traditions within the Garifuna community including planting and farming initiatives, whilst groups such as the *Barranco Sustainable Fisher Folk* are striving to ensure that fishing remains central to village cultural and economic life. Sustainable practises ensure not only the preservation of the Garifuna culture itself, but also of the natural world, which is essential to that cultural preservation. Figure E10 contains an extract regarding the importance of sustainability in relation to the issue of logging concessions granted in the Barranco area, discussed later in further detail.

Figure E10: Excerpt on Garifuna sustainability

“These guys are cutting and they are not replanting, no kind of enforcement to see if they are planting. As far as I am concerned if I am at Barranco and one of these goes there and asks for a concession I will tell him no because you are not planting.” (FP110)

Ground foods are a staple of the Garifuna diet, with tubers such as cassava, varieties of yam, okra and plantains, just a selection of the foodstuffs for which the

⁹⁶⁶ Wagiya Foundation, (n.d.) available at <http://www.wagiyafoundationbelize.org> accessed 16 September 2018.

Garifuna are renowned. The baking of cassava bread by Garifuna women is a cultural trait that is particularly recognizable. Meanwhile, the relationship with the Sea is represented in the traditional Garifuna dish *hudut* (fish cooked in coconut broth with mashed plantains or yams). *Figures E11* and *E12* include photographs taken on fieldwork showing Garifuna farmers at work in Barranco, the baking of cassava bread, and a dish of hudut.

Figure E11: Barranco farmers at work



Figure E12: Baking cassava bread and hudut



Sustainability for cultural survival is also vitally important within Garifuna spirituality. The overwhelming majority of Garifuna participants cited spirituality as being a particularly important element of their culture, with only one Garifuna participant stressing it was unimportant to them. *Figure E13* contains an extract on the importance of Garifuna spirituality. The Garifuna believe that their ancestors remain close to them, with food acting as a medium of interaction with the spirits of the ancestors.⁹⁶⁷ This may be an offering with or without prayer, as a simple act of remembrance, or through a more elaborate ritual such as the *amuyadahani*, *chugu*, or

⁹⁶⁷ Joseph Palacio, 'The multifaceted Garifuna: juggling cultural spaces in the 21st century' in Palacio (2005) 110.

dugu ceremonies. Sustainability is vital in safeguarding the continued ability to give gifts from the earth and sea.

Figure E13: Excerpt on spirituality

“For me it doesn’t only play an important part, Garifuna spirituality is my life. I am blessed to be one to come out of one of the spiritual families.” (FP105)

The *amuyadahani* describes a ritual bath early in the morning followed by a Roman Catholic mass.⁹⁶⁸ The *chugu* is a one night feast of singing, dancing and feeding the ancestral spirits with participation from descendants of the person being honoured. The *dugu* meanwhile is an expanded version of the *chugu*, where the singing and dancing can go on for two or three nights and corresponding days. In both the *chugu* and *dugu* interaction between the living and ancestors is essential. At the most intense level, direct communication can occur between the ancestor and the living when they appear through a living person in the form of a trance.⁹⁶⁹ Both the *chugu* and *dugu* take place at the *dabuyaba* or temple (*Figure E14* shows a picture of the temple in Barranco). Whilst no *dugu* or *chugu* ceremonies took place whilst on fieldwork, a gathering of spiritual leaders (*buyeis*) from across Central America did take place at the temple in Barranco.

Despite this event being a predominantly closed affair, the drumbeat that resonated throughout Barranco that weekend left little doubt as to the importance. Drumming is another vital component of Garifuna identity, and was audible

⁹⁶⁸ Ibid.

⁹⁶⁹ Ibid at 111.

throughout that weekend, as is customary at Garifuna spiritual events.⁹⁷⁰ Drumming is not however merely enacted at spiritual events, it is a vital element of Garifuna music and expression, and was constant throughout fieldwork at both private and public events. Perhaps the most famous cultural demonstration takes place annually in Punta Gorda at the *Battle of the Drums* contest, where Garifuna groups from around Belize take part in drumming competitions. The Barranco group are notorious for being multiple champions. *Figure E15* displays a picture of Barranco residents drumming at a house party

Figure E14: Barranco temple



⁹⁷⁰ Byron Foster, *Heart drum: Spirit possession in the Garifuna communities of Belize* (Cubola 1994) 161.

Figure E15: Barranco residents drumming and dancing



Garifuna language, music and dance has famously received international accreditation from the UN Educational, Science and Cultural Organisation (UNESCO), when on May, 18th 2001 it was proclaimed a *Masterpiece of the Oral and Intangible Heritage to Humanity*.⁹⁷¹ It is undoubtedly one of the unique cultural identifiers of the Garifuna, as it is an Amerindian language spoken by a black population in Central America.⁹⁷² It has been described as essentially an Arawak language, spoken by Arawak women in communities taken over by Carib men in the expansion from South America and then the Lesser Antilles,⁹⁷³ influenced by Carib, French, English, Spanish and African languages on St Vincent.⁹⁷⁴ A strong oral tradition accompanies the language, manifesting itself in stories and songs for every occasion

⁹⁷¹ Marian Cayetano and Roy Cayetano, 'Garifuna Language, Dance, and Music—A Masterpiece of the Oral and Intangible Heritage of Humanity How did it happen?' in Palacio (2005) 243-4.

⁹⁷² Ibid at 242.

⁹⁷³ Ibid at 240.

⁹⁷⁴ Ibid at 237.

Garifuna music and dance capture the distinct fusion between their African, Carib and Arawak roots. Whereas within the language the Amerindian roots predominate, African emerges as the predominant cultural identifier in both the music and dance.⁹⁷⁵ The songs and dances are both varied and identifiable by the same name, with arguably *paranda* and *punta* the most recognisable to have broken through into the mainstream. In certain dances such as the *wanagragua*, Garifuna dancers dictate to the drummer with the drummer expected to anticipate moves and drum accordingly.⁹⁷⁶

The great Andy Palacio, born, raised, and buried in the village of Barranco, is renowned for bringing *punta* music to widespread global acclaim. Regarded as being arguably the most famous Garifuna musician worldwide, and recipient of the BBC World Music Award,⁹⁷⁷ he is revered for being a pioneer in promoting Garifuna culture. He is buried in Barranco cemetery, and the village bar *Watina* is named after his most famous album. A sign at the junction for Barranco states that the village is his birthplace. His legacy lives on both through his music, and through the people who knew him, as was the case for many participants of a certain age who contributed to fieldwork. Similarly, many participants mentioned the influence of his music as an example of what the Garifuna had contributed to global culture.

The presence of Garifuna language, music and dance was constant throughout fieldwork, audible and visible on a daily basis, both in Barranco and Punta Gorda.

⁹⁷⁵ Ibid at 240.

⁹⁷⁶ Ibid at 239.

⁹⁷⁷ BBC, 'Awards for World Music' (n.d.) available at http://www.bbc.co.uk/radio3/worldmusic/a4wm2008/2008_andy_palacio.shtml accessed 16 September 2018.

However, like farming and fishing, language is a cultural indicator under significant threat in the modern age.⁹⁷⁸ Older generations lamented diminishing language use amongst the youth of today, and of the difficulty they face in maintaining it. St Joseph's RC School – Barranco village primary school – encourage children to use the language, however this is unlike the *Gulisi* School in Dangriga who teach the entire curriculum in Garifuna. Language decline is discussed in further detail throughout this chapter.

A further indicator of cultural distinctness was a wider theme of the *Garifuna nation across borders*. This was particularly apparent through the number of participants who had immediate connections with Guatemala and Honduras. The Garifuna arrival in, and dispersal across Central America, can of course be traced back to Honduras, and the clear evidence of continued kinship between Belize, Guatemala and Honduras (and to a lesser extent Nicaragua), was striking. *Figure E16* contains an example of such kinship. This connection was particularly apparent between Barranco/Punta Gorda and Livingston or *Labuga* (meaning the mouth of the river as it is at the estuary of the Rio Dulce) in Guatemala. Every single Garifuna participant encountered on fieldwork, with one exception, had living relatives in Livingston.

Figure E16: Excerpt regarding kinship across Central America

"I was born in Honduras in a little bush village to a Belizean mother and a Honduran father, with roots from Guatemala, so I have all the countries in me." (FP209a)

⁹⁷⁸ Cayetano, and Cayetano (2005) 243.

On a clear day, Guatemala can be seen from the beach at Barranco, the coastlines being separated by only 8km of water. In his documented travels first published in 1841, John Stephens made the short journey from the Carib settlement at Punta Gorda to Livingston where he encountered a second Carib community.⁹⁷⁹ Livingston was settled by Marcos Sanchez Diaz and his group of Garifuna sometime between 1802 and 1806,⁹⁸⁰ and forms another of the settlements founded by the Garifuna in the northern thrusts between Trujillo, Honduras and Dangriga.⁹⁸¹ This link within the Garifuna nation was evident through the customary route travelled between the two countries on a weekly basis, departing from either Barranco or on the daily ferries between PG and Puerto Barrios, Guatemala. Such routes link the ‘triangle’ of the traditional Garifuna settlements of Punta Gorda, Barranco and Livingston.

These established connections go some way to explaining the mixed response from participants regarding whether the most recent escalation in tensions with Guatemala (discussed later in this chapter) had affected their customary travel patterns. Several participants admitted that recent escalations had caused them some form of inconvenience/distress, yet the overriding feeling throughout fieldwork was that recent escalations were not an impediment for sea travel between Livingston-Barranco-Punta Gorda. Although Barranco had been a port of entry up until the latter part of the 20th Century, it was no longer a designated immigration point. This however did not deter the Garifuna from travelling across Amatique Bay to Livingston and vice versa. *Figure E17* contains an interview extract alluding to this.

⁹⁷⁹ Stephens and Catherwood (1841) 27-37.

⁹⁸⁰ Arrivallaga-Cortes (2005) 72.

⁹⁸¹ Ibid at 67.

Figure E17: Excerpt regarding customary sea travel

"I was born in Livingston, it's just 8 miles, bop, bop and you are there. It no affect we in no kind of way here in Barranco. Our people still come, find us, look for us. It no affect we in no kind of way." (FP102)

Garifuna refusal to allow international disputes to affect their 'nation across borders' is telling for several reasons. First, these travel patterns are both customary and representative of the routes the Garifuna used to settle the region. Second, it points to the fact that the Garifuna are both a nation *across* borders and a nation *without* borders. This attitude manifested in numerous ways, from some participants stating that they did not see borders, to others stating why they did not/chose not to see them. An example of this attitude is included in *Figure E18*.

Figure E18: Excerpt regarding nation across/without borders

"And maybe on this note I can say that us as a people we are nations across borders, so we don't see the boundary." (FP109)

Garifuna kinship was also particularly noticeable at events in Barranco and Punta Gorda. On such occasions, the population of Barranco could literally double overnight. An example of this includes the gathering of spiritual leaders, where Garifuna had travelled from Honduras, Guatemala, Nicaragua, and Trinidad amongst other countries. Another key event in the village was the funeral of a respected community elder. Again, this event saw Garifuna return to Barranco from across the Central American, Caribbean and North American regions.

These connections represent the maintenance of a distinct kinship that remains particularly strong within the Garifuna nation. The Garifuna ability to maintain movement across national borders ensures that members of the nation are in constant

flux between the ancestral settlements throughout Central America's Caribbean coast. This ability to do so is another distinctive feature of the Garifuna as a group. Combined, the cultural indicators discussed within this section identify the Garifuna as a distinct group, for none of these indicators could be attributed to any other group other than the Garifuna.

6.2.3 Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collective

Unsurprisingly, all Garifuna participants on fieldwork, with the exception of one,⁹⁸² *self-identified* themselves as *Garifuna* and by extension as a member of a *distinct collective*. Self-identification as Garifuna was clearly vitally important, and manifests in the various cultural indicators already discussed throughout this section. Cumulatively these indicators are a fusion of Amerindian and African practises that have combined since their inception on the island of St Vincent to make this collective particularly distinct. The pride participants had in being Garifuna was evident on a daily basis, and that recognition of the Garifuna as a distinct collective clearly extended to both the Belizean State, as well as other distinct collectives such as the Maya.

The history and continued presence of the Garifuna in Toledo is quite simply a part of Toledo life. However, the extent to which this distinct collective felt that they are recognised as being truly *indigenous* is far more complex than being viewed merely as a distinct collective. This phenomenon is intimately linked to the fourth and final norm in Erica Daes' framework. The following sub-section of fieldwork analysis seeks to explore how the Garifuna not only strongly conform to this fourth norm of

⁹⁸² This participant had undergone a religious conversion and renounced Garifuna spirituality.

being indigenous, but also how conforming to indigeneity actually contributes towards *inhibiting* them from gaining tangible recognition as such.

6.2.4 An experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist

The wider narrative of the Toledo Garifuna receiving some form of unfavourable treatment was both persistent and multidimensional throughout fieldwork. For example, some participants claimed that subjugation began with the British imposition of rents on land already settled in Barranco,⁹⁸³ and the sale of large swathes of the Carib settlement of Punta Gorda, which spurred Jose Maria Nunez to collect the money to buy the Saint Vincent block. Once incorporated within the colonial property structure, the Garifuna now had to pay for the land they had previously enjoyed in *their* settlements. A similar act against the Garifuna in Stann Creek was described as tantamount dispossession;⁹⁸⁴ therefore, the same must be concluded for land already settled in Toledo. *Figure E19* contains an excerpt attesting to this phenomenon.

Figure E19: Excerpt regarding colonial rent impositions

“So there were the things the government did to de-indigenize, instead of acknowledging the rights these people had, they introduced rules and laws to make them subject to another narrative. The very first map of Barranco is very instructive of those narratives. Where the surveyor went to survey a village, he mapped the village as he saw it.” (FP206)

⁹⁸³ Palacio (2001) 85-114.

⁹⁸⁴ Bolland and Shoman (1977) 91.

However, this subjugation extended beyond incorporating settled land within the colonial structure. Early colonial dispatches such as those detailed in the previous chapter referenced British experiences on the island of St Vincent and are evidence of their wariness of the people then known as *Caribs*. Keeping the Caribs and other people of African descent separated in the colony of British Honduras, was a notion commented on by several well-informed participants. *Figure E20* contains an example of such a conviction. Possible reasons for this separation are discussed later in the chapter.

Figure E20: Excerpt regarding perceived colonial attitudes towards the Garifuna

“The British, this is what I got, I believe they told some people arriving in then British Honduras, they look like you, but you know they are not like you, they are inferior and so on and so on. From what I’ve heard that’s where the root of the prejudice began” (FP201)

The previous chapter discussed how the British colonisation in the Bay of Honduras, as in many countries, manifested in tandem with the church. All schooling in the colony therefore became the responsibility of the church until the post-independence era of the 1980s.⁹⁸⁵ The church was the most frequently cited force of subjugation by those participants who spoke of Garifuna subjugation within the colonial period. The demonization of farming, fishing, language, and spirituality was perceived as intended to erode Garifuna identity, and outlaw any spiritual practises and practitioners considered influential and/or pagan. This had been evident in Belize

⁹⁸⁵ Bolland (1986) 49.

as early as 1791, when Obeahmen (Shamen) were deemed influential people and a law passed making the practise punishable by death.⁹⁸⁶

Figures E21 and E22 contain excerpts detailing memories of the processes by which cultural identifiers were demonized.

Figure E21: Excerpt regarding demonization of farming

“When I was going to school, primary school, the teachers used to say do you think that it is good to be planting and things? You want to stay here and plant? Don’t you want to go to an office and work with a computer with air conditioning?” (FP106)

Figure E22: Excerpt regarding demonization of culture

“Growing up in PG, the Garifuna language and people were discriminated against. We were discouraged from using the language and many aspects of the culture, particularly by the education system which was run by nuns back in those days, catholic days, in unison with the colonial regimes.” (FP210)

Furthermore, the demonization of cultural practises was perceived by certain participants to be a part of a wider process intended to *de-indigenize* the Garifuna as a people. De-indigenization was used explicitly by several well-educated participants, with others suggesting such a process was intended either overtly through demonization, or through more indirect means such as the separation of family units that occurred through the recruitment of Garifuna males as teachers who were then posted around rural Toledo and beyond. Barranco, like other Garifuna settlements in Belize, is notorious for its provision of teachers.⁹⁸⁷ This theme was persistent

⁹⁸⁶ Ibid at 55.

⁹⁸⁷ Joseph Palacio, ‘Cultural Identity among Rural Garifuna Migrants in Belize City Belize’ in Forte (2006) 182.

throughout fieldwork. *Figure E23* contains an excerpt on Garifuna de-indigenization generally, whilst *E24* contains an excerpt on Garifuna teaching.

Figure E23: Excerpt discussing Garifuna de-indigenization

“In whatever way, the subjects could be separated from each other for the strength of the mother country. At one level it was certainly colonialism and along with that it was also an effort to, and I use the term...de-indigenization, which is one of the ways that the colonial powers and here we have to include the church, the Catholic church, as being very much a part of that Empire dominance. And the mission, to use that term, the mission was to let the Garifuna not be indigenous, to be wage labourers, or to become teachers, to not be ones living on the soil, or on the sea for that matter.” (FP113)

Figure E24: Excerpt discussing Garifuna teaching traditions in Belize

“I think that process of decline happened when the families were separated, because you have to remember that in the early 1900s the Catholic Church took on the Garifuna primarily men, because they were considered fast learners, and prepared them to become teachers, so they ended up teaching all of Belize, every corner, sacrificing their own families in the process.” (FP210)

These multiple colonial era forces were perceived to have conspired to direct significant levels of subjugation/discrimination towards the Garifuna as a people. Yet fieldwork revealed that *every* Garifuna participant maintained that such forces remained present in the post-colonial era. These negative post-colonial forces can be broadly divided into two areas, the first being perceived *discriminatory treatment towards them as Garifuna*. This perceived discrimination can be separated further into two specific areas, *land* and *culture*. One particularly prevalent theme within interviews and participant observation was the continued appropriation of traditional Garifuna territory.

The wider narrative across the Garifuna nation of how coastal lands they have settled throughout Central America have come under threat from Multinational Companies, conservation laws, other indigenous groups etc.,⁹⁸⁸ was particularly strong

⁹⁸⁸ See inter alia; Brondo (2010), Anderson (2009).

in Toledo. The most commonly mentioned appropriations were through the actions of the logging companies who gain concessions through the G.O.B to log in the Barranco area. These concessions are granted subject to conditions such as gaining consent from the village, and re-planting in accordance with Belize's strict conservation laws. *Figure E25* contains an excerpt from a fieldwork diary regarding this issue, describing the atmosphere at one village meeting when 'consent' was sought from a logging contractor.

Figure E25: Excerpt on logging concessions in Barranco

"I actually felt sorry for the guy, after the emotions stirred up by the MLRC meeting, there was no way the community were in any mood to grant his wish, especially after he admitted to XX that he did not replant. Once XX had identified him as somebody who never employed Barranco residents, he had no chance, the wrong meeting to walk in on - A real lion's den moment." (Author)

The oil company US Capital Energy was also a significant thread of conversation throughout fieldwork. Previously based in Barranco, the company proved a divisive presence, mainly due to the split within the community regarding the pros and cons of oil development, and the trade-off between an impoverished rural community gaining employment as wage labourers and the long-term environmental impacts of oil development. An opinion of the company's legacy is included within *Figure E26*. The establishment of the STNP, and wider conservation laws governing Belize, were identified as being issues that prevented the Garifuna from carrying out traditional practises, and left them impotent in preventing Guatemalans from entering their territory to poach. Garifuna (and Belizeans generally), felt that these prohibitions were a huge injustice (See example in *Figure E27*).

Figure E26: Excerpt regarding US Capital Oil Company

“These guys were violating safety... these guys had fuel tanks with no warning on them that you were approaching an area with fuel. Then there was a helipad right on the way going to the school, and these things were taking off and landing right when students were going by, with no warning, no barricade anything like that.” (FP104)

Figure E27: Excerpt regarding conservation laws

“Part of it is the government makes some areas reserved, those are the areas the Guatemalans are going into and just raping the area, like the National Park. So why make it a National Park are when Guatemalans going in taking our logwood, taking all the gold?” (FP110)

Several erudite participants were also keen to point out the lack of compensation that they believe the Saint Vincent block is due from the G.O.B. The land is the source of Punta Gorda’s water supply, yet despite this, it is claimed there has never been any compensation for the construction facilitating this municipal supply. *Figure E28* contains a quote from one such interview.

Figure E28: Excerpt regarding Cerro water supply

“While we people cannot claim for the resources under the earth, but from the mere facts that they had to sink wells on our private property. That was a cause for compensation, since 1985 to this present moment, the Garifuna people have not benefitted, not one single drop of compensation from the water source. And, despite the fact that there were repeated challenges to the authorities, all those have foundered and failed.” (FP209b)

In addition to the appropriation of Garifuna land, Garifuna *cultural* discrimination in the post-colonial State of Belize was a significant fieldwork theme. One thread centred on the historical division between the Garifuna and Creoles in Belize, considered by some to have continued to the present day. Perceived discrimination against the Garifuna as a group, by the State, was also a particularly common theme throughout fieldwork. Participant responses ranged in scale from

acknowledgement of perceived discrimination, to accusations of State/institutional culpability for this, to more overt accusations of the perceived racism directed towards the Garifuna. Such discrimination was suggested by some participants to have been handed from colonial to post-colonial government.

An example whilst on fieldwork concerned the non-selection of a Garifuna Olympic hopeful, not selected for the national team. The allegation amongst certain sections of the public was that her non-selection was because she was Garifuna. Another cited example concerned the case of a Garifuna worker who was chastised for speaking in Garifuna to a colleague. Both were stories of national concern in Belize.⁹⁸⁹ Those who commented on a perceived historical division between Garifuna and Creoles stated directly or indirectly that the Garifuna culture was the reason.

Figure E29 contains an example of these comments.

Figure E29: Excerpt regarding perceived historical Creole-Garifuna division

"I guess one of the reasons why (alleged racism by Creoles) was because they (Garifuna) had that culture, some people referred to it as, well maybe I could say this, right, one reason they were able to maintain the culture and language was because they weren't enslaved." (FP201)

There can be little argument that the Garifuna were the victim of numerous forms of discriminatory treatment in the colonial era. To what extent the disrespect against the Garifuna as a group has continued in a post-colonial sense is much harder to gauge, particularly without fostering widespread generalisations. The information compiled for this fieldwork was always intended to give the platform to a voice considered in need of uplifting. The continued disrespect of the Garifuna as a people,

⁹⁸⁹ See 7 News Belize, 'NGC calls out for Kaina' (28 June 2016) available at <http://www.7newsbelize.com/sstory.php?nid=36800> and Channel 5 Belize, 'Garifuna bank employee instructed not to speak in her native tongue' (28 August 2014) available at <http://edition.channel5belize.com/archives/103239> accessed 20 September 2018.

through a disregard of their land and culture by the State, *was* a significant theme on fieldwork, perhaps best summarised by the dispossession of Garifuna lands and resources with limited/no consent, and the national incidents of perceived discrimination.

The second theme evident on fieldwork was perceived *discriminatory treatment towards them as an indigenous people*. The indigenous narrative in Belize has for years, naturally been dominated by the Maya mobilisation and corresponding court cases. The contrast between how the Garifuna were viewed as an indigenous people, and how their brethren the Maya were perceived, formed one of the emerging themes from fieldwork. This perceived discrimination as an indigenous people forms the second pillar of the narrative regarding post-colonial discrimination. Again, two general themes became apparent, *indigenous land and indigenous conceptualisation*.

The indigenous discourse is a subject area of significant complexity with the need for analysis on multiple levels. First, it became very apparent that the subjects of indigenous rights and/or international treaties/instruments, were *not* universally known amongst participants. This was in part because only the more informed participants discussed them, and secondly because they themselves commented that there was a general lack of exposure in Belize. Those who could comment regarding indigenous rights were generally those with a higher level of education and/or people who encountered the discourse through work and/or social media. Several even quantified this by stating they were luckily at a particular conference/working group when the exposure happened.

Further discussion on the phenomena associated with the indigenous narrative in Belize will feature later in this chapter, yet one area of indigenous discourse

unavoidable whilst on fieldwork was the *Maya Land Right Commission*. Established by the government to settle the Maya land debate, it is naturally one of the major contemporary issues within Belizean society. The sheer volume of media the Maya movement gets both inside and outside Belize ensures the issue is a constant in Toledo. As the only non-Maya village within the STNP buffer zone, the Maya movement has naturally left its mark on the village of Barranco. The issue was discussed by participants formally or informally on a daily basis, and is quite literally, a part of everyday life in Toledo.

It is important to stress that fieldwork confirmed the Garifuna and Maya generally share extremely good relations. Since the Maya and Garifuna have established their own settlements in the area the two groups have enjoyed co-operative relationships, and in some cases marriage and children. Barranco is home to several Maya who are key community figures. *Figure E30* contains an example extract of close Maya-Garifuna relations.

Figure E30: Excerpt regarding Maya-Garifuna relations

“You see because they were compadres, as a matter of fact there was inter marriage, there was integration, relationships, between people of Conejo and Barranco and that is why you have children in Belize whose father is from Conejo and whose mother is from Barranco.” (FP205)

However, some differences of opinion have manifested as a result of the MLRC in the form of the ‘Midway issue’ (introduced earlier), which was commented upon on a daily basis. The roots of this friction could be traced to the boundary marker that Barranco had erected (see *Figure E1*). Midway (a village established on traditional Barranco lands) had protested against what they perceived as disrespect in Barranco erecting the marker. This reaction was reciprocated in Barranco, who themselves felt as though they were the ones being disrespected. A meeting between the two villages

saw friction ease through mediation, yet the issue acts as a reminder of the potential for tension to manifest between impoverished rural communities in Toledo, regarding issues centred on land and resources. *Figure E31* contains an interview extract describing the ‘Midway issue.’

Figure E31: Excerpt regarding Barranco-Midway issue

“You know the issue about the monument, where the people of Midway are now claiming that they are being disrespected by the people of Barranco, because they should have been consulted (FP 206)

On an international level, the Maya were able to benefit from the expertise of a range of international legal experts including the Arizona University Law Department and the Indian Law Centre. Garifuna participants were very aware of the level of Maya advocacy, particularly those who were privy to the inner workings of some NGOs. A variety of observations of a perceived ‘*Maya momentum*’ were provided by participants ranging from acknowledgement, to more nuanced observations linked to more complex phenomena. The disappointment which certain participants articulated regarding SATIIM’s perceived ‘desertion’ of the Barranco cause during the initial land rights challenge (explained further later in this chapter), was expanded upon by some participants.

Of all the Garifuna societal contributions mentioned by participants throughout fieldwork, their role as teachers and educators of Belize was the most frequently mentioned after music and dance. Despite the acknowledgement by some that this societal contribution had contributed towards de-indigenization, as discussed earlier, the Garifuna role in educating the country was regarded as a source of pride within the culture, and something participants clearly felt was respected across the wider nation. Particularly noteworthy, was the dispersal of Garifuna teachers across rural Toledo

District and deemed responsible for the education of the Maya. The pride in this contribution has in turn led to a degree of Garifuna dismay in some cases at the perceived marginalisation they have encountered in the ensuing land rights campaign.

Figure E32 contains a sample of this phenomenon.

Figure E32: Excerpt regarding Garifuna-Maya connections through education

“My Dad was a teacher in Maya villages ok. Teachers from San Antonio to Albaquate, and these are Garifuna teachers that I am speaking about, so after teaching the Maya for so many years, we taught them to teach themselves.” (FP105)

A further strand within the marginalisation theme considered reasons as to *why* the Garifuna were not able to tap into the indigenous narrative in Belize. These reasons were generally offered by the most well-informed participants and were associated with both the perception of the Garifuna by other groups from a development/racial perspective, and in certain cases, Garifuna *self-perception* regarding indigeneity. These reasons are discussed and explained in further detail throughout this chapter. *Figure E33* contains an example of one particularly prevalent theme, the lack of Garifuna conformity with the indigenous narrative in Belize on account of their partial black identities.

Figure E33: Excerpt regarding Garifuna not conforming to indigenous narrative

“As usual our blackness gets in our way (laughs). How can you be indigenous and you are black? (laughs) Because indigenous means people who look different, so you don’t have indigenous people in Africa (laughs). How can you be indigenous and you are black?” (Laughs) (FP206)

6.3 Investigating Garifuna ability to receive tangible indigenous recognition and benefit from land and resource rights

6.3.1 *Inhibitors to recognition: Garifuna de-indigenization*

The centuries of subjugation/marginalisation etc. against the Garifuna at the hands of the (post) colonial governments can be described as **Macro/National** level de-indigenization, commonly identified in the previous section as the demonization of Garifuna cultural traits such as farming, fishing, language etc. Additionally, de-indigenization at the **Meso/Community** and **Micro/Household** level has conspired to further afflict the Toledo Garifuna, and in turn has acted as an inhibitor to them gaining tangible recognition as an indigenous. Identifications of **Meso/Community** de-indigenization were just as common on fieldwork, and included comments regarding poverty, market competition, modernization, and the out-migration from traditional Garifuna settlements.

National/Macro influences *may* have resulted in some of these market forces taking hold, yet the influences are not as overt as the ones discussed in the previous section. A common example was farming. Despite once being a thriving farming community, the highest economic prosperity in the village took place during the banana boom years between 1900 and 1940,⁹⁹⁰ and this has diminished significantly since the latter half of the 20th Century. This decline in farming was widely commented on. *Figure E34* contains an excerpt of Barranco's history as a thriving farming centre, which was a source of great pride in the village.

Figure E34: Excerpt on Barranco farming history

"Barranco was blooming back in them times, they used to plant rice here, sugarcane, and we used to produce the best sugarcane, best plantain, and best bananas. Growing up by the police station they used to have a shed, where they used to have bags of rice man, bags of rice...I could recall they had bags of rice, it came from in the Temash river." (FP102)

Recent attempts to revive community level agriculture in Barranco for the national market have not been significant.⁹⁹¹ Numerous reasons were given for this decline including; accusations of an overt campaign to stop farming contracts being given to Toledo Garifuna, the necessity for the whole community to be involved to make projects viable, and the lack of security of land title (discussed further later). Additionally, attempts to revive fishing have reportedly also been impeded in numerous ways. *Figures E35* and *E36* contain sample quotes on the decline in farming and fishing.

Figure E35: Excerpt on the decline in farming

“We work in respect of the land, without the chemicals, a couple of times we have been given opportunities to bid for growing projects but they all include the use of Monsanto seeds, and harsh sterilising human genocide chemicals, so it hasn’t been a pleasant picture. So as far as the active demeanment I would throw that in there as far as farming is concerned.” (FP209a)

Figure E36: Excerpt on the decline in fishing

“Because right now simply when they give out the license you need this, you need that, you pay your license and you can barely pay back your money at the end of the year. You know? So, they make it rough. You need to pay a license for even a paddle!” (FP111)

The decline in farming and fishing has clearly played a major role in the separation of the Garifuna from cultural practises that compose inherent elements of their identity. This has led to a need to source other forms of income and ultimately led to a continuation in the erosion of community cohesion, as men particularly, were required to travel further afield in order to earn money as wage labourers. *Figure E37* contains a quote discussing Garifuna out-migration, a phenomenon which became

⁹⁹¹ Ibid.

particularly pronounced from around 1960 onwards.⁹⁹² Examples cited include the sugar industry centred in Corozal, and the United Fruit Company in Honduras (both mentioned in the previous chapter).

Furthermore, a relaxation on immigration restrictions to the United States based on race saw many Garifuna men find work as merchant seamen, or in manufacturing jobs vacated by men heading to war.⁹⁹³ This “*great American migration*” has continued unabated in recent years, with New York (notably Honduran and Guatemalan) and Los Angeles (notably Belizean), leading Garifuna centres of population. The largest Garifuna community in the world is now said to be found in The Bronx.⁹⁹⁴ A number of fieldwork participants spent at least part of the year in the United States. The quotation within *Figure E37* attests to how this phenomenon has continued into the present.

Figure E37: Excerpt on Garifuna migration

“Here I am talking about a Caribbean phenomenon, what they call migrant society, and the difficulties of organisation, the difficulties of defining issues, the difficulties of organising projects at any one time. The population particularly of young people can shift in a matter of a few weeks here, and if there is not a permanent population over a certain period of time, then it’s very difficult to move and to get things done, on anything for that matter.”(FP113)

This out-migration becomes even more pronounced when considering many of the lots in Barranco are long-term leases passed from one generation to the next. This system of property ownership stems from that first British survey of Barranco. When the British imposed prices on the property upon discovering the village,

⁹⁹² Ibid.

⁹⁹³ Anderson (2009) 178.

⁹⁹⁴ Ibid.

overwhelmingly the villagers decided to take out long-term leases rather than outright purchase of the lots, due to the cost.⁹⁹⁵ Now, as the second and third generations of those Baranguna inherit the paperwork for those lots, many do not live in the village for long periods or have never lived in the village at all, and have inherited these lots whilst living in places such as the USA for example. The result is that Barranco has numerous unused lots, some barely visible as they are engulfed in jungle vegetation. *Figure E38* contains an example picture of one such lot, the structure remains just visible.

Figure E38: Overgrown lot in Barranco



The quote in *Figure E37* is particularly revelatory, in that it summarises the consequences of this migration. Mobilisation around issues becomes extremely difficult due to the sheer fact that significant numbers of the population are away from the village for months or even years at a time, leaving a ‘brain’ drain on small

⁹⁹⁵ Palacio (2001) 111.

communities such as Barranco, which suffers from physical and social isolation.⁹⁹⁶

Granted, many of the houses in Barranco are also built or maintained with the specific intention of returning for periods of the year or for retirement, yet this renders the village largely unpopulated for long periods, seriously inhibiting the ability for village initiatives in industry and commerce to gain traction there. *Figure E39* contains an excerpt on Garifuna migration, specifically urbanisation *within* Belize.

Figure E39: Excerpt on Garifuna urbanisation

“I think the Garinagu have gradually urbanised, urbanised as a result of viewing their lifestyle as difficult and hard.” (FP205)

Migration also significantly impacts initiatives in Punta Gorda. Although as discussed in earlier sections of this chapter, the Saint Vincent block is land that can neither be bought nor sold legally, a concern amongst some participants was how members of the Garifuna community had left caretakers to tend their land whilst they were out of the district/country. *Figure E40* contains a sample quotation regarding this issue.

Figure E40: Excerpt on Saint Vincent Block

“Going to Cerro recently I found several Maya families in the Cerro block, and I investigated and was told that they were put there by the Garifuna owners, which I think would need to be dealt with cautiously.” (FP203)

The assertions by participants regarding the breakdown in community initiatives such as farming, were voiced as part of a wider narrative regarding the weakening of community cohesion. Several participants regarded the old *alcalde* system (as discussed in the previous chapter) as an example of authority that Barranco particularly missed. For example, the practise of *fajina* (a community effort to clean

⁹⁹⁶ Palacio (2005) 109.

the village) took place during the fieldwork period. However, such practises were reported to be far more frequent under alcalde rule. Although still a regular presence in many Maya villages, the alcalde system has not been present in Barranco for some years. *Figure E41* contains a sample interview excerpt regarding community in Barranco.

Figure E41: Excerpt on community in Barranco

“Barranco was a united community because they together went into something, they together went into the banana industry, together went into the rice industry, together went into fishing, together went into farming, and so unity is based on what you do in common, and that is what community is, it is what we have in common.” (FP107)

Unsurprisingly, **National/Macro** and **Community/Meso** de-indigenization has also percolated into the **Household/Micro** arena. Throughout fieldwork this was most apparent in the sphere of language, which has long been regarded as an area of culture needing conscious intervention to survive.⁹⁹⁷ However, more than any other cultural trait, the Garifuna laid the blame for language decline on their own doorsteps. This was mainly attributed to a breakdown in the communication from parents to children in the modern age. Reasons for this that were given included; life pressures meaning a lack of time for parents to teach children, urbanization,⁹⁹⁸ multiculturalism and modernisation, and the continued rise of the English language. *Figure E42* contains an excerpt describing language decline.

Figure E42: Excerpt on Garifuna language decline

“They speak less Garifuna to their children. When I was growing up, the children speak in Garifuna when they are out in the street, you don’t hear them speaking this Creole, the broken English, only the Garifuna.” (FP103)

⁹⁹⁷ Cayetano and Cayetano (2006) 243.

Taken cumulatively these layers of de-indigenization have combined over centuries to have a significant effect on Garifuna community cohesion in Toledo. The damage wrought upon communities by sustained de-indigenization from multiple forces, at multiple levels, across multiple temporal periods, is hard to quantify. Alluding to the wider effects of de-indigenization is a quote in *Figure E43* from a conversation held on Barranco beach, reminiscing about the time when the village was a thriving, vibrant community. According to this community leader, the ghosts of Barranco's past linger heavy in the present.

Figure E43: Excerpt on the legacy of Garifuna de-indigenization

"It is easy to say the Garifuna are lazy people, easy to say that. And that has been said about the Garifuna people that we are lazy. But nobody asked why come to that conclusion? What caused that? And then I go back to what I said earlier, how people are broken, and now you can kind of see now once bitten, twice shy. Why should I want to go into cacao today when I can relate to my grandfather, your grandfather going into bananas, or going into rice or what have you? That left something in someone as a child and that doesn't leave that person." (FP107)

6.3.2 *Inhibitors to recognition: Issues in mobilisation and representation*

A further significant inhibitor to Garifuna recognition throughout fieldwork was the issue of Garifuna mobilisation and representation. Before discussing the issues pertaining to Garifuna representation and mobilisation initiated by the Garifuna themselves, one particular emergent theme whilst on fieldwork concerned the NGO, SATIIM (the Sarstoon-Temash Institute for Indigenous Management). Returning to the rationale for this study, SATIIM formed in 1997 in response to the creation of the Sarstoon-Temash National Park (STNP) in 1994, without the prior knowledge of the communities who reside on its periphery. The communities within the SATIIM remit

are overwhelmingly Maya communities such as Conejo, one of the two villages involved in the first Belizean Supreme Court case. Yet Barranco is also an associate village of SATIIM, the *only* non-Maya village within the organisation.

The relationship between Barranco and SATIIM has played a significant role in both the recent history of the village and the life cycle of the NGO since inception. Indeed, it is possible to trace SATIIM's inception to a meeting held in Barranco, a point reinforced by numerous participants throughout fieldwork and during a previous visit to the village in 2013. Interviews with people who had been present from those first meetings were conducted in both 2013 and 2016, as well as with former employees, members of the board, and chairpersons, who were able to trace SATIIM's roots to the village. *Figure E44* contains a sample from an interview highlighting this point.

Figure E44: Excerpt regarding the inception of SATIIM

"Well the irony is that SATIIM started with a consultation that was held here in the village of Barranco, and the growth that over the years has been in the name of SATIIM"
(FP113)

During 2013 the tension between SATIIM and Barranco was noticeable, mainly due to the perceived notion in the village that the organisation was separating itself from Barranco and focussing on spearheading the Maya Land Rights challenge. What had manifested in the minds of the overwhelming majority of villagers was that the organisation had become too "*Maya-centric*". Although Barranco had always been the only Garifuna village under the organisational remit of SATIIM, bearing in mind their history in its foundation, the feelings of betrayal were palpable. *Figure E45* contains an excerpt summarising the SATIIM organisational structure.

Figure E45: Excerpt regarding SATIIM organisational structure

“There would have to be more than one representative from Barranco, because the four Maya communities are Maya leaders right, the four other representatives are Maya leaders, and four to one plus the ED (Exec. Director), the one person has practically no vote.” (FP114 talking in 2013)

When fieldwork commenced in 2016, both SATIIM’s organisational structure and their relationship with Barranco had altered somewhat. In 2013, as SATIIM led the Maya advocacy over land rights against the G.O.B, the Government revoked SATIIM’s Sarstoon-Temash National Park co-management agreement that they had previously undertaken in conjunction with Government Forestry Department.⁹⁹⁹ As the establishment of the NGO had been in response to the creation of the STNP, their co-management agreement with the G.O.B ensured that the NGO was largely defined by activities within the STNP and its periphery. Conservation projects SATIIM undertook in the STNP included; management of threats to biodiversity in the STNP, monitoring and evaluation of oil exploration activities in the STNP, and reduction of illegal activity in the STNP.¹⁰⁰⁰

Consequently, the termination of the STNP co-management resulted in the redundancy of numerous staff. This included the park ranger from each of the five villages associated with SATIIM, including the Barranco ranger who was the only paid position from Barranco within the company at the time of their redundancy. The frustration towards SATIIM regarding a lack of development for Barranco was partly due to the knowledge that only one person had consistently benefitted from their existence in terms of paid employment. Additionally, development projects in

⁹⁹⁹ 7 News, ‘SATIIM’s National Park Co-Management Agreement Cancelled’ (23 July 2013) available at <http://www.7newsbelize.com/sstory.php?nid=26112> accessed 18 September, 2018.

¹⁰⁰⁰ SATIIM, ‘Project Profile’ (n.d.) available at <https://www.satiim.org.bz/project-profile/> accessed 18 September 2018.

Barranco were often short-lived and difficult to sustain for any length of time. However, the palpable frustration towards SATIIM in 2013 had been replaced in 2016, by an acknowledgement that the relationship had altered over time.

Regarding SATIIM, most participants in Barranco merely stated that the organisation gave Barranco ‘no assistance.’ However, some of those who had a more intimate knowledge of the relationship between SATIIM and the village were more direct. Several accusations centred on the lack of financial support/projects that Barranco received compared to other villages. Other accusations included attacks on SATIIM’s alleged comments regarding Barranco’s ‘indecisiveness’ and the fact that meetings started being held in Kekchi and not English. *Figure E46* contains an example of the tension that had manifested.

Figure E46: Excerpt regarding Barranco-SATIIM tension

*“Whenever there was an opportunity for SATIIM that was the same argument that came across - Barranco do not know what they want, are not organised et cetera, et cetera.”
(FP207)*

One event that certainly caused friction between the village and NGO was the fact that the oil company US Capital Energy (USCE) had based themselves in the village in 2012. That the company then moved to nearby Sundaywood, who were removed from SATIIM shortly after, is perhaps telling. The conflict caused within communities by the presence of USCE was prevalent, wide ranging in causation, and affected *every* village within SATIIM’s jurisdiction.¹⁰⁰¹ The assumption that any village was always wholly behind SATIIM, wholly behind USCE, or indeed behind

¹⁰⁰¹ Alex Gough, ‘Indigenous peoples and oil development: Complexities in conflict (Unpublished thesis 2013).

any venture, is misleading and something that was corroborated numerous times in both 2013 and 2016. This resulted in what one village leader in Barranco regarded as being a “roadshow” battle for control over the villages between SATIIM and USCE. A former senior SATIIM employee offers their version of events from 2013 in *Figure E47*.

Figure E47: Excerpt regarding Barranco-SATIIM relationship

“The traditional rights of Barranco have been advanced from our perspective ...but the most fundamental issue there is representation, who represents you? Who do you want to represent you? And that is what Barranco has not clearly articulated. They’ve not said ok they have NGC, the National Garifuna Council” (FP204)

Whatever the exact cause of Barranco’s fracture with SATIIM, it seems that a breakdown in communication between the two parties was a major contributing factor. Whether that was caused by indecision on Barranco’s part regarding its allegiances, a conscious movement by SATIIM to concentrate on the Maya majority within the group, or a combination of factors, will remain open for debate. Although divisions over representation had clearly emerged, the NGO and the village have continued to work together on certain initiatives, for example in the case of the Barranco Sustainable Fisher Folk CBO, which offers hope for co-operation on future ventures.

However, what was abundantly obvious in 2016 was that it was a Garifuna organisation, the National Garifuna Council, who received more blame than SATIIM for a perceived lack of representation on behalf of the Toledo Garifuna. The National Garifuna Council (hereinafter NGC) evolved as part of the movement celebrating pan-Garifuna culture across Belize, which had succeeded in the creation of Garifuna

Settlement Day in 1948.¹⁰⁰² Created in 1981, the NGC is undoubtedly the largest Garifuna organisation in Belize. The NGC has representatives in all six traditional Garifuna communities (Dangriga, Seine Bight, Georgetown, Hopkins, Punta Gorda and Barranco), as well as in other areas with significant numbers of Garifuna (Belize City, Belmopan, Libertad and San Pedro).¹⁰⁰³ The NGC is notable for having a multi-disciplinary professional membership of over one thousand members.¹⁰⁰⁴ As an NGO, the NGC mission statement begins by stating that;

*“The Mission of the Council is to advocate for and secure the rights, development and culture of the Garifuna in Belize...”*¹⁰⁰⁵

In 1999, the NGC signed a Memorandum of Understanding with the Government of Belize as a basis for dialogue. Accordingly, the Government recognized the NGC as the legitimate representative of the Garifuna people in Belize. Furthermore, the Government agreed to consult the organization on all matters concerning the Garifuna community in Belize.¹⁰⁰⁶ Despite these efforts, the perceived lack of representation that the NGC provided for the Garifuna village of Barranco during the Maya Land Rights challenge was a prevalent theme. The simple fact that the NGC is a Garifuna organisation in entirety, and *the* Garifuna NGO in Belize, meant that their contribution (or lack of), was perceived in a more negative light than SATIIM’s. *Figure E48* contains an extract attesting to this.

¹⁰⁰² Palacio (2005) 117.

¹⁰⁰³ Gabriel Izard, ‘Patrimonial activation and construction of Garífuna identity in contemporary Belize’ in Palacio (2005) 181-182.

¹⁰⁰⁴ Ibid.

¹⁰⁰⁵ NGC, ‘About’ (n.d.) available at <http://ngcbelize.org/about/> accessed 18 September 2018.

¹⁰⁰⁶ Izard (2005) 182.

Figure E48: Excerpt regarding NGC inactivity in Barranco

“Well, since Barranco is a Garifuna community then you could say that the NGC should have been the one to take the initiative to look after its people, if the Mayans are looking after their people then what happened to our organisation?” (FP104)

The lack of support from the NGC was attributed to numerous factors. Several participants did acknowledge that as a voluntary organisation the NGC simply did not have the money/time to be effective. Several mentioned a potential NGC brainstormed cassava growing project for Barranco as an example of a productive contribution, as was the effort put into the national Garifuna celebrations on Settlement Day.¹⁰⁰⁷ Some defence of the organisation was made regarding the Maya Land Rights case, and the fact that they were not kept informed by SATIIM as to the direction of advocacy needed. This defence was made by those informed through being privy to high-level meetings, and *not* by the general trend of participants. *Figure E49* contains an excerpt of some defence of the NGC.

Figure E49: Excerpt regarding defence of the NGC

“Speaking to, I believe two past presidents of the NGC, whilst they were in tune with what is going on, the charge legal case, I observed that they were not too happy in one way that they were not being informed enough from the Mayan groups. That this was taking place and they felt they were not needed, or I would say they were of no significance.” (FP207)

Fieldwork facilitated the opportunity to speak to a high-ranking member of the NGC who acknowledged the shortfalls the organisation had faced. The member stated that securing tangible benefits for the Garifuna communities in Belize through

¹⁰⁰⁷ Garifuna hero Thomas Vincent Ramos established Settlement Day in 1941 (known as Carib disembarkment day until the 1970s). It was declared a public holiday in Stann Creek and Toledo in 1943 and a national holiday in 1977. Although the first Garifuna settled in Belize in 1802, Settlement Day celebrates the 1832 arrival of a group of Carib refugees led by Alejo Beni, who arrived from Honduras and settled present day Dangriga. See Izard (2005) 182-185.

economic projects was a key area of concern, as was preserving the language. They were unable to comment on the *NGC-Barranco-SATIIM* situation and the breakdown that had clearly occurred. They were however able to shed some light on the geographical concentration of the NGC, which was backed up by another well-informed respondent. *Figure E50* contains an extract referring to this geographical weakness in the Toledo branch.

Figure E50: Excerpt regarding NGC geographical focus

“Yes, because in Toledo you know that the branch there is very weak and we need to strengthen that branch.” (FP203)

The quote alludes to the contrast in NGC activity when comparing the Toledo branch with other parts of the country. For example, the NGC were based in the *Gulisi Museum* (National Garifuna museum) in Dangriga at the time of fieldwork,¹⁰⁰⁸ Dangriga (known as *Carib town* in colonial times) being the most notorious Garifuna settlement in Belize. In terms of other notable Garifuna organisations, some well-informed participants offered the World Garifuna Organisation (WGO), yet these were infrequent. Formed in 2000 (also with a listed headquarters in Dangriga), the WGO is notable for placing a great emphasis on the blackness of the Garifuna, whilst the NGC have always been huge advocates of the Amerindian element of Garifuna identity.¹⁰⁰⁹ The missions of these two organisations offer an interesting distinction though the present functionality of the WGO is difficult to measure, as no website for the organisation seems to be in operation.

The perceived lack of effective representation on behalf of the NGC in Toledo is symptomatic of further division within the Garifuna community. This was alluded

¹⁰⁰⁸ NGC, ‘Museum’ (n.d.) available at <https://ngcbelize.org/muesum/> accessed 18 September 2018.

¹⁰⁰⁹ Izard (2005) 190.

to by almost every Garifuna participant, either through assertions as to a lack of advocacy, or through more detailed observations regarding lack of leadership and/or division within the Garifuna community. One thread centred on those deemed “*pencilled*” versus those deemed “*non-pencilled*”, the former being reserved for Garifuna who have attained higher levels of education and/or moved out of the district. For example, these Garifuna have gone on to take senior level positions in a variety of sectors, whilst the latter would generally refer to those who remain in their traditional communities and do not possess what could be described as a formal ‘higher’ level of education. *Figure E51* contains an excerpt considering this phenomenon whilst also alluding to the high level of educational attainment from Barranco.

Figure E51: Excerpt on Garifuna divisions

“There has always been this tension between the pencilled and the non-pencilled ones. And this village has been a very educated village, I mean we have a lot of people with PhDs in this village.” (FP112)

A second form of tension, more prevalent on fieldwork, was the consideration that those in positions to lead or to advocate the Garifuna cause did not do so for whatever reason. *Figure E52* contains a quote alluding to this. The perception by many participants over a lack of leadership, whether it be at a governmental or non-governmental level, is certainly a contributing factor to the division between those deemed pencilled and those not. It was also evident on a community level that there is a lack of unity holding Barranco back. Again, leadership was noted as being an area that Barranco residents were critical of within their own community.

Figure E52: Excerpt on Garifuna leadership

“If these PhDs can come together and be brave to challenge the government we can get the government to come onto the negotiating table, and we present them with our Barranco agenda, if I may label this thing as a Barranco agenda.” (FP109)

The perceived lack of effective mobilisation and representation in Toledo raises a further point regarding recognition and the different forms that recognition may take. For example, the only other Garifuna group who were mentioned in Toledo was the “*Battle of the Drums*” organisation, responsible for holding the weeklong celebration in November coinciding with the above-mentioned Garifuna Settlement Day. The *Battle of the Drums* undoubtedly makes a huge contribution regarding promoting Garifuna culture, as groups from all over the country join in the celebration, with Barranco’s group well regarded as being multiple (and reigning) champions. Furthermore, the *Battle of the Drums* group run events to keep children connected with their Garifuna culture. However, it was acknowledged the group really concentrate on the period around Settlement Day in November and that the organisation is not an NGO in a community sense, rather it is a commercial enterprise as summarised by a participant in *Figure E53*.

Figure E53: Excerpt regarding Battle of the Drums

“There are some private individuals in town who are doing stuff that impact the Garifuna people, and one of those things is the annual festival of the battle of the drums competition. And that is run by a group of Garifuna, but they are more a private enterprise than a community enterprise.” (FP208)

Overall, participants certainly felt that from a cultural perspective the Garifuna *did* attain significant recognition. Numerous cultural contributions were mentioned including; the celebration of Garifuna Settlement Day, the UNESCO cultural proclamation, the introduction and popularization of Garifuna foods, and most notably

the contribution to music, drumming and dance, particularly by the late Andy Palacio. The pride in which the Garifuna hold their contribution to Belizean music and dance, particularly Baranguna (Barranco resident) Andy Palacio, was abundantly apparent (see *Figure E54* for an example). Garifuna music was regularly heard in the bars of Punta Gorda, such as those popular on Front Street and more ‘local’ spots such as Elephant Foot on VOA road. What was particularly interesting regarding these cultural contributions was the level of recognition that they were perceived to have been given by wider society. It was this element of Garifuna societal contribution that was discussed the most whilst on fieldwork.

Figure E54: Excerpt on Garifuna cultural contributions

“It is the culture that has internationalised Belize...the Garifuna peoples have contributed greatly to the country, to the development of this country, and still are contributing, and won’t stop contributing. Andy Palacio had become one of the few people too have won the WOMIX award, and topped the charts in Europe, a Garifuna ambassador, an icon.” (FP108)

It was actually the recognition of their cultural contribution that fuelled Garifuna outrage at the lack of recognition they received in other ways. It is possible therefore to identify a division within the concept of recognition and mobilisation. The Toledo Garifuna undoubtedly felt that their culture received positive recognition for the contributions it had made to society. However, in terms of representation and mobilisation regarding the recognition of their *rights to control over land and resources*, the Toledo Garifuna were particularly negative, stemming from the perceived lack of SATIIM/NGC representation they received.

This thesis has charted how land control has historically been an issue for the Garifuna community both in Toledo and further afield. A strong feeling manifested

whilst on fieldwork that the time to mobilise around preservation of Garifuna ancestral lands in Toledo may be imminent. In lieu of any formal legal challenge over Barranco lands, the community have themselves initiated protocols in order to secure land. However, this is a process that is difficult to put into tangible action due to financial restrictions. *Figure E55* contains an excerpt regarding community efforts to see Garifuna land recognised, whilst *Figure E56* contains an excerpt regarding a wider concern for the Garifuna as a people to secure their lands.

Figure E55: Excerpt regarding community land applications

“Well the first group was 40 applicants, and they have been granted their permission to survey, which is a document giving you the authority to survey your area...They all have origin, they all have ancestry origin, if you know what I mean. Yes. If there is a block of land that is vacant we want to demarcate those. That will stop the multi-million dollar investments of the big guys coming in because they won’t see land availability.” (FP205)

Figure E56: Excerpt regarding Garifuna land rights

“I think that as a people we are very passive, so you are not thinking that a time will come when we need to fight for our lands. But I think the time is now, because under our very eyes we have been losing a little piece, a little piece, a little piece, like in Barranco, where the Maya village, Midway is, that was Barranco farmland.” (FP203)

6.3.3 Inhibitors to recognition: The contested land of Toledo

In April 2016, a tragic incident marked the latest escalation in hostilities between Belize and Guatemala. An altercation at the heavily forested (and porous) western border between the BDF (Belize Defence Force) and armed Guatemalan civilians resulted in the death of a teenage boy. In response, Guatemala heavily increased its troop presence on the western border, and tensions rose sharply with both countries implored to seek a diplomatic outcome by regional and world leaders. The Sarstoon River (Belize’s southern border with Guatemala) had been the site of rising

tensions prior to the tragedy, with Guatemala essentially annexing Sarstoon Island and press reporting that Belizeans were being restricted from entering the mouth of the river. The tragedy provoked a nationalist outcry on both sides.

The Belizean Territorial Volunteers (BTV) planned to travel to the river mouth on Mayday weekend in order to celebrate the anniversary of the signing of the 1859 Anglo-Guatemalan treaty, the treaty that explicitly recognised the Sarstoon as Belize's southern border for the first time. In an effort to prevent any further escalation, on Friday 29th April PM, Dean Barrow passed Statutory Instrument 46 (SI 46) which sought to prevent Belizeans from going “*without lawful authority*” to the Belize side of the Sarstoon River beginning at its mouth and including Sarstoon Island. The curfew, scheduled to last one month, was essentially a travel ban for any Belizean to the Sarstoon River.¹⁰¹⁰ *Figure E57* contains a fieldwork diary extract recording the cancellation of a boat trip intended to celebrate the signing of the 1859 treaty.

Figure E57: Field diary extract regarding escalation in Belize-

Saturday 30th brought news of a major development in the border crisis. It seems that a man named [REDACTED] was due to travel by boat to the Sarstoon in order to celebrate the signing of the Anglo-Guatemalan treaty of 1859. [REDACTED] stopped by [REDACTED] special battalion. It seems that the day before (Friday 29th), the government had hastily passed SI 46 which effectively placed a curfew on heading down the Sarstoon River for all BZE citizens for 1 month. I had been approached about going on this trip but had decided it may be too risky. It seems I was right in my instincts regarding not heading to the Sarstoon as I wouldn't have made it off the pier.” (Author - 3/5/16)

With Barranco the closest Belizean village to the mouth of the Sarstoon (around 6 kilometres from its mouth), it was unavoidable that this escalation would affect the

¹⁰¹⁰ Amandala, ‘Opposition PUP challenge G.O.B over Sarstoon River Law’ (10 May 2016) available at <http://amandala.com.bz/news/opposition-pup-challenge-gob-sarstoon-river-law/> accessed 18 September 2018.

lives of the villagers as well as the fieldwork project in general. Whilst the situation did calm as the month progressed, there was a palpable sense of guarded tension both in Punta Gorda and nationally in the first weeks of May. Several Barranco residents appeared on national media discussing the situation, and by June, it was clear that what had occurred was yet another admittedly tragic chapter in the ongoing Belizean-Guatemalan dispute. The Guatemalan army remained, but life went on. As the closest coastal village to the mouth of the Sarstoon, Barranco has used the river for fishing, travel and trade, since settling in the region in the 19th Century.

A significant number of Barranco participants stated that the recent escalation had affected their lives with regard to the river. The most popular answer given regarding the effect of the army annexation on lives in Barranco was that of trade and/or exchange, particularly with the neighbouring village of *Sarstoon/Sarstun* (the village where many of the Kekchi Maya who moved to work for Cramer in the 1880s settled, as discussed in the previous chapter).¹⁰¹³ Located on the Guatemalan side of the border, and only accessible through the mouth of the river, the village has been an important trading and cultural exchange partner for Barranco for years. Among the activities that participants cited as being threatened by the army blockage of Sarstoon Island were; trading, recreational activities, and an important leadership course which children from both communities were undertaking together. *Figure E58* contains an interview extract highlighting certain mutual ventures between the villages.

¹⁰¹³ *Sarstun* is the Spanish name for the river. The village was also referred to as *San Pedro Sarstoon* in colonial times. See Wainwright (2011) 48.

Figure E58: Excerpt regarding effects on Barranco-Sarstun activities

“Last week these kids were supposed to go and finish the leadership training they are on. They can’t go because of the conflict again. Usually we just go from here to Sarstun with no problem...since that conflict started we can’t move, because we don’t want to go there and the authorities are going to grab us and we could get in to problems. So, it is really affecting our movement in the area. (FP111)

The escalation had clearly affected the rights of the Garifuna in Barranco to go about their daily lives on the Sarstun, if not the customary Garifuna sea travel between Guatemala and Belize (discussed earlier). Although the latest escalation was clearly distressing for some Garifuna, the overwhelming evidence throughout fieldwork suggested this issue was merely the latest in a long line of disputes between two governments. Interviews with certain Garifuna elders and community leaders enabled them to chart points in history where the conflict had escalated. Some made particularly nuanced observations regarding the root cause of the conflict. *Figure E59* contains an example of such a recollection.

Figure E59: Excerpt regarding Belize-Guatemala dispute

“No, we are used to it... I was reading a letter with my Dad that he wrote me in 1981 and in that letter he was talking about how the border was closed. That was 35 years ago so it is not anything new.” (FP 205)

The ability to discuss the nuances of the historical Guatemalan territorial claim naturally varied depending on participant awareness of the historical content and context. Assertions on this matter therefore ranged in detail, from those who were not privy to the facts, to those who were able to make erudite assertions regarding the question of any potential Guatemalan sovereignty to Southern Belize. Those participants who spoke on the claim spoke of a number of issues that they felt

dispelled Guatemalan sovereignty, with all expressing their absolute belief that Guatemala held no claim to Belize. *Figure E60* contains an example of such a comment. At *no time* on fieldwork did any participant suggest that Guatemala held a claim to Belize nor that they desired that to be the case, *all* expressed their love for Belize. The majority of participants that commented on the situation made assertions regarding the territorial integrity of Belize. *Figure E61* contains such an example.

Figure E60: Excerpt dismissing Guatemalan claims to Belize

“There are two things that are important to analyse here. One is the argument of sovereignty. Guatemala has never exercised sovereignty over no part of Belize under no circumstance. We never used the peso when Guatemala used the peso before the quetzal.” (FP211)

Figure E61: Excerpt regarding Belize’s territorial integrity

“For Belizeans that would be terrible, Toledo, Punta Gorda, we have all these Maya and Garifuna who were born Belizean, you cannot just take them and give them to another country.” (FP208)

In addition to participants citing the colonial and post-colonial histories of Belize as evidence in countering the Guatemalan claim to the Toledo district, certain participants were also able to cite alleged experiences of the indigenous populations in Guatemala as a further reason of their pride in being Belizean. These observations, made by well-informed members of the Garifuna community in Toledo, point to a wider issue of the poor human rights record that Guatemala holds with regard to its indigenous peoples. *Figure E62* contains an excerpt of a comment of this nature.

Figure E62: Excerpt regarding indigenous rights in Guatemala

“Because I am totally sure that the Guatemalans in Belize, with the right that they have for land, with the environment, the peaceful environment that they are living in, they don’t want to have anything to do with Guatemala” (FP211)

Such observations add a further perspective to the large-scale Maya migration that continues over the border from Guatemala to Belize. This migration is fuelled in part by a greater ability for Guatemalans to gain access to land in Belize, a country that has always had a surplus, particularly in Toledo. Furthermore, this migration is intimately connected to the Toledo Maya movement and mobilisation at the forefront of Belizean society for the past twenty years, adding further complexity to the MLRC process of adjudicating customary land tenure in Maya villages in Toledo.

The *Maya Land Rights Commission* was established in January 2016, three months before fieldwork began, to facilitate the implementation of the consent order between the Maya communities and G.O.B as per the CCJ directive. Although the MLRC had not (and still have not) established any website to regarding their establishment and objectives, they have set up an office in Punta Gorda. The MLRC visited Barranco during the fieldwork period in 2016, as part of a roadshow whereby the MLRC would be visiting every Toledo settlement. The meeting was a naturally tense affair, with Barranco residents eager to understand exactly what the MLRC meant for the village, notably the territorial integrity. *Figure E63* contains a field diary extract from this meeting.

Figure E63: Field diary extract from MLRC meeting

The meeting remained passionate, with the theme of Barranco's rights, central. The convenor did a good job I thought, and I wonder how much he really knew about the subject. But whether it was XX talking about [REDACTED], or XX telling him to read [REDACTED] book regarding continuity in land, it was clear that Barranco was going to use this meeting to have its say on what they feel is injustice [REDACTED] regarding Garifuna land." (Author)

At this meeting, the MLRC representative handed out a leaflet summarising their objectives. This constitutes the only literature available from the meeting. Figure E64 contains a photograph of the leaflet sourced first hand from the meeting. The mandate of the MLRC is stated on the leaflet as; "*consulting with the Maya people, or their representatives, to identify and protect the Maya land rights as it relates to customary land tenure.*" ¹⁰¹⁴ Nine paragraphs/objectives are listed as part of this process. Paragraph one states the Court of Appeal of Belize; affirms Maya customary land tenure exists in Toledo giving rise to collective and individual property rights within the meaning of sections 3 (d) and 17 of the Constitution. Paragraph two states that the Court accepts the Government requirement to adopt affirmative measures to identify and protect the rights arising from customary land tenure in conformity with sections 3, 3(d), 16 and 17 of the Constitution.

Paragraph three states that in order to achieve the objective in paragraph two, that the Court accepts the undertaking of the Government to, in consultation with the Maya or their representatives, develop the legislative, administrative and/or other measures to create an appropriate mechanism to identify and protect such property and

¹⁰¹⁴ Toledo Maya Rights Commission Consent Order Leaflet (2016).

rights.¹⁰¹⁵ Paragraphs five to nine are very short and mainly relate to the issue of determining Maya court costs from the case. However, paragraph four is particularly prominent within the text, and states that:

“The court accepts the undertaking of the government that, until such time as the measures in paragraph two are achieved, it shall cease and abstain from any acts...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...This undertaking includes but is not limited to, abstaining from: issuing any leases or grants to lands or resources under the National Lands Act or any other Act; registering any interest in land; issuing or renewing any authorizations for resource exploitation, including concession, 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 Act.”

Paragraph five meanwhile states: *“that the constitutional authority over all lands in Belize is not affected by this order.”*¹⁰¹⁶

¹⁰¹⁵ Ibid.

¹⁰¹⁶ Ibid

Figure E64: MLRC leaflet



Closer inspection of the wording within the leaflet is particularly interesting.

First, the inclusion in paragraph five that the “*constitutional authority of the Government over all lands in Belize is not affected by this order,*” removed any doubt that regardless of the Consent Order, the G.O.B maintained supreme constitutional authority over all land in Belize. Second, the list of abstinences that the G.O.B is prohibited from engaging in without the “*consultation with them (Maya villages) in order to obtain their informed consent*”, is of a considerable scope. However, as

discussed in earlier chapters, the issue of *free, prior and informed consent* is a particularly grey area within international law, and the same is true in Belize. One community leader dismissively outlined their vision of what free, prior and informed consent constitutes, an extract of which is available in *Figure E65*.

Figure E65: Excerpt regarding free, prior and informed consent

“Something that gets banded around in the UN.” FP113

Having been present at the meeting in Barranco when a man with a logging concession was introduced to the village, the comments above seem somewhat valid. To what extent that extremely short address, made to those people in the village who happened to be present at that time, constituted *free, prior and informed consent* is debateable, as is whether such introductions happen for each logging concession given, or crucially, whether the refusal of the community to grant consent would actually prohibit him from logging. However, with no clear framework established to constitute the parameters to which *free, prior and informed consent* must adhere, it remains a particularly (and perhaps deliberately) ambiguous term. Therefore, the ability for the G.O.B to continue to award such concessions on land and resources occupied or used by Maya villages, may not have been conclusively extinguished by the establishment of the MLRC. Indeed, even if it had, based on previous experience, significant questions remained as to whether the G.O.B would adhere to such demands.

To return to the Toledo Garifuna and to the thread of this analysis identified as an impediment to recognition, that of the contested land of Toledo, fieldwork embellished both notions of contestation discussed throughout this thesis. The external territorial claims of Guatemala, manifested through their annexation of the Sarstoon

River, ensured that the territorial debate (naturally) re-entered and re-dominated local and national discourse. Additionally, the MLRC ensured that the internal territorial claims of the Toledo Maya communities also continued to dominate local and national agendas. The cumulative effect was that Guatemala and the Toledo Maya continued to dominate the space the Toledo Garifuna inhabit, with the latter continuing to dominate the indigenous narrative in the district and wider nation-State of Belize.

6.4 Summarising Garifuna identity in Belize's Toledo district

6.4.1 Garifuna identity: Conforming to indigenous legal norms on multiple levels in Belize's Toledo district

When placing empirical research conducted in the Toledo district with the Garifuna against norms of indigeneity as posited by Erica Daes,¹⁰¹⁷ a particularly rich dataset has produced a number of interesting conclusions with regard to the extent that the Garifuna conform to these norms. Taking the first norm as *priority in time, with respect to the occupation and use of a specific territory*, the Garifuna case is extremely strong from multiple perspectives. First, fieldwork conclusively reaffirmed that the Garifuna are intimately rooted within the Toledo district, and the Toledo district intimately rooted within the Garifuna. Both of the settlements of Barranco and Punta Gorda were settled by Garifuna (then known as Caribs), before the British colonization of Belize in 1868, and before the creation of Toledo as the colony and then nation's southernmost State in 1882.¹⁰¹⁸

There can be little doubt that the British did *not* recognise Maya land-use patterns and that they remained beyond British consciousness until the end of the

¹⁰¹⁷ Daes (1996) 23, para 69.

¹⁰¹⁸ Wainwright (2015) 123.

nineteenth century.¹⁰¹⁹ Additionally, both Barranco and Punta Gorda settlements were already established when the British conducted their first surveys of those areas. This does not dispel the idea that Maya land use patterns were beyond British consciousness, yet the fact that both Garifuna settlements had been established before currently recognised Maya settlements in their immediate proximity cannot be disputed. Furthermore, in some cases, these Garifuna settlements pre-date neighbouring Maya villages (such as Midway and Sundaywood) by over one hundred years.¹⁰²⁰ Indeed, this is something which the G.O.B themselves have readily admitted.¹⁰²¹ The lineage that evidently still flows through both Barranco and Punta Gorda ensures an ancestral link between the present day inhabitants and the earliest settlers remains strong.

Whilst the Maya clearly hold ancient and ancestral roots to the Toledo district, the fact that Garifuna settlements have enjoyed *continuity with respect to their occupation and use of a specific territory* adds a further point of interest to indigenous narratives in the district. When international legal norms identify ‘*priority in time*’ as relating to ‘*the establishment of present State boundaries*’,¹⁰²² then a strong argument can be made that with regard to the modern Toledo district, the colony of British Honduras, and independent nation of Belize, that the Garifuna were one of the original *settlers* of this territory. To embellish this point, with regard to the Toledo district as

¹⁰¹⁹ Ibid at 126.

¹⁰²⁰ IACHR (2004), para 73, n31.

¹⁰²¹ Ibid at n32.

¹⁰²² ILO 169, art 1b.

part of Belize, at the time of British colonization the Garifuna had already settled there.

Furthermore, the Garifuna are the descendants of the Caribs who roamed across the wider Americas and Caribbean region, just as the Maya are the descendants of the Maya who roamed around the wider Central American region. Considering this adds further historical credence to the priority in time strand of identification “*on account of their descent from the populations which inhabited the country or a geographical region to which the country belongs, at the time of conquest or colonisation.*”¹⁰²³ The Toledo Garifuna are descended from the Caribs who inhabited the region, now known as the *Caribbean*, at the time of colonization. Cumulatively, whether taking a pre-Columbian or present State boundary approach to the term priority in time/original settlers, then the Garifuna fit either narrative

Fieldwork embellished the notion of the Garifuna conforming to the ***voluntary perpetuation of cultural distinctiveness*** in numerous ways. To quote renowned Garifuna anthropologist Dr Joseph Palacio, taking their “*hybridity*” to begin with,¹⁰²⁴ the Garifuna possess a markedly different biological and cultural composition to many other black skinned Caribbean descendants in that they have black skins, but in fact are a fusion of Africans and Amerindians. Rather than originate from slavery, they originated in resistance to the slavery of two founding races of the Caribbean region on St Vincent.¹⁰²⁵ Garifuna language is predominantly Amerindian in composition, yet has been furnished with phrases from numerous other languages. Furthermore, it is a

¹⁰²³ Ibid.

¹⁰²⁴ Palacio (2005) 9.

¹⁰²⁵ Ibid at 11.

language spoken by a black population in Central America. Meanwhile, Garifuna drumming and dance is predominantly African,¹⁰²⁶ their spirituality has been likened to Haitian voodoo,¹⁰²⁷ whilst their music has been embraced globally.¹⁰²⁸

The sustained and sustainable Garifuna relationship with land and sea, and to the territories they settled in what would become Toledo in the 19th century, are further evidence of the distinctness of the Garifuna as a group. Maintaining control of such territory is essential for the Garifuna to remain a distinct culture, as this connection with their territories on land and at sea is a vital strand of the connection to their ancestors through spirituality. Furthermore, *sustainable* land and sea use is an essential part of the culture, as it facilitates the continued relationship with nature, essential for cultural survival. Barranco is a distinctly Garifuna settlement, whilst Punta Gorda has grown to be the multi-ethnic State capital of Toledo, yet in doing so the Garifuna have maintained a distinct form of property ownership and management at the Saint Vincent block. This form of collectively owned private property is unlike anything else in Punta Gorda. Indeed, the confusion surrounding it has seen it labelled as a reserve right up until the present day, as alluded to during fieldwork

The Garifuna kinship systems that span multiple temporal places and geographical spaces are further examples of the distinctness of this culture. Garifuna spirituality allows the Garifuna to retain ancestral links, whilst the connections between the Garifuna across their homeland countries of Central America and beyond

¹⁰²⁶ Cayetano and Cayetano (2006) 240.

¹⁰²⁷ Foster (1994) 171.

¹⁰²⁸ BBC, 'Awards for World Music' (n.d.) available at http://www.bbc.co.uk/radio3/worldmusic/a4wm2008/2008_andy_palacio.shtml accessed 16 September 2018.

mean that the “*nation across borders*” concept remains strong in the 21st century. Garifuna customary routes between Belize and Guatemala incepted before modern State boundaries, yet still in use, are a further example of the culture continuing to maintain distinctive travel patterns that predate the colonisation of Belize. The *voluntary perpetuation of cultural distinctness* by the Toledo Garifuna was visible every day whilst on fieldwork and cannot be disputed.

The third norm identified by Erica Daes, *Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collective*, was also undoubtedly a vital cultural indicator of the Toledo Garifuna. Self-identification as Garifuna (a distinct collective), and recognition as Garifuna by other groups including the Maya and Belizean State, was overwhelmingly obvious throughout fieldwork, and is also fundamentally obvious in a wider sense. However, fieldwork confirmed that whilst the majority of Garifuna certainly self-identified as indigenous, the issue as to whether they were regarded as *truly* indigenous by State authorities, or comprehensively so by the wider Belizean population, was more complex. This complexity is directly associated with the final norm as selected by Erica Daes.

When considering the final norm, the Toledo Garifuna *experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist*, a plethora of issues spanning both the colonial and post-colonial era emerged. Taking colonial era subjugation first, with regard to land, the fact Garifuna settlements had rents imposed upon them in Toledo, as in Stann Creek,¹⁰²⁹ means that tantamount *dispossession* could be said to have occurred in both Barranco and Punta Gorda. What is certain is that when the British established the

¹⁰²⁹ Bolland and Shoman (1977) 91.

colony of British Honduras, the Garifuna (or Caribs) were precluded from owning any land until the end of the 19th Century, and instead as a people were conceptualised (with the Maya) within narratives of *reserve* land.¹⁰³⁰ Although the story of the Saint Vincent Block suggests that the British actually facilitated the Caribs reclaiming their lost land, they were undoubtedly the victims of *exclusion* and *discrimination* over land.

Furthermore, the Caribs were victims of cultural *discrimination* under the direction of the Catholic Church, who demonized Garifuna farming and fishing practises as well as the language and spirituality of the group. A combined effort to remove the Garifuna from land and sea, ban their spirituality, and silence their language, was described by some participants as being a process of *de-indigenization*. The recruitment of Garifuna men as teachers was a further significant factor in breaking up communities and family units. This separation of Garifuna men from their families and communities could be regarded as cultural *marginalization*. The demonization of this people was reported by certain older and/or educated participants, as also taking the form of *exclusion*, through the alleged separation of Garifuna and Creole – both peoples of African origin.

Continued discrimination against the Garifuna was widely reported to have continued into the post-colonial era. This discrimination can be divided into two general areas, discrimination against the Garifuna as a people/culture *and* discrimination against the Garifuna as an indigenous people. In terms of land, the granting of logging concessions to outsiders on Barranco lands, the passing of conservation laws affecting the ability to benefit from their ancestral territories and the

¹⁰³⁰ Crown Lands Ordinance Act 35Y1872 (1872).

lack of any compensation in the Saint Vincent Block, are examples whereby modern day *dispossession* through appropriation/prohibition could be said to have taken place. Meanwhile, culturally, the already discussed alleged discrimination suffered by the Garifuna, as reported recently in the media,¹⁰³¹ is suggestive that residual cultural discrimination against the Garifuna as a people, may potentially remain in some quarters.

The first large scale anthropological study of the Garifuna conducted by Douglas Taylor (1951) gives accounts of the relations between ethnic groups during the colonial era. For example, relations between the Creoles and Garifuna, were reported to be particularly strained at this time.¹⁰³² Colonial era policies of promoting ethnic stereotypes and cultures of fear between peoples, and encouraging the ethnic groups to look up to White and Creole landowners, are well-documented.¹⁰³³ To what extent any such residual discrimination remains in Belize's multicultural post-colonial society – almost 70 years after Taylor's study - is much harder to gauge and much easier to generalise. However, fieldwork certainly raised questions.

A second emergent form of post-colonial discrimination towards the Toledo Garifuna was regarding their identification as an *indigenous people* of Belize. As indigenous brethren, the Maya and Garifuna continue to share strong links as native peoples of the Toledo district. It should not be forgotten that in the colonial period, in certain matters of land (for example the reserve system) and political organisation (for

¹⁰³¹ See 7 News Belize, 'NGC calls out for Kaina' (28 June 2016) available at <http://www.7newsbelize.com/sstory.php?nid=36800> and Channel 5 Belize, 'Garifuna bank employee instructed not to speak in her native tongue' (28 August 2014) available at <http://edition.channel5belize.com/archives/103239> accessed 20 September 2018.

¹⁰³² Douglas Taylor, *The Black Carib of British Honduras* (No. 17 Johnson Reprint 1951) 39.

¹⁰³³ Bolland (1986) 52.

example the alcalde system), the Maya and Caribs were categorised in the same manner.¹⁰³⁴ Intermarriage and the posting of Garifuna male schoolteachers into Maya villages strengthened this relationship further. However, the relationship has perhaps understandably experienced some tension in recent times in the case of Midway, a Maya village recently established on Barranco farmland.

A point made by numerous well-informed participants was that the ‘*Maya-centricity*’ of the indigenous narrative in Belize does impact upon the Garifuna. Meanwhile, those participants who may not have been able to articulate *why* the Maya have been so successful in getting both national and international support were still able to acknowledge that the Maya had attracted such a significant level of support. The fact that the Maya are regarded as being the focus of *the* indigenous discourse both inside and outside Toledo, coupled with the fact that many Garifuna did *not* feel that they were considered indigenous by other people, is telling. Whilst one group enjoys great momentum in Toledo, the other does not, which in turn leads to two further points, essential in the context of this thesis. First, the Garifuna clearly felt that they remain somewhat *marginalised* by the Maya momentum in terms of indigenous advocacy in Toledo. Second, those with a detailed knowledge of the indigenous narrative maintain that the Garifuna are being somewhat marginalised from this mobilisation in Toledo due to a diverse range of factors.

In summary, using Erica Daes’ framework of the four normative legal indicators of indigeneity,¹⁰³⁵ the adherence of the Toledo Garifuna with *all four* characteristics of being indigenous is particularly strong. As a group, the Garifuna clearly enjoy *priority*

¹⁰³⁴ Crown Lands Ordinance Act 35Y1872 (1872).

¹⁰³⁵ Daes (1996) 23, para 69.

in time in Toledo, exhibit a voluntary perpetuation of cultural distinctness, self-identify as being members of a distinct collective, and have suffered varying degrees of colonial and post-colonial forms of *subjugation/marginalisation* etc. However, the very fact that the Garifuna adhere strongly to the experience of subjugation/marginalisation etc. is also indicative of a complex set of phenomena that ensures the Garifuna both strongly adhere to being indigenous, and struggle for recognition as such.

6.4.2 *Garifuna identity: The struggle for tangible indigenous recognition, and to benefit from land and resource rights, in the post-colonial State of Belize*

As discussed, the very forces which ensure the Garifuna conform to the indigenous narrative are also the forces which impede recognition. Centuries of ***National/Macro*** level de-indigenization sought to separate the Garifuna from land and sea, language and spirituality. Furthermore, these forces have percolated into the ***Community/Meso*** level, whereby a decline in initiatives such as community farming and fishing projects are both causes and consequences of economic struggle, increasing levels of urbanisation, and migration out of Toledo. Meanwhile, at the ***Household/Micro*** level a declining use of the language continues to be a worrying trend. Cumulatively these factors have conspired to ensure the increased separation of Garifuna from land and sea, and a significant decline in community cohesion, as the total populations of both Barranco and Punta Gorda are rarely in situ for significant time together.

This de-indigenization and weakening of community cohesion has naturally impeded the mobilisation and representation of the Toledo Garifuna. Despite being

founding members of SATIIM, a fracture of some degree clearly occurred between the village and the organisation. This in turn has both strengthened and been strengthened by the perception that SATIIM evolved into an NGO which became even more Maya-centric in its objectives, which ultimately saw Barranco excluded from the resulting land rights challenge. It must however be noted that this claim was disputed by a former senior member of the SATIIM staff. Regardless, as the only non-Maya village in the STNIP periphery, the situation has undoubtedly left Barranco feeling somewhat isolated.

This isolation was compounded by a perceived lack of representation by the NGC, who were viewed overwhelmingly negatively regarding their lack of advocacy over Barranco's rights to land and resources. The NGC have historical connections with a vast number of organisations throughout Belize, Central America and the Caribbean including; the Toledo Maya Council, Creole Council of Belize, ODECCO and OFRANEH, CABO (Central American Black Organisation), WCIP (World Council of Indigenous People) and Caribbean Organisation of Indigenous People (COIP) and the (very) recently revitalised BENIC (Belize National Indigenous Council).¹⁰³⁶ However, Belizean Garifuna advocacy is renowned for being directed at '*living culture*' such as music, dance, song, rather than land rights.¹⁰³⁷

Participants were of no doubt that the representation and recognition of the Garifuna culture was lauded across Belize and the wider world, resulting in such

¹⁰³⁶ BENIC formed in 1998 to focus on the collective rights of the four indigenous linguistic communities of Belize – Garifuna, Mopan, Kekchi and Yucatec. See Izard (2005) 189. BENIC had ceased to function for some years until December 2017, when the UN Small Grants Programme sponsored a workshop to revitalise BENIC and establish a new structure. See UN Small Grants Programme (27 March 2018) available at <http://sgp.undp.org/~sgpundp/resources-155/our-stories/534-revitalizing-the-belize-national-indigenous-council-benic-to-address-today-s-ip-challenges.html> accessed 18 September 2018.

¹⁰³⁷ Brondo (2010) 177.

recognition as the UNESCO proclamation. However, the lack of advocacy over land rights and resources was fundamentally at the heart of the tension experienced towards the NGC whilst on fieldwork in Toledo. This tension is accentuated by the geographical dislocation of NGC strongholds being located in Dangriga and Belize City rather than Toledo, and by perceived division between the educated diaspora and some of those that remain in Barranco. Valiant community efforts to see land demarcation in the village have been constrained financially, with the recognition that securing Garifuna land and resources becoming an increasingly pressing concern amongst participants.

In the M.O.U between the Government of Belize and National Garifuna Council in 1999, the G.O.B states inter alia that; it recognises the social, cultural, religious and spiritual values of the Garifuna, it will protect and preserve the land and sea environments of communities predominantly populated by the Garinagu. Furthermore, it states that it will conduct good faith negotiations with regard to certain communal Garinagu lands.¹⁰³⁸ The existence of such a document raises several questions. First, that (although not named as indigenous, instead as a minority), the Garifuna have clearly been recognised by the G.O.B as a distinct people of Southern Belize with specific accompanying rights, as documented in the Memorandum. Furthermore, the fact that despite existing for almost twenty years, this recognition remains unsubstantiated by any tangible implementation. Finally, this is suggestive that Garifuna concerns at not being regarded as *truly* indigenous hold credence.

The inhibiting effect that de-indigenization and lack of mobilization around land and resources have on Garifuna indigenous recognition in Toledo are accentuated

¹⁰³⁸ NGC, 'M.O.U' (17 July 1999) available at <http://ngcbelize.org/wp-content/uploads/2018/05/MOU-ngc-gob.pdf> accessed 18 September 2018.

by the continuation of the contested land of Toledo district. The escalation in tension that occurred whilst on fieldwork was a reminder of Guatemala's continued territorial claim to Southern Belize, and notably to the Toledo district. Such escalations are a continuation of disputes that do not involve the Garifuna, a people who have maintained customary methods of travel, trade, and communication since settling in the area. The escalation was however a reminder that the Garifuna stand to be affected by the reinvigoration of the Guatemalan claim, perhaps not in their route across Amatique Bay, but certainly in their activities on the Sarstoon River.

Fieldwork reinforced the narrative that the Garifuna are a distinct people who established communities on both the Belizean and Guatemalan sides of Amatique Bay around two hundred years ago. However, migration between the two countries by the region's other native people – the Maya – ensures the number of Maya in the Toledo district continues to grow significantly. This in turn adds momentum to the Maya mobilisation in the Toledo district as their population increases. Such increases not only ensure that the Garifuna become further outnumbered, but also crucially have the potential to impact the MLRC with regard to their ability to adjudicate ever expanding village boundaries, as well as recently (re)settled villages which may challenge for land rights based on customary patterns of land tenure.

A further issue for consideration is that Belize's engagement with the regional and global indigenous narrative has undoubtedly been considerably less than other countries in Central America, and to what extent this has had an effect on the ability for the Garifuna to be seen as *truly* indigenous. Earlier sections explored how in Honduras, for example, the classification of being *autochthonous* is associated with

being culturally distinct and native inhabitants of a particular place.¹⁰³⁹ Autochthonous is not a classification formally recognised in Belize, which can further inhibit the Garifuna ability to be seen as indigenous. There are only three countries in the entire Latin American region where Indians and Afro-Latinos hold the same collective rights, Honduras, Guatemala and Nicaragua.¹⁰⁴⁰ This group consists of three of the four States considered as the Garifuna homeland. As the fourth, Belize is notable in its absence.

Similarly, the classification of *tribal*, and how tribal and indigenous peoples are viewed with the same rights within international law, is far less likely to have percolated into mainstream Belizean society. For example, Belize is the only country in Central America other than Panama that has not ratified ILO 169.¹⁰⁴¹ Belize is also the only country in Central America not a party to the ACHR, and therefore to have accepted the jurisdiction of the IACtHR through signing article 62 of that convention.¹⁰⁴² Not being a party to such conventions means that Belize is not legally obliged to adhere to their content. Furthermore, in not being party to such agreements, the evolution of the indigenous narrative such as the pairing of ‘*indigenous*’ with ‘*tribal*’ peoples’ rights,¹⁰⁴³ and the expansive understandings of the concept of land

¹⁰³⁹ Anderson (2009) 123.

¹⁰⁴⁰ Hooker (2005) 286.

¹⁰⁴¹ ILO 169, ‘Ratifications’ (n.d.) available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314 accessed 18 September 2018.

¹⁰⁴² International Justice Resource Centre, ‘Inter American Court of Human Rights’ (n.d.) available at https://ijrcenter.org/regional/inter-american-system/#Inter-American_Court_of_Human_Rights accessed 14 September 2018.

¹⁰⁴³ ILO 169, art 1.1 (a) and (b).

and resources, particularly with regard to spirituality,¹⁰⁴⁴ cannot be expected to have percolated into national consciousness to the same extent.

Within IACHR jurisprudence, when discussing the *Saramaka* (who the IACHR regard as tribal, and therefore deserving of the same rights as indigenous) it states that the Garifuna situation has also been considered from the standards applicable to indigenous peoples.¹⁰⁴⁵ The Garifuna are noted in other documentation as being a *distinct ethnic group* that are the product of syncretism between Afro-descendants and indigenous people.¹⁰⁴⁶ Despite the fact that, as discussed earlier, there remains a slight difference in these conceptualisations (principally due to the fact that the latter conceptualisation stresses the indigenous element of Garifuna inception), IACHR jurisprudence suggests that the body consider the Garifuna tribal, and by extension indigenous. Indeed, like the Saramaka, the Garifuna in Honduras were most recently successful in being awarded collective rights to land and resources at the IACtHR, in a case where the *indigenous-tribal* definitional convergence was again stressed. The IACtHR however, has no jurisdiction to enforce such decisions in Belize.

The racial element of not conforming to the indigenous narrative cannot be underestimated. In 1992, the Garifuna were admitted to the (now defunct) World Council of Indigenous People (WCIP), yet only after having to defend their “Indian-ness” to some groups reluctant to accept black groups who considered themselves Amerindian.¹⁰⁴⁷ This carries hallmarks of the fractures that emerged in Honduran

¹⁰⁴⁴ Ibid.

¹⁰⁴⁵ IACHR (2009) 11, para 35.

¹⁰⁴⁶ IACHR (2015) 21, para 28.

¹⁰⁴⁷ Izard (2005) 189.

society over the inclusion of black skinned groups alongside others regarded as indigenous,¹⁰⁴⁸ or of the reaction by other indigenous groups to the Garifuna claiming similar rights.¹⁰⁴⁹ Being regarded as *indigenous* in the Americas ultimately remains strongly associated with *race*.¹⁰⁵⁰

By extension, Belize's comparative lack of engagement with regional and international indigenous instruments and discourse inhibits the ability of the wider Belizean population to understand the international concept of indigenous peoples as a continuous process rather than a fixed legal category.¹⁰⁵¹ Furthermore, this reinforces notions of the cultural identity of indigenous peoples as being immutable,¹⁰⁵² and leaves less scope for a broader understanding of who may be classed as indigenous/tribal, but also understanding that indigenous identity actually changes over time, and can also remain strongly present in urban as well as rural environs.¹⁰⁵³ This in turn facilitates a continued manifestation of the dual narratives of the Maya as strongly conforming to the indigenous narrative, and conversely the Garifuna not conforming.

Of course, Belize being party to such conventions is no guarantee of significantly increased recognition pertaining to land and resource rights. Generally, where Belize *has* signed up to international agreements that give recognition to

¹⁰⁴⁸ Anderson (2007) 399.

¹⁰⁴⁹ Brondo (2010) 183-185.

¹⁰⁵⁰ See inter alia; Anderson (2009) 129, Brondo (2010) 183, Hooker (2005) 285.

¹⁰⁵¹ Kingsbury (1998) 414-415.

¹⁰⁵² Palacio (2006) 192.

¹⁰⁵³ Ibid at 192-194.

indigenous rights they lack the necessary jurisdiction to ensure they are enforced. For example, whilst the UNDRIP was heralded for its recognition of indigenous rights, it remains a legally non-binding document.¹⁰⁵⁴ States are therefore under no legally binding obligation to see its enforcement or perhaps as importantly, its promotion. Furthermore, Belize is a party to the CBD,¹⁰⁵⁵ and whilst the CBD is a legally binding document, closer inspection of article 8(j) reveals that despite the clear intention to involve indigenous knowledge systems in conservation strategies, *and* to encourage benefit sharing arising from the utilization of such knowledge, that this is subject to *national legislation*. Article 8(j) declares that:

*“Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”*¹⁰⁵⁶

It is the supplementary Nagoya Protocol on access and benefit sharing (ABS), which has established clear obligations on States to share any benefits arising from natural wealth that indigenous peoples also hold a stake in. This is partly facilitated by the presence of indigenous peoples as observers in meetings of the ‘Working Group’ established to facilitate the implementation of the Nagoya Protocol.¹⁰⁵⁷ However,

¹⁰⁵⁴ Allen (2011) 225.

¹⁰⁵⁵ Convention on Biological Diversity, ‘Ratifications’ (n.d.) available at <https://www.cbd.int/information/parties.shtml> accessed 18 September 2018.

¹⁰⁵⁶ Ibid at art 8(j).

¹⁰⁵⁷ Cittadino (2018) 126-130.

parties to the Nagoya Protocol have an *obligation* to ensure that a national regulatory framework is adapted to ensure that indigenous peoples' genetic resources and associated knowledge are accessed with the consent or approval, and involvement, of indigenous and local communities.¹⁰⁵⁸ However, although Belize is a party to the CBD it is *not* a party to the Nagoya Protocol, therefore the implementation of such a framework within national legislation is not an obligation. Accordingly, no national legislation exists regards incorporating indigenous peoples into knowledge and benefit sharing on conservation and biodiversity wealth.

As discussed earlier, the co-management of the Sarstoon-Temash National Park that the Government (through the Forestry Department) shared with SATIIM was terminated in 2013.¹⁰⁵⁹ That this agreement was terminated as SATIIM's involvement in the Maya Land Rights movement grew *may* be pure coincidence. However, the co-management agreement is evidence of both the ability for the indigenous peoples of Belize's Toledo district and the government to work together, and also of the ability for that partnership to be removed at will. In a similar vein it must be remembered that the decision to establish the STNP was made *without* consultation with the surrounding villages (including Barranco), hence the reason for SATIIM's creation. Furthermore, Belize's rich biodiversity wealth is intimately linked to its natural resource based tourism industry.¹⁰⁶⁰ With tourism contributing 18% of GDP from 2008-12, initiatives such as The National Sustainable Tourism Masterplan

¹⁰⁵⁸ Ibid at 4-5.

¹⁰⁵⁹ 7 News, 'SATIIM's National Park Co-Management Agreement Cancelled' (23 July 2013) available at <http://www.7newsbelize.com/sstory.php?nid=26112> accessed 18 September 2018.

¹⁰⁶⁰ Ministry of Forestry, Fisheries and Sustainable Development *Fifth National Report to the United Nations Convention on Biological Diversity: Belize* (Belmopan 2014) 4.

(2012-30),¹⁰⁶¹ are literally a reminder of stakeholder ability to benefit from Belize's abundant natural *wealth*.

In addition to no national legislation existing with regard to incorporating indigenous peoples into knowledge and benefit sharing on conservation, Belize suffers from a significant lack of indigenous legislation generally. The Belizean Constitution does acknowledge an obligation to *protect the identity, dignity and social and cultural values of Belizeans, including Belize's indigenous peoples*.¹⁰⁶² However, the Constitution does not explicitly name these peoples. The 2010 Census report *did* name the Maya and Garifuna as the two indigenous groups of Belize.¹⁰⁶³ This was a point restated (if somewhat ambiguously) by the G.O.B in their only report to the Human Rights Committee as per the reporting guidelines for signatories of the ICCPR.¹⁰⁶⁴

The report stated that “*according to the 2010 census the Maya and the Garifuna are the two indigenous groups to Belize*.”¹⁰⁶⁵ However, such wording falls short of an official acknowledgement by the report's authors, and even if it were, it is not recognition that offers an obvious claim to a stake in control over land and resources. In Belize, the lack of any State recognition of the Garifuna or Maya as indigenous peoples has been conspicuous in the legal and juridical structures of the country.¹⁰⁶⁶ That, of course, has changed within recent years with the inception of the

¹⁰⁶¹ Inter-American Development Bank, *Sustainable Tourism in Belize* (IADB 2015) 2.

¹⁰⁶² Belize Constitution (1981), art 2(e).

¹⁰⁶³ SIB (2010) 19.

¹⁰⁶⁴ UN HRC, ‘Consideration of reports submitted by States parties under article 40 of the Covenant, Belize’ (received 8 August 2017) UN Doc CCPR/C/BLZ/1.

¹⁰⁶⁵ *Ibid* at 47.

¹⁰⁶⁶ Palacio (2006) 194.

Maya Land Rights Commission. However, the general dearth in apparatus for indigenous recognition in Belize is an unavoidable fact.

Cumulatively, these factors go some way to explaining the difficulties the Garifuna have faced in attaining tangible indigenous recognition over land and resources in Belize. It is with a certain degree of irony then, that Barranco was used as a form of defence by the G.O.B within the IACHR report, when the G.O.B unsuccessfully maintained that Barranco's priority in time over neighbouring Maya villages extinguished any Maya claim to continuous exclusive occupation in Toledo.¹⁰⁶⁷ This assertion was however of course no gateway to facilitating further Garifuna benefits with regard to control over land and resource rights. Indeed, the Maya case is evidence of the difficulty for *any* group in Belize gaining *tangible* recognition in terms of control over land and resources.

The lack of enforceability of the IACtHR, led to the IACHR report referring instead to articles II (Right to equality) and XIII (Right to property) of the ADRDM,¹⁰⁶⁸ which is *not* legally binding. Presiding over the Supreme Court case, Judge Conteh cited inter alia: the IACHR report (*not* legally binding), the UNDRIP (*not* legally binding), ILO 169 (Belize has *not* ratified), when declaring that Maya property be accorded the protection it deserves within the Belizean constitution.¹⁰⁶⁹ Indeed, it took the CCJ ruling based on sections 3(d) (protection from arbitrary deprivation of property) and 17 (compulsory acquisition/possession of property) of the

¹⁰⁶⁷ IACHR (2004), para 73, n32.

¹⁰⁶⁸ ADRDM, arts 2, 23.

¹⁰⁶⁹ *Aurelio Cal, et al. v. Attorney General of Belize*, paras 120-136.

Belize Constitution, before a mechanism (the MLRC) became the obligation of the Belizean government.¹⁰⁷⁰

Yet it was through using *customary* norms of international law with regard to indigenous peoples that Judge Conteh proceeded to pass verdict on the Maya cases, regardless of whether Belize had ratified legally binding international conventions. When adapting these customary norms with regard to indigenous rights, one theme was particularly emergent on fieldwork. The Garifuna relationship with the land and resources within the territory that they have continuously used in the Toledo district for around two hundred years, and how this relationship is intimately dependent on the group's cultural survival,¹⁰⁷¹ was unavoidable. This thesis has discussed how customary norms relating to indigenous land rights, have developed into an expansive understanding of the implicit spiritual and cultural connections peoples have with the total environment of the territories they have traditionally used, including waters and coastal seas.¹⁰⁷²

Furthermore, this understanding of how land and resources are implicitly linked to culture, has been expanded through interpretations of instruments such as the ICCPR (also cited in the Maya case), which is not explicitly an indigenous instrument, and which Belize is a party to. Article 1 states that the right to self-determination equates to cultural development, and that peoples may freely dispose of their natural resources and not be deprived of their means of subsistence. Meanwhile, article 27 states that *minorities* shall not be denied the opportunity in community with others, to

¹⁰⁷⁰ Belize Constitution (1981), arts. 3(d), 17.

¹⁰⁷¹ Gilbert (2016) 176.

¹⁰⁷² ILO 169, arts 13.1, 13.2. See also, UNDRIP (2007), arts 25-28.

enjoy their own culture.¹⁰⁷³ The link between self-determination, culture, natural resources and minorities is therefore explicit, as was the G.O.B classification of the Garifuna in the M.O.U with the NGC, as a *minority*.¹⁰⁷⁴

It is important to remember that any right to a controlling stake in land and resources must be tempered with fairness. For example, the Saint Vincent Block, as a privately owned collective form of property, has a unique history, and it would seem the onus on ensuring the area flourishes and remains true to this history, is the responsibility of those Garifuna that collectively own it. Certainly, the Garifuna have undoubtedly been the victims of *dispossession* in varying forms over the centuries, yet ownership remains in Garifuna hands, and as such is ultimately under Garifuna control. It is hoped that the story of the land as documented in this thesis may be relayed to a wider audience, and result in whatever benefits to the land and people that may bring.

However, the village of Barranco is a far more complex case. It faces contemporary threats from the extraction of raw materials by outsiders, the prohibition of traditional activities in the form of the establishment of the STNP, the debilitating effects of de-indigenization, as well as facing the constant risk stemming from being the southernmost coastal village in the country and its sheer proximity to Guatemala. Furthermore, significant questions remain as to the levels of consent, consultation and benefit sharing from any activities (such as logging/oil development/conservation activities). Fieldwork suggested that these do not seem to be present on a level adequate to ensure that principles are upheld when, there are cases of, *cultural*,

¹⁰⁷³ ICCPR (1966), arts 1, 27.

¹⁰⁷⁴ NGC-G.O.B M.O.U (1999).

intellectual, religious and spiritual property taken without their free, prior and informed consent.”¹⁰⁷⁵

For example, whilst logging may not immediately seem to be a ‘large scale development project’, ascertaining the cumulative effects of a number of small-scale projects is particularly difficult.¹⁰⁷⁶ If multiple logging concessions are given and no/limited replanting takes place, then this has the potential to pose significant threat to Garifuna cultural and spiritual property. A further example can be found in the fact that the community were not told the STNP had been established on their ancestral lands until *after* the decision had been made, which in turn led to the establishment of SATIIM. It remains to be seen to what threshold the concept of *free, prior and informed consent* will be held in Belize after the establishment of the MLRC. Yet a broader Garifuna involvement in the control and management of resources in their ancestral territories is an important starting point.

Whilst the 1999 M.o.U between the NGC and G.O.B is not a legally binding document its very existence is an excellent starting point for dialogue between the Garifuna community and the G.O.B. The Garifuna deserve *tangible* recognition as being an indigenous *or* tribal people of Toledo, in the form of a stake in control over land and resources in their ancestral lands. There can be little doubt that the Belizean/Toledo Garifuna are viewed as a distinct collective in Belize, their ‘living cultural’ contribution to the country has been lauded from Andy Palacio’s music, to events such as the Battle of the Drums, to the fact that Settlement Day is a national holiday. However, as discussed, indigenous/tribal rights to culture, and by extension

¹⁰⁷⁵ UNDRIP (2007), art 11.

¹⁰⁷⁶ Barelli (2012) 15.

cultural survival, extends far beyond music and dance, and is inseparable from rights to land and resources.

Customary norms of international law, emboldened by organisations such as the UN, ILO and Inter American system, call for the recognition and protection of indigenous territories and resources, and that indigenous groups benefit from their ancestral lands.¹⁰⁷⁷ The inception of the MLRC should *not* mean that Barranco be excluded from any potential decisions made pertaining to recognition, protection, or demarcation of any traditional territories in the periphery of the village. The IACHR report on the *Maya indigenous communities'* case reiterated that Belize carry out the measures to delimit, demarcate and title Maya lands *without detriment to other indigenous communities*.¹⁰⁷⁸ To subjugate or marginalise Toledo Garifuna rights to a stake in control over their lands and resources would be discriminatory in the extreme against the only rural Garifuna village in Toledo. In a wider sense, a role for Barranco *must* be assured within the MLRC process.

The recommendation from fieldwork conducted in 2016 is not that the Garifuna launch a legal challenge against the G.O.B with regard to their rights over land and natural resources in the rural Toledo district. However, some place at the negotiating table needs to be assured to ensure that the Garifuna in Barranco are not the victims of the same arbitrary deprivation of property rights that the Maya have experienced, as well as ensuring dialogue between all parties to outline issues such as consent, benefit sharing, and mutual co-operation. The Toledo Garifuna have never excluded other peoples from the territory they have traditionally held rights to, even in

¹⁰⁷⁷ See inter alia; UNDRIP, arts. 25-28, ILO 169, art 14.

¹⁰⁷⁸ IACHR (2004), para 197, n3.

the face of mounting pressures. Under no circumstances should they face exclusion from their own land and resources. Such discrimination could be the spur for more concerted action.

Yet there is a further reason for tangible Garifuna recognition in Toledo. Fieldwork enabled a first-hand view of the continued territorial claim from Guatemala, the annexation of the Sarstoon River the latest show of defiance against the sovereign State of Belize. This facilitated collating Garifuna views on the Guatemalan claim, where two themes emerged particularly. First, that the Garifuna were accustomed to any contestation, which in any case did not involve them. Second, and most importantly, that there was *absolutely no support at any time* for Guatemala's claim to Belize, a claim which was routinely dismissed by all participants who discussed it. The Toledo Garifuna are proud Garifuna but also proud *Belizeans*. Considering their customary rights to land and resources in the surrounds of Barranco can only be a positive move for Belize, bearing in mind continued Guatemalan aggression.

6.5 Aftermath: Developments in Toledo post-2016 (2016-2018)

The developments in Toledo since fieldwork ceased in 2016 carry all the hallmarks of the contestation for the territory since the pre-colonial era, with the significant actors in that contestation – the G.O.B, Guatemala, and the Maya and Garifuna peoples –all continuing to play significant roles. Despite the establishment of the MLRC, tangible progress seemingly remains elusive. As well as publicly criticising the G.O.B for ongoing violations regarding the continued issuing of concessions on land without Maya consultation, the case has returned to the CCJ who

were reported to be very concerned that their orders were not being followed.¹⁰⁷⁹ A participant who had been present at initial MLRC meetings summarised their view of the progress thus far. *Figure E66* contains a note regarding their thoughts

Figure E66: Note regarding MLRC progress

The CCJ is reportedly very angry with Belize for not implementing the necessary framework as per the MLRC. A technical committee has been assigned to ascertain two things – what is customary land use, and what are the village boundaries? The contestation is a result of the confusion that is taking place in Belize. XX and myself were assigned to the meeting which the Maya had no problem with at all, having known us both for a long time

The lack of resolution is unsurprising, with the G.O.B continuing to award concessions for extraction in the rural Toledo district, something that has characterised much of the economic life in Toledo since colonial times. Despite this, the presence of Garifuna representatives at the meeting was particularly positive news. Furthermore, the continued exclusion that the Toledo Garifuna continued to experience, manifested in a public mobilisation in full view of the Belizean public. In April 2018, Barranco villagers marched in Belmopan, protesting against the fact that the government has consistently granted logging concessions to outsiders, including multi-national companies, without either consenting the village or providing any compensation. Furthermore, whilst doing this, the Forestry Department had consistently rejected logging applications from Barranco residents.¹⁰⁸⁰

¹⁰⁷⁹ Channel 5 Belize, 'Maya lash G.O.B in CCJ' (24 October 2017) available at <https://www.youtube.com/watch?v=BkRG84BgXuc>. See also, Love FM 'Mayan Land Rights case before CCJ once more' (15 March 2018) available at <http://lovefm.com/mayan-land-rights-case-ccj/> Channel 5 Belize 'CCJ puts pressure on government to honour consent order' (19 February 2018) available at <http://edition.channel5belize.com/archives/160861> all accessed 18 September 2018.

¹⁰⁸⁰ Amandala, 'Barranco villagers prepared to fight government over logging rights' (25 April 2018) available at <http://amandala.com.bz/news/barranco-villagers-prepared-to-fight-government-logging-rights/>. See also, Channel 5 Belize, 'Barranco loggers take case to Belmopan' (24 April 2018) available at <http://edition.channel5belize.com/archives/164230>, Amandala, 'A deeper look at the Barranco protest' (5 May 2018) available at <http://amandala.com.bz/news/deeper-barranco-protest/> all accessed 18 September 2018.

This mobilisation was regarded as a watershed moment in terms of visible mobilisation of the Garifuna community around the rights to resources in the wider Barranco village area, considered by the village as their ancestral homelands. This mobilisation was reported extremely positively within the Belizean press, as finally one of Belize's oldest villages gained public notoriety in standing up for their rights. The march also provided the spur for the village to mobilise in a wider sense around the stewardship of natural resources in the wider Barranco area. *Figure E67* contains notes taken from two prominent members of the Barranco community regarding the public reaction, and of the objective of the stewardship.

Figure E67: Notes regarding public reaction to march and stewardship group

There were officials – police and security – who took off their hats and placed them on their chests as a mark of respect. That respect was for Barranco.

The group is called 'Louniri Lumua Barangu', meaning 'overseers of the land and natural resources of Barranco'. It is based around the natural resources and looks at sustainable income generation around the historical territory – not just the land but the Sea, rivers, lagoons, jungle, bush etc. We are in talks with the Global Environmental Fund an arm of the UN Development bank. As we are looking at it as a CBO, the proposal is that the money will come through the NGC.

The fact that the mobilisation and establishment of *Louniri Lumua Barangu*, (Overseers of Barranco's resources) has the involvement of the NGC, is evidence that no matter what divisions may exist between the organisation and Barranco residents, that the will to come together for the betterment of the Toledo Garifuna clearly remains. Yet the mobilisation around land and resources in the aftermath of fieldwork has manifested in other ways. The *Wachari* project, a new initiative from the *Wagiya foundation* - the Punta Gorda organisation aiming to promote and preserve conservational and spiritual traditions amongst the Garifuna – seeks to empower the

Garifuna to return to the land.¹⁰⁸¹ By establishing a market place in Punta Gorda town, the project has opened a space for Garifuna farmers to sell organic products. *Figure E68* contains a picture of construction of the new market space in June 2018.

Figure E68: Construction of the Wachari marketplace



Cumulatively, these positive developments in Barranco and Punta Gorda are evidence of Garifuna mobilisation around the stewardship, preservation and promotion of Garifuna land and sustainable resources. The involvement of Garifuna representatives in the MLRC, and the NGC role in the Garifuna awakening in Barranco, give hope that Garifuna inclusivity in control over land and resources in Toledo remains possible. However, the positivity must be tempered by patience to see if such inclusivity leads to tangible recognition, notably in the case of the ‘*Louniri Lumua Barangu*’ group. The lack of consultation that continues to overshadow both the

¹⁰⁸¹ Wagiya Foundation, ‘Wachari project’ (21 February 2017) available at <http://www.wagiyafoundationbelize.org/the-wachari-project/> accessed 18 September 2018.

MLRC and the issue of logging concessions in the Barranco area, remains a worrying trend, and ensures the *internal contestation* over control of land and resources in Toledo continues.

Meanwhile, developments in the *external contestation* of Toledo reached new levels. On April 15th 2018, Guatemala went to the polls, and despite a voting turnout of less than 30%, overwhelmingly voted (a reported 97%) in a referendum to refer their territorial claim over Belize to the International Court of Justice (ICJ).¹⁰⁸² In response, the Belizean government have set the date of April 10th, 2019 for the country to vote on whether to do the same. The future remains unclear, yet what is guaranteed is that the external contestation over the Toledo district stands to remain a permanent fixture on both local and national agendas for the foreseeable future.

¹⁰⁸² Amandala, 'Government sets ICJ referendum date: April 10, 2019' (5 May 2018) available at <http://amandala.com.bz/news/government-sets-icj-referendum-date-april-10-2019/> accessed 18 September 2018.

7. Conclusion

The aim of this study was outlined as to: **Investigate Garifuna identity in Belize's Toledo district, with specific regard to whether they conform to normative legal conceptualisations of indigeneity and are empowered to gain tangible recognition as being indigenous in Belize.** The first objective detailed the evolutionary timeline of this most distinct culture, and revealed how as a people, the Caribs and then Garifuna, consistently maintained an anomalous position within the wider Caribbean and Central American region. Whether as 'roaming cannibalistic Caribs', 'the Black Caribs of St Vincent', or the 'Black Indians of Central America', their position has always been as an '*other*', or as the '*zoe*' that sovereign power could never fully transform into the '*bios*'.

In order to detail the developments in international law which are relevant to the Garifuna, objective two charted the evolution of the indigenous narrative in the Americas and Caribbean. Although indigeneity in the region was originally largely conceptualised by racial connotations, ILO 169 extended indigenous identity to include those who may be classed as either *indigenous* or *tribal*, whilst the UNDRIP expanded indigenous rights discourse to a literally global audience. Perhaps most importantly, no fixed definition of being indigenous, and self-identification as such, was largely the result of the involvement of indigenous peoples in the UNWGIP. Instead, four normative legal conceptualisations of being indigenous emerged that may be adapted to different peoples/regions/situations to a greater or lesser extent. These are recognised as; priority in time, voluntary perpetuation of cultural distinctness, self-identification as well as recognition by others as being part of a distinct collective, and an experience of subjugation/marginalisation or some other form of discrimination.

With an expansive concept of indigeneity, and detailed instruments dedicated to the protection of indigenous rights, peoples of the American-Caribbean region have become empowered through the Inter-American Human Rights system. Expansive interpretations of what constitutes the total area of land and resources, as well as which peoples may benefit from such rights, has ensured that those recognised as indigenous/tribal have received a tangible stake in control over land and resources. Such jurisprudence has seen Afro-descendant groups, such as the Saramaka in Suriname, positioned as tribal and therefore deserving of the same rights as indigenous. Most notably, the Garifuna have themselves achieved recognition in both IACHR documentation, and in the IACThR ruling in Honduras. However, despite this recognition the Garifuna have been the victims of contestation to this empowerment in Central America, from both the government and other groups.

Such contestation is a reminder that although three of the four Garifuna homelands in Central America are amongst the most progressive on the continent in terms of ratifying international conventions respecting indigenous rights, tangible recognition is highly dependent on particular national situations. For this reason, objective three charted the very particular history of the fourth Garifuna homeland of Belize. Unlike the rest of Central America, Belize was not settled or administered by Spain. Instead, the territory evolved from a British logging settlement under the auspices of Spanish 'Papal sovereignty' into a British colony in 1862, and eventually an independent country in 1981. Furthermore, it has remained the focus of a territorial claim by the Republic of Guatemala throughout.

Such a unique history demands that Belize be considered through a markedly different lens than neighbouring Central American countries when considering its politico-legal evolution. This is particularly pertinent when considering the

southernmost district of Toledo. As Britain's original logging rights were limited to the territory between the Rivers *Hondo-Sibun*, the territory that would become Toledo became a no-man's land in terms of colonial administration, however the lack of sovereign control by Britain, Spain, or an independent Guatemala, ensured that other peoples subjugated by colonial powers were able to maintain their ways of life largely untroubled. Notable amongst these peoples were the Maya and Garifuna (then known as Caribs). As Britain expanded and then colonized the territory, what was particularly notable was the manner in which the British adopted the same methods of land tenure and political organisation to both peoples.

However, in the years after Belizean independence Toledo has remained a land of contested pre-colonial, colonial and post-colonial geographies. The Republic of Guatemala has never fully relinquished its territorial claim to Southern Belize, ensuring Toledo remains *externally* contested land. Meanwhile, as in colonial times, the peoples of the Toledo district held no stake in the control over the district's land and resources. The manifestation of decades of frustration finally came as the Toledo Maya mobilised around their rights to control land and resources they consider their indigenous ancestral lands. This resulted in Toledo also becoming *internally* contested land. However, this raised questions as to why only one of Toledo's peoples had mobilised around such land and resources. In order to find answers, it was necessary to turn the focus onto the Toledo Garifuna.

The fourth objective was to position the Garifuna against normative legal conceptualisations of indigeneity. An interdisciplinary approach placed the Toledo Garifuna at the centre of this study, and taking the four legal norms of indigeneity as

posited by Erica Daes,¹⁰⁸³ their applicability to the Toledo Garifuna was considered using a range of ethnographic data, collected first hand in the field over a four months period in 2016. This empirical study overwhelmingly confirmed that the Toledo Garifuna conformed to all four normative indicators. As a people, the Garifuna settled Toledo before British colonization, with continuous habitation in the settlements of Barranco and Punta Gorda to the present day. Furthermore, these settlements are among the oldest continuous settlements in the district, pre-dating the surrounding Maya villages in the STNP region. These factors ensure that Garifuna *priority in time* in Toledo cannot be disputed.

The Garifuna consistently exercise a *voluntary perpetuation of cultural distinctness*. As a people who came into inception from a distinct blend of Island Carib and African cultures, Garifuna language, music, dance, spirituality and kinship systems, mark them out as distinct from any other peoples. Furthermore, their cultural survival is intimately tied to the sustainable use of their ancestral lands. The Garifuna undoubtedly *self-identify as being part of a distinct collective* and are recognised as a distinct collective, both by other distinct collectives such as the Maya and by State authorities. However, this distinct culture have been the victims of centuries of *subjugation/marginalisation*, or some other form of discrimination from both colonial and post-colonial governments. Despite overwhelmingly conforming to all four normative legal conceptualisations of indigeneity in this specific study of Toledo, being the victims of sustained colonial and post-colonial subjugation etc. is both a characteristic of being indigenous and acts as an impediment to tangible recognition.

¹⁰⁸³ Daes (1996) 23, para 69.

Sustained subjugation/marginalisation over centuries has resulted in the Garifuna undergoing varying levels of *de-indigenization*. This de-indigenization has for a multitude of reasons weakened Garifuna connections with their traditional territories and customs, whilst widespread urbanisation and migration has significantly impeded the Garifuna ability to mobilise. Furthermore, as the only non-Maya village in the STNP region, Barranco was somewhat overshadowed as SATIIM led the Maya mobilisation over land rights. Meanwhile, the NGC, known for its advocacy of ‘living culture’ such as language, music and dance, did not mobilise around the issue of control over land and resources, leaving the Toledo Garifuna isolated.

Additionally, continued aggression and assertions of territorial control by Guatemala, coupled with the Maya Land Rights Commission, have conspired to ensure that Toledo’s external and internal contested geographies continue to be dominated by the same actors. This has ensured that the Maya continue to dominate the indigenous narrative in Belize, a country which has had very limited engagement with international indigenous rights instruments, or implementing national frameworks which recognise indigenous peoples within governmental/judicial bodies, compared to its Central American neighbours. This has resulted in the national population not being exposed to the same levels of discourse, meaning terms such as *tribal* and *autochthonous* do not carry the same weight as in countries which have, for example, signed ILO 169 or accepted the jurisdiction of the IACtHR. Where national implementation in the recognition of the right of indigenous communities to a stake in controlling land and resources has taken place, it follows a similar vein of Maya centrality in the form of the MLRC.

Where some form of Garifuna indigenous recognition has occurred (such as being named as an indigenous group in the Census or through membership of various

national/international indigenous organisations), this has been tempered by further inhibiting factors such as their partial African heritage. Furthermore, it is far easier (and less costly) for the Belizean State to give recognition to ‘softer’ ‘living cultural’ indigenous rights such as song and dance that the Belizean Garifuna have traditionally mobilised around and that are so widely lauded in Belize, than to facilitate any potential recognition of harder (and significantly more valuable) ‘ancestral land/resource’ rights. Yet the connection between indigenous/tribal rights to culture (and by extension cultural survival) and land/resources is inseparable.

The present situation in Toledo is no different from previous centuries – a contested land both internally and externally. Guatemala has declared its intention to take its territorial dispute with Belize to the ICJ, with Belize’s national referendum on the same matter scheduled for 2019. Meanwhile, Maya anger at the lack of tangible implementation of the MLRC ensures that the internal contestation remains. However, there are signs that the Toledo Garifuna are now finally mobilising around their own claims to land and resources. The public protest at continued marginalisation has opened the door to the possibility that such a stake may potentially be closer than at any other time. Yet hope must be tempered by the continued shadow of both the Republic of Guatemala and lack of tangible implementation of the MLRC, with both phenomena sources of potential further injustices against the Toledo Garifuna.

When considering the contribution of the Garifuna to the evolution of the particular history of the Toledo district, and State of Belize, exclusion from a stake in control over land and resources in Toledo is tantamount to continued discrimination. This in turn will continue to fuel the cycle that has seen them historically struggle to assert control over their ancestral land and resources, both in Belize and further afield. This becomes particularly pertinent when considering that Barranco and its

surrounding area represent *one* Garifuna village surrounded by Maya villages. The Toledo Garifuna must see their rights to a stake in control over land and resources is respected at an appropriate level, free from discrimination, and to be able to benefit in a manner both their historical and continued presence and contribution to the region demands. Failure to do so may see the Garifuna launch their own legal challenge against a Government of Belize already embattled in territorial challenges by both the Maya communities, and Republic of Guatemala.

In placing the Toledo Garifuna at the centre of this case study, it was intended that taking an interdisciplinary approach would produce new insights that could be viewed through both a legal and social anthropological lens. From a *legal anthropological* perspective, employing Erica Daes' four normative concepts of being indigenous, established an international framework that could be adapted to the Toledo Garifuna in a highly localised setting. Doing so facilitated the production of contemporary and diverse datasets, and an exploration of the inherent complexity facing peoples striving to receive *tangible* indigenous recognition, particularly when such tangible recognition can lead to control over land and resources. Adapting this framework has revealed that the rights of certain groups may equate to, or even exceed, the rights of those with dominant backing. It is hoped that doing so has contributed new perspectives in the field of legal anthropology, as well as employing a framework that may be considered useful for future similar studies.

In addition to this objective, this thesis also sought to add further perspective as to how in the face of such complexity, and despite being routinely rendered legal victims throughout history, the Toledo Garifuna represent an extraordinary example of both cultural survival and indigenous evolution. From a *social anthropological* perspective, fieldwork conclusively reinforced the fact that despite this complexity

and the enormous pressures the Toledo Garifuna have had to withstand to their identity throughout the colonial and post-colonial periods, they are a pertinent example of cultural survival. Additionally, the Toledo Garifuna perfectly represent the concept of indigenous evolution in the wider Central American and Caribbean region, as they represent the contemporary lineage which can be traced to both the Black Caribs, and the Caribs before them. It is hoped that in exploring the identity of the Toledo Garifuna, this study has also contributed new perspectives in the field of social anthropology.

In a broader sense, Belize acts as a pertinent reminder that Central America and the Caribbean form part of a continent in which different European colonial regimes forever altered the political economies, ethnic compositions, and State boundaries of 'other' lands. These lands then gained eventual independence and were inherited by post-colonial regimes. In turn, post-colonial governments such as in Belize, have been confronted by strong indigenous claims from peoples who seek tangible benefits, in an age when international law has facilitated expansive recognitions of indigenous identity and associated rights. This is also indicative of an age whereby an assortment of colonial and post-colonial era geographies compete with each other for control over resources. For the Caribbean particularly, this has manifested in an indigenous resurgence that has swept the region over recent years,¹⁰⁸⁴ and in a continued regional unease in accepting black-skinned people as being indigenous.¹⁰⁸⁵

¹⁰⁸⁴ Forte (2006) 3.

¹⁰⁸⁵ Palacio (2006) 194.

Considering the processes that contributed to Belize's composition and to the wider region generally, it must be remembered that Belize is a particularly small and young nation-State, which has faced a sustained and considerable threat from the Republic of Guatemala. It is also the most ethnically heterogeneous State in a particularly ethnically heterogeneous region, which unlike its neighbours remained under colonial rule until the end of the twentieth Century. Belize's shortcomings with regard to its indigenous peoples must be considered against these criteria, yet these criteria must not be used as an excuse for inaction. It is also the moral duty of the international community to ensure the flourishing of communities such as the Toledo Garifuna, who have sustained, adapted to, and survived, macro level forces with their roots in European society and colonial State formation. This becomes even more pertinent when considering it is currently the UN International Decade for people of African descent.¹⁰⁸⁶

Dr Joseph Palacio, esteemed Garifuna, Belizean, and Baranguna, describes the Garifuna as the quintessential Caribbean people, originating from the fusion of two of the founding peoples of the region – Native American and African.¹⁰⁸⁷ The Garifuna are also the quintessential Belizean people, in that they helped to form and have been partially formed by Belize. Furthermore, the Toledo Garifuna are the quintessential Toledo people, in that they helped to form and have been partially formed by Toledo. In summary, it is hoped that whatever else this thesis may achieve, it will contribute to increased Garifuna empowerment towards ensuring that a recognition of their identities results in a share of tangible benefits in the contested land of Belize's

¹⁰⁸⁶ UN, '2015-2024 International Decade for People of African Descent' (n.d.) available at <http://www.un.org/en/events/africandescentdecade/> accessed 20 September 2018.

¹⁰⁸⁷ Palacio (2005) 11.

Toledo district, land to which they belong, and land that belongs partially at least to them.

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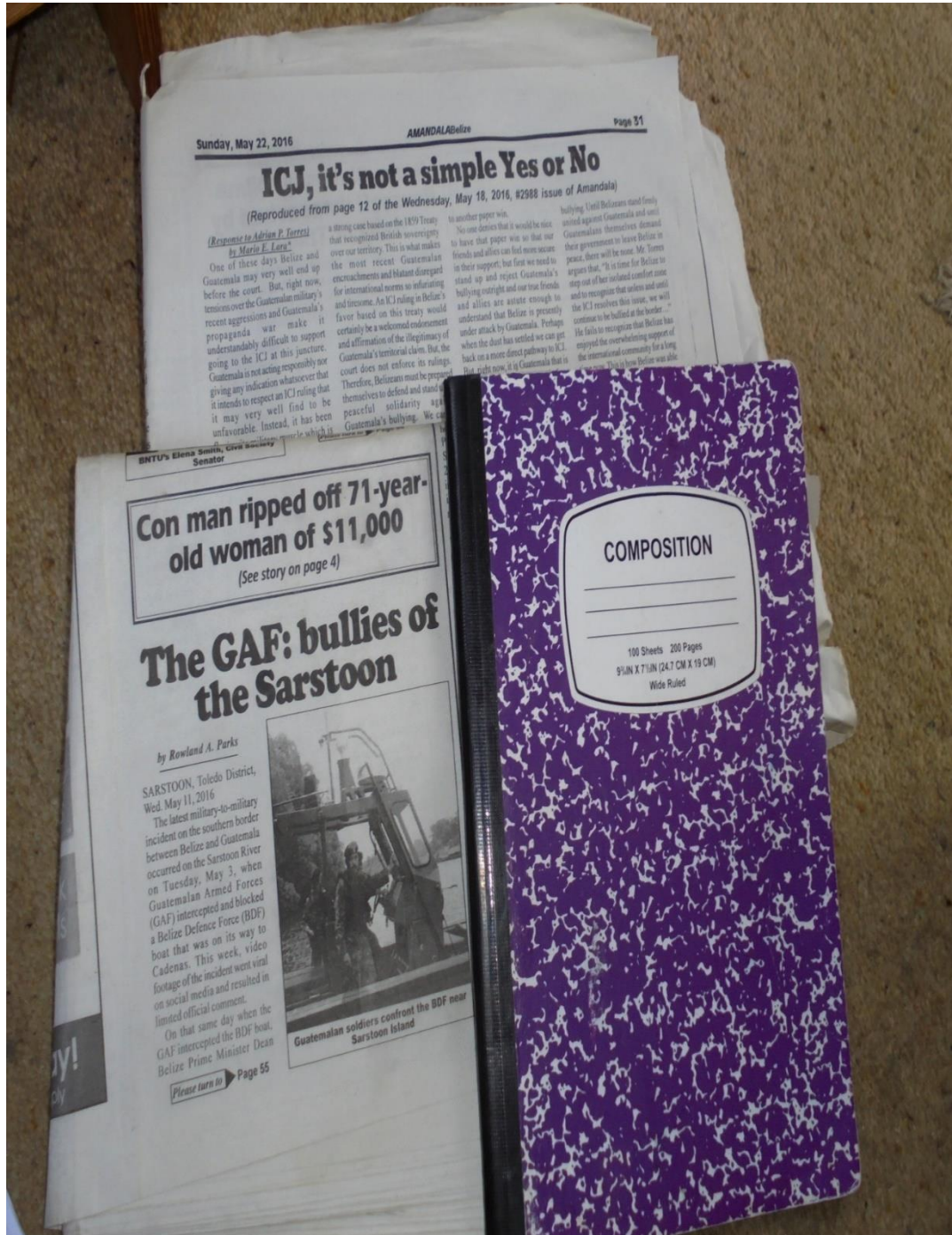
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Appendices

Appendix A1: Field aids



Appendix A2: Thematic coding analysis sample

(Available on request)

Appendix A3: UREC form

(Available on request)

Appendix A4: NICH permit

(Available on request)

Appendix A5: Consent form

(Available on request)

Appendix A6: P.I.S

(Available on request)

Plan

*Of a Mahogany Work situated as above
on the North Bank of the Maho River and
West of the Charib Settlements
Granted by Her Majesty's Superintendent
Colonel Macdonald
to the
Sir Mathew Newport
Planned and Surveyed by T. S. Halliday
March 1837*

