

Rights of Indigenous People in Addressing Climate-Forced Displacement

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Complaint submitted to:

Cecilia Jimenez-Damary,

Special Rapporteur on the Human Rights of Internally Displaced Persons

Victoria Lucia Tauli-Corpuz,

Special Rapporteur on the Rights of Indigenous Peoples

David R. Boyd,

Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment

Hilal Elver,

Special Rapporteur on the Right to Food

Karima Bennoune,

Special Rapporteur in the Field of Cultural Rights

Dainius Puras,

Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health

Leilani Farha,

Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living

Philip Alston,

Special Rapporteur on Extreme Poverty and Human Rights

E. Tendayi Achiume,

Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance

Léo Heller

Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation

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Introduction

The Alaska Institute for Justice submits this complaint on behalf of five Tribes faced with climate-forced displacement and experiencing ongoing human rights violations caused by the United States government. The Tribes are located in Louisiana and Alaska. The Louisiana Tribes are Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians of Louisiana; Pointe-au-Chien Indian Tribe; Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw Tribe; and the Atakapa-Ishak Chawasha Tribe of the Grand Bayou Indian Village. The Alaska Tribe is the Native Village of Kivalina. Despite their geographic differences, the Tribes in Louisiana and Alaska are facing similar human rights violations as a consequence of the US government’s failure to protect, promote and fulfill each Tribe’s right to self-determination to protect Tribal members from climate impacts. The human rights violations cut across several thematic mandates of the UN Special Rapporteurs because climate-forced displacement threatens the full enjoyment of a wide range of human rights. These rights include the rights to life, health, housing, water, sanitation, a healthy environment and food, among others.

The Complainant

The Alaska Institute for Justice is an independent human rights organization based in the United States working to protect the human rights of those displaced because of the climate crisis.

The Victims¹

Louisiana

Four Louisiana Tribes submit this complaint: **Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians of Louisiana; Pointe-au-Chien Indian Tribe; Grand Caillou/Dulac Band of Biloxi-Chitimacha-**

¹ For Tribal Resolutions, see Appendix A.

Choctaw Tribe; and the Atakapa-Ishak Chawasha Tribe of the Grand Bayou Indian Village. The traditional lands of these Tribes are located in the following Parishes in what is now called the southern Louisiana coast: Terrebonne Parish, Lafourche Parish and Plaquemines Parish.² The Tribes have always been stewards of the land and ocean. Historically, the Tribes have sustained themselves by trapping, fishing, hunting and farming. However today, the coastal region of Louisiana is rapidly disappearing. The areas inhabited by the coastal Louisiana Tribes are the fastest eroding areas in the United States.³ Sea level rise, extreme weather events and subsidence are causing land to be permanently submerged. Sea level rise and coastal erosion impact the Tribes' subsistence lifestyle, sacred sites, and historical sites. Natural disasters, such as Hurricanes Katrina, Rita, Gustav, Ike, Lee, Isaac, and Barry have also taken a significant toll, resulting in increased flooding and damage to these Tribal communities.⁴ The Mississippi River flood control system⁵ and the oil and gas industries have also destroyed the land and exacerbate coastal erosion and subsidence.⁶ These profound environmental changes negatively impact the ability of the Tribes to protect the health and safety of tribal citizens and to protect its land base and natural resources.⁷ Yet, despite these changes and the systemic inequity caused by "generations of displacement, discrimination, exclusion from regional levees, threats to food sovereignty and traditional ways of life, and the imposed criteria for political recognition," the Indigenous Tribes living here continue to subsist, and want to continue to subsist, on their remaining traditional lands.⁸

Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians of Louisiana

The Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians of Louisiana (IDJC Tribe) are descendants of these three historic Tribes who inhabited southern Louisiana and the southeastern part of what is now the United States. The Chitimacha have historically called what is now southeastern Louisiana home. In 1830, the U.S. government passed the Indian Removal Act and members of the Biloxi and Choctaw Tribes fled to the bayou area to escape forced relocation. The IDJC Tribe was originally located on Isle de Jean Charles, Louisiana, an area in southern Terrebonne Parish that has lost most of its land mass. Now only approximately 80 of 700 total tribal citizens live on the Island, while others form a

² Parish is a term used in Louisiana to refer to a local territorial division and administrative unit of the Louisiana state government within the U.S. states.

³ The Barataria-Terrebonne Basin has lost over 935 square miles since 1935. Habitat Loss, BTNEP Website, available at <https://btnep.org/estuary-issues/habitat-loss/>.

⁴ "Vulnerability of Coastal Louisiana Tribes in a Climate Change Context," Tribal Climate Change Profile: Coastal Louisiana Tribes (September 2012), available at https://www7.nau.edu/itep/main/tcc/docs/Tribes/Tribes_CoastalLA.pdf.

⁵ The Mississippi River flood control system is also known as a "levee system."

⁶ Patty Ferguson-Bohnee, "The Impacts of Coastal Erosion on Tribal Cultural Heritage," *Forum Journal* 29.4 (Summer 2015), 58.

⁷ *Id.*

⁸ Nathan Jesse, a doctoral candidate in anthropology at Temple University whose dissertation is on Isle de Jean Charles, as quoted in Boyce Upholt, "Goodbye to Good Earth," *Oxford American* (September 3, 2019), available at <https://www.oxfordamerican.org/magazine/item/1816-goodbye-to-good-earth>

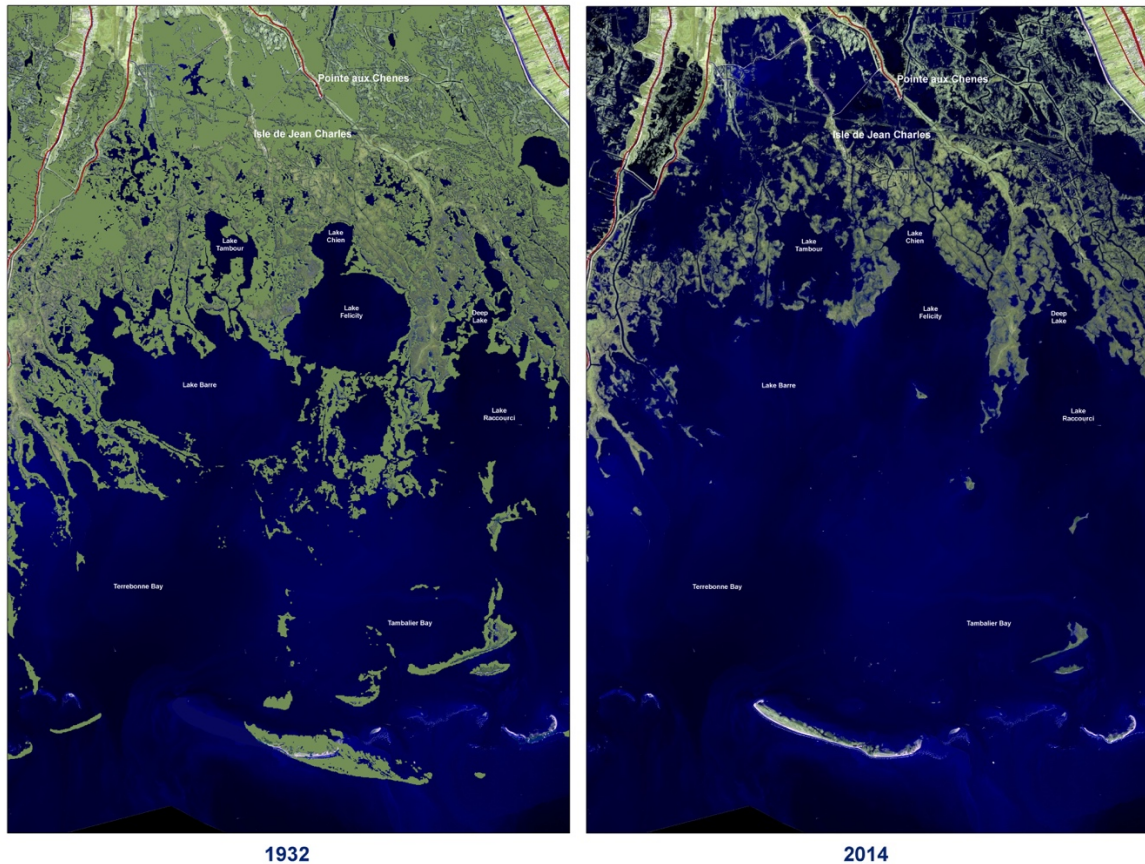
diaspora in nearby communities. The IDJC Tribe is a state recognized Tribe and has been seeking federal recognition since the 1990s. Since 2002, the IDJC Tribe has been actively working to implement a Tribal-led resettlement to bring both Island residents and the diaspora together in one place that ensures the Tribe's safety and cultural survival.



Isle de Jean Charles Aerial View

Pointe-au-Chien Indian Tribe

The Pointe-au-Chien Indian Tribe (PACIT) has inhabited their traditional territory in the southernmost end of Louisiana along and around Bayou Pointe-au-Chien since time immemorial. Today, this area is known as Terrebonne and Lafourche Parishes. The Tribe descends primarily from Chitimacha and Biloxi Tribes, as well as the Acolapissa and Atakapas Tribes and has approximately 750 members. Several villages where Pointe-au-Chien members historically lived are no longer inhabitable due to land loss and salt water intrusion. As a consequence, many tribal citizens have been forced to relocate to family properties further north in the current Pointe-au-Chien village, nearby communities, or beyond. PACIT is a state recognized Tribe and has been seeking federal recognition since the 1990s.



Land Loss around Isle de Jean Charles and Pointe-au-Chien

The Pointe-au-Chien Indians have always been stewards of the water and land. Today, Pointe-au-Chien Indians continue to have a subsistence and agrarian livelihood – fishing, catching oysters, shrimp, and crabs and growing vegetables. Saltwater intrusion has limited the ability of Tribal members to engage in large-scale agricultural practices and has made the land unusable for herding and trapping. Instead, Tribal members are only able to tend small gardens. Commercial fishing is a primary occupation. Increased flooding has resulted in some Tribal members relocating to higher ground and others raising their homes to adapt to these changes. “This small French-speaking Tribe continues to comprise a distinct community despite colonization, land loss, lack of status as a federally recognized Tribe, exploitation of the land and people, and denial of educational opportunities.”⁹

Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw

The Grand Caillou/Dulac Band is a Tribe of 1098 citizens who have historically lived in and around the ancestral village of Grand Caillou/Dulac in southern Terrebonne Parish, Louisiana. The Tribe is primarily

⁹ History/Background: Our Community Yesterday, Today, Tomorrow, Pointe-au-Chien Indian Tribe Website, available at <https://www.pactribe.com/history>.

descended from Biloxi, Chitimacha and Choctaw Tribes, along with the Atakapas and Acolapissa Tribes. The Grand Caillou/Dulac Band, as part of the Biloxi-Chitimacha Confederation of Muskogeans, was recognized by state of Louisiana in 2004 and has been working to gain federal recognition since the 1990s.

Like other tribal communities in southern Louisiana, the Grand Caillou/Dulac Band has traditionally sustained itself through trapping, fishing, and farming in lands and waters that were historically lush. Because of the diversion of the Mississippi River and other development projects, oil and gas extraction, erosion, salt-water intrusion, and the climate crisis, the Tribe has seen these traditional practices threatened. Forests that used to exist are fewer and fewer due to saltwater intrusion.¹⁰ Land loss and increasingly severe storms now put the community at frequent risk of disaster and flooding.¹¹ Land loss means less hunting and trapping. Especially since the catastrophic Deepwater Horizon Oil Disaster in 2010, tribal members have experienced smaller shrimp yields. Salt-water incursion and flooding make it difficult to maintain gardens.

Grand Bayou Village

Grand Bayou Village, home of the Atakapa-Ishak Chawasha Tribe, is located at the southernmost part of Plaquemines Parish, Louisiana, south of New Orleans, and is accessible only by boat.¹² The Atakapa have called this area home for thousands of years and settled along what is now Grand Bayou – a place oral histories recall as a “paradise” with forests on high ground and plenty of game. The Tribe’s sacred burial sites and ancestral fishing waters are here. The Atakapa-Ishak Chawasha lacks any formal state or federal recognition as an Indian Tribe.¹³

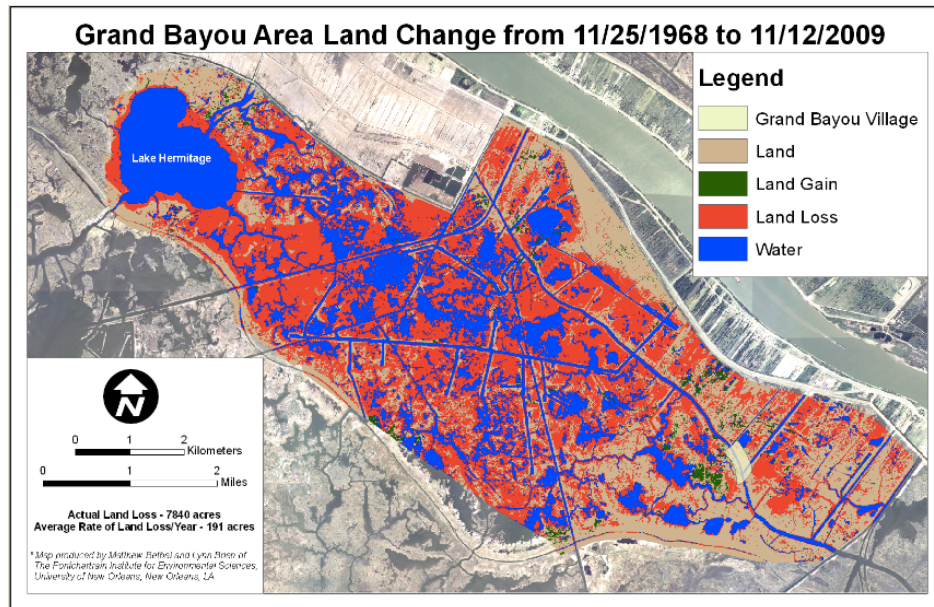
In the last century, the Mississippi River levee systems, sea level rise and destruction of wetlands caused by oil and gas exploration have caused the lands around the village to erode and subside. Saltwater intrusion has killed the forests and medicinal plants and made it impossible to carry out traditional gardening. Major storms like Hurricane Katrina in 2005 flooded the community and destroyed homes, causing many families to move elsewhere. Today, only 14 families live full-time in Grand Bayou in homes built on 16-foot pilings; however the diaspora continue to return to the Grand Bayou Village for the bi-annual celebration of community, sacred place and family, celebrating their Tribal lifeway. The community is routinely at risk from coastal land loss, flooding, and storms.

¹⁰ Chief Shirell Parfait-Dardar, “Fighting to Save Home,” *available at* <https://www.youtube.com/watch?v=rbphUxHHIDY>.

¹¹ Brooks Hays, “Native Groups Fight to Save Land, Culture from Rising Seas,” *United Press International* (December 5, 2017), *available at* https://www.upi.com/Science_News/2017/12/05/Native-groups-fight-to-save-land-culture-from-rising-tides/3881512148020/.

¹² Grand Bayou Indian Village, First Peoples Conservation Council website, *available at* <http://fpccloisiana.org/our-communities/our-communities-grand-bayou/>.

¹³ Tribal Climate Change Profile: Louisiana Tribes, Vulnerability of Coastal Louisiana Tribes in a Climate Change Context at 3, *available at* https://www7.nau.edu/itep/main/tcc/docs/Tribes/Tribes_CoastalLA.pdf.



Grand Bayou Land Change, Matthew Bethel et al.

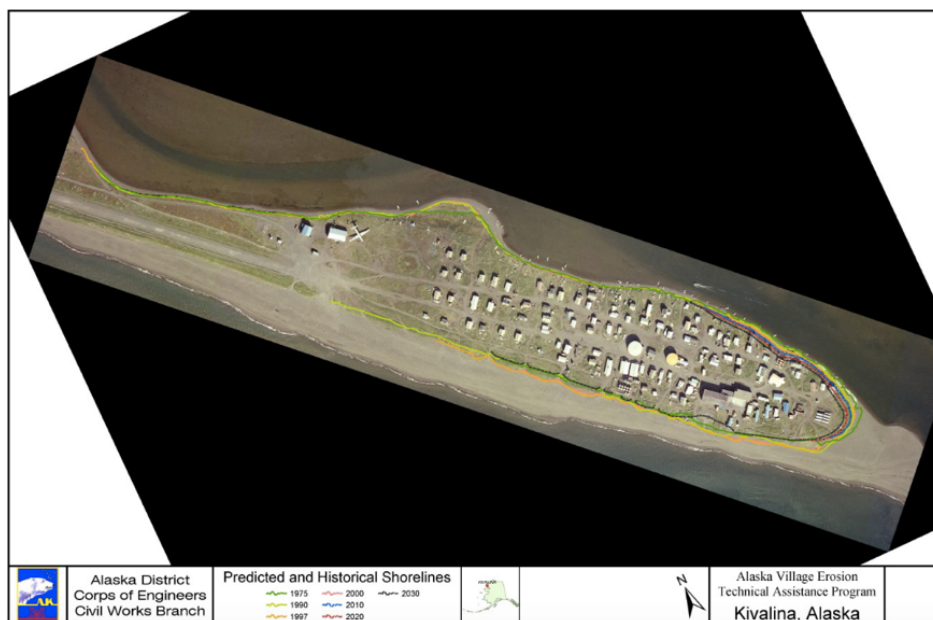
Alaska

One Alaska Native Tribe joins with the four Louisiana Tribes in this complaint.

Native Village of Kivalina

The Native Village of Kivalina is a federally recognized Tribe and includes approximately 400 Inupiaq people. The community is located on a barrier reef island between the Chukchi Sea and the mouths of the Wulik and Kivalina Rivers. No roads lead to or from the community, which is only accessible by small planes or boats and is approximately 100 miles north of the Arctic Circle and 1,000 miles northwest of Anchorage, Alaska. Inupiaq communities have resided in this region for thousands of years. Historically, the island where Kivalina sits had been used by Inupiaq people for seasonal hunting and fishing, not permanent habitation. The United States Congress authorized the building of schools in rural Alaska in 1905, overseen by the Governor of the district of Alaska. These government authorities built a school on the island of Kivalina and informed people in the region that they had to bring children to school or face imprisonment.¹⁴ The people of Kivalina noted in the very first years of the permanent settlement that this was not a safe place. As early as 1910, reports from the school committee document that residents wished to move because of the risks of erosion. To this day, the community has not been able to relocate.

¹⁴ Christine Shearer, *Kivalina: A Climate Change Story* (Chicago: Haymarket Books, 2011), 34.



Kivalina Land Loss

USACE Kivalina Draft Master Plan 2014

Summary

The United States government has failed to protect the human rights of Tribal Nations in Louisiana and Alaska, who are being forcibly displaced from their ancestral lands. The five Tribes named in this complaint request immediate intervention and investigation by the UN Special Rapporteurs of the human rights violations in accordance with the UN Guiding Principles on Internal Displacement, the UN Declaration on the Rights of Indigenous Peoples, and other international human rights legal doctrine. The United States government's failure to protect the Tribal Nations named herein has resulted in the loss of sacred ancestral homelands, destruction to sacred burial sites and the endangerment of cultural traditions, heritage, health, life and livelihoods. Furthermore, it has interfered with tribal nation sovereignty and self-determination and is breaking apart communities and families.

The United States government has known for decades that changes to the environment caused by the effects of climate change, as well as human-made disasters, threaten these coastal Tribal Nations in Alaska and Louisiana. Among these threats include rising sea levels, catastrophic storms, and unchecked extraction of oil and gas. When these threats impact citizens of these Tribal Nations, the government has failed to allocate funds, technical assistance and other resources to support the Tribes' right to self-determination to implement community-led adaptation efforts that effectively protect the lives and livelihoods of Tribal citizens. The government's inaction has gone beyond basic negligence where the government has failed to engage, consult, acknowledge and promote the self-determination of these Tribes as they identify and develop adaptation strategies, including resettlement. By failing to act, the U.S. government has placed these Tribes at existential risk.

Recommendations

The Tribes respectfully urge the Special Rapporteurs to find that climate-forced displacement is a human rights crisis. To respond to this crisis and rectify the human rights violations occurring in the United States, the Tribes request that the Special Rapporteurs make the following recommendations to the United States federal government and the State governments of Louisiana and Alaska:

The United States federal government should:

- Recognize the self-determination and inherent sovereignty of all of the Tribes, including those federally recognized and those who have not received federal recognition;
- Grant federal recognition to the Tribal Nations in Louisiana so that these Tribes are able to access federal resources that will support their self-governance of the various climate impacts that affect them;
- Recognize the Tribes' collective rights to the land, subsistence, and cultural identities and their collective right to return to and maintain access to their ancestral homelands;
- Assist the Tribes in protecting and restoring their homelands to the extent possible;
- Create a Federal relocation institutional framework that is based in human rights protections to adequately respond to the threats facing Tribal Nations, including the rapid provision of resources for adaptation efforts that protect the right to culture, health, safe-drinking water, food, and adequate housing;
- Ensure that Tribal Nations are integral to decision-making processes and that all federal government entities obtain their free, prior, and informed consent to all infrastructure developments, coastal resiliency master plans and any agreements pertaining to the underlying use of the land that impacts Tribes or their aboriginal lands;
- Work with the State government of Louisiana to explore and develop models of shared land ownership that would ensure the protection of land and the promotion of healthy ecosystems and land rejuvenation;
- Recognize and protect Tribal Cultural Heritage, including the use, practice, and designation of sacred sites, historical sites, cultural sites, fishing and hunting sites via mechanisms like the National Register of Historic Places;
- Recognize and respect access of the Tribes to their lands, sacred sites, cultural sites, and their aboriginal subsistence lands when Tribes are forcibly displaced or have voluntarily relocated;
- Allocate funding to restore tribal lands and protect sacred sites, village sites, and subsistence hunting and fishing areas, as well as consult with Tribes on restoration projects;
- Allocate funding for adaptation measures for Tribes experiencing increased sea-level rise;

- Respect the inherent sovereignty of the resettlement decisions of the Tribal communities by implementing and upholding their decisions relating to resettlement; and
- Allocate funding to implement the tribal-led relocation process for the Alaska Native Village of Kivalina and Isle de Jean Charles Indian Tribe.

The Louisiana state government should:

- Allocate funding to the Louisiana Tribes listed in this complaint to respond to the humanitarian crisis they are currently experiencing.
- Designate the Louisiana Tribes listed here as entities eligible for assistance directly from federal government agencies, such as, U.S. Housing and Urban Development community development block grants (CDBG), and Federal Emergency Management Agency (FEMA) disaster relief and response funding;
- Require the oil and gas industry to give advanced notice to the Tribes of their intent to conduct oil and gas exploration or drilling that may pose a risk to Tribal cultural heritage, lands, and waters.
- Hold oil and gas corporations responsible for damages they have caused to the Louisiana coast; require mitigation measures and compensation.
- Respect the right to self-determination of the Tribes and ensure that there is free, prior and informed consent prior to the state government's development of projects for the Louisiana Master Plan;
- Amend State laws and policies, including to create a relocation institutional framework, based in human rights protections to ensure that resources are provided to accelerate adaptation efforts to protect the right to culture, health, safe-drinking water and adequate housing; and
- Allocate funding to implement the tribal-led relocation process for Isle de Jean Charles.

The Alaska state government should:

- Amend their laws and policies, including to create a relocation institutional framework based in human rights protections to ensure that resources are provided to accelerate adaptation efforts to protect the right to culture, health, safe-drinking water and adequate housing; and
- Allocate funding to implement the tribal-led relocation process for the Alaska Native Village of Kivalina

International Law & Best Practices for the Rights of Indigenous People to Address Climate-Forced Displacement

International legal doctrine outlines the responsibilities of the United States government to protect internally displaced populations. The Guiding Principles on Internal Displacement (Guiding Principles), Pinheiro Principles and Peninsula Principles specifically articulate the human rights protections required for those who are displaced by natural or human-made disasters and places the primary duty and responsibility to provide protection and humanitarian assistance on the United States government to displaced persons within their jurisdiction.¹⁵ The right to self-determination is the most important principle to protect, promote and fulfill in the context of climate-forced displacement.¹⁶

The Guiding Principles articulate the duty of the United States government to ensure all feasible mitigation alternatives are explored to avoid and minimize displacement. The Principles also highlight the importance of family unity, free and informed consent, and the rights to life, dignity, liberty and security. Guiding Principle 9 emphasizes that States are under a “particular obligation to protect against the displacement of Indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to their lands.”¹⁷

The Pinheiro Principles on Housing and Property Restitution echo the principle that nation state governments have an obligation to guarantee human rights protections to persons affected by internal displacement and emphasize the obligation to protect human rights related to housing and property restitution.¹⁸ Drawing on established human rights declarations and covenants, the Peninsula Principles outline the human rights principles that must be adhered when individuals and communities are forcibly displaced internally because of climate change.

Several international human rights documents affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their own political status, and freely pursue their economic, social and cultural development, including the Charter of the UN, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, and Article 3 of the Declaration on the Rights of Indigenous Peoples. Additionally, the Right of Free, Prior and Informed Consent (FPIC) is a critical component of the fundamental, inherent right to self-determination as defined in international law. This right undergirds Indigenous Peoples’ ability to conclude and implement agreements in order to

¹⁵ UN High Commissioner for Human Rights, Guiding Principles on Internal Displacement E/CN.4/1998/53/Add.2 (1998).

¹⁶ Peninsula Principles on Climate Displacement within States (August 2013), *available at* <http://displacementsolutions.org/wp-content/uploads/2014/12/Peninsula-Principles.pdf>.

¹⁷ UNHCHR, Guiding Principles on Internal Displacement.

¹⁸ Centre on Housing Rights and Evictions, The Pinheiro Principles, principle 8.2 (2007), *available at* <https://2001-2009.state.gov/documents/organization/99774.pdf>.

uphold their sovereignty over and protection of lands and natural resources, and to develop and participate in processes that redress violations of their land and Treaty rights.

The UN Declaration on the Rights of Indigenous Peoples affirms that Indigenous peoples possess collective rights, indispensable for their existence and well-being, including the right to collective self-determination and the collective right to the lands, territories and natural resources they have traditionally occupied and used.¹⁹ The collective right to self-determination ensures that Indigenous communities can determine their own identity, belong to “an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned” and make decisions about internal and local affairs.²⁰ The Declaration also provides that Indigenous peoples have the right to freely define and pursue their economic, social and cultural development. These rights protect the collective right of Indigenous peoples to live as “distinct peoples” and “maintain and strengthen their distinct political, legal, economic, social and cultural institutions.”²¹ Collective self-determination ensures that communities are empowered to make the critical decisions related to climate adaptation, including relocation.

Tribal Self-Determination

Indigenous communities in the United States were autonomous self-governing peoples living on the land, long before the current manifestation of the United States of America and its constitutional democracy as it stands today. When Tribal Nations negotiated treaties with the U.S. federal government, they were done under the auspices of relationship, responsibility, respect, and reciprocity. The United States government agreed to undertake a duty of protection in-perpetuity to Native communities during the creation of the first federal-tribal relationships. However, for Tribes that are not federally recognized, these rights are harder to reach.

Tribal governments in the United States are sovereign governments with powers that are derived from their inherent sovereignty that predates the United States Constitution.²² In order for its powers of sovereignty, or self-government, to be recognized and officially functional within the United States legal system, or to be eligible for assistance designated for Indian Tribes, an Indigenous group must have specific recognition by the federal government.²³ Gaining federal recognition is critical to self-

¹⁹ United Nations Declaration on the Rights of Indigenous Peoples, art. 1, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); United Nations Development Group Guidelines on Indigenous Peoples’ Issues (February 2008), <http://www2.ohchr.org/english/issues/Indigenous/docs/guidelines.pdf>.

²⁰ United Nations Declaration on the Rights of Indigenous Peoples, arts. 9, 33, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

²¹ United Nations Declaration on the Rights of Indigenous Peoples, arts. 5 and 7, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

²² *Talton v. Mayes*, 163 U.S. 376, 385 (1896).

²³ James Anaya, Report of the Special Rapporteur on the rights of Indigenous peoples: The situation of Indigenous peoples in the United States of America, U.N. Doc. A/HRC/21/47/Add.1, ¶ 56 (Aug. 30, 2012), *available at* https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47-Add1_en.pdf.

determination.²⁴ Tribes are primarily recognized through Congress or the administrative process, known as the Federal Acknowledgement Process (FAP).

The administrative federal recognition process is time consuming, burdensome, and expensive. In 2012, James Anaya, Special Rapporteur on the rights of Indigenous Peoples noted concerns about the cost and length of the federal recognition process.²⁵ He found that Indigenous groups have strived to achieve recognition through the FAP for decades and noted that the federal recognition process needs reform.²⁶ The Rapporteur's report quoted Alaska U.S. Senator Lisa Murkowski during a 2007 U.S. Senate Committee on Indian Affairs hearing on the process of federal recognition of Indian Tribes, "It is not right, it is not a system that is working under any stretch of the imagination."²⁷

A 2014 UN Committee on the Elimination of Racial Discrimination report affirmed the Special Rapporteur's analysis and noted concerns with "[t]he ongoing obstacles to the recognition of Tribes, including high costs and lengthy and burdensome procedural requirements."²⁸ It further reiterated its recommendation from 2007 to "[t]ake effective measures to eliminate undue obstacles to the recognition of Tribes."²⁹ The United States government has failed to address the broken federal acknowledgment process.

As a consequence, none of the coastal Tribes in the State of Louisiana have this official federal recognition. Pointe-au-Chien, Grand Caillou Dulac, and Isle de Jean Charles have been petitioning for federal recognition through the United States administrative process since the mid-1990s. Although the criteria for federal recognition changed in 2015 to improve transparency and to reduce the burden of the petitioner, for under resourced Indigenous communities, the cost, expertise, and resources needed to prepare a petition are still a barrier to the process. Nevertheless, Pointe-au-Chien, Grand Caillou Dulac, and Isle de Jean Charles have renewed their efforts for recognition after administrative regulations changed in 2015.

The lack of federal acknowledgment impedes the ability of Louisiana's coastal Tribes from fully exercising their self-determination rights and severely hampers the Tribes' plans for protecting its members and

²⁴ *Id.*

²⁵ *Id.* at ¶ 57.

²⁶ *Id.*

²⁷ *Id.*; see also *Process of Federal Recognition: Hearing Before the Comm. on Indian Affairs*, 110 Cong. 1 (2007), available at <https://www.indian.senate.gov/sites/default/files/upload/files/September192007.pdf>.

²⁸ Committee on the Elimination of Racial Discrimination, International Convention on the Elimination of All Forms of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of the United States of America at ¶ 24, CERD/C/USA/CO/7-9 (Sept. 25, 2014), available at <https://2009-2017.state.gov/documents/organization/235644.pdf>.

²⁹ *Id.*; see also Alberto Saldamando, International Indian Treaty Council, Racial Discrimination Against Indigenous Peoples in the United States, Consolidated Indigenous Shadow Report at 29, available at <https://www2.ohchr.org/bodies/cerd/docs/ngos/usa/USHRN8> ("the United States employs a lengthy and demanding federal approval process to determine which Indian Nations or peoples it will 'recognize' on a government-to-government basis").

their sacred sites, villages, and subsistence hunting and fishing practices from the impacts of the climate crisis. This lack of recognition impacts the ability of Louisiana Tribes to respond to environmental disasters because they do not directly qualify for many financial resources and cannot directly deal with the US Federal Emergency Management Agency (FEMA).³⁰ This lack of recognition has significantly limited the Isle de Jean Charles' efforts to reunite the Tribe in a safe new home.

Although federal recognition should not be required to protect traditional tribal homelands, there is no mechanism to have a government-to-government relationship with the United States federal government to protect these lands without this recognition.³¹ The United Nations Declaration on the Rights of Indigenous Peoples ("Declaration"), adopted in 2007, recognizes that Indigenous peoples have a right to their land, territories and resources and shall have legal recognition to protect these lands, territories and resources.³² The Declaration also recognizes the right to protect historic sites and tribal culture.³³ For Tribes in Louisiana, their right to their land and resources is not protected.

In 2004, the State of Louisiana recognized the Isle de Jean Charles Band of Biloxi-Chitimacha Confederation of Muskogees, Bayou Lafourche Band of the Biloxi-Chitimacha-Choctaw, Grand Caillou/Dulac Band of the Biloxi-Chitimacha-Choctaw, and the Pointe-au-Chien Indian Tribe (See Appendix B). The Grand Bayou Indian Community has neither federal nor state recognition. State recognition acknowledges a Tribe's continued existence, and ensures that tribal citizens are included in federal Indian education programs, qualify for scholarships, and qualifies them to use Indian Health Service. In addition, state and federal Tribes in Louisiana are part of the Louisiana Indian Commission and, importantly, should be engaged in emergency management through the Louisiana Governor's Office of Indian Affairs and parish governments.³⁴

Exception to Domestic Remedies Exhausted

UN treaty bodies only require complainants—alleged victims or their representatives—to exhaust remedies that are available and effective.³⁵ This determination requires evaluating the circumstances of the case, including the personal circumstances of the complainants and the legal and political context in

³⁰ Hazard Mitigation is described by FEMA and the Disaster Mitigation Act of 2000 (DMA 2000) as any sustained action taken to reduce or eliminate long-term risk to life and property from a hazard event. Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended by DMA 2000, provides for States, Federally recognized Native American Tribes and local governments to undertake a risk-based approach to reducing risks to natural hazards through mitigation planning.

³¹ Patty Ferguson-Bohnee, "The Impacts of Coastal Erosion on Tribal Cultural Heritage," 65.

³² *Id.*; United Nations General Assembly, Declaration on the Rights of Indigenous Peoples, art. 26 (2007).

³³ *Id.*, arts. 11, 12, 25, 26, 29, 31.

³⁴ State of Louisiana Emergency Operations Plan, Appendix 4 (2009), *available at* http://www.lsp.org/pdf/Emergency_Operations_Plan.pdf.

³⁵ See Human Rights Committee, *Vicente et al. v. Colombia*, Communication 612/1995, Views of 29 July 1997, U.N. Doc. CCPR/C/60/D/612/1995, para. 5.2, *available at* <http://hrlibrary.umn.edu/undocs/612-1995.html>.

which the remedies exist. Domestic remedies are considered unavailable if there is no legal process under national law to protect the rights allegedly violated, if national law authorizes the human rights violation being complained of, or if the State denies access to the courts or other legal procedures to bring a claim to protect the right infringed.³⁶

In this current case, there are no available and effective legal remedies to address the complainants human rights violations. Over the years, the Tribes involved in this complaint have been denied both access and adjudication of their legal challenges to violations of environmental and permitting laws. They have also been denied opportunities to redress their rights to live, occupy, and use their aboriginal land.³⁷ They have not been able to avail themselves of administrative procedures when they have sought assistance with climate change mitigation, adaptation and relocation efforts with both State and Federal agencies and courts.

Complainants seek multijurisdictional relief that can only be remedied by an international human rights system with jurisdiction over government-to-government relations and an understanding of international Indigenous rights protections.

U.S. Federal Government and Louisiana and Alaska State Agencies

The United States Federal Emergency Management Agency (FEMA) is the lead United States federal government agency responsible for disaster preparation and response and supporting hazard mitigation.

United States Department of Housing and Urban Development (HUD) is the federal government agency responsible to housing assistance and community development. HUD is the federal government agency that administers Community Development Block Grants (CDBG) in both Alaska and Louisiana.

United States Army Corps of Engineers (USACE) is the federal agency that is responsible for flood protections and infrastructure developments throughout the United States. USACE excluded IDJC from the Morgana-to-the-Gulf Hurricane Protection Levee.

³⁶ Manfred Nowak, *A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies* (Boris Wijkstrom 2006), 64-65.

³⁷ In the 1970s, Pointe-au-Chien Tribal members worked together to put a stop to the Louisiana Land and Exploration Company attempting to dig a canal and dynamite through a mound complex, directly aimed at one of the Tribe's burial mounds. Tribal members fought off attempts by Louisiana Land and Exploration to dig canals and one tribal member went to jail. However, the oil company never filled in the cut leading to the cemetery and other canals surrounding the burial mounds. In 1992, an oil company sued eight Pointe-au-Chien tribal members who were fishing in their ancestral fishing grounds, in Terrebonne and Lafourche Parishes, for trespass and damage to the property. The federal district court in Louisiana stayed the decision until after the federal government makes a final determination on the Tribe's petition for federal recognition. Over two decades have passed, and the federal court in Louisiana has yet to determine the status of the land *See Louisiana Land & Expl. Co. v. Verdin*, 95-2579 (La. App. 1 Cir. 9/27/96), 681 So. 2d 63, 64, writ denied, 96-2629 (La. 12/13/96), 692 So. 2d 1067; *Verdin v. Louisiana Land & Expl. Co.*, CIV. A. 93-3537, 1995 WL 311897, at *1 (E.D. La. May 18, 1995).

United States Department of the Interior (DOI) is the federal agency responsible for management and protection of U.S. lands and natural resources.

Within DOI, the Bureau of Indian Affairs (BIA) is charged with engaging with Tribes in fulfilling the U.S. trust responsibility to Tribes. The Office of Federal Acknowledgment is within the Office of the Assistant Secretary – Indian Affairs in the Department of Interior and is responsible for implementing the administrative federal recognition process.

Denali Commission is a federal agency to provide critical infrastructure, utilities, and economic support in Alaska. It was designated as the central coordinating agency for climate resilience efforts in Alaska, including community relocations.

Louisiana Office of Community Development (OCD) administers grants received from HUD for public facilities, economic development, demonstrated needs projects to local units of government, including funds for rehabilitating, improving and constructing projects for community water systems to provide safe, clean drinking water. This office also administers HUD funding for disaster recovery and mitigation grants to help state residents recover from hurricanes Katrina, Rita, Gustav, Ike and Isaac; and lessen the impacts of future storms.

In Louisiana, CDBG funds have gone to the OCD's Disaster Recovery Unit, which has partnered with Coastal Protection and Restoration Authority (CPRA) and local interests across the coast to identify potential flood protection projects such as levee construction or improvements, floodgate installation, critical infrastructure, and shoreline protection.

Louisiana Oil Spill Coordinators Office serves as the single point of contact for all programs related to oil spills in Louisiana, including restoration of natural resources, protecting economic infrastructure and safeguarding the public health.

Louisiana Department of Natural Resources is responsible for permits issued to oil and gas companies.

Louisiana Governor's Office of Indian Affairs is responsible for overall liaison and coordination with the Tribes for emergency responses.³⁸ From 2010-2016, the Governor of Louisiana failed to appoint a director of the Governor's Office of Indian Affairs.

Alaska Department of Transportation and Public Facilities (DTPF) designs, constructs, and maintains Alaska's transportation infrastructure.

Alaska Division of Community and Regional Affairs (DCRA) is within the Department of Commerce, Community, and Economic Development. Kivalina's Inter-Agency Planning Group is within DCRA's Community Resilience Programs.

³⁸ State of Louisiana, Emergency Operations Plan 4.2 (2009), *available at* http://www.lsp.org/pdf/Emergency_Operations_Plan.pdf

Factual Evidence

The combination of slow ongoing environmental change, such as sea level rise and erosion, and extreme weather events, such as flooding, is causing the land upon which the Tribes live and thrive to become uninhabitable. Despite knowing the cause and impacts of sea level rise and erosion, the government has failed to act to protect the Tribes.

Factual Evidence: Louisiana

For thousands of years, the Mississippi River has snaked across southern Louisiana, depositing sediment from 31 states and 2 Canadian provinces across its delta. As sediment accumulated, land was built and continually changed the Mississippi River's path to the Gulf of Mexico. This constant ebb and flow created a dynamic ecosystem process of habitats and natural resources. The flood control structures built along the Mississippi River and unmitigated oil and gas extraction forever transformed this ecosystem. Climate-induced environmental change, such as sea level rise, coupled with frequent and increasingly intense extreme weather events accelerate rapid land loss.

Land Loss Due to Rising Sea Level and Human-made Infrastructure

In 1955, Isle de Jean Charles (IDJC) consisted of 22,000 acres. By 2015 (60 years later), IDJC's land mass decreased by 98% due to sea level rise, erosion, oil and gas infrastructure and the effects of levee development.³⁹ In 2016, the land mass was only 320 acres.⁴⁰ The Tribal Council's most recent calculation shows that the liveable space on the Island is only 110 acres. The Terrebonne Basin in which these communities sit has lost approximately 502 square miles of wetland since 1932.⁴¹ Areas that was formerly used for cattle, farming, gardens, forests, and even full residential communities are now water. GPS systems today cannot keep up with the rate of land loss.

Sea Level Rise

Louisiana's barrier shoreline is one of the fastest eroding shorelines in the world because of sea level rise and subsidence, which is occurring at a higher rate than anywhere else in the United States.⁴² "Shoreline

³⁹ State of Louisiana, National Disaster Resilience Competition Phase II Application (October 27, 2015), 105, available at https://www.doa.la.gov/OCDDRU/NDRC/NDRC_PII_Final_ExImg.pdf.

⁴⁰ Ted Jackson, "On the Louisiana Coast, a Native Community Sinks Slowly into the Sea," *Yale Environment 360* (March 15, 2018) available at <https://e360.yale.edu/features/on-louisiana-coast-a-native-community-sinks-slowly-into-the-sea-isle-de-jean-charles>.

⁴¹ Habitat Loss, Barataria-Terrebonne National Estuary Program, available at <https://btnep.org/estuary-issues/habitat-loss/>.

⁴² Halle Parker, "Its Sinking Land AND Climate Change," *Houma Courier*, June 19, 2019, available at <https://www.houmatoday.com/news/20190610/its-sinking-land-and-climate-change>; Coastal Protection and Restoration Authority, 2017 Coastal Master Plan, Attachment C2-1, Eustatic Sea Level Rise, available at http://coastal.la.gov/wp-content/uploads/2017/04/Attachment-C2-1_FINAL_3.16.2017.pdf; CPRA, Barrier Island

erosion data [shows] that most of Louisiana's shoreline is eroding faster than ever before with some short-term (1996 – 2005) erosion rates more than double the historic (1890s – 2005) averages."⁴³ This results in increased flooding and erosion. In 2019, Pointe-au-Chien and Isle de Jean Charles were inundated with 8-feet of water in their Tribal villages from Hurricane Barry, a category 1 hurricane. The Louisiana Coastal Restoration and Protection Authority estimates that in the next 50 years sea level rise will increase anywhere from 2.85 feet to 4.85 feet in the Terrebonne Basin, where PACIT, IDJC, and Grand Caillou Dulac reside.⁴⁴

Ecological Disasters Caused By Unchecked Oil & Gas Exploitation

In 1901, oil companies discovered fossil fuel deposits in southern Louisiana, which launched a booming oil and gas industry where almost a quarter million wells would be drilled by 2014.⁴⁵ The industry has wreaked ecological havoc, destroying ecosystems through land loss and oil spills and stealing tribal lands through violence and fraudulent land deals.

By the 1940s, oil companies built offshore platforms to excavate gas and oil deposits throughout southern Louisiana. To transport the drilling and rig equipment, construction materials, and personnel to off-shore oil platforms, construct pipelines, and to mark boundaries, these companies excavated canals across these Tribes' territory. Oil and gas companies have cut over 10,000 miles of canals across coastal Louisiana.⁴⁶

The canals cause saltwater intrusion, which kills the flora and destroys tree roots that holds the land together.⁴⁷ Without tree roots, the surrounding land sinks, which makes it difficult for Tribes to grow their traditional fruits and vegetables and harvest medicinal plants. The degradation has never been remediated.⁴⁸ The erosion and deterioration of the coastal lands cause storms to be much more intense. Rising sea level and increasingly intense hurricanes exacerbate these issues.⁴⁹

Status Report FY 2020 Annual Plan at 22, *available at* <http://coastal.la.gov/wp-content/uploads/2017/04/AppB-FY20-Barrier-Island-Report.pdf>.

⁴³ *Id.*, Summary at 3.

⁴⁴ Halle Parker, "Sinking Land."

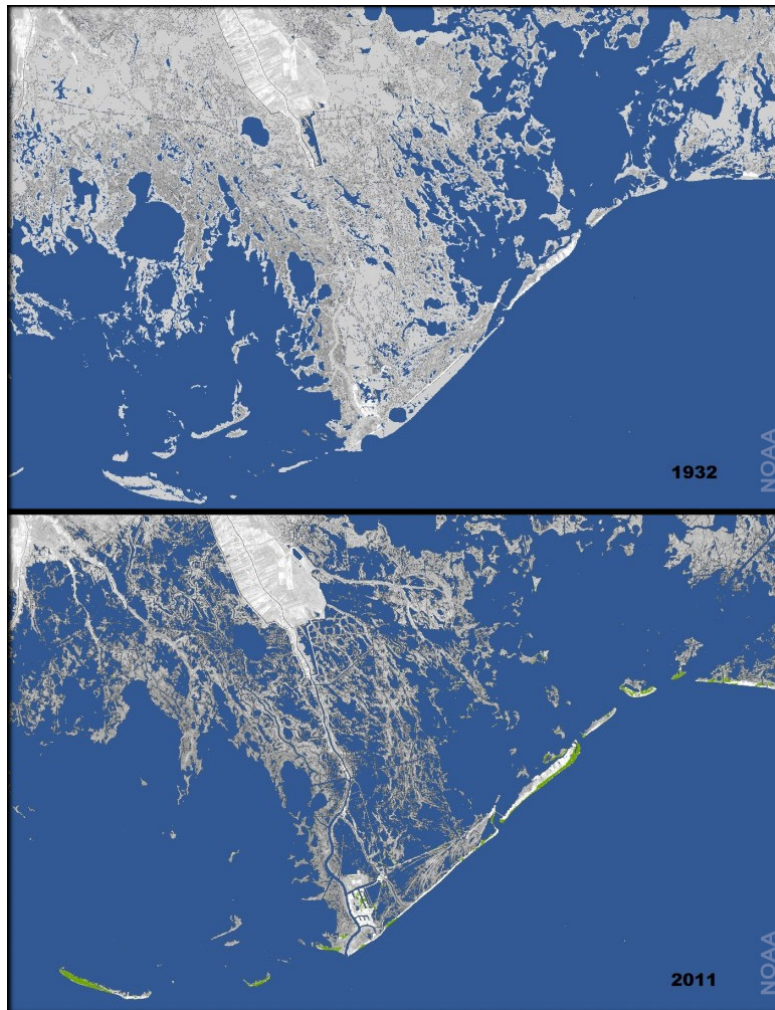
⁴⁵ Chris Kardish, "Southern Louisiana Picks a Fight with Big Oil to Save the Wetlands," *Governing* (Aug 25, 2015), *available at* <https://www.governing.com/topics/transportation-infrastructure/gov-louisiana-wetlands-lawsuits.html>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Shirley Laska et al, "Layering of Natural and Human-Caused Disasters in Context of Sea Level Rise," in Michele Companion, ed., *Disasters Impact on Livelihood and Cultural Survival: Losses, Opportunities, and Mitigation* (CRC Press, 2015), 227.

⁴⁹ Debra Utacia Krol, "In Louisiana, A Plan to Relocate The Country's First 'Climate Refugees' Hits a Roadblock," *Huffington Post*, Mar. 3, 2018, *available at* https://www.huffpost.com/entry/louisiana-climate-refugees-plan-roadblock_n_5ab402ade4b008c9e5f55c1b.



Land Loss in Southern Louisiana 1932-2011, NOAA

Deepwater Horizon Oil Spill of 2010

The 2010 Deepwater Horizon Oil Spill in the Gulf of Mexico devastated Pointe-au-Chien, Isle de Jean Charles, Dulac, and Grand Bayou. More than 200 million gallons of crude oil spilled into the Gulf of Mexico, creating an epic environmental disaster.⁵⁰ The oil spill also impacted the traditional subsistence fishing practices and the economic livelihood of many Tribal citizens.⁵¹ The State of Louisiana received billions of dollars in restoration funds and fines from the Deepwater Horizon Settlement; however, the Tribes have not been consulted or included in any restoration projects or discussions for use of the funds. The federal government also has not ensured that Tribal areas were appropriately represented or considered for

⁵⁰ Terri Hansen, "Drowning in It," *Indian Country Today*, May 4, 2011, at 20.

⁵¹ Barry Yeoman, "Reclaiming Native Ground," *SAPIENS*, (Feb. 24, 2017), available at <https://www.sapiens.org/culture/louisiana-native-americans-climate-change/>.

restoration funds in order to protect their subsistence livelihoods, sacred sites and cultural heritage.⁵² Today, the state of Louisiana continues to permit for unmitigated oil exploration despite ongoing problems with recurring oil spills.⁵³

Failure to Apply Legal Protection

Although some legal protections exist to regulate oil and gas development, little has been done to enforce the laws in place, and few actions have been taken to address the inequities created by the power imbalance that favors development and extraction of resources over protection, restoration, and maintenance of Tribal communities. For example, the State and Local Coastal Resources Management Act of 1978, La. R.S. § 49:214.21, *et seq.*, (“the CZM Laws”) regulates “uses” within Louisiana’s Coastal Zone through a permitting system.⁵⁴ The CZM Laws prohibit anyone from engaging in a “use” without first applying for and receiving a coastal use permit.⁵⁵ The purpose of the law is to protect, develop, and, where feasible, restore or enhance the resources of the state’s coastal zone.⁵⁶ Often the government fails to take into consideration the impact of the permittee’s actions on tribal fishing, hunting, and sacred sites. Pointe-au-Chien requested to receive notice of coastal zone permits applied for in its territory. The State of Louisiana failed to respond to the request for notice of coastal permitting.

The district attorney of Terrebonne Parish is investigating whether oil companies properly filed the required permits for oil and gas exploration activities in the state’s coastal zone or if a permit was obtained, whether any provisions of the permit were violated.⁵⁷ Parish officials have criticized the

⁵² US Department of the Interior, Historic NRDAR Settlement Reached for Deepwater Horizon Spill, *available at* <https://www.doi.gov/restoration/historic-nrdar-settlement-reached-deepwater-horizon-spill>; Tribal communities are notably absent from the list of Trustees who were consulted in this planning, see <https://la-dwh.com/>.

⁵³ In 2019, after fifteen years, the Taylor Oil Spill that occurred after Hurricane Ivan was finally contained. *Taylor Energy Co. v. Letrell* (Status Report, 18-14046, Dkt. 96, May 14, 2019) *available at* https://earthjustice.org/sites/default/files/files/96_CG%20Status%20Report_5-14-19.pdf; Darryl Fears, “A 14-year Old Oils Spill in the Gulf of Mexico Verges on Becoming One of the Worst in US History,” *Washington Post*, Oct. 20, 2019, *available at* https://www.washingtonpost.com/national/health-science/a-14-year-long-oil-spill-in-the-gulf-of-mexico-verges-on-becoming-one-of-the-worst-in-us-history/2018/10/20/f9a66fd0-9045-11e8-bcd5-9d911c784c38_story.html; Yessinia Funes, “Longest Oils Spill in US History May be 900 Times Larger,” *Gizmodo*, June 25, 2019, *available at*, <https://earth.gizmodo.com/longest-oil-spill-in-u-s-history-may-be-900-times-larg-1835847992>; Joan Mieners, “There were 540 Oils Spills After Katrina. Oil Companies have yet to be accountable for any of them,” *Times Picayune*, Dec. 27, 2019, *available at* https://www.nola.com/news/environment/article_ae173ac4-2377-11ea-8f3f-37710b50344c.html.

⁵⁴ *Plaquemines Par. v. Palm Energy Offshore, LLC*, CIV.A. 13-6709, 2015 WL 3404032, at *1 (E.D. La. May 26, 2015 (citing La. R.S. § 49:214.30).

⁵⁵ *Id.*

⁵⁶ State of Louisiana Department of Natural Resources Office of Coastal Management, *available at* <http://www.dnr.louisiana.gov/index.cfm/page/90>.

⁵⁷ John DeSantis, “Terrebonne Enters Oilfield Fray: DA Commencing Environment Damage Probe,” *Houma Times*, Mar. 17, 2019, https://www.houmatimes.com/news/terrebonne-enters-oilfield-fray-da-commencing-environment-damage-probe/article_cdc3bfa6-48f7-11e9-92fb-e781a8c1689f.html; John DeSantis, “Terrebonne Parish Sues its District Attorney and the State,” *Houma Times*, Apr. 8, 2019,

district attorney's actions as jeopardizing the oil industries contributions to the state, local economy, and labor market.⁵⁸ With such high stakes, the Terrebonne Parish President is suing the Parish district attorney and the State to stop the investigations into oil companies, permits, and coastal damages.⁵⁹

Mississippi River Levee System

European settlers reconfigured the Mississippi River after they arrived, building flood control structures that diverted the Mississippi River. As a result, the environment changed. As early as 1896, experts knew the effect of levee development on communities outside of the levee system. The government made a decision to protect some citizens, while ignoring others, specifically Tribal communities living on the coast.⁶⁰ Levees caused saltwater intrusion, prevented the river from depositing sediment into its wetlands damaging them, and eroded the barrier islands.⁶¹ Land loss occurred, causing the vegetation and natural buffer zone to disappear, making the coastal region vulnerable to flooding.⁶²

Morganza-to-the-Gulf Flood Protection System

In the early 1990s, the U.S. Congress tasked the U.S. Army Corps of Engineers (USACE) to construct the Morganza-to-the-Gulf Flood Protection System to keep hurricane waves from breaking across the land.⁶³ The USACE did not engage in any consultation process with the Tribes nor obtain their free, prior and informed consent before deciding which communities would be included in the flood protection system. In 2000, the USACE decided not to include Isle de Jean Charles in the Morganza-to-the-Gulf Flood Protection System, finding that it would not be cost-effective.⁶⁴ Excluding IDJC condemned the community to future land loss and hazardous conditions during storms.⁶⁵ Concerned with the USACE's determination, IDJC's Chief Albert Naquin urged the federal government to protect IDJC and include the

https://www.houmatimes.com/news/terrebonne-parish-sues-its-district-attorney-and-the-state/article_21e94704-5a64-11e9-aeb4-ebbc94e114ca.html.

⁵⁸ *Id.*

⁵⁹ DeSantis, "Terrebonne Parish Sues its District Attorney and the State," *Houma Times*.

⁶⁰ Ferguson-Bohnee, "High Water and High Stakes: Cultural Resources and Climate Change," *Forum Journal* 29.4 (Summer 2015), 59; E.I. Couthell, "The Delta of the Mississippi River," *National Geographic* (Dec. 1897), 354, available at http://www.lacoastpost.com/National_Geographic_Dec_1897.pdf.

⁶¹ Sara Sneath, "Hilcorp Energy Settles Suit with Oystermen over Unauthorized Dredging through Wetlands," *The Times-Picayune*, June 15, 2018, https://www.nola.com/news/environment/article_6df4e1e6-29d2-51cb-a68a-cdd14a90247d.html.

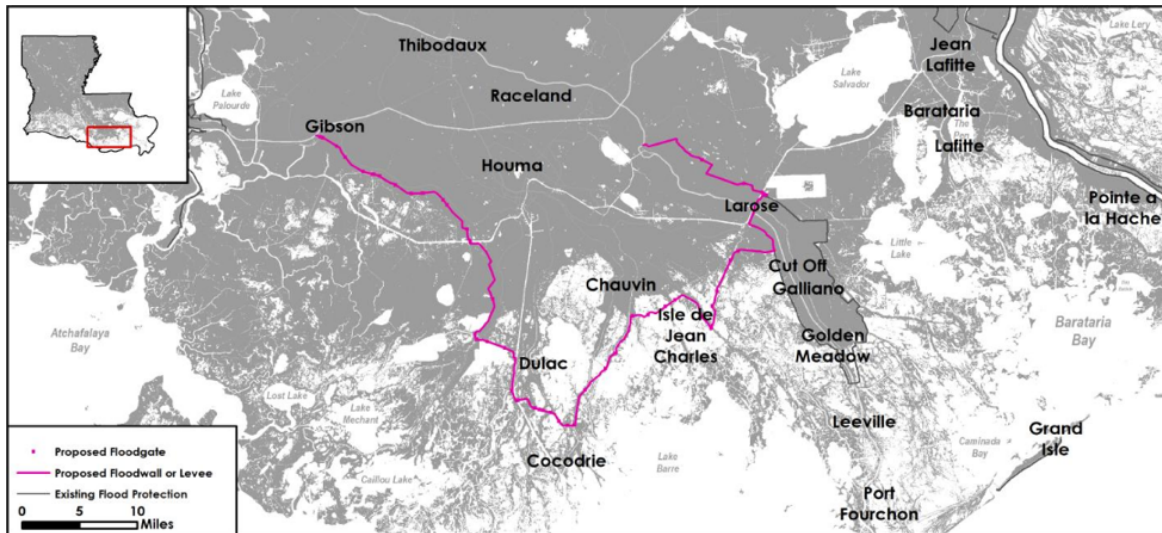
⁶² Andrew Stelzer, "Gulf Coast Tribes Face Erosion, Lack of Aid," *The New Standard*, April 27, 2007, <http://newstandardnews.net/content/index.cfm/items/2969>.

⁶³ Boyce Upholt, "Goodbye to Good Earth," *Oxford American*, Sept. 3, 2019, <https://www.oxfordamerican.org/magazine/item/1816-goodbye-to-good-earth>.

⁶⁴ Letter from Dr. James Johnson, Chief, Planning Division – Office of Deputy Commanding General for Civil Works, U.S. Army Corps of Engineers, to Honorable Albert P. Naquin, Chief, Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw, Feb. 9, 2000 (See Appendix C).

⁶⁵ *Id.*

community in the levee system.⁶⁶ The USACE, however, denied this request and instead determined that it would consider relocating residents or construct smaller flood control projects to protect the Tribe.⁶⁷ As a consequence, the USACE constructed a smaller flood control structure, a ring levee, to surround Isle de Jean Charles for protection. This levee is often breached by storms and in 2019, Category 1 Hurricane Barry breached the levee and filled the Island like a bathtub, inundating homes and forcing an evacuation.



Morganza-to-the-Gulf, Louisiana CPRA

Grand Bayou is not protected by the Morganza system or by smaller levees. The state of Louisiana's recent coastal restoration strategy in the Grand Bayou region includes land and marsh restoration projects, none of which are specifically targeted to protect Grand Bayou Village. Members of the Grand Bayou Atakapa-Ishak Chawasha Tribe have urged planners to include more socio-cultural indicators and Traditional Ecological Knowledge (TEK) in their planning to better assess the impacts these projects have on the community.⁶⁸ However, the projects have not included sufficient consultation with the community, and in some cases have not even adequately assessed impacts on the village.

The USACE included the current Pointe-au-Chien village area in the Morganza-to-the-Gulf Flood Protection System. This is the last segment of the Morganza-to-the-Gulf to be completed. Lack of federal funding has hampered levee construction. Currently, the levee system stops at a floodgate near the Pointe-au-Chien marina, separating Pointe-au-Chien from open water and marsh that used to be dry land.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Matthew Bethel et al, "Blending Geospatial Technology and Traditional Ecological Knowledge to Enhance Restoration Decision-Support Processes in Coastal Louisiana," *Journal of Coastal Research* 27.3 (May 2011), https://scholarworks.uno.edu/cgi/viewcontent.cgi?article=1022&context=chart_pubs.

Hurricane Barry brought eight feet of water into the tribal community in 2019, causing tribal homes and vehicles to flood. Although, the primary residential village that currently makes up Pointe-au Chien will sit inside the levee system when it is completed, as illustrated in the plan above, the levee system excludes most of the Tribe's aboriginal territory.⁶⁹ PACIT's ancestral burial grounds, historic farmland and villages, traditional fishing and hunting grounds, and sacred sites are not protected by the levee system and do not have hurricane protection.⁷⁰ As a consequence, salt water intrusion and coastal erosion destroyed these cultural heritage sites and village sites, and Tribal citizens were forced to relocate and adapt to the changes in the landscape.

The Impact of Natural Disasters

Hurricanes and tropical storms have had devastating impacts on the Tribes damaging thousands of homes and leaving some Tribal citizens homeless for long periods of time. The intensity and frequency of these storms have increased dramatically. The flood protection systems have provided insufficient protection from these storms. They also submerged the natural barriers, such as barrier islands and wetlands, which used to protect the southern Louisiana coast.

In the early 1900s, tropical storms or hurricanes were relatively infrequent and the impacts on Louisiana's tribal communities were manageable because of protection from the barrier islands and the natural marsh. From 1900-1947, nine hurricanes hit the Louisiana coast.⁷¹ From 1956-1988, seventeen hurricanes hit the Louisiana coast.⁷² From 1988-2000, five major storms occurred, including Hurricane Andrew in 1992.⁷³ Beginning in the 2000s, a surge in the number of tropical storms and hurricanes along the southern Louisiana coast has increased the rate of devastation for tribal communities. From 2000 until 2004, eleven tropical storms and hurricanes inundated the southern Louisiana coast.⁷⁴ From 2005 until 2009, ten storms inundated southern Louisiana, including four major hurricanes, Rita and Katrina in 2005 and Gustav and Ike in 2008.⁷⁵

⁶⁹ Ferguson-Bohnee, "The Impacts of Coastal Erosion on Tribal Cultural Heritage," 61.

⁷⁰ Pam Radtke Russell, "Fighting Rising Tides, Coastal Towns Turn to Humble Oysters to Save Their Land and Their Culture," *Huffington Post*, May 24, 2019, https://www.huffpost.com/entry/oyster-shells-rising-sea-level-louisiana_n_5ce2c7f2e4b0e69c18efae1a (noting that a sacred tribal mound, one of five tribal mounds, which dates back to 900 A.D. is at risk).

⁷¹ Gregory W. Stone, John M. Grymes III, John R. Dingler, and David A. Pepper, "Overview and Significance of Hurricanes on the Louisiana Coast, U.S.A." *Journal of Coastal Research* 13.3 (1997): 656, 660. www.jstor.org/stable/4298661.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ David Roth, *Louisiana Hurricane History*, at 10, National Weather Service, Camp Springs, MD <https://www.wpc.ncep.noaa.gov/research/lahur.pdf> (last accessed Nov. 15, 2019).

⁷⁵ Rachel Steffan, A Brief History of Louisiana Hurricanes, *Beauregard Daily News* (May 24, 2017), <https://www.beauregarddailynews.net/news/20170524/brief-history-of-louisiana-hurricanes>.

In 2005, Hurricanes Katrina and Rita inundated the communities in southern Louisiana. Hurricane Rita brought eight-foot floodwaters and flooded 10,000 homes, many of them in the southern part of the Parish where the Pointe au Chien Indian Tribe, Isle de Jean Charles Tribe, and Grand Caillou/Dulac Tribe reside.⁷⁶ Months after the storms, the tribal communities in the bayou region had received minimal aid and faced bureaucratic denials for aid from the Federal Emergency Management Agency (FEMA). Tribal members continued to live in homes that were moldy, dilapidated, or had been gutted and left people vulnerable to winter weather for months after the storm.

Hurricane Katrina completely devastated Grand Bayou, causing homes to be uninhabitable. Government officials failed to support the self-determination of the Tribe or protect the right to life and safety of the community at Grand Bayou following Katrina. From outright discrimination to attempts to use red tape to displace community members, one and one-half years after the disaster, Tribal citizens were struggling to rebuild, and access electricity and other utilities. Tribal citizen Rosina Philippe notes that it was four years before a volunteer disaster agency, acting on her and the village's behalf, was able to obtain the necessary permits and other resources to rebuild her home in Grand Bayou Village.

Following Hurricane Katrina, Louisiana created a Road Home program with federal money to buy out homeowners or assist them with rebuilding. In Pointe-au-Chien, where many tribal citizens live on collective "family" property, tribal citizens did not qualify for the same amounts to rebuild as nonIndian homeowners because of the way in which tribal citizens hold property collectively. The state treats these homeowners as "renters."

The Louisiana Legislature also created the Coastal Protection and Restoration Authority (CPRA), with federal funding, to achieve comprehensive coastal protection and restoration. CPRA was charged with working collaboratively with coastal partners to develop a master plan to guide coastal restoration work.

Tribes are notably excluded from the list of coastal partners.⁷⁷ The CPRA 'Master Plan' to protect and restore the coast insufficiently protects the Louisiana Tribes participating in this complaint or, worse, excludes them. When Tribal citizens have appealed to state officials for restoration of the land and barrier islands, they have been told that "the science-based plan used objective tools to select the projects that would create the most lasting land for the least amount of money, and building land in [the area where these communities live] was . . . too expensive and not sustainable."⁷⁸

⁷⁶ Coastal Tribes, Press Release: Louisiana Coastal Tribes Appeal for Help, Jan 5, 2006, *available at* <http://pacTribe.tripod.com/id13.html>.

⁷⁷ Coastal Protection and Restoration Authority, Coastal Partners, *available at* <http://coastal.la.gov/about/coastal-partners-overview/>

⁷⁸ Patty Ferguson-Bohnee, "The Impacts of Coastal Erosion on Tribal Cultural Heritage," *Forum Journal* 29.4 (Summer 2015), 63.

economic impacts of future storms.⁸⁰ Insurance rates can be over \$25,000 a year in this area, and in Dulac the median income is under \$20,000.⁸¹

Following Hurricanes Gustav and Ike, the federal government provided \$27.4 million to Louisiana for coastal protection and restoration projects to help communities recover from the storms and prepare to better withstand future hurricanes.⁸² The U.S. Dept. of Housing and Urban Development (HUD) funded Community Development Block Grants (CDBG) to the La. Office of Community Development's Disaster Recovery Unit to identify potential flood protection projects. No consultation process occurred with any of the Tribes to determine how to allocate the funds to protect their communities.

From 2010 until 2019, eleven storms occurred, including Lee in 2011 and Barry in 2019 causing flooding in Pointe-au-Chien and Isle de Jean Charles. In 2012, Hurricane Isaac struck causing widespread damage in Isle de Jean Charles, flooding five homes with over three feet [one meter], requiring that virtually everything in the home be replaced.⁸³ In Grand Bayou, where homes are now 16 feet off the ground on pilings, Isaac inundated the village and Tribal citizens took to their boats to ride out the storm. But this storm brought a new phenomenon: a tsunami effect in which the waters rose and then receded before rushing in and again. Residents had gone back to yards and homes when the waters rose quickly, tearing boats from their moorings.

After Hurricane Isaac in 2012, Terrebonne Parish used CDBG funding to "buy out" Grand Caillou/Dulac Tribal citizens' homes that had been damaged.⁸⁴ The parish then auctioned these homes off to developers to create revenue for the government.⁸⁵ This sort of economic displacement is common. In Grand Caillou/Dulac, a Tribal elder was unable to remain on their property due to age and repeated damages from hurricanes and flooding. A developer then approached the elder to purchase the property and it was sold for approximately \$45,000.00 because the elder had no knowledge of property values or real estate sales. Once the developer divided the property, 100 by 100 foot parcels of land were sold for

⁸⁰ Julie K. Maldonado, *Seeking Justice in an Energy Sacrifice Zone: Standing on Vanishing Land in Coastal Louisiana* (New York: Routledge, 2019), 32.

⁸¹ Maldonado, *Seeking Justice*, 32, 40.

⁸² Coastal Programs, Coastal Protection and Restoration Authority, *available at* <https://coastal.la.gov/about/coastal-programs/>

⁸³ Chief Albert Naquin, Isle de Jean Charles Assessment of Damage from Hurricane Isaac, Completed on September 4, 2014, Chief Naquin IDJC Files.

⁸⁴ State of Louisiana, Office of Community Development – Disaster Recovery Unity, Cooperative Endeavor Agreement (2013), https://www.doa.la.gov/OCDDRU/Disasters/IC_Contracts/Terrebonne_HMA.pdf.

⁸⁵ Karl Gommel, "TPCG Looks at Property Sales," *The Houma Times*, May 17, 2016, *available at* https://www.houmatimes.com/news/tpcg-looks-at-property-sales/article_b72af8da-1c46-11e6-a02b-eb7424c927a5.html

approximately \$45,000.00 each, undeveloped. Now, this area is a vacation home community called “Southern Comfort” with private wharves and bulkheads to protect against storms.⁸⁶

On July 13, 2019, Hurricane Barry (category 1) hit South Louisiana and breached the 7-foot ring levee protecting Isle de Jean Charles, filling the island, with storm surge rising 5-6 feet high in some places. Barry flooded eight homes of IDJC Tribal members and also severely impacted Pointe au Chien, flooding 12 homes. Pointe-au-Chien Tribal citizens also suffered damage to crab traps and fishing nets. Insufficient and unbuilt levee systems, where the large-scale Morganza-to-the-Gulf levee system has not yet been completed, and storm surge caused the flooding.

Isle de Jean Charles Resettlement Plan

Following the US Army Corps of Engineers’ decision to exclude the Isle de Jean Charles from the Morganza-to-the-Gulf flood protection system, the Isle de Jean Charles Tribal Council made the difficult decision in 2002 to leave their ancestral island and resettle elsewhere. The Tribe made this decision to protect the lives of Tribal citizens still residing on the island and also to bring together again the Tribal citizens who were forced to flee the island because of the impact of previous hurricanes.

The Tribe has developed three resettlement plans since 2002. Each time, federal, state, and parish officials have failed to implement the Tribe’s plans. In 2015, the U.S. Department of Housing and Urban Development (HUD) issued a request for proposals for a National Disaster Resilience Competition grant program. The competition required that state governments submit applications for this competition. The Tribe collaborated with the state of Louisiana, and the state of Louisiana secured a \$92 million dollar grant, including \$48 million to fund the Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribal Resettlement.⁸⁷ IDJC worked intensively to develop a tribal-led resettlement plan to include in the state’s application.

Since receiving these funds, the state has fundamentally changed the IDJC resettlement plans violating the Tribe’s right to self-determination. The federally-funded activities of the state, and in particular the Louisiana Office of Community Development (OCD) charged with implementing the IDJC resettlement plan, substantially changed the resettlement plan without consulting tribal leadership, and in some cases, took major action without notifying the Tribe. As early as March 2016, the state’s plans for the resettlement began to substantially diverge from the Tribe’s plans, when an early fact sheet for the award

⁸⁶ Southern Comfort Waterfront Community advertisements, *available at* https://www.realtor.com/realestateandhomes-search/Southern-Comfort-Waterfront-Community_Dulac_LA/overview; Southern Comfort satellite photo, *available at* <https://www.google.com/maps/place/Southern+Comfort+Ct,+Dulac,+LA+70353/@29.369652,-90.727741,764m/data=!3m1!1e3!4m5!3m4!1s0x8621a8580173eab1:0x3773eac4c0e471ea!8m2!3d29.3696333!4d-90.7249837>

⁸⁷ Julie Dermansky, “Isle de Jean Charles Tribe Turns Down Funds to Relocate First US ‘Climate Refugees’ as Louisiana Buys Land Anyway,” *DeSmog Blog*, Jan. 11, 2019, *available at* <https://www.desmogblog.com/2019/01/11/isle-de-jean-charles-tribe-turns-down-funds-relocate-climate-refugees-louisiana>; see also National Disaster Resilience Competition, Grantee Profiles, (Jan. 2016), <https://www.hud.gov/sites/documents/NDRCGRANTPROF.PDF>; <https://www.hudexchange.info/news/hud-awards-1-billion-through-national-disaster-resilience-competition/>; About the Project, Isle de Jean Charles Coastal Resettlement Webpage, *available at* <http://www.coastalresettlement.org/about-the-project.html>.

asserted that “tribal affiliation” would not be a part of the resettlement plan.⁸⁸ The state included individuals not affiliated with the IDJC Tribe, asserting that it must prevent discrimination in the distribution of public housing.⁸⁹

In September 2018, the state’s Permanent Relocation & Homeownership Assistance Program was unveiled. The state’s plan at that time, developed without Tribal consultation, required that the Tribal citizens participating in the resettlement process relinquish the properties on their ancestral homelands and required Island residents to enter into mortgages to secure land and a home in the resettlement site.⁹⁰

Chief Naquin of the IDJC Tribe has repeatedly objected to the Louisiana government’s resettlement plans. None of these written and verbal objections have changed the state’s resettlement plan. On Sept 25 2018, Chief Naquin wrote an open letter to state officials stating that the resettlement process was a dishonor to the Tribe’s ancestors because the “homeownership assistance program” for the relocation required IDJC residents to “sign away the legacy from their ancestors.”⁹¹ On October 29, 2018, the IDJC Tribal Council also wrote to the Director of Office of Block Grant Assistance at U.S. Housing and Urban Development to recommend that the grant funds be returned to the National Disaster Resilience Competition grant committee.⁹²

In January 2019, the state purchased land for the resettlement site. The Isle de Jean Charles Tribe learned of this purchase through a press release. The state did not consult nor directly notify the Tribe prior to this action. In response to the state’s purchase of the land without consultation, the IDJC Tribal Council issued a press release “The Isle de Jean Charles Tribal Resettlement: A Tribal-driven, whole community process,” explaining the origins and intentions of the resettlement plan and the ways the new plans diverge.⁹³ On January 24, Chief Naquin met with the Director of OCD, Pat Forbes, to discuss the plan. On February 7, the Tribe sent Forbes a list of the Tribe’s desired changes. On February 21, 2019, the OCD presented and defended its new plans before the Houma-Terrebonne Parish Planning Commission. Chief

⁸⁸ State of Louisiana CDBG-NDR Award Fact Sheet, as cited in Nathan Jessee, “Community Resettlement in Louisiana: Learning from Histories of Horror and Hope,” in Shirley Laska, ed., *Louisiana’s Response to Extreme Weather: A Coastal State’s Adaptation Challenges and Successes* (Springer, 2019), 170.

⁸⁹ Boyce Upholt, “Goodbye to Good Earth,” *Oxford American* (Sept. 3, 2019), <https://www.oxfordamerican.org/magazine/item/1816-goodbye-to-good-earth>.

⁹⁰ Julie Dermansky, “Isle de Jean Charles Tribe Turns Down Funds to Relocate First US ‘Climate Refugees’ as Louisiana Buys Land Anyway,” *Desmog*, January 11, 2019, *available at* <https://www.desmogblog.com/2019/01/11/isle-de-jean-charles-tribe-turns-down-funds-relocate-climate-refugees-louisiana>.

⁹¹ Chief Albert Naquin to State of Louisiana, September 26, 2018, Chief Albert Naquin IDJC Files (Appendix D).

⁹² Chief Albert Naquin to Stan Gimont, Director, Office of Block Grant Assistance, US Department of Housing and Urban Development, October 29, 2018, Chief Albert Naquin IDJC Files (Appendix E).

⁹³ Isle de Jean Charles Tribe Press Release, The Isle de Jean Charles Tribal Resettlement: A Tribal-Driven, Whole Community Process, Jan 15, 2019, *available at* <https://static1.squarespace.com/static/5672cfb1d82d5e366e753691/t/5c425ac4c74c507d878e696a/1547852484564/IDJC+Press+release+1-18-19.pdf>.

Naquin of IDJC, Chief Dardar of Grand Caillou Dulac, Chief Creppel of the United Houma Nation, and Commissioner Kurtz from the Houma-Terrebonne Parish Planning Commission, among others, objected to the project.⁹⁴ On March 7, Forbes wrote to Chief Naquin rejecting all of the changes, including an outright rejection of the tribal sovereignty of the IDJC Tribe.⁹⁵

In April 2019, OCD released a fifth substantial amendment to the resettlement plan, with an open comment period until April 23, 2019. The IDJC Tribe was not directly notified. The amendment replaces a section of the original resettlement plan that focused on “supporting and enhancing tribal identity, sovereignty, and dignity” and the tribal community center.⁹⁶ This amendment denies IDJC tribal sovereignty and self-determination. The Pointe-au-Chien Indian Tribe, among other local Tribes, sent a public comment letter in response to this amendment. The letter notes that the new amendment minimizes both the existence and leadership of the Tribe (and other coastal Tribes). On May 14, 2019, Patty Ferguson-Bohnee of the Pointe-au-Chien Indian Tribe received an email response to the public comment asserting that the state refuses to acknowledge the Tribes as sovereign, as they are not federally recognized by the Bureau of Indian Affairs, and claims that the Isle de Jean Charles Tribe is only recognized by the state for “education and health care benefits” (See Appendix F). The current state web site for the resettlement states that the resettlement has no affiliation with any tribal or religious organization “by federal law and state desire.” At this time, IDJC Tribe-led resettlement plans have been suspended because of the state’s refusal to allocate funds to IDJC to implement the Tribe’s plan as originally described in the National Disaster Resilience Competition grant application. The state continues its own planning without consultation with the Tribe.

Factual Evidence: Alaska

The Arctic region is warming at an accelerated and unprecedented rate, resulting in warmer oceans, decreased seasonal sea ice extent, and thawing permafrost.⁹⁷ Temperatures along the northern Alaskan coast, for example, have increased by an average of 3.5 degrees Celsius since the beginning of the twentieth century, 2 degrees Celsius higher than the global aspirational target established by the United Nations Framework Convention on Climate Change (UNFCCC) Paris Agreement for warming relative to pre-industrial times. These increased temperatures are causing catastrophic changes to the environment

⁹⁴ Julie Dermansky, “Critics say Louisiana ‘Highjacked’ Climate Resettlement Plan From Isle de Jean Charles Tribe,” *DeSmog*, Apr 20, 2019.

⁹⁵ Patrick Forbes of the Louisiana Office of Community Development to Chief Albert Naquin, March 7, 2019, Chief Albert Naquin IDJC Files (Appendix G).

⁹⁶ Nathan Jessee, “Community Resettlement in Louisiana: Learning from Stories of Horror and Hope,” in Shirley Laska, ed., *Louisiana’s Response to Extreme Weather* (Springer, 2019).

⁹⁷ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Working Group II Contribution to the IPCC 5th Assessment Report*; B.M., Jones, et al. “A Decade of Annual Permafrost Coastal Observations Indicate Changes in the Arctic System,” *Environmental Research Letters* 13.11 (2018): 1-13, available at <http://iopscience.iop.org/article/10.1088/1748-9326/aac471>.

and threatening the lives and livelihoods of Alaska Native communities, forcing the community of Kivalina to decide that the relocation of their entire community is the best long-term adaptation strategy.



State of Alaska, Triangle Indicates Kivalina Location

The risks and severity of climate impacts are particularly high for coastal communities in Alaska, such as Kivalina, where loss of land-fast sea ice is increasing storm impacts.⁹⁸ Since the 1980s, the Arctic seas have remained ice-free approximately three weeks longer in the autumn, compared to the historical record.⁹⁹ Loss of arctic sea ice, the natural storm barrier for coastal communities, results in inundation of coastal communities by flooding and storm surges during extreme weather events. The loss of this natural sea wall during the late fall and early winter storm season increases the exposure of many communities to stronger wave impacts.¹⁰⁰ Coastal storms also result in hurricane-strength winds, damaging infrastructure, subsistence land use areas, and transportation corridors that are vital to health and socioeconomic well-being. During the winter of 2017-2018, 42 storms battered the west coast of Alaska, causing damage in many coastal and riverine communities. In addition, warmer winter temperatures and more erratic weather patterns are causing heavy rain and melting snow extreme weather events, resulting in significant flooding.

Permafrost underlies much of Alaska, and this perennially frozen ground keeps the land intact and habitable by providing a stable foundation for the built environment and by supporting critical ecosystem

⁹⁸ Z. Fang, Z., P. T. Freeman, et al., "Reduced sea ice protection period increases storm exposure in Kivalina, Alaska, *Arctic Science* 4 (2018): 525–537; J.C. Vermaire, M. Pisaric, et al., "Arctic climate warming and sea ice declines lead to increased storm surge activity," *Geophysical Research Letters* 40.7 (2013): 1386-1390.

⁹⁹ B.M. Jones, D.L. Bull, et al., "A decade of annual permafrost coastal observations indicate changes in the Arctic System," *Environmental Research Letters* 13.11 (2018): 1-13, <http://iopscience.iop.org/article/10.1088/1748-9326/aac471>.

¹⁰⁰ C.E. Tweedie, C.E. Aguirre, et al., "Spatial and temporal dynamics of erosion along the Elson Lagoon Coastline near Barrow, Alaska," 2002-2011 (2012) in *Proceedings of the Tenth International Conference on Permafrost*, 425-430, available at <https://ipa.arcticportal.org/meetings/international-conferences>.

services.¹⁰¹ When ice-rich permafrost thaws, the resulting ground collapse increases flood risk and threatens the structural integrity of infrastructure.¹⁰² Permafrost thaw in the Arctic has already reached depths that scientists predicted would not thaw until the end of the century.¹⁰³ Coastal bluffs that were once “cemented” by permafrost are thawing leaving them more vulnerable to erosion from wave attack during coastal storms. Inundation of land by seawater, in turn, contributes to further destabilization of permafrost.¹⁰⁴ Flooding, erosion, and permafrost thaw, which work in concert to influence the vulnerability of land to each hazard individually, can lead to *usteq*—catastrophic land collapse.¹⁰⁵

Land Loss

The climate crisis has exacerbated erosion of the island where the Native Village of Kivalina is located and has made Kivalina a dangerous place to live. In 1953, Kivalina Island was 55 acres.¹⁰⁶ By 2003, a National Oceanographic and Atmospheric Administration study showed that the island had shrunk to 27 acres of livable space.¹⁰⁷ During the same year, the US Government Accountability Office reported that most of Alaska’s 200 native villages were affected by flooding, erosion, and 31 – including Kivalina – faced “imminent threats” “due in part to rising temperatures that cause protective shore ice to form later in the year, leaving the villages vulnerable to storms.”¹⁰⁸ The thick sea ice that historically has protected the coast from the impacts of storms is no longer present, or freezes up later in the year, meaning that fall storms are increasingly severe and destructive. In addition, Kivalina village sits on permafrost, and as it thaws the river bank washes into the Wulik River. The only year-round access to the community, its airstrip, is not protected by the seawall and is exposed to erosion and flooding when storms inundate the community.

Increasingly Severe Storms

The sea is now at Kivalina residents’ doorsteps and in recent decades, increasingly severe storms have sped the rate of erosion and prompted repeated disaster declarations. In 2004 and 2005, storms caused

¹⁰¹ M.T. Jorgenson, G.V. Frost, D. Dissing, “Drivers of landscape changes in coastal ecosystems on the Yukon-Kuskokwim Delta, Alaska,” *Remote Sensing* 10.8 (2018): 1280.

¹⁰² State of Alaska, DHSEM, *Alaska State Hazard Mitigation Plan* (2019) at 6-8 to 6-12, available at <https://ready.alaska.gov/Plans/Mitigationplan>.

¹⁰³ Grant Currin, “Arctic Permafrost is Going Through a Rapid Meltdown—70 Years Early,” *Live Science* (June 13, 2019), available at <https://www.livescience.com/65709-arctic-permafrost-melts-decades-early.html>.

¹⁰⁴ Jorgenson et al, “Drivers of landscape changes.”

¹⁰⁵ DHSM, *Alaska State Hazard Mitigation Plan*.

¹⁰⁶ Shearer, *Kivalina*, 50.

¹⁰⁷ *Id.*

¹⁰⁸ US General Accounting Office, *Alaska Native Villages: Most are Affected by Flooding and Erosion, but Few Qualify for Federal Assistance* (Washington, DC: GAO, 2003), 17.

major erosion into the Chukchi Sea, including around the fuel tank farm, school, and airstrip.¹⁰⁹ In 2004, evacuation was not possible – people were trapped. Millie Hawley, Kivalina’s Tribal Administrator notes that the worst years of erosion were 2005-2007.¹¹⁰ In 2005, the village was declared a disaster area after fall storms. FEMA provided funding for sandbags to guard against erosion. In 2006, storms caused erosion up to 50 feet inland and exposed permafrost. In 2007, storms were so bad that community leaders called for an evacuation,¹¹¹ but Kivalina did not have an evacuation road, so there was no way to leave by vehicle or foot, and boat travel is dangerous during storms.

Kivalina Planned Resettlement

As early as 1910, residents wanted to move because of threats of erosion. In 1953, Kivalina had its first community election on the question of relocation, but voted not to relocate at that time.¹¹² During the 1980s and 1990s both city and tribal governments considered relocation for a variety of reasons, mainly to escape flooding, erosion, and storms. In 1992, the Kivalina community voted to relocate.¹¹³ Community leadership then began planning a relocation process and petitioning state and federal government entities for help to make a community relocation a reality.

In 1998, after having commissioned an engineering report, Kivalina residents voted and selected a site for relocation: Igrugaivik. However, the U.S. Army Corps of Engineers did their own assessment the same year and rejected Kivalina residents’ choice.¹¹⁴ Two years later, Kivalina residents held another election and chose another site for relocation: Kiniktuuraq. Elders reported that that area had not flooded historically, even when Kivalina did. The USACE decided that it would not be cost effective to shore up the relocation site against permafrost melt and other impacts of climate change.¹¹⁵

Fall storms in 2005 caused major damage and the village was declared a disaster area. Kivalina’s leadership worked with state and federal legislators to help them understand the severity of the situation. That year Congress passed Section 117 of the Consolidated Appropriations Act (Section 117) allowing

¹⁰⁹ US Army Corps of Engineers, *Section 117 Expedited Erosion Control Project Kivalina Alaska* (Sept 2007), https://www.commerce.alaska.gov/web/Portals/4/pub/2007_Kivalina_Erosion_Control_EA&FONSI.pdf

¹¹⁰ Interview with Millie Hawley, Kivalina Tribal Administrator, June 26, 2019.

¹¹¹ “Arctic Villagers Evacuate as Storm Erodes Island,” *NBC News*, Sept 14, 2007, *available at* http://www.nbcnews.com/id/20772026/ns/us_news-environment/t/arctic-villagers-evacuate-storm-erodes-island/#.XfD-W-t7n-Y.

¹¹² Glen Gray and Associates, *Kivalina Consensus Building Project Final Report* (July 2010), 11, *available at* http://www.relocate-ak.org/wordpress/wp-content/uploads/2012/09/Kivalina_Consensus_Building_Project_Final_Report_July_20106.pdf.

¹¹³ Shearer, *Kivalina*, 102.

¹¹⁴ US Army Corps of Engineers, *Kivalina Relocation Master Plan* (2006), *available at* <https://www.poa.usace.army.mil/Portals/34/docs/civilworks/reports/KivalinaMasterPlanMainReportJune2006.pdf>

¹¹⁵ *Id.*; Glenn Gray and Associates, *Kivalina Consensus Building Project: Situation Assessment* (July 2010), *available at* http://www.relocate-ak.org/wordpress/wp-content/uploads/2012/09/Situation_Assessment_Final_July_20105.pdf

USACE to carry out storm damage protection projects for Alaska Native villages at federal expense, not through the usual cost-sharing mechanism. Kivalina began working with the US Alaska Congressional delegation to get funding to support an evacuation road across the lagoon and to the mainland.

In 2006, the regional native corporation,¹¹⁶ NANA Pacific, secured a contract for a seawall to protect Kivalina. Unfortunately, there was not sufficient consultation with village/tribal leadership. The project went ahead with a plan for wire mesh boxes filled with sand. The seawall was completed and almost immediately thereafter, on October 11, 2006, the protective seawall washed away in a storm.¹¹⁷

Kivalina next received funding for a protective barrier – a rock revetment which was originally meant to be 3100 feet.¹¹⁸ Ultimately, only 1600 feet of the revetment was funded and built between 2009-2010 before funding ran out.¹¹⁹ The rock revetment was intended to have a lifespan of approximately 10-15 years. Kivalina's Strategic Management Plan notes that reports have suggested that Kivalina may be uninhabitable as early as 2025.¹²⁰

¹¹⁶ With the passage of the Alaska Native Claims Settlement Act in 1971, 13 Alaska Native corporations were created to manage those claims.

¹¹⁷ Robin Bronen, *Climate-Induced Displacement of Alaska Native Communities* (Brookings Institute, 2013), available at <https://www.brookings.edu/wp-content/uploads/2016/06/30-climate-alaska-bronen-paper.pdf>.

¹¹⁸ US Army Corps of Engineers, *Section 117 Expedited Erosion Control Project Kivalina, Alaska: Environmental Assessment and Finding of No Significant Impact* (September 2007), available at https://www.commerce.alaska.gov/web/Portals/4/pub/2007_Kivalina_Erosion_Control_EA&FONSI.pdf.

¹¹⁹ US Army Corps of Engineers, *Kivalina Coastal Erosion Condition of Improvements* (December 31, 2017), available at <https://www.poa.usace.army.mil/Portals/34/docs/operations/EFC/2017KivalinaOverview.pdf?ver=2018-12-31-112731-157>.

¹²⁰ HDR, RIM First People, *Kivalina Strategic Management Plan* (September 2016), available at https://www.commerce.alaska.gov/web/Portals/4/pub/1_Kivalina_SMP_September_2016.pdf.



Kivalina's Rock Revetment¹²¹

To find safety for the community, by 2011, Kivalina's leadership shifted to focusing on securing funding for an evacuation road. In 2012, Kivalina and other rural Alaska Native communities won a lawsuit based on the discriminatory allocation of state funding for schools. The community voted to pursue a plan to use that settlement money to build a new school seven miles inland on a high point called Kisimigiiqtuq Hill.¹²² This vote allowed the community to begin working with local, state, and federal agencies, work which has resulted in the State of Alaska providing funding for an evacuation road in the amount of \$55million.

In 2014, Kivalina engaged in a 2-year planning process with Alaska Division of Community and Regional Affairs to develop another master plan – the Kivalina Strategic Management Plan that covers adaptation, resilience, and relocation. Kivalina also worked to engage an Inter-Agency Planning Work Group that meets quarterly to coordinate resources and technical assistance from state and federal agencies, regional organizations, and local governments.¹²³

¹²¹ Kivalina, Kotzebue Shoreline Survey, *available at* <https://www.flickr.com/photos/shorezone/11471418433>

¹²² Alaska Department of Transportation and Public Facilities, Northern Region, *Kivalina Evacuation and School Site Access Road*, *available at* <http://dot.alaska.gov/nreg/KivalinaEvacRd/>.

¹²³ Kivalina Inter-Agency Work Group, *available at* <https://www.commerce.alaska.gov/web/dcra/PlanningLandManagement/KivalinaInter-AgencyPlanningWorkGroup.aspx>.

In 2018, the Alaska Department of Transportation completed the final environmental assessment of the school access/evacuation road.¹²⁴ The road construction began in summer 2019 across the lagoon out of Kivalina and to Kisimigiuqtuq Hill (the potential school site), 7 miles away.

The U.S. Has Failed to Implement A Relocation Governance Framework

The United States government and Alaska state government have recognized for at least the last decade the critical need to create a relocation governance framework and identify a lead federal agency to coordinate federal government agencies to facilitate a relocation process if a community decides that relocation is the best long-term adaptation strategy. In 2007, former U.S. Alaska Senator Stevens organized a Congressional hearing on the state and federal response to storm damage and erosion in Alaska and Kivalina leadership testified on the impact of coastal erosion on disaster recovery.¹²⁵ In the same year, former Alaska Governor Palin created the Sub-Cabinet on Climate Change and tasked the Immediate Action Work Group, a working group of the sub-cabinet, with making recommendations to address the threats to Alaska Native communities from erosion and flooding.¹²⁶

In 2009, the US Government Accountability Office reported that there had been “Little Progress . . . on Relocating Villages Threatened by Flooding and Erosion” in Alaska and recommended that the government assign a lead entity on relocation.¹²⁷ In 2013, the Bicameral Task Force on Climate Change first recognized the complex challenges of climate-induced population displacement and the need for a federal relocation governance framework. Recognizing the U.S. relocation governance gap, the Task Force recommended:

that the Administration devote special attention to the problems of communities that decide they have little choice but to relocate in the face of the impacts of climate change. Because the relocation of entire communities due to climate change is such an

¹²⁴ Alaska Department of Transportation and Public Facilities, *Final Environmental Assessment Kivalina Evacuation and School Site Access Road* (January 2018), available at <http://dot.alaska.gov/nreg/KivalinaEvacRd/files/kiv-final-ea.pdf>.

¹²⁵ “The State and Federal Response to Storm Damage and Erosion in Alaska’s Coastal Villages,” Pub. L. No. 110–486, § Ad Hoc Subcommittee on Disaster Recovery of the Committee on Homeland Security and Governmental Affairs (2007).

¹²⁶ Immediate Action Workgroup (IAWG), Recommendations Report to the Governor’s Subcabinet on Climate Change, Alaska SubCabinet on Climate Change, Juneau, Alaska (2008);

IAWG, Recommendations Report to the Governor’s Subcabinet on Climate Change, Alaska SubCabinet on Climate Change, Immediate Action Workgroup, Juneau, Alaska (2009).

¹²⁷ US Governmental Accountability Office, *Alaska Native Villages: Limited Progress has been Made on Relocating Villages threatened by Flooding and Erosion* (June 2009), available at <https://www.gao.gov/new.items/d09551.pdf>.

unprecedented need, there is no institutional framework within the U.S. to relocate communities, and agencies lack technical, organizational, and financial means to do so.¹²⁸

President Obama's Task Force on Climate Preparedness and Resilience echoed this recommendation in November 2014, and affirmed that the federal government should take a lead role to establish a relocation governance framework to respond to the complex challenges of climate-induced population displacement.¹²⁹ President Obama designated the Denali Commission, an independent federal agency,¹³⁰ to be the central coordinator of the federal effort to build climate resilience in Alaska, but at the time did not allocate any additional funding to accomplish this goal. President Obama also traveled to Alaska as the first sitting US President to travel north of the Arctic and in February 2015 then Department of the Interior Secretary Sally Jewell visited Kivalina to learn about climate change impacts there.

The United States Department of the Interior was leading the effort to address the relocation governance challenges for tribal communities throughout the United States. Joel Clement was the senior policy analyst at the DOI working on these issues. He resigned in 2017 after he was suddenly reassigned from leading the DOI section on policy analysis to working in the DOI auditing office that collects and disperses royalty income from oil, gas, and mining companies. He became a public whistleblower speaking out about the Trump administration's failure to take action on climate change and specifically to provide leadership to address the relocation issues affecting tribal communities in Alaska.¹³¹

Despite decades of awareness, state and federal government agencies are struggling to respond because they lack the statutory mandate and the funding to facilitate a community relocation process. The lack of a human rights-based governance framework to facilitate and fund a relocation process is the primary barrier.

To date, Kivalina continues to lead its relocation planning efforts and to engage a wide range of state and federal agencies and foundations to secure funding for its community relocation. A lack of dedicated

¹²⁸ United States Congress Bicameral Task Force on Climate Change, "Implementing the President's Climate Action Plan: US Department of the Interior" (United States Congress, December 19, 2013), 18.

¹²⁹ The State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, "Recommendations to the President" (Washington, DC: White House, 2014), *available at* https://obamawhitehouse.archives.gov/sites/default/files/docs/task_force_report_0.pdf.

¹³⁰ Introduced by Congress in 1998, the Denali Commission is designed to provide critical utilities, infrastructure, and economic support throughout Alaska. With the creation of the Denali Commission, Congress acknowledged the need for increased inter-agency cooperation and focus on Alaska's remote communities.

¹³¹ Joel Clement, "I'm a Scientist. I'm Blowing the Whistle on the Trump Administration," *Washington Post*, July 19, 2017, *available at* https://www.washingtonpost.com/opinions/im-a-scientist-the-trump-administration-reassigned-me-for-speaking-up-about-climate-change/2017/07/19/389b8dce-6b12-11e7-9c15-177740635e83_story.html; Testimony of Joel Clement Before the House Committee on Science, Space, and Technology, Joint Hearing on Scientific Integrity in Federal Agencies, July 17, 2019, *available at* <https://science.house.gov/imo/media/doc/Clement%20Testimony.pdf>.

federal and state funding has meant that the relocation process moves too slowly for Kivalina's residents whose lives are in danger every time a storm inundates the community.

Allegations

By Its Acts and Omissions the US Government and the State Governments of Louisiana and Alaska Violated the Collective and Individual Human Rights of Indigenous Tribes Facing Climate Displacement

The United States government has failed to protect the individual and collective human rights of the Indigenous Tribes in Louisiana and Alaska from the climate crisis.

The U.S. Government and the Governments of Louisiana and Alaska Have Failed to Protect the Right to Life and Failed to fulfill Its Duty to Protect these Indigenous Tribes from Harm

The United States government has the most stringent obligation to protect the lives of Indigenous tribal citizens in Louisiana and Alaska from climate-induced and human-driven ecological change which threatens the civil, economic, social and cultural rights fundamental to the inherent dignity of tribal citizens as individuals and also collectively as tribal nations.¹³² This right is explicitly articulated in the Universal Declaration of Human Rights, which describes the right to life as the "supreme right," "basic to all human rights."¹³³ This duty also includes the prohibition against acts that violate the human right to life as well as steps that must be taken to protect the right.¹³⁴

¹³² Nation state governments have an obligation to protect the people residing within their jurisdiction from climate-induced ecological change and the failure to protect is a human rights violation. See European Court of Human Rights, *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 1534/02, judgment of March 20, 2008 (finding that government officials violated the right to life of community residents when they failed to implement land-planning and emergency relief policies even though they were aware of an increasing risk of a large-scale mudslide. The Court also noted that the population had not been adequately informed about the risk).

¹³³ Universal Declaration of Human Rights, art. 3 G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948; International Covenant on Civil and Political Rights art. 6, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force March 23, 1976); Office of the High Commissioner of Human Rights, Human Rights Committee, *General Comment No. 6: The Right to Life*, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.7 (Apr. 30, 1982) (requiring States to adopt positive measures to protect the "inherent right to life"); Office of the High Commissioner of Human Rights, Human Rights Committee, *General Comment No 14: Nuclear Weapons and the Right to Life* ¶ 1 Twenty-third session (November 9, 1984).

¹³⁴ Universal Declaration of Human Rights, art. 3 G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948; International Covenant on Civil and Political Rights, art. 6, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force March 23, 1976); Human Rights Committee, *General Comment No. 6: The Right to Life*, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.7 (Apr. 30, 1982) (requiring States to adopt positive measures to protect the 'inherent right to life'); Office of the High

As the UN Human Rights Committee explained, these obligations extend to “reasonably foreseeable threats and life-threatening situations that can result in loss of life.”¹³⁵ States violate the right to life by exposing victims to a real risk of the deprivation of life, even if “such threats and situations do not result in loss of life.”¹³⁶

The Human Rights Committee has also noted that climate change is one “of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”¹³⁷ The Human Rights Committee has further found that:

Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ... pay due regard to the precautionary approach.¹³⁸

The Guiding Principles on Internal Displacement also affirm the importance of the duty to protect the right to life to prevent and avoid conditions that lead to displacement and also affirms the special duty to protect Indigenous peoples who have close ties to land.¹³⁹ This elevated responsibility to Indigenous peoples is also articulated in the Universal Declaration on the Rights of Indigenous Peoples.

The duty to protect life also implies that “State parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”¹⁴⁰ These general conditions may include “degradation of the environment,” and “deprivation of land, territories and resources of Indigenous peoples.”¹⁴¹

Commissioner of Human Rights, Human Rights Committee, *General Comment No 14: Nuclear Weapons and the Right to Life* ¶ 1 Twenty-third session (November 9, 1984).

¹³⁵ UNHRC, General Comment No. 36, CCPR/C/GC/36, ¶ 7.

¹³⁶ UNHRC, General Comment No. 36, CCPR/C/GC/36, ¶ 7.

¹³⁷ UNHRC, General Comment No. 36, CCPR/C/GC/36, ¶ 62.

¹³⁸ UNHRC, General Comment No. 36, CCPR/C/GC/36, ¶ 62.

¹³⁹ Guiding Principles of Internal Displacement Principle 5 and 9.

¹⁴⁰ UNHRC, General Comment No. 36, CCPR/C/GC/36, ¶ 26.

¹⁴¹ UNHRC, General Comment No. 36, CCPR/C/GC/36, ¶ 26; The Inter-American Commission on Human Rights has also recognized that Indigenous peoples’ “special relationship [to their territories] is fundamental ... for the[ir] material subsistence,” and that such subsistence is related to the right to life. Inter-Am. C.H.R., Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System (Inter-Am. C.H.R., Indigenous and Tribal Peoples’ Rights) (Dec. 30, 2009), ¶ 56. In *Yakye Axa*, the Court found that Paraguay’s failure to legally recognize and protect traditional lands of Indigenous peoples “has had a negative effect on the right of the ... [Yakye Axa] Community to a decent life, because it has deprived them of the possibility of access to their traditional means of subsistence.” *Yakye Axa Indigenous Community v. Paraguay*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 125 (June 17, 2005), ¶ 168.

In the United States, state and federal government agencies have failed to protect the Tribes in Alaska and Louisiana. Federal government agencies have consistently failed to respond to the urgent needs of these tribal nations. The tribal governments of the Native Village of Kivalina and IDJC each decided decades ago that the relocation of their entire community is the best long-term adaptation strategy. Despite making this very difficult decision, the United States government has failed to implement the relocation plans so that neither community has yet relocated. As a consequence, the lives of Tribal citizens are threatened every time a storm occurs and the communities are inundated.

The U.S. Government Has Failed to Protect Tribes' Right to Self Determination

The United Nations Declaration on the Rights of Indigenous Peoples ("Declaration"), adopted in 2007, recognizes that Indigenous peoples have a right to their land, territories and resources and shall have legal recognition to protect these lands, territories and resources.¹⁴² Article 18 of the Declaration on the Rights of Indigenous Peoples provides that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions." Article 19 of the Declaration provides that "States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

The United States government, and through federal government funding, the state governments of Louisiana and Alaska, have repeatedly failed to protect the right to self-determination of the Indigenous nations in each state. In Alaska, the United States government and the State of Alaska have in the past failed to implement the decisions of the Native Village of Kivalina by failing to complete the protective rock revetment and failure thus far to facilitate the tribal government's relocation plans.

In Louisiana, the lack of federal recognition of the Tribes has meant that the Tribes do not have a government-to-government relationship with the U.S. federal government and have been forced, at great consequence to Tribal citizens, to engage with the Louisiana state government, which has systemically discriminated against and excluded the Tribes from protection from sea level rise, land subsidence and extreme weather events caused by the climate crisis. This can be seen through the government-to-government dialogue that has unfolded during discussions of the Louisiana IDJC Tribe's relocation efforts and the way that the State of Louisiana took over the process, excluding the Tribe from participation and ultimately, from the decision-making about the community's future. The state of Louisiana has failed to protect the IDJC Tribe's collective human rights by failing to consult with tribal leadership in good faith throughout the grant application and award process and did not provide free prior and informed consent regarding the nature of the NRDC grant and all of the subsequent revisions to IDJC's resettlement plan. Louisiana's failure to implement the IDJC resettlement plan, especially the mortgage process, fails

¹⁴² *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 2001, 46 I.L.M. 1013 (2007)) http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

to uphold Tribe's right to preserve spiritual connection to land, water and homeland.

The U.S. Government Has Failed to Protect Cultural Heritage

The Declaration recognizes the right to protect historic sites and tribal culture.¹⁴³ Common elements of cultural heritage include intangible, tangible, and natural heritage.¹⁴⁴ The Special Rapporteur in the Field of Cultural Rights noted in the 2011 Report that:

the concept of heritage reflects something that has been developed, built or created, interpreted and re-interpreted in history, and transmitted from generation to generation. Cultural heritage links the past, the present, and the future as it encompasses things inherited from the past that are considered to be of such value or significance today, that individuals and communities want to transmit them to future generations.¹⁴⁵

Other international human rights bodies have recognized the special relationship that Indigenous peoples have with their land and resources, and its connection to their right to culture.¹⁴⁶ The UN Human Rights Committee has also explained that degradation of natural resources may violate the right to enjoy culture as defined in the International Covenant on Civil and Political Rights (ICCPR):

[C]ulture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. ... The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.¹⁴⁷

The Inter-American system also recognizes that the right to culture has particular importance for Indigenous peoples, including in particular, the vital connection of their lands and natural resources to this right. For example, in *Case of the Mayagna (Sumo) Awas Tingni Community*, the Inter-American Court has emphasized the importance of this connection:

¹⁴³ *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 2001, 46 I.L.M. 1013 (2007)) http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

¹⁴⁴ Farida Shaheed (Special Rapporteur in the Field of Cultural Rights), *Report in the Field of Cultural Rights*, ¶ 4, A/HRC/17/38, (March 21, 2011).

¹⁴⁵ *Id.* at ¶ 5.

¹⁴⁶ See, e.g., *Centre for Minority Rights Development v. Kenya*, Case 276/2003, Afr. Comm'n on Human and Peoples' Rights, ¶ 156 (2009) (citing extensively the Inter-American Court's jurisprudence in *Awas Tingni*, *Moiwana*, and *Saramaka* in observing that Indigenous peoples' "culture, religion, and traditional way of life are intimately intertwined with their ancestral lands [] and the surrounding area" and that "without access to their ancestral land, [they] are unable to fully exercise their cultural and religious rights, and feel disconnected from their land and ancestors.").

¹⁴⁷ OHCHR, Gen. Comment No. 23, ¶¶ 7, 9.

[T]he close ties of Indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For Indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.¹⁴⁸

The United States government has failed to protect the cultural heritage of the Tribes submitting this complaint. The U.S. government's failure to grant federal recognition of the Tribes in Louisiana has prevented them from protecting their right to their land and resources. Federal government agencies and federally-funded activities, such as the Louisiana Master Plan, do not protect, maintain and preserve tribal identity, culture, and history.¹⁴⁹ Tribal heritage includes traditional ecological knowledge, sacred sites, cemeteries, village sites, fishing sites, waterways, and the history and culture associated with these sites.¹⁵⁰ Projections of land loss, caused by sea level rise and land subsidence, indicate that numerous cemeteries, sacred sites and historic mounds are on the brink of disappearing in the aboriginal territory of Louisiana's coastal Tribes.¹⁵¹ Tribes are not able to protect their historic sites that are threatened by rising sea level.

Relying on U.S. government federal funding, the Louisiana Master Plan, which outlines coastal protection and restoration actions, excluded the Louisiana Tribes,¹⁵² stating that it was "too expensive and not sustainable" to include the tribal communities in the protection plan.¹⁵³

These actions have been taken by the Louisiana state government despite the provisions of the Louisiana Constitution which establishes the "right of the people to preserve, foster, and promote their respective historic linguistic and cultural origins is recognized."¹⁵⁴ The State's Constitution emphasizes the importance of preserving cultural origins.¹⁵⁵ Despite this, climate change has impacted the culture of Tribes in Louisiana. For instance, because of the constant threat of rising water, Tribal citizens are no

¹⁴⁸ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 149 (Aug. 31, 2001) (Awas Tingni).

¹⁴⁹ Ferguson-Bohnee, "The Impacts of Coastal Erosion on Tribal Cultural Heritage," 58.

¹⁵⁰ *Id.* at 62.

¹⁵¹ *Id.* at 63.

¹⁵² Louisiana Coastal Protection and Restoration Authority, 2017 Coastal Master Plan, Appendix C: Modeling, available at http://coastal.la.gov/wp-content/uploads/2017/04/Appendix-C_chapter1_FINAL_3.16.2017.pdf

¹⁵³ Ferguson-Bohnee, "The Impacts of Coastal Erosion on Tribal Cultural Heritage," 63

¹⁵⁴ LA Constitution. art. XII §4.

¹⁵⁵ LA Constitution. art. XII §4.

longer able to live in their traditional dirt floor palmetto homes.¹⁵⁶ Today, homes are raised 10-15 feet off the ground to avoid potential flood damage.¹⁵⁷

In Kivalina, there is no more space to build infrastructure, so the airstrip was built adjacent to the community's burial site. The burial site is now partially protected from inundation because the Federal Aviation Administration built a revetment to protect the airstrip, but eventually the community knows that its burial site will be washed away by the rising seas along with the remains of the approximately 400 people buried there.

Federal government officials have failed to use historic preservation mechanisms to protect the Tribes' historic and cultural sites. One key mechanism for protecting historic and cultural sites in the United States is having them listed on the National Register of Historic Places. Under the National Historic Preservation Act, Congress has created ways to preserve and protect "historical and cultural foundations of the Nation."¹⁵⁸ Every four years, state and federal officials are tasked with reviewing "significant threats to properties included in, or eligible for inclusion in, the National Register" to recommend protective action.¹⁵⁹ The Pointe-au-Chien Indian Tribe is currently determining if or how it can nominate its historic cemeteries and mounds through the State of Louisiana for historic preservation.¹⁶⁰ The Louisiana archaeological database includes numerous sites related to Pointe-au-Chien and the Tribe has identified more than 20 "traditional cultural properties" that could be considered for the National Register. The state preservation agency has never nominated a site in Pointe-au-Chien for National Register status, despite the clear threats these sites face

The U.S. Government has Failed to Protect the Right to Subsistence and Food Security

Human rights doctrine explicitly affirms that the right to food and the right to be free from hunger are indispensable to human dignity and critically connected to other fundamental rights.¹⁶¹ States have the primary responsibility to promote and protect the right to food.¹⁶² The United States government is prohibited from taking any actions that prevent individuals from access to food and have the obligation

¹⁵⁶ *Id.* at 61-62.

¹⁵⁷ *Id.* at 62.

¹⁵⁸ National Historic Preservation Act, Public Law 89-665, 54 U.S.C. §300101 *et seq.*, Section 1(b)(2).

¹⁵⁹ *Id.* at Section 101(a)(8).

¹⁶⁰ Ferguson-Bohnee, "The Impacts of Coastal Erosion," 64.

¹⁶¹ Comm. on Econ., Soc. and Cultural Rights, *General Comment 12: The Right to Adequate Food*, ¶ 1, U.N. Doc. E/C.12/1995/5 (May 12, 1999).

¹⁶² Human Rights Committee, *The Right to Food*, A/HRC/RES/16/27 ¶ 11 (2011).

to 'strengthen people's access to and utilization of resources and means to ensure their . . . food security.'¹⁶³

The right to subsistence, an element of the right to self-determination, is one of the essential human rights connected to the right to food.¹⁶⁴ In Kivalina, subsistence hunting and gathering provides primary sources of food, which is often shared among community members. These activities are central to their culture and resilience. However, subsistence harvesting is becoming more dangerous and less reliable because of the climate crisis. Frozen rivers and sea ice serve as winter roads in Alaska and are used for hunting and fishing. In Kivalina, people can no longer predict when traditional hunting, fishing, or subsistence practices will take place. Walrus hunts have not been successful for fifteen years. Hunters have not seen the beluga since 1989. Now, in December 2019, there is still open water on the ocean, meaning that traditional seal hunting can not take place. In addition, two of the community's historic ice cellars are no longer useable. They now flood with water and then freeze.

As Kivalina's Tribal Administrator, Millie Hawley explains:

We have not caught the bearded seal for 2 years, due to lack of solid ice formation. The ice conditions are weak. Soft, thin ice that doesn't support the bodies of the bearded seal nor the hunters necessary to hunt the seal as practiced in the last century. The bearded seal was a daily nutritional source of food for the community of Kivalina for time immemorial. . . . All the marine mammals we gather to feed our families for the winter are lacking and our childbearing women suffer the most due to low iron in their blood. The food we rely on now are western food that is flown in and is incredibly expensive. For a can of 12 oz milk, people of Kivalina must pay \$2.99, the quart size whole milk is \$3.95. A loaf of bread cost \$3.89, and a dozen of eggs are \$3.25. Imagine trying to feed a family of 7, which is average number of people in a household in Kivalina.

At the same time, over the past several months, many species of fish and marine mammals have been washing up dead along the coast of Norton Sound and in other locations in Alaska because ocean and river temperatures are causing fish to die. These changes raise concerns about the future health of fish stocks and marine mammals on which communities depend.¹⁶⁵ The combination of these factors, which impacts the availability of local and non-monetary food sources, creates a situation of food insecurity.

¹⁶³ Comm. on Econ., Soc. and Cultural Rights, *General Comment 12: The Right to Adequate Food*, ¶ 15, U.N. Doc. E/C.12/1995/5 (May 12, 1999).

¹⁶⁴ International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

¹⁶⁵ Davis Hovey KNOM, "Warmer waters investigated as cause of pink salmon die-off in Norton Sound region," *Anchorage Dispatch News* (July 12, 2019), available at <https://www.adn.com/alaska-news/rural-alaska/2019/07/12/warmer-waters-investigated-as-cause-of-pink-salmon-die-off-in-norton-sound-region/>.

The right to food is a collective right, and fundamentally connected to sovereignty, rights to land and territories, health, subsistence, treaties, economic development and culture.¹⁶⁶

In Louisiana, the Constitution guarantees the “freedom to hunt, fish, and trap wildlife, including all aquatic life, traditionally taken by hunters, trappers and anglers, is a valued natural heritage that shall be forever preserved for the people.”¹⁶⁷ The state is also bound to protect the wildlife and marine life to ensure resources are available to hunt and fish.¹⁶⁸ Under the Constitution, the state must manage and regulate hunting and fishing activities to “protect, conserve and replenish the natural resources of the state.”¹⁶⁹ The state of Louisiana has not adequately protected the fish and wildlife resources because these resources are no longer abundant.

The 2010 oil spill, levee systems and recurring storms are impacting the traditional subsistence fishing practices and the economic livelihood of many tribal members and the U.S. federal government is failing to protect these cultural rights.¹⁷⁰ Tribal citizens are being forced to change their subsistence livelihood, and instead to purchase food from the grocery store.¹⁷¹ Having to purchase food causes a burden on families whose main source of income is also tied to the natural resources that are adversely impacted by climate change.¹⁷²

In addition, traditional practices that sustain the Tribe’s close knit community are at risk.¹⁷³ The tribal communities have longstanding practices of sharing one’s catch or having a crab-boil at the dock.¹⁷⁴ Tribal citizens no longer have a bountiful catch to share because of ecosystem damage to marine habitats.¹⁷⁵ Not being able to share ones catch and feed the community have negatively impacted Tribal citizens who have always practiced this tradition.¹⁷⁶ Without this tradition, Tribal citizens do not have the numerous community gatherings and interactions that they have always relied.¹⁷⁷

¹⁶⁶ Office of the United Nations High Commissioner on Human Rights, Consultation on the Relationship Between Climate Change and Human Rights 4 (October 22, 2008).

¹⁶⁷ LA Constitution. art. I §27.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Terri Hansen, “Drowning in It,” *Indian Country Today*, May 4, 2011, at 20; Barry Yeoman, *Reclaiming Native Ground*, *SAPIENS*, (Feb. 24, 2017), <https://www.sapiens.org/culture/louisiana-native-americans-climate-change/>.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Yeoman, *Id.* (explaining that trips to the grocery store are replacing community gatherings at the bayou).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* (describing how the tradition fell apart as a result of the sporadic crab hauls).

¹⁷⁷ *Id.*

The U.S. Government and Alaska and Louisiana State Governments Have Failed to Protect The Individual and Collective Rights to Safe Drinking Water, Physical and Mental Health and an Adequate Standard of Living

The human rights related to physical security and basic necessities are most profoundly implicated when climate change renders communities uninhabitable, requires community residents to relocate, and eliminates one of the core elements of tribal sovereignty—it's territory.¹⁷⁸ Climate change also impacts the human right to water, housing, health and property, all critical to human dignity. The combination of sea level rise and extreme weather events, sea surges, flooding and erosion—all have led to the contamination of water supplies, damage to sanitation and medical infrastructure and increase of disease transmission—all impact the right to adequate living standards.

The Human Right to Safe Drinking Water and Sanitation

The human right to water is essential for leading a life in human dignity and is indispensable to the realization of all the human rights related to basic necessities, and fundamental for life and health.¹⁷⁹ The Committee on Economic, Social and Cultural Rights defines the right to water as the equal and non-discriminatory right of everyone to access sufficient, safe, and affordable water for personal and domestic uses.¹⁸⁰ This means that the United States government is obligated to implement strategies to ensure that there is access to water.¹⁸¹

In Alaska, climate change is impacting access to freshwater and water quality. Extreme weather events, rising sea-levels and flooding damage or destroy infrastructure, including rainwater storage tanks, water treatment plants and sanitation systems, causing the latter to leak human waste and contaminating the groundwater. In Kivalina, the Wulik River is the community water source. Thawing permafrost causes the banks of the Wulik River to erode, increases the turbidity of the water and prevents the water treatment plant from eliminating dangerous organisms in the community's water supply.¹⁸² Residents of Kivalina do not have flush-toilets or sewage systems, but rather use 5-gallon buckets called "honey-buckets" to transport solid waste to disposal sites. Kivalina has not received funding to improve sanitation and water

¹⁷⁸ Montevideo Convention on the Rights and Duties of States *opened for signature* July 13, 1934 (entered into force December 26, 1934).

¹⁷⁹ Office of the High Commissioner of Human Rights, Consultation on Human Rights and Access to Safe Drinking Water and Sanitation 4 (May 2007).

¹⁸⁰ U.N. Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 15: The Right to Water*, arts. 11 and 12, U.N. Doc. E/C.12/2002/11 (Nov. 29, 2002).

¹⁸¹ Office of the High Commissioner of Human Rights, Consultation on Human Rights and Access to Safe Drinking Water and Sanitation 4 (May 2007), *available at* <http://www2.ohchr.org/english/issues/water/docs/consultationReportmay07.pdf>

¹⁸² See Michael Brubaker et al., *Climate Change in Kivalina Alaska Strategies for Community Health* (ANTHC Center for Climate and Health 2010), 37-41.

because of the community's decision to relocate. Yet without the funding and technical resources to relocate, the community continues to live without safe drinking water and sanitation.

For several years, Pointe-au-Chien and Island residents have been affected by *Naegleria fowleri*, a brain eating amoeba that affects the water supply.¹⁸³ The amoeba was found in an area between Isle de Jean Charles and Pointe-au-Chien. Residents are warned to not swim in the water or get in in their noses.

Right to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health

The right to health extends to the necessities required to lead a healthy life, such as food, housing, safe drinking water and adequate sanitation. The human rights obligations of the United States government extends to both preventing exposure to health hazards, and improving the capacity of individuals to cope with health hazards. Decreased access to clean water also affects the incidence of disease. Sea level rise salinates freshwater and disrupts sanitation and water supply. Flooding may also lead to groundwater contamination. In Kivalina, Alaska, community health aides have documented a variety of illnesses related to the decrease in water supply, caused by climate-induced ecological change.¹⁸⁴

Following storms, coastal Louisiana residents are often overworked cleaning their homes. Some Tribal citizens continue to live in unsafe homes because there is little to no support for them to fix their homes following flooding or damage to their homes. As mentioned above, brain eating amoeba affects the water supply in Louisiana.

Right to an Adequate Standard of Living

Housing is the basis of stability and security for an individual or family. The right to adequate housing, which is defined as habitable, culturally appropriate and able to protect from environmental threats, is also enshrined in additional international human rights doctrine, including the Pinheiro Principles on Housing and Property Restitution for Refugees.¹⁸⁵

Deprivation of the use and enjoyment of land through climate change threatens the human right to property.¹⁸⁶ The permanent loss of land and housing due to climate change and the consequent inability

¹⁸³ CBS News, "Brain-eating amoeba found in Louisiana water district for the third time since 2015," June 13, 2018, available at <https://www.cbsnews.com/news/brain-eating-amoeba-found-louisiana-terrebonne-parish-pointe-aux-chenes/>.

¹⁸⁴ See, Michael Brubaker et al., *Climate Change in Kivalina Alaska Strategies for Community Health*. According to the Alaska Native Health Consortium, these diseases include "mouth sores, strep throat, gastroenteritis, vomiting and diarrhea, cellulitis, abscesses, impetigo, MRSA skin infections, ear infections, and respiratory syncytial virus".

¹⁸⁵ Center on Hous. Rights & Evictions, The Pinheiro Principles, Principle 18 (2007), available at <http://www.unhcr.org.ua/img/uploads/docs/PinheiroPrinciples.pdf>; Comm. on Econ., Soc. and Cultural Rights, *General Comment 7: The Right to Adequate Housing* (1997); Comm. on Econ., Soc. and Cultural Rights, *General Comment 4, The Right to Adequate Housing* (1991)(Environmental harms include "cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors).

¹⁸⁶ The right to property includes the right to land. See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); Brookings-Bern Project on Internal Displacement, Human Rights and

to return to original homes and lands is one of the most intense losses caused by the climate crisis. For the Tribes submitting this complaint, land is fundamentally connected to national, cultural and personal identity.¹⁸⁷ Sea level rise, extreme weather events, storm surges, erosion and flooding endanger these coastal communities by reducing the area of land that buffers them from the ocean.¹⁸⁸ These ecological changes also affect the habitability of their homes by damaging the physical structure of housing, as well as impact access to basic services such as electricity, water supply, and sanitation that are essential elements of the right to adequate housing. Flooding also results in soil subsidence, which damages homes.

Kivalina is now also severely overcrowded due to its decreasing liveable space. Multiple families must live together in a small house with no water and sewer installed in the homes. Heating fuel cost \$4.85 /gallon, and average monthly electrical bill is \$300/month. Families must choose between feeding their families or paying for electricity and fuel during the winter months. Tribal Administrator Hawley notes that “Most families pay their electrical bill and go hungry for half a month.”

Conclusion

The Guiding Principles on Internal Displacement, Pinheiro Principles and Peninsula Principles specifically articulate the human rights protections required for those who are displaced by natural or human-made disasters and place the primary duty and responsibility to provide protection and basic rights on national governments. The Guiding Principles articulate the duty of the United States government to ensure all feasible mitigation alternatives are explored to avoid and minimize displacement.

The United States government’s failure to protect the Tribal Nations named in this complaint from both the human-made and natural effects of the climate crisis has resulted in significant human rights violations that affects these tribal nation’s ability to secure basic human rights and continue to lead to individual and community displacement from their land. In accordance with international law and universally held human rights norms, the U.S. government must take immediate action to redress the human rights violations enumerated in this complaint. We submit this evidence of the human rights violations of tribal nations in Louisiana and Alaska and we provide recommendations for immediate U.S. government action to redress these harms and ensure the protection of human rights.

Natural Disasters Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disasters 44-47 (2008), available at [http://www.reliefweb.int/rw/lib.nsf/db900sid/KHII-7EE9KM/\\$file/brookings_HR_mar08.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/KHII-7EE9KM/$file/brookings_HR_mar08.pdf?openelement)

¹⁸⁷ See Office of the United National High Commissioner on Human Rights, Consultation on the Relationship Between Climate Change and Human Rights 4 (October 22, 2008).

¹⁸⁸ Scott Leckie, “Climate-related Disasters and Displacement: Homes for Lost Homes, Lands for Lost Lands” in J.M.Guzmán et al, eds., *Population Dynamics and Climate Change* (2009), 119-132.

Appendix

Appendix A

Isle de Jean Charles Biloxi-Chitamacha-Choctaw Indians of Louisiana
Traditional Chief Albert P. Naquin
100 Dennis St.
Montegut, LA 70377

RESOLUTION

A RESOLUTION BY THE Isle de Jean Charles Biloxi-Chitamacha-
Choctaw Indians of Louisiana
TO SUBMIT A HUMAN RIGHTS COMPLAINT TO THE UNITED NATIONS SPECIAL RAPPORTEUR

WHEREAS: Isle de Jean Charles Biloxi-Chitamacha-Choctaw Indians of Louisiana is a self-governing Tribe in The United States;

WHEREAS: Isle de Jean Charles Biloxi-Chitamacha-Choctaw Indians of Louisiana is the duly elected governing body of the Tribe;

WHEREAS: Isle de Jean Charles Biloxi-Chitamacha-Choctaw Indians of Louisiana recognizes that the collective and individual human rights of tribal members must be protected when a tribal government decides and implements climate adaptation strategies;

WHEREAS: Isle de Jean Charles Biloxi-Chitamacha-Choctaw Indians of Louisiana recognizes that the human right to self-determination is the most important human right to protect;

WHEREAS: Isle de Jean Charles Biloxi-Chitamacha-Choctaw Indians of Louisiana recognizes that state and federal government agencies have not been protecting the individual and collective human rights of tribal members despite efforts by tribal governments to implement climate adaptation strategies. These rights include the Right to Self-Determination; Right to Life, Right to Practice and Revitalize Cultural Traditions; Right to Subsistence; Right to Improve Livelihoods; Right to Safe Drinking Water; Right to Health; and Right to Safe and Sanitary Housing;

WHEREAS: Isle de Jean Charles Biloxi-Chitamacha-Choctaw Indians of Louisiana supports the submission of a complaint documenting the human rights violations currently occurring to the United Nations Special Rapporteurs;


WHEREAS: Isle de Jean Charles Biloxi-Chitamacha-Choctaw Indians of Louisiana has agreed to work with the Lowlander Center, Unitarian Universalist Service Committee and Alaska Institute for Justice to submit this Complaint;

NOW THEREFORE BE IT RESOLVED THAT:

Isle de Jean Charles Biloxi-Chitamacha-Choctaw Indians of Louisiana hereby supports working with the Alaska Institute for Justice to submit a Complaint to the United Nations Special Rapporteurs at its meeting held on *(date).

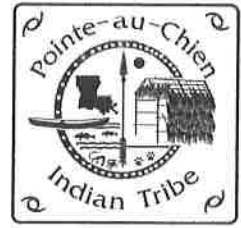
CERTIFICATION

**PASSED AND APPROVED BY A CONSTITUED QUORUM OF THE * ON 8th DAY OF May
BY A VOTE OF 6 FOR, 0 AGAINST AND 0 ABSTAIN.**



Signature

POINTE-AU-CHIEN INDIAN TRIBE
Chairman Charles "Chuckie" Verdin
Second Chairman Donald Dardar
PO Box 416
Montegut, LA 70377
(985) 466-3129



RESOLUTION OF THE POINTE-AU-CHIEN TRIBAL COUNCIL
(Authorizing the Submission of a Human Rights Complaint
to the United Nations Special Rapporteur)
DATED May 18, 2019

RESOLUTION NO. 2019-06

WHEREAS, the Pointe-au-Chien Indian Tribe is a self-governing Tribe located in the United States; and

WHEREAS, the Pointe-au-Chien Indian Tribal Council is the duly elected governing body of the Tribe;
and

WHEREAS, Pointe-au-Chien Indian Tribe's aboriginal land is located in the fastest eroding basin in the United States and the Tribal Council intimately understands the impacts of land loss, coastal erosion, climate change, and environmental disasters on the survival of our people; and

WHEREAS, over the last twenty years, the Pointe-au-Chien Indian Tribe has faced extreme weather and environmental events including successive hurricanes and oil spills; and

WHEREAS, several Pointe-au-Chien villages have become uninhabitable, and tribal members have been required to relocate due to salt water intrusion, land loss, and haphazard cuts made by extractive industries;
and

WHEREAS, sustaining and protecting the Pointe-au-Chien community including the remaining village sites, sacred sites, fishing sites, traditional places for subsistence hunting and gathering, and cemeteries is an integral part in maintaining the cultural heritage and self-determination of the Pointe-au-Chien people;
and

WHEREAS, the Pointe-au-Chien Indian Tribe recognizes that the collective and individual human rights of tribal members must be protected when a tribal government decides and implements climate adaptation strategies; and

WHEREAS, the Pointe-au-Chien Indian Tribe recognizes that the human right to self-determination is the most important human right to protect; and

WHEREAS, the Pointe-au-Chien Indian Tribe recognizes that state and federal government agencies have not been protecting the individual and collective human rights of tribal members despite efforts by tribal governments to implement climate adaptation strategies. These rights include the Right to Self-Determination; Right to Life, Right to Practice and Revitalize Cultural Traditions; Right to Subsistence; Right to Improve Livelihoods; Right to Safe Drinking Water; Right to Health; and Right to Safe and Sanitary Housing; and

WHEREAS, the Pointe-au-Chien Indian Tribe supports the submission of a complaint documenting the human rights violations currently occurring to the United Nations Special Rapporteurs; and

WHEREAS, the Pointe-au-Chien Indian Tribe has agreed to work with the Lowlander Center, Unitarian Universalist Service Committee and Alaska Institute for Justice to submit this Complaint.

NOW THEREFORE BE IT RESOLVED THAT the Pointe-au-Chien Indian Tribe hereby supports working with the Alaska Institute for Justice to submit a Complaint to the United Nations Special Rapporteurs at its meeting held on May 18, 2019.

CERTIFICATION

The foregoing Resolution was passed by the Pointe-au-Chien Tribal Council on the 18th of May 2019 at a meeting at which a quorum was present with a vote of 7 FOR; 0 AGAINST; 0 NOT VOTING; and 2 ABSENT, pursuant to the powers vested in the Council by Article IV, Section 1 of the Constitution of the Pointe-au-Chien Indian Tribe.

POINTE-AU-CHIEN TRIBAL COUNCIL



Charles Verdin, Chairman

ATTEST



Michelle Matherne, Secretary

Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw
C/O Chief Shirell Parfait-Dardar
5057 Bayouside Drive
Chauvin, LA 70344
Ph: 985-791-2222

RESOLUTION

A RESOLUTION BY THE GRAND CAILLOU/DULAC BAND OF
BILOXI-CHITIMACHA-CHOCTAW
TO SUBMIT A HUMAN RIGHTS COMPLAINT TO THE UNITED NATIONS SPECIAL RAPPORTEUR

WHEREAS: Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw is a self-governing Tribe in The United States;

WHEREAS: Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw is the duly elected governing body of the Tribe;

WHEREAS: Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw recognizes that the collective and individual human rights of tribal members must be protected when a tribal government decides and implements climate adaptation strategies;

WHEREAS: Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw recognizes that the human right to self-determination is the most important human right to protect;

WHEREAS: Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw recognizes that state and federal government agencies have not been protecting the individual and collective human rights of tribal members when tribal governments implement climate adaptation strategies. These rights include the Right to Self-Determination; Right to Life, Right to Practice and Revitalize Cultural Traditions; Right to Subsistence; Right to Improve Livelihoods; Right to Safe Drinking Water; Right to Health; and Right to Safe and Sanitary Housing;

WHEREAS: Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw supports the submission of a complaint documenting the human rights violations currently occurring to the United Nations Special Rapporteurs;

WHEREAS: Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw has agreed to work with the Lowlander Center, Unitarian Universalist Service Committee and Alaska Institute for Justice to submit this Complaint;

NOW THEREFORE BE IT RESOLVED THAT:

Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw hereby supports working with the Alaska Institute for Justice to submit a Complaint to the United Nations Special Rapporteurs at its meeting held on August 10, 2019.


CERTIFICATION

**PASSED AND APPROVED BY A CONSTITUED QUORUM OF THE GOVERNING BODY ON THE 10th DAY OF AUGUST, 2019
BY A VOTE OF 9 FOR, 0 AGAINST AND ABSTAIN.**

Signature



Chief Shirell Parfait-Dardar



Chairwoman Marlene J. Forel

Grand Bayou Village
Atakapa-Ishak/Chawasha
P.O. Box 1021
Port Sulphur, LA 70083
rpatakapa@yahoo.com

RESOLUTION

A RESOLUTION BY THE GRAND BAYOU VILLAGE ATAKAPA- ISHAK/CHAWASHA TRIBE TO SUBMIT A HUMAN RIGHTS COMPLAINT TO THE UNITED NATIONS SPECIAL RAPPORTEUR

WHEREAS: Grand Bayou Village Atakapa-Ishak/Chawasha is a self-governing Tribe in The United States;

WHEREAS: Grand Bayou Village Atakapa-Ishak/Chawasha is the duly elected governing body of the Tribe;

WHEREAS: Grand Bayou Village Atakapa-Ishak/Chawasha recognizes that the collective and individual human rights of tribal members must be protected when a tribal government decides and implements climate adaptation strategies;

WHEREAS: Grand Bayou Village Atakapa-Ishak/Chawasha recognizes that the human right to self-determination is the most important human right to protect;

WHEREAS: Grand Bayou Village Atakapa-Ishak/Chawasha recognizes that state and federal government agencies have not been protecting the individual and collective human rights of tribal members when tribal governments implement climate adaptation strategies. These rights include the Right to Self-Determination; Right to Life, Right to Practice and Revitalize Cultural Traditions; Right to Subsistence; Right to Improve Livelihoods; Right to Safe Drinking Water; Right to Health; and Right to Safe and Sanitary Housing;

WHEREAS: Grand Bayou Village Atakapa-Ishak/Chawasha supports the submission of a complaint documenting the human rights violations currently occurring to the United Nations Special Rapporteurs;

WHEREAS: Grand Bayou Village Atakapa-Ishak/Chawasha has agreed to work with the Lowlander Center, Unitarian Universalist Service Committee and Alaska Institute for Justice to submit this Complaint;

NOW THEREFORE BE IT RESOLVED THAT:

Grand Bayou Village Atakapa-Ishak/Chawasha hereby supports working with the Alaska Institute for Justice to submit a Complaint to the United Nations Special Rapporteurs at its meeting held on *(date).

CERTIFICATION

**PASSED AND APPROVED BY A CONSTITUED QUORUM OF THE * ON _DAY OF _
BY A VOTE OF __ FOR, __ AGAINST AND ABSTAIN.**

Rosina Philippe

Signature



KIVALINA IRA COUNCIL

P.O. Box 50051 Kivalina, AK 99750 Ph: (907)645-2153 Fax: (907)645-2193
e-mail: tribeadmin@kivaliniq.org

“Advocating for our people, land, waters and subsistence way of life”

RESOLUTION 19- 06

TO SUBMIT A HUMAN RIGHTS COMPLAINT TO THE UNITED NATIONS SPECIAL RAPPORTEUR

WHEREAS: The Kivalina IRA Council is a self-governing Tribe in The United States;

WHEREAS: The Kivalina IRA Council is the duly elected governing body of the Tribe;

WHEREAS: The Kivalina IRA Council recognizes that the collective and individual human rights of tribal members must be protected when a tribal government decides and implements climate adaptation strategies;

WHEREAS: The Kivalina IRA Council recognizes that the human right to self-determination is the most important human right to protect;

WHEREAS: The Kivalina IRA Council recognizes that state and federal government agencies have not been protecting the individual and collective human rights of tribal members despite efforts by tribal governments to implement climate adaptation strategies. These rights include the Right to Self-Determination; Right to Life, Right to Practice and Revitalize Cultural Traditions; Right to Subsistence; Right to Improve Livelihoods; Right to Safe Drinking Water; Right to Health; and Right to Safe and Sanitary Housing;

WHEREAS: The Kivalina IRA Council supports the submission of a complaint documenting the human rights violations currently occurring to the United Nations Special Rapporteurs;

WHEREAS: The Kivalina IRA Council has agreed to work with the Lowlander Center, Unitarian Universalist Service Committee and Alaska Institute for Justice to submit this Complaint;


NOW THEREFORE BE IT RESOLVED THAT:

The Kivalina IRA Council hereby supports working with the Alaska Institute for Justice to submit a Complaint to the United Nations Special Rapporteurs at its meeting held on May 17, 2019.

CERTIFICATION

**PASSED AND APPROVED BY A CONSTITUED QUORUM OF THE
KIVALINA IRA COUNCIL ON 17 DAY OF MAY, 2019**

BY A VOTE OF 5 FOR, ____ AGAINST AND ____ ABSTAIN.



President



Secretary

Appendix B

SENATE CONCURRENT RESOLUTION NO. 105—
BY SENATOR DUPRE**A CONCURRENT RESOLUTION**

To recognize the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogees ("BCCM"), the Bayou Lafourche Band of the BCCM, the Grand Caillou/Dulac Band of the BCCM, known collectively as the "BCCM Tribes" and the Pointe-au-Chien Indian Tribe ("PACIT").

SENATE CONCURRENT RESOLUTION NO. 106—
BY SENATOR LENTINI AND REPRESENTATIVE MARTINY
A CONCURRENT RESOLUTION

To urge and request the Department of Public Safety and Corrections to extend and expand the pilot program for home incarceration and electronic monitoring that was established by Act No. 1139 of the 2001 Regular Session.

SENATE CONCURRENT RESOLUTION NO. 113—
BY SENATORS ULLO, DARDENNE, DUPLESSIS, DUPRE, HINES, HOLLIS, JACKSON, JONES, KOSTELKA, LENTINI, MICHOT, MOUNT, NEVERS, ROMERO, SCHEDLER, AND THEUNISSEN AND REPRESENTATIVE SCALISE**A CONCURRENT RESOLUTION**

To memorialize the Congress of the United States to develop sound energy policies that promote expansion and production of domestic crude oil reserves, and encourages the development of petroleum refining facilities in the United States.

SENATE CONCURRENT RESOLUTION NO. 116—
BY SENATOR MCPHERSON**A CONCURRENT RESOLUTION**

To urge and request the commissioner of administration to study the feasibility of delegating, through the office of facility planning and control, all or a portion of the office's administrative responsibilities regarding any capital outlay project appropriated to a non-state entity to the governing authority of the non-state entity, or to an agency of such governing authority.

SENATE CONCURRENT RESOLUTION NO. 123—
BY SENATORS SMITH AND MCPHERSON**A CONCURRENT RESOLUTION**

To urge and request the Department of Transportation and Development to study the laws that govern the operation of vehicles which haul Louisiana products on the highways and roadways of Louisiana in excess of the standard limitations set forth in law, and to include in such study more particularly, vehicles transporting forestry products in their natural state and vehicles transporting Louisiana-produced lignite coal and coke fuel.

SENATE CONCURRENT RESOLUTION NO. 140—
BY SENATOR FIELDS**A CONCURRENT RESOLUTION**

To urge and request the Louisiana State Board of Private Investigator Examiners to take appropriate steps to provide for the offering of courses in private investigation at Southern University.

SENATE CONCURRENT RESOLUTION NO. 152—
BY SENATORS DUPRE, BOASSO, B. GAUTREAUX, N. GAUTREAUX, MOUNT, ROMERO, THEUNISSEN AND ULLO
A CONCURRENT RESOLUTION

To memorialize the Congress of the United States to enact legislation eliminating the "new shipper" bonding privilege.

Respectfully submitted,
CHARLES D. JONES
Chairman

The foregoing Senate Concurrent Resolutions were signed by the President of the Senate.

Message to the Governor**SIGNED SENATE BILLS**

June 11, 2004

To the Honorable Governor of the State of Louisiana:

The President of the Senate and the Speaker of the House of Representatives have signed the following Senate Bills:

SENATE BILL NO. 97—
BY SENATOR ADLEY (By Request)
AN ACT

To amend and reenact R.S. 37:2301, 2302(2) and (3), 2303(A)(5), 2308, 2309(B), (D), (G), (H), (K) and (L), 2313(A)(2)(d) and (e), and 2317(B), relative to the maintenance and repair of citizen band radios; to repeal requirements that a person must be licensed by the Louisiana State Radio and Technicians Board in order to repair a citizen band radio; and to provide for related matters.

SENATE BILL NO. 105—
BY SENATOR DUPRE AND REPRESENTATIVE BALDONE
AN ACT

To amend and reenact R.S. 56:2(D), relative to wildlife and fisheries; to provide relative to the Wildlife and Fisheries Commission; to provide for the elections of the chairman and vice-chairman; and to provide for related matters.

SENATE BILL NO. 138—
BY SENATOR SCHEDLER AND REPRESENTATIVE STRAIN
AN ACT

To enact R.S. 13:2575.2, relative to administrative adjudication procedures and judicial reviews of code violations in the parish of St. Tammany; to provide additional administrative adjudication procedures in St. Tammany Parish; to provide additional judicial review procedures in St. Tammany Parish; and to provide for related matters.

SENATE BILL NO. 140—
BY SENATOR BAJOE
AN ACT

To amend and reenact R.S. 40:1300.51(3) and to enact R.S. 40:1300.51(2)(h), (i) and (j), relative to those employed to care for the infirm; to provide for criminal background checks on those seeking employment at agencies that care for the infirm; to provide a bar to employment in these agencies of persons convicted of certain offenses; to provide for an effective date; and to provide for related matters.

Appendix C

**DEPARTMENT OF THE ARMY**

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

9 FEB 2000

REPLY TO
ATTENTION OF:

Planning Division
Central Planning Management Branch

Honorable Albert P. Naquin
Chief, Isle de Jean Charles Band
of Biloxi-Chitimacha-Choctaw
100 Dennis Street
Montegut, Louisiana 70377

Dear Chief Naquin:

Thank you for your recent e-mail to President Clinton concerning a study being conducted by the New Orleans District of the U.S. Army Corps of Engineers. President Clinton has referred your e-mail to me because I have oversight responsibility for the Corps Civil Works planning program.

The hurricane protection levee to which you refer is being investigated under our Morganza, Louisiana, to the Gulf of Mexico study. This feasibility study is identifying the Federal interest in flood damage reduction measures for Terrebonne and Lafourche Parishes. You urge that the alignment of the levee be such that it would protect the entire island of Isle de Jean Charles and that it not be located on the island. Construction of a levee having sufficient elevation to protect against a hurricane surge with a return frequency of 100 years would require a levee base width of 300 feet or greater. To protect your community, the levee would have to be built across open water and would require several lifts (raises of the levee to compensate for subsidence). The additional cost of such a levee alignment would not be economically justified.

The New Orleans District is sensitive to your community's problems and intends to look further into providing flood protection. The Corps has authority under its section 205 program to construct smaller flood control projects, including non-structural measures. Of course, the work must be economically justified and must be cost-shared by a non-Federal sponsor. The New Orleans District will also consider the possibility of relocating the residents of Isle de Jean Charles out of the floodplain.

Thank you for your interest in this study.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Johnson".

Dr. James E. Johnson
Chief, Planning Division
Office of Deputy Commanding General
for Civil Works

Appendix D



Isle de Jean Charles Biloxi-Chitimacha-Choctaw

Chief Albert White Buffalo Naquin

100 Dennis Street

Montegut, LA 70377

Cell: (985) 232-1286 Fax: (985) 594-3725

Email: whitebuffalo@aim.com

Website: www.isledejeancharles.com

September 25, 2018

Greetings,

The Isle de Jean Charles Tribal Resettlement project has taken some very strong curves and is no longer meeting the goals and objectives set out by the residents and IDJC Tribe. The changes are so much so that I have begun to question my ability to be a part of the project committee due to what I believe are unjust actions and proposals set forth in the IDJC Permanent Relocation Project.

The IDJC Tribe began working in 2002 to help resident ensure a future together as a tribal community. Through various turns of events our tribe began working with and partnering Louisiana OCD officials and other non-profit organizations to submit our Tribe's ideas and goals for a new tribal community. As of now:

1. The efforts to design a tribal community have been replaced with a "As such, the IDJC Resettlement is an **initiative led by the State of Louisiana's Office of Community Development (OCD)**"¹
2. The project that was supposed to be led by the Isle de Jean Charles Community and Tribe is now just "in close collaboration."²
3. The project that was supposed to build the capacity of the Tribe and community now places it in the hands of a housing authority and a new non-profit corporation³.
4. The project was to ensure the Culture and life-ways of the community would survive to live on into the future is no longer even mentioned in the master plan.
5. The project was to bring justice to a marginalized community by not valuing them or their land to be protected⁴. The new plan allows for camp owners to have more rights and privileges than land owners.

I believe the final unjust act is the requiring Island property owners to sign away interest of their homes. The last thing anyone wants to do is sign away the legacy from their ancestors who worked so hard to keep it. Our Tribe feels this is dishonoring of everything our ancestors did to ensure we survived the

¹ Isle de Jean Charles (IDJC) Resettlement Permanent Relocation & Homeownership Assistance Program (Option A) Version 1.0 9/16/2018 pg.4

² Isle de Jean Charles (IDJC) Resettlement Permanent Relocation & Homeownership Assistance Program (Option A) Version 1.0 9/16/2018 pg.5

³ Isle de Jean Charles (IDJC) Resettlement Permanent Relocation & Homeownership Assistance Program (Option A) Version 1.0 9/16/2018 pg.8

⁴ USACE Morganza to the Gulf realignment 1999.



Isle de Jean Charles Biloxi-Chitimacha-Choctaw

Chief Albert White Buffalo Naquin

100 Dennis Street

Montegut, LA 70377

Cell: (985) 232-1286 Fax: (985) 594-3725

Email: whitebuffalo@aim.com

Website: www.isledejeancharles.com

Indian Removal Act 1830, Indian Relocation Act of 1956, Jim Crow Laws and other discriminatory acts. The injustices are contrary to everything our Tribe stands for and will not be tolerated.

In our opinion, the State of Louisiana has managed to ruin their chance to be leaders of our country and world by ignorance and "good 'ole Louisiana politics." We believe the parameters set forth are unconstitutional.

It is our suggestion that some real discussion and collaboration happen. We have a scheduled meeting October 8, 2018 with the Office of Community Development and fully expect to address these issues in length.

Sincerely,

Chief Albert White Buffalo Naquin

100 Dennis Street

Montegut, LA 70377

Cell: (985) 232-1286 Fax: (985) 594-3725

Email: whitebuffalo@aim.com

Website: www.isledejeancharles.com

Appendix E



Isle de Jean Charles Biloxi-Chitimacha-Choctaw

Chief Albert White Buffalo Naquin

100 Dennis Street
Montegut, LA 70377
Cell: (985) 232-1286 Fax: (985) 594-3725
Email: whitebuffalo@aim.com
Website: www.isledejeancharles.com

October 29, 2018

Stan Gimont
Director, Office of Block Grant Assistance
US Department of Housing & Urban Development
451 7th Street, SW
Washington, DC 20410

The Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribal (IDJC/BCC) Resettlement project has taken some very strong curves and is no longer meeting the goals and objectives set out by the residents and Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribe. The changes are so much so that we question our ability to be a part of the resettlement project. It is our Tribal Council's recommendation that the grant funds be returned to the National Disaster Resilience Competition Grant committee due to deviances and "scalable model" the state has proposed IDJC/BCC Permanent Relocation Project.

The Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribe began a partnership with the Louisiana Office of Community Development Disaster Recovery Unit to help our Tribe and its resident to ensure a future together as a sustainable, resilient, and healthy tribal community. The following changes have occurred since the grant funds were awarded no longer meeting the goals and needs of the community. As of now:

1. In the document, [National Disaster Resilience Competition Grantee Profile](#) it states, "Relocation of the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Tribe, has seen a 98-percent loss of land since 1955, to a resilient and historically-contextual community." The project plan has been changed to community relocation, even allowing for lots to be sold at public auction¹.
2. The project that was presented and scored for its cutting edge concept to be led by the Isle de Jean Charles Tribe and community is now just "in close collaboration."² In fact, The IDJC/BCC Tribal Council finally secured a meeting with the Louisiana OCD officials on October 8, 2018 asking for more specific communication and answers to pointed land ownership questions as of the date of this letter no communication has taken place in response to any of those questions.
3. The proposal was scored and reviewed based on the principle that grant funds and project would not only build the capacity of the Tribe but rely on additional resources and funding because of the Tribal Government and partnership. The Tribe's capacity to qualify for additional funding and resources has been severed because the new community is now placed in the hands of a housing authority and a new non-profit corporation³.

¹ Isle de Jean Charles (IDJC) Resettlement Permanent Relocation & Homeownership Assistance Program (Option A) Version 1.0 9/16/2018

² Isle de Jean Charles (IDJC) Resettlement Permanent Relocation & Homeownership Assistance Program (Option A) Version 1.0 9/16/2018 pg.5

³ Isle de Jean Charles (IDJC) Resettlement Permanent Relocation & Homeownership Assistance Program (Option A) Version 1.0 9/16/2018 pg.8

4. The project was to bring justice to a marginalized community and not by devaluing them or their land to be protected⁴. For example, the new plan allows for camp owners to have more rights and privileges than land owners⁵.

We believe the final unjust act is the requiring Island property owners to sign away the interest of their homes. The last thing anyone wants to do is sign away the legacy from their ancestors who worked so hard to keep it. Our Tribe feels this is dishonoring of everything our ancestors did to ensure our Tribes survival under the Indian Removal Act 1830, Indian Relocation Act of 1956, Jim Crow Laws and other discriminatory acts. The injustices are contrary to everything our Tribe stands for and will not be tolerated.

In our opinion, the State of Louisiana has managed to ruin their chance to be leaders of our country and world by ignorance and “good ‘ole Louisiana politics.” We believe the parameters set forth are unconstitutional.

Therefore, the Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribal Council request the official retract of benefits under the Housing and Urban Development National Disaster Resilience Competition Grant Funds awarded for the Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribe Resettlement Project.

Sincerely,



Chief Albert White Buffalo Naquin
100 Dennis Street
Montegut, LA 70377
Cell: (985) 232-1286 Fax: (985) 594-3725
Email: whitebuffalo@aim.com
Website: www.isledejeancharles.com

⁴ USACE Morganza to the Gulf realignment 1999.

⁵ Isle de Jean Charles (IDJC) Resettlement Permanent Relocation & Homeownership Assistance Program (Option A) Version 1.0
9/16/2018

Appendix F

POINTE-AU-CHIEN INDIAN TRIBE

Chairman Charles “Chuckie” Verdin
Second Chairman Donald Dardar
PO Box 416
Montegut, LA 70377
(985) 466-3129



23 April 2019

OCD—Disaster Recovery Unit
Attn: Janice Lovett
PO Box 94095
Baton Rouge, LA 70804-9095
VIA EMAIL: ocd@la.gov

RE: Isle de Jean Charles Resettlement

Dear Ms. Lovett:

The Pointe-au-Chien Indian Tribe submits this comment to the LA Office of Community Development – Disaster Recovery Unit regarding Substantial Amendment No. 5 for utilization of CDBG Funds under the National Disaster Resiliency Competition to Resettle Isle de Jean Charles.

The Pointe-au-Chien Indian Tribe is concerned about the progress of and changes to the Resettlement Project made by the State of Louisiana. The changes to the Project undermine the Project’s original intent and the self-determination of the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw (IJC-BCCM). The Pointe-au-Chien Tribal Council passed a resolution in support of the Isle de Jean Charles Resettlement as envisioned by the Tribe. This resolution is attached hereto and incorporated into the Tribe’s comment.

As a Tribal Coastal Community that participated in the resiliency competition meetings, we were fully aware that IJC BCCM was the only Tribe that requested resettlement due to their history of exclusion from protection levees. The IJC-BCCM put together a project for the resiliency competition, and that project was selected. Everyone who participated in the meetings and who were following the competition knew that the IJC-BCCM spearheaded the application process. The State of Louisiana would not have received the funding for the project to resettle Isle de Jean Charles without the substantial effort and work put into the application by the IJC BCCM. In fact, the State agreed to partner with the IJC-BCCM on resettlement as part of this process. However, it seems now that the IJC BCCM is not even part of the process. Pointe-au-Chien is very concerned as to how these changes happened, the impact on resiliency and cultural heritage of the IJC BCCM people, and the self-determination of the IJC-BCCM.

On page 3-4 of Amendment 5, the State sets forth the resettlement context. The Pointe-au-Chien Indian Tribe is concerned that the State is seeking to minimize that the Isle de Jean Charles is inhabited primarily by the IJC-BCCM, an indigenous Tribe. The State seems to minimize the political leadership of IJC-BCCM by implying that IJC-BCCM and the other coastal tribes are not state recognized, and even describes the UHN as a nonprofit organization. The State has cherry picked documents to undermine that Isle de Jean Charles was a self-sustaining indigenous community with a traditional line of leadership. It seems that if the State actually consulted with the IJC-BCCM and used tribal experts that its discussion of

the tribal backgrounds would be very different, and in fact, more accurate. However, the tone of minimizing Tribes carries through the document by:

1. Removing the IJC-BCCM Tribe and Indian community from the description;
2. Replacing the IJC-BCCM tribally-driven approach with the State's approach;
3. Removing the commitment to tribal cultural heritage through establishment of a community center;
4. Excluding the Tribe from the process; and
5. Including a public auction option that may open up settlement to nonIsland residents.

We are concerned that without the IJC-BCCM's leadership involved in this process, that this Project will fail, and will actually hurt the Tribe in its efforts to maintain its cultural heritage. The Isle de Jean Charles people are not only indigenous peoples, but displaced peoples, who deserve to be consulted. We agree that this is a difficult endeavor. Our hope is that our neighbors/cousins/friends who were deemed unworthy to be protected and whose land and lives have been devalued by those choices, will not only be safely resettled, but will be resettled in a way that reflects their unique cultural heritage and that will support the self-determination of the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw.

Sincerely,



Second Chairman, Donald Dardar

POINTE-AU-CHIEN INDIAN TRIBE
Chairman Charles "Chuckie" Verdin
Second Chairman Donald Dardar
PO Box 416
Montegut, LA 70377
(985) 466-3129



RESOLUTION OF THE POINTE-AU-CHIEN TRIBAL COUNCIL
(Supporting the Self-Determination of the Isle de Jean Charles Indian Community)

DATED January 19, 2019

RESOLUTION NO. 2019-01

WHEREAS, the Pointe-au-Chien Indian Tribe resides in the fastest eroding basin in the United States and intimately understands the impacts of land loss, coastal erosion, climate change, and environmental disasters on the survival of our people;

WHEREAS, the Isle de Jean Charles Indian Community is a distinct indigenous community; and

WHEREAS, Isle de Jean Charles people are our neighbors, relatives, and friends, and we have worked together to preserve and maintain our distinct cultures, including our language, history, and traditions; and

WHEREAS, for decades Isle de Jean Charles and Pointe-au-Chien have suffered from overt discrimination, exploitation of resources, and paternalistic policies; and

WHEREAS, many decisions are made that directly impact our self-determination without any consultation or discussion; and

WHEREAS, the Isle de Jean Charles Indian Community has a right to Self-Determination, their traditional lands, and their distinct cultural heritage; these rights are recognized in the Declaration on the Rights of Indigenous Peoples;

WHEREAS, the Declaration on the Rights of Indigenous Peoples recognizes the Isle de Jean Charles Indian Community's right to the Isle de Jean Charles (the "Island"), including their right to return to the Island.

WHEREAS, many Island residents have been forced to relocate due to man-made environmental disasters and the unwillingness of the local, state, and federal governments to address the causes of land loss and coastal erosion; and

WHEREAS, the Island is excluded from the Morganza-to-the Gulf levee system; and

WHEREAS, decisions have been made by government actors to not protect or preserve the Island;

WHEREAS, in May 2018, the Pointe-au-Chien Indian Tribe voted to support the Isle de Jean Charles process to resettle their entire community and to support their efforts to preserve their culture, community, ancestral land, and economic development; and

WHEREAS, Article 18 of the Declaration on the Rights of Indigenous Peoples provides that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through

representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions;" and

WHEREAS, Article 19 of the Declaration on the Rights of Indigenous Peoples provides that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or a legislative or administrative measures that may affect them;" and

WHEREAS, the Pointe-au-Chien Indian Tribe continues to support the Isle de Jean Charles Indian Community's commitment to resettle together as a tribal community and under the direction of the Isle de Jean Charles Tribal leadership;

WHEREAS, the Pointe-au-Chien Indian Tribe is concerned that the State of Louisiana is ignoring the self-determination of the IJC Indian Community through its current process.

NOW, THEREFORE, BE IT RESOLVED, that the Pointe-au-Chien Indian Tribe supports the Isle de Jean Charles Indian Community's commitment to resettle their entire community as set forth in the plan developed by the Tribe with its Tribal citizens.

BE IT FURTHER RESOLVED, that the Pointe-au-Chien Indian Tribe encourages the State of Louisiana and the United States government to respect the self-determination and cultural heritage of the Isle de Jean Charles Indian Community by recognizing that the Island is a distinct Indian community with its own government, and has the right to participate directly in the resettlement efforts of its people.

BE IT FURTHER RESOLVED, that the State and Federal Governments be requested to recognize and respect that the Island is the aboriginal land of the Isle de Jean Charles Indian people and that the Isle de Jean Charles people should not be required to lose any rights to protect or have access to sacred sites, cultural sites, or subsistence activities on the Island.

BE IT FINALLY RESOLVED that this Resolution shall be shared with the State of Louisiana and the Department of Housing and Urban Development, and any other local, state, or federal officials.

CERTIFICATION

The foregoing Resolution was passed by the Pointe-au-Chien Tribal Council on the 19th of January 2019 at a meeting at which a quorum was present with a vote of 7 FOR; 0 AGAINST; 0 NOT VOTING; and 2 ABSENT, pursuant to the powers vested in the Council by Article IV, Section 1 of the Constitution of the Pointe-au-Chien Indian Tribe.

POINTE-AU-CHIEN TRIBAL COUNCIL

A handwritten signature in blue ink, reading "Donald Dardar", is written over a horizontal line.

Donald Dardar, Second Chairman

Pointe-au-Chien Indian Tribe

ATTEST

A handwritten signature in blue ink, reading "Michelle Matherne", is written over a horizontal line.

Michelle Matherne, Secretary

Subject: RE: Pointe-au-Chien Public Comment

Date: Tuesday, May 14, 2019 at 2:34:09 PM Eastern Daylight Time

From: OCDHUD

To: Patricia Ferguson

Thank you for your comment on the State of Louisiana's proposed Action Plan Amendment 5 for the resettlement of the residents of Isle de Jean Charles.

The state originally described the concept of community resettlement as part of a broader resilience policy framework. In its [Phase I application](#), this framework was referred to simply as Louisiana's Resilience Framework (LRF), later evolving in the state's [Phase II application](#) to Louisiana's Strategic Adaptations for Future Environments (LA SAFE). In Phase I, the application described resettlement as a potentially appropriate intervention for "at-risk communities currently in environmentally unsafe conditions, such as Isle de Jean Charles in coastal Terrebonne Parish" (page 39). Moreover, such communities for which resettlement may be appropriate were described using a series of location-specific characteristics, inclusive of places having been "ravaged by multiple events, and are subject to long-standing environmental stressors, such as land loss, subsidence, and sea-level rise contributing to the severity of disaster events. Specifically, these are communities within Special Flood Hazard Areas, outside of planned future structural protection systems, and those that cannot reasonably absorb future projected insurance costs, or the cost of projected losses of a 100-year flood event occurring within the next 50 years" (page 40).

Phase I additionally described what such community resettlement projects may entail, noting, "resettlement activity may involve removing a community from an area that is not realistically viable to a safer location either in close proximity to an existing economic corridor (e.g. the hub of an immovable industry), or to a location prime for future economic growth" (page 46). Further underlining a location-specific approach, Phase I described the primary objective of community resettlement, "to relocate a community from an area that is neither environmentally nor economically sustainable to one that can be sustainable in both respects through the measured 50-year modeling period" (page 46). In its Phase I submission, the state clearly outlined community resettlement as an intervention appropriate for specific geographic locations susceptible to prohibitively high degrees of current and future flood risk, characteristics all describing present-day Isle de Jean Charles. Finally, Phase I outlined the presence of several native tribes in specifically high-risk places, "Coastal Louisiana is home to the Isle de Jean Charles Band of Biloxi-Chitimacha Choctaw, the Pointe-Au-Chien Indian Tribe, the Grand Caillou-Dulac Band of the Biloxi-Chitimacha Choctaw, the Bayou Lafourche Band of the Biloxi-Chitimacha, the Avoyel-Taensa Tribe/Nation, and the United Houma Nation" (page 40).

As the state moved forward in preparation of its Phase II submission, it sought to propose a specific example of a community resettlement project in line with the characteristics clearly outlined and described in Phase I – characteristics describing specific locations and peoples living at high risk of severe flood impacts. Concurrently, tribal leadership of the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans (BCCM) provided the state with a basic narrative, paraphrased for the purposes of this response: Isle de Jean Charles is home to their tribe. The Island is eroding away at an alarming rate and is subject to severe repetitive disaster events. Therefore, in following this narrative as presented, resettling the tribe would represent an ideal example embodying the community resettlement concept outlined in the state's Phase I submission. Having no reason to question this description of Isle de Jean Charles at the time, the state described in its Phase II submission the resettlement project accordingly. However, the submission also made specific note of location-specific characteristics, stating, "This resettlement is necessitated by ongoing coastal land loss and barrier island destruction, a condition both demonstrated and exacerbated by Hurricane Isaac" (page 15). The Phase II submission went on to

describe the process by which a community resettlement would be conducted, noting it would entail, "...a systems-based approach to community-led planning and group migration. It is a small-scale, targeted strategy for culturally-sensitive at-risk communities and special needs groups, including the disabled, the elderly, disaffected minority groups and very low income populations. It is intended to capture a community's remaining – and often rapidly dwindling – value and transfer it to an environment in which it has the opportunity to grow and ultimately thrive" (page 105).

The state's primary error in its Phase II submission was accepting the narrative BCCM leadership offered in its description of Isle de Jean Charles' residents as being exclusively affiliated with the BCCM and its broad characterization of the Island as being synonymous with the BCCM tribe. Shortly after the resettlement grant award was announced, United Houma Nation (UHN) leadership contacted the state and pointed out the historical community and population of current residents are not homogeneously synonymous with the BCCM tribe, and that the Isle de Jean Charles community is composed of a diverse peoples inclusive of BCCM tribal members, UHN tribal members, individuals with ties to both tribes, and those who claim no tribal affiliation. Subsequent to the UHN's claim, the state conducted its own inventory of on-Island conditions, including an initial census of households and initial engagement activities. These findings, outlined in a November 2016 report on initial [Data Gathering and Engagement](#), noted, "...some residents maintain UHN membership. At least two residents are unsure about which organization they belong to. During our interviews, residents did not bring up tribal distinctions and more often noted that everyone on the Island is related" (page 18).

Moreover, as part of this initial engagement effort, the state specifically asked Island residents about their participation in and knowledge of previous resettlement planning efforts. The report states, "Of the 20 residents who responded, 16 had heard about the previous visioning efforts. Of the 16 who heard about it, four said they attended a community meeting. Of these four, two indicated that they were observers and not participants in the work (the other two did not indicate one way or the other). Of the 12 who heard about previous visioning efforts but did not participate, 10 heard about it from other community members and two heard about it from Chief Albert" (page 21). Following this initial engagement effort, the state proceeded in conducting the "community-led" planning effort described in its Phase II submission, with specific emphasis on empowering Island residents living in the specific location at greatest risk, adopting the location-specific approach outlined and described in detail in both Phase I and Phase II submissions.

In facilitating a community-led planning effort, the state has conducted an exhaustive and unprecedented engagement effort. This effort has been punctuated by weekly on-Island, in-home consultations with Island residents, and has encompassed five separate community meetings – three of which were held on the Island itself, with the remaining meetings held just off the Island in Montegut and Pointe Aux-Chenes. Additionally, the resettlement's design team has conducted three design workshops, co-designing specific site elements hand-in-hand with the Isle de Jean Charles community. Finally, as a mechanism to guide the planning process as a whole, a steering committee was formed and convened on six occasions. This steering committee included five Island residents, a representative from both BCCM and UHN tribal councils, a representative from Terrebonne Parish government, and a representative from the Governor's Office of Indian Affairs. Plans described within this Amendment and in greater detail on the project's website, www.isledejeancharles.la.gov, reflect this inclusive, exhaustive, and detail-oriented planning process.

In addition, the state hosted weekly calls throughout 2016 and bi-weekly calls throughout 2017 with BCCM and UHN tribal members and leadership and has attended numerous BCCM and UHN tribal council meetings, all oriented as open-ended outlets to provide input and guidance regarding all aspects of the Isle de Jean Charles resettlement project. BCCM leadership was specifically vocal – and influential – in the project's site selection, with the state having recently completed the purchase of the BCCM tribal leadership's preferred resettlement site.

However, the state must also remain mindful of the Island's non-homogeneous population. Regarding BCCM and UHN tribes, only one Island resident is an active member of either tribal council. In most cases, those tribal council members with direct ties to the Island moved off of the Island – and to locations that are higher, drier, and safer than the Island – decades ago. More importantly, several Island residents have voiced specific concerns regarding their participation in the project should the project's resources, or the new Isle de Jean Charles community, end up under the direct control of either tribe's leadership. As the specific population at highest risk, the state must prioritize the input of the Island's residents.

On the issue of tribal sovereignty, the state cannot recognize the BCCM or UHN as a sovereign tribal community as doing so would constitute a significant and inappropriate overreach. Neither tribe has been federally recognized by the Bureau of Indian Affairs (BIA), the entity with the responsibility to recognize tribal sovereignty within the United States. Regarding the BCCM, specifically, the state must adhere to its own legal description of the tribe stated in Senate Concurrent Resolution No. 105, as adopted by the Louisiana State Legislature. SCR No. 105 clearly states its intent to “formally reacknowledge (sic) the Indian ancestry of members of the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogees (“BCCM”)... for the sole purpose of qualifying for Indian education and health care benefits due these Native American citizens.”

The state contends it has conducted itself in good faith, working hand-in-hand with the Isle de Jean Charles community, to develop a plan for a new home for Isle de Jean Charles that directly reflects the wishes and desires expressed by that community. In this sense, the state believes the plan, when constructed, provides every opportunity to support tribal aspirations, preserve cultural heritage and improve tribal economic conditions. Current development plans include a Community Center with capacity for museum exhibits documenting the Island's Native American history, Park Facilities, Festival Grounds on which Pow Wows can be conducted, and a Marketplace. All represent examples of this good faith approach in the planning effort for a new Isle de Jean Charles community. Moreover, regarding the proposed Community Center, specifically, OCD has revised this amendment to clarify its intention to build the center. The amendment now reads, “The state will use program funding to make infrastructure improvements necessary for the development of the new community to include, but not limited to: a community center, streets, sewerage, water and other utilities, sidewalks, parks, etc. If funding is available, the program may also construct additional public facilities.”

However, it is essential the Resettlement's direction emphasizes residents' self-determination first and foremost. The residents of Isle de Jean Charles have consistently maintained their desire to make individual choices and have consistently affirmed their right to self-determination apart from the wishes or desires of either tribe's leadership. As such, while the state believes the project can and should benefit the broader interests of both BCCM and UHN tribes, the new community cannot be developed to the exclusive benefit of either. Moreover, while this response illustrates the state's position as to why the project should not be to the exclusive benefit of either tribe, it is also imperative to highlight that the project cannot be to the exclusive benefit to any group in a manner inconsistent with Fair Housing Act (FHA) requirements, which prohibit housing discrimination on the basis of race, color, national origin, religion, sex, familial status, or disability.

As fundamentally vital stakeholders to the Isle de Jean Charles resettlement, the state believes both BCCM and UHN tribes should have use rights to the areas referenced above, including the Community Center/Museum, Pow Wow Grounds/Festival Space, and Marketplace. The state welcomes further discussion as to what appropriate – yet non-exclusive – use agreements may entail. Additionally, and again in recognition of the reality both BCCM and UHN tribes are fundamentally vital stakeholders to the project, the state will continue to exhaust every effort to engage the tribes as partners and will continue to explore every viable opportunity to implement the resettlement project in a manner beneficial to both tribal

groups.

Finally, to clarify misconceptions regarding eligibility, all individuals and families who have been permanent residents of the Island at any point in time after August 28, 2012 – the date of Hurricane Isaac's landfall – are eligible to receive property improved with a new home regardless of whether they are renters or own homes on the Island. Former permanent residents of the Island, defined as those who can illustrate permanent residency on the Island prior to Isaac's landfall, are eligible to receive property within the new community, so long as they can illustrate financial ability to improve that property with a new home. This illustration of financial ability serves as a safeguard to ensure all of the homes in the new community are developed in a consistent manner and are constructed with a consistent level of quality, benefitting the community as a whole. To this end, the state is working with other partners and the local banking community to make this opportunity as accessible and affordable as possible to populations residing on the Island prior to August 28, 2012.

Thank you again for your input and interest in the Resettlement of Isle de Jean Charles. For current information on the Resettlement's status, please visit www.isledejeancharles.la.gov. Additionally, do not hesitate to contact OCD if you have any additional questions or comments regarding this initiative.

From: Patricia Ferguson <pafergus@asu.edu>

Sent: Tuesday, April 23, 2019 4:53 PM

To: OCDHUD <OCDHUD@LA.GOV>

Cc: pacitp1@aol.com; Donald Dardar (ddardar13@gmail.com) <ddardar13@gmail.com>; verdin1504 <verdin1504@yahoo.com>

Subject: Pointe-au-Chien Public Comment

I attach a public comment on behalf of the Pointe-au-Chien Indian Tribe.

Best,

Patty Ferguson-Bohnee

Appendix G

Office of Community Development

Disaster Recovery Unit

State of Louisiana

Division of Administration



JOHN BEL EDWARDS
GOVERNOR

JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

March 7, 2019

Chief Albert White Buffalo Naquin
Isle de Jean Charles-Biloxi-Chitimacha-Choctaw
100 Dennis Street
Montegut, LA 70377

Dear Chief Naquin:

Thank you for meeting with me at Parish President Dove's office on January 24, 2019 and for the information you provided on February 7, 2019 in response to my question at that meeting. I have addressed the concerns and statements in bold in the corresponding sections below:

1. In order to "enhance and support the tribal identity, sovereignty, and dignity," as stated in the State's successful application for NDRC funds, the state of Louisiana must agree to legally-binding terms of our partnership for the resettlement. These terms must include a clear mutually-agreed upon process for communication and decision making.

The Office of Community Development (OCD) supports a collaborative working relationship with the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogees Tribe, as demonstrated by OCD's past, present and future planning sessions, workshops and community meetings with residents, the steering committee and the tribal council. The state would need more information about any additional expectations for communication and decision-making before providing an answer to your request. However, the state will not enter into any agreement, legally binding or otherwise, that does not represent and consider the interests of all eligible community participants, as outlined by CDBG-NDR regulations and federal law.

2. The Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribe shall be respected by Louisiana's Office of Community Development as a sovereign tribal community. The 2004 Senate Concurrent Resolution #105 articulates the State of Louisiana's policy to support our tribal aspirations, preserve our cultural heritage, improve our economic condition and assist us in the achievement of our just rights. All members of the Tribe, and our tribal social organization, shall be considered rights holders to the funds awarded through the National Disaster Resilience Competition that are devoted to supporting the sovereignty, identity, dignity, and resilience of the Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribe. The funds were provided to the State of Louisiana to support our tribal aspirations, preserve our cultural heritage, improve our economic

condition and assist us in the achievement of our just rights through resettlement. We are the only ones in a position to determine how these are to be achieved.

OCD is not in a legal position to recognize a sovereign tribal community of the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans Tribe. There is no aspect of federal law or regulations regarding the administration of CDBG-NDR funds that would allow the state to recognize tribal sovereignty. Moreover, any attempt to do so would constitute an overreach of the specific parameters outlined in SCR No. 105.

SCR No. 105 clearly states its intent to “formally reacknowledge (sic) the Indian ancestry of members of the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans (“BCCM”)... for the sole purpose of qualifying for Indian education and health care benefits due these Native American citizens.”

The state has conducted an exhaustive outreach and engagement process that included the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans Tribe and its leadership. Subsequently, OCD has acted in good faith to develop a new community that supports the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans Tribe’s aspirations to co-locate previously displaced members in the new community—if its members so wish; to preserve its cultural heritage; and to improve its economic condition. Some examples of the state’s good faith include plans for a community center with capacity for museum exhibits; park facilities; festival grounds where Pow Wows can be conducted; and a marketplace.

Finally, the state is unclear about the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans Tribe’s expectations regarding recognition as ‘rights holders.’ The grant is not for the sole purpose of the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans Tribe; rather, the grant is intended to provide assistance to current and past residents of Isle de Jean Charles. That said, the state must act on behalf of all eligible community participants, without regard for tribal affiliation, in accordance with the state’s obligations to adhere to the federal Fair Housing Act and associated guidelines.

3. Land Ownership: To ensure a historically contextual community and our Tribe’s collective survival and resilience, The Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribe must maintain ownership of community property. The ownership should include but not be limited to Community Center, Tribal Museum, Park Facilities, Pow Wow Grounds, and Marketplace.

If the state were to grant this request, it would be acting in direct opposition to feedback received from Isle de Jean Charles residents and stakeholders, many of whom have stated on several occasions their unwillingness to be a part of the new community if the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans has ownership of community property. However, as an important stakeholder, the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans Tribe as a whole should have ‘use rights’ to many of the common spaces, including the community center, museum, Pow Wow grounds, festival space and marketplace. OCD welcomes continued discussion as to appropriate, but non-exclusive, use rights.

4. **Current Island Property:** The current Island Property is not a negotiating tool. No mortgages shall be placed on the Island property. The Island is ancestral property with deep significant cultural value, to which there are continuing obligations and relationships and should not be used as anything else.

The state understands the island holds an important sense of place for its current and former residents. As detailed in the state's application to HUD, it is critical to allow property owners continued access to the island for ceremonial, cultural, historic and recreational purposes.

When awarding the resettlement grant to the state, however, HUD agreed with OCD that high-risk conditions on Isle de Jean Charles make it unsafe for habitation. Therefore, it is not reasonable to use grant funds to relocate families from high-risk properties, only to allow those families to return to those high-risk properties for residential purposes. Not only would this place them in harm's way, it would create a potential need for more disaster recovery funding in the future.

Therefore, in order to provide continued access to the Island residents, while complying with HUD requirements, the state has created an innovative approach that allows owners continued access to their island properties. This approach allows existing structures to remain intact, while ensuring they are not used for residential purposes or future redevelopment. This is a significant departure from traditional HUD-funded relocation programs, which require the removal of all structures from vacated land and the land designated as permanent open space at the time of relocation.

To implement this innovative approach, the state has proposed two legal options for property owners to choose from in exchange for Resettlement assistance:

- **Option 1—A mortgage on the property; or**
- **Option 2—A deed restriction in the form of an easement, also known as a “servitude” under Louisiana law.**

These legal commitments will allow program participants continued ownership and use of island property for non-residential purposes, including recreational, cultural and historic purposes. Former and current island residents who are not island property owners but who are resettlement participants, will enter into a personal grant agreement that limits their use of island property to non-residential purposes. HUD has provided written guidance and an alternative requirement specifically for activities associated with the relocation of the residents of Isle de Jean Charles in the latest Federal Register Notice, which is attached for your review. HUD's approval of this innovative approach will provide property owners the opportunity to keep their island properties and existing structures for ceremonial, cultural, historic and recreational uses instead of requiring that the structures be immediately removed.

5. The “Isle de Jean Charles Biloxi-Chitimacha-Choctaw Tribe” shall be the name used for our Tribe in any further communication or documentation related to this resettlement. The use of

“Biloxi-Chitimacha-Choctaw” or “BCC” as a short-hand for our people is disrespectful and misrepresents our Tribe’s historical and present connection to our traditional homeland, the Island.

SCR No. 105 refers to ‘the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogees (“BCCM”)’. Henceforth, the state will use this recognized name and apologizes for any unintentional disrespect or misrepresentation caused by alternative references to the Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogees Tribe.

We encourage you to honor the United Nations Declaration of Rights of Indigenous Peoples

Article 25

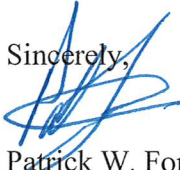
Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

The state acknowledges and respects the United Nations Declaration of Rights of Indigenous Peoples.

While the responses I have provided today don’t provide some of the things you’ve requested, we thank you for your input and hope to be able to continue to work closely together for the good of residents and former residents of the Isle de Jean Charles community.

Sincerely,


Patrick W. Forbes, P.E.
Executive Director

Below is an excerpt from the Federal Register Notice published on 02/19/2019 related to the CDBG-NDR funds made available to the State of Louisiana for the Resettlement of the Isle de Jean Charles Community. It can be found pages on 4838-4839 of the FRN. The FRN can be found at: <https://www.govinfo.gov/content/pkg/FR-2019-02-19/pdf/2019-02695.pdf>

4. Clarification that certain actions constitute part of new construction and disposition activities associated with relocation of the Isle de Jean Charles community (State of Louisiana only)

The Department awarded the State of Louisiana \$92,629,249 in CDBG–NDR funds, of which \$48,373,249 was to enable the community on the Isle de Jean Charles (IDJC) to relocate to a new and more resilient community. As part of this award, the State grantee will construct new housing on land it acquires for relocation purposes. This housing will be transferred to former residents of the Isle de Jean Charles community that relocate to the new community.

In its approved application for CDBG– NDR funds, the State noted that IDJC has experienced a 98 percent loss of land since 1955, with only 320 acres remaining of what was a 22,400-acre island in 1955. The State’s Phase 1 application notes that the island’s residents will relocate to a new community, but as long as the island itself exists, the residents will retain their property on the island for ceremonial, cultural, historic and recreational uses. The Phase 1 application also notes that the connecting road to the island will very soon be impassible and that access will then be available only by boat.

To implement the IDJC portion of its grant, the State of Louisiana has explored a variety of voluntary relocation assistance options to facilitate the movement of island residents to the planned new community. Both the State and IDJC community have indicated that to effectively relocate as many island residents as possible, it is critical to provide those residents with continued access to their property for ceremonial, cultural, historic and recreational uses for the finite remaining life of the island.

While it is important to permit the community’s continued access to the island for these limited purposes, it is also important to take reasonable measures to ensure that the land is no longer used for primary residences or otherwise developed in ways that frustrate the purposes of the grant to relocate the community to a safer area.

The current residents of the island will continue to own their property on the island. However, as a condition of receiving newly constructed housing, the State plans to restrict owners’ use of their former land on the island as a primary residence. The State indicates that it may need to record mortgage liens or limited real property interests such as easements or deed restrictions on the property of relocated island residents to restrict the use of the island land as a primary residence.

For this reason, HUD is clarifying that costs incurred by the State to establish and record mortgage liens or limited real property interests on the island to restrict the use of the land as a primary residence are eligible costs that may be charged to the grant as part of the State’s new construction and disposition activities to relocate island residents. HUD considers the costs incurred to restrict continued use of the island property as a primary residence to meet the same national objective as the new construction and disposition activities.

HUD is also clarifying that since the actions to limit use as a primary residence are undertaken as a condition of new construction and disposition activities to provide relocated residents with more resilient housing, the actions are not undertaken as part of acquisition activities that trigger buyout requirements.

The State should impose conditions on assistance to relocate island residents that are consistent with the purpose of the CDBG–NDR award. Specifically, the State should prohibit new construction, reconstruction, and major rehabilitation on the property and prohibit use of the property as a primary residence. CDBG–NDR funds may not be used for rehabilitation of structures on the island. However, if the State chooses to permit limited, minor rehabilitation of structures on the property with other, non-grant funds to allow for the continued interim use of the property for ceremonial, cultural, historic and recreational uses, the State should specify in its policies and procedures the allowable activities that would constitute a minor rehabilitation. Under the second homes prohibition established for all CDBG–NDR grantees in the June 7, 2016 notice (81 FR 36578), the State may not provide CDBG–NDR funds for rehabilitation of residential structures on the island.