

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL USA 16/2020

15 September 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 37/12, 37/8, 32/8, 43/14, 42/20, 41/15, 44/13, 34/35 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged failure of the United States of America to protect indigenous peoples who live along the coastal regions of Louisiana and Alaska from the impacts of natural hazards and the adverse effects of climate change, development projects and oil and gas exploration, affecting their rights to life, health, food, water, housing, a safe, clean, healthy and sustainable environment, self-determination, cultural and religious rights, and leading to the displacement of indigenous peoples from their traditional lands.

According to the information received:

Coastal indigenous tribes in the states of Louisiana and Alaska have been severely affected by the slow-onset adverse effects of climate change such as sea level rise and saltwater intrusion and resulting coastal land erosion, and extreme weather events such as hurricanes, storms and flooding. The environmental impact of the Mississippi River levee system and the destruction of wetlands caused by oil and gas exploration and drilling have also contributed to land erosion and subsidence in the region. Such events have endangered the subsistence and cultural traditions of these indigenous peoples, affecting their health, life and livelihoods, and have led to the loss of sacred ancestral homelands and the destruction of sacred burial

sites. As a result, these lands are becoming uninhabitable and many indigenous families have been forcibly displaced from their ancestral lands. Those who remain are at risk of disasters and displacement.

The Government of the United States of America has allegedly failed to support the affected indigenous tribes to identify and implement community-led adaptation strategies by failing to allocate resources, provide technical assistance, engage and consult with the affected indigenous tribes, thus placing them at existential risk. The Government has also allegedly failed to protect the tribes' historic and cultural sites through the existing historic preservation mechanisms, such as listing them on the National Register of Historic Places, despite the clear threats on indigenous historical and sacred sites.

The situation of the indigenous peoples in the coast of Louisiana

The information received relates to four Louisiana Tribes, namely: Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians of Louisiana (IDJC); Pointe-au-Chien Indian Tribe (PACIT); Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw Tribe; and the Atakapa-Ishak Chawasha Tribe of the Grand Bayou Indian Village. While the Atakapa-Ishak Chawasha Tribe of the Grand Bayou Indian Village lacks formal federal or state recognition, the other three are state recognized tribes and have been seeking federal recognition since the 1990s.

The traditional lands of these tribes are located in the following Parishes: Terrebonne Parish, Lafourche Parish and Plaquemines Parish – now commonly referred to as the southern Louisiana coast. The coastal region of Louisiana is one of the fastest eroding shorelines in the world. It is becoming submerged and disappearing as a result of sea level rise, extreme weather events and subsidence, leading to the displacement of indigenous peoples from their ancestral lands. The land mass of Isle de Jean Charles decreased by 98% between 1955 and 2015. Of the original 22,000 acres, the current habitable space on the island has reduced to 110 acres. The Louisiana Coastal Restoration and Protection Authority estimates that in the next 50 years sea level rise will increase from 2.85 feet to 4.85 feet in the Terrebonne Basin.

Sea level rise and coastal erosion have affected the tribes' subsistence lifestyle, which has traditionally been based on trapping, fishing, hunting and farming. Lands that were traditionally used for raising cattle, farming, gardening, agriculture or for residential communities or covered by forests are now under water. Saltwater intrusion has limited large-scale agricultural practices, destroyed forests and medicinal plants, rendered parts of their lands unusable for herding and trapping and made traditional gardening impossible. As a result, indigenous peoples are no longer able to maintain their subsistence lifestyle and are forced to purchase food from grocery stores.

Sea level rise and coastal erosion have also affected the tribes' cultural heritage and sacred ancestral sites. Impacted sites include the burial grounds of the Atakapa-Ishak Chawasha Tribe in the Grand Bayou Village and of the Pointe-au-Chien Indian Tribe in Pointe-au-Chien.

Because of the rising water and frequent floods, indigenous peoples are no longer able to live in their traditional dirt floor palmetto homes and have to live instead in homes raised 10-15 feet off the ground.

Recurrent natural hazards such as hurricanes and severe storms have had devastating impacts on the tribes, flooding communities, destroying thousands of homes, affecting agricultural practices and displacing indigenous peoples. The intensity and frequency of extreme weather events have increased dramatically over the past decades. Natural barriers that used to protect the southern Louisiana coast, such as barrier lands and wetlands, have become submerged and the flood protection systems that have been built over the past decades (such as the uncompleted Morganza-to-the-Gulf Flood Protection System or smaller levee systems) are insufficient to protect indigenous communities.

In addition to natural hazards, coastal erosion and subsidence are linked also to the Mississippi River levee system and the oil and gas industries. The Mississippi river is rich in sediment that used to be carried from far lands and deposited across its delta, building up new land and replenishing wetlands. The levee system built to prevent flooding has interfered with this ecosystem and the delivery of sediment to the area, thus contributing to land subsidence.

The oil and gas industry in southern Louisiana has severely impacted on the ecosystem and on the subsistence and traditional practices of indigenous peoples. This is as a result of extensive drilling, oil spills, and the construction of pipelines, canals and offshore platforms across lands traditionally occupied by indigenous tribes. Over 10,000 miles of canals were excavated across indigenous lands to serve oil and gas exploration, which has caused saltwater intrusion that has killed flora and destroyed the roots that hold the land together, thus leading to land erosion. Oil spills have also killed fishing stocks affecting the tribes' traditional subsistence fishing.

The combination of these events has also led to damage or destruction of housing and infrastructure, including sanitation and medical infrastructure, contamination of water supplies and an increase in disease transmission. Some indigenous families have been living in damaged and unsafe homes due to the lack of resources to repair them.

Government response in Louisiana

Indigenous peoples have allegedly not been involved or consulted in projects intended to protect Louisiana's coast from extreme weather events, and their lands

have often been neglected. The Morganza-to-the-Gulf Flood Protection System built to keep hurricane waves from breaking across the land excluded the Isle de Jean Charles from the area to be protected. A smaller flood control structure was later built around the Isle de Jean Charles but it is often breached by storms and hurricanes, inundating homes and forcing an evacuation. Grand Bayou is not protected by any levees, and the recent coastal restoration strategy in the Grand Bayou region did not involve or consult members of the Grand Bayou Atakapa-Ishak Chawasha Tribe and does not specifically target Grand Bayou Village. The Pointe-au-Chien village area will be included in the last segment of the Morganza-to-the-Gulf Flood Protection System but the lack of federal funding has hampered its construction, leaving the Pointe-au-Chien Indian Tribe exposed to flooding. Once completed, although the system is expected to protect Pointe-au-Chien village, it will exclude most of the tribe's traditional territory.

It is also alleged that the United States Government has systematically failed to support indigenous communities to rebuild their homes hit by disasters, such as in the aftermath of Hurricane Katrina in 2005 where requirements to qualify for financial aid discriminated against indigenous people who usually hold property collectively, and has failed to involve indigenous peoples in coastal protection and restoration projects. Following Hurricanes Katrina and Rita, the Coastal Protection and Restoration Authority was created by the Louisiana Legislature with federal funding to achieve comprehensive coastal protection and restoration. The Authority was tasked to collaborate with coastal partners to develop a master plan. Indigenous peoples have, however, not been included in the list of partners. Following the Hurricanes Gustav and Ike in 2008, the federal government provided funds to Louisiana for coastal protection and restoration projects to help communities recover and prepare to better withstand future hurricanes but no consultation process occurred with the tribes to determine how best to allocate these funds. After Hurricane Isaac in 2012, Terrebonne Parish allegedly used funding of a Community Development Block Grant to buy the damaged houses of indigenous people, often at undervalued prices, and sold them to developers who built vacation homes with private structures to protect against storms.

Despite the recurrent oil spills and the impact of the oil and gas industry on the environment and the tribes' livelihoods, health and cultural heritage, the state of Louisiana allegedly continues to permit unmitigated oil exploration with little oversight and poorly enforced regulations. Permits for the economic use of Louisiana's coastal zone are often granted without consideration of the impact of these activities on tribal livelihoods and cultural practices, and without the free, prior and informed consent of the indigenous peoples affected. The state of Louisiana has also allegedly failed to respond to the request of the Pointe-au-Chien Tribe to receive notice of the coastal zone permits applied for their territory. To date, neither the state of Louisiana nor the Federal Government have regularly consulted and ensured the representation of indigenous peoples in restoration projects following major oil spills, such as the 2010 Deepwater Horizon oil spill in which over 200 million gallons of oil were spilled into the

Gulf of Mexico with a devastating impact on Pointe-au-Chien, Isle de Jean Charles, Dulac, and Grand Bayou.

Since the decision adopted by the Isle de Jean Charles Tribal Council in 2002 to leave their ancestral lands and resettle elsewhere, the tribe has developed three resettlement plans. The federal, state and parish governments have, however, repeatedly failed to support their resettlement plans and have made amendments to the plans without consultation with the indigenous peoples.

The failure of the United States Government to grant federal recognition to the Louisiana indigenous peoples has also undermined their ability to respond to the climate impacts affecting them and to exercise their right to self-determination, as federal recognition is critical for their self-governance, access to federal resources and assistance designated for indigenous peoples, and ability to engage with the US Federal Government including its Emergency Management Agency. The state of Louisiana's failure to grant state recognition to the Grand Bayou Indian Tribe has also been problematic, as the state recognition acknowledges a tribe's continued existence, and grants access to educational programmes, scholarships and health care services targeted to indigenous communities. State recognition would also make them part of the Louisiana Indian Commission, and as such support their engagement with the Louisiana Governor's Office of Indian Affairs and parish governments to manage situations of emergency by.

The situation of the Kivalina Native community in the Alaska

The Native Village of Kivalina counts approximately 400 members of the Inupiaq indigenous people and is a federally recognized tribe. The tribe resides on a barrier reef island between the Chukchi Sea and the mouths of the Wulik and Kivalina Rivers. This island was historically used by the tribe for seasonal hunting and fishing, not permanent habitation. The community moved there after a school was built on the island in 1905 and the people in the region were threatened with imprisonment if their children did not attend school.

The accelerated warming of the Arctic region has led to higher temperatures along the northern Alaskan coast, warmer oceans, decreased seasonal sea ice and thawing permafrost and has exacerbated the erosion of the Kivalina Island. The thawing of the permafrost that underlies Alaska has led to ground collapse, affecting the structural integrity of infrastructure. The loss of arctic sea ice, which used to function as a natural storm barrier for coastal communities, has exacerbated the impact of storms and waves on these communities resulting in increased flooding, especially during the late fall and early winter storm season, and placing the community at risk of disasters. As the island is only accessible by small planes or boats, there are no safe evacuation routes during storms. The combination of flooding, erosion and thawing permafrost can lead to catastrophic land collapse, called *usteq*.

These events threaten the tribe's housing, subsistence and cultural heritage. In Kivalina, the tribe has traditionally sustained itself through subsistence hunting of marine mammals, fishing and gathering, which involves the use of frozen rivers and sea ice as roads during winter. Walrus hunts, however, have not been successful for fifteen years and hunters have not seen beluga whales since 1989. Due to reduced sea ice, traditional seal hunting has no longer been possible either. Two of the tribe's historic ice cellars now flood with water then freeze, making them unusable. The rising water temperature has also threatened fish stocks and marine mammals on which communities depend, and many species have been washing up dead along the coast of Alaska. As a result, the tribe has been unable to sustain their traditional practices and has had to rely on western food flown into the island, which is generally unaffordable. Extreme weather events, sea level rise and flooding have also damaged or destroyed rainwater storage tanks, water treatment plants and sanitation systems, and contaminated water supplies with saltwater and human waste leaked from damaged sanitation systems, impacting the tribe's access to safe drinking water. With land loss and the decreasing liveable space, Kivalina is now overcrowded with several families sharing housing, which often lacks adequate water and sanitation facilities. As an airstrip was built adjacent to their burial site, a revetment built by the Federal Aviation Administration to protect the airstrip has also offered partial protection to their traditional burial site but it is expected that the rising sea will eventually wash the burial site away along with the remains of about 400 people buried there.

Given the catastrophic environmental impacts that have threatened the lives and livelihoods of Alaskan indigenous peoples and which have made Kivalina a dangerous place to live, the community of Kivalina has decided that the relocation of their entire community is their best long-term adaptation strategy. The community has, however, lacked the necessary support to be able to relocate.

Government response in the Alaska

The Native village of Kivalina has been trying to relocate since 1992 without success. Twice the tribe voted and selected a relocation site (Igrugaivik was chosen by the community in 1998, and Kiniktuuraq in 2000) but the Army Corps of Engineers (USACE) rejected their choice on grounds that it would not be cost effective to shore up the relocation site against permafrost melt and other impacts of climate change. A protective barrier has been partially built in 2009-2010 but was not completed due to lack of funding. The State of Alaska has engaged with the community of Kivalina in a planning process which resulted in the Kivalina's Strategic Management Plan, published in 2016. The Plan acknowledges the impacts of natural hazards on the community, dealing with adaptation, resilience and relocation. The Kivalina Inter-Agency Planning Working Group was established during the development of the Plan and continued to meet after the plan was completed to help Kivalina implement the strategic actions identified in the Plan. The construction of a school access/evacuation road began in summer 2019 across the lagoon out of Kivalina and to Kisimigiuqtuq Hill (the potential

school site). State and federal government agencies, however, have repeatedly failed to facilitate a community relocation process due to the lack of an appropriate governance framework and funding.

While we do not wish to prejudge the accuracy of these allegations, we express our utmost concerns about the effects of the climate crisis on the human rights of the indigenous peoples of Louisiana and Alaska, in particular their rights to life, health, food, safe drinking water, sanitation, housing and education, their right to a safe, clean, healthy and sustainable environment and their cultural rights, and their collective rights as indigenous peoples such as their right to self-determination, to their traditional lands, territories and resources, and to engage in their cultural and religious practices. We are equally concerned about the environmental impacts of the oil and gas exploration in the Louisiana coast and of the Mississippi River levee system, which have also severely affected the human rights of indigenous peoples in the area, without their free, prior and informed consent. We express our strong concerns about the displacement of indigenous peoples from their ancestral lands triggered by the loss of land, ecosystems and biodiversity resulting from these events and recurrent disasters. We are extremely concerned also that these indigenous peoples are currently at risk of further disasters and displacement and that the violation of their rights is aggravated by the impact of COVID-19, which has disproportionately affected indigenous peoples across the United States.

We further express our concerns that the Government of the United States of America at the federal and state levels seems to have taken measures without the inclusion and full participation of the affected indigenous peoples and have as a result failed to provide them with sufficient protection.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the measures taken by the Government of the United States of America, and any future measures envisioned, to work with the above-mentioned tribes to find solutions to protect the affected indigenous peoples from forced displacement linked to climate change and disasters and to the above-mentioned development projects and oil and gas exploration, including climate change mitigation and adaptation strategies, and disaster risk reduction. Please provide information on measures taken or contemplated to ensure the right to relocate, of the affected indigenous peoples, and specifically on the resettlement, relocation and compensation

plans of the Native Village of Kivalina and the Isle de Jean Charles tribes in conformity with international law.

3. Please provide information on steps taken to respect, protect and fulfil the rights of indigenous peoples to life, health, food, safe drinking water, sanitation, housing and education, their right to a safe, clean, healthy and sustainable environment and their cultural rights, and their collective rights such as their right to self-determination, to their traditional lands, territories and resources, and to engage in their cultural and religious practices in the face of growing climate impacts.
4. Please provide information on the measures taken by the Government of the United States of America, and any future measures envisioned, to support the affected indigenous peoples own decisions regarding their needs for humanitarian assistance and protection in relation to their displacement linked to the above-mentioned events, and to support durable solutions for them.
5. Please provide also information on the measures taken, and any future measures envisioned, to include the full participation of the above-mentioned tribes in all decision-making affecting them and to obtain their free prior informed consent to any projects that affect their lands and territories.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would appreciate receiving a response within 60 days. After this deadline this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Michael Fakhri
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Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

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Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We would like to refer your Excellency's Government to the 1998 Guiding Principles on Internal Displacement, which establishes that all authorities shall respect their obligations under international law, including human rights and humanitarian law, to prevent and avoid conditions that might lead to the displacement of persons. We moreover stress that according to the Guiding Principles, every human being shall have the right to be protected against being arbitrarily displaced from his or her home (Principle 6). We would like to particularly draw your attention to Principle 9, which highlights that States are under a particular obligation to protect against the displacement of indigenous peoples and minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

It is necessary that those persons internally displaced are assisted and supported by the government until such time that they achieve durable solutions. Principles 18(2) and 24-27 identify the rights and obligations regarding the provision of humanitarian assistance to internally displaced persons. Competent authorities have the primary duty and responsibility to support durable solutions for internally displaced persons, i.e. their safe, voluntary and dignified return to their places or origin, their resettlement elsewhere in the country or their local integration, including assistance to recover their property and possessions which they left behind (Principles 28-30). Where recovery of such property is not possible, internally displaced persons should receive appropriate compensation or another form of just reparation (Principle 29(2)). Principle 28 provides that special effort should be made to ensure the full participation of internally displaced persons in the planning and management of their return, resettlement and reintegration. In regard to the requirement to ensure durable solutions for internally displaced persons, we furthermore recall the provisions of the IASC Framework on Durable Solutions for Internally Displaced Persons.

We would like to bring to the attention of your Excellency's Government Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR), which provides for the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions. While your Government has signed but not yet ratified the ICESCR, article 18 of the Vienna Convention on the Law of Treaties obliges your Government to not take actions which defeat the object and purpose of the ICESCR. As explained by the Committee on Economic Social and Cultural Rights in its General Comment 12, the right to food includes "the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights”.¹

With respect to article 11(1) of the ICESCR, we would also like to refer your Excellency’s Government to General Comment No. 4, of the Committee on Economic, Social and Cultural Rights, in which the Committee affirmed that the right to housing includes legal protection against forced evictions, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection. It also declared that forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances.

Also in relation to article 11(1) of the ICESCR, the Committee stated in its General Comment No. 7 on forced evictions, that indigenous peoples suffer disproportionately from the practice of forced eviction. Therefore, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties must also see to it that all the individuals concerned have a right to adequate compensation for any affected property. Forced evictions are only permissible under international human rights law in exceptional circumstances and after all procedural protections have been met. This includes *inter alia* the exploration of all feasible alternatives to avoid evictions, genuine consultation with the affected residents and tenants, adequate and reasonable notice, adequate compensation for any loss of property, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights (paragraphs 13, 15 and 16).

Similarly, we wish to refer to the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1), which specify that evictions can only take place in 'exceptional circumstances'; that they must be authorized by law, and ensure full and fair compensation and rehabilitation. The Guidelines also state that any settlement agreement must satisfy the criteria of adequacy, accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. Among other safeguards, the Guidelines state that States must ensure that adequate and effective legal or other appropriate remedies are available to all those who undergo, remain vulnerable to, or defend against forced evictions. In addition, we would wish to refer your Excellency's Government to the Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43) elaborated by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, notably guideline no. 6 “Prohibit forced evictions and prevent evictions whenever possible”.

¹ CESCR, General Comment no. 12, para 8.

In a report to the United Nations General Assembly (A/74/183), the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, called Member States to declare a moratorium on forced evictions affecting indigenous peoples, until national legislation governing eviction and resettlement has been adopted that is fully compliant with international human rights standards and that allows for recourse before independent judicial institutions. The Special Rapporteur also stated that, prior to carrying out any evictions, States must ensure that all feasible alternatives are explored in consultation with the indigenous communities affected. Indigenous peoples must not be rendered homeless as a result of evictions, nor should they be made vulnerable to the violation of other human rights. Where the affected communities are unable to provide for themselves, States should take all appropriate measures, to the maximum of its available resources, to ensure access to adequate alternative housing, resettlement or access to productive land, as appropriate. States should also monitor and prevent forced evictions carried out by private persons or other third parties.

We recall the explicit recognition of the human rights to safe drinking water by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of ICESCR. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

Furthermore, the UN General Assembly (resolution 70/169) and the Human Rights Council (resolution 33/10) recognized that water and sanitation are two distinct but interrelated human rights. In particular, we recall explicit recognition that “the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living”.

Cultural rights, including the right of all to take part in cultural life without discrimination, the right to access and enjoy cultural heritage, and the right to engage in one’s own cultural practices, are guaranteed by many provisions of international law. Such provisions include article 27 of the Universal Declaration of Human Rights; article 15 of the International Covenant on Economic, Social and Cultural Rights; and related provisions of the International Covenant on Civil and Political Rights.

Specific standards apply to the cultural rights of indigenous peoples. For example, The UN Declaration on the Rights of Indigenous Peoples establishes, in article 31, that “indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, [and] knowledge of the properties of fauna and flora.”

In her forthcoming report to the General Assembly for 2020, the Special Rapporteur in the field of cultural rights argues that the impact of climate change on cultural rights must be addressed as a matter of priority, and asserts that many of the most at-risk populations, including indigenous peoples, face the real threat of cultural extinction due to climate impacts which are not being appropriately addressed by governments. She recommends that states “[p]rioritize the need for an especially urgent, effective and concerted global effort to prevent the cultural extinction of populations facing particular threats from the climate emergency, such as those in polar and coastal regions, including indigenous peoples, and those living in small island states” and also calls on states to “[g]uarantee that all climate action and initiative is taken in coordination with, and with the participation of indigenous peoples, and directly affected local groups.”

We furthermore wish to refer to additional provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. In particular, we would like to recall article 25 of the Declaration, which states that 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.

Furthermore, Article 32 states that ‘indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources’ and 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 and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources’. Article 32 also affirms that ‘States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact’.

In addition, Article 10 of the Declaration affirms that indigenous peoples ‘shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.’

We would also like to refer to the provisions of the UN Framework Convention on Climate Change, and in particular the Paris Agreement, to which your Excellency’s Government continues to be bound to until 4 November 2020. Article 3(3) of the United Nations Framework Convention on Climate Change requests Parties to take precautionary measures to anticipate, prevent or minimize the causes of climate change

and mitigate its adverse effects. The Paris agreement acknowledges that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, including the rights of indigenous peoples and local communities among others. Article 7(5) states that any adaptation action by Parties should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions.

We would like to underline additional existing standards and instruments including, the Declaration on the Rights of Indigenous people and, in particular its article 20 which provides indigenous peoples “the right to maintain and develop their political, economic and social systems or institutions,” as well as article 15, the Declaration on the rights of peasants, A/RES/73/165 on the right to adequate food. In addition, we would like to highlight article 14 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which provides that “The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.(...) “and article 23 specifying that “Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted”.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by the United States in 1994, guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equal treatment before tribunals and all other organs administering justice. We would like to recall your Excellency’s Government that any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life constitute racial discrimination (Article 1). The Convention also requires States to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination (Article 2.1). It further obliges States to take special and concrete measures in the social, economic, cultural and other fields, to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms (Article 2.2).

Furthermore, CERD in its General Recommendation No 23 reiterates State’s obligation to provide indigenous peoples with conditions allowing for a sustainable

economic and social development compatible with their cultural characteristics, raising deep concerns that indigenous peoples are discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. We would like to bring to the attention of your Excellency's Government that Article 4 of General Recommendation No 23 in particular highlights equal rights of indigenous people in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.