

# THE IMPACT OF CLIMATE CHANGE ON THE CULTURAL IDENTITY OF INDIGENOUS PEOPLES AND THE NATION'S FIRST "CLIMATE REFUGEES"

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*I am convinced that climate change, and what we do about it, will define us, our era, and ultimately the global legacy we leave for future generations. Today, the time for doubt has passed.*

– U.N. Secretary-General Ban Ki-moon<sup>1</sup>

*The people of the world cannot continue to ignore Aboriginal Indigenous Peoples, the Natural System of Life, the Natural Law and our connection with All Life.*

– Indigenous Elders and Medicine Peoples Council  
Statement, United Nations Convention on Climate  
Change COP21, Paris, France 2015<sup>2</sup>

## *I. Introduction*

Whether it is your childhood home, town you grew up in, or state you were born, there is a sense of attachment to the locations and places that shape who we are and the memories made there. Some can trace back their roots to a town for a few decades, others several generations. For Indigenous people groups, the ties to the land and environment go deeper than mere connection to place. Their land provides not just memories of their past but also provides a sense of purpose, belonging, sustenance, and cultural significance that encompasses who they are. It is sacred and to be protected at all costs. But for many Indigenous peoples, their sacred land is under threat and at risk of disappearing. Global climate change is causing disastrous effects around the world, including land loss, rising sea levels, and more frequent and longer periods of extreme heat. These effects are not temporary; just as the current

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1. Ban Ki-moon, U.N. Sec'y Gen., Secretary-General's Address to High-Level Event on Climate Change (Sept. 24, 2007), <https://www.un.org/sg/en/content/sg/statement/2007-09-24/secretary-generals-address-high-level-event-climate-change>.

2. *Indigenous Elders and Medicine Peoples Council Statement: United Nations Convention on Climate Change COP21, Paris, France, 30 November 2015–11 December 2015*, 10 J. FOR STUDY RELIGION, NATURE & CULTURE 255, 257 (2016) <https://journal.equinoxpub.com/JSRNC/article/view/4970/5283>.

rate of greenhouse emissions is on the rise, the global temperatures are expected to continue rising.<sup>3</sup> While many of us in the United States have not seen the immediate effects of climate change, Indigenous people groups are some of the first to face the fatal impacts. Tribal communities are often situated in remote and coastal areas making rising sea level and changing temperatures disastrous for their livelihood and self-determination. Alaskan Native villages and tribes located on coastal Louisiana are forced to decipher how to protect their communities and culture while making decisions to either adapt and mitigate the damage, or migrate as their land is disappearing before their eyes. Although tribes are the first dealing with climate change, they are the last invited to participate in climate conversations on the federal and global level. Where they seek to lead by creating partnerships and influencing federal climate policy, their sovereignty is disrespected and has routinely been excluded.

This Comment focuses on the desperate impact of climate change on Indigenous peoples groups' right to self-determination, culture, traditional knowledges, and protection of these rights under the federal trust responsibility. The federal government can change course and uphold its responsibility to Indigenous people groups by passing the Respect Act; implementing protocols for tribal consultation; incorporating tribal lead adaptation and mitigation strategies; and recognizing the need for a federal framework for climate migration.

First, Part II discusses the history of the federal-tribal relationship and its impact on tribal sovereignty. Tribal self-determination is the ability for tribes to have autonomy over their land and people; therefore, the effects of climate change fall directly on tribes, which can severely impact a tribe's welfare. Part III explains the disparate impact that climate change has on tribes. Part IV examines the United States' first climate refugees and the conflicting goals of tribal and state leadership. Part V analyzes the legal and political responses from the Choctaws and other tribal communities including the potential human rights violations that are occurring. Part VI seeks to provide solutions involving tribal lead adaptation and mitigations strategies that start with a cohesive federal plan involving representation of tribes at all levels of discussion. Lastly, Part VII offers closing remarks and challenges the federal government to formulate solutions by including Indigenous voices. This Comment highlights in detail the issues that the Choctaws are facing as our nation's first climate migrants with the understanding that it does not end

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3. *The Effects of Climate Change*, NASA: GLOB. CLIMATE CHANGE, <https://climate.nasa.gov/effects/> [<https://perma.cc/557H-SGR2>] (last updated Mar. 7, 2023).

with them—the Alaskan Native villages are next, the Navajo Nation in the Southwest is next, the Quileute Nation in the Pacific Northwest is next. Everyone is next to face the impacts of climate change.

## *II. History Leading to the Federal Trust Responsibility*

### *A. The Development of Federal Indian Law*

American Indians have endured a rocky history with the United States from the moment the country was founded. For instance, although it has recognized a relationship between sovereign nations, the United States has also instituted policies driven to deprive Native peoples from their personhood.<sup>4</sup> When writing the Ordinance of 1787, the Confederation Congress determined it was in its best interest to make treaties and agreements with Indian tribes.<sup>5</sup> This was later confirmed by the Commerce Clause of the U.S. Constitution, which gave Congress control over commerce “with the Indian Tribes.”<sup>6</sup> The Commerce Clause comprises three individual clauses—(1) the Indian Commerce Clause, (2) the Foreign Commerce Clause, and (3) the Interstate Commerce Clause—that regulate commerce with three separate sovereign bodies—Indian tribes, foreign nations, and states.<sup>7</sup> The Commerce Clause’s purpose was to be a positive grant of power to the federal government and an “implied limitation” of state power.<sup>8</sup> Even with this positive grant of power, there was confusion across the country on how to best handle Indian relations.

This confusion laid the foundation for the Marshall Trilogy of Supreme Court decisions, written by Chief Justice John Marshall, that effectively dehumanized Indian people and diminished their rights.<sup>9</sup> The first of three foundational Marshall decisions is *Johnson v. M’Intosh*, which established that aboriginal title did not mean ownership and that Indian people only have the right to occupy the land as allowed by the federal government.<sup>10</sup> Marshall characterized Indian people as an “inferior race . . . without the privileges of

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4. Geoffrey D. Strommer & Stephen D. Osborne, *The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act*, 39 AM. INDIAN L. REV. 1, 8 (2014-2015).

5. See Northwest Ordinance of 1787, ch. 8, art. III, 1 Stat. 50, 52 n.(a).

6. U.S. CONST. art. I, § 8, cl. 3.

7. Robert N. Clinton, *The Dormant Indian Commerce Clause*, 27 CONN. L. REV. 1055, 1059 (1995).

8. *Id.* at 1059–60.

9. Alexis Zendejas, *Deserving a Place at the Table: Effecting Change in Substantive Environmental Procedures in Indian Country*, 9 ARIZ. J. ENV’T L. & POL’Y 90, 94 (2019).

10. *Id.* at 94–95.

citizens.”<sup>11</sup> The second key Marshall decision is *Cherokee Nation v. Georgia*, which differentiated tribes from foreign nations and, instead, classified them as “domestic dependent nations” resembling “that of a ward to his guardian.”<sup>12</sup> Lastly, in *Worcester v. Georgia*, the Marshall Court solidified that a state’s power was limited, and the federal government exercised exclusive power over Indian nations.<sup>13</sup> The three aforementioned cases create a three-pronged framework that summarized the scope of the federal-tribal relationship: “(1) the federal government has a duty to protect Indian nations, (2) Indians have inherent sovereignty but they are subject to federal authority, and (3) the federal government has plenary power over Indian nations.”<sup>14</sup>

During the Marshall Trilogy of Supreme Court decisions, President Andrew Jackson signed the Indian Removal Act of 1830 to promulgate westward expansion.<sup>15</sup> The Removal Act forced many tribes west into reservations and brought with it the threat and reality of lives lost along the way.<sup>16</sup> Post-removal, the United States transitioned into the Reservation Era. In the Reservation Era, Indian people were heavily policed and reliant on food rations from federal agents.<sup>17</sup> After the Reservation Era, the Allotment Era began with the passage of the Dawes Allotment Act of 1887 (Dawes Act).<sup>18</sup> The Dawes Act allotted tracts of reservation land to individual tribal members.<sup>19</sup> The Act purported to allocate property ownership to individuals instead of the tribes to effectively destroy tribal communities and culture.<sup>20</sup> However, this initiative to end tribal culture could not overcome the Marshall Court’s framework for the federal-tribal relationship and tribal sovereignty.<sup>21</sup> Before the Allotment Era concluded, the Bureau of Indian Affairs (BIA), solidified by the Snyder Act of 1921 (Snyder Act), arose to oversee the life of tribal citizens.<sup>22</sup> The Snyder Act expanded areas such as education,

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11. *Johnson v. M’Intosh*, 21 U.S. (8 Wheat.) 543, 569 (1823).

12. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831).

13. *See Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

14. Zendejas, *supra* note 9, at 96.

15. Ch. 148, 4 Stat. 411 (1830).

16. Zendejas, *supra* note 9, at 97.

17. *A Brief History of Civil Rights in the United States: The Reservation Era (1850 - 1887)*, HOWARD UNIV. L. LIBR., <https://library.law.howard.edu/civilrightshistory/indigenous/reservation> [<https://perma.cc/7D8C-M9L2>] (last updated Jan. 6, 2023).

18. Zendejas, *supra* note 9, at 97.

19. *Id.*

20. *Id.*

21. *Id.*

22. Strommer & Osborne, *supra* note 4, at 14.

healthcare, and employment under BIA control.<sup>23</sup> Thereafter, the BIA undertook a paternalistic role in overseeing the administration of these reservation services and activities.<sup>24</sup> Ultimately, the Marshall Court's ideas, Indian removal, reservations, and allotment all led to the right of self-determination; however, the legislature continued to "flip-flop" on policy.

### *B. Tribal Self-Determination*

In 1934, thirteen years after the Snyder Act was enacted, the Indian Reorganization Act (Reorganization Act) was passed, which formally ended allotment and gave the remaining reservation land to the tribes.<sup>25</sup> The Reorganization Act aimed to restore tribal self-governance through the adoption of tribal constitutions and bylaws.<sup>26</sup> The Reorganization Act did not expand tribal powers, but instead promoted reliance on tribal self-governance and lessened the federal government's paternal role over tribes.<sup>27</sup> Unfortunately, the Reorganization Act was not the end of the federal government's routine stripping of Indian rights. In the 1950s, the federal government passed fourteen acts to neutralize the Reorganization Act and terminated the federally recognized status of over 100 tribes.<sup>28</sup> This was another tactic and attempt by the federal government to weaken tribal sovereignty, force assimilation, and end tribal culture.

Finally, in 1959, Indian tribes received an efficacious outcome in the Supreme Court's holding in *Williams v. Lee*, which re-established the principals of respect to tribal sovereignty as "distinct communities . . . under Federal . . . jurisdiction" from *Worcester*.<sup>29</sup> *Williams* gave tribes momentum to launch a new era of tribal self-determination. Sixty-seven tribes came together and adopted the "Declaration of Indian Purpose" as a declaration to change the federal-tribal relationship and increase tribal self-governance.<sup>30</sup> The Declaration of Indian Purpose called for tribal participation with the

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23. *Id.*

24. *Id.*

25. CONF. OF W. ATT'YS GEN., *The Indian Reorganization Act and Subsequent Legislation: 1934 to the Present*, AMERICAN INDIAN LAW DESKBOOK § 1:13 (May 2022 update), AILDKBK § 1:13 (Westlaw) [hereinafter *Reorganization Act*, DESKBOOK].

26. *Id.*

27. *Id.*

28. *Id.*

29. Mark Allen, Comment, *Native American Control of Tribal Natural Resource Development in the Context of the Federal Trust and Tribal Self-Determination*, 16 B.C. ENV'T AFF. L. REV. 857, 864 (1989).

30. *Id.* at 865.

federal government to solve problems and improve tribal independence.<sup>31</sup> Tribal self-determination was bolstered with the enactment of the Indian Civil Rights Act of 1968, which promoted Indian self-governance through federal policy.<sup>32</sup> This policy was later solidified by the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA).<sup>33</sup> The ISDEAA required several federal agencies to contract with tribes for essential services, such as health care and education.<sup>34</sup>

Other important legislation that has worked to promote Indian self-governance includes the (1) Indian Financing Act (1974), (2) Indian Child Welfare Act (1978), and (3) Indian Gaming Regulatory Act (1988).<sup>35</sup> Specifically, through the Indian Financing Act of 1974, Congress provided capital to develop Native resources to a point where tribes can “enjoy a standard of living” from their own efforts.<sup>36</sup> The Indian Child Welfare Act of 1978 promoted tribal self-governance, because, in recognizing the federal responsibility, it elevated the importance of maintaining stable tribal communities by prioritizing child placement with tribal members.<sup>37</sup> Lastly, the Indian Gaming Regulatory Act of 1988 created a basis for tribal gaming operations, which encouraged tribal self-governance by economic self-sufficiency.<sup>38</sup>

### C. The Federal Trust Responsibility

An understanding of the evolution of federal Indian law is necessary to fully comprehend the development of the federal trust responsibility. In *Seminole Nation v. United States*, the Supreme Court defined the federal government’s trust responsibility as “the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people.”<sup>39</sup> The obligation of responsibilities imposes fiduciary duties on the federal government.<sup>40</sup> Enforcement of the fiduciary

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31. *Id.*

32. *Id.* at 866.

33. *Id.*

34. *Reorganization Act*, DESKBOOK, *supra* note 25.

35. *Id.*

36. Pub. L. No. 93-262, § 2, 88 Stat. 77, 77.

37. Pub. L. No. 95-608, § 105, 92 Stat. 3069, 3073 (codified at 25 U.S.C. § 1915), *invalidated by* *Brackeen v. Haaland*, 994 F.3d 249 (5th Cir., Apr. 6, 2021).

38. Pub. L. No. 100-497, § 3, 102 Stat. 2467, 2467.

39. 316 U.S. 286, 296 (1942).

40. *Id.* at 297.

duties is often examined under a breach of trust for mismanagement or neglect of tribal trust resources.<sup>41</sup>

If a breach of the trust responsibility is found, the courts can award monetary or equitable relief damages, or both. In *Seminole Nation*, the Court held that paying money to a fiduciary with knowledge that the fiduciary intended to misuse the money was a breach of trust that warranted monetary damages payable to the individual tribal members.<sup>42</sup> Alternatively, in *Pyramid Lake Paiute Tribe of Indians v. Morton*, the court found that the federal government breached its duty to the Paiute Tribe when it diverted water from a river that supplied water for a reservation lake to an irrigation district.<sup>43</sup> As a result, the court granted equitable relief in the form of a mandatory injunction requiring the government to create and implement a plan to assure the delivery of water back to the Paiute Tribe's Reservation.<sup>44</sup>

When a federal agency acts, it has the responsibility to consider the impacts to trust resources while balancing statutory mandates.<sup>45</sup> Trust responsibly requires the highest level of protection of "treaty rights, land, assets, and resources."<sup>46</sup> To provide these protections, the trust responsibility also requires consultation with the tribes on any policies that have tribal implications.<sup>47</sup> Practically, consultation is not only good law, but it is also good policy for management and governance.<sup>48</sup> For example, tribal opposition to federal projects on or near tribal land can substantially hinder the cost and completion of the proposed project; however, prior consultation with the tribe can help the federal government mitigate these risks.<sup>49</sup>

Further, after initially voting against it the United States has later acknowledged the right to tribal self-determination by its endorsement of the

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41. Sandi B. Zellmer, *Indian Lands as Critical Habitat for Indian Nations and Endangered Species: Tribal Survival and Sovereignty Come First*, 43 S.D.L. REV. 381, 388 (1998).

42. *Seminole Nation*, 316 U.S. at 307–08.

43. *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F. Supp. 252 (D.D.C. 1973).

44. *Id.* at 260.

45. Zellmer, *supra* note 41, at 388.

46. KATHRYN NORTON-SMITH ET AL., FOREST SERV., U.S. DEP'T OF AGRIC., CLIMATE CHANGE AND INDIGENOUS PEOPLES: A SYNTHESIS OF CURRENT IMPACTS AND EXPERIENCES 5 (2016), [https://www.fs.usda.gov/pnw/pubs/pnw\\_gtr944.pdf](https://www.fs.usda.gov/pnw/pubs/pnw_gtr944.pdf).

47. Exec. Order No. 13175, 65 Fed. Reg. 67249 (2000).

48. Gabriel S. Galanda, *The Federal Indian Consultation Right: A Frontline Defense Against Tribal Sovereignty Incursion*, FED. BAR ASS'N 2 (Dec. 9, 2010), <https://web.archive.org/web/20150606163610/https://www.fedbar.org/Image-Library/Sections-and-Divisions/Indian/Federal-Indian-Consultation-Right.pdf>.

49. *Id.*

2007 United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>50</sup> The UNDRIP recognizes the rights of indigenous people as sovereign nations and recognizes that tribal culture and practices contribute to proper environmental sustainability with the right to conserve and protect it.<sup>51</sup> International laws, like the UNDRIP, strengthen the federal trust responsibility to Indian tribes. Additionally, in 2009, the Secretary of the Department of Interior issued Order 3289 that discussed the Department's trust responsibility to tribes on the topic of climate change.<sup>52</sup> Specifically, the Secretary stated the disproportionate effect of climate change on tribes as well as the necessity of including tribal participation and support in climate conversations.<sup>53</sup>

#### *D. Impacts to Treaties and Reserve Rights*

Even with this trust responsibility and duty to consult tribes, the federal recognition of a tribe directly correlates with the level of power that a tribe has to negotiate and implement climate adaptation and mitigation strategies.<sup>54</sup> Federally recognized tribes that have land and reservations yield more power to make land management decisions and introduce climate policies than non-federally recognized or non-land holding recognized tribes.<sup>55</sup> The main issue with climate change is that it does not respect territorial boundaries or government jurisdiction. On or off reservation, climate change affects and threatens tribal treaty rights.<sup>56</sup>

Currently, reservation locations serve as the basis for treaty-protected rights to hunt, fish, and collect vegetation for traditional practices.<sup>57</sup> The location of a tribe's reservation is a major issue, because, as culturally significant species of plants and animals shift to new areas and move off reservation due to climate change, tribes will not have the same legal rights

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50. *United Nations Declaration on the Rights of Indigenous Peoples*, U.N. DEP'T OF ECON. & SOC. AFF., <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (last visited Mar. 10, 2023).

51. NORTON-SMITH ET AL., *supra* note 46, at 10.

52. Sec'y of the Interior, Order No. 3289, Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources 1 (Sept. 14, 2009), <https://www.doi.gov/sites/doi.gov/files/migrated/whatwedo/climate/cop15/upload/SecOrder3289.pdf>.

53. *Id.* at 4.

54. NORTON-SMITH ET AL., *supra* note 46, at 7.

55. *Id.*

56. *Id.*

57. *Id.* at 7–8.



to natural resources as tribes located in other geographic regions.<sup>58</sup> Thus, it is imperative that we understand how climate change impacts the federal government's obligations under its trust responsibility. Kronk Warner makes an argument for using the enforcement of treaty rights as a basis for a claim for the breach the trust responsibility to preserve key tribal resources in the context of climate change.<sup>59</sup> Tribes may be able to argue that original Native interpretation of the treaties, coupled with the cultural significance of fish and wildlife, implicates an obligation to take measures to protect these treaty guaranteed resources.<sup>60</sup> To make this argument, Indian tribes would need to prove that the federal government's lack of action to protect the resource is a violation of both its treaty and trust responsibilities.<sup>61</sup>

### *III. Climate Change and Its Impact on Indigenous Peoples*

The scientific community presents a strong message on the impacts of climate change currently felt by vulnerable and historically marginalized communities, like Indigenous peoples.<sup>62</sup> Every four years, the U.S. Global Change Research Program presents a National Climate Assessment to Congress and the President, as is required by the Global Change Research Act of 1990.<sup>63</sup> The idea is that the Assessment will provide key decision makers with the information needed to shape federal climate policy.<sup>64</sup> The most recent assessment, presented in 2018, explains that the greenhouse effect of trapping carbon dioxide and other gasses in the atmosphere causes the earth to be warm enough to sustain human life; however, humans release a large amount of greenhouse gasses, which intensifies the greenhouse effect.<sup>65</sup> The current rate that humans are adding carbon emissions into the atmosphere is at a higher rate than what can be removed naturally—causing a surplus in carbon emissions.<sup>66</sup> The long-term effects of our current rate of

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58. *Id.*

59. Elizabeth Ann Kronk Warner, *Everything Old Is New Again: Enforcing Tribal Treaty Provisions to Protect Climate Change-Threatened Resources*, 94 NEB. L. REV. 916, 917 (2015).

60. *Id.* at 952.

61. *Id.*

62. U.S. GLOB. CHANGE RSCH. PROGRAM, FOURTH NATIONAL CLIMATE ASSESSMENT VOLUME II: IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES 28 (David Reidmiller et al. eds., 2018), [https://nca2018.globalchange.gov/downloads/NCA4\\_2018\\_FullReport.pdf](https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf) [hereinafter FOURTH NATIONAL CLIMATE ASSESSMENT VOLUME II].

63. *Id.* at 1.

64. *Id.*

65. *Id.* at 39.

66. *Id.* at 40.

greenhouse gas emissions is best examined by looking at projected emissions for 2050. On the conservative, low end—which assumes a significant reduction of emissions—the assessment projects that “the increase in global annual average temperature relative to preindustrial times could be limited to less than 3.6 [degrees Fahrenheit].”<sup>67</sup> Even so, our current course of emissions without mitigation is projected to reach an increase of nine degrees Fahrenheit or more.<sup>68</sup> There are many likely effects of the projected increase in temperature, such as overall warming; rising sea levels; and extreme droughts, floods, and temperatures, which are all liable to threaten the agriculture industry and cause food insecurities across communities.<sup>69</sup>

Although globally everyone feels the effects of climate change, “Indigenous peoples [are] . . . affected uniquely and disproportionately.”<sup>70</sup> Indigenous people have a close cultural and religious connection with the earth’s resources and the environment.<sup>71</sup> Therefore, the impact of climate change not only affects Indigenous peoples’ physical location but is deeply connected to their sense of self and personhood. Indigenous peoples have experienced “political and economic marginalization,” discrimination, and a stripping of their aboriginal land.<sup>72</sup> Unfortunately, these difficulties faced by tribes are only intensified by climate change.<sup>73</sup>

While climate change effects each group of Indigenous people differently, there are commonalities felt by Indigenous peoples across the globe.<sup>74</sup> Located in some of the world’s most vulnerable places, Indigenous peoples are often some of the first individuals who are forced to react to the effects of climate change.<sup>75</sup> For instance, the Arctic ice melting is causing floods and shifts of weather patterns affecting the population of caribou, which

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67. *Id.* at 42.

68. *Id.*

69. *The Causes of Climate Change*, NASA: GLOB. CLIMATE CHANGE, <https://climate.nasa.gov/causes/> [<https://perma.cc/2S4L-6F23>] (last updated Mar. 7, 2023).

70. FOURTH NATIONAL CLIMATE ASSESSMENT VOLUME II, *supra* note 62, at 576.

71. Rebecca Tsosie, Essay, *Indigenous Sustainability and Resilience to Climate Extremes: Traditional Knowledge and the Systems of Survival*, 51 CONN. L. REV. 1009, 1009 (2019).

72. *Climate Change*, U.N. DEP’T OF ECON. AND SOC. AFFS.: INDIGENOUS PEOPLES, <https://www.un.org/development/desa/indigenouspeoples/climate-change.html> (last visited Mar. 12, 2023).

73. *Id.*

74. Randall S. Abate & Elizabeth Ann Kronk, *Commonality Among Unique Indigenous Communities: An Introduction to Climate Change and Its Impacts on Indigenous Peoples*, 26 TUL. ENV’T L.J. 179, 181–82 (2013).

75. *Id.* at 182.

Indigenous peoples rely on for survival.<sup>76</sup> Also, the destruction of pine trees in North America results in loss of food supply for Indigenous groups in Canada.<sup>77</sup> In addition to the vulnerability and cultural connections to their land, Indigenous peoples also often times share a legal connection to their land, which results in restrictions to the traditional use of resources.<sup>78</sup> The impact of climate change reaches all aspects of Indigenous life: cultural identity, public health, and food security.

#### *A. Cultural Identity*

Climate change severely impacts the cultural identity of Indigenous people groups because many of their traditions involve the relationship between people and the land, which is known as the “nature-culture nexus.”<sup>79</sup> The Indigenous way of life that is made up of the individual and collective information of Indigenous peoples is known as “traditional knowledges.”<sup>80</sup> These traditional knowledges are developed and passed down over generations by “songs, proverbs, . . . practices and rituals” that are used to “sustain a community.”<sup>81</sup> Traditional knowledges provide Indigenous peoples with a spiritual connection to and an understanding of the environment and world around them.<sup>82</sup> The familial perception that the people, plants, and animals that live across the globe are relatives is a common idea among Indigenous people groups.<sup>83</sup> This connection and relationship to the environment breeds the intrinsic responsibility to care for their natural relatives of plants, animals, and places.<sup>84</sup>

Indigenous religious identity is linked with the environment, because, historically, the liturgical calendar corresponds with the seasonal cycles of weather.<sup>85</sup> One example is the Blackfoot Tribe’s spring celebration of the

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76. *Id.* at 183.

77. *Id.* at 182.

78. *Id.* at 183.

79. NORTON-SMITH ET AL., *supra* note 46, at 13.

80. *Id.*

81. Joseph P. Brewer II & Elizabeth Ann Kronk Warner, *Protecting Indigenous Knowledge in the Age of Climate Change*, 27 GEO. INT’L ENV’T L. REV. 585, 590 (2015).

82. *Id.*

83. *Tribal Nations*, U.S. CLIMATE RESILIENCE TOOLKIT, <https://toolkit.climate.gov/topics/tribal-nations> (last modified Sept. 28, 2020, 9:55 AM).

84. NORTON-SMITH ET AL., *supra* note 46, at 38.

85. Rosalyn R. LaPier, *Climate Change Could Disrupt Tribes’ Religious Practices: After Years of Religious Persecution, Tribes Face Changing Natural World*, HIGH COUNTRY NEWS (July 7, 2017), <https://www.hcn.org/articles/opinion-will-climate-change-affect-native-american-religious-practices>.

beaver bundle ceremony.<sup>86</sup> This ceremony is based on the belief that beavers taught humans to grow tobacco, which the Blackfeet people used in peacemaking with enemies.<sup>87</sup> Recent studies show that both beavers and their food source are moving north as a result of climate change, which places the Blackfeet's traditional spring ceremonies in jeopardy.<sup>88</sup> The Mojave people are feeling the effects of the drying of the Colorado River Basin, which they believe was given to them as a sacred space.<sup>89</sup> Traditional knowledges are used to predict appropriate times for religious ceremonies and harvests but, because of environmental changes, they are becoming more difficult for Indigenous peoples to predict.<sup>90</sup> These are just a few examples that are reflective of the broad and vast impacts on climate change on the cultural identity of Indigenous peoples.

#### *B. Public Health & Food Security*

American Indian and Alaskan Natives are more disproportionately affected by disease and death than non-Native Americans.<sup>91</sup> The life expectancy of an American Indian and Alaskan Native is “5.5 years less than the U.S. all races population.”<sup>92</sup> More Indigenous people die from diabetes; chronic liver, respiratory, and heart diseases; and suicide than non-Native Americans.<sup>93</sup> Climate change affects several aspects of public health differently, including traditional food and medicine, extreme weather, and air quality.<sup>94</sup> Traditional food and medicine intersect both health and cultural practices. Tribal communities have transitioned from hunting and gathering their food to buying food in stores.<sup>95</sup> Even with this transition, traditional foods remain a vital part of the health of tribal communities, which is at risk due to the lack of availability of these traditional foods. When defining food

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86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. NORTON-SMITH ET AL., *supra* note 46, at 14.

91. *Fact Sheet: Indian Health Disparities*, INDIAN HEALTH SERV. (Oct. 2019), [https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/documents/factsheets/Disparities.pdf](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/factsheets/Disparities.pdf).

92. *Id.*

93. *Id.*

94. NORTON-SMITH ET AL., *supra* note 46, at 25–26, 31–32.

95. Charlene Compher, *The Nutrition Transition in American Indians*, 17 J. TRANSCULTURAL NURSING 217, 220–21 (2006), <https://journals.sagepub.com/doi/epdf/10.1177/1043659606288376>.

security or insecurity for Indigenous people, it is imperative to include assessments of the stability to access and consumption of traditional foods.<sup>96</sup>

The availability of traditional foods affects the Crow Reservation in Montana as the availability of the berries that have been a stable part of their diets dwindle.<sup>97</sup> The tribal elders express concerns that changes in seasonal fluctuations of weather, and generally less cold winters, are causing the berry bushes to begin producing fruit earlier in the spring before quickly dying off during cold snaps.<sup>98</sup> Similarly, in Alaska, the melting of ice is making it more and more difficult for native Kivalina people to hunt, which is leaving them without their traditional subsistence practices and decreasing food security.<sup>99</sup> Kivalina people have observed that the warming and cooling trends are impacting their ability to safely navigate their hunting trails.<sup>100</sup>

A study examining Alaskan Natives' diets found that traditional food contributes greatly to the key nutrients in their diet (as compared to non-traditional foods that are loaded with sugar and lead to disease and health issues).<sup>101</sup> Further, the study showed that, when at least one traditional food was eaten per day, "the diet contained more energy, less carbohydrate and fat and more protein" as compared to days not incorporating traditional foods.<sup>102</sup> As climate related issues continue to impact the access and cost of obtaining traditional foods, many tribes are having to supplement their diets with store-bought options.<sup>103</sup> These store-bought options are often less healthy than traditional foods, which contain high levels of protein, iron, omega-3 fatty

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96. Grace M. Egeland & Gail G. Harrison, *Health Disparities: Promoting Indigenous Peoples' Health Through Traditional Food Systems and Self-determination*, in INDIGENOUS PEOPLES' FOOD SYSTEMS & WELL-BEING: INTERVENTIONS AND POLICIES FOR HEALTHY COMMUNITIES 9, 17 (Harriet V. Kuhnlein et al. eds., 2013), <https://www.fao.org/3/i3144e/i3144e00.pdf>.

97. John T. Doyle et al., *Exploring Effects of Climate Change on Northern Plains American Indian Health*, in CLIMATE CHANGE AND INDIGENOUS PEOPLES IN THE UNITED STATES, 135, 137 (Julie Koppel Maldonado et al. eds., 2013).

98. *Id.*

99. David L. Driscoll et al., *Initial Findings from the Implementation of a Community-Based Sentinel Surveillance System to Assess the Health Effects of Climate Change in Alaska*, 72 INT'L J. CIRCUMPOLAR HEALTH DOI No. 10.3402/ijch.v72i0.21405, 2013, at 7, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3754612/pdf/IJCH-72-21405.pdf>.

100. *Id.*

101. Jennifer S. Johnson et al., *Dietary Intake of Alaska Native People in Two Regions and Implications for Health: The Alaska Native Dietary and Subsistence Food Assessment Project*, 68 INT'L J. CIRCUMPOLAR HEALTH 109, 110 (2009), <https://www.tandfonline.com/doi/epdf/10.3402/ijch.v68i2.18320?needAccess=true&role=button>.

102. *Id.*

103. *See id.*

acids, and other nutrients.<sup>104</sup> Further, many reservation communities are characterized as food deserts with few fresh fruit and vegetable options.<sup>105</sup> For example, the Apaches in Arizona have to go outside of the reservation to grocery shop because gas stations are the only food stores on the reservation.<sup>106</sup> Overall, climate change is decreasing the availability of traditional food sources for tribes, which negatively impacts the health and welfare of tribal communities.

#### *IV. Climate Displacement and Migration*

Climate change directly influences the need for migration due to “global warming, sea level rise, floods, droughts, ice melt, and extreme weather events.”<sup>107</sup> Climate migration is the term used when climate change impacts the environment and weather conditions causing people to move geographically to escape it.<sup>108</sup> The response to migration has been anything but systematic or organized, as this issue covers several different legal areas including environmental, immigration, and human rights.<sup>109</sup> Environmental migration is not a new phenomenon as people had to relocate during the little ice age, which spanned the sixteenth and nineteenth centuries.<sup>110</sup> However, what is “new” is the lasting climate effects of the greenhouse gas emission since the Industrial Revolution. These effects have resulted in a shift from people migrating due to isolated extreme weather events to moving because of the lasting climate change.<sup>111</sup> In 2020, the Internal Displacement Monitoring Centre reported that, globally, in 2019, there were 1900 disasters triggering 24.9 million new displacements.<sup>112</sup>

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104. *Id.*

105. Lawrence M. Schell & Mia V. Gallo, *Overweight and Obesity Among North American Indian Infants, Children, and Youth*, 24 AM. J. HUM. BIOLOGY 302, 311 (2012), <https://onlinelibrary.wiley.com/doi/epdf/10.1002/ajhb.22257>.

106. Joel Gittelsohn & Sangita Sharma, *Physical, Consumer, and Social Aspects of Measuring the Food Environment Among Diverse Low-Income Populations*, 36 AM. J. PREVENTATIVE MED. (SUPPLEMENT) S161, S162 (2009).

107. Eliza Pan, *Reimagining the Climate Migration Paradigm: Bridging Conceptual Barriers to Climate Migration Responses*, 50 ENV'T L. 1173, 1175 (2020).

108. *Id.*

109. *Id.* at 1176.

110. *Id.* at 1179.

111. *Id.* at 1181.

112. INTERNAL DISPLACEMENT MONITORING CTR. & NORWEGIAN REFUGEE COUNCIL, *GLOBAL REPORT ON INTERNAL DISPLACEMENT 4* (2020), <https://www.internal-displacement.org/sites/default/files/publications/documents/2020-IDMC-GRID.pdf>

The varied manifestations of climate change implicate migration differently.<sup>113</sup> Global warming has sped up the warming and melting of glaciers causing the sea level to rise at a drastic pace.<sup>114</sup> During the twentieth century, the sea level rose at an average of 1.7 millimeters per year.<sup>115</sup> Since 1993, the rate has increased to a consistent rise at approximately three millimeters per year.<sup>116</sup> Although the sea level rise is immediately devastating for people in coastal areas who are forced to migrate away from the coast, it also presents issues for inland communities that are unprepared for the heavy influx of migrants.<sup>117</sup> Flooding, another manifestation of climate change, can damage infrastructure and interrupt economic activity, which causes people and business to leave areas more susceptible to flooding.<sup>118</sup> It is projected that thirty-one or more Alaskan villages are in imminent danger as a result of sea level rise, flooding, and coastal erosion.<sup>119</sup> Additionally, if sea levels continue to rise at the current rate, an estimated 13.1 million Americans may be displaced and forced to migrate by 2100.<sup>120</sup>

Generally, the physical movement of people from one area to another is a financial and logistical challenge in itself; however, relocating American Indian and Alaskan Native communities presents an even greater challenge.<sup>121</sup> The U.S. Army Corps of Engineers did a study on the cultural impact of community relocation, which highlighted a discovery with the Native Village of Shishmaref, Alaska. The study found that if a community is moved to a nearby population center inland there is a greater potential loss of the “subsistence way of life” that affects their economic and food security.<sup>122</sup> For example, the “traditional carving practices and its local dialect of Inupiaq.”<sup>123</sup> There is a fear among Alaskan Native communities that migration to existing villages will “threaten their identity and culture.”<sup>124</sup>

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113. Pan, *supra* note 107, at 1183.

114. *Id.* at 1184.

115. *Id.* at 1185.

116. *Id.*

117. *Id.* at 1185–86.

118. *Id.* at 1187.

119. Eli Keene, Note, *Resources for Relocation: In Search of a Coherent Federal Policy on Resettling Climate-Vulnerable Communities*, 48 TEX. ENV'T L.J. 119, 121–22 (2018).

120. *Id.* at 122.

121. *Id.* at 123–24.

122. *Id.* at 124 (quoting PETER SCHWEITZER & ELIZABETH MARINO, U.S. ARMY CORPS OF ENGINEERS, COASTAL EROSION PROTECTION AND COMMUNITY RELOCATION, SHISHMAREF, ALASKA: COLLOCATION CULTURAL IMPACT ASSESSMENT 81 (2005)).

123. *Id.*

124. *Id.*

Ideally, whole Indigenous communities would move to safer areas together; therefore, the community can retain and preserve its cultural identity, which is a better alternative than displacing individual tribal members.<sup>125</sup> The decision for people to stay or flee the adverse conditions are influenced by personal, cultural, and socioeconomic conditions.<sup>126</sup>

*A. Our Nation's First Climate Migrants*

“The First Official Climate Refugees in the U.S. Race Against Time” is the title of a 2016 National Geographic article that highlights the plight of the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians (The Choctaws) located in the Terrebonne Parish of Coastal Louisiana.<sup>127</sup> Although there are several tribes facing imminent dangers from climate related issues, the Choctaws gained the title of the nation’s first climate refugees when Louisiana won a grant from the U.S. Department of Housing and Urban Development’s (HUD) National Disaster Resilience Competition on their behalf.<sup>128</sup> Alaska unsuccessfully entered the same competition for funding to relocate the Alaskan Native Village of Newtok—which has been classified as being in imminent danger since 2009.<sup>129</sup> The grant given to Louisiana totaled \$92 million for both the relocation of the Choctaws and a LA SAFE Fund project to provide financing for development projects on the coast.<sup>130</sup> Specifically, \$48.3 million of the grant was bookmarked for the relocation of the Choctaws.<sup>131</sup>

The Isle de Jean Charles has been the home of the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians since their ancestors were displaced from mainland Louisiana after the Removal Era of the 1830s.<sup>132</sup>

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125. *Id.* at 124–25.

126. EMILY WRIGHT ET AL., GER. ENV’T AGENCY, MIGRATION, ENVIRONMENT AND CLIMATE CHANGE: RESPONDING VIA CLIMATE CHANGE ADAPTATION POLICY 9 (2021), [https://www.umweltbundesamt.de/sites/default/files/medien/1410/publikationen/2020-03-04\\_texte\\_44-2020\\_migration-response\\_3.pdf](https://www.umweltbundesamt.de/sites/default/files/medien/1410/publikationen/2020-03-04_texte_44-2020_migration-response_3.pdf).

127. Carolyn Van Houten, *The First Official Climate Refugees in the U.S. Race Against Time*, NAT’L GEOGRAPHIC (May 25, 2016) <https://www.nationalgeographic.com/science/article/160525-isle-de-jean-charles-louisiana-sinking-climate-change-refugees>.

128. Keene, *supra* note 119, at 131.

129. *Id.*

130. U.S. DEP’T HOUS. & URB. DEV., NATURAL DISASTER RESILIENCE PROGRAM COMPETITION GRANTEE PROFILES 7 (2016), [https://www.hud.gov/sites/documents/NDRCG\\_RANTPROFILES.PDF](https://www.hud.gov/sites/documents/NDRCG_RANTPROFILES.PDF).

131. Van Houten, *supra* note 127.

132. *The Island*, ISLE DE JEAN CHARLES, <http://www.isledejeancharles.com/island> (last visited Mar. 13, 2023).



The Choctaws are a state recognized tribe but have been unsuccessfully requesting federal recognition since the 1990s.<sup>133</sup> The Choctaws are once again facing displacement; but this time in the form of climate migration. The Isle de Jean Charles, which once occupied upwards of 22,000 acres of land off the coast of Louisiana in the 1950s, has now been reduced to less than a 320-acre strip.<sup>134</sup> This is a result of sea levels rising, flooding, rising temperatures, and the devastation of seven hurricanes and storms since 2005.<sup>135</sup> These factors resulting from climate change—coupled with the impacts from the BP oil spill in 2010<sup>136</sup>—have left tribal members without the water and resources that allowed them to be self-sufficient.<sup>137</sup> Specifically, land loss and saltwater intrusion is preventing traditional agriculture production of food and healing herbs.<sup>138</sup> The increase in temperature causing longer warm periods and shorted winters has also affected plant cycles and flora and fauna species.<sup>139</sup> The loss of land has eliminated the Tribe’s ability to do the things that were once integral to their lifestyle, like cattle grazing<sup>140</sup> and animal trapping.<sup>141</sup> These factors are deeply connected to tribal traditions and culture, which encourage living and interacting with the land. The loss of land comes at a high cost to tribal health and economic sustainability; for instance, without the ability to hunt, fish, or grow their own food, the tribal people are forced “to shop for the food they once readily harvested,” and, as a result, “[m]odern diseases linked to

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133. Alaska Inst. for Just., [Complaint Submitted to the U.N.:] Rights of Indigenous People in Addressing Climate-Forced Displacement 5 (2020) [hereinafter Complaint], [http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20200116\\_USA-162020\\_complaint.pdf](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20200116_USA-162020_complaint.pdf).

134. Van Houten, *supra* note 127.

135. *The Environment*, ISLE DE JEAN CHARLES, <https://www.isledejeancharles.com/the-environment> (last visited Mar. 13, 2023).

136. See generally Amina Rangoonwala et al., *Wetland Shoreline Recession in the Mississippi River Delta from Petroleum Oiling and Cyclonic Storms*, 43 GEOPHYSICAL RESEARCH LETTERS 11,652 (2016), <https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1002/2016GL070624> (evaluating the coastal land loss in the upper Barataria Bay, Louisiana prior to and following the BP oil spill and storm surge).

137. *The Environment*, *supra* note 135.

138. *Id.*

139. *Vulnerability of Coastal Louisiana Tribes in a Climate Change Context*, N. ARIZ. UNIV.: INST. FOR TRIBAL ENV’T PROS. (Sept. 2012), [https://www7.nau.edu/itep/main/tcc/docs/tribes/tribes\\_CoastalLA.pdf](https://www7.nau.edu/itep/main/tcc/docs/tribes/tribes_CoastalLA.pdf).

140. *The Environment*, *supra* note 135.

141. *Vulnerability of Coastal Louisiana Tribes in a Climate Change Context*, *supra* note 139.

nutrition are on the rise.”<sup>142</sup> A lifelong resident of the Isle de Jean Charles and shrimping specialist, Edison Dardar, has stated that, where he used to catch around 300 pounds of fish per day, he is now lucky to catch enough to feed himself dinner.<sup>143</sup> In an interview, Father Roch Naquin, native of the island, recounted memories of live oak trees, pecan orchards, animals (like pigs and chickens) grazing, and an array of fisherman bringing in the day’s catch across the island.<sup>144</sup> These riches of agriculture and fishing that sustained life are now just distant memories for the people who remain.<sup>145</sup>

Another example of the vulnerability that the Choctaws are facing is the diminishment of the only road that connects the Isle de Jean Charles to Pointe-aux-Chene.<sup>146</sup> What was once surrounded by marshland that allowed a narrow two-lane road to be securely built has now been eroded, leaving the road open to flooding and damage by open salt water.<sup>147</sup> Rising flood waters make the road unpassable and leave the people without access to the main land for safety or medical attention.<sup>148</sup> Many individuals have made the decision to leave on their own over the years. Ultimately, to maintain the dignity and traditions of their ancestors, the Choctaws have made the decision to advocate for their community and migrate to safer land as well.<sup>149</sup>

Before being awarded the HUD grant in 2016, the Choctaws voted at a tribal council in 2002 and decided to resettle.<sup>150</sup> Largely, notice by the U.S. Army Corps of Engineers that the island was not going to be included in the Morganza to the Gulf of Mexico Hurricane Levee Protection Project resulted in this decision.<sup>151</sup> Since then, and leading up to the 2016 grant, the Choctaws took steps to ensure their resettlement would be successful and sustainable—including making a presentation to the Louisiana Terrebonne Parish Council in 2009 and conducting workshops on knowledge sharing sessions, natural

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142. *The Environment*, *supra* note 135.

143. *Isle de Jean Charles*, RED RD. PROJECT, <https://redroadproject.com/isle-de-jean-charles/> (last visited Mar. 13, 2023).

144. Andrew J. Yawn, *As Gulf Swallows Louisiana Island, Displaced Tribe Fears the Future*, DAILY ADVERTISER (Apr. 23, 2020, 10:39 AM), <https://www.theadvertiser.com/in-depth/news/2020/02/27/isle-de-jean-charles-louisiana-climate-refugees-resettlement/2448973001/>.

145. *Id.*

146. *The Island*, *supra* note 132.

147. *Id.*

148. *Id.*

149. *Tribal Resettlement*, ISLE DE JEAN CHARLES, <https://www.isledejeancharles.com/our-resettlement> (last visited Mar. 13, 2023).

150. *Id.*

151. *Id.*

hazards, and resettlement.<sup>152</sup> The Choctaws actively met with architects and Indigenous leaders across the globe to discuss the best resettlement strategies for their community. For the people of the Isle de Jean Charles, the grant was the result of nearly two decades of planning and advocacy for their people, and resettlement would bring an opportunity to “reunite our displaced tribal members and rekindle our traditional life-ways” with support for their identity.<sup>153</sup>

After the grant, the Choctaws continued their work and advocacy by coordinating with the State of Louisiana as they used the HUD funding to develop the New Isle located on 515 acres, forty miles north of the Isle de Jean Charles.<sup>154</sup> The State of Louisiana outlined its mission for the resettlement as a holistic approach “that reflect[ed] the values of the Isle de Jean Charles people.”<sup>155</sup> There was also a stated emphasis on the incorporation of “sustainable materials and practices” to promote the self-determination of the New Isle residents.<sup>156</sup> After purchasing the land in 2018, construction began in mid to late 2020.<sup>157</sup>

### *B. Rising Tensions and Conflicting Goals*

Unfortunately, the Choctaws’ road to migration and resettlement has not been without contention between the tribes of the Isle de Jean Charles and the State of Louisiana. Although the lofty goal of the grant aimed to create a place of safety with respect to tribal preservation of culture, it appears that the federal government and the State’s leaders lacked knowledge and consideration of the Indigenous habitants of the isle.<sup>158</sup> Albert Naquin, Chief of the Isle de Jean Charles Band of the Choctaws, was once one of the main proponents of the resettlement and encouraged other people living on the island that relocation was the best option for their community.<sup>159</sup> The New

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152. *Id.*

153. *Id.*

154. *The New Isle*, LOUISIANA.GOV: ISLE DE JEAN CHARLES RESETTLEMENT, <https://isledejeancharles.la.gov/new-isle> (last visited Mar. 13, 2023).

155. LA. OFF. OF CMTY. DEV., RESETTLEMENT OF ISLE DE JEAN CHARLES: BACKGROUND AND OVERVIEW 2 (rev. June 9, 2020), <https://isledejeancharles.la.gov/sites/default/files/public/IDJC-Background-and-Overview-1-28-21.pdf>.

156. *Id.*

157. *Resettlement Plan*, LOUISIANA.GOV: ISLE DE JEAN CHARLES RESETTLEMENT, <https://isledejeancharles.la.gov/resettlement-plan> (last visited Apr. 18, 2023).

158. Adam Crepelle, *The United States First Climate Relocation: Recognition, Relocation, and Indigenous Rights at the Isle De Jean Charles*, 6 BELMONT L. REV. no. 1, 2018, at 1, 29–31, <https://repository.belmont.edu/cgi/viewcontent.cgi?article=1057&context=lawreview>.

159. Yawn, *supra* note 144.

Isle project gave Naquin hope for a new home that could help revive tribal culture, and he believed that he could save his people through this project.<sup>160</sup> Now, he has become less hopeful and unhappy with the State's handling of the resettlement.<sup>161</sup> Naquin believes that the State is no longer prioritizing the needs of the tribal communities because the State is changing the resettlement plan and no longer allowing tribal leaders to share their expertise in the relocation.<sup>162</sup> Naquin feels that many of the promises made to island people are now being broken.<sup>163</sup>

In 2018, Naquin sent a letter to the director of the Office of Block Grant Assistance at HUD asking that they take the grant fund back as a result of the goals and the objectives of the relocation not aligning with their initial application.<sup>164</sup> Naquin explained that many of the provisions in the relocation agreements include the risk of losing ownership of their homes and “sign[ing] away the legacy [of] their ancestors.”<sup>165</sup> Naquin also stated, “Our Tribe feels this is dishonoring of everything our ancestors did to ensure we survived the Indian Removal Act 1830, Indian Relocation Act of 1956, Jim Crow Laws, and other discriminatory acts.”<sup>166</sup> These statements are reflective of the broader fight of Indigenous peoples groups globally—a continued fight for tribal self-determination.

The tension between the tribes and the State has continued to escalate. In a July 2021 meeting before the Louisiana Terrebonne Parish officials, the Tribe expressed anger and feelings of betrayal.<sup>167</sup> Almost two decades ago, the tribes felt that they were given an ultimatum—relocate or forfeit the right to receive help or services.<sup>168</sup> Now that they are over five years into the relocation process to the New Isle, there are plans for island land to be

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160. *Id.*

161. Dalia Faheid & Katie Livingstone, *To Flee, or to Stay Until the End and Be Swallowed by the Sea*, INSIDE CLIMATE NEWS (July 18, 2021), <https://insideclimatenews.org/news/18072021/to-flee-or-to-stay-until-the-end-and-be-swallowed-by-the-sea/>.

162. *Id.*

163. Kezia Setyawan, *Native American Tribes Express Concern About Development on Isle de Jean Charles*, HOUMATODAY (July 17, 2021, 4:42 PM) [hereinafter Setyawan, *Tribal Concerns*], <https://www.houmatoday.com/story/news/2021/07/17/native-american-leaders-question-terrebonne-parish-isle-de-jean-charles/7970561002/>.

164. Julie Dermansky, *Isle de Jean Charles Tribe Turns Down Funds to Relocate First US 'Climate Refugees' as Louisiana Buys Land Anyway*, DESMOG (Jan. 11, 2019, 3:56 PM), <https://www.desmog.com/2019/01/11/isle-de-jean-charles-tribe-turns-down-funds-relocate-climate-refugees-louisiana/>.

165. *Id.*

166. *Id.*

167. Setyawan, *Tribal Concerns*, *supra* note 163.

168. *Id.*

“repurposed and seemingly redeveloped for private recreational use.”<sup>169</sup> These redevelopments refer to proposals by the Houma-based A.M. Dupont Corporation that is submitting plans for the improvements to be made in preparation to sell lots on the Dupont land for sporting camp owners.<sup>170</sup> This has come as a shock to many of the tribal members who are seeing their parish school shut down one day and sold to sporting organizations the next.<sup>171</sup> As of 2016, there were approximately ten more sport fishing camps than there were remaining residences on the island.<sup>172</sup>

Another notable contradiction is that, after the completion of the 2011 road restoration project elevating the two-lane road connecting the island to the mainland, the State notified the people of the Isle that it would be the last time that money would be invested in fixing the road.<sup>173</sup> The State has since altered its course and invested \$2.4 million in December 2020 to improve Island Road by building five fishing piers, parking lots, and a rock levee.<sup>174</sup> Part of the rationale for this new investment into the road as stated by the Louisiana Department of Wildlife and Fisheries is to provide access to the “bounty in our Sportsman’s Paradise.”<sup>175</sup> In a 2019 press release, the Choctaws expressed “worry that the state of Louisiana’s vision for a resettlement is assimilationist and more about moving people from the coast without taking the care to preserve and strengthen social relationships and distinct traditional ways of life that have been strained throughout this intergenerational crisis of land loss.”<sup>176</sup> Chief Naquin believes the original intent of the resettlement—to preserve the Choctaws’ cultural identity and sustainability—has been lost, whereas the State claims their goal of providing a safe haven for all island people has remained the same.<sup>177</sup> In light

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169. *Id.*

170. *Id.*

171. *Id.*

172. Nathan Jessee, *Tribal Leaders Raise ‘Serious Concerns’ About Plans to Turn Their Shrinking Louisiana Island Home into a ‘Sportsman’s Paradise’*, DESMOG (July 23, 2021, 10:42 AM), <https://www.desmog.com/2021/07/23/isle-de-jean-charles-tribe-louisiana-sports-mans-paradise/>.

173. *The Island*, *supra* note 132.

174. Jessee, *supra* note 172.

175. *Id.*

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

177. Robynne Boyd, *The People of the Isle de Jean Charles Are Louisiana’s First Climate Refugees—but They Won’t Be the Last*, NRDC (Sept. 23, 2019), <https://www.nrdc.org/stories/people-isle-jean-charles-are-louisianas-first-climate-refugees-they-wont-be-last>.

of the long, turbulent history underpinning relations between the federal government and sovereign tribes, once again, a path forward with these conflicting goals must be handled delicately.

### *V. Legal and Political Responses*

Since their cries to the State have gone ignored, the Choctaws and individual tribal members have turned to efforts of more formalized advocacy. These efforts include continued development of the “Preserving Our Place” movement; a lawsuit against the Terrebonne Parish School Board by tribal members and parents to stop the closure of the Pointe-aux-Chênes Elementary School; and a formal complaint for human rights violations to the United Nations.

#### *A. Preserving Our Place Project*

The notoriety that came with being named the country’s first climate refugees, along with the continued oppression and difficulties through the ongoing relocation process, sparked the Tribe’s creation of their Preserving Our Place movement.<sup>178</sup> The project aims to distribute the Tribe’s knowledge of and experiences with adaptation and sustainability to other tribes across the world dealing with the climate crisis.<sup>179</sup> In initiating their effort to share their knowledge, the Tribe, in conjunction with the Gulf Research Program of the National Academies of Sciences, Engineering, and Medicine, created a toolkit and field guide for communities undergoing similar environmental pressures.<sup>180</sup> The purpose of this toolkit is to reposition the power so that the community leaders remain in control of the adaptation and mitigation efforts.<sup>181</sup> Much of the toolkit is filled with lessons learned and tips from the Choctaws throughout their experiences with adapting to the challenges imposed by climate change.

The Choctaws advise that tribes adversely impacted by climate change need to establish a firm foundation as a community, provide direction for communal goals, and create and manage the public narrative of these

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178. *Preserving Our Place*, ISLE DE JEAN CHARLES, <https://www.isledejeancharles.com/preserving-our-place> (last visited Mar. 13, 2023).

179. *Id.*

180. *Tribal Resettlement*, *supra* note 149; ISLE DE JEAN CHARLES BILOXI-CHITIMACHA-CHOCTAW TRIBE ET AL., PRESERVING OUR PLACE: A COMMUNITY FIELD GUIDE TO ENGAGEMENT, RESILIENCE, AND RESETTLEMENT: COMMUNITY REGENERATION IN THE FACE OF ENVIRONMENTAL AND DEVELOPMENTAL PRESSURES 5 (2019) [hereinafter COMMUNITY FIELD GUIDE]

181. COMMUNITY FIELD GUIDE, *supra* note 180, at 5.

communal goals.<sup>182</sup> For example, after the announcement of the HUD grant for the Isle de Jean Charles, the Tribe received national and international attention from numerous media outlets.<sup>183</sup> For the Tribe, the focus on resettlement is a means to not only escape their land loss realities, but also a method of reunification of the Tribe with those who have already been displaced and migrated away from the island.<sup>184</sup> As media attention increased, that goal was lost and the narrative changed. Articles use the tagline of “climate refugees” as clickbait for drawing attention to climate change; however, this comes at the expense and marginalization of the Indigenous people at the story’s center.<sup>185</sup> The narrative does not “address[] the historical processes and conditions that have produced coastal risks in the first place or the long durée of indigenous adaptation to forced displacement, land grabs, and unsustainable development.”<sup>186</sup> Now, tribal leaders fear that the label of the first “climate refugees” presents them as scattered individuals “in desperate need of saving” rather than a sovereign nation reaching out in advocacy of their cause.<sup>187</sup>

To combat these conflicting pressures, the Tribe’s toolkit recommends, after establishing the community’s goals, creating partnerships to take steps to protect the community from exploitation.<sup>188</sup> The communities can accomplish this by creating and revisiting a declaration of principles and memorandum of understanding with all partners involved, including academic, non-profit, or governmental.<sup>189</sup> The toolkit concludes with a somber statement from the Choctaws on their current state of adaptation and relocation—“The Tribe itself, having publicly been part of this large award, is now in a precarious position . . . . The media attention . . . has made it appear as though the Tribe’s needs have been met, when in fact they have not.”<sup>190</sup>

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182. *Id.* at 11, 23–26.

183. *Id.* at 25.

184. *Id.*

185. *Id.* at 26.

186. *Id.*

187. *Id.*

188. *Id.* at 32.

189. *Id.*

190. *Id.* at 51.

### *B. Saving the School and the Language*

Individual tribal members and parents are taking legal action against the Terrebonne Parish school board for the closure of their elementary school.<sup>191</sup> These parents are tribal members and *Indian French* dialect speakers primarily from the Choctaws of the Isle de Jean Charles and the Pointe-au-Chien Tribes.<sup>192</sup> The school board scheduled to close the elementary school at the end of the 2020-21 academic year and to consolidate the school with another nearby elementary school for cost-saving measures and decreased enrollment.<sup>193</sup> The lawsuit, filed in June 2021, is asking for the court to keep the school open as a French immersion school as an effort to preserve the language and traditions.<sup>194</sup> The parents cite a history of discrimination against Native American students, evidenced by the continual rejection of the French and Indian French languages in education across the State and diminished access to education and demise of cultural heritage for these Native American children.<sup>195</sup>

They further assert a violation of the public trust doctrine by the defendant's failure to minimize the damage to the cultural environment and tribal education.<sup>196</sup> The Eastern District Court of Louisiana subsequently denied the parents' request for a temporary restraining order to keep the school from closing while the case makes its way through the legal process.<sup>197</sup> In November 2021, the parents survived a motion to dismiss on their claims of discrimination under Title VI of the Civil Rights Act and Equal Protection Clause of the Fourteenth Amendment, and the case is ongoing.<sup>198</sup> For the Choctaws who are a part of the lawsuit, it is an act of cultural preservation to protect their language as they are losing the battle of preserving their home on the Isle de Jean Charles.

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191. Kezia Setyawan, *Pointe-aux-Chenes Parents File Federal Lawsuit over Elementary School Closure*, HOUMATODAY (June 18, 2021, 6:00 AM) [hereinafter Setyawan, *Parents File Lawsuit*], <https://www.houmatoday.com/story/news/2021/06/18/pointe-aux-chenes-parents-federal-lawsuit-elementary-school-closure/7671482002/>.

192. *Billiot v. Terrebonne Par. Sch. Bd.*, No. 21-1144, 2021 WL 5083710, at \*1 (E.D. La. Nov. 2, 2021).

193. Setyawan, *Parents File Lawsuit*, *supra* note 191.

194. *Billiot*, 2021 WL 5083710, at \*1.

195. *Id.* at \*1, \*4.

196. *Id.* at \*1.

197. Kezia Setyawan, *Parents Seeking to Block Terrebonne's Closing of Pointe-aux-Chenes School Lose Round in Court*, HOUMATODAY (July 14, 2021, 8:00 PM), <https://www.houmatoday.com/story/news/2021/07/15/federal-court-pointe-aux-chenes-elementary-terrebonne-school-board/7955657002/>.

198. *Billiot*, 2021 WL 5083710, at \*4, \*6.



### *C. Protecting Human Rights*

The Choctaws, along with four other tribes, have taken steps to make a formal complaint to the United Nations for human rights violations against the U.S. government for failing to act on climate change and imposing restraints on the tribal right to self-determination.<sup>199</sup> Working with the Alaska Institute for Justice, the tribes involved in the complaint include the “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 [from Louisiana]; and the Atakapa-Ishak Chawasha Tribe of the Grand Bayou Indian Village.”<sup>200</sup> The complaint is addressed to the United Nations Special Rapporteurs, including the Rapporteur on the Rights of Indigenous Peoples and the Rapporteur on the Human Rights of Internally Displaced Persons.<sup>201</sup> The UN Special Rapporteurs are “independent experts appointed by the U.N. Human Rights Council . . . with the mandate to monitor, advise and publicly report . . . on human rights violations worldwide.”<sup>202</sup>

The legal doctrine outlined in the complaint relies on the Guiding Principles on Internal Displacement (Guiding Principles) adopted by the United Nations Commission on Human Rights in 1988, which was reaffirmed in 2018.<sup>203</sup> The Guiding Principles place the responsibility on the federal government to protect displaced people groups within their country by exhausting all possible efforts to prevent and mitigate their displacement.<sup>204</sup> The efforts toward mitigation need to also work to uphold the federal trust responsibility by recognizing the “obligation to protect

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199. Associated Press, *Tribes File Complaint with UN Saying Climate Change Threatens Existence*, INDIAN COUNTRY TODAY (Jan. 21, 2020), <https://indiancountrytoday.com/news/tribes-file-complaint-with-un-saying-climate-change-threatens-existence>.

200. Complaint, *supra* note 133, at 3–4.

201. *Id.* at 1.

202. *FAQs: United Nations Special Rapporteurs*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/other/faqs-united-nations-special-rapporteurs> (last visited Mar. 13, 2023).

203. Complaint, *supra* note 133, at 12; *see also Background to the Guiding Principles: International Standards, Special Rapporteur on the Human Rights of Internally Displaced Persons*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/issues/idpersons/pages/standards.aspx> (last visited Mar. 13, 2023) (marking the twentieth anniversary of the Guiding Principles). The United Nations Commission on Human Rights reaffirmed the principles along with a report from the Special Rapporteur outlining the remaining challenges and necessary actions that stakeholders should take while implementing the Guiding Principles. *Id.*

204. Complaint, *supra* note 133, at 12.

against the displacement of indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to their lands.”<sup>205</sup> The obligation of the U.S. government to protect the Indigenous tribes from the climate change “which threatens the civil, economic, social and cultural rights fundamental to the inherent dignity of tribal citizens” is stated in the Universal Declaration of Human Rights as a supreme right to life.<sup>206</sup> The Human Rights Committee extends these rights to circumstances that are reasonably foreseeable, including the urgent nature of climate change and its impact on the right to life.<sup>207</sup> The Guiding Principles bolsters the responsibility to Indigenous people groups by expressing the duty to avoid conditions leading to displacement, which especially applies to these Indigenous people groups that have close ties to their land.<sup>208</sup>

The Choctaws and other tribes involved in the complaint outline how the federal government has neglected their right to tribal self-determination. The United Nations Declaration on the Rights of Indigenous Peoples affirms the right of Indigenous peoples to have an active role and consultation on federal policies that directly impact their people.<sup>209</sup> One of the biggest barriers that the Choctaws and other coastal Louisiana tribes have endured is not having a government-to-government relationship because of not being a federally recognized tribe.<sup>210</sup> The Choctaws have continued to petition for federal recognition since the mid-1990s, and have renewed their efforts since the criteria change in 2015.<sup>211</sup> Even so, until they receive federal recognition, they have limited resources, cannot communicate directly with the Federal Emergency Management Agency (FEMA), and can only engage with the government of Louisiana.<sup>212</sup> The Tribe points to the violations of self-determination by the government of Louisiana in regards to the resettlement of the Choctaws.<sup>213</sup> Specifically, the exclusion of the Choctaws from decision making and drastic deviation from the Tribe’s resettlement plan submitted in the initial grant application in which the State did not assist or participate.<sup>214</sup>

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205. Representative of the U.N. Secretary-General, *Addendum to Report: Guiding Principles on Internal Displacement*, at 5, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

206. Complaint, *supra* note 133, at 38.

207. *Id.* at 39.

208. *Id.*

209. *Id.* at 40.

210. *Id.*

211. *Id.* at 14.

212. *Id.* at 14–15.

213. *Id.* at 40.

214. *Id.*

The exclusion of the Choctaws and coastal Louisiana tribes from federal recognition further inhibits their right to protection of their cultural heritage.<sup>215</sup> These tribes are precluded from access to federally funded programs and federal agencies, like the Louisiana Master Plan which organizes the State's coastal protection and restoration plans.<sup>216</sup> Exclusion of the tribes from the master plan is blamed on the expense of including the tribal communities.<sup>217</sup> Although the Louisiana State Constitution recognizes the right of people to foster and promote their cultural origins, the State has violated the tribal community's efforts to enforce their rights.<sup>218</sup> The complaint goes on to explain other violations by the State, including the right to subsistence farming, food security, and adequate standard of living.

The common goal of the tribes involved in the complaint is to urge the special rapporteurs to find that climate-forced displacement is a human rights crisis.<sup>219</sup> They urge the rapporteurs to remedy the violations by calling on the United States federal and state governments to implement a series of recommendations.<sup>220</sup> Their recommendations include federal recognition of the tribes and their right to tribal self-determination, so they can access resources to support their self-governance.<sup>221</sup> The tribes also recommend that the federal government implement a framework for assisting tribes in relocation and adaptation strategies "based in human rights protections" to respond to the climate crisis.<sup>222</sup> Additionally, the tribes wish that the recommendation be made for the allocation of funding by the government of Louisiana for a tribal-led relocation of the Choctaws of the Isle de Jean Charles.<sup>223</sup> Further, the tribes want the State to respect their right to self-determination and consultation in the State's development and implementation of the Louisiana Master Plan.<sup>224</sup> Lastly, the tribes ask that the United Nations help them enforce the international law and human rights norms by insisting the United States take action to remedy the human rights violations outlined in their complaint.<sup>225</sup>

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215. *Id.* at 42.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.* at 10.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.* at 11.

224. *Id.*

225. *Id.* at 48.

The United Nation Special Rapporteurs responded in September 2020, nearly eight months after the complaint, with concern for the climate crisis effects on the displaced tribal communities.<sup>226</sup> Their response was addressed directly to the U.S. government and cites to the Tribe's complaints with concerns for the situation but does not validate or speak to the accuracy of the information provided in the complaint.<sup>227</sup> The rapporteurs expressed concern for "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."<sup>228</sup> Particularly, for the federal and state governments acting without the inclusion of the Indigenous people affected.<sup>229</sup> The response urges the federal government to provide clarity on the actions it has taken to protect the tribes from climate displacement.<sup>230</sup> The federal government was also asked to "provide information on steps taken to respect, protect and fulfil the rights of indigenous peoples to life, . . . sustainable environment and their cultural rights."<sup>231</sup> Additionally, the rapporteurs requested a plan to ensure the inclusion of affected Indigenous people groups in decision making when tribal land is affected in the future.<sup>232</sup>

The rapporteurs go further than merely requesting a response to their inquiries but also includes an annex of references to international human rights law. In the annex, they highlight the importance of cultural rights and specific standards to protect the rights of indigenous peoples.<sup>233</sup> The Special Rapporteur in the field of cultural rights "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."<sup>234</sup> The rapporteur urges that these matters be

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226. Kezia Setyawan, *Louisiana Tribes Urge Biden to Invite U.N. to Investigate Failure to Respond to Climate Change*, HOUMATODAY (Oct. 26, 2021, 4:47 PM), <https://www.houmatoday.com/story/news/2021/10/26/louisiana-tribes-urge-biden-invite-u-n-investigate-complaint/6174163001/>.

227. U.N. Special Rapporteurs, Letter dated Sept. 15, 2020 from U.N. Special Rapporteurs to the President of the United States, U.N. Doc. AL USA 16/2020 (Sept. 15, 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25381>.

228. *Id.* at 7.

229. *Id.*

230. *Id.*

231. *Id.* at 8.

232. *Id.*

233. *Id.* at 12.

234. *Id.* at 13.

given priority and that “concerted . . . effort[s]” be taken by global partners and governments with the “[g]uarantee that all climate action and initiative is taken in coordination with, and with the participation of indigenous peoples.”<sup>235</sup> They concluded with references to both international law and agreements that the United States has affirmatively signed onto as support for their concerns for the allegations presented in the tribal complaint. In their letter, the special rapporteurs extended a sixty-day window for a reply before the correspondence, and any responses, were published on the communications reporting website.<sup>236</sup> There are no published replies from the U.S. government in response to this letter from the special rapporteurs.

### *VI. Moving Forward*

As this Comment has outlined, climate change has and will continue to disproportionately impact the lives and culture of Indigenous peoples if no action is taken to mitigate and aid the displacement of these people groups. The place to start in finding a solution is the inclusion of Indigenous voices in climate conversations and collaboration to develop and implement adaptation and mitigation strategies. Adaptation and mitigation are often lumped together when discussing strategies for climate change but serve individual and unique purposes. Adaptation is the reactive measures taken to cope and live with the “unfolding ecological and atmospheric changes.”<sup>237</sup> Whereas mitigation is the preventative measures to stop further climate change.<sup>238</sup> Along with the development of these strategies, another key step in the solution to this complex issue is found in the federal trust responsibility requiring the promotion and protection of native land by creation of a federal climate response framework with tribal consultation at its conception.

#### *A. Tribal Lead Adaptation and Mitigation Strategies*

The federal response to climate change thus far has mirrored the Western ideals of prioritizing economic success based on profits and individualism above all other objectives including “well-being” and “community.”<sup>239</sup> The

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235. *Id.* (quoting “forthcoming report to the General Assembly for 2020” by “the Special Rapporteur in the field of cultural rights”) (alteration in original).

236. *Id.* at 8.

237. KARI MARIE NORGAARD, KARUK TRIBE DEP’T OF NAT. RES., KARUK TRIBE CLIMATE VULNERABILITY ASSESSMENT: ASSESSING VULNERABILITIES FROM THE INCREASED FREQUENCY OF HIGH SEVERITY FIRE 8 (2016), <https://karuktribeclimatechangeprojects.files.wordpress.com/2016/11/final-karuk-climate-assessment1.pdf>.

238. *Id.*

239. *Id.* at 7.

prioritization of profits does not work for the issue of climate change, and there is an increasing realization of the need to incorporate long term community-based models of solutions.<sup>240</sup> As a result of the unique vulnerability to climate change that they face, tribes have been leading the way in developing community centric solutions to climate change, founded in traditional knowledge. This vulnerability “is not because of an inherent weakness, but because of the way colonialism and Western land management policies and practices have limited—if not outlawed—the ability of indigenous communities to exercise their resilient lifeways.”<sup>241</sup> Just as Indigenous communities in the United States have had to adapt and remain resilient through its turbulent history, they are once again using adaptive measures to navigate the effects of climate change, and there is much to be learned from them.

The Karuk Tribe located on aboriginal lands along the Klamath and Salmon Rivers in northern California have created a comprehensive climate adaptation plan that emphasizes the restoration of traditional knowledges and human responsibilities.<sup>242</sup> The Karuk plan is unique as it contains a central focus on fire and utilizing both Western science and traditional knowledge to identify “22 focal species cultural indicators . . . across seven habitat management zones.”<sup>243</sup>

The State of California has seen an increase in the total number of fires, change in fire behavior, and a progressive increase in high severity fires as a result of climate change.<sup>244</sup> The Karuk aboriginal land spans two fire zones, and according the NW Climate Toolbox, it is expected to increase its number of very high fire danger days by twelve and extreme fire danger days by six “by the end of the century.”<sup>245</sup> The Karuk Tribe plans to combat these fires by revitalizing their cultural land management practices and, in turn, reducing the number of high severe fires and protecting public and tribal trust land.<sup>246</sup> One tool to achieve this goal is by restoring their traditional fire regimes.<sup>247</sup> The fire regimes management practices include burning during

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240. *Id.*

241. *Id.* at 17.

242. KARI MARIE NORGAARD & WILLIAM TRIPP, KARUK TRIBE DEP’T OF NAT. RES., KARUK CLIMATE ADAPTATION PLAN 14 (2019), [https://karuktribeclimatechangeprojects.files.wordpress.com/2019/10/reduced-size\\_final-karuk-climate-adaptation-plan.pdf](https://karuktribeclimatechangeprojects.files.wordpress.com/2019/10/reduced-size_final-karuk-climate-adaptation-plan.pdf).

243. *Id.* at 10.

244. *Id.* at 34.

245. *Id.* at 35.

246. *Id.* at 42–43.

247. *Id.* at 45.

specific “season, frequency, and intensity.”<sup>248</sup> These controlled burns promote fire adapted vegetation and are “especially critical for restoring grasslands for elk, managing for food sources including tanoak and black oak acorns, maintaining quality basketry materials, producing smoke that shades the river for fish, and more.”<sup>249</sup> The Karuk Tribe has been prohibited from the use of these fire regime practices because of fire suppression policies over the last century, including the Weeks Act of 1911, making it illegal to continue.<sup>250</sup> The ending of this type of tribal fire management has led to an increase in the fuel load, and coupled with the increase in temperature and prolonged drought due to climate change, results in disastrous, high-severity fires.<sup>251</sup> Through the advocacy of the Karuk Tribe, there has been an increased recognition and interest in their traditional land management practices “that they may provide a much-needed path towards both adaptation and reducing emissions.”<sup>252</sup> The Karuk Tribe is working with both Native and non-Native policymakers in efforts to implement these and other practices.

The Karuk climate adaptation plan also includes strategies to combat physical and mental health challenges resulting from climate change.<sup>253</sup> Short term and long term health adaptation needs to be met include “coordination with other departments, development of [an] emergency management program, . . . and air purifying resources.”<sup>254</sup> The plan further addresses infrastructure, food security, and water quality climate adaptations.<sup>255</sup> The Karuk plan is designed to be a living document to evolve as the community’s needs change and information develops.<sup>256</sup> Other tribal adaptation plans include the Confederated Salish and Kootenai Tribes’ plan focused on “forestry, land, fish, wildlife, water, air, infrastructure, people, and culture” and the Nez Perce Tribe’s Clearwater River Subbasin plan focused on “forest resources, water resources, and economic impacts.”<sup>257</sup> For the Karuk and many tribes developing adaptation plans, it is with the understanding that it is a process of improvement not focused on a specific outcome.

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248. *Id.*

249. *Id.*

250. *Id.* at 46.

251. *Id.*

252. *Id.*

253. *Id.* at 157.

254. *Id.* at 159.

255. *Id.* at 190–91.

256. *Id.* at 13.

257. NORTON-SMITH ET AL., *supra* note 46, at 82.

Adaptation efforts by tribes work to adjust to the damage that has already been done by climate change, whereas mitigation efforts are aimed at reducing the rate of the ongoing climate change and addressing the disproportionate impacts to indigenous people groups.<sup>258</sup> In 2009, “Indigenous representatives from the Arctic, North America, Asia, Pacific, Latin America, Africa, Caribbean and Russia” gathered for the Indigenous Peoples’ Global Summit on Climate Change.<sup>259</sup> They concluded their meeting with a declaration stating, “In order to achieve the fundamental objective of the United Nations Framework Convention on Climate Change (UNFCCC), we . . . call upon States to work towards decreasing dependency on fossil fuels” and transition to “decentralized renewable energy economies.”<sup>260</sup> Their declaration is based in the context of tribal sovereignty and urge states to abandon solutions to climate change that negatively affect their rights to land like nuclear energy and large scale dams.<sup>261</sup> The move toward renewables has to be balanced with sovereignty in mind, otherwise, there are unjust outcomes to Indigenous people groups. One example is the solar power plant project in the Sonoran Desert that threatens ancient tribal cultural sites.<sup>262</sup>

#### *B. Recommendation for a Federal Climate Framework*

Working hand in hand with the development of tribal led adaptation and mitigation strategies the solution must also start with the inclusion of Indigenous voices and the creation of a federal climate framework. According to the U.S. Government Accountability Office (GAO) July 2020 Report to Congressional Requesters, unclear federal leadership “inhibits the ability of federal agencies to provide effective assistance to states and

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258. *Id.* at 85.

259. The Anchorage Declaration 1 (Indigenous Peoples’ Global Summit on Climate Change, Apr. 24, 2009), <https://unfccc.int/resource/docs/2009/smsn/ngo/168.pdf>.

260. *Id.* at 2; *see also* United Nations Framework Convention on Climate Change art. 2, May 9, 1992, 1771 U.N.T.S. 107, [https://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf) (stating that the ultimate objective of this Convention is to achieve “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”).

261. The Anchorage Declaration, *supra* note 259, at 3.

262. Tiffany Hsu, *Native Americans Sue U.S. over Solar Power Plant in Desert*, L.A. TIMES (Nov. 4, 2010), <https://www.latimes.com/archives/la-xpm-2010-nov-04-la-fi-solar-tribe-20101105-story.html>.



communities.”<sup>263</sup> Specifically, there has been no coordinated federal efforts to support climate migration. As a result, aid for tribes facing climate migration as a resilience strategy, like the Choctaws and Alaskan Natives, is limited to provisions by various agencies is sparse and falling under broad authority and funding from other projects.<sup>264</sup> In their report, the GAO recommends for the creation of a “well-designed climate migration . . . program” to improve the federal capability to assist these communities and would limit the federal fiscal exposure in the future.<sup>265</sup> Recognizing that climate migration impacts the communities’ socio-economic and cultural connections to their land, the GAO identified that migration programs need to be community-driven.<sup>266</sup> They conclude that creating agreements with all levels of governments and community stakeholders will increase support and expedite necessary climate migration efforts.<sup>267</sup>

GAO had previously reported to Congress in October 2019 the need for a federal initiative prioritizing climate resilience programs.<sup>268</sup> Both the October 2019 and July 2020 reports and recommendations have been met with no action by Congress.<sup>269</sup>

### *C. Indigenous Representation*

Lastly, the Global institutions and the United States must uphold their responsibility to Indigenous people groups by requiring consultation and representation of Indigenous voices in climate conversations. Indigenous people are not merely victims of climate change but rather “agents of environmental conservation.”<sup>270</sup> From the beginning of global climate conversations, Indigenous people groups have been cast out of the room, and the notion of them as victims has been perpetuated.<sup>271</sup> These instances

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263. U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-488, CLIMATE CHANGE: A CLIMATE MIGRATION PILOT PROGRAM COULD ENHANCE THE NATION’S RESILIENCE AND REDUCE FEDERAL FISCAL EXPOSURE 38 (2020).

264. *Id.*

265. *Id.*

266. *Id.* at 43.

267. *Id.* at 44.

268. *Id.*

269. *See id.*; *see also* U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-127, CLIMATE RESILIENCE: A STRATEGIC INVESTMENT APPROACH FOR HIGH-PRIORITY PROJECTS COULD HELP TARGET FEDERAL RESOURCES (2019).

270. Linda Etchart, *The Role of Indigenous Peoples in Combating Climate Change*, 3 PALGRAVE COMM’NS, article no. 17085, 2017, at 1, <https://www.nature.com/articles/palcomms201785.pdf>.

271. *Id.* at 2.

include the being sidelined following the adoption 1997 Kyoto Protocol and more recently the exclusion from the 2015 Global COP21 United Nation Climate Change Summit.<sup>272</sup> Although Indigenous leaderships have worked to advocate to their place and reiterate the “link between climate change and the rights of indigenous peoples” their exclusion from the table has continued.<sup>273</sup> Providing opportunities for the inclusion of Indigenous perspectives and voices is the foundational first step in mitigating impacts of climate change. The United States government’s unique federal trust responsibility to Indigenous peoples adds another layer to how imperative it is for inclusion of tribes in climate conversations. The United States has taken small steps towards better consultation including a 2013 executive order by President Obama and more recently the Respect Act that has been introduced in the House of Representatives this legislative session.

In November 2013, President Obama issued Executive Order (EO) 13653 entitled Preparing the United States for the Impacts of Climate Change.<sup>274</sup> EO 13653 is based on the notion that the United States needs to develop preparedness and resilience strategies.<sup>275</sup> Specifically, the EO establishes a task force on climate preparedness and resilience comprised of state, local, and tribal leaders.<sup>276</sup> The task force was asked to provide recommendations within one year on how to foster federal programs promoting resilience to climate impacts.<sup>277</sup> The task force was comprised of twenty-six individuals—primarily state governors and mayors.<sup>278</sup> It is important to note that although the task force addresses the climate impacts on tribal communities, Chairwoman Karen Diver of the Fond du Lac Band of Lake Superior Chippewa was the only tribal-affiliated representative appointed to the taskforce.<sup>279</sup> The taskforce made recommendations for the incorporation of the tribal communities by “enhancing self-governance capacity,” engagement in the collaboration process, and “recognizing the role of

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272. *Id.*

273. *Id.*

274. Exec. Order No. 13653, 3 Fed. Reg. 66,819 (Nov. 6, 2013).

275. *Id.*

276. *Id.* at 66, 823.

277. *Id.*

278. PRESIDENT’S STATE, LOCAL, AND TRIBAL LEADERS TASK FORCE ON CLIMATE PREPAREDNESS & RESILIENCE, RECOMMENDATIONS TO THE PRESIDENT ii (2014), [https://obama.whitehouse.archives.gov/sites/default/files/docs/task\\_force\\_report\\_0.pdf](https://obama.whitehouse.archives.gov/sites/default/files/docs/task_force_report_0.pdf).

279. *Id.* (noting that among the listed members of the task force Ms. Diver was the only individual listed for her representative capacity of her tribe). The other members appointed were listed by their titles as mayors and governors of various states without notation of possible personal tribal connection or affiliation. *Id.*

traditional ecological knowledge in understanding the changing climate.”<sup>280</sup> The taskforce and the recommendations were a good first step towards greater inclusion of tribal and indigenous voices in the area of climate change but is only as strong as the actions that follow and if their recommendations are implemented.

If passed by Congress, the Respect Act could be the next step towards expanding tribal representation. The name “Respect Act” is short for the House Resolution 3587-Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes Act that was introduced into the House of Representatives and currently sits in the House Judiciary Natural Resources Committee.<sup>281</sup> The Respect Act recognizes the tribal right to self-govern and the trust responsibility has to protect and support tribal governments.<sup>282</sup> It outlines its purpose of increasing consultation procedures to ensure meaningful tribal input is being taken into consideration throughout decision-making processes.<sup>283</sup> The Act defines consultation as more than notice but rather a “two-way exchange of information, a willingness to listen [and] . . . accommodate Tribal concerns to the extent feasible and consistent with applicable law.”<sup>284</sup>

The Act requires consultation to occur before beginning or finalizing any federal action or activities that may impact tribes or involves federal land that borders tribal land.<sup>285</sup> It further requires that a federal agency must prepare a Tribal Impact Statement that identifies potential impacts of the proposed project including efforts to identify any known sacred sites.<sup>286</sup> The Act then requires that the Tribal Impact Statement be sent to affected tribes with a “good faith effort” at arranging a consultation meeting before proceedings with the proposed project.<sup>287</sup> The overarching goal of the Respect Act is for adherence of the federal trust responsibility by creating a process for meaningful tribal input in federal decision making.<sup>288</sup> If passed, this Act would greatly increase the tribes’ influence on climate change initiatives by not only giving them a seat at the table but an opportunity to be of influence

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280. *Id.* at 8.

281. Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes Act, H.R. 3587, 117th Cong. (2021).

282. *Id.* §§ 3(a)(2)–(3).

283. *Id.* §§ 3(a)(4)–(5).

284. *Id.* §§ 4(2)–(3).

285. *Id.* § 101(a).

286. *Id.* §§ 201(1)–(2).

287. *Id.* §§ 202(a)(1), 202(b).

288. *Id.* §§ 3(a)(4)–(5).

on the decisions being made that directly impact their Indigenous culture, right to self-determination, and well-being.

### *VII. Conclusion*

The Choctaws of coastal Louisiana have received notoriety across the nation as the first climate migrants in the United States, but it is certain that they will not be the last. As the temperatures continue to rise and we continue seeing more and more environmental changes because of climate change, we will also see more and more people groups affected. Indigenous people groups are the first to feel these impacts because of their cultural and subsistence reliance on the land. The federal government must uphold their trust obligation to support tribes as they work to protect their citizens and livelihood. The first step is passing the Respect Act and implementing measures for effective consultation and inclusion of Indigenous voices. There is a lot to be learned from the adaptation and mitigation strategy plans based in traditional knowledges that tribes are already creating—all that is left is for the federal government to listen.