

**REQUEST FOR EARLY WARNING MEASURES AND
URGENT ACTION PROCEDURES**

TO

The United Nations Committee on the Elimination of Racial Discrimination

BY

**The Gwich'in Steering Committee, Land is Life, Cultural Survival,
First Peoples Worldwide, and the University of Colorado's American Indian
Law Clinic**

IN RELATION TO

The United States of America

PREPARED FOR

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Discrimination**

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I. Executive Summary

The Gwich'in Steering Committee, Land is Life, Cultural Survival, First Peoples Worldwide, and the University of Colorado's American Indian Law Clinic thank you for the opportunity to submit this request for early warning and urgent action procedures on behalf of the Gwich'in people. The government of the United States is aggressively pursuing oil and gas development in the Coastal Plain of the Arctic National Wildlife Refuge in Alaska without the free, prior and informed consent of the Gwich'in Nation. This is an encroachment on lands held sacred by the Gwich'in people and has further discriminatory impacts on their security and freedoms as enumerated in the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD").

II. Introduction and Background

The submitting organization respectfully requests a decision under the early warning and urgent action procedures of the United Nations Committee on the Elimination of Racial Discrimination ("CERD" or "the Committee") regarding the U.S. Government's proposed oil and gas development in the Coastal Plain of Alaska. This land is sacred to the Gwich'in Nation. Development in the area will threaten their way of life, in violation of various rights protected by ICERD including their rights to culture, health, education, and employment. Development will also exacerbate the impacts of global climate change, which have a heightened and disproportionate impacts on Indigenous Peoples, particularly in places like Alaska.¹ The planned extraction of oil and gas in and around their sacred lands threatens serious harm to the Gwich'in Nation, consistent with a continued pattern of the United States showing racial discrimination against indigenous groups. The Gwich'in are therefore asking CERD to address these human rights violations.

The domestic legal framework in the U.S. has proven inadequate in protecting the human rights of Indigenous Peoples, as demonstrated by a long history of discriminatory treatment since its founding. As described by Dr. Martin Luther King, Jr., "Our nation was born in genocide when it embraced the doctrine that the original American, the Indian, was an inferior race. Even before there were large numbers of Negroes on our shore, the scar of racial hatred had already disfigured colonial society. From the sixteenth century forward, blood flowed in battles over racial supremacy. We are perhaps the only nation which tried as a matter of national policy to wipe out its indigenous population."²

¹ All over the globe, Indigenous Peoples are on the frontlines of climate change. They often feel the effects most acutely because of the ways in which climate change impacts their traditional ways of life. The climate in Alaska is already warming twice as fast as the global average, resulting in serious threats to the safety and lifeways of the Gwich'in People.

² King, Martin Luther, Jr., *Why We Can't Wait*. New York: New American Library, 1964.

The Gwich'in Nation spreads across northeastern Alaska and the Northwest Territories of Canada. They are caribou people. For thousands of years, they migrated alongside the Porcupine Caribou Herd ("the Herd"). When they settled, they placed their villages along the Herd's migration path. The Gwich'in and the Porcupine Caribou are culturally and spiritually linked and dependent on each other for their survival.³ The Gwich'in rely on the Herd for 80% of their subsistence diet, and their subsistence culture of hunting revolves around the caribou.⁴ As one elder shared, "Caribou are not just what we eat; they are who we are. They are in our stories and songs and the whole way we see the world. Caribou are our life. Without caribou, we wouldn't exist."⁵ Because of the cultural, spiritual, and subsistence relationship with the caribou, harm done to the Herd directly impacts the rights of the Gwich'in.

The Coastal Plain of the Arctic National Wildlife Refuge is the calving and nursery grounds of the Porcupine Caribou Herd.⁶ For this reason, the Gwich'in call the Coastal Plain, *Izhik Gwats'an Gwandaii Goodlit*, which translates to *The Sacred Place Where Life Begins*. The Coastal Plain is so sacred to the Gwich'in that they do not step foot there, even in times of famine. The United States Government is well aware of this special relationship between the Gwich'in and the Herd and of the importance of the Coastal Plain to the Herd's survival. Nevertheless, the U.S. is moving forward with aggressive plans to lease the area for oil and gas extraction. The U.S. admits that "caribou are held in the highest regard by the Gwich'in and are the backbone of their cultural identity"⁷ and that "broader cultural impacts [from development] on belief systems/religious practices would be common...[p]articularly for the Gwich'in, who hold the program area as sacred ground."⁸ Although the U.S. Government admits that the decision to invade this sacred space will impact the Gwich'in's subsistence, culture, and health, the Government has moved forward with plans for oil and gas development in the Coastal Plain without the Gwich'in's free, prior and informed consent, without meaningfully consulting the Gwich'in as required under domestic law, and without incorporating the Gwich'in's traditional knowledge.

In 1960, in response to pressure from conservationists and outdoorsmen, U.S. President Eisenhower designated the Arctic National Wildlife Refuge ("Arctic Refuge" or "Refuge"), as a protected area in northern Alaska. The Coastal Plain is a 1.5 million acre area located within the approximately 19 million acres of the Arctic Refuge. This designation prevented the Coastal

³ See U.S. Bureau of Land Mgmt., Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement Final 3-226 (2019) [hereinafter "FEIS"].

⁴ Richard J. Wilson, A Moral Choice for the United States: The Human Rights Implications for the Gwich'in of Drilling in the Arctic National Wildlife Refuge at 4 (2005).

⁵ Sarah James, Gwich'in Steering Committee Website. Retrieved from: <<http://ourarcticrefuge.org/about-the-gwichin/>> (last visited on Nov. 07, 2019).

⁶ FEIS, at 3-215.

⁷ FEIS, at 3-216.

⁸ FEIS, at 3-216.

Plain from development or natural resource extraction.⁹ In 1988, in response to potential oil and gas development in the Coastal Plain, the Gwich'in Nation leaders —spanning both the U.S. and Canada—were called together by their elders for the first gathering in over 150 years. They passed a unanimous Resolution, *Gwich'in Niintsyaa*, and created the Gwich'in Steering Committee (“GSC”) to speak as the unified voice of the Gwich'in Nation against oil and gas development in *The Sacred Place Where Life Begins*.¹⁰

In December 2017, the United States Congress passed the Tax Cuts and Jobs Act of 2017 (“2017 Tax Act”) into law. The Tax Act included language that amended the prohibition of oil and gas development in the Coastal Plain and required that lease sales take place in the area.¹¹ United States lawmakers passed the law without obtaining the free, prior and informed consent or adequately consulting with the Gwich'in and other similarly affected Indigenous Peoples. On September 11, 2019, in recognition of the harm that oil and gas development would have on some of the last remaining wild landscapes in the world, the U.S. Senate leaders introduced the *Arctic Refuge Protection Bill*, which would provide permanently protect the Coastal Plain from development.¹² On the next day, September 12, the U.S. House of Representatives passed the *Arctic Cultural and Coastal Plain Protection Act* that would reverse the language in the 2017 Tax Act and halt oil and gas development on the Coastal Plain.¹³ Three days before the bill was passed, the Trump Administration issued a statement stating that “[i]f these bills were presented to the President, his advisors would recommend he veto them.”¹⁴ A few hours after the House vote, the Bureau of Land Management issued a Final Environmental Impact Statement (“FEIS”)¹⁵ as part of the domestic requirements for opening the Coastal Plain to oil and gas development.

The FEIS is a lengthy document listing all of the potential environmental impacts that come with certain proposals for development. As required under domestic law, the FEIS must consider alternatives for development that range in scope. The BLM selected the option with the greatest environmental and social impacts as its “preferred alternative.”¹⁶ This option will open the entirety of the Coastal Plain to oil and gas leasing for development, exceeding what is mandated by the 2017 Tax Act. The U.S. Government analyzed, acknowledged, and accepted

⁹ Alaska National Interest Lands Conservation Act (PL 96-487).

¹⁰ Gwich'in Niintsyaa 2012: Resolution to Protect the Birthplace and Nursery Grounds of the Porcupine Caribou Herd. Retrieved from: <<http://ourarcticrefuge.org/wp-content/uploads/2012/10/GG-Resol.-2012-1.pdf>> (last visited on Nov. 07, 2019).

¹¹ The Tax Cuts and Jobs Act, 131 Stat. 2054 (2017).

¹² Arctic Refuge Protection Act, S. 2461, 116 Cong. (2019).

¹³ Arctic Cultural and Coastal Plain Protection Act, H.R. 1146, 116 Cong. (2019)

¹⁴ Statement of Administration Policy, September 9, 2019. Retrieved from:< https://www.whitehouse.gov/wp-content/uploads/2019/09/SAP_HR-205_HR-1146_HR-1941.pdf> (last visited on Nov. 07, 2019).

¹⁵ A copy of the FEIS can be found at <<https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=152110>> (last visited on Nov. 07, 2019).

¹⁶ See FEIS, at ES-3.

that the plan for oil and gas development in the Coastal Plain would have numerous adverse impacts to the physical environment, biological resources, and social systems in the area. Although the U.S. Government claims it consulted with the Gwich'in and other Alaska Native peoples, those efforts were largely an attempt to meet technical requirements for consultation rather than a good faith effort to integrate and consider indigenous perspectives and concerns. This was especially true for the Gwich'in; the analysis of the Final Environmental Impact Statement does not reflect their interests.

Therefore, the Gwich'in ask CERD to review these concerns under the early warning and urgent action procedures as they are related to “encroachment on the lands of indigenous communities, in particular exploitation of natural resources and infrastructure projects posing threats of irreparable harm to indigenous and tribal peoples.”¹⁷ Because the Gwich'in are Indigenous Peoples, the rights enumerated under the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP” or “the Declaration”) help inform this request. Furthermore, since this oil and gas development will be accomplished through government leases to private companies, the Gwich'in invoke the United Nations Guiding Principles of Business and Human Rights (“UNGPs”) under the ICERD obligation that State parties also prevent private actors from engaging in human rights abuses.

III. Previous CERD Recommendations

In its concluding observations from 2014, the Committee acknowledged the following concerns within the United States, all of which are relevant to the proposed development in the Coastal Plain:

- a) “That the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with [the ICERD], which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect;”
- b) That “the Committee is concerned that...indigenous peoples continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries;”
- c) That there are “adverse effects of economic activities related to the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the rights to land, health, environment and the way of life of indigenous peoples and minority groups living in these regions;”
- d) That “[t]he Committee is concerned at the obstacles faced by individuals belonging to racial and ethnic minorities and indigenous peoples to effectively exercise their right to vote, due...to restrictive voter identification laws;”

¹⁷ Revised Guidelines 2007 CERD, Annual report A/62/18, Annexes, Chapter III.

- e) That “the Committee remains concerned at the disproportionate number of women from racial and ethnic minorities, particularly...Alaska Native women, who continue to be subjected to violence, including rape and sexual violence;”
- f) That there has been a “[l]ack of concrete progress achieved to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policy-making and decisions that affect them;” and
- g) That there have been “[i]nsufficient measures taken to protect the sacred sites of indigenous peoples that are essential for the preservation of their religious, cultural and spiritual practices against polluting and disruptive activities...”¹⁸

As such, the Committee recommended that the United States:

- 1) “Prohibit racial discrimination in all its forms in federal and state legislation, including indirect discrimination, covering all fields of law and public life;”
- 2) “[A]dopt and strengthen the use of special measures...when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms based on race or ethnic origin;”
- 3) “Ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels;”
- 4) “Take appropriate measures to prevent the activities of transnational corporations registered in the State party which would have adverse effects on the enjoyment of human rights by local populations in other countries, especially by indigenous peoples and minorities;”
- 5) “[I]ntensify its efforts to prevent and combat violence against women, particularly against American Indian and Alaska Native women, and ensure that all cases of violence against women are effectively investigated, perpetrators prosecuted and sanctioned, and victims provided with appropriate remedies;”
- 6) “Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them based on their free, prior and informed consent;” and
- 7) “Adopt concrete measures to effectively protect the sacred sites of indigenous peoples as a result of the State party’s development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable.”¹⁹

The United States has provided no response to these concluding observations, and violations continue to persist. As such, the Gwich’in Steering Committee brings the foregoing

¹⁸ CERD/C/USA/CO/7-9.

¹⁹ CERD/C/USA/CO/7-9.

violations and concerns to the attention of CERD under the early warning and urgent action procedures.

IV. The Gwich'in invoke the early warning and urgent action procedures under CERD to prevent escalation of conflict and serious harm.

The Gwich'in Steering Committee and partner organizations file this request asserting that the United States is engaging in harmful and discriminatory activity warranting the application of early warning and urgent action procedures under ICERD.

The revised guidelines for early warning and urgent action procedures include various situations that may trigger the procedures; relevant here is the “encroachment on the traditional lands of indigenous peoples. . . in particular for the purpose of exploitation of natural resources” and “polluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups.”²⁰ By opening the Coastal Plain to oil and gas development, without regard for the Gwich'in's cultural, traditional, and historical relationship to the land and its resources, the U.S. Government is engaging in discriminatory practices that harm the Gwich'in.

A. Domestic remedies do not sufficiently address these human rights violations.

Indigenous rights are not sufficiently considered in the domestic remedies available to prevent drilling on the Coastal Plain, which are instead largely based on environmental, administrative, and procedural statutes. Though remedies under these domestic laws could have beneficial consequences for the protection of the Coastal Plain or minimize the impacts of development, they do not address the underlying discriminatory principles that allow for these violations to take place.

Furthermore, any domestic recourse the Gwich'in have to address their human rights as Indigenous Peoples has historically been futile. This Committee itself has reiterated its concern that “the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with [the ICERD], which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory *in effect*.”²¹ Furthermore, in her report to the United States in 2017, the Special Rapporteur on the rights of indigenous peoples noted the Human Rights Committee's recommendation to the United States to “adopt measures to effectively protect sacred areas of indigenous peoples against desecration, contamination and destruction and ensure that consultations are held with the indigenous communities that might be

²⁰ Guidelines for the Early Warning and Urgent Action Procedures, Annual report A/62/18, Annexes, Chapter III, ¶ 12(h).

²¹ CERD/C/USA/CO/7-9, ¶ 5 (emphasis added).

adversely affected by the State party's development projects and exploitation of natural resources with a view to obtaining their free, prior and informed consent for proposed project activities."²² The Special Rapporteur also noted that the United States does not have a framework that ensures full access to redress to Indigenous Peoples for violations perpetrated on their lands and territories.²³

These legislative and regulatory deficiencies are particularly salient for the Gwich'in who do not have meaningful representation in Congress. Don Young, the U.S. Representative for Alaska, has specifically stated that he does not represent or account for the concerns of the Gwich'in.²⁴ Alaska's congressional representatives are putting corporate interests above those of their indigenous constituents. Unsurprisingly, many Alaska Natives face barriers to their ability to participate meaningfully in the elections of these representatives. Proposed voting rules requiring identification cards to include street addresses are one way in which local government is trying to prevent Alaska Natives from being able to vote. This is aligned with a trend that has been occurring in indigenous communities throughout the United States.²⁵ Furthermore, as the non-Native population in southern Alaska continues to grow, the interest of Alaska Natives are an increasingly marginalized concern for elected officials.

While legal claims brought under U.S. domestic law could result in the delay or even prevention of oil and gas development in the Coastal Plain, those laws do not directly address the human rights of the Gwich'in. The discriminatory effect of the U.S.'s oil and gas leasing plan will harm the Porcupine Caribou Herd, encroach on Gwich'in sacred lands, impact the health of the Gwich'in through climate change and pollution, and increase the risk of violence against Alaska Native women. Therefore, the Gwich'in now turn to CERD for assistance addressing the discriminatory legal framework that is allowing these human rights abuses to be perpetuated against them.

B. Development in the Coastal Plain violates numerous human rights of the Gwich'in People.

The U.S. Government's plan to open the Coastal Plain for oil and gas development will (1) result in devastating environmental impacts to the Porcupine Caribou Herd and, by extension,

²² CCPR/C/USA/CO/4, ¶ 25.

²³ A/HRC/36/46/Add.1.

²⁴ Meeting of House Natural Resources Committee's Subcommittee on Energy and Mineral Resources. Retrieved from: <<https://www.ktva.com/story/40215667/theyre-not-the-people-young-blasts-gwichin-over-anwr>> (last visited on Nov. 07, 2019).

²⁵For example, similar voter identification laws were passed in North Dakota in 2018 with the effect of disenfranchising indigenous communities. Maggie Astor, *A Look at Where North Dakota's Voter ID Controversy Stands*, N.Y. Times (Oct. 19, 2018). Retrieved from: <<https://www.nytimes.com/2018/10/19/us/politics/north-dakota-voter-identification-registration.html>> (last visited Nov. 07, 2019).

the Gwich'in; (2) physically encroach on land that has been held sacred by the Gwich'in since time immemorial; (3) hasten the effects of climate change in Alaska, which disproportionately impacts Alaska Natives; and (4) increase the risk of violence against Alaska Native women caused by an influx of male-dominated industry camps. Not only is the United States failing to protect the Gwich'in, but it is also actively mandating oil and gas development that directly impacts many of their human rights as defined in ICERD.

i. Development in the Coastal Plain harms the Porcupine Caribou Herd and the Gwich'in by extension.

Because of the cultural, spiritual, and subsistence relationship between the Gwich'in and the Porcupine Caribou Herd, any harm to the Herd will also harm the Gwich'in. A loss of access to the caribou will impact the Gwich'in's health and nutrition, the education of their youth, the expression of their culture, and their access to the subsistence activities that supplement their employment. The U.S. Government recognizes that development in the Coastal Plain will negatively affect terrestrial mammals, including the Herd, through habitat loss and alteration, behavioral disturbance and displacement, and injury or mortality.²⁶ Because the Herd has had very limited human contact, they will be more adversely affected than other land animals who interact with people more often.²⁷ In addition to physical threats posed by interaction with humans, the Herd are a highly acoustic-sensitive species.²⁸ As such, the introduction of drilling equipment, road building equipment, seismic testing, and other development processes will be highly disruptive to the caribou's migratory and breeding behaviors. By the Government's own calculations, development in the Coastal Plain would cause an 8-10% decline in annual calf survival, impacting the overall growth of the Herd.²⁹ Therefore, either through death or displacement, the Gwich'in's access to the Herd will be impacted by the Government's activities in the Coastal Plain.

a. Harms to the Porcupine Caribou Herd violate the Gwich'in's right to health under ICERD Article 5(e)(iv).

The United States is violating Article 5(e)(iv), which protects their right to public health, medical care, social security and social services. In 2014, the Committee demanded the United States "[t]ake appropriate measures to prevent the activities of transnational corporations . . . which could have adverse effects on the enjoyment of human rights by local populations, especially indigenous peoples and minorities in other countries."³⁰ The United States is blatantly

²⁶ FEIS, at 3-144.

²⁷ For example, lack of familiarity with humans may result in high risk of mortality and injury based on vehicle-related incidents. FEIS, at 3-148-49.

²⁸ *Id.*

²⁹ FEIS, at 3-150.

³⁰ CERD/C/USA/CO/7-9, ¶ 10(d).

disregarding both the suggestions of the Committee and the impacts on the rights of the Gwich'in by opening the Coastal Plain for oil and gas development.

The Gwich'in rely on the Porcupine Caribou for the majority of their subsistence. Development on the Coastal Plain would greatly diminish this key source of nutrition, threatening the Gwich'in's food security and forcing them to rely on store-bought food. Studies have shown that consumption of store-bought foods leads to higher rates of cancer and diabetes.³¹ Furthermore, store-bought food in this region is prohibitively expensive and lacks nutritional value.³² When Gwich'in elders have had to rely on store-bought food in the past, they became sick and needed treatment for vomiting and gestational issues.³³

Additionally, the health of other indigenous communities has been impacted when their food sources have come into contact with the Prudhoe Bay oil fields. The Gwich'in are concerned that if the Porcupine Caribou get too close to oil and gas drilling, their meat will no longer be safe for consumption. Therefore, even if the Herd does not alter its migration path and maintains the same number of caribou, oil and gas activity on the Coastal Plain will impact the Gwich'in's reliance on this food source.

The United States is disregarding the disproportionate impacts these actions will have on the Gwich'in's health despite their admission that “[t]he relative lack of cash to support subsistence activities would make [them] more vulnerable to changes in the availability of resources, such as caribou.”³⁴ Without access to the safe, nutritional food source that has sustained their people for millennia, these impacts threaten the health of the Gwich'in people, amounting to a violation of ICERD Article 5(e)(iv).

b. Harms to the Porcupine Caribou Herd violate the Gwich'in's right to education under ICERD Articles 5(e)(v) & 7.

The United States is violating Articles 5(e)(v) and 7 of ICERD, which protects their right to education. When the Herd is decreased or displaced, the Gwich'in will have to rely on less nutritious, more expensive western food. As such, Gwich'in students are more likely to show up to school hungry. The UN Department of Economic and Social Affairs has said that in general “Indigenous children are more likely to arrive at school hungry, ill, and tired.”³⁵ These obstacles

³¹ *Id.*

³² Richard J. Wilson, A Moral Choice for the United States: The Human Rights Implications for the Gwich'in of Drilling in the Arctic National Wildlife Refuge, p. 6.

³³ FEIS app. C, at C-18.

³⁴ FEIS, at 3-262.

³⁵ UN Department of Economic and Social Affairs, Indigenous Peoples. Retrieved from: <<https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/education.html>> (last visited on Nov. 07, 2019).

to education lead to higher drop-out rates, which have a direct correlation to family and community poverty.³⁶

According to the American Psychological Association, family poverty leads to “[h]igh mobility and homelessness; hunger and food insecurity; parents who are in jail or absent; domestic violence; drug abuse and other problems . . .”³⁷ Family poverty is linked to “[s]ome of the precursors to dropping out, including low achievement, chronic absenteeism and misbehavior. . .”³⁸ In addition, community poverty is linked to “[c]ommunities of concentrated disadvantage with extremely high levels of joblessness, family instability, poor health, substance abuse, poverty, welfare dependency and crime. . .”³⁹ Moreover, sustained community poverty has an impact on “[c]hild and adolescent development through the lack of resources (playgrounds and parks, after-school programs) or negative peer influences.”⁴⁰ The U.S. opened the Coastal Plain to development knowing that these issues already plague indigenous communities. This is symbolic of the discriminatory legal and political framework in the U.S., one that ignores and perpetuates harms specific to indigenous communities in violation of Articles 5(e)(v) and 7 of ICERD.

The caribou and their migration pattern are essential for the Gwich’in’s cultural education and the passing of knowledge, dances, and ceremony. In the words of one Gwich’in elder, “This is the time when the life lessons are taught to the younger generation of the Gwich’in people.”⁴¹ The impacts of drilling on the Coastal Plain and on the Herd will deny current and future generations of Gwich’in children the right to learn, practice, and perpetuate their religious and cultural beliefs.

c. Harms to the Porcupine Caribou Herd violate the Gwich’in’s right to culture under ICERD Articles 2(2), 5(e)(vi) & 7.

The United States is violating Articles 5(e)(vi) and 7, which protect their right to engage in their subsistence culture. As a key food source for the Gwich’in, the Herd is a crucial part of their subsistence culture and is intrinsically linked to the Gwich’in’s identity. Gwich’in creation stories explain that the Herd and the Gwich’in have been connected since time immemorial; it teaches that the Gwich’in made a pact with the Herd that they will always take care of each other. The Gwich’in have lived up to this promise today by steadfastly protecting the sacred lands in which the Herd migrate and calve.

³⁶ Rumberger, R. Poverty and high school dropouts. American Psychological Association (2013). Retrieved from: <<https://www.apa.org/pi/ses/resources/indicator/2013/05/poverty-dropouts>> (last visited on Nov. 07, 2019).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Wilson, *supra* note 4, at 7.

Climate change has already created unusually warm seasons resulting in melting ice and altered landscapes. Even the most experienced hunters have fallen through thinning ice and drowned. Ice cellars that used to keep caribou meat fresh and safe to eat throughout the year are melting. The Gwich'in are already feeling the impacts from climate change on their subsistence activities, and these will only become more extreme as developers extract and burn fossil fuels in the Coastal Plain.

By the Government's own admission, the "[o]verall, future development in the program area [the Coastal Plain] could have lasting effects on cultural practices, values, and beliefs through its impacts on subsistence. The potential impacts of development could result in reduced harvests, changes in uses of traditional lands, and decreased community participation in subsistence harvesting, processing, sharing, and associated rituals and feasts. Because of this, communities could experience a loss of cultural and individual identity associated with subsistence, a loss of traditional knowledge about the land, damaged social and kinship ties, and effects on spirituality associated with degradation of the Alaska coastal plain."⁴² While the United States recognizes that its proposed oil and gas development will disproportionately affect the cultural practices of groups like the Gwich'in, it nevertheless is moving forward with oil development, in violation of ICERD Articles 5(e)(vi) and 7.

d. Harms to the Porcupine Caribou Herd violate the Gwich'in's right to Employment under ICERD Article 5(e)(i).

The Gwich'in have a deep relationship with the land they occupy and the resources they use. There is little economic development in remote northern Alaska and few opportunities for local employment. In most cases, seasonal employment rather than full-time or permanent employment directly supports the subsistence activities of individuals. The United States government acknowledges the significant effects a decrease in subsistence wildlife will have on the Gwich'in, specifically that "[t]he comparative lack of economic activity for the Gwich'in . . . could make those communities more vulnerable to social impacts, particularly those associated with disruption of subsistence activities."⁴³

ICERD Article 5(e)(i) secures the Gwich'in's right to free choice of employment and to just and favorable conditions of work. The U.S.'s failure to consider the negative impacts that development would have on employment is evidence of its broader discriminatory treatment of Indigenous Peoples. Although development will create an influx of jobs in the region, the Government has stated that the Alaska Natives would not be the anticipated beneficiaries of this job creation.⁴⁴ Instead, development is likely to displace the Herd, forcing the Gwich'in to travel further distances to hunt and greatly diminishing the ability of hunters to hold part-time

⁴² FEIS, at 3-241.

⁴³ FEIS, at 3-270.

⁴⁴ FEIS, at 3-339.

employment that provides for their families. Having to travel a greater distance to hunt will also put the Gwich'in in prolonged danger since climate change is already impacting the predictability of the landscape and of predators in the area. These increased dangers associated with hunting may discourage some members from participating in this activity, even though it is a regular supplement to part-time work and an important facet to their culture. The United States has chosen to ignore these discriminatory impacts on the Gwich'in's right to employment, in violation of ICERD Article 5(e)(i).

ii. *Development in the Coastal Plain is destruction of sacred lands, violating the right to religion under ICERD Article 5(d)(vii).*

Indigenous culture, religion, and spirituality are integral to the Gwich'in identity. The Gwich'in believe that the Coastal Plain is so sacred that no one should step foot in the area, and that any kind of development on this land would be an act of desecration. Even in times of extreme famine, the Gwich'in remain steadfast in their refusal to enter *Izhik Gwats'an Gwandaii Goodlit* or *The Sacred Place Where Life Begins*.⁴⁵

The Gwich'in's civil right to protect this land is found under ICERD Article 5(d)(vii) as "the right to freedom of thought, conscience, and religion." This right to religion can be implemented by way of culture through the UNDRIP, which states that "Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains."⁴⁶ Despite the fact that the United States have signed on to both the ICERD and the UNDRIP, they have refused to earnestly take into account the importance of the Coastal Plain to the Gwich'in.

Oil and gas infrastructure will affect thousands of acres of the Coastal Plain. Development will require installing nearly two dozen drilling pads and over 200 miles of roads and pipelines that "stretch like a spider across the entire Coastal Plain, end to end, from the coast to the foothills."⁴⁷ The drilling pads are "spaced according to state of the art drilling technology and what people don't realize when they hear 2,000 acres is that one mile of road only covers

⁴⁵GWICH'IN STEERING COMM., *The Refuge – The Coastal Plain*. Retrieved from: <<http://ourarcticrefuge.org/about-the-refuge/the-coastal-plain-the-sacred-place-where-life-begins/>> (last visited on Nov. 07, 2019).

⁴⁶ United Nations Declaration on the Rights of Indigenous Peoples G.A. Res. 61/295, art. 12, U.N. Doc. A/RES/61/295 (Sept. 13, 2007). Retrieved from: <<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>> (last visited on Nov. 07, 2019).

⁴⁷ *The Need to Protect the Arctic National Wildlife Refuge Coastal Plain: Hearing on H.R. 1146 Before the S. Comm. on Energy and Mineral Resources*, 116th Cong. (2019) (statement of Rep. Jared Huffman, Member, S. Comm. on Energy and Mineral Resources). Retrieved from: <<https://naturalresources.house.gov/hearings/the-need-to-protect-the-arctic-national-wildlife-refuge-coastal-plain>> (last visited Nov. 07, 2019).

roughly 7 and a half acres, 100 miles of road only covers 750 acres but it creates a 100 mile long barrier and a 100 mile long scar on the landscape.”⁴⁸ In other words, unequivocally, oil and gas infrastructure and road networks would do irreparable damage to the area.⁴⁹

Furthermore, seismic testing trails would drastically alter the land of this sacred area as well. The trails would be several hundred feet apart. Depending on timing and local conditions, the testing and camps could create ruts in the terrain or compress vegetation beneath equipment and snow. This could create a network of visible disturbance in the texture of the land and vegetation across the landscape.⁵⁰

The U.S. Government recognizes the following geological hazards within the Coastal Plain: earthquakes, surface faults, landslides, land subsidence, flooding, sea ice ride-up and override, coastal erosion, and storm surge. Oil and gas development in the Coastal Plain is expected to increase the rate and degree of risk regarding these hazards. Oil and gas development also produces waste, such as solid waste, wastewater, produced fluids, drilling muds, fire-fighting foam, and spills of oil, saltwater, and hazardous substances.⁵¹

The U.S. Government in the FEIS acknowledged that “[w]hile potential impacts on specific cultural resource sites would differ by alternative, broader cultural impacts on belief systems/religious practices would be common across all alternatives. Particularly for the Gwich’in, who hold the program area as sacred ground to their culture . . . the presence of development in the program area would constitute a cultural impact on the Gwich’in. This is because they believe that development in the program area would harm the caribou . . . that migrate to the Coastal Plain to give birth.”⁵²

Therefore, because the Gwich’in consider the Coastal Plane as sacred territory, any sort of physical invasion (drilling, building of roads, pipelines, etc.) within the Coastal Plain would harm the Gwich’in’s ability to protect this area and would infringe upon their religious freedom right under CERD.

⁴⁸ *Id.*

⁴⁹ *The Need to Protect the Arctic National Wildlife Refuge Coastal Plain: Hearing on H.R. 1146 Before the S. Comm. on Energy and Mineral Resources*, 116th Cong. (2019) (statement of The Honorable Dana Tizya-Tramm, Chief, Vunit Gwitchin First Nation). Retrieved from: <<https://naturalresources.house.gov/hearings/the-need-to-protect-the-arctic-national-wildlife-refuge-coastal-plain>> (last visited on Nov. 07, 2019).

⁵⁰ FEIS, at 3-88.

⁵¹ FEIS, at 3-77.

⁵² FEIS, at 3-216.

- iii. *Development will exacerbate climate change and air pollution, directly impacting the Gwich'in's right to health under ICERD Article 5(e)(iv).*

In addition to the immediate impacts from drilling in the Coastal Plain, burning the extracted oil will accelerate climate change, the effects of which disproportionately impact the health of Alaska Natives, including the Gwich'in, in violation of ICERD Art. 5(e)(iv).

The climate in Alaska is already warming twice as fast as the global average, and Alaska Natives feel those effects more directly because of their connection to the land. As climate change alters weather patterns, natural cycles that the Gwich'in people have understood and relied on for thousands of years have become increasingly unpredictable. For example, an increasing number of experienced Gwich'in hunters are falling through prematurely melting and thin ice during hunts. Arctic lakes are experiencing fish kills, where thousands of fish, such as Arctic char, are going belly-up as warming lakes are no longer suitable for arctic fish species. Melting permafrost is also eliminating previously safe ways for the Gwich'in to store their caribou meat throughout the year. Since the Gwich'in rely on game for most of their meals, any loss to their ability to hunt, fish, and store it will have devastating impacts to Gwich'in health.

The United States' denial that climate change is a threat further impedes the Gwich'in's ability to protect themselves from climate change through domestic means. In response to climate change concerns about the development project in the Coastal Plain, the U.S. stated it "does not agree that the proposed development is inconsistent with maintaining a livable planet (i.e., there is not a climate crisis)."⁵³ Further the U.S. seems to claim that Alaska will be better off by drastic warming, stating that "[t]he planet was much warmer within the past 1,000 years ... [t]his warmth did not make the planet unlivable; rather, it was a time when societies prospered."⁵⁴

Other types of air pollution from Coastal Plain oil and gas development will put the health of the Gwich'in people at risk. Every phase of the proposed project will pollute the air including transportation, the use of industrial construction and drilling equipment, power generation, and venting/flaring during oil production. Prior oil and gas activities in Arctic Alaska have proven the long range that the air pollutants travel. For example, air pollution from oil and gas activities in Prudhoe Bay has been detected over 200 miles away.⁵⁵ Air pollutants can also settle on the lands and water bodies after traveling long distances, depositing pollutants in waters and soils on which Alaska Natives rely. There are currently few sources of air pollutants in the

⁵³ FEIS app. S, at S-686.

⁵⁴ *Id.*

⁵⁵ Natural Resources Defense Council, the Arctic National Wildlife Refuge. Retrieved from: <<https://www.nrdc.org/sites/default/files/facts2.pdf>> (last visited on Nov. 07, 2019).

Coastal Plain, making the area particularly vulnerable as the impacts of those pollutants is unknown and prior exposure is low.

ICERD Article 5(e)(iv) protects the right to public health, medical care, social security and social services. By approving a large oil and gas development project, where the burning of those resources will exacerbate climate change and the project will emit air pollutants that will make their way to Gwich'in villages, the U.S. is impeding the Gwich'in health. The project would disproportionately harm the health of Alaska Natives.

- iv. *Development increases the risk of violence against indigenous women, violating the Gwich'in's right to security under ICERD Article 5(b).*

In addition to the harm that the drilling would cause the Herd and the sacred land, the oil and gas development in the Coastal Plain will lead to industrialization of the area and put the indigenous women who live there at risk. This is a violation of Article 5(b), which protects their “right to security of person and protection by the State from violence inflicted by the State or any individual group or institution.”

The Special Rapporteur, in her 2017 report on the rights of indigenous people in the United States, noted the number of interlocutors who raised the concern that oil and gas leasing approvals do not take into consideration the impact that a short-term influx of well-paid men into isolated indigenous communities has on the rate of sex trafficking, illegal prostitution, and violence against indigenous women.⁵⁶ The protection of women and the elimination of discrimination against them is threatened by the potential oil and gas development in the Coastal Plain as multiple studies have shown that oil and gas development is linked to an increase of violence against women, particularly indigenous women.⁵⁷

This type of harm to indigenous women has been seen in other areas of the country that have increased or developed oil production. After the discovery of oil in the Bakken Formation of North Dakota in 2006, the region experienced an increase in people flocking to the area and more importantly the creation of man camps, “and, in recent years, has experienced an exponentially increasing level of violence against Native women.”⁵⁸

⁵⁶ Rep. of the Special Rapporteur on the rights of indigenous peoples, ¶ 14, U.N. Doc. A/HRC/36/46/Add.1 (2017).

⁵⁷ Kimberly Martin et al., Violent Victimization Known to Law Enforcement in the Bakken Oil-Producing Region of Montana and North Dakota, 2006 – 2012, Natl. Crime Stats. Exchange (Feb. 2019). Kathleen Finn et. Al., Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation, 40 HARV. J.L. & GENDER 1 (2017).

⁵⁸ HONOR THE EARTH., *Man Camps Fact Sheet: Chasing out the Specter of Man Camps...* Retrieved from: <http://www.honorearth.org/man_camps_fact_sheet> (last visited Nov. 07, 2019) (explaining, that “North Dakota’s Uniform Crime Report shows that violent crime has increased 7.2 percent, while 243 reported rapes occurred in 2012 – an increase from 207 in 2011. According to the Bismarck Tribune, Attorney General Wayne Stenehjem stated that 12 of the state’s top oil-producing counties accounted for much of that crime. The cause for this is the camps of thousands of male workers who have come to their territory to profit from the Bakken oil boom – settling

Even though the Gwich'in do not occupy the area directly parallel to the potential drilling sites, there will still be an influx of people and creation of man camps that will impact their communities, particularly those located closest to the Coastal Plain. In 2014, the Committee noted that they remained concerned “[a]t the disproportionate number of women from racial and ethnic minorities, particularly . . . American Indian and Alaskan Native women, who continue to be subjected to violence, including rape and sexual violence.”⁵⁹ The Committee went on to recommend that the United States “intensify its efforts to prevent and combat violence against women, particularly American Indian and Alaska Native women, and ensure that all cases of violence against women are effectively investigated, perpetrators are prosecuted and sanctioned, and victims are provided with appropriate remedies.”⁶⁰

The Committee made its remarks in 2014, the Special Rapporteur made her comments in 2017, and in 2019 the issue of unrectified violence against Indigenous women still remains to be addressed. In the face of this shocking reality, the United States has mandated that more of these man camps come into existence in frightening proximity to vulnerable indigenous communities. The effects of oil and gas leasing on the rates of violence experienced in indigenous communities are beyond dispute, so it is not unfounded speculation to conclude that leasing in the Coastal Plain will be placing an untold number of indigenous women and girls in danger of sexual exploitation, drug addiction, and violence.

V. UNDRIP informs ICERD violations relating to Indigenous Peoples.

The CERD’s 2008 Concluding Observations regarding the United States included a recommendation that the U.S. adopt UNDRIP as a guide for fulfilling its obligations as a State party to ICERD.⁶¹ When the U.S. adopted UNDRIP in 2010, it did so with reservations, including that its domestic frameworks were sufficient to protect these rights. Since then, the U.S. has done little to nothing through its legislative and regulatory mechanisms to implement UNDRIP and has specifically failed to follow these recommendations regarding development on the Coastal Plain. While UNDRIP is not a binding treaty, CERD has recommended that the “declaration be used as a guide to interpret the State party’s obligations under [ICERD] relating to indigenous peoples.”⁶² Further, UNDRIP does not have its own treaty body to enforce its

into what are commonly called ‘man camps’, and more than doubling the population with an influx of non-Indian oil workers”). *Also see* NCAI Policy Research Center, *Statistics on Violence Against Native Women*, (2013).

⁵⁹ CERD/C/USA/CO/7-9, ¶ 19.

⁶⁰ *Id.*

⁶¹ Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, 72nd Sess., UN Doc. CERD/C/USA/CO/6 (2008), at ¶ 29. [hereinafter *CERD 72nd Session*].

Retrieved from: <https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> (last visited on Nov. 07, 2019).

⁶² *Id.*

guidelines. Therefore, it is appropriate for the Committee to address violations of these principles as they relate to issues covered by ICERD.⁶³

The proposed development on the Coastal Plain would violate UNDRIP Articles including the Right to Free, Prior and Informed Consent: Arts. 3,5,8(2)(b), 11(2), 18, 19, 27, 28(1), 29(1), the Right to Subsistence: Arts. 20, 24, 26, 29, 30, the Right to Health, Nutrition, and Mental Health: Arts. 21(1), 23, 24(2), the Right to Culture and Religion: UNDRIP Arts. 5, 8(1), (2)(a), & (2)(b), 12, and the Right to Self-Determination in Resource and Land Development: Arts. 1, 3, 8(2)(b), 20, 23, 25, 26, 28, 29. All of these violations are a furtherance of the discriminatory framework within the U.S. that fails to protect the rights of Indigenous Peoples.

VI. The Gwich'in never provided their Free, Prior and Informed Consent.

UNDRIP establishes the duty of States to consult in good faith with Indigenous Peoples to obtain their free, prior and informed consent prior to approving projects that may affect their lands, territories, or other resources.⁶⁴ It also reaffirms that Indigenous Peoples have the right to participate in decision-making processes through representatives chosen in accordance with their own procedures.⁶⁵ As early as 1997, this Committee recognized Indigenous Peoples' right to be consulted and the key role that consent plays in the elimination of discrimination.⁶⁶

Through Executive Order 13175, the United States sought to strengthen its consultation with indigenous communities. The order requires “an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”⁶⁷ However, as noted by the Special Rapporteur in her 2017 Report, the Executive Order has “has failed to ensure effective consultations with tribal governments. The breakdown in communication and lack of timely and good faith involvement in the review of federal and non-federal projects has left tribal governments unable to participate in meaningful dialogue on projects affecting their lands, territories and resources. . .”⁶⁸

The United States did not meaningfully consult or obtain consent from the Gwich'in before passing language in the 2017 Tax Act that mandates oil and gas leasing, nor during the administrative process for environmental review of the proposed development.

⁶³ Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, 72nd Sess., UN Doc. CERD/C/USA/CO/6 (2008), at ¶ 29.

⁶⁴ UNDRIP Art. 27 and 32.

⁶⁵ *Id.* Art. 18.

⁶⁶ See Committee on the Elimination of Racial Discrimination General Recommendation No. 23 Rights of Indigenous Peoples, U.N. Doc A/52/18, annex V at 122 (1997).

⁶⁷ S.Rep., 115th Congress, 1st Session, Vol. 163, No. 207 at H1201 (2017) (Conf. Rep.).

⁶⁸ Rep. of the Special Rapporteur on the rights of indigenous peoples, ¶ 14, U.N. Doc. A/HRC/36/46/Add.1 (2017).

On December 22, 2017, the United States hastily pushed the 2017 Tax Act through Congress, mandating oil and gas leasing, exploration, and development in the Coastal Plain. The United States passed this language in the Act without conducting a single hearing or communicating or consulting with the Gwich'in Nation. On December 28, 2018, the Government issued a draft Environmental Impact Statement and opened up a 45-day public comment period to allow the public to comment on the proposed development plan.⁶⁹ This process proved deficient. The Government shut down for 35 of the 45 days of the comment period and cancelled public meetings.⁷⁰ Although the Government subsequently extended the comment period by 30 days and rescheduled meetings, it nevertheless failed to meaningfully consult with the Gwich'in during that extended period.

During the drafting of the FEIS, the Government claimed it engaged in consultation by sending letters to five tribal governments on March 2, 2018, and eight additional letters on April 23, 2018.⁷¹ Additionally, it lists fifteen consultation meetings conducted with various tribal governments throughout the drafting of the FEIS.⁷² In organizing these meetings, the Government failed to coordinate with the Gwich'in to determine a time that would work best for them. For example, the Government scheduled one meeting during the same time the Gwich'in were honoring their traditional chief, making it impracticable for the most important tribal decision-makers to attend.

These consultations efforts can hardly be described as genuine consultations as established by international human rights norms. As noted by the Expert Mechanism on the Rights of Indigenous Peoples, UNDRIP does not envision consultation as a “single moment or action but a process of dialogue and negotiation over the course of a project, from planning to implementation and follow-up.”⁷³ The United States, however, treated consultation as a single moment by holding public hearings across Alaska and considering those to be sufficient rather than engaging the Gwich'in leadership in a meaningful and extensive dialogue.

The Government also failed to recognize that “consultation” denotes the right of Indigenous Peoples to genuinely influence the decision-making process. As Former Special Rapporteur on the rights of indigenous peoples, James Anaya, explained, “the somewhat different language of the Declaration suggests a heightened emphasis on the need for consultations that are in the nature of negotiations towards mutually acceptable arrangements, prior to the decisions on proposed measures, rather than consultations that are more...for

⁶⁹ Notice of Availability of the Draft Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, 83 Fed. Reg. 67,337, (Dec. 28, 2018).

⁷⁰ *Id.*

⁷¹ FEIS, at ES-7.

⁷² *Id.*

⁷³ United Nations General Assembly, Study of the Expert Mechanism on the Rights of Indigenous Peoples: Free, prior, and informed consent: a human rights-based approach, A/HRC/39/62 (Aug. 10, 2018), ¶ 15.

providing indigenous peoples with information about decisions already made or in the making, without allowing them genuinely to influence the decision-making process.”⁷⁴

The United States Government shared its plans for oil and gas development to the Gwich'in and other affected indigenous groups without giving the Gwich'in the opportunity to make a different proposal or suggest an alternative. At one consultation meeting, *Gwichyaa Zhee Gwich'in* Tribal Government Chief Nancy James, the Council of Athabaskan Tribal Governments, and the GSC stood together to let the Government know they opposed development in the calving ground. The U.S. Government nevertheless reiterated its plan for development, asking only *where* to drill and not *if* it should drill.

The United States has failed to live up to its commitments under UNDRIP and the Convention by disregarding its obligation to secure the free, prior and informed consent of the Gwich'in.

VII. The United States has the responsibility to protect the Gwich'in from human rights abuses by private businesses under the UN Guiding Principles of Business and Human Rights.

The UN Guiding Principles on Business and Human Rights (“UNGPs”) apply to States and corporations alike. States must protect against human rights abuses by third parties. States have a duty to prevent, investigate, punish, and redress human rights abuses through State legal systems.⁷⁵ Further, a State has an additional duty to protect against abuses by businesses when they receive substantial support and services from State agencies.⁷⁶ By granting companies oil and gas leases on public land, the U.S. is providing them substantial support, therefore heightening the U.S.’s responsibility to ensure those companies are not violating human rights.

Where such connection to the State exists, acts of human rights abuses by businesses might “entail a violation of the State’s own international obligations.”⁷⁷ In that case, the UNGPs encourage States to require agencies and businesses to practice due diligence to ensure human rights are not violated. States also have a duty to ensure that remedies to abuses occurring in their territories exist and are available when those abuses occur. The U.S.’s leasing scheme does not

⁷⁴ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, U.N. Doc. A/HRC/12/34 (July 15, 2009) ¶ 46, Retrieved from: <http://unsr.jamesanaya.org/docs/annual/2009_hrc_annual_report_en.pdf> (last visited on Nov. 07, 2019). See also: Victoria Tauli-Corpuz, *Responsibilities of the States and private sector with respect to prior consultation with indigenous peoples and free, prior and informed consent*. Retrieved from: <<http://unsr.vtaulicorpuz.org/site/index.php/en/statements/210-emrip-fpic>> (last visited on Nov. 07, 2019).

⁷⁵ United Nations, Guiding Principles on Business and Human Rights, 3 (2011). Retrieved from: <https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> (last visited on Nov. 07, 2019).

⁷⁶ *Id.* at 6.

⁷⁷ *Id.* at 7.

provide opportunities to address abuses resulting from oil and gas development in the Coastal Plain, either during the decision-making process or in the future as those abuses occur.

The same industries that have already contributed heavily to global climate change are now positioned to exacerbate the accelerated climate problems in Alaska. Instead of holding these industries accountable, the United States is engaged in business dealings that will increase the impacts felt by the Gwich'in and other similarly situated Indigenous Peoples. Although Alaska Natives are already experiencing a disproportionate number of harms from climate change, they are expected to bear the burden of additional environmental and climate consequences ushered in by the oil and gas development in the Coastal Plain.

VIII. Conclusions and Requests

In light of the ongoing discrimination against the Gwich'in and the threat of imminent destruction of the Coastal Plain, the submitting organizations humbly request that the Committee considers the situation in the Coastal Plain under its early warning and urgent action procedures in order to avoid further irreparable harm to the Gwich'in. In particular, the submitting organization requests that the Committee adopt a decision:

1. Stating concern regarding the discriminatory treatment of the Gwich'in and requesting that the United States submit information to the Committee under the urgent action and early warning procedures relating to the situation in *Izhik Gwats'an Gwandaii Goodlit (The Sacred Place Where Life Begins)*.
2. Recommending that the United States, consistent with the commitments that it has made under ICERD and UNDRIP, recognize the denial of rights to the Gwich'in as a human rights issue and begin to take action to rectify the above described human rights abuses.
3. Recommending the United States Government work to bring to a halt any future activities that infringe on the rights of the Gwich'in as Indigenous Peoples in Alaska, through:
 - a. Halting the impending oil and gas sales;
 - b. Adopting Option A in the Final Environmental Impact Statement, so that no part of the Coastal Plain will be offered for future oil and gas lease sales;
 - c. Passing legislation to provide permanent protection for the Coastal Plain;
 - d. Adopting a plan that permanently protects the wildlife in the Coastal Plain including the polar bears and the Porcupine Caribou Herd including honoring their commitments under the *Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd*;
 - e. Honoring the government's trust responsibility to Indigenous Peoples within the United States; and

- f. Engaging in meaningful consultation and obtaining the free, prior and informed consent of the Gwich'in under the principles enshrined in UNDRIP and related international norms before commencing projects on or near the ancestral lands of the Gwich'in.
4. Requesting that other States and international organizations, including financial institutions, withdraw their support *and* informing all Member States of their obligations under ICERD and the UNGPs that the support of oil and gas development on the part of governments or private businesses will be a violation of these instruments.
5. Recommending that CERD communicate with the United States Government regarding this situation and consider sending a committee member to visit Alaska to create a report on the situation based on his or her findings.
6. Recommending the U.S. reaffirm their commitment to and incorporate UNDRIP into domestic law through statutes and regulations and ensure that human rights pronouncements made at the federal level are implemented at the local level.
7. Stating that the Committee will continue to track this issue and report on it in the next Universal Periodic Review of the United States of America on May 11, 2020 in Geneva.
8. Addressing these ICERD violations facing the Gwich'in at the 100th CERD Session beginning November 25, 2019.