

**Violations on the Part of the United States Government of Indigenous Rights Held
by Members of the Lipan Apache, Kickapoo, and Ysleta del Sur Tigua Tribes of the
Texas-Mexico Border**

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Introduction

The Secure Border Fence Act of 2006 and the Consolidated Appropriations Act of 2008 mandate the construction of 700 miles of reinforced fencing on the Southwest border of the United States. As of March 2008, U.S. Customs and Border Protection (CBP) reported that it had completed close to 170 miles of pedestrian fencing. CBP reports that it is “well on its way to constructing” 370 miles of pedestrian fencing by the end of 2008.¹ Much, if not all, of the fencing scheduled to be completed in 2008 is planned along the Texas-Mexico border. More than 100 miles of fencing is slated to be constructed on the Texas-Mexico border by December 31st, 2008, with about 50 miles being planned for the Rio Grande Valley.²

The border fence is scheduled to roughly follow, in most places, the southernmost levee built during the 1930s and under jurisdiction of the International Border and Water Commission (IBWC), the bi-national commission that presides over the Rio Grande River as an international boundary.³ The levee crosses, and the border fence is scheduled to cross, through or near four areas of indigenous peoples in the border region: the Lipan Apache in the southern Rio Grande Valley; the Kickapoo Traditional Tribe of Texas southeast of Rosita South and outside of Eagle Pass, Texas; the Jumano community in Redford, southeast of Presidio, Texas; and the Tigua people southeast of El Paso, Texas. In 2008, the Secretary of the US Department of Homeland Security, Michael Chertoff, signed a Multistate Waiver of federal environmental and related legislation. However, once the Multistate Waiver was signed, the Army Corps of Engineers did not undertake a new EIA reflecting how bypassing this legislation would impact plans for the construction of the border fence. Instead, they replaced the EIA of 2006 with “Environmental Stewardship Plans” (ESPs) for each fence section, in order “to continue to protect valuable natural and cultural resources” and to “develop appropriate best management practices (BMPs) to avoid or minimize adverse impacts.”⁴ The scheduled locations of the border fence in relation to indigenous people and their lands are assumed to remain largely unchanged, since DHS has retained its December 31st, 2008 date for construction of fencing in Texas and the waivers issued to allow expedited construction apply to many of the previously identified areas.

¹ Department of Homeland Security, “Fact Sheet: US Department of Homeland Security Five-Year Anniversary Progress and Priorities,” March 6, 2008.

http://www.dhs.gov/xnes/releases/pr_1204819171793.shtm

² Calculation made by the authors from DHS pronouncements, including:

www.dhs.gov/xlibrary/assets/press_border_waivers_08-2177_All_Segments_Project_Area-Final_v2_040108.pdf

³ Ibid. It is worth noting that the fence will, in most places, not be built on top of the levee or between the levee and the river and so will leave additional land, including both the levee and any land between the fence and the levee, outside of the reach of property owners, essentially on the Mexico side of the border.

⁴ The 2008 Environmental Stewardship Plans are available at the Army Corps of Engineers border fence website: <http://www.borderfenceplanning.com/>

Through planning for and construction of the fence, the United States government is affecting traditional indigenous lands in the path of or near scheduled fencing. Private properties, which the U.S. government seeks to take for the purpose of surveying and construction, are owned by citizens with deep historical claims to their land. Dr. Eloisa Tamez, a life-long resident of El Calaboz, Texas in the Rio Grande Valley is one such property owner. Dr. Tamez is Lipan Apache and the owner of a small piece of property that has been in her family since the mid-1700s. The land originally came into her family as a result of a land grant from the Spanish crown, and the family's ownership has since been confirmed by successive governments and treaties dictating land ownership along what is now the Texas/Mexico border. The proposed wall will bisect her land, leaving the majority of her property on the south side of the barrier inaccessible.⁵ Other private property owners, some of whom also have indigenous heritage, are being affected in similar ways.

Similarly, the federal government's planned fence construction will affect traditional lands of the Kickapoo Tribe and the Tigua people and will cut these indigenous communities off from important ceremonial and religious sites and the Rio Grande River. The unique trans-border nature of the indigenous peoples on the Texas-Mexico border, whose traditional lands are located in both Texas and Mexico, will be greatly and negatively impacted by a border wall.

In the process of planning and constructing the border fence along the Texas/Mexico border, the United States government is violating the rights of indigenous peoples by damaging their relationships to land and natural resources, as well as religious and cultural sites, along the border. Additionally, the Department of Homeland Security (DHS), CBP, and the Army Corps of Engineers are conducting the border fence planning and construction process in ways that violate the rights of self-determination and non-discrimination of these indigenous communities as understood by international human rights law.

This briefing paper examines these violations. The central points of this paper are:

- The United States government is violating the indigenous peoples' right to recognition of juridical personality and civil rights protected in Article XVII of the American Declaration of the Rights and Duties of Man (the American Declaration) by failing to recognize the legal personality of the indigenous people of the Texas-Mexico border.
- The United States government is violating the right to property as supported by Article XXIII of the American Declaration by taking indigenous-owned lands and not establishing free, prior, and informed consent with indigenous communities of

⁵ The Working Group has interviewed and consulted with Dr. Eloisa Tamez and her daughter Margo Tamez on this briefing paper.

- the Texas-Mexico border prior to surveying lands and planning, designing and constructing the fence, as supported by ILO Convention 169.
- Indigenous communities of the Texas-Mexico border have the right to legal protections and remedies as supported by Article XVIII of the American Declaration. These rights are also not being respected.
 - The United States government is violating the right of indigenous people to enforce treaties and agreements with the government that the communities entered into in the past, as supported by Article 37(1) of the UN Declaration on the Rights of Indigenous Peoples.
 - The United States government will impede access and cause irreparable harm to natural resources deemed significant to the survival, development, religion and continuation of the ways of life of indigenous people of the Texas-Mexico border, as supported by Article XXIII of the American Declaration.

International Human Rights Law as it Applies to the Border Fence's Impact on Indigenous Rights

The rights of indigenous people are widely supported in U.S. domestic and international law. These norms may be applied to the violations of indigenous peoples' rights by the U.S. government in respect to the exploration and construction of the border fence on the Texas-Mexico border.

The American Declaration constitutes a source of international legal obligation for all member states of the Organization of American States, including the U.S.⁶ According to the jurisprudence of the inter-American human rights system, the provisions of its governing instruments, including the American Declaration, should be interpreted and applied in light of developments in the field of international human rights law since those instruments were first composed and with due regard to other relevant rules of international law applicable to member states against which complaints of human rights violations are properly lodged. In particular, the organs of the inter-American system have previously held that developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration may be drawn from the provisions of other prevailing international and regional human rights instruments. These other instruments include the American Convention on Human Rights, which may generally be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.⁷ Pertinent developments have also been

⁶ See I/A Court H.R., Advisory Opinion OC-10/89 Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, July 14, 1989, Ser. A N° 10 (1989), paras. 35-45; I/A Comm. H.R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49

⁷ See, I/A Comm. H.R. Report N° 52/01, Case 12.243, Juan Raul Garza (United States), Annual Report of the IACHR 2000, paras. 88, 89 (confirming that while the Commission clearly does not apply the American Convention in relation to member states that have yet to ratify that treaty, the Convention's provisions may well be relevant in informing an interpretation of the principles of the Declaration).

drawn from the provisions of other multilateral treaties adopted inside and outside of the framework of the inter-American system, including for example the Geneva Conventions of 1949, the Vienna Convention on Consular Relations and, of particular pertinence to the present case, International Labour Organisation Convention N° 169 concerning Indigenous and Tribal Peoples in Independent Countries and other instruments concerning the rights of indigenous peoples.⁸ This paper thus references the provisions of the American Declaration as well as other international human rights norms in analyzing the actions of the United States in developing and constructing the Texas-Mexico border wall.

In several cases and reports, the Inter-American Commission on Human Rights (the Commission) and the Inter-American Court of Human Rights (the Court) have held that members of indigenous and tribal communities require special measures that guarantee the full exercise of their rights, particularly with regards to their enjoyment of the land, in order to safeguard their physical and cultural survival.

By not recognizing the legal status of indigenous people along the Texas-Mexico border as such, especially as regards the Lipan Apache of the Coastal Bend Region and South Rio Grande Valley, the U.S. government is violating indigenous peoples' right to recognition of juridical personality and the right to enjoy civil rights as supported by Article XVII of the American Declaration: "Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights." In the case of Saramaka People v. Suriname, the Court held that the acknowledgement of the clan's communal juridical personality is one of the "special measures" owed to indigenous and tribal groups in order to ensure they can use their land according to their own traditions.⁹

By not obtaining the Free, Prior, and Informed Consent (FPIC) of indigenous peoples on the Texas-Mexico border before commencing the exploration and construction of the border fence, the U.S. government is further violating indigenous peoples' right to property and judicial protection. The government is also violating the provisions of International Labor Organization Convention No. 169 which provides: "States must consult people living on the land before doing exploration or exploitation of the land."¹⁰ In the case of Maya Indigenous Communities of the Toledo District v. Belize, the Commission established that the state must obtain fully informed consent from the indigenous community before beginning a project and the community must know the consequences and processes of the project.¹¹

⁸ See, e.g., Report N° 75/02, Case 11.140, Mary and Carrie Dann (United States), Annual Report of the IACHR 2002, para. 127.

⁹ I/A Court H.R., Case 12.338, Saramaka People v. Suriname, Judgment of November 27, 2007.

¹⁰ <http://www.unhchr.ch/html/menu3/b/62.htm>

¹¹ I/A Comm. H.R., Case 12.053, Maya Indigenous Communities of the Toledo District v. Belize, 2004 Annual Report of the Inter-American Commission on Human Rights.

By planning to construct sections of the border fence on private property owned by indigenous community members and by impacting lands on which indigenous peoples depend for natural, cultural, and spiritual resources, the U.S. government is violating indigenous peoples' right to property as provided by Article XXIII of the American Declaration: "Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home." In the cases of Sawhoyamaxa Indigenous Community v. Paraguay and Mayagna (Sumo) Awas Tingni Community v. Nicaragua, the Court held that close ties between a clan and its land must be secured as property rights.¹² The right to property is also supported in Article 26 of the United Nations Declaration of the Rights of Indigenous Peoples:

Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.¹³

The U.S. government's actions also violate indigenous peoples' right to judicial protection, as supported by Article XVIII of the American Declaration, which provides:

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

In the case of Indigenous Community Yakye Axa v. Paraguay, the Court held that states must grant effective protection to indigenous people that takes into account their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values and customs, and states must establish an effective means for guaranteeing clans their right to communal property with due process guarantees.¹⁴

By constructing the wall on private and traditional lands of indigenous peoples on the Texas-Mexico border and by cutting off access to the Rio Grande River and other important sites as well as creating barriers to free crossing of the border, the U.S. government is violating the right of indigenous communities to enforce previous treaties and agreements that they have entered into in the past, as supported by Article 37 of the United Nations Declaration of the Rights of Indigenous Peoples:

¹² I/A Court H.R., Sawhoyamaxa Indigenous Community v. Paraguay, Judgment of March 29, 2006; and I/A Court H.R. The Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of August 31, 2001.

¹³ <http://www.iwgia.org/graphics/Synkron-Library/Documents/InternationalProcesses/DraftDeclaration/07-09-13ResolutiontextDeclaration.pdf>

¹⁴ I/A Court H.R., Indigenous Community Yakye Axa v. Paraguay, Judgment of June 17, 2005.

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.¹⁵

These treaties and agreements that have not been respected include, for example: The Colonial del Nuevo Santander Treaty (signed on March 15, 1791 with the Spanish Colonial Government); The Alcaldes de las Villas de la Provincia Treaty (signed on August 17, 1822 with the Spanish Colonial Government); The Live Oak Point Treaty (signed on January 8, 1838 with the Republic of Texas Government); and The Treaty of Guadalupe Hidalgo (signed on February 2, 1848 between the United States and Mexico). These various treaties guarantee protection of the civil and human rights, including rights to respect for traditional lands, of indigenous communities in Texas. They bind the United States, until abrogated, either as signatory or as successor to the governments originally signing the treaties. An additional agreement is codified at 25 United States Code § 1300b-13(d), which outlines the “Border Crossing, Living and Working Rights of the Kickapoo Traditional Tribe of Texas” providing:

Notwithstanding the Immigration and Nationality Act, all members of the Band [the Kickapoo] shall be entitled to freely pass and repass the borders of the United States and to live and work in the United States.

The United States government is violating the right to recognition of juridical personality and civil rights in failing to recognize the legal personality of indigenous peoples of the Texas-Mexico border and respect their rights to property and legal protection.

Lipan Apache of South Texas

The border fence is scheduled to cross through the community of Ranchería El Calaboz, which has residents who are descendants of Lipan Apache. The Lipan Apache of South Texas are descended from the original Ndé buffalo hunters who call themselves the Cúelcahén Ndé or “People of the Tall Grass”¹⁶ or Ndé, which means “the people”¹⁷ and the Spanish colonizers later referred to Ndé as Apache who migrated from the southern plains before European contact.¹⁸ Mounted Ndé buffalo hunters settled in West Texas and were called Apache by Spaniard settlers. The Lipan Apaches of the Coastal

¹⁵ <http://www.iwgia.org/graphics/Synkron-Library/Documents/InternationalProcesses/DraftDeclaration/07-09-13ResolutiontextDeclaration.pdf>

¹⁶ Maestas, Enrique Gilbert-Michael, Ph.D., Co-Edited Romero, Daniel C. Jr., M.S.W., (2004), “Anthropological Report on the Cúelcahén Ndé Lipan Apaches of Texas,” Edinburg, Texas.

¹⁷ Ibid.; see also Sandra L. Myres, The Lipan Apaches in Indian Tribes of Texas at 129-145 (1971).

¹⁸ Ibid.; Campbell, Thomas Nolan, (1997), “Ethnohistoric Notes on Indian Groups Associated with Three Spanish Missions at Guerrero, Coahuila,” University of Texas at San Antonio, Center for Archeological Research, Archaeology and History of the San Juan Bautista Area, Coahuila and Texas, Report No. 3.

Bend Region, which included most of south Rio Grande Valley, settled in the area after many battles with Spaniards and Spaniard-indigenous alliances. After battling Indian raids by Spanish and United States militaries, as well as Texas Rangers, the Lipan Apache often took defensive refuge on rancherías created by Spanish land grants.¹⁹ Over the years, significant mixing between the Lipan Apache and Spanish colonizers took place.²⁰ Such miscegenation with Spaniard colonizers is evident in the genealogy of the Cuelga de Castro line, a chief of the Lipan Apache. Further historical accounts, genealogies, and testimonies have recorded the adoption of Hispanic names and language by Lipan Apache.²¹ Thus, currently many families may properly claim both Hispanic and Lipan Apache heritage.²²

The Native American Cultural Affiliation Overview, written for the U.S. Army Corps of Engineers Galveston District by Karen Gardener in 2001, describes the ethno-history and legal status of the Lipan Apache in United States federal law. However, in its assessments made in connection with the construction of a border fence, the U.S. Army Corps does not recognize the living members of the Lipan Apache band of South Texas, due to their shared heritage with Mexican-American communities living in the Rio Grande Valley.

This briefing paper argues that members of the mixed Lipan Apache and Mexican-American communities of the Rio Grande Valley area practice cultural relationships to the land and natural resources that are sufficiently similar to Lipan Apache traditions and practices and to indigenous practices in general as underlined in international law such that they can uphold a claim that construction of a border fence through their lands, resulting in government taking of their property and loss of access to traditional lands, violates international human rights. This paper also argues that the Army Corps environmental assessment for the border fence performed previous to the waiver of applicable laws by DHS Secretary Michael Chertoff on April 1st, 2008 makes the Lipan Apache identity of property owners in the Lower Rio Grande Valley and Coastal Bend region invisible. By not recognizing the Lipan Apache identity of property owners in the Rio Grande Valley in the areas slated for border fence construction, the U.S. government violates the right to recognition of juridical personality and civil rights and the right to property as supported by Articles XVII and XXIII of the American Declaration.

¹⁹ Maestas, Enrique Gilbert-Michael (2003) "Culture and History of Native Peoples of South Texas," Dissertation, University of Texas at Austin; Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas, 1734-1900* at 51 (describing skirmishes between Lipan Apaches and Spanish settlers).

²⁰ Maestas, Enrique Gilbert-Michael (2003) "Culture and History of Native Peoples of South Texas," Dissertation, University of Texas at Austin; Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas, 1734-1900* at 54-55.

²¹ *Ibid.*

²² See generally Martha Menchaca, *Recovering History, Constructing Race: The Indian, Black, and White Roots of Mexican Americans* (2001).

The Native American Cultural Affiliation Overview of the U.S. Army Corps of Engineers acknowledges the identity of the Lipan Apache and describes them as a federally unrecognized indigenous group that has associated itself with the Mescalero Apache to advance land claims:

The land claims were brought before the Indian Claims Commission by the Apache Tribe of the Mescalero Reservation on behalf of the Lipan Apache Tribe and the Mescalero Apache Tribe against the United States of America (Docket No. 22-0, for the taking of ancestral lands belonging to them. This claim was settled in a Findings of Fact on Compromise Settlement heard before the Indian Claims Commission, with a decision rendered on February 19, 1976. This claim was resolved in favor of the Indians, based on the conclusion that the United States removed the title of the Lipan Apache to their aboriginal lands in Texas on 1 November 1856 and from the Mescalero Apache on 27 May 1873, without payment of any form of compensation.

The Lipan Apache applied for federal recognition in 1999 and their juridical personality has not yet been recognized by the U.S. government. While Lipan Apache land claims have remained legally associated with the Mescalero Apache in the eyes of the U.S. government, individual property owners outside of Mescalero Apache lands also claim Lipan Apache heritage, exercising their right to self-determination as recognized by Articles XVII and XXIII of the American Declaration and Article 3 of the Declaration of the Rights of Indigenous Peoples of the United Nations.²³

Anthropologist Enrique Maestas, himself Lipan Apache and an expert scholar on the history of South Texas indigenous people's ethno history, links current border families with Spanish surnames that self-identify as Lipan Apache to the pedestrian buffalo hunters known as Cúelcahén Ndé. He argues that the historical lands of the Cúelcahén Ndé people were constituted by the region between the Pecos River and Rio Grande River and most of the Costal Bend Region, but was porous to interaction and mixing with Spanish colonizers, and the result was the transformation of the social spaces of the Cúelcahén Ndé into rancherías, settlements, and buffalo hunting territory.²⁴

One such ranchería is the Ranchería El Calaboz, owned by Dr. Eloisa Tamez. The legal title of Ranchería El Calaboz dates to the original San Pedro de Carricitos Land Grant from Spain that benefited the Tamez family.²⁵ Dr. Tamez's daughter, Dr. Margo

²³ Article 3 of the UN Declaration of the Rights of Indigenous Peoples states: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

²⁴ Maestas, Enrique Gilbert-Michael, (2003) "Culture and History of Native Peoples of South Texas," Dissertation, University of Texas at Austin.

²⁵ Texas General Land Office, Guide to Spanish and Mexican Land Grants in South Texas #336 (1998) (identifying the land grant of San Pedro de Carricitos); Florence Johnson Scott, Historical Heritage of the

Tamez, has identified her family as Lipan Apache. In a presentation about their lands, Margo gave a statement regarding her family's Lipan Apache heritage:

I am born on my mother's side for the Łebaiyé t'nde' hi'ke nnee' gowa goshjaa ha'ána' idiłi (Lipan and Chiricahua People of the "Jail Village"/El Calaboz), and on my maternal grandmother's side for the Euskara and T'nde' (Basque-Lipan People), and on my fathers' side I am from the Suma' nde' hi'ke nnee' gowa goshjaa ni'godzán łichii (Jumano and Chiricahua Red Earth Mud People).²⁶

The Federal Land Trust to the Kickapoo Traditional Tribe of Texas of Nacimiento, Mexico, and Eagle Pass, Texas

The border fence is scheduled to separate traditional lands pertaining to the Kickapoo Traditional Tribe of Texas on the Mexico and Texas sides of the Rio Grande River. The fence will also cross through and disturb or destroy traditional sites of the Kickapoo along the Rio Grande River and will impede access to the Rio Grande River and free crossing across the border by the Kickapoo.

The Kickapoo Tribe of Texas is the proprietor of a Federal Indian Land Trust located between the Rio Grande River and the town of Rosita South, near Eagle Pass, Texas. The land trust was regularized into law in the year 1983.

The Kickapoo Traditional Tribe of Texas descends from the original Kickapoo (Kiikaapoa) of the Great Lakes region.²⁷ The Kickapoo were forced to migrate and relocate south of the Great Lakes through subsequent conflicts with French colonials and then American Indian Removal Policy during the 18th century. Rebellions led by Pontiac and Tecumseh were unsuccessful in abating white settlers and served to split the Kickapoo into Kansas Kickapoo, Oklahoma Kickapoo, and the Texas-Mexico border region Kickapoo.²⁸ Violence against Kickapoo in Texas led some of this last band to flee to Mexico and to Indian Country (Oklahoma). President Sam Houston of the Republic of Texas attempted to settle Kickapoo on the Texas-Mexico border through a peace agreement with no results, and the Kickapoo united with Mexican guerillas to fight American colonizers in Texas. The Texas Republic administration of Mirabeau Lamar then embarked on a vigorous Indian removal campaign. The Mexican government,

Lower Rio Grande at 107 (1937) (setting forth the history of the San Pedro de Carricitos land grant from the Spanish crown to Pedro Villareal); Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas, 1734-1900*, at 28-39, 61-65 (1998) (describing the Spanish land grant process in the lower Rio Grande River Valley and land tenure patterns during the period of transition of control from Spain to Mexico).

²⁶ "Lipan Apache Women's Defense," <http://lipanapachecommunitydefense.blogspot.com/>

²⁷ Carolyn Mitchell Burnet, *The First Texans*, at 124 (1995).

²⁸ Texas State Historical Association, *Handbook of Texas Online*, available at <http://www.tshaonline.org/handbook/online/articles/KK/bmk9.html>

however, awarded the Kickapoo land grants southwest from the border in El Nacimiento, Coahuila, for their service in battling the U.S. and Texan militaries.²⁹

Subsequent migrations and relocations moved the Kickapoo back and forth between El Nacimiento and Indian Territory in Oklahoma.³⁰ Over time, the Kickapoo of El Nacimiento gathered in camps near the Texas border. The Kickapoo did not legally hold title to land in Texas until 1985, but because they have traditionally camped near the international bridge between Piedras Negras, Coahuila, and Eagle Pass, Texas, they have “long been identified with this state.”³¹ The US government, in 1983, granted the Texas Band of Oklahoma Kickapoo a federal land grant southeast of Eagle Pass, Texas. The band then claimed official tribal status separate from the Kickapoo Tribe of Oklahoma, as the Kickapoo Traditional Tribe of Texas, as stated in their tribal constitution.³²

As a result of their continual migration and relocation, the Kickapoo have sustained a semi-nomadic lifestyle between Texas and Mexico. According to the Texas State Historical Association Handbook of Texas, “the group, which numbers between 625 and 650, spends the major portion of the year in El Nacimiento— about 130 miles southwest of Eagle Pass, Texas— but still lives a semi-nomadic life that has been adapted to modern economic conditions. In middle to late May most of the residents of Nacimiento divide into family-based bands and set out across Texas and other western states to work as migrant agricultural laborers. By late October or early November the bands make their way back to Nacimiento, where they pass the winter hunting, planting crops, raising cattle, and participating in religious ceremonies.”

Because the tribe’s traditional lands lie along both sides of the Rio Grande River near Eagle Pass, the construction of the border wall will irrevocably divide their territory. The tribe’s migratory and cross-border nature is recognized by 25 United States Code § 1300b-13(d) which gives the tribe the right to pass and repass the Texas-Mexico border at will. Currently, the CBP impermissibly asks the Kickapoo to cross at the official Port of Entry in Eagle Pass showing their tribal ID cards, but the tribal members generally ignore this requirement and cross freely as they have traditionally done. If the border fence crosses through this area, it would impede the Kickapoo from passing and repassing freely as is their right.

By failing to acknowledge and give proper consideration to the juridical tribal personality of both the Lipan Apache and the Kickapoo Traditional Tribe of Texas, and through its insistence in taking land for the exploration and the construction of the border wall, the United States government is violating articles XVIII and XXIII of the American Declaration, as well as 25 United States Code § 1300b-13(d).

²⁹ Ibid

³⁰ Ibid.; Carolyn Mitchell Burnet, *The First Texans*, at 124-131 (1995).

³¹ Texas State Historical Association, *Handbook of Texas Online*.

³² Constitution of the Kickapoo Tradicional Tribe of Texas,
<http://thorpe.ou.edu/constitution/kickapoo/index.html>

Tigua (Ysleta del Sur) of El Paso County

The border wall is also projected to be built on traditional lands of the sovereign Tigua Tribe, impacting their nearby reservation. The Tigua (Ysleta del Sur)³³ Pueblo Indians of El Paso County originally lived south of modern Albuquerque, New Mexico along the Rio Grande River before coming to Texas.³⁴ The Tigua ancestral home, Gran Quivera, was started about 800 A.D. north of El Paso in the Manzano Mountains, southeast of modern Albuquerque.³⁵ With an increase of Spanish missions and settlements throughout the 1600s, disease and slavery killed many of the Tigua of Gran Quivera. By 1675, after years of drought and after the Pueblo Revolt in New Mexico, the Tigua population continued to dwindle, and as a result they resettled and began farming along the Rio Grande River near modern El Paso. Gran Quivera was left abandoned, yet the ruins remain and are currently protected by the National Park Service.³⁶

In the late 17th century, the Ysleta del Sur Pueblo, 12 miles east of modern El Paso, was founded by the Tigua Pueblo Indians who had moved from New Mexico. The collective possession of the Pueblo was confirmed by the Spanish crown in a land grant which the Spanish and Mexican authorities acknowledged in documents dated 1751, 1825, 1839, and 1841. Under Mexican rule (1821-1848), the Tigua were recognized as an Indian group with an Indian settlement, and they continued to have rights to their traditional lands. The grant to the Tigua, comprised of 36 square miles, was not respected after 1848 when Mexico ceded New Mexico and West Texas to the United States, despite assurance by the United States that the land rights of former Mexican citizens (Spanish/Mexican grants) now found in territory of the United States would be honored. The Ysleta del Sur Pueblo was deprived of almost all of their land grants as a result of a series of incorporation acts passed by the Texas Legislature. By these acts the land grants were partitioned into individual tracts and conveyed to new applicants. According to a recent federal study, the Texas Legislature illegally incorporated the town of Ysleta in 1871. The unlawful incorporation included not only the immediate area of the former Ysleta Pueblo, but the entire Ysleta Grant.³⁷ Thereafter, many tribal members were forced to leave and relocate to small plots north of the pueblo.³⁸

In 1987, the Tigua Tribe was finally fully recognized by the federal government of the United States.³⁹ The Ysleta del Sur Pueblo still exists today with a tribal

³³ The tribal community of The Ysleta del Sur Pueblo is known as the "Tigua" tribe.

³⁴ Randy Lee Eickhoff, Exiled: The Tigua Indians of Ysleta del Sur at 19 (1996).

³⁵ Ibid., 57-58.

³⁶ Moore, R Edward. "The Tigua Indians of Texas." Texas Indians. Living History Studies. 19 Apr. 2008, <http://texasindians.com>, Path: tigua.

³⁷ Scharrer, Garry. "Report confirms Indians' land claim." San Antonio Express-News, 19 Jan. 2008, <http://www.mysanantonio.com/news/metro/stories/MYSA012008.01A.Indianland.29b80ea.html>; see also Randy Lee Eickhoff, Exiled: The Tigua Indians of Ysleta del Sur (1996).

³⁸ Ysleta del Sur Pueblo. 2 June 2008, <http://ydsp.stantonstreetgroup.com/index.sstg>.

³⁹ Randy Lee Eickhoff, Exiled: The Tigua Indians of Ysleta del Sur at 204-05; see also Pub.L.No. 90-287 (April 12, 1968).

enrollment of over sixteen-hundred people. In April 2008, the Tribal Census Department reported the tribal member make-up as follows: 47% male, 54% females, 24% under the age of 17, 7% between 18 and 21 years old, 56% between the ages of 22 and 55, and 14% age 55 or older.⁴⁰

The combined reservation lands of the Tribe include two housing communities and several tracts of land.⁴¹ According to the tribal council, for almost 40 years the tribe has owned and operated a diverse set of tribal enterprises and corporations that provide employment for its members and the El Paso community. The common goal of the tribal businesses is to advance the tribe toward self-determination and self-governance.⁴² The Tribal Council (the Council) of the Ysleta del Sur Pueblo is the traditional governing body of the Ysleta del Sur Pueblo exercising all inherent governmental power, fiscal authority and tribal sovereignty as recognized in the August 18, 1987 Ysleta del Sur Pueblo Restoration Act.⁴³

A recent federal study conducted by Charles R. Cutter and Hana Samek Norton, two historians hired by the U.S. Department of Interior with expertise in Spanish colonial relations with American Indian peoples, confirmed the important historical relationship between the Tigua and the land and river in the El Paso area. As a result of this study, the U.S. government signed an agreement with the tribe in January 2007 stipulating its responsibility to help the Tigua develop the tribe's potential land and water rights claims "and to take actions consistent with those rights."⁴⁴ Yet, construction of the border fence sections planned for the El Paso area will sever Tigua traditional lands along the Rio Grande River and will impede access to traditional sites along an extensive stretch of the river that have been used by the community for 300 years.⁴⁵

By failing to give proper consideration to the juridical tribal personality of the Tigua (Ysleta del Sur) in planning and constructing the border wall in areas where the Tigua have traditionally held land and by cutting off access for the Tigua to the Rio Grande River and to traditional sites, the United States government is violating Articles XVIII and XXIII of the American Declaration.

⁴⁰ Ysleta del Sur Pueblo. 2 June 2008, <http://ydsp.stantonstreetgroup.com/index.sstg>.

⁴¹ See Figure 2.

⁴² Ysleta del Sur Pueblo. 2 June 2008, <http://ydsp.stantonstreetgroup.com/index.sstg>.

⁴³ 101 Stat. 666 Public Law No. 100-89; Houser, Nicholas P. Ysleta del Sur. 13 June 2006. 15 May 2008, <http://ydsp.stantonstreetgroup.com/index.sstg>.

⁴⁴ Scharrer, Garry. "Report confirms Indians' land claim." San Antonio Express-News, 19 Jan. 2008, <http://www.mysanantonio.com/news/metro/stories/MYSA012008.01A.Indianland.29b80ea.html>.

⁴⁵ See County of El Paso, et al. v. Chertoff, et al., Complaint for Declaratory and Injunctive Relief, No. EPO8CA0196, filed in the United States District court of the Western District of Texas, El Paso Division (June 2, 2008), par. 29.

The United States government is violating the right of indigenous people to enforce past treaties and agreements.

The indigenous people affected by the planned border wall have certain rights protected by treaties and agreements that the United States must respect. These treaties and agreements include, for example: The Colonial del Nuevo Santander Treaty (signed on March 15, 1791 with the Spanish Colonial Government); The Alcaldes de las Villas de la Provincia Treaty (signed on August 17, 1822 with the Spanish Colonial Government); The Live Oak Point Treaty (signed on January 8, 1838 with the Republic of Texas Government); and The Treaty of Guadalupe Hidalgo (signed on February 2, 1848 between the United States and Mexico). These various treaties guarantee protection of the civil and human rights of indigenous communities in Texas, including the right to respect for traditional lands and property ownership. By taking property from indigenous landholders and by interfering with access to traditional lands, through construction of the border wall, the United States fails to respect its pre-existing obligations secured through treaties and other agreements.

Exploration and construction of the border wall also violates the right of the Texas Traditional Tribe of Kickapoo to enforce their unique right to pass and repass the international border utilizing only their tribal ID card, as stated in 25 United States Code § 1300b-13(d). Upon receiving legal recognition of juridical personality by the United States government in 1983, the Kickapoo were guaranteed the right to pass and repass due to their unique status as a transboundary indigenous people whose community members live in both Mexican and U.S. territory. Construction of the border fence violates this right by limiting the movement of tribal members on the U.S. side and movement of tribal members back and forth between Mexico and the U.S..

Exploration and construction of the border wall further violates the rights of the indigenous peoples of the Texas-Mexico border with regards to the Native American Graves Protection and Repatriation Act (NAGPRA). In an effort to expedite the construction of the border wall, and without further explanations as to why the waivers were necessary,⁴⁶ Secretary of Homeland Security Michael Chertoff announced April 1, 2008 that NAGPRA (along with dozens of other federal laws) would be waived. NAGPRA, a federal law passed in 1990, creates a legal process for federal agencies and institutions that receive federal funding to return American Indian human remains and cultural items to their respective tribes or lineal descendants.⁴⁷ The waivers apply to approximately 470 miles of land in a stretch of area from California through Texas,⁴⁸

⁴⁶ The Tigua, the City of El Paso, the County of El Paso and several environmental groups have filed suit challenging the REAL ID Act, which grants Chertoff his waiver power. The groups contend that the REAL ID Act's waiver provision unconstitutionally allows the DHS secretary unilaterally to repeal laws.

⁴⁷ Capriccioso, Rob. "NAGPRA waived to build U.S.-Mexico fence." *Indian Country Today*. 11 Apr. 2008, <http://www.indiancountry.com/>.

⁴⁸ According to Indian Country Today, Sherry Hutt, the national NAGPRA program manager, was not previously informed about the waiver.

which include Texas-Mexico border indigenous peoples' historical grave sites and other culturally significant lands, such as ceremonial sites. In an interview with the Working Group, the Ysleta del Sur lieutenant governor, Carlos Hisa, explained that historical Tigua grave sites will likely be impacted by the border wall.⁴⁹ Eric Anico of the Kickapoo Tribe similarly notes that the border wall will affect burial grounds and other ceremonial sites.⁵⁰ The blanket waiver by DHS violates the government's obligation to respect its prior commitments, leaving certain indigenous peoples along the Texas-Mexico border, including the Tigua, without the ability to secure the human and cultural remains of their tribes and lineal descendants.

The U.S. government is violating indigenous peoples' right to enforce treaties and agreements, which are binding on the United States. The right to enforce such treaties and agreements is supported by Article 37 of the United Nations Declaration of the Rights of Indigenous Peoples. The United States is therefore in violation of its obligations under international law.

The United States government is taking actions that will cause irreparable harm and limit access to natural resources deemed significant to the survival, development, and continuation of the ways of life of indigenous people of Texas.

Historical and Current Land Use of the Lipan Apache

The Working Group interviewed Dr. Eloisa Tamez about the historical and current uses of her land.⁵¹ Dr. Tamez stated that her family has maintained cultural uses of their land as Lipan Apache since the 1700s, when her ancestors were granted a Spanish land title. Dr. Tamez stated that her grandfather used to plant seasonal crops on the south side of her property past the levee; he would go all the way to the river to get water for irrigation. She stated that her grandmother would harvest *golondrina* plant from the south side of the property to treat the eyes of Dr. Tamez's grandfather when the sulfur powder he utilized to control pests irritated his vision.

Enrique Maestas corroborates historical and current uses of land and natural resources typical of Mexican American communities in South Texas as inheritances of Lipan Apache customs and traditions. He writes:

Concrete cultural practices that affiliate Mexican American cultural practices . . . with Texas Indians are hunting and gathering for food and medicines in south Texas, preparation of corn tortillas and tamales, planting corn, beans, squash, and chiles, oral and incarnate traditions reproducing an Indigenous identity based on the land and water. This

⁴⁹ Phone interview with Carlos Hisa conducted by Michelle Guzman in April 2008.

⁵⁰ See written testimony of Eric Anico, member of the Kickapoo Traditional Tribe of Texas (Oct. 13, 2008).

⁵¹ Working Group interview with Dr. Eloisa Tamez on her property, May 2, 2008.

identity is reaffirmed in Native American ceremonial observance in south Texas. These Native American traditions are incorporated into ceremony through practices such as Native American oratory ritual, which guarantees each person the opportunity to speak and express themselves. Purification lodges, Native American dance societies, and the religious use of peyote are practices culturally affiliated with prehistoric, colonial, and modern Texas Indians. Often, and especially for newcomers, a testimony of their Native ancestry is part of this oratory. Women often prepare Native American food, such as corn, deer, and wild fruits using Native American technologies used by Texas Indians in missions. Therefore, cultural traditions reproduced in Mexican American families provide a Native American identity and Native American cultural foundations and supports for Native American ceremonial observance.⁵²

Dr. Tamez has a close connection to her land and to the Rio Grande River that it borders—a connection which developed from family and community traditions, including indigenous uses. She has stated that the river is “spiritual” for her.⁵³ She has also stated that she maintains spiritual uses of her land including on the south side of her property past the levee, the access to which would be severed by the border fence.⁵⁴ Among these uses of her land, she currently has let the south side of the property go wild and is not planting crops, in order to give habitat for the ocelots and *chachalacas* (wild chicken) that are commonly seen on the south side of her property. She stated that jaguarandi also cross over the river from Mexico to mate. Her traditions in this regard are reflected in broader community traditions; Dr. Tamez explained to us that the city of Harlingen every year celebrates the ocelot with an ocelot fest.

General Council Chairman of the Lipan Apache Band, Daniel Castro Romero, Jr., has similarly referenced the importance of ongoing traditional uses of Lipan Apache and border lands and the connections between the indigenous community and the environment, which will be impacted by the border wall, saying:

Our people are so closely tied to the environment that the wall has a huge impact. Our lifestyle is to look out and see the river and the wildlife and to enjoy them as a religious experience, but now we will look out and see the wall. Our religion is taking care of Mother Earth. The wall infringes on our religious beliefs and way of life in other ways, too. It will devastate the peyote fields that we still use for religious purposes; they are some of the few remaining fields.⁵⁵

⁵² Maestas p. 518; see also Sandra L. Myres, *The Lipan Apaches in Indian Tribes of Texas* at 131.

⁵³ Comments by Dr. Eloisa Tamez, made at *Abriendo Brecha* conference at University of Texas at Austin, February 21, 2008.

⁵⁴ Working Group interview with Dr. Eloisa Tamez on her property, May 2, 2008.

⁵⁵ Phone interview conducted by Denise Gilman with Daniel Castro Romero Jr., June 9, 2008.

Historical and Current Land Use of the Texas Traditional Tribe of Kickapoo

The Kickapoo are one of the more traditional tribes of the border region and possibly in all of the United States.⁵⁶ They largely maintain land use practices from the past. Such practices include construction of *wickiups*, the traditional housing made of mats of cattails and fronds. The Kickapoo raise the same crops in Mexico and Texas as they have always raised, including squash, beans, potatoes, pumpkin, corn, sweet potatoes, and wheat and oats, and still hunt game including deer, bear, and squirrel, the meat of which is preserved as jerky.⁵⁷ They regularly practice traditions at the banks of the Rio Grande River, such as gathering material for ceremonial use, offering prayers and tobacco, and visiting burial sites near the river, practices which are repeated several times a year.⁵⁸

The Kickapoo have historical ties to land on both sides of the Rio Grande River. In Mexico, their traditional lands are in Nacimiento, Mexico. The Kickapoo Traditional Tribe of Texas consider land both north and south of the international border as their traditional hunting and ceremonial grounds.

Historical and Current Land Use of the Tigua (Ysleta del Sur) of El Paso County

The Tigua Indians of Ysleta del Sur Pueblo historically raised wheat, corn, grapes, cattle and horses. They traded these products, as well as hand made pottery, baskets, and rope throughout the region - north to New Mexico and south to Chihuahua, Mexico. They hunted throughout the Hueco Mountains, east to the Guadalupe Mountains, and south to Sierra Blancas. In the spring, Tigua hunters ventured east across the Pecos River into the plains to hunt buffalo. Tigua families also traveled with horses and ox carts 80-miles east the Guadalupe Salt Beds where they gathered salt for its sacred properties, to trade and to preserve and enrich their food.⁵⁹ The Tigua continue to farm the same land along the Rio Grande River and engage in other traditional uses of their land and the Rio Grande River.⁶⁰

Additionally, the land of the Tigua and its natural resources continue to play a significant role in traditional ceremonial events. The Ysleta del Sur lieutenant governor, Carlos Hisa, explained to the Working Group that while the proposed border wall sections will not directly cut through Tigua reservation lands, the sections will directly impact land with extreme historical and religious significance for the Tigua.⁶¹ Although

⁵⁶ Carolyn Mitchell Burnet, *The First Texans*, at 131.

⁵⁷ <http://www.texasindians.com/kickapoo.htm>

⁵⁸ See written testimony of Eric Anico, member of the Kickapoo Traditional Tribe of Texas (Oct. 13, 2008).

⁵⁹ "Newcomers: Tigua." *Texas Beyond History*. Jan. 2008. The University of Texas, <http://www.texasbeyondhistory.net/trans-p/peoples/newcomers.html>.

⁶⁰ See, e.g., Randy Lee Eickhoff, *Exiled: The Tigua Indians of Ysleta del Sur* at 110.

⁶¹ Phone interview conducted by Michelle Guzman with Carlos Hisa in April 2008

Hisa would not disclose the exact location of these lands, nor their use, as to maintain what little privacy the tribe has left concerning these issues, he did acknowledge that the tribe is attempting to communicate with DHS in an effort to protect these significant areas. Furthermore, Tigua tribal members' access to sections of the Rio Grande River will be cut off by the border fence. This separation from the river will interfere with or completely halt important religious and social traditions of the tribe. The river is where the tribe celebrates the beginning of a new calendar year each year, where it inducts elected tribal officials, and where it has conducted naming ceremonies for centuries. These ceremonies are significant to the survival, development, and continuation of the ways of life of the Tiguas.⁶²

Elected representatives have recognized the unique and highly meaningful customs, uses and traditions of the Tigua. U.S. Representative Silvestre Reyes, D-Texas, signed onto a legal brief filed with the U.S. Supreme Court challenging the waivers of environmental and American Indian religious protection laws. Representative Reyes also met with Tigua tribal Governor Frank Paiz and has continued to urge DHS to respect the Tiguas' ceremonial customs. However, to date, DHS has not agreed to withdraw from its plan to build a fence that will negatively impact traditional Tigua lands and the tribe's use of those lands.

Construction of the border wall by the United States government will not only result in direct impacts on indigenous lands and the separation of families from other portions of their lands, it will cause significant harm to the wildlife, waterways and other natural resources so important to the lifestyle and religious observance of the indigenous communities living in Texas. A separate briefing paper more fully explores the significant environmental impacts of the border wall.⁶³ Exploration and construction of the border fence violates indigenous peoples' rights to access and use of natural resources they deem important for their survival, religion and ways of life, as supported by Article XXIII of the American Declaration, and Article 26(2) of the UN Declaration on the Rights of Indigenous Peoples.

The United States government did not establish free, prior, and informed consent (FPIC) with indigenous communities prior to exploration activities.

DHS did not consult with indigenous people before beginning its survey project in preparation for construction of the border wall, and in some cases, residents were not even informed that a fence would be built on or near their lands. DHS has not "effectively" consulted with the affected communities about the planning and construction of a border fence. This failure to consult violates the interpretations of the Inter-American Court in accordance with ILO Convention 169, which understand that consent must be freely given, prior to the undertaking of a project, and according to

⁶² Ibid.; see also Randy Lee Eickhoff, Exiled: The Tigua Indians of Ysleta del Sur at 123-150.

⁶³ Lindsay Eriksson & Melinda Taylor, The Environmental Impacts of the Border Wall Between Texas and Mexico.

tribal customs and procedures. Informed consent means accepting and disseminating information, and constant communication between parties in good faith and in culturally appropriate ways. The failure to consult properly also violates Section 564 of the Omnibus Appropriations Bill for 2008, which required DHS to consult with affected property owners, Indian tribes, and local governments regarding construction of the border wall in order to minimize the impact on the environment, culture, commerce, and quality of life in areas considered for the border fence. The legislation also required DHS to perform an analysis on the “possible unintended effects on communities.”

The Working Group gathered testimonies from Ranchería El Calaboz and Granjeno, two traditional Lipan Apache areas impacted by the exploration and planned construction of the border wall. In these testimonies, the violation of FPIC by the U.S. government is evident.⁶⁴ For example, Dr. Eloisa Tamez has stated that Army Corps are surveying the south side of her property, but she does not know what they are doing. She asserts that the government does not have her consent to place a fence on her private property and has not offered her any choices regarding the fence. Hidalia and Guadalupe Benavides describe how the government communicated with them about their property through written documents in English, although they do not read well in any language, particularly English. They have attempted to ask questions of the government regarding the manner in which they would be able to reach the side of their property that would fall on the south side of the wall and have not received any clear response. A government official urged them to sign a document offering to purchase their property saying, “If you don’t sign, the government’s going to build the wall anyway,” and telling her that she did not want to “scare” her, “but if you don’t sign, you will be sued; what will you do then?” Gloria Garza described how government officials have repeatedly pressured her to sign paperwork giving the government rights to her property, stating that all they needed was “just a signature.” At one point, a government official asked for his papers back when it became clear the Garza family was not going to sign. Despite Gloria Garza’s refusal to provide permission, surveying has occurred on the levee on the Garza family property.

A similar lack of consultation took place in relation to the Tigua Tribe. As stated in the El Paso Times, El Paso County Commissioner Veronica Escobar noted that federal officials have not done enough communicating with border residents in the El Paso area, and are moving forward with a costly plan that will not stop the flow of undocumented workers or drug and human traffickers into the United States. “We want to be consulted,”

⁶⁴ Interviews conducted by the Working Group with Dr. Eloisa Tamez, Hidalia and Guadalupe Benavides and Gloria Garza, May 2-3, 2008; see also Leah Nedderman, Ariel Dulitzky & Denise Gilman, *Violations on the Part of the United States Government of the Right to Property and Non-Discrimination Held by Residents of the Texas Rio Grande Valley*, at 19-20 (describing a lack of meaningful consultation at the government forums set up for this purpose and other failings in the government’s notification of affected parties).

she said. "We want to have a voice, and we want meaningful solutions."⁶⁵ Also, in a 4-1 vote, the El Paso County Commissioners Court announced Tuesday, May 28 that it was planning to join two lawsuits challenging the border fence construction. County Attorney José Rodríguez said, "[W]hat the lawsuits seeks is to require the federal government to follow procedures and due process, and to observe the constitutional rights individuals and the community have in these matters."⁶⁶

The lack of consultation with the Kickapoo Tribe is similarly evident. The U.S. government's formal assessment of the impact of the border wall mentions the Kickapoo only once, in relation to municipal water systems.⁶⁷ The failure to include information about the impacts of the border wall on the Kickapoo is notable and evidences a lack of concern and consultation with the Kickapoo, given the proximity of the border wall to the Kickapoo reservation, the transnational characteristics of the tribe and the tribe's traditional connection to the Rio Grande River.

Conclusion

Exploration, planning and construction activities conducted by DHS, the U.S. Border Patrol, and the U.S. Army Corps of Engineers to further the U.S. government's plan to construct wall segments along the U.S.-Mexico border have violated the rights of indigenous peoples in Texas. Such rights are recognized in international and domestic law as inviolable and therefore must be protected for the members of the Lipan Apache, Kickapoo, and Tigua (Ysleta del Sur) tribes located on the Texas-Mexico border. These rights include:

- The right to recognition of juridical personality and civil rights protected in Article XVII of the American Declaration;
- The right to property as supported by Article XXIII of the American Declaration and to be properly consulted prior to surveying lands and planning, designing and constructing the fence, as supported by ILO Convention 169;
- The right to legal protections and remedies as supported by Article XVIII of the American Declaration;
- The right of indigenous people to enforce treaties and agreements with the government that the communities entered into in the past, as supported by Article 37(1) of the UN Declaration on the Rights of Indigenous Peoples;
- And the right to natural resources deemed significant to the survival, development, and continuation of the ways of life of indigenous people of the Texas-Mexico border, as supported by Article XXIII of the American Declaration.

⁶⁵ Grissom, Brandi. "Planned border wall blocks Tiguas from sacred grounds." El Paso Times 14 May 2008: 1A.

⁶⁶ Johnson, Erica Molina. "Violation of Constitution is alleged; County joins suits opposing barrier." El Paso Times 28 May 2008: 1A.

⁶⁷ DHS Environmental Stewardship Plan, Del Rio Sector (July 2008).

According to the evidence gathered, the Working Group on Human Rights and the Border Wall concludes that the Inter-American Commission on Human Rights should initiate an investigation into the violation of the above-mentioned rights on behalf of the United States government towards the members of the Lipan Apache, Kickapoo, and Tigua (Ysleta del Sur) peoples. Although possible violations of the rights of members of the Jumano Apache tribe have not been included in this briefing paper, the Working Group also recommends that the Inter-American Commission on Human Rights consider the situation of the community of Jumano Apache in and near Redford, Texas, outside of Presidio. Similar violations of indigenous rights are reported to be occurring in this community.

Figure 1. Border Wall Location Splitting Private Property of Indigenous Landowners in Ranchería El Calaboz, TX

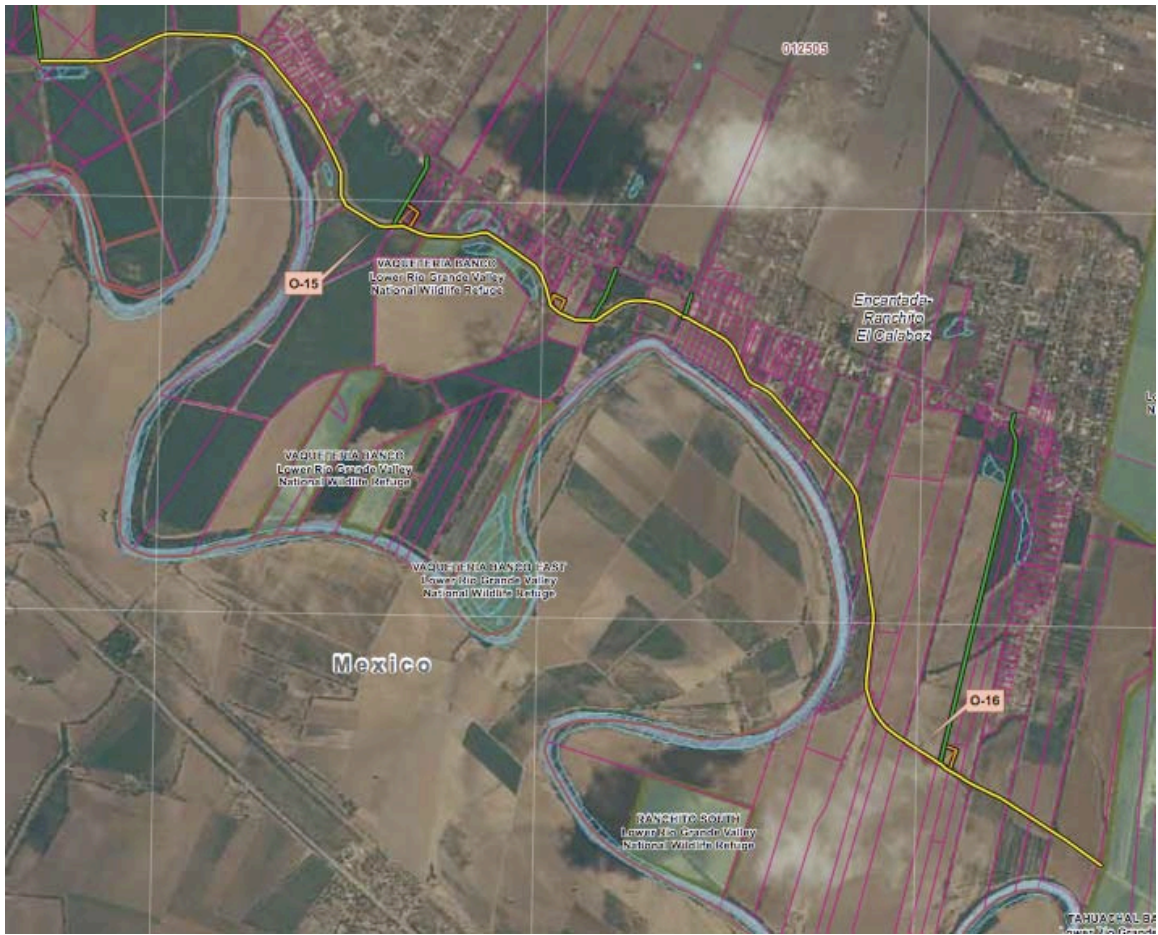


Figure 2. Border Wall Location in Reference to Ysleta Mission and Land Trust

