



Water Protector Legal Collective

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OHCHR

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Re: Call for Inputs: Human Rights Council resolution 52/8 on promoting human rights and the Sustainable Development Goals through transparent, accountable and efficient public service delivery

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The Water Protector Legal Collective (“WPLC”) is an Indigenous-led legal nonprofit organization that provides legal support and advocacy for Indigenous Peoples and Original Nations, the Earth, and climate justice movements.

Born out of the #NoDAPL movement, WPLC’s founding mission was to serve as the on-the-ground legal team for the Indigenous-led resistance to the Dakota Access Pipeline (DAPL) at Oceti Sakowin camp at Standing Rock where we provided legal defense of Water Protectors in over 800 cases in North Dakota.

Today, we continue in the frontline legal battles to honor the Earth and protect the Sacred, through direct representation of Indigenous Peoples in both civil and defense work; through ongoing, long-term accompaniment and legal advocacy; community legal education and training for our relatives in direct response to needs; and supporting sovereignty and self-determination of Indigenous Peoples through international human rights advocacy, working to protect fundamental human rights, spiritual and cultural rights, and the Earth and Water itself.

WPLC has expertise in public international law, international human rights, humanitarian law, norms regarding statehood, sovereignty, self-determination, and in particular, experience regarding the social, political, and cultural rights of Indigenous Peoples and Original Nations.

WPLC answers the call for input regarding the preservation and promotion of human rights in the context of the Sustainable Development Goals informing the

report to be presented to the Human Rights Council during its 56th Session. WPLC will be centering this submission of the issues surrounding the use of “local communities” language in the context of Indigenous Peoples, and often written as “Indigenous Peoples and local communities,” answering questions 1, 3, 5, and 7. Indigenous Peoples are actively targeted by both states and non-state actors in continuing colonial violence that manifests in all facets of life. As laws evolve at all levels to be more inclusive of and recognizing Indigenous Peoples’ rights, there are new ways in which colonial powers are working to undermine or diminish those very rights.

In particular, we are seeing issues of using both “Indigenous Peoples” and “local communities” together as “Indigenous Peoples and local communities.” We are seeing the terminology being weaponized against Indigenous Peoples in two ways. The term “local communities” does not have a firm, consistent definition; whereas, the term “Indigenous Peoples” has generally consistent defining characteristics: “self-identification as Indigenous Peoples at the individual level and accepted by the community as their member; historical continuity with pre-colonial and/or pre-settler societies; strong link to territories and surrounding natural resources; distinct social, economic or political resources; distinct language, culture and beliefs; form non-dominant groups of society; [and] resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.”¹ Maintaining that it is “the most fruitful approach is to identify, rather than define Indigenous Peoples.”²

The intention behind including the term “local communities” with Indigenous Peoples is to be inclusive of the nuanced experience many peoples have and to ensure that other peoples that have connection to the land do not also experience adverse human rights impacts.

First, “local communities” is being used for transient or planted communities that generally commit harm to Indigenous Peoples and are seeking the same rights and protections as Indigenous Peoples, in particular, to undermine the rights to free, prior and informed consent.

Second, in some instances, Indigenous Peoples are being relegated to “local communities” only and stated that Indigenous rights do not extend to “local communities” despite clearly being Indigenous.

This harm stems from compounding the two terms together and seemingly conflating them without consulting with Indigenous Peoples or local communities, and without international law and dialogue supporting both terms used in

¹ U.N. Permanent Forum on Indigenous Issues, *Indigenous Peoples, Indigenous Voices*, https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf

² *Id.*

conjunction. “Indigenous Peoples and local communities” was first introduced in conservation spaces at the international level - and in particular, the U.N. Programme of Work on Protected Areas introduced “Indigenous Peoples and Local Communities Conserved Territories and Areas” (ICCAs) during the Convention on Biological Diversity.

Many international human rights experts support using “Indigenous Peoples” separately from “local communities” due to the recognition that Indigenous Peoples are a distinct entity and Peoples, especially with the U.N. Declaration on the Rights of Indigenous Peoples being adopted by the General Assembly in 2007 which cements the unique status Indigenous Peoples hold. Moreover, the U.N. Permanent Forum on Indigenous Issues (“U.N. Permanent Forum” or “UNPFII”) also issued in its 21st Session Report a denouncement of the use of “Indigenous Peoples and local communities” together as a compound term.

Under emerging issues, the U.N. Permanent Forum stated:

Indigenous peoples have been a distinct constituency at the United Nations since 1977 and, with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly in 2007, their inherent rights were affirmed as the international minimum standard. The Permanent Forum reiterates the position of the Special Rapporteur on the rights of indigenous peoples, namely that it is unacceptable to undermine the status and standing of indigenous peoples by combining or equating them with non-indigenous entities such as minorities, vulnerable groups or local communities. Such attempts, whether by States or United Nations entities, are not acceptable and will be challenged by indigenous peoples and those mandated to defend their rights. The Permanent Forum urges all United Nations entities and States parties to treaties concerning the environment, biodiversity and the climate to eliminate the use of the term “local communities” in conjunction with indigenous peoples, so that the term “indigenous peoples and local communities” would be abolished.³

Further, the Report of the Expert Mechanism on the Rights of Indigenous Peoples to the Human Rights Council in its 48th Session also expressed concern at the conjunction of Indigenous Peoples and local communities:

³ E/2022/43-E/C.19/2022/11 at ¶85.

One concern expressed by some indigenous peoples is the move to group indigenous peoples with “local communities” within multiple international conventions and other multilateral agreements. Such a development may have the impact of undermining the rights of indigenous peoples under the Declaration, in particular their right to self-determination, a concern which some States share.⁴

Similarly, a Joint Statement by the United Nations Permanent Forum on Indigenous Issues, Special Rapporteur on the Rights of Indigenous Peoples, and the Expert Mechanism on the Rights of Indigenous Peoples was issued also asking for the use of “Indigenous Peoples and local communities” to cease:

Therefore, we, the UN mechanisms of Indigenous Peoples urge all UN entities in their methods of work to refrain from conflating, associating, combining, or equating Indigenous Peoples with non-indigenous entities, such as minorities, vulnerable groups, or “local communities.” We further request that all UN Member State parties to treaties related to the environment, biodiversity, and climate cease using the term “local communities” alongside “Indigenous Peoples,” so that the term “Indigenous Peoples and local communities” is no longer used.⁵

Again, the concern comes from a lack of a consistent definition of “local communities.”⁶ The term “local communities” can apply to any groups of people merely residing in proximity with Indigenous Peoples and therefore put them in equal footing with Indigenous Peoples despite often having oppositional interests. Additionally, states and non-state actors acting in bad faith are also weaponizing these concerns Indigenous Peoples have regarding the use of “Indigenous Peoples and local communities” terminology and those bad actors designate Indigenous Peoples and communities as “local communities” that do not have the same protections internationally or locally.

⁴ A/HRC/48/75 at ¶34; *See also*, Press Release, Inuit Circumpolar, *ICC Policy on “Local Communities” Chronicles Opposition to the Undermining and Erosion of Inuit Rights* (Oct. 26, 2020), <https://www.inuitcircumpolar.com/news/icc-policy-paper-on-local-communities-chronicles-opposition-to-the-undermining-and-erosion-of-inuit-rights/>. *See also*, Joint statement made by Canada, Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway and Sweden, together with Greenland, at the fourteenth session of the Expert Mechanism.

⁵ Joint Statement (July 2023), <https://social.desa.un.org/issues/indigenous-peoples/news/joint-statement-by-the-un-mechanisms-of-indigenous-peoples>.

⁶ Cultural Survival & First Peoples Worldwide, *Statement towards Discontinuing the Use of the Collective Term “Indigenous peoples and Local Communities” or “IPLC,”* <https://www.culturalsurvival.org/news/statement-towards-discontinuing-use-collective-term-indigenous-peoples-and-local-communities>.

This submission should not be taken that WPLC does not support peoples that identify as a local community or to diminish or take from any rights that local communities have; rather, this submission is to show the danger of conflating undefined terms that have no grounding in international law with Indigenous Peoples. We recommend:

1. that all international fora, and in particular, U.N. systems and mechanisms that work on conservation and sustainable development take the time to be strategic with language and build language and defined rights that apply to specific groups in ways that are suitable for all rights holders.
2. that U.N. mechanisms and systems working on conservation and sustainable development hold consultations with both Indigenous Peoples and local communities as two distinct groups to reach terminology, definitions, and defined rights that is suitable for all parties as one of the ways to work towards developing strategic language and defined rights in a good way.

In these two recommendations, we hope that we can all move towards the maximum protections for all those that experience human rights violations, while still respecting the unique status Indigenous Peoples hold and the important roles local communities also play in the human rights diaspora and conservation efforts.