



Water Protector Legal Collective

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Mr. Francisco Calí Tzay, Special Rapporteur on the Rights of Indigenous Peoples
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February 15, 2024

Re: Submission to the Call for Input regarding Indigenous Persons with Disabilities to be presented in the Special Rapporteur's Report to the 57th Session of the Human Rights Council

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.

A Brief History of Disability Rights in the United States

Discrimination against peoples and individuals with disabilities can be traced back to the Greek and Roman empires, just as racism and contemporary attitudes overall towards Indigenous Peoples can be traced to this point in history. These attitudes directly contribute to contemporary forms of ableism, at-large obsessions with perfection both mentally and physically, and ongoing efforts towards eugenics and genocide.

In the United States, civil rights movements for disabilities began in the early 1800s, but was met harshly in 1907 when the Eugenic Sterilization Law was enacted in 24 states and allowed medical practitioners to sterilize disabled people. In 1910, the Eugenics Record Office was established in New York and collected data on families and sought to identify people that were “unfit” to participate in society - mainly socially and economically poor families and its answer was sterilization.¹ In 1927, the Supreme Court of the United States (“SCOTUS”) upheld a “feeble-minded” woman’s forced sterilization and stated “three generations of imbeciles are enough,” while citing to case law that allows for forced vaccination due to at-large public health concerns.²

Additionally, there were other laws that criminalized disabilities known as “ugly laws.” Ugly laws were first seen as early as the 1860s. The first “ugly law” went into effect in San Francisco, California and stated “any person who is diseased, maimed, mutilated, or in any way deformed so as to be an unsightly or disgusting object, or an improper person shall not” expose themselves to the public.³

People with disabilities were not included in the 1964 Civil Rights Act and did not see broad federal civil rights protections until the Americans with Disabilities Act (“ADA”) of 1990. It wasn’t until 1995 when the Third Circuit Court of Appeals held that forced institutionalization of people with disabilities was a violation of the ADA and people with disabilities were able to be housed and engage in community settings.⁴

There are current attacks on people with disabilities ongoing and is exemplified by a case out of Massachusetts that allows for the continued use of electric shock therapy for autistic individuals despite the Federal Drug Administration labeling the practice as “torture.” The Judge Rotenberg

¹ Cera R. Lawrence, *The Eugenics Record Office at Cold Spring Harbor Laboratory (1910-1939)*, Arizona State University (Apr. 21, 2011), <https://embryo.asu.edu/pages/eugenics-record-office-cold-spring-harbor-laboratory-1910-1939>. See also, *The Supreme Court Ruling That Led to 70,000 Forced Sterilizations*, NPR (Mar. 7, 2016), <https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations>.

² *Buck v. Bell*, 274 U.S. 200 (1927) (citing *Jacobson v. Massachusetts*, 197 U.S. 11 (1905)).

³ Marina Masnoukian, *The Untold History of Ugly Laws*, Grunge (Aug. 23, 2023), <https://www.grunge.com/664678/the-untold-history-of-ugly-laws/>.

⁴ *Helen L v. Didario*, 46 F.3d 325 (3rd Cir. 1995).

Educational Center, the institution at the center of the court case, primarily holds Black and brown individuals.⁵ There is also a push country-wide to forcibly re-institutionalize individuals with disabilities. The U.S. trend toward institutionalization and jailing is particularly worrying given the mass disabling event of the ongoing COVID-19 pandemic, the disproportionate impact of the pandemic on Indigenous Peoples, the United States cavalier attitude toward the illness, and the resultant death of over 1.1 million Americans since 2020.⁶

A Brief History on the Rise of Disability in Indigenous Peoples

There are roughly 360 million Indigenous Peoples in the world and it is estimated that more than 50 million Indigenous individuals have a disability globally; however, in the United States roughly 1 in 3 Indigenous individuals have a disability. Indigenous Peoples in the United States are 50.3% more likely to have a disability when compared to the national average.⁷ It is also worth noting that Indigenous Peoples originally did not have the same outlook and purviews of disabled or divergent individuals, who were afforded safety, care, and respect. Nor did Indigenous Peoples share the cultural obsessions with productivity, normalization, and perfection as ancient Greeks and Romans did that inform European societies today. Even so, settler colonialism and ongoing genocidal policies exacerbate rates of disability amongst Indigenous Peoples.

Violence enacted upon Indigenous Peoples since contact has resulted in the wanton destruction of Indigenous Nations and communities via attacks targeting women and children, unending wars, broken Treaties, forced removal, resource extraction, the forced removal of children from their families and communities, as well as the introduction of alcohol and other illicit substances has resulted in intergenerational trauma, post-traumatic stress disorder (“PTSD”), complex post-traumatic stress disorder (“C-PTSD”), substance abuse, and other disabilities to become prevalent in Indigenous communities.

Moreover, ongoing extractive industry projects often on or near Indigenous lands and other forms of pollution are also greatly contributing to and causing further disabilities for Indigenous Peoples and in communities. In many cases extractive industry sites are purposefully located near Indigenous communities - such is the case with the Dakota Access Pipeline and re-route from near Bismarck, South Dakota to unceded Treaty territory. As a result, Indigenous Peoples are exposed to contaminated waters, contaminated soils and food, and toxic waste at a greater rate than other communities. For example, the Yakama Nation in eastern Washington is surrounded by superfund sites and is considered some of the most contaminated and polluted

⁵ *Judge Rotenberg Education Center v. Commissioner of the Dept. of Dev. Serv.*, 492 Mass. 772 (2023).

⁶ Carrie Arnold, *Unraveling Long COVID'S Causes and Impacts*, Hopkins Bloomberg (Mar. 21, 2023), <https://magazine.jhsph.edu/2023/unraveling-long-covids-causes-and-impacts> ;COVID Data Tracker, Center for Disease Control, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>.

⁷ *Understanding Disabilities in American Indian & Alaska Native Communities*, National Indian Council on Aging, <https://www.nicoa.org/programs/technical-assistance-and-resource-center/disabilities/>.

areas in the country. Yakama Nation and advocates have been calling for the clean-up of Portland Harbor, a key point for fishing and other resources for the Nation, for over 30 years to no avail. Portland Harbor is heavily contaminated by petroleum, pesticides and other toxic chemicals at high levels and is considered dangerous to human health. Another example is the testing of dioxin, a component of Agent Orange, by the U.S. government in the 1960s on San Carlos Apache Tribal lands in Arizona. San Carlos Apache community members report devastating illnesses and disabilities as a result of the experimentation that include rare cancers, heart disease, and neurological disorders.⁸

Relatedly, seemingly common conditions such as PTSD, C-PTSD, alcohol use disorder and substance abuse disorders are often not thought of as disabilities in at-large society. Rather, they are pathologized as medical conditions that can be overcome with will-power or are due to a moral failing. The Social Security Administration does consider PTSD and C-PTSD disabilities. Similarly, the Americans with Disabilities Act does consider alcohol use disorder and substance abuse disorders disabilities.⁹ Indigenous Peoples have the highest rates of alcohol use disorder and substance abuse disorders of other demographics.¹⁰ Substance abuse disorders often stem from the high rates of PTSD, C-PTSD, ongoing violence and harms, and intergenerational trauma enacted upon Indigenous Peoples.

Contemporary Glaring Concerns Regarding Disabilities of Indigenous Peoples Include COVID-19, Purposeful Targeting of Indigenous Peoples with Disabilities, and Fundamental Misunderstandings of Mental Health and Trauma Informed Care in Policing and Incarceration Regarding Indigenous Peoples

COVID-19 is a mass disabling event that impacts Indigenous Peoples the most.

COVID-19 is a mass disabling event and current levels of COVID infections are high, as well as deaths as a result COVID. Currently in the United States, nearly 2,000 individuals are dying weekly due to COVID.¹¹ Other reports show that COVID levels could be up to 19 times higher than official governmental reports and experts are stressing that the virus is not well understood.¹² The aftermath of infections and multiple infections are leaving children diagnosed

⁸ Sylvana Manjeshwar, *The Lasting Harms of Toxic Exposure in Native American Communities*, Berkeley Political Review (July 10, 2021), <https://bpr.berkeley.edu/2021/07/10/the-lasting-harms-of-toxic-exposure-in-native-american-communities/>.

⁹ Eleesha Lockett, *Understanding Alcohol Use Disorder and Disability Benefits*, Healthline (Oct. 4, 2023), <https://www.healthline.com/health/alcoholism/is-alcoholism-a-disability>.

¹⁰ *Substance Abuse & Native Americans*, The Red Road, <https://theredroad.org/issues/native-american-substance-abuse/>.

¹¹ Mary Kekatos, *Why are 1,500 American still dying from COVID every week?*, ABC News (Jan. 10, 2024), <https://abcnews.go.com/Health/1500-americans-dying-covid-week/story?id=106237143>.

¹² Erin Prater, *COVID levels are up to 19 times higher than reported, WHO says as it warns of the potential dangers of repeat reinfection: 'We don't know everything about this virus.'* Fortune (Jan. 12, 2024), <https://fortune.com/well/2024/01/12/covid-in1-pandemic-world-health-organization-warns-dangers-repeat-covid-infection-cardiac-pulmonary-neurologic/>.

with dementia and other memory disorders, and others are experiencing permanent damage to their heart and respiratory systems.¹³

Indigenous Peoples are at high risk for infection and re-infection and subsequent disabilities. Indigenous individuals that have contracted COVID are three times more likely to become severely ill and more than twice as likely to die while in the hospital due to COVID - even when younger and having fewer chronic conditions or disabilities.¹⁴

COVID vaccinations are no longer subsidized by the federal government, and billing issues have resulted in vaccination seekers to pay even when insurance is supposed to cover new COVID vaccinations. If uninsured, the vaccination can cost roughly \$155 and nearly 25% of Indigenous Peoples in the United States are uninsured.¹⁵

COVID disparately impacts Indigenous Peoples and will continue to do so resulting in long-term, serious disability and in some cases, death, and will continue to do so as long as healthcare is inaccessible and inadequate for Indigenous Peoples.

Indian Health Service and programs it provides are consistently underfunded and clinics shutdown.

Indian Health Service (“IHS”) serves enrolled members of federally recognized Tribes and eligible descendants and spouses of those enrolled members. IHS provides health services and these services stem from the trust and fiduciary responsibilities, as well as Treaty responsibilities, the federal government holds towards Indigenous Peoples.

IHS is funded by the federal government and as such is often in danger of a lapse of funding due to consistently imminent government shutdowns. In 2019, the government shut down for 35 days and nearly 65% of IHS employees were not paid. For the first time in 2023, IHS received advanced appropriations of roughly \$5 billion - which means that it would remain operational in the event of a government shutdown. Even so, it is well-known that IHS is chronically underfunded. Reports in 2022 showed that IHS’ operational budget is roughly \$7 billion and

¹³ Children’s Hospital Los Angeles, *Researchers publish comprehensive report on long COVID symptoms in children*, Medical Xpress (Feb. 12, 2024), <https://medicalxpress.com/news/2024-02-publish-comprehensive-covid-symptoms-children.html>. See also, Dana G. Smith & Dani Blum, *New Report Raises Concerns About Long Covid in Children*, The New York Times (Feb. 7, 2024), <https://www.nytimes.com/2024/02/07/well/live/long-covid-children.html>. See also, Hadar Avittan & Dmitrijs Kustovs, *Cognition and Mental Health in Pediatric Patients Following COVID-19*, Int. J. Env. Rev. Pub. Health (Mar. 13, 2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10049312/>.

¹⁴ Mary Van Beusekom, *Native Americans at outsized risk of severe COVID-19, death* University of Minnesota (Aug. 30, 2023), <https://www.cidrap.umn.edu/covid-19/native-americans-outsized-risk-severe-covid-19-death>.

¹⁵ Latoya Hill & Samantha Artiga, *Health Coverage Among American Indian and Alaska Native and Native Hawaiian and Other Pacific Islander People*, KFF (Nov. 30, 2023), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-among-american-indian-and-alaska-native-and-native-hawaiian-and-other-pacific-islander-people/>.

serves 2.6 million patients, but only received less than half of that budget from the government. The Tribal Budget Formulation Workgroup that advises the government on budgetary needs estimated that IHS needs \$51 billion to provide adequate health services and directly address health disparities in Indigenous communities.¹⁶

IHS has also begun to stop providing specific services and in some cases shut down clinics. In 2020, without notice, the Phoenix Medical Center stopped offering birthing services without public notice leaving Indigenous pregnant individuals scrambling to seek prenatal care.¹⁷ In 2021, during a deadly wave of COVID-19, the Acoma-Canoncito-Laguna Service Unit stopped some of its services and stated that Tribes that were affected were being consulted; however, some Tribal officials stated they were being left in the dark regarding IHS plans to service eligible individuals in the area.¹⁸ Continued operations of IHS also require adequate appropriations in a timely manner and the current political climate in the United States makes that an uncertainty.

Some IHS facilities have long histories of subpar care and have even contributed to the deaths of Indigenous individuals. In 2016, a 6-month-old nearly died due to a wrong diagnosis and then inability to treat after the mother brought her child back in for medical care. That same hospital, the Sioux San, was responsible for several patient deaths according to federal investigations and was shut down by both IHS and Congress in 2017.¹⁹ Further, in 2019, PBS did an investigation on a non-Indigenous doctor that drew suspicion of targeting and committing sexual assault against predominantly Indigenous children for over 21 years, but IHS did nothing to intervene. In 1995, after serving as a pediatrician at the Blackfeet IHS facility in Browning, Montana for three years, officials were convinced Stanley Patrick Weber was a pedophile and sought his removal. Instead, Weber was transferred to another IHS facility in Pine Ridge, South Dakota and remained there for 21 years. Weber was indicted in 2017 and 2018 for sexually assaulting 6 patients in Montana and South Dakota.²⁰ These incidents and stories are not isolated throughout Indian Country, and it has created a rightful culture of distrust between Indigenous patients and IHS facilities. Many will go without any healthcare rather than go to an IHS facility.

¹⁶ Gemma DiCarlo, *New Indian Health Service funding provides stability, but long-standing issues remain*, OPB (Jan. 20, 2023), <https://www.opb.org/article/2023/01/20/new-indian-health-service-funding-provides-stability-but-long-standing-issues-remain/>.

¹⁷ Dalton Walker, *Lawmakers demand answers in birthing center closure*, Indian Country Today (Oct. 29, 2020), <https://indianz.com/News/2020/10/29/indian-country-today-indian-health-service-shuts-down-birthing-center-at-urban-hospital/>.

¹⁸ Seb Peltikian, *IHS Shuts Down Vital Hospital Services in Acoma Pueblo During Pandemic*, Native News Online (Jan. 04, 2021), <https://nativenewsonline.net/health/left-in-the-dark-ih-s-shuts-down-vital-hospital-services-in-acoma-pueblo-during-pandemic>.

¹⁹ Mark Walker, *Fed Up With Deaths, Native Americans Want to Run Their Own Health Care*, The New York Times (Oct. 8, 2021), <https://www.nytimes.com/2019/10/15/us/politics/native-americans-health-care.html>.

²⁰ Christopher Weaver, Dan Frosch, & Gabe Johnson, *A Pedophile Doctor Drew Suspicions for 21 Years. No One Stopped Him.*, PBS (Feb. 8, 2019), <https://www.pbs.org/wgbh/frontline/article/patrick-stanley-weber-sexual-abuse-pine-ridge-blackfeet-reservation/>.

Indigenous Peoples with disabilities are targeted for enrichment and are trafficked and left in cities with little to no resources to return home.

In 2023, a purposeful trafficking scheme of Indigenous Peoples suffering from alcohol use disorder and substance abuse, labeled as an “insurance scam” by media outlets, was exposed. In May 2023, the Arizona Governor held a press conference announcing actions against over 100 providers of behavioral health, and residential and outpatient treatment services for defrauding Arizona’s Medicaid program of hundreds of millions of dollars. As of May 2023, there have been 45 indictments by the Arizona Attorney General’s office and more than a hundred facilities have been suspended from providing services. There are ongoing investigations by the Federal Bureau of Investigation (“FBI”) and are cooperating and working in partnership with state and Tribal Nation authorities to conduct the investigation. Indigenous individuals were housed in places that were neither safe nor sober and often in residential homes that billed the Medicaid American Indian Health Program of Arizona.²¹

Indigenous Peoples from Montana, New Mexico, and South Dakota were approached at community gathering events by ‘providers’ to be brought to Phoenix to receive services. ‘Providers’ targeted Indigenous individuals that were already intoxicated or offered alcohol during transport. Once arriving in Phoenix and other Arizona locales and no longer under the influence of substances, Indigenous individuals did not know where they were or how they got there. Indigenous individuals trafficked to the area often have difficulties returning home to their communities and families due to a lack of resources and a lack of understanding why they are in Arizona. Several Indigenous individuals have been declared missing and found dead.²²

‘Providers,’ in some instances, have been found to have ties to other countries overseas. Currently, there are no known trafficking or other criminal charges against the ‘providers’ that have been targeting Indigenous individuals, and the ongoing incident is framed as a large-scale insurance fraud.

Policing, prison, and hospital systems are not trained nor engage in proper culturally safe mental health support that is trauma informed when interacting with Indigenous Peoples.

Indigenous Peoples experience high rates of disability, including PTSD and C-PTSD. Indigenous Peoples are also targeted by policing at higher rates and are incarcerated at higher rates.

²¹ Alice Forham, *Fake ‘sober homes’ targeting Native Americans scam millions from taxpayers*, NPR (Aug. 31, 2023), <https://www.npr.org/2023/08/31/1196855614/fake-sober-homes-targeting-native-americans-scam-millions-from-taxpayers>.

²² *Seeking Victims in the Phoenix Group Homes Targeting Native Americans Investigation*, FBI (Jan. 5, 2023), <https://www.fbi.gov/how-we-can-help-you/victim-services/seeking-victim-information/seeking-victims-in-the-phoenix-group-homes-targeting-native-americans-investigation>.

Indigenous Peoples are the most likely demographic to be killed by police officers²³ and are incarcerated at 38% over the national average.²⁴

Policing in the United States is widely known to fail individuals with disabilities.²⁵ As of 2021, roughly 760,000 individuals with disabilities are incarcerated. Individuals with disabilities that are incarcerated are more likely to serve “longer, harder sentences and [at higher risk for] being exploited and abused by prison staff or other incarcerated people.”²⁶ Given that Indigenous individuals have high amounts of contact with police and are overrepresented in the carceral system, it is likely the case that Indigenous individuals with disabilities are also over represented in police encounters and in the carceral system.

Further, institutions including hospitals, policing and the carceral system also are not adequately trained to culturally engage or provide culturally safe spaces to Indigenous Peoples. Police training in the United States is highly militarized and are some of the least trained officers in the entire world, especially when it comes to de-escalation tactics, engaging in community, and with individuals with disabilities.²⁷ Police are often indifferent at best towards Indigenous Peoples and at worst engage in the ongoing racism and stereotypes commonly believed by society at-large towards Indigenous Peoples. The same is true of the carceral and hospital systems.²⁸

Examples of police violence against disabled Indigenous Peoples are abound and in 2010 a Seattle police officer shot a deaf First Nations woodcarver, John T. Williams, within seconds of seeing him walk in front of a police cruiser.²⁹ In 2015, a Denver police officer shot mentally ill Sicangu Lakota man, Paul Castaway, in front of neighborhood children after his mother called the police while Castaway was experiencing a mental health break.³⁰

²³ Mike Males, *Who Are Police Killing?*, Center on Juvenile & Criminal Justice (Aug. 26, 2014), <https://www.cjci.org/news/blog/who-are-police-killing-2>.

²⁴ James Van Bramer, *Report: Native Americans Significantly Overrepresented In US Prisons*, The Crime Report (Jan. 23, 2023), <https://thecrimereport.org/2023/01/23/report-native-americans-significantly-overrepresented-in-u-s-prisons/>.

²⁵ Eric Westervelt, *Mental Health And Police Violence: How Crisis Intervention Teams Are Failing*, NPR (Sept. 18, 2020), <https://www.npr.org/2020/09/18/913229469/mental-health-and-police-violence-how-crisis-intervention-teams-are-failing>.

²⁶ Jennifer Sarrett, *US prisons hold more than 550,000 people with intellectual disabilities - they face exploitation, harsh treatment*, The Conversation (May 7, 2021), <https://theconversation.com/us-prisons-hold-more-than-550-000-people-with-intellectual-disabilities-they-face-exploitation-harsh-treatment-158407>.

²⁷ Jack Date, *Why police training in the US falls short compared to the rest of the world: Report*, ABC News (Feb. 15, 2023), <https://abcnews.go.com/US/police-training-us-falls-short-compared-rest-world/story?id=96729748>.

²⁸ See, e.g., University of Colorado hospital admits to forcibly cutting Arthur Janis' traditionally long hair in December 2023, Elizabeth Hernandez, *Family alleges UHealth cut off Indigenous patient's hair, then lied about it*, The Denver Post (Dec. 8, 2023), <https://www.denverpost.com/2023/12/08/uhealth-native-american-patient-hair-cut/>.

²⁹ Steve Miletich, *Woodcarver was shot four times in his side by officer, autopsy shows*, The Seattle Times (Oct. 6, 2010), <https://www.seattletimes.com/seattle-news/woodcarver-was-shot-four-times-in-his-side-by-officer-autopsy-shows/>.

³⁰ Anna V. Smith & Tristan Ahtone, *Denver cop with tattoo resembling militia group logo killed tribal citizen in 2015*, High Country News (Dec. 15, 2018),

Additionally, even though the carceral system is required to provide sacred and religious items for Indigenous individuals that are imprisoned under the American Indian Religious Freedom Act (“AIRFA”) of 1978, serving to protect and ensure that Indigenous Peoples access to sacred sites, use and possession of sacred objects and freedom to worship using traditional ceremonies and rites; the Religious Freedom Restoration Act (“RFRA”) of 1993, serving to ensure that Indigenous religious practices are on equal footing with other societal ‘mainstream’ religions such as Christianity; and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) of 2000, serving to protect individuals that are incarcerated religious freedom and prevents carceral administrations from dictating religious practices of any particular faith. However, the patchwork of state, federal and Tribal carceral systems often operates with wide discretion (and resultant disparity) to neglect and interfere with Indigenous individuals’ that are incarcerated rights to engage in original religious practices and possess sacred items.

This submission draws attention to issues with access to sacred items and original religious practices because these are points of healing for Indigenous individuals that have been traumatized and harmed by militarized policing, by engaging in frontline defense as Water Protectors and Land Defenders, intergenerational trauma, harms from pollution, and inadequate health care resulting in disability. Indigenous Peoples need to be able to engage in ceremony and that is even more true of those with disabilities and especially Indigenous individuals with disability that are incarcerated.

WPLC thanks the Special Rapporteur for his consideration of this submission.

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Sincerely,

Summer Blaze Aubrey

Water Protector Legal Collective
Mni Wiconi. Water is Life.

<https://www.hcn.org/articles/tribal-affairs-denver-cop-with-tattoo-resembling-militia-group-logo-killed-Paul-Castaway-tribal-citizen-in-2015-indigenous/>.