

SECTION III – REPORTS

## Environmental Protection and Human Rights in the Pandemic

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**Abstract.** The Covid-19 outbreak in 2020 took the world by surprise. The virus spread quickly around the globe and death tolls were constantly on the rise at early stages of the pandemic. Although vaccine rollouts have helped halt the number of deaths, inequality in accessing vaccines and effective treatments is still a major issue. From the onset, Covid-19 negatively impacted global well-being and myriad human rights. The present report examines how environmental protection and related human rights have been affected by the Covid-19 pandemic.

Based on link between environmental and human health, this report focuses on ecological human rights. The report aims to assess the negative effects of Covid-19 on the enjoyment and realization of particular rights, including the right to a healthy environment, the right to food, the right to water, the right to life and the right to health. It discusses how the pandemic interplays with the Sustainable Development Goals and Agenda 2030. The report also highlights how the pandemic in and of itself, as well as governmental response measures to it, have played a role in exacerbating pre-existing social and economic inequalities. The report places a special focus on the impact of response measures on marginalized groups, namely Indigenous communities, Afro-descendant communities and environmental defenders.

The world is now facing the challenge of building back better. With this in mind, the report provides specific recommendations on how to move forward in a way that ensures human and environmental health are protected. These recommendations are mainly directed at international organizations and States in their decision-making processes. As they continue to face the devastating effects of the pandemic, States and international organizations need to guarantee that inequalities are not furthered and that the rights of marginalized groups are particularly protected.

**Keywords:** *Covid-19, Human Rights, Ecological Rights, Right to a Healthy Environment, Building Back Better, Inequalities*

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## 1. Introduction

Infectious diseases and pandemics<sup>1</sup> have been an endemic part of human history, including the Spanish Flu in 1918 (with a death toll of about 40 million),<sup>2</sup> the Asian Flu from 1956-58 (with a death toll of about two million),<sup>3</sup> the Flu Pandemic in 1961 (with a death toll of about one million),<sup>4</sup> the HIV/AIDS Pandemic from 2005-12 (with a death toll of about 36 million),<sup>5</sup> and the H1N1 Pandemic from 2009-10 (with a death toll of about 500,000).<sup>6</sup> At the end of 2019, the world faced what would become another pandemic. Covid-19 is caused by infection with a new coronavirus (called SARS-CoV-2) and quickly spread around the globe only weeks after its initial detection. On December 31, 2019, the WHO's Country Office in China was informed of cases of 'viral pneumonia' of unknown cause in Wuhan City, Hubei province, China. Affected patients were thought to have visited Wuhan's Huanan Seafood Wholesale Market, a wholesale fish and live animal market, more commonly referred to as a 'wet market'. The market was closed the next day.

On January 2, 2020, the WHO informed its Global Outbreak Alert and Response Network partners about the cluster of pneumonia cases reported in China. The first recorded case outside of China was reported in Thailand on January 13, 2020, followed by another case in Japan on January 16; both patients had recently traveled to Wuhan. Although

initial investigations by the Chinese authorities found "no clear evidence of human-to-human transmission," the WHO first found evidence of "limited human-to-human transmission" on January 19.<sup>7</sup> By the end of January, 98 cases were reported in 18 countries outside China, including four countries having evidence of human-to-human transmission (Germany, Japan, the United States of America, and Vietnam).

On January 30, 2020, the WHO declared the outbreak of novel coronavirus a 'public health emergency of international concern' under the International Health Regulations (IHR) protocol. On February 22, 2020, Italian authorities reported clusters of cases in several regions, quickly followed by reports of cases from other European countries.

The first cases in Africa were reported by the end of February in Egypt and then in Algeria.<sup>8</sup> On March 11, 2020, the WHO officially declared Covid-19 a global pandemic.

In May 2020, the WHO issued a 'Covid-19 Report' concerning the sources and transmission routes of the virus.<sup>9</sup> The Report highlights the crisis' negative impact on global well-being and underlines governmental response responsibilities. The Report recalls global solidarity, acknowledging that the pandemic has had a disproportionate impact on the poor and the most vulnerable. It further notes that these impacts could hamper the achievement of the Sustainable Development Goals (SDGs). The WHO Report stresses the importance of

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<sup>1</sup> So far, the WHO has never provided a clear definition of 'pandemic' although reference is often made to the 'pandemic phase' of infectious diseases. In the 2015 International Health Regulation (IHR) there is only a definition of public health risk which is "a likelihood of an event that may affect adversely the health of human populations, with an emphasis on one which may spread internationally or may present a serious and direct danger" (IHR at art. 1) and of a 'public health emergency of international concern' to be declared by the Director General of the WHO taking into consideration "(a) information provided by the State Party; (b) the decision instrument contained in Annex 2; (c) the advice of the Emergency Committee; (d) scientific principles as well as the available scientific evidence and other relevant information; and (e) an assessment of the risk to human health, of the risk of international spread of disease and of the risk of interference with international traffic' (IHR at art. 12). For the purposes of this report, pandemic is 'the worldwide spread of a new disease which has a significant impact on the affected societies'.

<sup>2</sup> The 1918 influenza pandemic was the most severe pandemic in recent history. It was caused by an H1N1 virus with genes of avian origin. Andrea de Guttry, 'Is the International Community Ready for the Next Pandemic Wave? A Legal Analysis of the Preparedness Rules Codified in Universal Instruments and of Their Impact in the Light of the Covid-19 Experience', [In English] 20(3) *Global Jurist*

<<https://doi.org/10.1515/gj-2020-0038>> accessed 1 October 2020.

<sup>3</sup> A pandemic outbreak of Influenza A of the H2N2 subtype that originated in China.

<sup>4</sup> Caused by the H3N2 strain of the Influenza A virus. Although it has been characterized by a comparatively low mortality rate, it caused more than one million deaths, mostly in Hong-Kong.

<sup>5</sup> First identified in the Democratic Republic of the Congo in 1976, HIV/AIDS has truly proven itself as a global pandemic.

<sup>6</sup> A (H1N1) was a new strain of influenza of swine origin. In the first year of the pandemic between 151,000 and 475,000 deaths worldwide have been attributed to this influenza.

<sup>7</sup> Helen Branswell, 'WHO raises possibility of 'sustained' human-to-human transmission of new virus in China', *STATnews* (21 January 2020) <<https://www.statnews.com/2020/01/21/who-raises-possibility-of-sustained-human-to-human-transmission-of-new-virus-in-china/>> accessed 23 December 2020.

<sup>8</sup> World Health Organization, Africa, *A second COVID-19 case is confirmed in Africa* (25 February 2020) <<https://www.afro.who.int/news/second-covid-19-case-confirmed-africa>> accessed 8 December 2021.

<sup>9</sup> World Health Organization, *COVID-19 response* (WHA73.1, May 19, 2020) <[https://apps.who.int/gb/ebwha/pdf\\_files/WHA73/A73\\_R1-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_R1-en.pdf)> accessed 8 December 2021.

working collaboratively to provide accurate information and to develop treatments and a vaccine, while protecting personal data.

As of December 7, 2021, the worldwide death toll stands at 5.26 million and counting,<sup>10</sup> while 266.46 million cumulative Covid-19 cases have been confirmed.<sup>11</sup> Some regions are more acutely affected than others. The United States has reported more than 789,900 deaths. In Europe, the death toll stands at approximately 1.44 million, while Latin America and the Caribbean reported nearly 1.18 million deaths. The numbers for Asia and Africa stand at more than 1.23 million and 223,000, respectively.<sup>12</sup>

The impacts of the Covid-19 pandemic - including on human rights and environmental protection - are projected to be profound and protracted across the geopolitical spectrum, and in ways that are likely to diminish well-being and dignity for billions of people.<sup>13</sup>

## **2. About this Report**

The present report examines how environmental protection and related human rights have been affected by the Covid-19 pandemic. Based on the idea that environmental and human health are closely linked, this report focuses on ecological human rights. This short introductory note places these issues, and the report's conclusions, within the larger context of the pandemic, explaining the rationale between the chosen sections.

Chapter 1 focuses on substantial environmental problems exacerbated by the pandemic. It begins with the right to a healthy environment as the foundation of all ecological challenges delineated here. It then includes several examples of these challenges, such as the role of zoonotic diseases, the rollback of environmental regulations that spread in several countries, the protection of wildlife, waste management, deforestation and overpopulation.

While the examples included here do not cover all environmental challenges that were exacerbated by the pandemic, it provides notable ones that are cross-cutting and at the core of some underlying issues discussed throughout this report. Finally, the last section addresses how to build back better. Each chapter ends with a summary and recommendations for key stakeholders.

Chapter 2 focuses on the Sustainable Development Goals (SDGs), specifically how the

right to health relates with Agenda 2030. Chapter 3 addresses the exacerbation of inequalities that were brought to light by the pandemic, through discriminatory practices against vulnerable communities and minorities. Chapter 4 looks at the right to water as another ecological right especially affected by the Covid-19 pandemic. With hand hygiene highlighted as one of the main ways to avoid spreading the virus, access to water and sanitation is at the core of pandemic response. Chapter 5 addresses the right to food, which has been highlighted by human rights bodies as a core human right to respect in light of Covid-19. Food insecurity has grown significantly during the pandemic, exacerbated by the inequalities highlighted in Chapter 3.

Chapter 6 looks closely at some of the groups most affected by the pandemic: Indigenous communities, Afro-descendant communities and environmental defenders. It highlights the ways in which these were disproportionately affected, especially considering their relationship with the natural environment.

Chapter 7 briefly looks at the rights to life and health.

While other reports from the GPN have focused more specifically on those as the main human rights infringed by the pandemic, this chapter addresses these as they pertain to the topics highlighted here.

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<sup>10</sup> 'Coronavirus (COVID-19) Deaths' *Our World in Data* <<https://ourworldindata.org/covid-deaths>> accessed 7 December 2021.

<sup>11</sup> 'Coronavirus (COVID-19) Cases' *Our World in Data* <<https://ourworldindata.org/covid-cases>> accessed 7 December 2021.

<sup>12</sup> 'Coronavirus (COVID-19) Deaths' *Our World in Data* <<https://ourworldindata.org/covid-deaths>> accessed 7 December 2021.

<sup>13</sup> See generally, James R. May and Erin Daly, 'Dignity Rights for a Pandemic' (2020) 17(2) *Law Culture, and the Humanities*.

### 3. Summary of Recommendations

#### 3.1. Environmental Protection

Based on our analysis, the Working Group recommends that international organizations:

- Integrate “One Health” into all International Natural Habitat Conservation agreements and strengthen National Implementation mechanisms for these agreements;
- Expand protected wetlands designations and secure wetland integrity nationally, regionally and internationally;
- Expand Listings of designed species for protection, particularly through the CITES and IUCN regimes, suspend non-compliance, and combat illegal wildlife trade;
- Fund and assist in the expansion of national measures to combat desertification and climate change associated impacts;
- Expand and enhance EU Protected Areas, Natura 2000, and the European Convention on Conservation of European Wildlife and Natural Habitats.

As a general matter, the Working Group recommends that States:

- Address the economic and cultural factors that drive deforestation;
- Support knowledge exchange so ecologists are able to interact with infectious-disease researchers, public-health workers, and medics to track environmental change, assess the risk of pathogens crossing over, and monitor and control new virus outbreaks from wildlife and livestock.

With regard to environmental protection law and policy, the Working Group recommends that States:

- Ensure the strengthening and enforcement of environmental regulations to reduce human encroachment into wildlife habitats;
- Start to reimagine our relationship with nature as a matter of legal and policy practice, including addressing issues related to climate change and urbanization.

#### 3.2. Sustainable Development Goals

Based on our analysis, the Working Group recommends that international organizations:

- Ensure that there are mechanisms for State Parties to the SDGs to meet more frequently than the standard HLPF when required in order to address the implementation of the SDGs during times of crisis;
- Create methodologies for collaboration, resource sharing and knowledge sharing in the face of multi-faceted crises such as the Covid-19 pandemic.

As a general matter, the Working Group recommends that States:

- Incorporate the SDGs into their Covid-19 pandemic responses and post-pandemic building back better strategies, taking into account the full range of policy measures included in the SDGs;
- Fulfill their stated plans and obligations as set out in their most current VNRs.

With regard to SDGs law and policy, the Working Group recommends that States:

- Ensure that responses to the pandemic are sufficient to ensure that all populations, especially vulnerable populations, receive proper medical care at the same time that funding and resource allocations continue for other health concerns;
- Ensure that plans for funding future health responses focus on all aspects of health concerns, communicable and noncommunicable diseases alike;
- Ensure that their responses are responsive to gender and educational priorities set out in the SDGs, as well as advancing SDG 2’s requirements for advancing food security and combating hunger, issues that are exacerbated by the pandemic and associated economic downturn.

#### 4. Exacerbation of Inequalities

Based on our analysis, the Working Group recommends that international organizations:

- Take into consideration pre-existing inequalities when dealing with solutions for building back better in the post-pandemic climate and in designing solutions for meeting legal and policy

changes while the pandemic remains active;

- Apply a general intersectional and inclusive lens to all efforts made towards addressing the pandemic and preventing new ones, including working together to address the needs and concerns of overlapping constituencies.

As a general matter, the Working Group recommends that States:

- Actively pursue expanded access to internet connectivity for all members of the public;
- Implement stronger employment policies and institutions, such as unemployment insurance, working time reduction programs, and income subsidies, to respond to pandemic-related economic and societal stresses;
- Establish a comprehensive social protection system that combines contributory and non-contributory schemes to guarantee some level of social protection for all;
- Use an inclusive and intersectional lens to cope with pre-existing inequalities and vulnerable groups when designing programs for social protection and building back better. This should include the use of appropriate language when spreading and sharing information among constituencies, such as children and the elderly;
- Incorporate impairments that may hinder communication, as well as language barriers, when it comes to migrants and refugees communities during times of emergency.

## **5. Right to Water**

Based on our analysis, the Working Group recommends that international organizations:

- Help in increasing financial flows to provide adequate infrastructure, notably for peri-urban and rural zones in Latin America and the Caribbean;
- Support States in implementing elements of the human right to water in their national legal systems and ensuring that there are adequate protections for the right during times of national and international crisis.

As a general matter, the Working Group recommends that States:

- Expand necessary infrastructure to ensure access to drinking water and sanitation, while avoiding interruption of the exercise of the human right to water, particularly during times of pandemic or other crisis;
- Incorporate the elements of the human right to water as a matter of law and policy, including through regulatory means;
- Consider controlled and organized growth of cities that allows expanded access to drinking water and sanitation services to the most vulnerable peoples and strengthens resilience, sustainability and efficiency of cities;
- Improve coordination and enhanced alignment of national, subnational, and local policies with international agendas relating to water and sanitation.

With regard to water law and policy, the Working Group recommends that States:

- Ensure the right to access water and sanitation, as well as non-interference with this right, and the collective right to have a network for the provision of water and sanitation services, which enables joint action between public-private actors.

## **6. Right to Food**

Based on our analysis, the Working Group recommends that international organizations:

- Support States and regions with less resources coping with lockdown measures, such as economic and public health-related issues relating to food and food security;
- Consider humanitarian activities, such as the distribution of food and cash as essential services, in conjunction with States and other international actors.

As a general matter, the Working Group recommends that States:

- Implement broad and inclusive social protection programs that can protect families and individuals against hunger, food insecurity and malnutrition;
- Ensure that national authorities cooperate with NGOs active in these fields without creating restriction and impediment.

With regard to food law and policy, the Working Group recommends that States:

- Adopt laws and measures that help implement different food activities, such as the inspection of food business operations, certifying exports, control of imported foods, monitoring and surveillance of the safety of the food supply chain, analysis of food quality, managing food incidents, and providing advice on food safety and regulations for the industry.

## 7. Rights of Indigenous Groups

Based on our analysis, the Working Group recommends that international organizations:

- Remain mindful of traditional Indigenous knowledge and modes of living in their decision-making practices;
- Support the protection of environmental and human rights defenders internationally, regionally, and nationally;
- Support the entry into force and implementation of the Escazú Agreement in Latin America.

As a general matter, the Working Group recommends that States:

- Recognize and respect Indigenous protocols and customary laws, and Indigenous leaders and authorities as communities' legitimate institutions, and include them in decision-making processes concerning Covid-19 and related health measures;
- Recognize the Indigenous peoples' right to self-determination, including their right to stay uncontacted and voluntarily isolated;
- Respect the Indigenous right to free, prior and informed consent for the prevention, development, application and monitoring of measures aimed at preventing the spreading of the Covid-19 virus and future health events;
- Consider the establishment of a fund for the recovery of Indigenous communities that have been affected by the pandemic and commit specific public funds to the re-establishment of Indigenous livelihoods and customary economic system at a level at least comparable to the pre-pandemic period.

With regard to rights of Indigenous groups in law and policy, the Working Group recommends that States:

- Comply with international obligations to guarantee the protection of Indigenous communities, as well as environmental and human rights defenders working to assist them.

## 8. Right to Life and Health

Based on our analysis, the Working Group recommends that international organizations:

- Coordinate surveillance protocols involving more than two regions, i.e., Southern Europe and the main airports in the Nordic region, to facilitate safe and efficient transfers of peoples and goods;
- Deepen cooperation between regions to support the accomplishment of the right to life and the right to health as universal rights.

As a general matter, the Working Group recommends that States:

- Connect the production of data at ports of entry with local clinics, laboratories and hospitals since symptoms matching certain dangerous pathogens can be rapidly confirmed;
- Provide or facilitate technical cooperation and logistical support among administrative and sub-national entities;
- Strengthen primary health care systems to address pandemics and infectious disease and create robust common funds with the purpose of financing the municipal system of surveillance health oversight;
- Design models of governance from a bottom-up perspective by forging a multi-layered strategy between local, regional and national levels.

With regard to the right to life and health law and policy, the Working Group recommends that States:

- Implement Annex I of the IHRs, which explicitly refers to the core capacity for surveillance and response through local authorities and primary health care;
- Invest local actors with power to detect events involving disease or death above expected levels for the particular time and place in all areas within the territory of the State Party.

## **Chapter 1: Covid-19 and Environmental Protection**

### **1. Introduction**

There exists a strong link between the health of the environment and human health. In its 2016 report, 'Preventing disease through healthy environments: a global assessment of the burden of disease from environmental risks',<sup>14</sup> the WHO estimated that premature deaths and diseases can be prevented to a significant degree through healthier environments.

The WHO found that, in 2016, 24% of all global deaths (approximately 13.7 million deaths a year) were linked to the environment, including 4.1 million deaths in the South-East Asian region, 3.6 million in the Western Pacific region, 2.5 million in the African region, 1.4 million in the European region, 1.1 million in the Region of the Americas and 984,000 in the Eastern Mediterranean region. Environmental impacts on health are uneven across age, disproportionately affecting children under age five and adults between 50 and 75 years old. It also significantly impacts the poor, with the WHO finding that low and middle-income States share the largest environment-related disease burden.

A healthy environment is essential for human health, as it provides basic needs such as clean air, water and fertile land. Environmental risk factors such as chemical exposure and air, water and soil pollution, as well as climate change impacts, can significantly affect human health through distribution and transmission of disease pathogens, vectors, and hosts. More specifically, climatic conditions affect the spread of vectors such as mosquitoes and ticks, environmental contamination, dampening of host immunity, as well as disruption of health systems due to

disasters such as hurricanes. In addition, an unhealthy environment is a threat multiplier for infectious diseases such as Covid-19 since such diseases can be transmitted through airborne particles (e.g. influenza), food and water (e.g. cholera), and vectors (e.g. malaria, dengue), and may involve non-human reservoir species (e.g. zoonotic pathogens).<sup>15</sup> As highlighted by the WHO, healthy environments contribute to the 17 Sustainable Development Goals (SDGs) and environmental health interventions could make 'a valuable and sustainable contribution towards reducing the global disease burden and improving the well-being of people everywhere'.<sup>16</sup>

### **1.1. Right to a Healthy Environment**

Human rights and environmental protection are inextricably intertwined. The right to a healthy environment embodies both the negative right to be free from exposure to toxic substances and the positive right to clean air, safe water, and healthy ecosystems.<sup>17</sup>

As the Covid-19 pandemic reminds, however, it is impractical if not impossible to afford and advance core civil and political rights (e.g., freedom of speech, voting rights, and other avenues of public participation) or socio-economic and cultural rights (e.g., to education, family, reproduction, food, and shelter) in a degraded or unstable environment.<sup>18</sup>

Yet, for the most part, global human rights instruments ranging from the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948) to the twin covenants on human rights (1966) did not recognize a right to a healthy environment.

There is growing recognition of the right to a healthy environment at the national, regional and international levels.<sup>19</sup> It arguably began at the

<sup>14</sup> Annette Prüss-Ustün et al., 'Preventing disease through healthy environments: a global assessment of the burden of disease from environmental risks' (11 May 2020) World Health Organization <[https://www.who.int/quantifying\\_ehimpacts/publications/preventing-disease/en/](https://www.who.int/quantifying_ehimpacts/publications/preventing-disease/en/)> accessed 30 September 2021.

<sup>15</sup> Jessica E. Metcalf et al., 'Identifying climate drivers of infectious disease dynamics: recent advances and challenges ahead' (16 August 2017) Proc. R. Soc. B.28420170901 <<https://royalsocietypublishing.org/doi/10.1098/rspb.2017.0901>> accessed September 27, 2020.

<sup>16</sup> WHO Commentary, *Environments should improve not harm our health* (15 March 2016) <<https://apps.who.int/mediacentre/commentaries/environments-should-improve-our-health/en/index.html>> accessed 30 September 2021.

<sup>17</sup> David R. Boyd, *The Environmental Rights Revolution, A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2012) 24; James R. May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge

University Press 2014) 19-31; Timothy Hayward, *Constitutional Environmental Rights* (OUP 2005).

<sup>18</sup> See generally, James R. May, 'Making Sense of Environmental Human Rights and Global Environmental Constitutionalism,' in Erika Techera, Jade Lindley, Karen Scott and Anastasia Telesetsky (eds.), *The Routledge Encyclopedia of International Environmental Law* (2020).

<sup>19</sup> James R. May and Erin Daly (eds), *Human Rights and the Environment: Legality, Indivisibility, Dignity, and Geography, Part of Encyclopedia of Environmental Law* (Edward Elgar 2019); James R. May and Erin Daly, 'New Dimensions in Human Rights and the Environment' in May and Daly, *Human Rights and the Environment*, *ibid.*; Naysa Ahuja, Carl Bruch, Arnold Kreilbuber et al., 'Advancing Human Rights Through Environmental Rule of Law' in May and Daly, *Human Rights and the Environment*, *ibid.*; John H. Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (CUP 2018); Jan Hancock, *Environmental Human Rights: Power, Ethics and Law* (Ashgate 2003).

subnational constitutional level in the United States.

In 1970, the State of Illinois in the United States became the first government to provide such a right under law by granting it constitutional protection, followed by Pennsylvania in 1971, by Montana and Massachusetts in 1972, and by Hawai'i in 1978.<sup>20</sup>

The right also has a long pedigree in international law. The 1972 Stockholm Declaration acknowledged the 'fundamental right to ... adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations'.<sup>21</sup> Both the 1989 Hague Declaration and the 1992 Rio Declaration recognize such a right, as do the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the African (Banjul) Charter on Human and Peoples' Rights, the Arab Charter on Human Rights, the Association of South East Asian Nations (ASEAN) Human Rights Declaration, and both the Aarhus Convention and Escazú Agreement on rights to information, participation and access to justice. In addition, nearly 100 countries have recognized a right to a healthy environment expressly through constitutional incorporation or implicitly by judicial interpretation of other rights, including to life, dignity and health.<sup>22</sup> The Special Rapporteur on a Right to a Safe, Clean, Healthy and Sustainable Environment (appointed by the UN Human Rights Council) reports that 'in total, more than 80 per cent of States Members of the United Nations (156 out of 193) legally recognize the right to a safe, clean, healthy and sustainable environment'.<sup>23</sup>

There is also growing support for international recognition of a right to a healthy environment. The

Special Rapporteur has issued 'Framework Principles on a Right to a Safe, Clean, Healthy and Sustainable Environment,' supported a 'Global Pact for the Environment,' and appealed to the UN General Assembly and the UN Human Rights Council to adopt a resolution recognizing a right to a healthy environment.<sup>24</sup> In October 2021, the Human Rights Council officially recognized access to a healthy environment as a fundamental human right.

Moreover, the United Nations Environment Programme (UNEP) recently launched an Environmental Rights Initiative.<sup>25</sup>

Thus, billions of people around the globe enjoy a right to a healthy environment (and related human rights to life, dignity, health, food, and water) by virtue of international law, domestic law, regional agreement, or juridical pronouncement.

Unfortunately, however, the pandemic has been used as an excuse to weaken environmental human rights by 'lowering environmental standards, suspending environmental monitoring requirements, reducing environmental enforcement, and restricting public participation'. The UN Special Rapporteur on Human Rights and the Environment and the Special Rapporteur for Economic, Social, Cultural and Environmental Rights from the Organization of American States (OAS) issued a joint statement to highlight challenges related to the Covid-19 pandemic and the global environmental crisis, concluding: '[T]he growing risk of emerging infectious diseases is caused by a 'perfect storm' of human actions that damage ecosystems and biodiversity, such as deforestation, land clearing and conversion for agriculture, the wildlife trade, expanding human population, settlements and infrastructure, intensified livestock production, and climate

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<sup>20</sup> James R. May and William Romanowicz, 'Environmental Rights in State Constitutions' in James R. May (ed), *Principles of Constitutional Environmental Law* (305 ABA Section of Environment, Energy, and Resources, ABA/ELI Press 2011); Art English and John J. Carroll, 'State Constitutions and Environmental Bill of Rights' *The Book of States* (Council of State Government 2015) 18.

<sup>21</sup> *Stockholm Declaration, (Declaration of the United Nations Conference on the Human Environment)*, 1972, UN Doc. A/Conf.48/14/Rev.1.

<sup>22</sup> Ben Boer, 'International Environmental Law' in Simon Chesterman, Hisashi Owada and Ben Saul (eds), *Oxford Handbook of International Law in the Asia Pacific* (Oxford 2020) 170, 200–202; *United Nations Environmental Rule of Law First Global Report* (UNEP & Environmental Law Institute 2019) 161; Sumudu Atapattu and Andrea Schapper, *Human Rights and the Environment: Key Issues* (Routledge 2019) 122.

<sup>23</sup> David Boyd, 'Right to a healthy environment: good practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe,

clean, healthy and sustainable environment' (2020) UN Doc. A/HRC/43/53 paras 3–13, available at <<https://undocs.org/A/HRC/43/53>> accessed 15 June 2020.

<sup>24</sup> John H. Knox, 'The United Nations Mandate on Human Rights and the Environment' in James R. May and Erin Daly (eds), *Human Rights and the Environment: Legality, Indivisibility, Dignity and Geography* (Edward Elgar 2019) 34; John H. Knox, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Framework Principles' (24 January 2018) UN Doc. A/HRC/37/59. See UN Doc. A/HRC/43/54, para 72(a) <[www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx)> accessed 23 December 2020. See also UN Secretary General, *Gaps in International Environmental Law and Environment-related Instruments: Towards a Global Pact for the Environment* (2019).

<sup>25</sup> See <<https://www.unep.org/explore-tropics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights>> accessed 3 June 2020.



change.” In the Americas, as well as in the rest of the world, human health is inextricably tied to ecosystem health, and putting all efforts towards the protection and the restoration of nature is an outstanding long-term investment’.<sup>26</sup>

While many people expect environmental protection to be at the heart of Covid-19 recovery plans, governments around the world instead have used the distraction of the pandemic to suspend, delay, or cancel environmental regulations, as section 2.4 below explores.

## 1.2. Ecology and Zoonotic Diseases

At the third United Nations Environment Assembly (UNEA-3) of the UNEP, held in 2017, the Resolution on Environment and Health was adopted.<sup>27</sup> It recognizes that biodiversity loss is a health risk multiplier, that human, animal, plant, and ecosystem health are interdependent, and emphasizes the value of the One Health Approach – an integrated approach that fosters cooperation between environmental conservation and human, animal, and plant health. It further encouraged Member States and invited organizations to mainstream the conservation surrounding sustainable use of biodiversity to enhance ecosystem resilience, as an important safeguard for current and future health and human well-being. Specifically, the Resolution requested UNEP’s Executive Director to include human health factors in its projects on ecosystem valuation and accounting, subject to the availability of resources.

Ecology studies can help different fields understand how human impacts on the environment have affected other species brought into close contact with humans. This interaction has been considered the source of most infectious

diseases with the potential to cause future pandemics.<sup>28</sup> The impacts of human development, though sometimes sustainable, have negatively affected large portions of land and habitats to the point of degradation, thus causing the probability of disease transmission or ‘spillover’ to increase.<sup>29</sup> Hence, a large portion of the One Health Approach is dedicated to the transformation of food systems,<sup>30</sup> as addressed in a seminal biodiversity report issued by the UN Convention on Biodiversity (CBD).<sup>31</sup>

The link between habitat destruction and disease calls for the environment to be better protected and managed. Scientists estimate that approximately 1.7 million undiscovered diseases exist in mammals and birds, half of which may have the potential to be passed on to humans and cause illness.<sup>32</sup> Of the 1,407 pathogens already known to affect humans, 58% are of animal origin, a quarter of which can be a possible source for an epidemic or pandemic. In addition, 75% of emerging infectious diseases are of animal origin.<sup>33</sup>

In November 2019, scientists were already sounding the alarm on increasing deforestation as a possible avenue to disease outbreaks, due to deforestation.<sup>34</sup> Deforestation can act as an intensifier of infection possibilities, as it drives animals to other places when looking for shelter, which can ultimately direct them toward urban and otherwise populated areas.

Disease outbreaks are also highly connected to cattle ranching, as cattle can act as an intermediary carrier of the disease to humans.<sup>35</sup> Global warming is also considered a driver of vector-borne diseases.<sup>36</sup> For example, the tiger mosquito of Asian origin (*Aedes albopictus*) – vector of diseases such as Zika, dengue, and chikungunya - or the sand fly (*phlebotominae*) – native to the Mediterranean

<sup>26</sup> OAS, *The Americas: Governments should strengthen, not weaken, environmental protection during COVID-19 pandemic* (13 August 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/198.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/198.asp)> accessed 23 December 2020.

<sup>27</sup> United Nations Environment, Assembly Third Session, *Resolution on Environment and Health* (UNEP/EA.3/Res.4, 30 January 2018) <[https://wedocs.unep.org/bitstream/handle/20.500.11822/30795/UNEA3\\_4EN.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/30795/UNEA3_4EN.pdf?sequence=1&isAllowed=y)> accessed 23 December 2020.

<sup>28</sup> Gabrielle Lipton, ‘Biodiversity’s role in One Health approach has been minimal – until now’ (29 October 2020) *Landscape Now* <<https://news.globallandscapesforum.org/48043/biodiversitys-role-in-one-health-approach-has-been-minimal-until-now/>> accessed 23 December 2020.

<sup>29</sup> *Ibidem*.

<sup>30</sup> *Ibidem*.

<sup>31</sup> Gabrielle Lipton and Sandra Cordon, ‘Variety of life on Earth is being lost at ‘unprecedented’ pace’ (15 September 2020) *Landscape Now* <<https://news.globallandscapesfo>

[rum.org/46865/variety-of-life-on-earth-is-being-lost-at-unprecedented-pace/](http://rum.org/46865/variety-of-life-on-earth-is-being-lost-at-unprecedented-pace/)> accessed 23 December 2020.

<sup>32</sup> Sarah Gibbens, ‘Protecting land and animals will mitigate future pandemics, report says’ (29 October 2020) *National Geographic* <[https://www.nationalgeographic.com/environment/2020/10/protecting-land-animals-will-mitigate-future-pandemics-report-says/?cmpid=org=ngp::mc=crmemail::src=ngp::cmp=editorial::add=SpecialEdition\\_20201030&rid=BB3192A42DA2949024ADDA6B9261012C](https://www.nationalgeographic.com/environment/2020/10/protecting-land-animals-will-mitigate-future-pandemics-report-says/?cmpid=org=ngp::mc=crmemail::src=ngp::cmp=editorial::add=SpecialEdition_20201030&rid=BB3192A42DA2949024ADDA6B9261012C)> accessed 23 December 2020.

<sup>33</sup> Eric Muraille and Jacques Godfroid, ‘The ‘One Health’ Concept Must Prevail to Allow Us to Prevent Pandemics’ (19 October 2020) *Global BioDefense* <<https://globalbiodefense.com/2020/10/19/the-one-health-concept-must-prevail-to-allow-us-to-prevent-pandemics/>> accessed 30 September 2021.

<sup>34</sup> Gibbens, “Protecting,” (n 32).

<sup>35</sup> *Ibidem*.

<sup>36</sup> Muraille and Godfroid, “The ‘One Health’ Concept,” (n 33).

basin and North Africa and transmitter of leishmaniasis - have now established themselves in southern Europe.<sup>37</sup>

The One Health Approach can provide important insights for developing a comprehensive and holistic response to Covid-19. However, several things need to be considered to successfully implement this approach. Issues of priority need to be uniformly addressed, especially when it comes to zoonoses, food security, and antimicrobial resistance.<sup>38</sup> Institutional capacity, such as good veterinary laboratories and epidemiological research centers, must also be strengthened. As a community problem, ownership must further be considered, taking into account local needs and pre-existing inequalities.<sup>39</sup>

Traditional environmental knowledge of ethnic communities is crucial to understanding how human health and the environment can coexist, and to informing the much-needed paradigm shift away from an anthropocentric worldview. The CBD recognizes the contribution of local and Indigenous communities in the conservation and sustainable utilization of biodiversity, according to traditional knowledge with the same status as other approved types of knowledge, especially scientific.<sup>40</sup>

Finally, sustainable development is key, especially when it comes to food security and safety.

Agricultural practices need to be aligned with sustainability principles, as a way of ensuring that both human and environmental health are preserved and protected. Sustainable agriculture will not only help achieve food security for the population as a whole, but also limit deforestation, environmental degradation and climate change. However, to be successful, this approach needs to be truly sustainable for current and future generations.

Political commitment is crucial in promoting a One Health Approach for responding to and managing zoonotic diseases, and thus should be supported by policy decisions as well as legal frameworks.<sup>41</sup>

### 1.3. Rollback of Environmental Regulations

States have used the pandemic as an excuse to weaken environmental rules for public health reasons and to address economic challenges faced by companies. These environmental deregulations include the weakening or cancelling of restrictions protecting lands and waters, endangered species, or Indigenous peoples' rights. In addition, many projects – such as those in the oil and gas sectors – have been approved before any environmental impact assessment (EIA) or public consultation could occur, taking advantage of the public's limited ability to participate in these decisions. This section will first focus on the environmental deregulation occurring in the United States, before providing a brief panorama of the deregulation happening around the world.

#### §1. Rollback of Environmental Regulations in the United States

The pandemic provided an opportunity for the Trump Administration to accelerate rollbacks of environmental programs in the United States, including laws that protect air, water, rare animals public health, and the climate.<sup>42</sup>

Rollbacks during the pandemic commenced initially in three ways. First, the US Environmental Protection Agency (EPA) announced that it would not enforce environmental regulations against manufacturing plants, power plants, and oil and gas refineries<sup>43</sup> where 'the EPA agrees that Covid-19

regulatory-rollback-tracker/> accessed 30 September 2021> accessed 30 September 2021; The Environmental Integrity Project <<https://environmentalintegrity.org/trump-watch-epa/regulatory-rollbacks/>> accessed 30 September 2021; Washington Post <<https://www.washingtonpost.com/graphics/2020/climate-environment/trump-climate-environment-protections/>> accessed 30 September 2021; New York Times <<https://www.nytimes.com/interactive/2020/climate/trumpenvironment-rollbacks-list.html>> accessed 30 September 2021; the New York University School of Law State Energy and Environmental Impact Center <<https://www.law.nyu.edu/sites/default/files/climate-and-health-showdown-in-the-courts.pdf>> accessed 30 September 2021.

<sup>43</sup> Lisa Friedman, 'E.P.A., Citing Coronavirus, Drastically Relaxes Rules for Polluter', *New York Times* (14 April 2020) <<https://www.nytimes.com/2020/03/26/climate/epa-coronavirus-pollution-rules.html>> accessed 14 December 2020.

<sup>37</sup> *Ibidem*.

<sup>38</sup> Gongal G., 'One Health Approach in the South East Asia Region: Opportunities and Challenges', in Mackenzie J., Jeggo M., Daszak P., Richt J. (eds), *One Health: The Human-Animal-Environment Interfaces in Emerging Infectious Diseases. Current Topics in Microbiology and Immunology* (vol 366, Springer, Berlin, Heidelberg, 2012) <[https://link.springer.com/chapter/10.1007/82\\_2012\\_242](https://link.springer.com/chapter/10.1007/82_2012_242)>-accessed-30-September 2021.

<sup>39</sup> *Ibidem*.

<sup>40</sup> Paul Gepts, 'Who Owns Biodiversity, and How Should the Owners Be Compensated?' (2004) *Plant Physiology* 134, no. 4, 1295.

<sup>41</sup> Gongal, "One Health," (n 38).

<sup>42</sup> Various entities have documented these rollbacks, including Brookings Institute <<https://www.brookings.edu/interactives/tracking-deregulation-in-the-trump-era/>> accessed 30 September 2021; Harvard Environmental and Energy Law Program <<https://eelp.law.harvard.edu/>

was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request'.<sup>44</sup> Second, the EPA announced that it would weaken 'clean gasoline' requirements due to the pandemic.<sup>45</sup> And third, it finalized its rollback of Obama-era clean car standards that intended to both make vehicles more fuel-efficient and reduce pollution from tailpipes.<sup>46</sup>

In April 2020, the EPA announced that it would not tighten air pollution standards recommended by its staff.<sup>47</sup> Specifically, the EPA declined to lower the national standard for particulate matter emitted by fossil-fuel burning power plants, cars, and factories.<sup>48</sup>

Additionally, the EPA finalized rollbacks to controls on mercury pollution from coal-fired power plants by downplaying health benefits and exaggerating economic burdens.<sup>49</sup> Finally, the Administration waived *all* federal environmental laws otherwise applicable to the construction of barriers and roads in Texas designed to deter immigration.<sup>50</sup>

With Covid-19-attributed deaths approaching 100,000 in May 2020, environmental rollbacks

continued. President Trump signed an executive order instructing federal agencies to 'address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery'.<sup>51</sup> The order directed federal agencies to suspend rules deemed to deter economic recovery, including to waive National Environmental Policy Act (NEPA) rules for pipeline projects.<sup>52</sup> In addition, the EPA issued an emergency rule to delay federal acid deposition and interstate pollution testing and reporting protocols under the Clean Air Act (CAA), citing the impact of 'travel, plant access, or other safety restrictions implemented to address the current Covid-19 national emergency'.<sup>53</sup>

The EPA finalized a rule that makes it more difficult for states, tribes, and the public to object to federal permits for pipeline, hydroelectric, dams and other environmentally destructive projects<sup>54</sup> by significantly shortening deadlines for and limiting the scope of state and tribal water quality certification under the federal Clean Water Act (CWA). In June 2020,<sup>55</sup> the EPA also accelerated the construction of fossil-fuel related energy projects

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<sup>44</sup> United States Environmental Protection Agency, Memorandum on *COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program* (26 March 2020) <<https://www.epa.gov/sites/production/files/2020/03/documents/oecamemooncovid19implications.pdf>> accessed 23 December 2020.

<sup>45</sup> United States Environmental Protection Agency, *EPA Announces Steps to Protect the Availability of Gasoline during COVID-19 Pandemic* (27 March 2020) <<https://www.epa.gov/newsreleases/epa-announces-steps-protect-availability-gasoline-during-covid-19-pandemic>> accessed 23 December 2020.

<sup>46</sup> Emily Holden, 'Trump to roll back Obama-era clean car rules in huge blow to climate fight' *The Guardian* (31 March 2020) <<https://www.theguardian.com/environment/2020/mar/31/trump-epa-obama-clean-car-rules-climate-change>> accessed 14 December 2020.

<sup>47</sup> Juliet Eilperin, Dino Grandoni and Brady Dennis, 'Trump officials reject stricter air quality standards, despite link between air pollution, coronavirus risks' *Washington Post* (14 April 2020) <<https://www.washingtonpost.com/health/2020/04/14/epa-pollution-coronavirus/>> accessed December 14, 2020.

<sup>48</sup> United States Environmental Protection Agency, 'Particulate Matter (PM) Basics' <<https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>> accessed 14 December 2020.

<sup>49</sup> Lisa Friedman and Coral Davenport, 'E.P.A. Weakens Controls on Mercury' *New York Times* (16 April 2020) <<https://www.nytimes.com/2020/04/16/climate/epa-mercury-coal.html>> accessed 14 December 2020.

<sup>50</sup> Amy Westervelt and Emily Gertz, 'The Climate Rules Being Rolled Back During the COVID-19 Pandemic' *Drilled News* (6 April 2020) <<https://www.drillednews.com/post/the-climate-covid-19-policy-tracker>> accessed 30

September 2021, citing *Office of the Secretary, Department of Homeland Security, Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended* (15 April 2020) <<https://www.federalregister.gov/documents/2020/04/15/2020-07981/determination-pursuant-to-section-102-of-the-illegal-immigration-reform-and-immigrant-responsibility>> accessed 14 December 2020.

<sup>51</sup> *Ibidem*. Amy Westervelt and Emily Gertz, 'Climate Rules Being Rolled Back' *Drilled News*, citing U.S. White House, *Executive Order on Regulatory Relief to Support Economic Recovery* (19 May 2020) <<https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/>> accessed 14 December 2020.

<sup>52</sup> *Ibidem*. Amy Westervelt and Emily Gertz, 'Climate Rules Being Rolled Back' *Drilled News*. (n 50).

<sup>53</sup> *Ibidem* citing Environmental Protection Agency, *Continuous Emission Monitoring; Quality-Assurance Requirements During the COVID-19 National Emergency* (22 April 2020) <[https://www.federalregister.gov/documents/2020/04/22/2020-08581/continuous-emission-monitoring-quality-assurance-requirements-during-the-covid-19-national-emergency?utm\\_source=federalregister.gov&utm\\_medium=email&utm\\_campaign=subscription+mailing+list](https://www.federalregister.gov/documents/2020/04/22/2020-08581/continuous-emission-monitoring-quality-assurance-requirements-during-the-covid-19-national-emergency?utm_source=federalregister.gov&utm_medium=email&utm_campaign=subscription+mailing+list)> accessed 14 December 2020.

<sup>54</sup> Juliet Eilperin and Brady Dennis, 'EPA limits states and tribes' ability to protest pipelines and other energy projects' *Washington Post* (1 June 2020) <<https://www.washingtonpost.com/climate-environment/2020/06/01/epa-limits-states-tribes-ability-protest-pipelines-other-energy-projects/>> accessed 14 December 2020.

<sup>55</sup> Environmental Protection Agency, *Clean Water Act Section 401 Certification Rule* (40 CFR Part 121, EPA-HQ-OW-2019-0405; FRL-10009-80-OW, RIN 2040-AF86, 1 June

and weakened federal authority to issue clean air and climate change rules.<sup>56</sup> And, citing the necessity of an ‘economic recovery from the national emergency’, President Trump issued an executive order to suspend the Endangered Species Act (ESA) and NEPA for mines, highways, pipelines, oil and gas projects, and large infrastructure efforts, eliminating consideration of climate change and lessening public participation.<sup>57</sup>

The summer and waning fall months saw more rollbacks. For example, the Bureau of Land Management continued to sell or lease public lands for hydraulic fracturing<sup>58</sup> and the EPA rolled back additional clean air standards for airplanes, cars, trucks, and ships. Further, the US Fish & Wildlife Service relaxed protections for endangered species, including the Grey Wolf.

The long-term health effects of these rollbacks are likely to be significant. For example, the relaxation of air pollution rules is expected to result in 18,500 premature deaths and \$190 billion in associated health-related costs.<sup>59</sup> Such rollbacks are particularly concerning for vulnerable and marginalized communities. These communities tend to disproportionately live near these kinds of polluting facilities and suffer from the cumulative effects of pollution over months, years, or decades; they are also hardest hit by Covid-19.<sup>60</sup> Rollbacks to regulation of greenhouse gases (GHG) are especially crushing.<sup>61</sup>

A Rhodium Group analysis compared national emissions projections with the environmental rollbacks in place to projections with the original Obama-era regulations.<sup>62</sup> This analysis found that the Trump Administration’s climate policy rollbacks have the potential to add 1.8 gigatons of CO<sub>2</sub> -equivalent to the atmosphere by 2035, which is equal to nearly one-third of all US emissions in 2019.<sup>63</sup>

President Trump’s loss in the 2020 election only accelerated the environmental rollbacks, including efforts to: expand oil and gas drilling in the Arctic National Wildlife Refuge; permit mining on previously protected federal land throughout the country – deep into the Alaska wilderness and on thousands of square miles of public land around New Mexico’s Chaco Canyon National Historical Park; afford immunity from criminal prosecution to heads of oil and gas companies who have authorized the killing of migratory birds; remove habitat protection for threatened and endangered species; and relax health-based air pollution standards for millions of Americans.<sup>64</sup>

President Biden fulfilled his campaign pledge to rejoin the Paris Climate Accord in 2021<sup>65</sup> and to prioritize reversal of Trump-era environmental rollbacks,<sup>66</sup> although this process is far from complete.

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2020) <[https://www.epa.gov/sites/production/files/2020-06/documents/prepublication\\_version\\_of\\_the\\_clean\\_water\\_act\\_section\\_401\\_certification\\_rule\\_508.pdf](https://www.epa.gov/sites/production/files/2020-06/documents/prepublication_version_of_the_clean_water_act_section_401_certification_rule_508.pdf)> accessed 14 December 2020.

<sup>56</sup> *Ibidem*.

<sup>57</sup> Amy Westervelt and Emily Gertz, ‘The Climate Rules’ *Drilled News* (n 50) <<https://drillednews.com/climate-covid-19-tracker/>> citing Juliet Eilperin and Jeff Stein, ‘Trump signs order to waive environmental reviews for key projects’ *Washington Post* (4 June 2020) <<https://www.washingtonpost.com/climate-environment/2020/06/04/trump-sign-order-waive-environmental-reviews-key-projects/>> accessed 14 December 2020.

<sup>58</sup> ‘Guardians Calls on U.S. Bureau of Land Management to Respond to COVID-19 Crisis’ *WildEarth Guardians* (18 March 2020) <<https://wildearthguardians.org/press-releases/guardians-calls-on-u-s-bureau-of-land-management-to-respond-to-covid-19-crisis/>> accessed 14 December 2020.

<sup>59</sup> Sally Hardin, ‘4 Ways the Trump Administration Has Made Our Air Dirtier During the COVID-19 Pandemic’ *Center for American Progress* (1 May 2020) <<https://www.americanprogress.org/issues/green/news/2020/05/01/484380/4-ways-trump-administration-made-air-dirtier-covid-19-pandemic/>> accessed 14 December 2020.

<sup>60</sup> Emily Holden and Nina Lakhani, ‘Polluted US areas are among worst-hit by coronavirus – putting people of color even more at risk’ *The Guardian* (14 April 2020) <<https://www.theguardian.com/world/2020/apr/14/pollution-hotspots-hit-hardest-by-coronavirus-us>> accessed 23 December 2020.

<sup>61</sup> Hannah Pitt, Kate Larsen, and Maggie Young, ‘The Undoing of US Climate Policy: The Emissions Impact of Trump-Era Rollbacks’ *Rhodium Group* (17 September 2020) <<https://rhg.com/research/the-rollback-of-us-climate-policy/>> accessed 23 December 2020.

<sup>62</sup> *Ibidem*.

<sup>63</sup> *Ibidem*.

<sup>64</sup> Matthew Brown and Ellen Knickmeyer, ‘Trump Pushes New Environmental Rollbacks on Way out the Door’ *AP News* (18 November 2020) <<https://apnews.com/article/joe-biden-donald-trump-public-health-climate-birds-a947e76f1023b739121692096322da24>> accessed 30 September 2021.

<sup>65</sup> *Ibidem*.

<sup>66</sup> For a list of rollbacks and potential means of reversing them, see, e.g., Center for Law, Energy & the Environment at Berkeley Law, *Reversing Environmental Rollbacks* (December 2020) <<https://www.law.berkeley.edu/research/clee/reversing-environmental-rollbacks/>> accessed 23 December 2020.

## §2. Environmental Rollbacks in Other States

Other national governments have used the pandemic to suspend, delay, or cancel environmental regulations. These rollbacks illustrate how governments have used Covid-19 restrictions to weaken environmental protections, contributing to pollution and biodiversity loss and having long-term effects on the health of the environment and local communities.

### Africa

In Africa, the Cameroonian government approved a logging concession for the Ebo Forest, allowing more than 169,000 acres of trees to be harvested.<sup>67</sup>

Meanwhile, the Kenyan government allowed the construction of a road that cuts through the Nairobi National Park, despite the fact that a similar project previously drew opposition due to the loss of biodiversity it would cause.<sup>68</sup>

### Asia

In May 2020, the Indonesian Parliament took advantage of the physical distancing restrictions inhibiting meetings and public debates to pass a bill removing the limit on the size of mining operations under a single permit and allowing automatic permit extensions for up to twenty years.<sup>69</sup> This same bill failed in 2019 due to massive street protests calling attention to deforestation.<sup>70</sup> The Indonesian government passed a deregulation law that amends 75 existing laws affecting the

plantation industry and allowing farmers to burn small plots of land.<sup>71</sup>

Furthermore, India's Minister of the Environment stated in a letter that railway projects, small-scale development works involving construction over less than 215,278 square feet (20,000 square meters), and hydropower plants under-25 MW capacity will no longer require approval from the National Board for Wildlife, even when located within eco-sensitive zones of national parks or wildlife sanctuaries.<sup>72</sup> The Minister also unlocked many protected areas, including an elephant reserve and wildlife sanctuaries, for development projects – such as coal mining, hydrocarbon drilling, and power lines projects – during the Covid-19 lockdown.<sup>73</sup>

### Europe

In Greece, the government passed a law overhauling environmental regulations on land use, environmental licensing, and management of protected areas, stating that it would help accelerate the country's economic recovery post-coronavirus. This law passed while debate and public consultation were curtailed by lockdown measures.<sup>74</sup> The Slovenian government enacted amendments to the Act on Intervention Measures to Contain the Covid-19 Epidemic, to introduce measures that restrict the ability of NGOs to defend the environment in administrative and court proceedings.<sup>75</sup> In Russia, a new law was passed that allows deforestation and construction in protected

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<sup>67</sup> *Ibidem*. Conservation International, citing Elizabeth C. Alberts, 'For tool-wielding chimps of Ebo Forest, logging plan is a 'death sentence', *Mongabay series* (30 July 2020) <<https://news.mongabay.com/2020/07/for-tool-wielding-chimps-of-ebo-forest-logging-plan-is-a-death-sentence/>> accessed 23 December 2020.

<sup>68</sup> *Ibidem*. Conservation International, citing Gilbert Koech, 'Road works underway through Nairobi National Park' *The Star* (12 March 2020) <<https://www.the-star.co.ke/counties/nairobi/2020-03-12-road-works-under-way-through-nairobi-national-park/>> accessed 15 December 2020.

<sup>69</sup> *Ibidem*. Conservation International, citing Hans Nicholas Jong, 'With new law, Indonesia gives miners more power and fewer obligations', *Mongabay* (13 May 2020) <<https://news.mongabay.com/2020/05/indonesia-mining-law-minerba-environment-pollution-coal/>> accessed 30 September 2021.

<sup>70</sup> *Ibidem*.

<sup>71</sup> Hans Nicholas Jong, 'Which version? Confusion over environmental fallout of Indonesia deregulation law', *Mongabay* (13 October 2020) <<https://news.mongabay.com/2020/10/which-version-confusion-over-environmental-fallout-of-indonesia-deregulation-law/>> accessed December 15, 2020.

<sup>72</sup> *Ibidem*. Conservation International, citing Jayashree Nandi, 'Wildlife nod not required for railway projects: Ministry' *Hindustan Times* (4 August 2020) <<https://www.hindustantimes.com/india-news/wildlife-nod-not-required-for-rly-projects-ministry/story-lk4i56MXDMxeQD0q5JQhIK.html>> accessed 30 September 2021.

<sup>73</sup> *Ibidem*. Conservation International, citing Mayank Aggarwal and Sahana Ghosh, 'Environment ministry unlocked many protected areas during the lockdown' *Mongabay* (12 June 2020) <<https://india.mongabay.com/2020/06/environment-ministry-unlocked-many-protected-areas-during-the-lockdown/>> accessed 30 September 2021; Ratnadip Choudhury, 'Row Over 2 Environment Clearances In Protected Wildlife Areas In Assam' *NDTV* (21 May 2020) <<https://www.ndtv.com/india-news/row-over-2-environment-clearances-in-protected-wildlife-areas-in-assam-2232444>> accessed 14 December 2020.

<sup>74</sup> *Ibidem*. Conservation International, Helena Smith, 'Backlash grows over Greek energy deregulation law' *The Guardian* (11 June 2020) <<https://www.theguardian.com/world/2020/jun/11/backlash-grows-over-greek-energy-deregulation-law>> accessed 23 December 2020.

<sup>75</sup> *Ibidem*. Conservation International citing Justice and Environment', 'Alarming developments in Slovenia'

natural areas near the shores of Siberia's Lake Baikal, a UNESCO World Heritage site, and suspends requirements for environmental impact evaluations of transport construction and modernization projects.<sup>76</sup>

#### Latin America

In Brazil, the Bolsonaro Administration dismantled rules shielding protected reserves in the Amazon rainforest.<sup>77</sup> Brazil's government also reduced efforts to combat environmental crimes in the country, alleging that many of the field monitoring staff at the environmental agency, Ibama – which has suffered additional budget cuts in the Bolsonaro administration – were at increased risk of severe illness from Covid-19.<sup>78</sup> In Chile, the Environmental Assessment Service approved a mining project, taking advantage of a period during which, due to pandemic curfews and movement restrictions, people could not express their opinions.<sup>79</sup> And, in Ecuador, construction commenced on a new road through Yasuni National Park, located in the heart of the Ecuadorian Amazon. This construction brings oil development even closer to the 'Zona Intangible', a reserve created to protect the territory of Indigenous people in voluntary isolation.<sup>80</sup>

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<[http://www.justiceandenvironment.org/news/?no\\_cache=1&tx\\_ttnews%5Btt\\_news%5D=465&cHash=51f5f5d304c5b06a7796759c6b0d12a7](http://www.justiceandenvironment.org/news/?no_cache=1&tx_ttnews%5Btt_news%5D=465&cHash=51f5f5d304c5b06a7796759c6b0d12a7)> accessed 23 December 2020.

<sup>76</sup> *Ibidem.* Conservation International citing 'Russia Sparks Backlash for Allowing Deforestation, Construction Along Lake Baikal' *The Moscow Times* (3 August 2020) <<https://www.themoscowtimes.com/2020/08/03/russia-sparks-backlash-for-allowing-deforestation-construction-along-lake-baikal-a71048>> accessed 23 December 2020.

<sup>77</sup> *Ibidem.* Conservation International citing Dom Phillips, 'Brazil Using Coronavirus to Cover up Assaults On Amazon, Warn Act' *The Guardian* (6 May 2020) <<https://www.theguardian.com/world/2020/may/06/brazil-using-coronavirus-to-cover-up-assaults-on-amazon-warn-activists?fbclid=IwAR3bPjsVjoOZSLOciOzQp0Uf05FoHRvmQuWCj9iLo9RvZkyP6mXB7SiUUZ0>> accessed 23 December 2020.

<sup>78</sup> *Ibidem.* Conservation International citing Reuters in Brasilia, 'Brazil Scales Back Environmental Enforcement Amid Coronavirus Outbreak' *The Guardian* (27 March 2020) <<https://www.theguardian.com/world/2020/mar/27/brazil-scales-back-environmental-enforcement-coronavirus-outbreak-deforestation>> accessed 15 December 2020.

<sup>79</sup> *Ibidem.* Conservation International citing Francisca Albiña, 'SEA Approves Start Of Mining Project in Putaendo Threatening Glacier Area' *Fundación Glaciares Chilenos* (27 April 2020) <<https://www.glaciareschilenos.org/news/sea-approves-start-of-mining-project-in-putaendo-threatening-glacier-area/?lang=en>> accessed 23 December 2020.

#### Oceania

In Australia, the government attempted to amend national environmental laws before receiving a once-in-a-decade report from a formal review, citing the necessity of economic recovery from the coronavirus crisis.<sup>81</sup> Prime Minister Morrison pushed to deregulate the environmental approval process for major developments, announcing that a significantly shorter approval time was necessary for major projects.<sup>82</sup> The federal government also decided to stop assessing major threats to species under national environment laws, thus endangering the survival of native wildlife.<sup>83</sup>

### **§3. Environmental Rollbacks in EIAs**

Environmental impact assessments (EIAs) serve many roles across law and ecology. They are governed by sub-national and national laws and procedures, as well as transboundary, regional, and international treaties and agreements – all of which have at their core the goal of sharing information with individuals and communities affected by projects, as well as between States and sub-national actors.

Typically, EIAs use systems in which a project proponent is required to file information on the project. That information is then used to determine

<sup>80</sup> *Ibidem.* Conservation International citing Finer M., Mamani N., 'New Oil Road Deeper Into Yasuni National Park (Ecuador) Toward Uncontacted Indigenous Reserves' *Amazon Conservation* (17 May 2020) <<https://www.amazonconservation.org/2020-itt-yasuni/>> accessed 23 December 2020.

<sup>81</sup> Lisa Cox, 'Coalition Is aiming to Change Australia's Environment Laws Before Review Is Finished' *The Guardian* (23 April 2020) <[https://www.theguardian.com/australia-news/2020/apr/23/coalition-is-aiming-to-change-australia-environment-laws-before-review-is-finished?CMP=share\\_btn\\_tw](https://www.theguardian.com/australia-news/2020/apr/23/coalition-is-aiming-to-change-australia-environment-laws-before-review-is-finished?CMP=share_btn_tw)> accessed 23 December 2020. See also Adam Morton, 'Review of federal environmental laws will cut "green tape" and speed up approvals' *The Guardian* (29 October 2019) <<https://www.theguardian.com/environment/2019/oct/29/review-of-federal-environment-laws-will-cut-green-tape-and-speed-up-approvals>> accessed 23 December 2020.

<sup>82</sup> 'Scientists Fear Push to Deregulate Environmental Approvals Will Lead to Extinction Crisis' *The Guardian* (15 June 2020) <<https://www.theguardian.com/environment/2020/jun/16/scientists-fear-push-to-deregulate-environmental-approvals-will-lead-to-extinction-crisis>> accessed 23 December 2020.

<sup>83</sup> 'Australian Government Stops Listing Major Threats To Species Under environmental Laws' *The Guardian* (7 May 2020) <<https://www.theguardian.com/environment/2020/may/08/australian-government-stops-listing-major-threats-to-species-under-environment-laws>> accessed 23 December 2020.

the level of potential environmental impact and the amount of background information which must be provided. The information is then shared with the public, which has the opportunity to review it, comment in-person and in writing and, where appropriate, lodge legal challenges if this process is not properly followed. After the public comment and information-gathering phases are concluded, the State or other decision-making entity issues a determination on whether to approve the project based on the EIA.

The pandemic and associated legal responses have, in many instances, proved challenging for the promotion – or even preservation – of the EIA systems existing in States across the globe. Indeed, several groups around the world have asserted that the Covid-19 pandemic has been used to undermine existing laws and rules regarding EIA processes, proceedings, and evidentiary requirements.<sup>84</sup>

Responding to concerns regarding the safety of governmental employees as well as of the general public, administrative departments and agencies across the globe have issued orders and amended laws to allow for online consultation processes during the pandemic. While this does not seem problematic, given the transition of much of the world to online work and education, it results in the silencing of Indigenous and marginalized communities which have issues accessing reliable internet connections.<sup>85</sup>

This also means that information relating to proposed projects is increasingly difficult for the public to access should there be questions of connectivity and the ability to view these documents virtually.

Relatedly, a number of States and sub-national actors have enacted laws and rules to amend EIAs and related procedures to shorten their timeframe and provide for new procedures.<sup>86</sup> For instance, in Australia, New Zealand, and Canada, new laws ostensibly seeking to streamline EIA processes, especially where more than one layer of government is involved, have been adopted over strenuous protests alleging that this will lead to insufficient information sharing, public comment time, and incorporation of public concerns in the decision-making process.<sup>87</sup>

In many instances, these laws had been proposed and rejected within the past several years due to the same concerns and protests. For example, in Canada, the Minister of Environment and Climate Change authorized a derogation from the Impact Assessment Act to allow exploratory, offshore oil-and-gas drilling that was pending a consultation process, as well as to allow exploratory drilling activities up to 2030 for which the requirement to write an environmental impact assessment report has been waived.<sup>88</sup> The Province of Alberta also suspended monitoring and reporting requirements under several environmental acts.

<sup>84</sup> OECD, *Biodiversity and the Economic Response to COVID-19: Ensuring a Green and Resilient Recovery* (September 2020).

<sup>85</sup> The Firelight Group, *Environmental Impact Assessment and Indigenous Rights Should not Be Sacrificed for the Sake of Rapid post COVID-19 Economic Recovery* <<https://firelight.ca/2020/07/29/environmental-impact-assessments-and-indigenous-rights-should-not-be-sacrificed-for-the-sake-of-rapid-post-covid-19-economic-recovery/>> accessed 23 December 2020; Antonio Jose Paz Cardona, 'Colombia: Audiencias Virtuales y El Temor a Un Retroceso Ambiental durante El COVID-19' *Mongabay LATAM* <<https://es.mongabay.com/2020/05/colombia-audiencias-publicas-virtuales-aspersion-aerea-glifosato/>> accessed 19 May 2020.

<sup>86</sup> UNECE, 'Environmental Democracy in Times of COVID-19' *News* (5 June 2020) <<https://unece.org/general-unece/news/environmental-democracy-times-covid-19>> accessed 23 December 2020; Nektaria Stamouli, 'Greece Tries to Green Its Coronavirus Recovery' *Politico* (5 May 2020) <<https://www.politico.eu/article/greek-environment-bill-aims-at-coronavirus-recovery/>> accessed 23 December 2020; The National Archives, UK Statutory Instruments, *Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020* (2020 No. 5, 12 May 2020) <<https://www.legislation.gov.uk/uksi/2020/505/introduc>

<tion/made>> accessed 23 December 2020; Asters, *Amendments to the Law of Ukraine "On Environmental Impact Assessment" and Peculiarities of Its Use During Quarantine* <[https://www.asterslaw.com/press\\_center/legal\\_alerts/amendments\\_to\\_the\\_law\\_of\\_ukraine\\_on\\_environmental\\_impact\\_assessment\\_and\\_peculiarities\\_of\\_its\\_use\\_during\\_quarantine/](https://www.asterslaw.com/press_center/legal_alerts/amendments_to_the_law_of_ukraine_on_environmental_impact_assessment_and_peculiarities_of_its_use_during_quarantine/)> accessed 7 August 2020.

<sup>87</sup> Government of Ontario, 'An Act to Amend Various Statutes in Response to COVID-19 and to Enact, Amend and Repeal Various Statutes' *COVID-19 Economic Recovery Act*, (2020, S.O. 2020, c. 18 - Bill 197, 21 July 2020) Chapter 18; Government of Ontario, 'Environmental Assessment Act (EAA) Amendments in the COVID 19- Economic Recovery Act' *Environmental Assessment Act* (R.S.O. 1990, 8 July 2020); Parliamentary of New Zealand, 'Urban Development Act 2020' *Parliamentary Counsel Office* (6 August 2020); Parliament of Australia, 'Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals' *Bill 2020*; Mike Foley, 'Morrison Government Resurrects Abbot's 'One-Stop' Environmental Laws' *Sydney Morning Herald* (27 August 2020); Vaishnavi Chandrashekhkar, 'India's Push to Relax Environmental Assessment Rules Amid Pandemic Draws Criticism' *Science* (7 May 2020).

<sup>88</sup> Conservation International, *Global Conservation Rollbacks Tracker*, <<https://www.conservation.org/projects/global-conservation-rollbacks-tracker>> accessed 23 December 2020.

Meanwhile, the Province of Ontario<sup>89</sup> suspended the EIA and other key environmental protection oversight rules that required the government to notify and consult with the public about any environment-related changes, declaring such rules to be disruptive of measures to respond to the Covid-19 pandemic.<sup>90</sup> Further, Ontario weakened the provincial Environmental Assessment Act and other environmental laws without consulting the public.<sup>91</sup>

Additionally, the Quebec legislature attempted to pass Bill 61, which would have had a similar result; however, it was temporarily removed from consideration in August 2020.<sup>92</sup>

At the same time, in States such as Brazil and Austria, there have been significant executive and legislative efforts to allow projects to go forward without thorough or public EIA process or filings.<sup>93</sup>

Austria commenced construction of a controversial hydroelectric dam while legal complaints calling attention to the preservation of the biodiversity in the region impacted were still pending.<sup>94</sup>

#### 1.4. Procedural Environmental Rights: Public Participation

The pandemic has also demonstrated internet access inequality. Relocating governmental and

legal procedures from the physical to the virtual environment has cut many people off from public participation in the political process.<sup>95</sup> For example, public comments on environmental and agricultural laws in the United States<sup>96</sup> have moved online and thus excluded those without reliable internet access from providing comments and oversight in this process.<sup>97</sup>

Despite the potential for abuse of digital information, some countries have harnessed technology to disseminate legitimate health and safety information. In September 2020, the Inter-American Commission on Human Rights (IACHR) issued a sweeping statement calling for Member States to provide expanded internet access to its citizens.<sup>98</sup> For example, the Brazilian Supreme Court created a special web page listing all judicial actions related to Covid-19.<sup>99</sup> It includes all cases related to the pandemic to better inform the community, while also giving preference to judgments of requests related to Covid-19. The measure ensures decisions are timely and transparent, with an efficient jurisdictional response to combating the pandemic.

Additionally, the Brazilian government announced plans for a new connectivity measure to distribute over 750,000 cell phone chips to better connect teachers and students.<sup>100</sup> The government has allocated R\$ 75 million (USD 13 million)

<sup>89</sup> James E. Paterson, Brynn Devine and Gideon Mordecai, 'Rolling back Canadian Environmental Regulations During Coronavirus is Short-Sighted' *The Conversation* (2020) <<https://theconversation.com/rolling-back-canadian-environmental-regulations-during-coronavirus-is-short-sighted-139636>> accessed 23 December 2020.

<sup>90</sup> Emma McIntosh, 'Ontario Suspends Environmental Oversight Rules, Citing COVID-19' *Canada's National Observer* (8 April 2020) <<https://www.nationalobserver.com/2020/04/08/news/ontario-suspends-environmental-oversight-rules-citing-covid-19>> accessed 23 December 2020.

<sup>91</sup> Katie Krelove, Ian Miron and Priyanka Vittal, 'Groups Sue Ford Government for Unlawful Failure to Consult Public on Bill 197' *Wilderness Committee* (10 August 2020) <<https://www.wildernesscommittee.org/news/groups-sue-ford-government-unlawful-failure-consult-public-bill-197>> accessed 23 December 2020.

<sup>92</sup> Philip Authier, 'Bill 61 Is Dead; CAQ Says It Will Table New Infrastructure This Fall' *Montreal Gazette* (19 August 2020) <<https://montrealgazette.com/news/quebec/bill-61-is-dead-caq-says-it-will-table-new-infrastructure-bill-this-fall>> accessed 23 December 2020.

<sup>93</sup> Jenny Gonzalez, 'Brazil Dismantles Environmental Laws via Huge Surge in Executive Acts Study' *Mongabay* (5 August 2020) <<https://news.mongabay.com/2020/08/brazil-end-runs-environmental-laws-via-huge-surge-in-executive-acts-study/>> accessed 23 December 2020.

<sup>94</sup> WWF, *Stop the Tumpen-Habichen Hydropower Station!* <[https://wwf.panda.org/wwf\\_news/?362336/stop-Tumpen-Habichen](https://wwf.panda.org/wwf_news/?362336/stop-Tumpen-Habichen)> accessed 23 December 2020.

<sup>95</sup> Stephanie Oehler, 'Public Participation at a Distance: Engaging in Gulf Restoration Processes During the Pandemic' *Environmental Law Institute* <<http://eli-ocean.org/blog/public-participation-at-a-distance-engaging-in-gulf-restoration-processes-during-the-pandemic/>> accessed 14 July 2020.

<sup>96</sup> The part of the administrative rulemaking process allowing the public to provide comments and input on proposed regulations.

<sup>97</sup> *Ibidem*.

<sup>98</sup> OAS, *States of the Region Must Accelerate Universal Internet Access Policies during the COVID-19 Pandemic and Adopt Differentiated Measures to Incorporate Groups in Vulnerable Situations* (press release R206/20, 31 August 2020).

<sup>99</sup> STF, 'Painel de Ações COVID-19' *Transparência* <<https://transparencia.stf.jus.br/single/?appid=615fc495-804d-409f-9b08-fb436a455451&sheet=260e1cae-f9aa-44bb-bbc4-9d8b9f2244d5&theme=simplicity&opt=cursel%2Cctxmenu&select=clearall>> accessed 18 December 2020.

<sup>100</sup> Xinhua, 'Brazil's Sao Paulo to Hand Out 750,000 Phone Chips to Keep Students, Teachers Connected' *XinhuaNet* (15 October 2020) <[http://www.xinhuanet.com/english/2020-10/15/c\\_139440751.htm](http://www.xinhuanet.com/english/2020-10/15/c_139440751.htm)> accessed 23 December 2020.



toward this effort.<sup>101</sup> These efforts are increasingly important in emerging markets where internet access is nowhere near universal and may be cost prohibitive. According to data from Zero-D, 49% of internet searches in Brazil queried variations of “internet gratis” or ‘free internet’.<sup>102</sup> As the pandemic rages on, and our lifestyle and work adapts to digital environments, such access needs will likely continue to increase.

### 1.5. Protection of Wildlife

Wildlife conservation is facing its most serious challenge in decades. The Covid-19 health crisis has highlighted the extreme fragility of the ecosystem and the massive impact human activity has had on the health of ecosystems, as ecosystems and wildlife populations near tipping points. The anthropogenic interference is leading to a complete disruption of flora and fauna, increasing the risks of extinction.

Human activity, directly and indirectly, is now the primary cause of ecological disruption. The loss of diverse ecological interactions is detrimental for other species, including humans. Animals are crucial for human survival since they maintain an ecological balance by playing an essential role in nutrient recycling. Man-made interference with the ecosystem has created perfect conditions for the so-called ‘zoonotic spillovers’. These entail harmful pathogens like viruses, bacteria, parasites, and fungi crossing the boundary from their natural reservoir (animals) to start circulating among humans. Environmental preservation is crucial in the fight against pandemic outbreaks. Scientists warn that deforestation, industrial agriculture, illegal wildlife trade, and other types of environmental degradation increase the risk of future pandemics as a consequence of the forced proximity between humans and animals.<sup>103</sup> Scientific evidence shows that it is likely Covid-19 originated in bats and then jumped to humans via an intermediary, probably pangolins. Severe acute

respiratory syndrome coronavirus 2 (SARS-CoV-2) is the virus that causes Covid-19, which is genetically related to the SARS-associated coronavirus.<sup>104</sup>

‘Coronavirus’ is a generic term that includes a large family of viruses. Scientists are still looking for similar coronaviruses in other animals to reveal the animals to which it might have adapted. This can be done by testing tissue samples from wild mammals or by examining the SARS-CoV-2. Over time, viruses often start encoding their proteins using similar patterns of nucleotides to those of their host, which helps viruses adapt to their new environment.<sup>105</sup>

Around 75% of emerging infectious diseases, such as Ebola, SARS, and MERS, are zoonoses. For example, the Ebola virus disease, which has a mortality rate of up to 90%,<sup>106</sup> was first transmitted after an individual ate an infected animal. Scientists identified members of a wild chimpanzee found dead in the Taï National Park, Côte d’Ivoire as the source of one of the first outbreaks, which happened in 1976. Retrospective epidemiologic and ecologic investigations were compatible with a point-source epidemic and the presence of Ebola virus was confirmed by laboratory tests.<sup>107</sup> Humans have exacerbated the threat Ebola poses to wild apes and chimpanzees through deforestation, urban sprawl, tourism, and other means. The largest outbreak of Ebola in humans was declared in 2014, after a pregnant woman living in Congo had butchered a monkey of an unknown arboreal species found dead by her husband.<sup>108</sup>

Transmission during this outbreak shows another example of anthropogenic interference in untouched ecosystems.<sup>109</sup> Animals’ health thus also depends on humans’ activities since humans structure their environments, intentionally or unintentionally.

The international wildlife trade is one of the main human-animal interactions, where animals are introduced to new environments, along with the pathogens they might carry. Amongst these, the so-

<sup>101</sup> *Ibidem*.

<sup>102</sup> Upstream, ‘Demand for Free Mobile Internet Access in Emerging Markets Reaches New High in Q2 during Pandemic’ *News* (5 October 2020) <<https://www.upstreamsystems.com/demand-for-free-mobile-internet-access-in-emerging-markets-reaches-new-high-in-q2-during-pandemic/>> accessed 23 December 2020.

<sup>103</sup> Josef Settele et al., *COVID-19 Stimulus Measures Must Save Lives, Protect Livelihoods, and Safeguard Nature to Reduce the Risk of Future Pandemics* (Bonn: IPBES, 2020).

<sup>104</sup> “Coronavirus” is a generic term that includes a large family of viruses.

<sup>105</sup> Smriti Mallapaty, ‘Animal Source of the Coronavirus Continues to Elude Scientists’ *Nature News* (18 May 2020) <<https://www.nature.com/articles/d41586-020-01449-9>> accessed 23 December 2020.

<sup>106</sup> WHO, ‘Ebola Virus Disease’ *Newsroom* (10 February 2020) <<https://www.who.int/news-room/fact-sheets/detail/ebola-virus-disease>> accessed 23 December 2020.

<sup>107</sup> Pierre Formenty et al., ‘Ebola Virus Outbreak among Wild Chimpanzees Living in a Rain Forest of Côte d’Ivoire’ *The Journal of Infectious Diseases* (179, no. 1, February 1999) <[https://academic.oup.com/jid/article/179/Supplement\\_1/S120/880079](https://academic.oup.com/jid/article/179/Supplement_1/S120/880079)> accessed 30 September 2021.

<sup>108</sup> Gaël D. Maganga et al., ‘Ebola Virus Disease in the Democratic Republic of Congo’ *New England Journal of Medicine* (371, November 2014) <<https://www.nejm.org/doi/full/10.1056/nejmoa1411099>> accessed 23 December 2020.

<sup>109</sup> Stanford University, ‘Ebola Zaire Outbreaks’ *Tara’s Ebola Site* <<https://web.stanford.edu/group/virus/filo/ebola.html>> accessed 23 December 2020.

called ‘wet markets’<sup>110</sup> offer the perfect platform where unregulated and illegal wildlife trade flows.<sup>111</sup>

Despite having some international legal frameworks for the protection of wildlife, overall, there is very poor law enforcement. The Convention on International Trade in Endangered Species (CITES)<sup>112</sup> is the global regulatory instrument for international trade in over 36,000 species of wild animals and plants – of which about 6,000 are animals. While CITES does not cover domesticated species, it does regulate trade in listed species of wild animals that are farmed, ranched, or bred in captivity.<sup>113</sup> It is important to note that CITES, as an international legally binding agreement, regulates cross-border transactions. Public health and veterinary quarantine are mentioned in the Convention as areas where parties may adopt stricter national measures in addition to those required by CITES. Domestic regulation of production and markets is relevant as it affects international trade.

However, with so many products dependent on a global supply chain, the international-domestic distinction may seem blurred.<sup>114</sup>

Therefore, international cooperation is necessary to fully implement wildlife protection measures. For example, the WHO, the UN Food & Agricultural Organization (FAO), and the World Organization for Animal Health (OIE) jointly issued a ‘Tripartite Guide to Addressing Zoonotic Diseases in Countries’ on the need to protect humans.<sup>115</sup> Furthermore, the ‘One Planet, One Health, One Future’ approach proposes reintegrating ecosystems’ health and integrity while also

addressing other pressing issues such as climate change and antimicrobial resistance (see section 1.3 above).<sup>116</sup>

Future pandemics are likely to happen more frequently unless society provides a holistic response that strengthens environmental protection.<sup>117</sup> A longer-term perspective is vital. For instance, safeguarding wild habitats against human encroachment can help tackle a key root cause of emerging zoonotic diseases, lessening future pandemic risks. The current health pandemic is, therefore, at its core, an environmental crisis.<sup>118</sup>

Understanding the linkages between human and animal behavior is of critical importance as human disturbance has detrimental effects on species persistence and ecosystem dynamics. Becoming aware of these insights would improve human-wildlife coexistence and preserve environmental well-being.

## 1.6. Waste Management

The pandemic has changed patterns of waste production around the world, posing new challenges for waste management. For instance, in China the healthcare waste treatment capacity increased from 50 tons/day to 106.9 tons/day during the pandemic.<sup>119</sup> The increase of single-use products, such as face masks and gloves, and “panic buying” due to isolation measures, have also increased plastic pollution.<sup>120</sup>

Waste management is an essential element of the protection of both the right to a healthy environment (see John Knox’s framework principle n. 11)<sup>121</sup> and

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<sup>110</sup> Lisa Lim, ‘Why Asia’s wet markets are being unfairly targeted in bad pandemic press’ *South China Morning Post* (25 April 2020) <<https://www.scmp.com/magazines/post-magazine/short-reads/article/3081363/why-asias-wet-markets-are-being-unfairly>> accessed 23 December 2020.

<sup>111</sup> Peter J. Li, ‘First Sars, now the Wuhan coronavirus. Here’s why China should ban its wildlife trade forever’ *South China Morning Post* (29 January 2020) <<https://www.scmp.com/comment/opinion/article/3047828/first-sars-now-wuhan-coronavirus-heres-why-china-should-ban-its>> accessed 23 December 2020.

<sup>112</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora <<https://cites.org/eng>> accessed 30 September 2021.

<sup>113</sup> *Ibidem*.

<sup>114</sup> *Ibidem*.

<sup>115</sup> FAO and WHO, *Taking a Multisectoral, One Health Approach: A Tripartite Guide to Addressing Zoonotic Diseases in Countries* (Geneva: WHO Press, 2019).

<sup>116</sup> WCS, *The Berlin Principles on One Health 2019* <<https://oneworldonehealth.wcs.org/About-Us/Mission/The-2019-Berlin-Principles-on-One-Health.aspx>> accessed 23 December 2020.

<sup>117</sup> Josef Settele *et al.*, ‘COVID-19 Stimulus Measures: Must Save Lives, Protect Livelihoods, and Safeguard Nature to Reduce the Risk of Future Pandemics’ *IPBES* (27 April 2020) <<https://ipbes.net/covid19stimulus>> accessed 23 December 2020.

<sup>118</sup> John Vidal, ‘Tip of the iceberg’: is our destruction of nature responsible for Covid-19? *The Guardian* (18 March 2020) <<https://www.theguardian.com/environment/2020/mar/18/tip-of-the-iceberg-is-our-destruction-of-nature-responsible-for-covid-19-aoe>> accessed 23 December 2020.

<sup>119</sup> UNEP & IGES, *Waste Management during the COVID-19 Pandemic: From Response to Recovery* (UNEP 2020).

<sup>120</sup> Samuel Asumadu Sarkodie and Phebe Asantewaa Owusu, ‘Impact of COVID-19 pandemic on waste management’ *Environ Dev Sustain* (2020) <<https://link.springer.com/article/10.1007/s10668-020-00956-y>> accessed 23 December 2020.

<sup>121</sup> Human Rights Council, Thirty-seventh session, 26 February–23 March 2018, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (A/HRC/37/59).

the right to health,<sup>122</sup> since adequate waste management prevents and minimizes individuals' exposure to hazardous substances, including viruses.

States thus have a duty to undertake measures to ensure appropriate waste management.<sup>123</sup> Sudden shifts in healthcare and household waste production during the pandemic require urgent implementation of contingency plans in order to avoid consequences to human health and the environment, especially regarding healthcare waste.<sup>124</sup>

However, not all States were capable of fully implementing contingency plans, especially developing countries struggling with financial and technical limitations.<sup>125</sup> The pandemic also exposed existing gaps in States' waste management sectors, such as lack of specific legislation on healthcare waste treatment.<sup>126</sup> Due to these deficiencies, environmental concerns arose regarding the fact that increased amounts of healthcare waste could impact air quality due to open burning and incineration, and improper disposal of waste could affect marine life and wildlife.<sup>127</sup>

Above all, the pandemic has magnified existing challenges in waste management that have been impacting human health and the environment for decades. As warned by the UN Special Rapporteur, this increases annual waste and also has health implications caused by chronic chemicals, pollutants, and other hazardous materials whose effects have been unrecognized or underappreciated.<sup>128</sup> As recommended by the UN, post-Covid-19 recovery focus should not only be on improving global waste management practices, but also on redesigning consumption patterns to reduce stress on natural habitats, minimizing the risk of the emergence of future zoonoses and reducing the risk of death from pollution.<sup>129</sup>

### 1.7. Deforestation

Deforestation has increased human exposure to new animal-borne illnesses. The links between loss

of biodiversity and habitat and the emergence and transmission of infectious diseases are well documented.<sup>130</sup> As forest habitats shrink, humans come in close contact with exotic wildlife harboring viruses and pathogens that lead to new diseases in humans such as Ebola, HIV, and dengue.<sup>131</sup> Tropical forests are home to unique environments. They are essential to the global hydrological cycle, as they help regulate climate patterns while keeping surface temperatures lower. Through the photosynthesis process, they function as sinks by removing CO<sub>2</sub> from the atmosphere. When they are burnt, they become sources of CO<sub>2</sub>. Trees intercept rainfall as water clings to leaves and branches, slowing its journey across the landscape. This reduces the overall volume of surface runoff, curtails soil erosion, and increases groundwater recharge.

There is an increasing body of evidence to suggest that land clearing has led to a circulation of viruses.

Firstly, when ancient ecosystems are disrupted and ecological rules are broken down, animals that have never previously met can come into contact with each other while increasing the pool of pathogen transmission. Secondly, these "disturbed" new environments created by deforestation pave the way for increased contact between humans and tropical animals.

Even before Covid-19 wreaked havoc, scientists were warning of the risks posed by land clearing. In 2018, a group of European scientists cautioned that 'the probability of occurrence of the risk of pandemics is increasing owing to environmental change and higher environmental pressure'.<sup>132</sup>

Deforestation and habitat fragmentation have increased the pool of pathogens that can spread from animals to humans. While some species are going extinct, those that tend to survive and thrive — rats and bats, for instance — are more likely to host potentially dangerous pathogens that could jump from animals to humans.<sup>133</sup> An analysis done by the Intergovernmental Science-Policy Platform

<sup>122</sup> CESCR *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12) (CESCR/E/C.12/2000/4, 11 August 2000).

<sup>123</sup> Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes\*, *Duty to prevent exposure to the COVID-19 virus* (13 October 2020, A/HRC/45/12).

<sup>124</sup> UNEP & IGES, *Waste Management* (n 119).

<sup>125</sup> *Duty to prevent exposure to the COVID-19 virus* (n 123).

<sup>126</sup> UNEP & IGES, *Waste Management* (n 119).

<sup>127</sup> Sarkodie and Owusu, 'Impact of COVID-19 pandemic on waste management'.

<sup>128</sup> *Duty to prevent exposure to the COVID-19 virus* (n 123).

<sup>129</sup> *Ibidem*.

<sup>130</sup> Felicia Keesing et al., 'Impacts of biodiversity on the emergence and transmission of infectious diseases' *Nature* 468 (2010) 647-652. Alessandra Nava et al., 'The Impact of Global Environmental Changes on Infectious Disease Emergence with a Focus on Risks for Brazil' *ILAR Journal* (58, 2017) 393-400.

<sup>131</sup> Vidal, *Tip of the iceberg* (n 118).

<sup>132</sup> Aneta Afelt et al., 'Bats, Coronaviruses, and Deforestation: Toward the Emergence of Novel Infectious Diseases?' *Frontiers in Microbiology* (11 April 2018) <<https://www.frontiersin.org/articles/10.3389/fmicb.2018.00702/full>> accessed 23 December 2020.

<sup>133</sup> Peter Daszak et al., 'Emerging Infectious Diseases of Wildlife - Threats to Biodiversity and Human Health' *Science* (287, no. 5452, 2000) 443-449, accessed 23 December 2020.

on Biodiversity and Ecosystem Services (IPBES) has also connected trends in human development and biodiversity loss to disease outbreak. The IPBES report highlights how Covid-19 has helped to clarify the need to investigate biodiversity's role in pathogen transmission as people move into undeveloped areas while increasing human exposure to parasites: 'Rampant deforestation, uncontrolled expansion of agriculture, intensive farming, mining and infrastructure development, as well as the exploitation of wild species have created a perfect storm for the spillover of diseases from wildlife to people'.<sup>134</sup>

### 1.8. Overpopulation

Overpopulation has further contributed to the current global pandemic and the spread of disease.

From 1900 to 2020, the world population has risen from 1.6 billion to 7.8 billion.<sup>135</sup> The international regulation of population control has been viewed through the lens of human rights and has often been frowned upon. Additionally, a sustainability argument asserts the rights of not only current but also future generations.<sup>136</sup> This proves to be a difficult argument in many countries – and it seems the problem of population growth and its accompanying ills will not be alleviated in our new pandemic reality.

Dense population centers not only create a hospitable environment for a disease's spread – they also wreak havoc on the environment and corresponding environmental rights.<sup>137</sup> Greater resource scarcity drives over-consumption of natural resources, forced human migration, and habitat destruction, thus leading to catastrophic environmental impacts, such as deforestation.

Population growth has been steadily increasing each year, and with this rise, environmental and public health problems will proliferate. A larger

population creates greater consumption and demand for natural resources; thus, it can create resource scarcity.<sup>138</sup> Additionally, climate change has been driving population mobility. As coastal areas become less hospitable for humans, and changing temperatures alter farming practices or crop output, involuntary migration becomes more prevalent.<sup>139</sup>

Many migrants seek stability in urban areas, which drives up population levels in many metro areas and creates the perfect storm for the spread of transmissible diseases.<sup>140</sup> Future pandemic plans, whether through more affordable and sustainable housing or relaxed zoning regulations, will have to account for these additional hurdles to containment caused by population growth from climate refugees.<sup>141</sup>

In countries that already struggle with overpopulation, Covid-19 and future pandemics make this issue even more unmanageable. As seen throughout this report, environmental protection and individual rights have become secondary to stopping the spread of disease, as well as to alleviating conditions that result from dense populations. For lasting benefits, pandemic containment plans and environmental protection should operate jointly.

Some urban areas are considering zoning plans that involve increasing population density to concentrate environmental impacts in fewer discrete locations. Other metro areas seek to relax zoning to allow for more equitable spread of the population, thus making social distancing more feasible, or to create more affordable and green housing options.<sup>142</sup>

The current global pandemic also highlights economic disparities related to overpopulation.

Poverty is the common denominator between living in densely populated urban areas and the lack

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<sup>134</sup> Josef Settele *et al.*, 'COVID-19 Stimulus Measures: Must Save Lives, Protect Livelihoods, and Safeguard Nature to Reduce the Risk of Future Pandemics' *IPBES* (27 April 2020).

<sup>135</sup> United Nations Environment Programme and International Livestock Research Institute, *Preventing the Next Pandemic: Zoonotic Diseases and How to Break the Chain of Transmission* (UNEP 2020).

<sup>136</sup> Victoria Mikesell Mather, 'Population Law and Policy: From Control and Contraception to Equity and Equality' *Saint Mary's Law Journal* (50, no. 3, 2019), 917-950.

<sup>137</sup> Sachin Minhas, 'Short Communication: Could India Be the Origin of the Next COVID-19 Like Epidemic?' *Science of the Total Environment* (728, no. 1, 2020), 138918.

<sup>138</sup> Paul R. Erlich of Stanford University's Institute for Conservation Biology lists demonstrable signs of resource scarcity including, "hundreds of millions hungry, . . . billions of people malnourished . . . the dramatic decline in energy returned on energy invested in the scramble for oil, the

heating planet and increasing extreme weather, the escalating refugee crisis, the scramble after remaining high-grade resources . . . , and the automatic decline (with population growth) of democratic government as each individual voter's say is diluted." Paul R. Ehrlich, 'Without Policy Changes, a Global Crash is Inevitable' *The Environmental Forum* (March/April 2017) <<https://www.eli.org/sites/default/files/tef/thedebate/population%20debate.pdf>> accessed 23 December 2020.

<sup>139</sup> Saber Salem and Armin Rosencranz, 'Climate Refugees in the Pacific' *Environmental Law Reporter* (50, no. 7, 2020) 10540.

<sup>140</sup> *Ibidem*.

<sup>141</sup> *Ibidem*.

<sup>142</sup> Maryke van Staden, 'What now for cities?', *Sustainable Dev. Goals: New Understanding* (39, October 2020) <<https://www.sustainablegoals.org.uk/wp-content/uploads/2020/10/039-041-SDGs-VAN-STADEN.pdf>> accessed 23 December 2020.

of geographic mobility.<sup>143</sup> Both of these factors intensify the effect and spread of Covid-19.

Furthermore, there are significant populations of refugees and migrants living in similarly dense and financially unstable conditions – with estimates of 80% of refugees living in low-income countries who are unable to mitigate such problems or account for the environmental impact of mass settlements of migrants and refugees.<sup>144</sup>

Overpopulation creates more than just a hospitable atmosphere for the spread of infectious diseases like Covid-19; it simultaneously causes intense ecological impacts such as habitat destruction and resource scarcity. To combat the spread of disease and to prevent environmental impacts, pandemic-time international and domestic legislation should include funding allocated specifically toward mitigating the environmental impacts caused by high population density and overconsumption.

Overpopulation, thanks to the current and future pandemic concerns, should be placed at the same level as other human rights – in conjunction with rights to the environment and health.

### **1.9. Building Back Better**

Cooperation at the international and regional levels is crucial to States' efforts to build back better. For example, in May 2020, as part of its effort to build back better post-Covid-19, the European Commission presented a wide-ranging package combining the future Multiannual Financial Framework (MFF) and a specific Recovery effort under Next Generation EU (NGEU).<sup>145</sup> The NGEU is one of the world's greenest recovery packages for the way that it seeks to ensure a sustainable recovery to save its economy from the pandemic.<sup>146</sup> The package includes a new Recovery and Resilience Facility of €560 billion to offer financial support for investments and reforms – notably in the green and digital transition industries.<sup>147</sup> The plan for European recovery seeks public and private investment to set the EU on the path to a 'sustainable and resilient recovery, creating jobs and repairing the immediate damage caused by the

Covid-19 pandemic whilst supporting the Union's green and digital priorities'.<sup>148</sup>

Moreover, the European Commission President Ursula von den Leyen wishes to turn the European Green Deal, which sets out how to make Europe the first climate-neutral continent by 2050, into a rescue plan to boost jobs and growth, the resilience of the EU, and the health of the environment.<sup>149</sup> As such, the EU's recovery strategy will include a more circular economy, renovating buildings and infrastructure, rolling out renewable energy projects, kick-starting clean hydrogen economy, and cleaner transport and logistics.<sup>150</sup> EU Member States are required to prepare national recovery and resilience plans setting out their reform and investment agenda for the years 2021-23.<sup>151</sup>

In addition, in response to Covid-19, the EU created a new Health Programme, EU4Health, to strengthen health security and be prepared for future health crises.<sup>152</sup> EU4Health will provide funding to EU Member States, health organizations and NGOs through a €9.4 billion investment, thus becoming the largest health program in monetary terms.<sup>153</sup> Other programs will be reinforced as well in order to align the future financial framework with recovery needs.

### **1.10. Conclusions and Summary of Key Recommendations**

Emerging infectious diseases (EID) are a significant threat to global health. The aforementioned evidence shows how they are products of anthropogenic interference. The Covid-19 outbreak has highlighted how crucial it is to protect and preserve untouched habitats to prevent the spread of future pandemics. It is essential that governments address the economic and cultural factors that drive deforestation. On top of that, they must ensure the strengthening and enforcement of environmental regulations to reduce human encroachment into wildlife habitats.

Furthermore, ecologists should be working with infectious-disease researchers, public-health workers, and medics to track environmental change, assess the risk of pathogens crossing over,

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<sup>143</sup> Alice Blukacz, 'COVID-19: Leaving No One Behind in Latin America,' 369 *Lancet* (1070, 10 October 2020).

<sup>144</sup> *Ibidem*.

<sup>145</sup> European Council, Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020), Conclusions, *EUCO* (10/20, 21 July 2020) <<https://www.consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf>> accessed 28 September 2020.

<sup>146</sup> European Commission press release, *Europe's moment: Repair and prepare for the next generation* (27 May 2020) <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_940](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_940)> accessed 23 December 2020.

<sup>147</sup> *Ibidem*.

<sup>148</sup> European Council conclusions *EUCO* 10/20, (n 145).

<sup>149</sup> European Commission press release (n 146).

<sup>150</sup> *Ibidem*.

<sup>151</sup> European Council conclusions *EUCO* 10/20 (n 145).

<sup>152</sup> European Commission, *EU4Health 2021-2027 – a vision for a healthier European Union* <[https://ec.europa.eu/health/funding/eu4health\\_en](https://ec.europa.eu/health/funding/eu4health_en)> accessed 28 September 2020.

<sup>153</sup> *Ibidem*.

and monitor and control new virus outbreaks from wildlife and livestock. Potential solutions include:

- **Expand Protected Wetlands and Secure Wetland Integrity**

The rapid spread of Covid-19 has made us more conscious of our relationship with other species. As mentioned in the section on the One Health Approach, it is necessary to understand how human actions can fuel the loss of natural habitats, and thus, bring together animals and humans in an exchange that can lead to these types of zoonotic diseases. That is why there is a pressing need to integrate the One Health Approach into existing natural habitat conservation agreements, such as the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat. The Convention directly recognizes the interdependence of humans and their environment, as well as the need to preserve the ecological functions of wetlands as habitats to a whole range of flora and fauna.<sup>154</sup> In the context of the Covid-19 pandemic, the Ramsar Secretariat has continued to work in collaboration with the CBD, providing inputs to processes related to the preparation of the post-2020 Global Biodiversity Framework. The Secretariat has also continued its work towards SDG14 and 6, and has participated in regional meetings, committees and panels.<sup>155</sup>

It is this work which has the potential to help in the aftermath of the pandemic, through reinforcing domestic and international legal frameworks to guarantee the protection and preservation of wetlands as significant natural habitats. Ramsar already provides an exchange forum for local, national, and international cooperation, which is what is needed in order to recover from the pandemic. By expanding the protection and securing the integrity of wetlands, the environment will be able to recover from the adverse effects of Covid-19 and prior human activities. It can also prevent future pandemics and zoonosis 'spillovers' by strengthening the protection of wetlands, and

hence, providing species with a place to live and thrive.

The Ramsar Convention, as it is today, provides a set of instructions and guidelines that are helpful for getting the conversation started. However, and as it has been proposed by some scholars, it does not establish an adequate mechanism of sanctions, which could be what is missing for its true implementation.<sup>156</sup> Strengthening the existing legal frameworks could be an avenue for achieving better protection of wetlands, and as a result, further environmental recovery and avoidance of future pandemics.

- **CITES – Expand Listings, Suspend Trade in Non-Compliance, and Combat Illegal Wildlife Trade**

With the spread of the pandemic, one current goal is how to face the aftermath of the virus. This includes new policies, reforms, and actions to be implemented by national authorities, international organizations, and citizens. In this regard, CITES<sup>157</sup> is crucial. It has been viewed as a success among international treaties involving the conservation of wildlife, however, the Covid-19 pandemic has drawn out the need for increased consideration of the Convention's serious inadequacies in regulating wildlife exploitation.

The preamble of the Convention explicitly underlines the need to be 'conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view'.<sup>158</sup> The identification of wild fauna that can pose a public health risk to humans is based on the highest scientific degree. One solution could be to include in Appendix I<sup>159</sup> of the Convention all those animals that carry coronaviruses.<sup>160</sup> This would allow a certain degree of control that may limit the next pandemic. Nevertheless, the CITES Secretariat noted that zoonotic disease matters are outside CITES' competencies; therefore, the organization lifted its focus from intervention regarding animals, human health, and Covid-19.<sup>161</sup>

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<sup>154</sup> Ramsar Convention Secretariat <[https://www.ramsar.org/sites/default/files/documents/library/current\\_convention\\_text\\_e.pdf](https://www.ramsar.org/sites/default/files/documents/library/current_convention_text_e.pdf)> accessed 23 December 2020.

<sup>155</sup> Ramsar Convention Secretariat <<https://www.ramsar.org/news/continued-work-of-the-secretariat-before-and-during-the-pandemic>> accessed 23 December 2020.

<sup>156</sup> V. Batanjski, et al., 'Critical legal and environmental view on the Ramsar Convention in protection from invasive plant species: an example of the Southern Pannonia region' *Int Environ Agreements* (16, 2016) 833, 848.

<sup>157</sup> The Convention on International Trade in Endangered Species (CITES) is a global environmental agreement that regulates the global trade of the most

threatened species on Earth, See CITES Secretariat, <<https://cites.org/eng>> accessed 23 December 2020.

<sup>158</sup> Convention on International Trade in Endangered Species (1975).

<sup>159</sup> CITES Secretariat, *CITES Appendices* <<https://cites.org/eng/app/index.php>> accessed 23 December 2020.

<sup>160</sup> Adiba Firmansyah, 'CITES reform: Enhanced wildlife trade regime needed to avoid next pandemic' *EJIL Talk* <<https://www.ejiltalk.org/cites-reform-enhanced-wildlife-trade-regime-needed-to-avoid-next-pandemic/>> accessed 23 December 2020.

<sup>161</sup> CITES Secretariat <[https://cites.org/eng/CITES\\_Secretariat\\_statement\\_in\\_relation\\_to\\_COVID19](https://cites.org/eng/CITES_Secretariat_statement_in_relation_to_COVID19)> accessed 23 December 2020.

Another solution would be to shape a new agreement to address trade in species that pose a threat to human health, such as Covid-19. However, experts have noted that another treaty would be duplicative of CITES, resulting in a redundant regulatory framework. Alternatively, the most practical and realistic solution would be a reform that could enable the Convention to support the regulation of trade in wild animals that affects humans.<sup>162</sup> While CITES has accomplished many successes since its entry into force, what is now needed is a new, broader Convention approach that can face the dangerous link between human health and wildlife species.

- **Fund and Expand National Measures to Combat Desertification**

A specific manifestation of land degradation, desertification is defined as 'land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities'.<sup>163</sup> International law on desertification is primarily codified in the United Nations Convention to Combat Desertification (UNCCD). Adopted on 14 October 1994, this Convention entered into force on 26 December 1996, and there are currently 197 parties to the Convention.<sup>164</sup> The UNCCD aims to combat desertification through long-term strategies for dryland management, the adoption of sustainable management programs for land and water

resources, and requirements for developed states and states affected by drought and desertification.<sup>165</sup> The UNCCD was seen as innovative because of the way it incorporated both general principles and region-specific measures by way of an implementation annex.<sup>166</sup>

As the UN explains, desertification, land degradation, and drought (DLDD) links to zoonosis and the spread of zoonotic diseases such as Covid-19.<sup>167</sup> There are a number of effects that desertification has on human health in general, including higher threats of malnutrition; more water- and food-borne diseases; more respiratory diseases; and the spread of infectious diseases due to migration.<sup>168</sup>

Many states have existing national plans to combat desertification, for example, Spain's National Program against Desertification (*Programa de Acción Nacional Contra La Desertificación*),<sup>169</sup> Argentina's National Action Plan to Combat Desertification, Land Degradation and Drought Mitigation (*Plan de Acción Nacional contra la Desertificación, Degradación de Tierras y Mitigación de Sequía*),<sup>170</sup> Iran's National Action Programme to Combat Desertification and Mitigate the Effects of Drought,<sup>171</sup> and Georgia's Second National Action Programme to Combat Desertification.<sup>172</sup> However, there remain insufficient measures to combat desertification, including at the EU level.<sup>173</sup>

<sup>162</sup> Malavika Vyawahare, 'As COVID-19 pandemic deepens, global wildlife treaty faces an identity crisis' (15 May 2020) <<https://news.mongabay.com/2020/05/as-covid-19-pandemic-deepens-global-wildlife-treaty-faces-an-identity-crisis/>> accessed 23 December 2020.

<sup>163</sup> United Nations, Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1992) art 1.

<sup>164</sup> *Ibidem*.

<sup>165</sup> William C. Burns, 'The International Convention to Combat Desertification: Drawing a Line in the Sand?' (1995) 16 Michigan Journal of International Law 3, 832-882.

<sup>166</sup> Kannan Ambalam, 'United Nations Convention to Combat Desertification: Issues and Challenges' *E-International Relations* (April 2014) <<https://www.e-ir.info/2014/04/30/united-nations-convention-to-combat-desertification-issues-and-challenges/>> accessed 23 December 2020.

<sup>167</sup> UNCCD, *UNCCD and the COVID-19 Crisis: Land Based Solutions for Healthy People and a Sustainable Planet* (Bonn: UNCCD, 2020) <<https://library.unccd.int/Details/fullCatalogue/1498>> accessed 23 December 2020.

<sup>168</sup> WHO, *Climate change: Land degradation and desertification* <<https://www.who.int/news-room/q-a-detail/climate-change-land-degradation-and-desertification>> accessed 23 December 2020.

<sup>169</sup> Gobierno de España, *Programa de Acción Nacional Contra La Desertificación* (Madrid: Ministerio de Agricultura, Pesca y Alimentación, 2007) <[https://www.mapa.gob.es/es/desarrollo-rural/temas/politica-forestal/desertificacion-restauracion-forestal/lucha-contra-la-desertificacion/lch\\_pand.aspx](https://www.mapa.gob.es/es/desarrollo-rural/temas/politica-forestal/desertificacion-restauracion-forestal/lucha-contra-la-desertificacion/lch_pand.aspx)> accessed 23 December 2020.

<sup>170</sup> Gobierno de Argentina, *Plan de Acción Nacional de Lucha contra la Desertificación, Degradación de Tierras y Mitigación de Sequía* (Buenos Aires: Ministerio de Ambiente y Desarrollo Sostenible) <<https://www.argentina.gob.ar/ambiente/bosques/programa-accion-nacional>> accessed 23 December 2020.

<sup>171</sup> Islamic Republic of Iran, *The National Action Programme to Combat Desertification and Mitigate the Effects of Drought* (Tehran: Forest, Range and Watershed Management Organization, 2004) <<https://knowledge.unccd.int/sites/default/files/naps/2017-08/iran-eng2004.pdf>> accessed 23 December 2020.

<sup>172</sup> Government of Georgia, *Second National Action Program to Combat Desertification* (Kutaisi: Ministry of Environment Protection of Georgia, 2014) <<http://extwprlegs1.fao.org/docs/pdf/geo171446.pdf>> accessed 23 December 2020.

<sup>173</sup> European Court of Auditors, *Combating desertification in the EU: a growing threat in need of more action* <<https://op.europa.eu/webpub/eca/special-reports/desertification-33-2018/en/>> accessed 23 December 2020.

There are several ways that we can seek to build back better and combat Covid-19 through a holistic approach that includes tackling land degradation.

The UNCCD Secretariat has generated policy documents that describe ways that land degradation, biodiversity, human health, and climate change are compounding challenges that require intervention on multiple levels.<sup>174</sup> The two overarching aspirations that the UNCCD Secretariat address are shaping a social contract for nature and going beyond the business-as-usual approach. Methods through which to expand and fund national measures to combat desertification might include enhancing coherence and synergies and reimagining financial systems.<sup>175</sup>

For funding, for example, green bonds are increasingly used in landscape restoration, and larger funds are moving toward decarbonization of their investments.<sup>176</sup> Through understanding how to tackle desertification we can strengthen global resilience against potential future diseases.<sup>177</sup>

- **Expand and Enhance EU Protected Areas, Natura 2000, and European Convention on Conservation of European Wildlife and Natural Habitats**

As a result of a growing awareness of environmental challenges such as biodiversity loss at the international and the EU-level, several European Directives and international conventions have been adopted to protect specific areas and species within the EU. The Natura 2000 network and the Emerald Network are both valuable examples of what countries around the world could implement together to build back better post-Covid-19 to cope with deforestation. In addition, the EU could also adopt policies to enhance and expand those protected areas to protect a wider range of species and habitat.

- **WCPA Protected Area Guidelines**

As of the time of writing, world leaders will convene at the UN Conference of Parties (COP) to the Convention on Biological Diversity in Kunming, China in 2022 to develop a roadmap that will guide

nature conservation efforts for the next 10 years – the period during which we must slow global warming, protect our ecosystems, and save species under threat. The COP had been scheduled for 2020, however was itself a victim of the Covid-19 pandemic. Under current conditions, more than 1 million species are at risk of extinction<sup>178</sup> due to human activities, so ambitious but fair targets to conserve the planet's wildlife by protecting nature are critical to preventing a mass extinction.

Research shows that protecting 30% of tropical lands could help cut species extinction risk in half, while slowing climate breakdown.<sup>179</sup> There is a whole suite of possible conservation tools that governments can implement to protect biodiversity while benefiting from the land, including protected areas, national parks, community conservancies, and indigenous-managed conservation areas.

However, establishing these areas is just the beginning, keeping them intact and supporting them is crucial to conserving nature and preventing human-wildlife contact. Another measure that countries must take to protect nature and stem zoonotic disease outbreaks is permanently ending the global wildlife trade. Due to its cultural implications in parts of the world, this will not be easy – but it is absolutely necessary.

Fundamentally, we need to reimagine our relationship with nature. For a long time, nature was robust and resilient, so humans often assumed we could do anything we wanted to it and it would bounce back. Due to population growth and overexploitation, we have reached a point where what we do to nature can permanently impact it.

Nature does a lot to support us and one of the things we must do in exchange for the benefits it provides is to make sure we protect it.

## Chapter 2: Sustainable Development Goals

### 2. Introduction

Since 2015, much of the international political agenda has been characterized by States' common goal to achieve 17 'Sustainable Development

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<sup>174</sup> UNCCD, *Supporting the Global Response to the COVID-19 Pandemic: Land-based Solutions for Healthy People and a Healthy Planet* (22 June 2020), <<https://knowledge.unccd.int/publications/supporting-global-response-covid-19-pandemic-land-based-solutions-healthy-people-and>> accessed 23 December 2020.

<sup>175</sup> UNCCD, *Supporting the Global Response to the COVID-19 Pandemic: Land-based Solutions for Healthy People and a Healthy Planet*, 11–12 <[https://catalogue.unccd.int/1498\\_UNCCD\\_%20Covid\\_%20layout-low%20res-1.pdf](https://catalogue.unccd.int/1498_UNCCD_%20Covid_%20layout-low%20res-1.pdf)> accessed 23 December 2020.

<sup>176</sup> *Ibidem*.

<sup>177</sup> UNCCD, *Role of land in COVID-19 response* (June 24, 2020) <<https://www.unccd.int/news-events/role-land-covid-19-response>> accessed 23 December 2020.

<sup>178</sup> Olivia DeSmit, 'A new report depicts a failing planet. A new book has solutions' *Conservation.org* (6 May 2019) <<https://www.conservation.org/blog/a-new-report-depicts-a-failing-planet-a-new-book-has-solutions>> accessed 23 December 2020.

<sup>179</sup> Kiley Price, 'Study: Protecting tropics could save half of species on brink' *Conservation.org* (26 February 2020) <<https://www.conservation.org/blog/study-protecting-tropics-could-save-half-of-species-on-brink>> accessed 23 December 2020.



Goals<sup>180</sup> in numerous areas, including poverty and hunger alleviation; improvement of health, education, and well-being; reduction of gender and other inequalities both within and between nation-states; access to clean water, sanitation and affordable renewable energy; maintenance and development of sustainable cities and communities; the fight against climate change and its impacts, conservation and sustainable use of oceans, seas and marine resources, sustainable management of forests, fight against land degradation and biodiversity loss; sustainable industry; decent work and economic growth based on responsible consumption and production approaches; and the promotion of just peaceful and inclusive societies.<sup>181</sup> The SDGs are a universal agenda of sustainable development<sup>182</sup> calling on States to pursue policies and strategies that combine economic development, social inclusion, and environmental sustainability. Governments are expected to incorporate these goals at the local, national, and international levels.<sup>183</sup>

Human rights are mentioned in the preamble of Agenda 2030 and integrated into the SDGs. To this extent, the SDGs are holistic, but also aligned with other international human rights recognized in international treaty law. To fully protect human rights, Goal 16 of the SDGs calls for accountability and inclusiveness of institutions, and access to justice for all.<sup>184</sup> This goal underlines the essential role that civil and political rights play in achieving sustainable and equitable development.<sup>185</sup>

## 2.1. The Right to Health and Agenda 2030

Given the importance of health and its crucial role for the enjoyment of the right to life itself, global health has its place throughout the 17 SDGs, especially in SDG 3: 'Ensure healthy lives and

promote well-being for all at all ages'.<sup>186</sup> SDG 3 expands the construct of health including the global prioritization of noncommunicable diseases,<sup>187</sup> the prevention and treatment of substance abuse,<sup>188</sup> and the reduction of global mortality due to road accidents.<sup>189</sup> It also includes universal access to sexual and reproductive healthcare services,<sup>190</sup> the achievement of universal health coverage,<sup>191</sup> and poor ecological and environmental health.<sup>192</sup> However, SDG 3 does not contain or reference the right to health originally introduced in the WHO's constitution<sup>193</sup> and then codified in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in article 12.<sup>194</sup>

SDG 3 illustrates how the integration of human rights took place in the Agenda. Starting from the Millennium Development Goals (MDGs), the old version of the right to health aimed to combat HIV/AIDS and other diseases, to improve maternal health, and to reduce child mortality. The 2030 Agenda also underlines that a healthy environment, human health, and human rights are intertwined because governments aim to protect natural resources but also fight poverty and inequalities.

After the international recognition of a global right to health, the international community has borne the collective obligation to realize health-related human rights. This can also happen by scaling up support to reduce public health inequities through global health governance.<sup>195</sup>

## 2.2. SDGs and the Pandemic

The 2020 Voluntary National Review (VNR) reporting cycle for the SDGs clearly illustrates the negative impacts of the Covid-19 pandemic at the global and national levels on States' accomplishment of the SDGs.

<sup>180</sup> United Nations, *Sustainable Development Goals* <<https://sdgs.un.org/goals>> accessed 23 December 2020.

<sup>181</sup> United Nations, *Transforming our world: The 2030 Agenda for Sustainable Development* <[https://wedocs.unep.org/bitstream/handle/20.500.11822/11125/unep\\_swio\\_sm1\\_inf7\\_sdg.pdf?sequence=1](https://wedocs.unep.org/bitstream/handle/20.500.11822/11125/unep_swio_sm1_inf7_sdg.pdf?sequence=1)> accessed 23 December 2020.

<sup>182</sup> Notion established in the "Our Common future" Report published by the Brundtland Commission in 1987.

<sup>183</sup> Jeffrey Sachs, et al., *Sdg Index & Dashboards: A Global Report* (Sustainable Development Solutions Network, 2016) 8-10. Shom Teoh, Simon Høiberg Olsen, and Simon Gilby, *Early Views of ASEAN's 'Frontrunner Cities' on the Sustainable Development Goals (SDGs) and Local Data Management* (Institute for Global Environmental Strategies 2018) 6-8.

<sup>184</sup> Goal 16: "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all level." SDG 16 <<https://sdgs.un.org/goals/goal16>> accessed 23 December 2020.

<sup>185</sup> Patrícia Galvão Ferreira, *Did the Paris Agreement Fail to Incorporate Human Rights in Operative Provisions?: Not If You Consider the 2016 SDGs* (Hurst 2016) 6-8.

<sup>186</sup> SDG 3 <<https://sdgs.un.org/goals/goal3>> accessed December 23, 2020.

<sup>187</sup> *Ibidem* at Target 3.4.

<sup>188</sup> *Ibidem* at Target 3.5.

<sup>189</sup> *Ibidem* at Target 3.6.

<sup>190</sup> *Ibidem* at Target 3.7.

<sup>191</sup> *Ibidem* at Target 3.8.

<sup>192</sup> *Ibidem* at Target 3.9.

<sup>193</sup> WHO, *The right to the highest attainable standard of health* <[https://www.who.int/governance/eb/who\\_constitution\\_en.pdf](https://www.who.int/governance/eb/who_constitution_en.pdf)> accessed 23 December 2020.

<sup>194</sup> ICESCR, art. 12.1 <<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>> accessed 23 December 2020.

<sup>195</sup> Lawrence O. Gostin and Benjamin Mason Meier, *Foundations of Global Health & Human Rights* (Oxford University Press, 27 July 2020) 333, 340.

Most States submitting VNRs in 2020 have identified budgetary constraints stemming from economic lockdowns as well as the need to shift funding priority to healthcare systems as severely hindering efforts to implement and achieve anticipated SDG benchmarks.<sup>196</sup>

For example, while the projected Armenian budget for 2020 had been structured to include a spending increase of 15% on healthcare over the 2019 budget, the VNR states that the entirety of the budget will be impacted by Covid-19.<sup>197</sup> The Armenian response to Covid-19 in the context of the SDGs has focused largely on providing economic and social support to those impacted by the quarantine and business restrictions.<sup>198</sup> However, there is also an emphasis on ensuring that the healthcare system has the capacity to address the needs of hospitals for ventilators and other equipment, population's need for PPE, and the need to isolate those infected by the virus.<sup>199</sup> With regards to those exposed to Covid-19, Armenia's VNR explains that their health monitoring steps include 'tracing and isolation of persons who have been in contact with Covid-19-positive patients, ensuring proper conditions with respond to human rights for these people by accommodating them in hotels and providing with quality and safe food'.<sup>200</sup>

In its 2020 VNR, Bangladesh notes that it had made significant steps toward achieving the targets of SDGs prior to the outbreak of the pandemic and thus that it had an advantage in terms of ability to respond to the pandemic within an established healthcare system.<sup>201</sup> However, Bangladesh explains that while its pandemic response has been successful from a healthcare coordination perspective, there are increasing issues with provision of and access to healthcare services for non-Covid-19 illnesses and conditions.<sup>202</sup>

To address health as well as a myriad of other sectors impacted by the pandemic, Costa Rica's VNR notes the importance of its national Resiliency,

Management and Development Plan. This Plan seeks to ensure that, in the post-Covid phase, there is an effort to 'enable vulnerable communities and people who have been left unemployed and who need new forms of dignified and decent employment for well-being and development'.<sup>203</sup> Further, Costa Rica has established a specialized healthcare center that treats only Covid-19 patients in recognition of the complexities of the virus rather than as a method of isolating these patients.<sup>204</sup> Costa Rica highlights the necessity to analyze how laws and policies related to the pandemic and the ways in which the SDGs are adopted can occur in a concerted effort for transformation and the preservation of human rights.

India's VNR emphasizes the medical technology it has deployed to fight Covid-19 while also innovating in other areas, particularly with regard to diseases such as malaria and HIV/AIDS, which were issues before the pandemic and are expected to continue well after the pandemic ends.<sup>205</sup> The VNR notes that the pandemic has served as a breakthrough moment for the realization of partnerships between sectors in the medical and healthcare fields,<sup>206</sup> which itself furthers SDG 17 (Partnerships for the Goals) as well as SDG 3 (Good Health and Well-being).

Nigeria's VNR states that, although the healthcare sector in the country had been underfunded prior to the pandemic, the uptick in funding during the pandemic has been limited to areas related to Covid-19 rather than spread among the sector as a whole.<sup>207</sup> This is asserted as negative to the achievement of the SDGs.<sup>208</sup> In this context, there is an emphasis that essential medical services, such as healthcare for women and children, are still unachieved and stand to remain critically impacted by Covid-19 and the legacy of funding decisions stemming from it.<sup>209</sup>

Kenya expects the Covid-19-related health issues to include those not connected to the

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<sup>196</sup> See United Nations, Office of the High Commissioner of Human Rights, 'Voluntary National Reviews – Benin,' (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/BENIN.pdf>> accessed 23 December 2020.

<sup>197</sup> United Nations, Office of the High Commissioner of Human Rights, 'Voluntary National Reviews – Armenia' (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/ARMENIA.pdf>> accessed 23 December 2020.

<sup>198</sup> *Ibidem.*

<sup>199</sup> *Ibidem.*

<sup>200</sup> *Ibidem.*

<sup>201</sup> United Nations, Office of the High Commissioner of Human Rights, 'Voluntary National Reviews – Bangladesh' (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/BANGLADESH.pdf>> accessed December 23, 2020.

<sup>202</sup> *Ibidem.*

<sup>203</sup> United Nations, Office of the High Commissioner of Human Rights, 'Voluntary National Reviews – Costa Rica' (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/COSTA%20RICA.pdf>> accessed 23 December 2020.

<sup>204</sup> *Ibidem.*

<sup>205</sup> United Nations, Office of the High Commissioner of Human Rights, 'Voluntary National Reviews – India' (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/INDIA.pdf>> accessed 23 December 2020.

<sup>206</sup> *Ibidem.*

<sup>207</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Nigeria* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/NIGERIA.pdf>> accessed 23 December 2020.

<sup>208</sup> *Ibidem.*

<sup>209</sup> *Ibidem.*

pandemic, such as teenage pregnancy and lack of prenatal care, due to the diversion of funds to pandemic infrastructure and lockdown measures.<sup>210</sup>

Mozambique's VNR highlights the likely impact of the pandemic on children and their prospects for health, education, and economic status in the future.<sup>211</sup>

North Macedonia's VNR stresses the particular threats children face to their health due to the lockdown, especially in terms of home-based violence.<sup>212</sup>

Conversely, the Federated States of Micronesia have stated that, although the pandemic has put economic strain on the State and its healthcare infrastructure, it has also empowered societal understandings of the need to have a healthy population in order to reduce the impacts of disease.<sup>213</sup>

Meanwhile, Samoa's VNR frames the Covid-19 issues in the larger context of its 2019 epidemic of measles in order to note the steps taken by the nation in securing a strong health foundation in this context that will then allow for broader steps toward achieving health-related SDGs and targets.<sup>214</sup>

Trinidad and Tobago's VNR discusses how the nation established a "parallel" healthcare system to specifically address pandemic prevention, testing and treatment while seeking to reduce the burden in the existing healthcare system.<sup>215</sup>

Brunei's VNR emphasizes the importance of its disease response systems generally as fulfilling both the requirements for SDG 3 targets and indicators as well as preparing it for the pandemic.<sup>216</sup> Despite this progress, Brunei's VNR warns that the State 'needs to continue to enhance

its capacities and preparedness level through a whole of nation approach linking all relevant sectors and players, including finance, health, agriculture, environment, emergency responders, security agencies and others, in working closely together to protect public health'.<sup>217</sup> The goal of this coordination is to immediately handle the pandemic and draft national laws and policies that implement and respond to the changing needs of the International Health Regulations and associated WHO guidance and policy.<sup>218</sup>

Bulgaria's VNR focuses on its efforts to undertake pre-emptive studies and medical policy guidance to address Covid-19 prior to the first reports of cases in the State.<sup>219</sup> This included establishing a system to provide medical personnel with information on the virus as well as the known complications associated with it.<sup>220</sup> Additionally, and interrelated with the provisions of SDG 16 relating to transparency and public participation, the Bulgarian response to Covid-19 has included the creation and maintenance of a website with updated data and statistical information, which can be accessed by all members of the public.<sup>221</sup>

The VNR submitted by the Democratic Republic of Congo emphasizes the devastating impact of Covid-19 throughout the country, including the negative effects due to the development and economic stresses that existed beforehand and are exacerbated by the pandemic.<sup>222</sup> Ecuador's VNR stresses the need to continue the progress made prior to the onset of the pandemic, noting that a decent standard of living, adequate nutrition, health care, education, decent work and protection against calamities are not simply development goals, but

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<sup>210</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Kenya* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/KENYA.pdf>> accessed 23 December 2020.

<sup>211</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Mozambique* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/MOZAMBIQUE.pdf>> accessed 23 December 2020.

<sup>212</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – North Macedonia* (2020) <[https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/NORTH\\_MACEDONIA.pdf](https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/NORTH_MACEDONIA.pdf)> accessed 23 December 2020.

<sup>213</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Micronesia* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/MICRONESIA.pdf>> accessed 23 December 2020).

<sup>214</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Samoa* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/SAMOA.pdf>> accessed 23 December 2020.

<sup>215</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Trinidad & Tobago* (2020) <[https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/TRINIDAD\\_AND\\_TOBAGO.pdf](https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/TRINIDAD_AND_TOBAGO.pdf)> accessed 23 December 2020.

<sup>216</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Brunei* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/BRUNEL.pdf>> accessed 23 December 2020.

<sup>217</sup> *Ibidem*.

<sup>218</sup> *Ibidem*.

<sup>219</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Bulgaria* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/BULGARIA.pdf>> accessed 23 December 2020.

<sup>220</sup> *Ibidem*.

<sup>221</sup> *Ibidem*.

<sup>222</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Democratic Republic of Congo* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/DRC.pdf>> accessed 23 December 2020.

also rights inherent to human dignity and freedom.<sup>223</sup>

Concerns regarding the implementation of health-related SDG provisions such as SDG 3 must be analyzed in conjunction with other SDGs that have a bearing on health. A key example of this comes from SDG 2, relating to hunger and food security.

Bangladesh emphasizes the dimensions of these issues in its VNR and notes that there is a cruel lack of food in many areas and yet a high number of crops, estimated to be at least 6 months' worth, are waiting to be harvested due to the inability of laborers to work.<sup>224</sup> This, combined with similar issues in terms of livestock and fishing, has created issues for the nation.<sup>225</sup> Argentina's VNR notes that there is a joint national and provincial effort to address hunger concerns and the pandemic both distinctly and as joint issues.<sup>226</sup> Brunei's VNR notes that it had taken significant steps toward achieving food security prior to the pandemic outbreak, which allowed it to advance SDG 2 and also maintain market stability for staple food stuffs, such as rice, when there were fears of global shortages at the beginning of the pandemic.<sup>227</sup> Peru's VNR discusses the importance of addressing hunger and food security concerns in its pre-Covid-19 policies and confirms that these concerns have been brought into sharper focus during the pandemic.<sup>228</sup> Samoa's VNR emphasizes the ways in which national responses to Covid-19 have involved an increased emphasis on local and sustainable farming as well as harvesting practices to ensure that food security is advanced both in the short and long-term.<sup>229</sup>

The Gambia's VNR stresses the underlying poverty situation that existed before the pandemic and explains that Covid-19 will likely exacerbate poverty rates.<sup>230</sup> Additionally, the impact of the

pandemic on non-Covid-19 related illnesses and healthcare issues have been observed, which impacts SDG 3.<sup>231</sup>

States also noted that concerns related to health that are addressed by SDGs such as poverty, employment, food access and food security, education and gender inclusion, have been negatively impacted the pandemic.<sup>232</sup> The Gambia stated that it expects gains made across the spectrum of SDGs to be reversed by the pandemic.<sup>233</sup> Similar concerns have been raised in the Honduran VNR, which explains that there have been reversals in the achievement of nearly every SDG as a result of the pandemic and national, regional and international economic downturns.<sup>234</sup>

Georgia's VNR also explains that the pandemic has exposed flaws in many facets of the national response system.<sup>235</sup> Georgia considers "an assessment and revision of the national social protection system that would also include not only the central level, but also social assistance programs provided at the local level," and underlines that there will be a special focus on including persons with disabilities in these programs.<sup>236</sup> For the dissemination of information related to Covid-19, Georgia has established an open-access website in multiple languages and also a specific telephone number that can be used by children who are impacted by the pandemic and associated social issues.<sup>237</sup> Peru's VNR describes an array of health issues that existed before the pandemic and explains that these were intended to be targeted in efforts to achieve the SDGs. It further explains that the pandemic has undermined these efforts and likely exacerbated many of these issues, or at the very least resulted in reductions in their treatment.<sup>238</sup>

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<sup>223</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Ecuador* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/Ecuador.pdf>> accessed 23 December 2020.

<sup>224</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Bangladesh* (2020).

<sup>225</sup> *Ibidem*.

<sup>226</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Argentina* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/ARGENTINA.pdf>> accessed 23 December 2020.

<sup>227</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Brunei* (2020).

<sup>228</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Peru* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/PERU.pdf>> accessed 23 December 2020.

<sup>229</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Samoa* (2020).

<sup>230</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Gambia* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/GAMBIA.pdf>> accessed 23 December 2020.

<sup>231</sup> *Ibidem*.

<sup>232</sup> *Ibidem*.

<sup>233</sup> *Ibidem*.

<sup>234</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Honduras* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/HONDURAS.pdf>> accessed 23 December 2020.

<sup>235</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Georgia* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/GEORGIA.pdf>> accessed 23 December 2020.

<sup>236</sup> *Ibidem*.

<sup>237</sup> *Ibidem*.

<sup>238</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Peru* (2020).

It is widely accepted that, although necessary in certain situations linked to the pandemic, declarations of emergency and similar invocation of extraordinary governmental powers pose a threat to human rights standards, including those enshrined in the SDGs. Several States have discussed their use of such measures in their VNRs.<sup>239</sup> For instance, Bulgaria explains that it initially implemented a national state of emergency in March 2020, seeking to balance public health concerns with established human rights laws and constitutional legal systems.<sup>240</sup> Following this, the state of emergency was extended several times, each for a short duration, and slowly resulting in a slightly lowered level of control by the end of June 2020.<sup>241</sup> Similarly, Panama entered into a national state of emergency in March 2020 and has extended it to the end of the pandemic, while taking measures to refine it in order to address the changing needs of the population and public health situation.<sup>242</sup> In conjunction with this, Panama has adopted a number of laws and rules to further address the pandemic, including lockdown orders, limitations on travel, bioethical requirements for testing and treatment, economic assistance measures, and the incorporation of technology in fighting the virus.<sup>243</sup>

### **2.3. Conclusions and Summary of Key Recommendations**

The SDGs represent the global community's second statement of the issues and priorities facing national and international communities for the short- and long-term. While the SDGs represent a more nuanced statement than the MDGs, when States drafted them in 2015, they did not have a potential pandemic in mind. The Covid-19 pandemic has highlighted areas of challenge in the implementation of the SDGs, although it has also emphasized areas in which states have been able to advance the goals and targets of the SDGs.

At the organizational level, the HLPF is a significant source of assistance for understanding and assessing the parameters of SDG implementation. However, the lack of a more frequently occurring mechanism to review the

VNRs in the face of crisis is a pressing concern. Additionally, just as the SDGs are cross-cutting, international organizational response to the concerns raised by the pandemic in relation to the SDGs must be coordinated across entities and subject areas, for example the continuing work between the WHO and FAO.

Nationally and sub-nationally, States must ensure efficient responses to the pandemic to ensure that (i) all populations, especially the most vulnerable communities, receive appropriate medical care, and that (ii) funding and resource allocations continue for other health concerns. This includes ensuring that plans for funding future health responses focus on all aspects of health concerns, communicable and noncommunicable diseases alike. States must also ensure that their responses are taking into account issues that are exacerbated by the pandemic and associated economic downturn such as gender and educational priorities set out in the SDGs, as well as SDG 2's requirements to advance food security and combat hunger. Additionally, States should ensure that, at the national and international level, there is adherence to public participation and transparency in government decision-making as required in SDG 16.

This is essential to preserve the health of people and the environment and ensure that marginalized communities are able to access these processes despite lockdowns and gathering restrictions.

## **Chapter 3: Exacerbation of Inequalities**

### **3. Introduction**

Covid-19 has brought to light the underlying, pre-existing inequalities that affect marginalized groups throughout the world.<sup>244</sup> A common denominator of these groups is a heavy reliance on the informal economy due to several social barriers. This is an aspect of the economy that has been highly impacted by measures adopted worldwide. In times of crisis, government safety nets protect workers operating in the formal economy. The

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<sup>239</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Papua New Guinea* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/PapuaNewGuinea.pdf>> accessed 23 December 2020.

<sup>240</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Bulgaria* (2020).

<sup>241</sup> *Ibidem*.

<sup>242</sup> United Nations, Office of the High Commissioner of Human Rights, *Voluntary National Reviews – Panama* (2020) <<https://www.ohchr.org/Documents/Issues/SDGS>

<<https://www.ohchr.org/Documents/Issues/SDGS/2020VNRCountries/PANAMA.pdf>> accessed 23 December 2020.

<sup>243</sup> *Ibidem*.

<sup>244</sup> UN Women and Translators Without Borders, *COVID-19: How to include marginalized and vulnerable people in risk communication and community engagement* (Risk Communication and Community Engagement Working Group on COVID-19 Preparedness and Response in Asia and the Pacific, March 2020) <[https://reliefwb.int/sites/reliefwb.int/files/resources/COVID-19\\_CommunityEngagement\\_130320.pdf](https://reliefwb.int/sites/reliefwb.int/files/resources/COVID-19_CommunityEngagement_130320.pdf)> accessed 23 December 2020.

Covid-19 pandemic has been no different.<sup>245</sup> Tax breaks,<sup>246</sup> job retention schemes,<sup>247</sup> and working time reduction programs<sup>248</sup> are measures levied solely in formal economic environments. Despite having pre-existing vulnerabilities - including high risks of poverty, high occupational risks, inferior working conditions, and an absence of adequate risk management instruments<sup>249</sup> - and operating in conditions that make them particularly vulnerable to contracting the virus,<sup>250</sup> workers in the informal economy are left out of key social and financial protection initiatives and relief programs.<sup>251</sup> Thus, workers in the informal economy, representing more than 61% of the world's population,<sup>252</sup> are bearing the brunt of the health and economic crisis catalyzed by Covid-19.<sup>253</sup> Similarly, most of these groups tend to occupy areas that are prone to natural disasters, and with limited capacities to cope with and adapt to new realities.

In the midst of the pandemic, some countries have engaged in discriminatory practices against vulnerable communities and minorities. A better response is necessary to include priority, differential assistance and active participation in decision-making processes by marginalized communities to generate pandemic-responsive policies that include the needs and perspectives of all.<sup>254</sup> The UN High Commissioner for Human Rights, the IACHR, the Inter-American Network on Afro-descendant Population Policies (RIA-FRO), and the UN Working Group of Experts on People of

African Descent have each issued statements urging States to actively combat discrimination and to address the disparate impact of the pandemic on racial and ethnic minorities.<sup>255</sup>

Pre-existing issues such as economic inequality, overcrowded housing, environmental risks, limited availability and access to health services, and bias in provision of care all play a part in the disproportionate impact that the pandemic has on marginalized communities.<sup>256</sup> Structural racism and pervasive discrimination are embedded in our societies.<sup>257</sup> Hence, Covid-19-related expressions of racism and xenophobia have taken the form of harassment, hate speech, proliferation of discriminatory stereotypes, and conspiracy theories, some perpetuated by nationalist and populist leaders.<sup>258</sup>

### 3.1. Environmental Justice

Ecosystems suffer environmental damages that can mirror the environmental damages experienced by the most marginalized human beings across the planet.<sup>259</sup> Environmental justice is 'the fair treatment of people regardless of ethnic origin or class in the distribution of negative environmental consequences from development plans and policies, industrial operations, or natural disasters

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<sup>245</sup> IMF, *Policy Responses to COVID-19: Policy Tracker* <<https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>> accessed 23 December 2020.

<sup>246</sup> Max Gallien & Vanessa van den Boogaard, 'To fight COVID-19, only the formal economy is getting tax breaks. The informal economy may be asked to foot the bill' *International Center for Tax and Development* (8 April 2020) <<https://www.ictd.ac/blog/covid-coronavirus-tax-breaks-informal-economy-workers/>> accessed 23 December 2020.

<sup>247</sup> Stefano Scarpetta et al., *Job retention schemes during the COVID-19 lockdown and beyond* (OECD August 2020) <<https://www.oecd.org/coronavirus/policy-responses/job-retention-schemes-during-the-covid-19-lockdown-and-beyond-0853ba1d/>> accessed 23 December 2020.

<sup>248</sup> Giulia Giupponi and Camille Landais, 'Building effective short-time work schemes for the COVID-19 crisis' *VOX EU CEPR* (1 April 2020) <<https://voxeu.org/article/building-effective-short-time-work-schemes-covid-19-crisis>> accessed 30 September 2021.

<sup>249</sup> OECD/ILO, *Tackling Vulnerability in the Informal Economy* (Development Centre Studies OECD Paris 2019).

<sup>250</sup> Gallien & van den Boogaard, (n 246).

<sup>251</sup> 'Relief for Informal Workers: Falling through the Cracks in COVID-19' *CGAP* (August 2020) <<https://www.cgap.org/research/publication/relief-informal-workers-falling-through-cracks-covid-19>> accessed 23 December 2020.

<sup>252</sup> 'More than 60 per cent of the world's employed population are in the informal economy' *ILO* (30 April 2018)

<[https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_627189/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_627189/lang-en/index.htm)> accessed 23 December 2020.

<sup>253</sup> International Labour Organization, *COVID-19 crisis and the informal economy: Immediate responses and policy challenges* (ILO, May 2020), <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/briefingnote/wcms\\_743623.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/briefingnote/wcms_743623.pdf)> accessed 23 December 2020.

<sup>254</sup> 'COVID-19 Guidance From Supranational Human Rights Bodies' *International Justice Resource Center* <[https://ijrcenter.org/covid-19-guidance-from-supranational-human-rights-bodies/#Human\\_rights\\_defenders\\_assembly\\_and\\_association](https://ijrcenter.org/covid-19-guidance-from-supranational-human-rights-bodies/#Human_rights_defenders_assembly_and_association)> accessed 23 December 2020.

<sup>255</sup> 'Disproportionate Impact of COVID-19 on ethnic and racial minorities needs to be urgently addressed - Bachelet' *OHCHR* (2 June 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25916&LangID=E>> accessed 23 December 2020.

<sup>256</sup> *Ibidem*.

<sup>257</sup> Claudia Wallis, 'Why Racism, Not Race, is a Risk Factor for Dying of COVID-19' *Scientific American* (12 June 2020) <<https://www.scientificamerican.com/article/why-racism-not-race-is-a-risk-factor-for-dying-of-covid-19/>> accessed 23 December 2020.

<sup>258</sup> *OHCHR*, 2 June 2020, (n 255).

<sup>259</sup> David Naguib Pellow, *What is Critical Environmental Justice?* (Wiley 2017).

and as fair access to natural resources and a clean environment'.<sup>260</sup>

Environmental injustices and health inequalities are deeply intertwined. Evidence establishes a correlation between inequitable air pollution exposure and human health, especially children's health.<sup>261</sup> It is now widely recognized that air pollutants affect humans' lungs and can cause significant respiratory issues.<sup>262</sup> Because Covid-19 is an infectious disease caused by a respiratory pathogen,<sup>263</sup> there is now evidence of the interrelation between high levels of pollution and an increased risk of death or severe symptoms from Covid-19.<sup>264</sup> Communities living near heavily polluted areas indeed have a reduced lung capacity and thus a higher risk of mortality.<sup>265</sup> Further, the provision of safe water, sanitation, waste management, and hygienic conditions are essential to prevent the spread of viruses and to protect human health.<sup>266</sup> In addition, Indigenous communities around the world experience inadequate access to healthcare, higher rates of communicable diseases, lack of access to essential services, sanitation, as well as preventive tools such as soap or disinfectant.<sup>267</sup>

In the US, Covid-19 disproportionately affects African Americans, Indigenous Americans and other populations of color compared to Whites.<sup>268</sup>

As of March 2<sup>nd</sup>, 2021, 1 in 555 Black Americans and 1 in 390 Indigenous Americans had died compared to 1 in 665 White Americans.<sup>269</sup> Environmental injustice in the US also results from historic redlining<sup>270</sup> and discriminatory housing practices that still prevent communities of color from safe and affordable housing.<sup>271</sup> As a result, communities of color disproportionately face injustices such as a lack of access to fresh and healthy food as well as exposure to air and water pollution. These injustices, and especially air pollution, exacerbate the underlying conditions that make these communities particularly at risk from Covid-19.

Research indicates that African-Americans are disproportionately dying due to the virus: they represented up to 72% of fatalities in Chicago, 70% in Louisiana and 41% in Michigan.<sup>272</sup> A Harvard study suggests that people infected with Covid-19 who live in US regions with high levels of air pollution are more likely to die from the disease than people who live in less polluted areas.<sup>273</sup> The study explicitly specified that 'an increase of only 1 g/m<sup>3</sup> in PM<sub>2.5</sub> is associated with a 8% increase in the Covid-19 death rate'.<sup>274</sup> The study further highlighted the 'importance of continuing to

<sup>260</sup> Tamara Steger and Richard Filcak, 'Articulating the Basis for Promoting Environmental Justice in Central and Eastern Europe' *Environmental justice* (1, 1, 2008) 1.

<sup>261</sup> Spencer Banzhaf, Lala Ma, and Christopher Timmins, 'Environmental Justice : the Economics of Race, Place, and Pollution' *Journal of Economic Perspective* (33, 1, Winter 2019) 193.

<sup>262</sup> See e.g. Aaron J. Cohen and C. Arden Pope III, 'Lung Cancer and Air Pollution' *Environmental Health Perspectives* (1995); Talat Islam et al., 'Relationship between air pollution, lung function and asthma in adolescents' *Thorax* (62, 11, 2007) 957, 963.

<sup>263</sup> World Health Organization <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19>> accessed 23 December 2020.

<sup>264</sup> See Sacoby Wilson, 'Connecting the Dots Between Environmental Injustice and the Coronavirus', interview by Katherine Bagley' *Yale Environment* 360 (7 May 2020) <<https://e360.yale.edu/features/connecting-the-dots-between-environmental-injustice-and-the-coronavirus>> accessed 23 December 2020.

<sup>265</sup> *Ibidem*.

<sup>266</sup> WHO and UNICEF, *Water, Sanitation, Hygiene, and Waste Management for SARS-CoV-2, The Virus that Causes COVID-19* (WHO 2020) <<https://www.who.int/publications/i/item/WHO-2019-nCoV-IPC-WASH-2020.4>> accessed 23 December 2020.

<sup>267</sup> United Nations Department of Economic and Social Affairs, *COVID-19 and Indigenous Peoples* (2020) <[https://www.un.org/development/desa/indigenouspeoples/covid-19.html#:~:text=The%20coronavirus%20\(COVID%2D19\),Indigenous%20peoples%20around%20the%20world.&text=Some%20indigenous%20communities%20also%20live,especially%20the%20Elders%2C%20at%20risk](https://www.un.org/development/desa/indigenouspeoples/covid-19.html#:~:text=The%20coronavirus%20(COVID%2D19),Indigenous%20peoples%20around%20the%20world.&text=Some%20indigenous%20communities%20also%20live,especially%20the%20Elders%2C%20at%20risk)> accessed 23 December 2020.

<sup>268</sup> APM Research Lab, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.* (10 December 2020) <<https://www.apmresearchlab.org/covid/deaths-by-race>> accessed 12 December 2021.

<sup>269</sup> *Ibidem*.

<sup>270</sup> The term "redlining" comes from the development by the federal government of maps of every metropolitan area in the country. See Terry Gross, 'A 'Forgotten History' of How the U.S. Government Segregated America' *npr KQED* 3 May 2017) <<https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>> accessed 23 December 2020.

<sup>271</sup> Sam Fulwood III, 'The United States' History of Segregated Housing Continues to Limit Affordable Housing' *Center For American Progress* (15 December 2016) <<https://www.americanprogress.org/issues/race/reports/2016/12/15/294374/the-united-states-history-of-segregated-housing-continues-to-limit-affordable-housing/>> accessed 23 December 2020.

<sup>272</sup> John Eligon et al., 'Black Americans Face Alarming Rates of Coronavirus Infections in Some States' *New York Times* (7 April 2020) <<https://www.nytimes.com/2020/04/07/us/coronavirus-race.html>> accessed 23 December 2020.

<sup>273</sup> Xiao Wu et al, 'Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis' *Science advances* (6, 45, 2020) <<https://projects.iq.harvard.edu/covid-pm>> accessed 23 December 2020.

<sup>274</sup> *Ibidem*.

enforce existing air pollution regulations to protect human health'.<sup>275</sup>

Pre-existing health issues due to air pollution thus make these communities more likely to have Covid-19 complications. However, the study did not consider other pollutants these communities are exposed to, thus potentially underestimating the real risk of Covid-19 mortality due to air pollution.<sup>276</sup> In addition, the high mortality rate among African Americans is a result of a lack of adequate healthcare, pre-existing medical conditions, and a lack of possibility to work from home and thus to respect social distancing.<sup>277</sup>

Indigenous communities in the US are also disproportionately affected. The Navajo Nation reached one of the highest per capita rates in the US in May 2020 due to poor healthcare as well as inadequate water and electrical infrastructures resulting from a lack of federal policies to improve their standards of living.<sup>278</sup> Similarly, Brazilian Indigenous peoples are among the most vulnerable to the Covid-19 due to air pollution and a lack of clean running water. As of October 13, 2020, the Articulation of Indigenous Peoples in Brazil (APIB)<sup>279</sup> reported that there had been 426 deaths amongst Indigenous peoples and 11,385 cases across a total of 124 Indigenous groups located in Brazil.<sup>280</sup>

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<sup>275</sup> *Ibidem.*

<sup>276</sup> Sacoby Wilson's interview (n 264).

<sup>277</sup> Alexandra Sternlicht, 'Higher Coronavirus Mortality Rates for Black Americans and People Exposed to Air Pollution' *Forbes* (7 April 2020) <<https://www.forbes.com/sites/alexandrasternlicht/2020/04/07/higher-coronavirus-mortality-rates-for-people-exposed-to-air-pollution-black-americans/#63ce94ce362f>> accessed 23 December 2020.

<sup>278</sup> Cody Nelson, 'Covid Ravages Navajo Nation as Trump Makes Election Play for Area' *The Guardian* (8 October 2020) <<https://www.theguardian.com/us-news/2020/oct/08/navajo-nation-coronavirus-pandemic>> accessed 23 December 2020.

<sup>279</sup> Articulação dos Povos Indígenas do Brasil (APIB) <<https://ifnotusthenwho.me/who/articulacao-dos-povos-indigenas-do-brasil-apib/>> accessed 23 December 2020.

<sup>280</sup> Grace Iara Souza, 'Brazil's indigenous peoples face a triple threat from COVID-19, the dismantling of socio-environmental policies, and international inaction' *LSE* (8 July 2020) <<https://blogs.lse.ac.uk/latamcaribbean/2020/07/08/brazils-indigenous-peoples-face-a-triple-threat-from-covid-19-the-dismantling-of-socio-environmental-policies-and-international-inaction/>> accessed 30 September 2021.

<sup>281</sup> Mauricio Angelo, 'Lack of clean water leaves Brazil indigenous reserve exposed to coronavirus' *Reuters* (21 April 2020) <<https://www.reuters.com/article/us-health-coronavirus-brazil-indigenous/lack-of-clean-water-leaves-brazil-indigenous-reserve-exposed-to-coronavirus-idUSKCN2232H1>> accessed 23 December 2020.

<sup>282</sup> *Ibidem.*

For example, the Dourados Indigenous Reserve does not have a constant source of water due to interruption of their water supply, which can happen several times a day or even for days at a time.<sup>281</sup> In addition, many outsiders kept travelling through the reserve despite the government's stay-at-home order, increasing the risk of spreading the virus within Indigenous communities.<sup>282</sup> Thus, Covid-19 is a double threat to these communities since Brazil's government has marginalized and neglected them, violating their rights of protection imposed by international agreements. In addition, these communities lack medical assistance, doctors, basic medications or the most advanced mechanisms needed to limit the Covid-19 outbreak.<sup>283</sup> *Medicines Sans Frontiers* reported that these communities present a high prevalence of diabetes and hypertension cases, which increase the risk of developing severe Covid-19's symptoms that could lead to death.<sup>284</sup> Judge Barroso, from the Brazilian Supremo Tribunal Federal (STF), thus stated<sup>285</sup> that there is a need to create a crisis response team to protect these communities by preventing outsiders from entering their territories without permission.<sup>286</sup>

The spread of the coronavirus within communities of color, Indigenous peoples and working-class communities clearly illustrate that Covid-19 is not only a health crisis, but also reflects

<sup>283</sup> Lucas Ferrante & Philip M. Fearnside, 'Protect Indigenous peoples from COVID-19' *Science* (368, 6488, 2020) 251.

<sup>284</sup> See CDC statement: 'Having any of the following serious heart conditions increases your risk of severe illness from COVID-19 : heart failure, coronary artery disease, cardiomyopathies, pulmonary hypertension', *Center for Disease Control* (1 December 2020) <<http://cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#:~:text=Having%20%other%20cardiovascular%20or%20cerebrovascular.from%20COVID-19>> accessed 23 December 2020. See also the American Diabetes Association statement: "People with diabetes have much higher rates of serious complications and death than people without diabetes—and generally we believe that the more health conditions someone has (for example, diabetes and heart disease), the higher their chance of getting serious complications from COVID-19", *American Diabetes Association* <<https://www.diabetes.org/coronavirus-covid-19>> accessed 23 December 2020.

<sup>285</sup> 'Barroso determina que governo federal adote medidas para conter avanço da Covid-19 entre indígenas' *Supremo Tribunal Federal* (8 July 2020) <<http://stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=447103&caixaBusca=N>> accessed 23 December 2020.

<sup>286</sup> Nadia Rubaii and Julio José Araujo Junior, 'Judge Orders Brazil to Protect Indigenous People from ravages of COVID-19' *The Conversation* (9 July 2020) <<https://theconversation.com/judge-orders-brazil-to-protect-indigenous-people-from-ravages-of-covid-19-142356>> accessed 23 December 2020.



an environmental justice crisis. The exacerbation of pre-existing health issues due to environmental injustice in minority communities causes the pandemic to highlight the necessity to advance environmental justice for all and to reduce air and water pollution to face the challenges of future pandemics. This further underlines the link between human health and the natural environment in which people live as well as the quality of food and water they have access to.

### 3.2. Covid-19 and Vulnerable Groups

Women tend to be a disproportionate part of the health workforce, and are primary caregivers to children, the elderly, and the ill. Women experience increased risks of gender-based violence, including sexual exploitation, and might experience interrupted access to sexual and reproductive health services during lockdowns and movement restrictions associated with Covid-19.<sup>287</sup> Concerns over a rise in domestic violence due to lockdown measures were shared among different countries worldwide, and a number of human rights activists issued statements aimed at preventing or addressing domestic violence during the pandemic.<sup>288</sup> The main concerns were thus to

address gender-based violence occurring when women were trapped at home with their abusers and to ensure access to justice during the pandemic.

Human rights activities also highlighted that the pandemic could harm women economically and threaten their financial independence.<sup>289</sup>

Additionally, women are impacted by restrictions on access to reproductive and sexual rights services.<sup>290</sup>

Women who are part of marginalized groups and suffer from intersectional discriminations, such as women with disabilities, elderly women, and migrant women, are the ones most at risk.<sup>291</sup>

The pandemic also exacerbated the risks of children dropping out from school due to the temporary suspension of most educational institutions, gender-based violence, exploitation, and separation from families.<sup>292</sup> The UN Secretary General (UNSG) identified some of the most daunting impacts that children may face, such as (i) poverty as a result of the economic crisis; (ii) exacerbation of the learning crisis due to school closures, (iii) threats to child survival and health due to economic hardship and malnutrition; and (iv) risks for child safety because of domestic violence and abuse.<sup>293</sup>

<sup>287</sup> UN Women and Translators Without Borders, *COVID-19: How to include marginalized and vulnerable people*.

<sup>288</sup> 'Press Release of the Special Rapporteur on the Rights of Women in Africa on violation of women's rights during the COVID-19 Pandemic' *African Commission on Human and People's Rights* (6 May 2020) <<https://www.achpr.org/pressrelease/detail?id=495>> accessed 23 December 2020; 'The IACHR calls on Member States to adopt a gender perspective in the response to the COVID-19 pandemic and to combat sexual and domestic violence in this context' *OAS* (11 April 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/074.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/074.asp)> accessed 23 December 2020; OAS, CIM & MESECVI, *Violence Against Women and the Measures to Contain the Spread of COVID-19* (OAS OEA/Ser.L/II.6.26, 2020) <<http://www.oas.org/en/cim/docs/COVID-19-RespuestasViolencia-EN.pdf>> accessed 23 December 2020; Council of Europe, *COVID-19 crisis: Secretary General concerned about the increased risk of domestic violence* 30 March 2020) <<https://www.coe.int/en/web/portal/-/covid-19-crisis-secretary-general-concerned-about-increased-risk-of-domestic-violence>> accessed 23 December 2020; Council of Europe, *Declaration of the Committee of the Parties to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) on the implementation of the Convention during the COVID-19 pandemic* (20 April 2020) <<https://rm.coe.int/declaration-committee-of-the-parties-to-ic-covid-16809e33c6>> accessed 23 December 2020; 'Guidance Note on CEDAW and COVID-19' *CEDAW* (2020) <[https://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/CEDAW\\_Guidance\\_note\\_COVID-19.docx](https://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/CEDAW_Guidance_note_COVID-19.docx)> accessed 23 December 2020; OHCHR, *States must combat domestic violence in the context of COVID-19 lockdowns - UN*

*rights expert* (27 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25749&LangID=E>> accessed 23 December 2020; Association of Southeast Asian Nations, *ASEAN calls for protective and preventive measures against domestic violence towards women and children during COVID-19 pandemic* (5 June 2020) <<https://asean.org/asean-calls-protective-preventive-measures-domestic-violence-towards-women-children-covid-19-pandemic/>> accessed 23 December 2020; UN WOMEN, *COVID-19 and Ending Violence Against Women and Girls* (2020) <<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>> accessed 23 December 2020.

<sup>289</sup> OAS, CIM & MESECVI, *Violence Against Women and the Measures to Contain the Spread of COVID-19*.

<sup>290</sup> Council of Europe, *COVID-19: Ensure women's access to sexual and reproductive health and rights* (7 May 2020) <<https://www.coe.int/en/web/commissioner/-/covid-19-ensure-women-s-access-to-sexual-and-reproductive-health-and-rights>> accessed 23 December 2020.

<sup>291</sup> Council of Europe, *COVID-19 crisis: Secretary General concerned about the increased risk of domestic violence*.

<sup>292</sup> African Committee of Experts on the Rights & Welfare of the Child, *Guiding Note on Children's Rights during COVID-19* (8 April 2020) <<https://www.acerwc.africa/Latest%20News/guiding-note-on-childrens-rights-during-covid-19/>> accessed 23 December 2020.

<sup>293</sup> United Nations, *Policy brief: The Impact of COVID-19 on Children* (15 April 2020) <[https://unsdg.un.org/sites/default/files/202004/160420\\_Covid\\_Children\\_Policy\\_Brief.pdf](https://unsdg.un.org/sites/default/files/202004/160420_Covid_Children_Policy_Brief.pdf)> accessed 23 December 2020.

Additionally, internet connection and access to electronic devices can be a significant obstacle, especially for children in vulnerable and secluded communities, hindering their education and reinforcing their sense of isolation.

With regards to people with disabilities, one of the most significant challenges they face during the pandemic is the lack of access to adequate information. Most of the time, information is not available as auditory, visual, psychosocial, and physical measures. As a result, they are excluded from decision-making processes and are often unaware of important steps to be taken in events such as the pandemic. Hence, this makes it harder for them to access health services.<sup>294</sup> People with disabilities are more likely to experience poverty, face catastrophic health expenses, have lower levels of education, and live in households more exposed to economic hardship.<sup>295</sup> Additionally, they face multiple barriers such as stigma, inaccessibility to infrastructures, transports and information systems, and the lack of inclusive public policies

and services.<sup>296</sup> It is crucial to understand and take into account the differentiated impacts that persons with disabilities face during the pandemic and to develop an inclusive social response to Covid-19 for them.<sup>297</sup>

With regards to migrants, several international organizations and representatives issued guidelines and statements to ensure respect of their rights during the pandemic.<sup>298</sup> Many migrants and refugees are hosted in developing countries where health services conditions are precarious. Many live in overcrowded camps or settlements where they lack access to clean water, sanitation, and health services.<sup>299</sup> They also face issues including lack of education for their children, xenophobia, discrimination, immigration detention, and difficulties to find safe and appropriate jobs.

Trafficked and exploited persons, who were already in a particularly precarious situation, see their vulnerabilities exacerbated by the pandemic because of the rise of unemployment, and the delays experienced by immigration services.<sup>300</sup>

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<sup>294</sup> UN Women and Translators Without Borders, *COVID-19: How to include marginalized and vulnerable people*.

<sup>295</sup> UNPRPD, UN Human Rights Special Procedures, Embracing Diversity, UNICEF, International Disability Alliance, International Labour Organization, *Disability Inclusive Social Protection Response to COVID-19 Crisis* (2020) <[https://www.ohchr.org/Documents/Issues/Disability/Leaflet\\_CRPD\\_COVID19.pdf](https://www.ohchr.org/Documents/Issues/Disability/Leaflet_CRPD_COVID19.pdf)> accessed 23 December 2020.

<sup>296</sup> *Ibidem*.

<sup>297</sup> UN Human Rights Special Procedures, World Health Organization, Embracing Diversity, *Disability Considerations during the COVID-19 outbreak* (2020) <[https://www.ohchr.org/Documents/Issues/Disability/COVID-19\\_disability\\_logos.pdf](https://www.ohchr.org/Documents/Issues/Disability/COVID-19_disability_logos.pdf)> accessed 23 December 2020.

<sup>298</sup> UN Committee on Migrant Workers & UN Special Rapporteur on the Human Rights of Migrants, *Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants* (26 May 2020) <<https://www.ohchr.org/Documents/Issues/Migration/CMWPSMJointGuidanceNot-eCOVID-19Migrants.pdf>> accessed 23 December 2020; OHCHR, *COVID-19 and the Human Rights of Migrants: Guidance* (7 April 2020) <[https://ohchr.org/Documents/Issues/Migration/OHCHRGuidance\\_COVID19Migrants.pdf](https://ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19Migrants.pdf)> accessed 23 December 2020; United Nations, *Policy brief: COVID-19 and people on the move* (2020) <[https://www.un.org/sites/un2.un.org/files/sg\\_policy\\_brief\\_on\\_people\\_on\\_the\\_move.pdf](https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_people_on_the_move.pdf)> accessed 23 December 2020; 'La CIDH urge a los Estados proteger los derechos humanos de las personas migrantes, refugiadas y desplazadas frente a la pandemia del COVID-19' *OAS* (June 2020) <<http://www.oas.org/es/cidh/prensa/comunicados/2020/077.asp>> accessed 23 December 2020; Council of Europe, *States should ensure rescue at sea and allow safe disembarkation during the COVID-19 crisis* (16 April 2020) <[https://www.coe.int/en/web/commissioner/thematic-work/covid-19/-/asset\\_publisher/5cdZWOAJBMLI/content/states-should-ensure-rescue-at-sea-and-allow-safe-disembarkation-dur](https://www.coe.int/en/web/commissioner/thematic-work/covid-19/-/asset_publisher/5cdZWOAJBMLI/content/states-should-ensure-rescue-at-sea-and-allow-safe-disembarkation-dur)

[ing-the-covid-19-crisis?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fthematic-work%2F covid-19%3Fp\\_id%3D101\\_INSTANCE\\_5cdZWOAJBMLI%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D1](https://www.coe.int/en/web/commissioner/thematic-work/covid-19/-/asset_publisher/5cdZWOAJBMLI/content/states-should-ensure-rescue-at-sea-and-allow-safe-disembarkation-during-the-covid-19-crisis?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fthematic-work%2F covid-19%3Fp_id%3D101_INSTANCE_5cdZWOAJBMLI%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1)> accessed 23 December 2020; African Union, *Statement of the African Union (AU) Labour Migration Advisory Committee (LMAC) on the novel Coronavirus Disease COVID-19 and the condition of African Migrant Workers* (14 April 2020) <<https://au.int/en/pressreleases/20200414/statement-lmac-condition-african-migrant-workers-covid-19>> accessed 23 December 2020; African Union, *Migration & Mobility in Contexts of COVID-19* (10 April 2020) <<https://au.int/en/pressreleases/20200410/migration-mobility-contexts-covid-19>> accessed 23 December 2020; OHCHR, *UN experts call on Governments to adopt urgent measures to protect migrants and trafficked persons in their response to COVID-19* (3 April 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25774&LangID=E>> accessed 23 December 2020; OHCHR (n.d.), *The rights and health of refugees, migrants and stateless must be protected in COVID-19 response: A joint statement by UNHCR, IOM, OHCHR and WHO* <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25762&LangID=E>> accessed 23 December 2020; European Union Agency for Fundamental Rights & Council of Europe, *Fundamental rights of refugees, asylum applicants and migrants at the European borders* (2020) <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-coe-2020-european-law-land-borders\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-2020-european-law-land-borders_en.pdf)> accessed 23 December 2020.

<sup>299</sup> FRA & Council of Europe, *Fundamental rights of refugees*.

<sup>300</sup> Maria Grazia Giammarinaro, *COVID-19 Position paper The impact and consequences of the COVID-19 pandemic on trafficked and exploited persons* (Special Rapporteur on Trafficking in Persons, especially women and children, June 2020) <<https://www.ohchr.org/Documents/Issue/Traffic>

Similarly, internally displaced persons face issues related to their limited access to health care, water, sanitation, food, and adequate housing, as well as discrimination.<sup>301</sup>

The elderly population is among the most vulnerable groups to Covid-19, with the overall highest mortality rate. The elderly may not be able to access health services, or such services may be inadequate for their needs, and will likely depend on family and caregivers, which can be challenging in case of emergency. Further, they are isolated when their relatives, if any, cannot visit them.<sup>302</sup> They may also be unable to follow instructions or have difficulties in understanding them, which is why it is necessary to take into consideration their particular situation and conditions in determining policies that will assist them and protect them from additional risks.<sup>303</sup>

Finally, LGBTQIA+ persons face challenges to access healthcare systems due to stigma and discrimination, especially in contexts where their sexual orientation is criminalized. They also tend to be more isolated and may not be able to leave an affected area as easily as other non-marginalized persons.<sup>304</sup> Finally, they may suffer from pre-existing inequalities such as homelessness, reduced access to work and livelihood, and compromised immune systems, which makes them more vulnerable to Covid-19.<sup>305</sup>

### **3.3. Rights Infringed by COVID-19 that Particularly Affect Marginalized Communities**

Some of the most important human rights are highly undermined during pandemics, including the right to water and sanitation, the right to work, the right to health, the right to education, the right to food, the right to housing, the right to a healthy environment, and digital rights.

The right to water and sanitation is among the most affected human rights. The lack of access to clean water and sanitation exacerbates conditions of vulnerability, since marginalized populations living in shelters, informal settlements, the homeless and rural populations will often not be able to fully comply with the health guidelines in tackling the pandemic. Water is also likely to become scarce due to environmental concerns heightened during the pandemic, thus making it more difficult to access clean water. Several UN experts, including the Special Rapporteur on the human rights to safe drinking water and sanitation, issued a statement in March 2020 calling on governments to prohibit water cuts to those who cannot pay bills, and provide water free of cost for the duration of the crisis to people in conditions of poverty.<sup>306</sup>

The health-related measures adopted throughout the world have caused massive economic and social shocks, and the global economy is sliding into a recession, with workers facing unemployment, loss of income and

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ing/COVID-19-Impact-trafficking.pdf> accessed 30 September 2021

<sup>301</sup> 'COVID-19: Do not forget internally displaced persons, UN expert urges Governments worldwide' *OHCHR* (1 April 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25763&LangID=E>> accessed 30 September 2021.

<sup>302</sup> UN Women and Translators Without Borders, *COVID-19: How to include marginalized and vulnerable people*.

<sup>303</sup> 'IACHR Urges States to Guarantee the Rights of Older People during the COVID-19 Pandemic' *OAS* (13 April 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/088.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/088.asp)> accessed 23 December 2020; Council of Europe, *Older persons need more support than ever in the age of the Covid-19 pandemic* (20 March 2020) <[https://www.coe.int/en/web/commissioner/thematic-work/covid-19/-/asset\\_publisher/5cdZW0AJBMLI/content/older-persons-need-more-support-than-ever-in-the-age-of-the-covid-19-pandemic](https://www.coe.int/en/web/commissioner/thematic-work/covid-19/-/asset_publisher/5cdZW0AJBMLI/content/older-persons-need-more-support-than-ever-in-the-age-of-the-covid-19-pandemic)> accessed 23 December 2020; 'Unacceptable' – UN expert urges better protection of older persons facing the highest risk of the COVID-19 pandemic' *OHCHR* (27 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25748&LangID=E>> accessed 23 December 2020; Special Envoy of the United Nations Secretary-General on Disability and Accessibility & Independent Expert on the enjoyment of all human rights by older persons, *Joint Statement Women and girls with disabilities and older women in relation to the*

*COVID-19 pandemic* (28 April 2020) <<https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/04/covid19-joint-statement-women-girls-disabilities-olderwomen-covid19.pdf>> accessed 23 December 2020; Special Envoy of the United Nations Secretary-General on Disability and Accessibility & Independent Expert on the enjoyment of all human rights by older persons, *Joint Statement: The right to life of persons with disabilities and older persons infected by Covid-19* <<https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/04/Version2-Decl-Estandar-Bioet-Dpcd-ENabril20.pdf>> accessed 23 December 2020; United Nations, *Policy brief: the impact of COVID-19 on older persons* (May 2020) <[https://www.un.org/sites/un2.un.org/files/un\\_policy\\_brief\\_on\\_covid-19\\_and\\_older\\_persons\\_1\\_may\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_covid-19_and_older_persons_1_may_2020.pdf)> accessed 23 December 2020.

<sup>304</sup> UN Women and Translators Without Borders, *COVID-19: How to include marginalized and vulnerable people*.

<sup>305</sup> 'COVID-19 and the Human Rights of LGBTI people' *OHCHR* (17 April 2020) <<https://www.ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf>> accessed 23 December 2020.

<sup>306</sup> 'COVID-19 will not be stopped without providing safe water to people living in vulnerability – UN experts' *OHCHR* (23 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25738&LangID=E>> accessed 23 December 2020.

livelihoods, hence infringing the right to work.<sup>307</sup> Special attention should be paid to vulnerable groups that were already facing difficulties to access decent jobs, such as women, informal economy workers, young workers, older workers, migrants and refugees, and the self-employed.<sup>308</sup>

Disparities related to the right to health and access to health services are being exacerbated by the Covid-19 pandemic. In this context, the IACHR and Office of the Special Rapporteur on Economic, Social, Cultural, and Economic Rights (OSRESCER) called special attention to pre-existing inequalities to ensure timely and appropriate care.<sup>309</sup> They also placed special focus on efforts directed towards treating mental health issues since psychological distress in populations is widespread due to the immediate health impacts of Covid-19 and the consequences of physical isolation, economic turmoil and uncertainty.<sup>310</sup> Moreover, some people already experiencing mental health issues might have seen their treatments interrupted or modified, which only adds to their vulnerability.<sup>311</sup>

The right to education was severely impacted by school closings, which is daunting to children as it goes beyond a mere interruption of classes. In some cases, the right to adequate food is also compromised, notably where school breakfast or lunch programs are available because many children rely on free or subsidized school meals on a daily basis.<sup>312</sup> As mentioned earlier, it may also leave children, particularly girls, more vulnerable to abuse, domestic work prioritization over education, and other harmful practices. These measures could lead to permanent dropout rate

increases, particularly for girls, children with disabilities and children coming from economically disadvantaged parents.<sup>313</sup>

The right to food has also been adversely impacted. It was estimated that 820 million people were already identified as chronically food insecure prior to the outbreak of Covid-19, and the food security of 135 million people was categorized as crisis level or worse, a number that is estimated to have doubled during the pandemic.<sup>314</sup> Lockdown measures and border closures have affected food supply chains by slowing harvests and constraining transport of food to markets.<sup>315</sup> The Special Rapporteur on the Right to Food called for the immediate lifting of international economic sanctions in countries like Syria, Venezuela, Iran, Cuba, and Zimbabwe to prevent a hunger crisis.<sup>316</sup> She underscored that most of those countries are already under stress and cannot handle economic sanctions while fighting Covid-19.<sup>317</sup> However, the international community has been largely slow to respond.

Homelessness is a vital human rights issue, since the rights to housing, health and food are fundamental to human dignity.<sup>318</sup> Housing became the front line defense against the coronavirus, but it may not be an adequate measure for those who do not have a home and are forced to shelter in overcrowded places, lacking access to water and sanitation as well as the ability to safely distance from others, and the uncertainty regarding allowed duration of stay.<sup>319</sup> Likewise, people facing economic hardship and job losses may face eviction from their homes for failure to pay their rent or mortgage.<sup>320</sup>

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<sup>307</sup> ILO, *Policy brief: A policy framework for tackling the economic and social impact of the COVID-19 crisis* (May 2020) <[https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms\\_745337.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_745337.pdf)> accessed 23 December 2020.

<sup>308</sup> *Ibidem*.

<sup>309</sup> 'IACHR and OSRESCER Urge States to Guarantee Comprehensive Protection for Human Rights and Public Health during the COVID-19 Pandemic' *OAS* (20 March 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/060.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/060.asp)> accessed 23 December 2020.

<sup>310</sup> United Nations, *Policy brief: COVID-19 and the need for action on mental health* (13 May 2020) <[https://www.un.org/sites/un2.un.org/files/un\\_policy\\_brief-covid\\_and\\_mental\\_health\\_final.pdf](https://www.un.org/sites/un2.un.org/files/un_policy_brief-covid_and_mental_health_final.pdf)> accessed 13 December 2020.

<sup>311</sup> *Ibidem*.

<sup>312</sup> ACERWC, *Guiding Note on Children's Rights during COVID-19* <<https://www.acerwc.africa/Latest%20News/guiding-note-on-childrens-rights-during-covid-19/>> accessed 23 December 2020.

<sup>313</sup> *Ibid*. See also, United Nations, *Policy brief: Education during COVID-19 and beyond* (August 2020) <[https://www.un.org/sites/un2.un.org/files/sg\\_policy\\_brief\\_covid-19\\_and\\_education\\_august\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/sg_policy_brief_covid-19_and_education_august_2020.pdf)> accessed 23 December 2020.

<sup>314</sup> United Nations, *Policy brief: The impact of COVID-19 on food security and nutrition* (June 2020) <[https://www.un.org/sites/un2.un.org/files/sg\\_policy\\_brief\\_on\\_covid\\_impact\\_on\\_food\\_security.pdf](https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_covid_impact_on_food_security.pdf)> accessed 23 December 2020.

<sup>315</sup> *Ibidem*.

<sup>316</sup> OHCHR, *COVID-19: Economic sanctions should be lifted to prevent hunger crises – UN expert* (31 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25761&LangID=E>> accessed 23 December 2020.

<sup>317</sup> *Ibidem*.

<sup>318</sup> OHCHR Special Rapporteur on the right to adequate housing, *Protecting those living in homelessness* (28 April 2020) <[https://www.ohchr.org/Documents/Issues/Housing/SR\\_housing\\_COVID-19\\_guidance\\_homeless.pdf](https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf)> accessed 23 December 2020.

<sup>319</sup> OHCHR, *Housing, the front line defence against the COVID-19 outbreak, says UN expert* (18 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>> accessed 23 December 2020.

<sup>320</sup> *Ibidem*.

Additionally, the right to a healthy environment is under threat. As analyzed in other sections of this report, there has been an increase in rollback of environmental regulations, relaxed standards for pollution from emitting sources, and a lack of enforcement of laws and regulations related to environmental protection. In the context of pre-existing inequalities, vulnerable populations have historically carried the burden of adverse environmental impacts, as they are relegated to areas where toxic wastes are dumped or live closer to polluting facilities, thus having a precarious air and water quality.<sup>321</sup> Environmental protection should be in the forefront of governments plans of action, as it is crucial that the pandemic does not serve as a scenario for furthering the current environmental and climate crisis. In particular, climate change-related impacts have proven to be felt worse by marginalized communities, who have little to no capacity to cope with the effects of climate change.

Finally, digital rights have also been in the center stage of Covid-19 response and have been infringed.

While the adoption of various digital technologies to stop the spread of Covid-19 has great potential to augment the power of cities to manage the crisis, the use of these technologies has also highlighted the extensive digital divide,<sup>322</sup> and risks stemming from function creep and mass surveillance.<sup>323</sup> As highlighted by the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, multiple governments have imposed internet shutdowns during the pandemic, 'risk[ing] the health and life of everyone denied such access'.<sup>324</sup> One of the largest digital rights violations during the pandemic is surveillance. At least 27 countries have used data from cell phone companies to track their citizens.<sup>325</sup> Other digital rights violations include censorship, misinformation, and disinformation. From January 26 to May 26, 2020, several rights organizations found 163 cases of digital rights

breaches in Hungary, Bosnia and Herzegovina, Croatia, Serbia, Romania, and North Macedonia.<sup>326</sup>

### **3.4. Conclusions and Summary of Key Recommendations**

The Covid-19 pandemic has emphasized pre-existing and deeply rooted inequalities worldwide. Policies such as capital and financial market liberalization have contributed to greater disparities and insecurities. There are obvious gaps both within and between countries. Covid-19 has shown how vulnerable categories are particularly exposed during health crises where some individuals cannot even afford basics such as soap and clean water. A recent report done by the United Nations Development Programme (UNDP) estimates that developed countries have 55 hospital beds, more than 30 doctors and 81 nurses for every 10,000 people. For the same number of people in a less developed country there are seven beds, 2.5 doctors and six nurses.

The pandemic has contributed to an acceleration in technological change such as remote working and distance learning. However, this can be considered as luxury for many. For instance, 86% of primary school-age children in low human development countries are currently not getting an education, compared to just 20% in countries with very high human development.

This could lead to levels of regression taking us back to a time long before the SDGs or even the MDGs.<sup>327</sup> Thus, the pandemic reveals how our societies are characterized by profound inequalities.

In these unforeseen times, governments need to actively pursue expanded access to internet connectivity for all members of the public. Such expanded access will enable an equitable spread of information, safety precautions, and public participation in government and legal processes.

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<sup>321</sup> 'The Americas: Governments should strengthen, not weaken, environmental protection during COVID-19 pandemic' *OAS* (13 August 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/198.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/198.asp)> accessed 23 December 2020.

<sup>322</sup> Don Rodney Junio, 'Digital Divide in the Time of COVID-19' (14 April 2020) United Nations University <<https://cs.unu.edu/news/news/digital-divide-covid-19.html>> accessed 23 December 2020.

<sup>323</sup> Elise Racine, 'What does the Covid-19 pandemic mean for digital rights?' *LSE* (30 April 2020) <<https://blogs.lse.ac.uk/internationaldevelopment/2020/04/30/what-does-the-covid-19-pandemic-mean-for-digital-rights/>> accessed 23 December 2020.

<sup>324</sup> UNGA, Disease pandemics and the freedom of opinion and expression: Report of the Special Rapporteur on

the promotion and protection of the right to freedom of opinion and expression (A/HRC/44/49, April 2020).

<sup>325</sup> Kareem Fahim, Min Joo Kim, and Steve Hendrix, 'Despite uncertain benefits, surveillance spreads across the world' *Privacy International* (2 May 2020) <<https://privacyinternational.org/examples/3803/despite-uncertain-benefits-surveillance-spreads-across-world>> accessed 23 December 2020.

<sup>326</sup> 'Over 150 Digital Rights Breaches During COVID-19 Pandemic' *BIRN* (3 June 2020) <<https://birn.eu.com/news-and-events/over-150-digital-rights-breaches-during-covid-19-pandemic/>> accessed 23 December 2020.

<sup>327</sup> UNDP, (n.d.), *Coronavirus vs. Inequality* <<https://feature.undp.org/coronavirus-vs-inequality/>> accessed 23 December 2020.

Indeed, intergovernmental organizations have already demanded that such expansions occur domestically, as much as practicable.<sup>328</sup>

The economic impacts of the pandemic on workers in the informal economy and vulnerable populations might be lessened through a variety of measures. Stronger employment policies and institutions<sup>329</sup> can help. In the formal sector, policy tools used to support the economy include unemployment insurance, working time reduction programs, and income subsidies.<sup>330</sup> Comprehensive social protection systems<sup>331</sup> are also helpful measures. These systems could combine contributory and non-contributory schemes to guarantee some level of social protection for all.<sup>332</sup>

Systems of cash transfer are highly effective as they enable fast and contactless delivery of financial assistance but not always feasible, especially at scale.<sup>333</sup> Other possible social assistance transfers might include in-kind transfers and school feeding programs.<sup>334</sup> Similarly, these programs should include an inclusive and intersectional lens to cope with pre-existing inequalities and vulnerable groups.

The use of appropriate language when spreading and sharing information is crucial for children and the elderly to effectively understand. Additionally, it is necessary to be mindful of any impairments that may hinder communication, as well as language barriers when it comes to migrants and refugees.

## Chapter 4: Right to Water

### 4. Introduction

Hand hygiene is among the most effective practices to confront the Covid-19, but not everyone has access to water and sanitation infrastructure in their homes.

Three billion people do not have a place in their home to wash their hands. Three quarters of those reside in poverty-stricken countries and constitute the most vulnerable, such as children and families living in informal settlements, migrant and refugee camps, or in areas of active conflict.<sup>335</sup> Additionally, one in seven people, roughly 946 million, defecate in the open, 9 out of 10 of whom live in rural areas.<sup>336</sup>

Given that water is essential for life, access to clean water must be guaranteed to people, particularly in the context of pandemics such as Covid-19. In this setting, it is necessary to review the content of the human right to water and sanitation and analyze the way it has been violated in the context of a pandemic. It is necessary to differentiate urban from rural areas. Although these areas may experience similar problems regarding the Covid-19 effects in relation to the lack of access to drinking water, the causes may differ.

#### 4.1. Human Right to Water and Sanitation

The human right to water and sanitation was recognized for the first time by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment N° 15 (GC N° 15) in 2002, developing its contents from articles 11 and 12 of the ICESCR.<sup>337</sup> Also, in 2010 the UN General Assembly explicitly recognized the human right to water and sanitation through Resolution 64/292<sup>338</sup> and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights. A similar interpretation has been given by the IACHR in different statements indicating that access to water and basic sanitation constitute an autonomous right recognized in the Inter-American framework by itself, but it is a right whose protection can be initiated through the

<sup>328</sup> 'States of the Region must Accelerate Universal Internet Access Policies during COVID-19' OAS (31 August 2020) <<http://www.oas.org/en/iachr/expression/showarticle.asp?IID=1&artID=1182>> accessed 23 December 2020.

<sup>329</sup> ILO, *ILO: As job losses escalate, nearly half of global workforce at risk of losing livelihoods* (29 April 2020) <[https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_743036/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_743036/lang-en/index.htm)> accessed 23 December 2020.

<sup>330</sup> Federico Diez et al., *Options to Support the Incomes of Informal Workers During COVID-19* (20 May 2020) IMF.

<sup>331</sup> ILO, *ILO: As job losses escalate*.

<sup>332</sup> ILO, *Extending social protection to informal workers in the COVID-19 crisis: country responses and policy considerations* (8 September 2020) <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---soc\\_sec/documents/publication/wcms\\_754731.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_754731.pdf)> accessed 23 December 2020.

<sup>333</sup> Diez et al., (n 330).

<sup>334</sup> *Ibidem* at 4.

<sup>335</sup> World Health Organization and UNICEF, *Hand Hygiene for all* (2020) <[https://www.who.int/water\\_sanitation\\_health/publications/200626-unicf-who-hand-hygiene-global-initiative.pdf](https://www.who.int/water_sanitation_health/publications/200626-unicf-who-hand-hygiene-global-initiative.pdf)> accessed 23 December 2020.

<sup>336</sup> *Ibidem*.

<sup>337</sup> Economic and Social Council, *General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)* (2002).

<sup>338</sup> This concern has been present since the beginning of international environmental law, for example in the Conference of Stockholm (1972). In the same way, other important documents to consider would be the Vancouver Declaration on Human Settlements (Habitat I, 1976), Section II, Point 1; Istanbul Declaration on Human Settlements (Habitat II, 1996), Chapter I, Point 8; New Urban Agenda (Habitat III, 2016), Point 13 (a).

principles of interdependent and interrelated rights.<sup>339</sup>

In line with this, and prior to its recognition as an autonomous right, the international community's concern for the environmental situation, and particularly the scarcity and supply of water, began to acquire greater importance. This was reflected in various non-binding international instruments, which reinforced the concept of water as a fundamental guarantee. Despite the implicit recognition, the development of normative content of this right was linked to the deployment of other fundamental guarantees such as the rights to health, to live in a healthy and balanced environment, to food, to housing and to self-determination of peoples.<sup>340</sup>

Examples of this recognition can be found in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child.

#### **4.2. Contents of the Human Right to Water and Sanitation**

General Comment N° 15 is the instrument establishing the cornerstone of the normative content associated with the human right to water and sanitation, containing freedoms and entitlements.

According to paragraph 10, freedoms “include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies.” In the same line, entitlements establish ‘the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water’. These classifications can be understood as rights of a subjective nature, with a strong public dimension regarding the provision of vital services to which States are obliged.<sup>341</sup>

In relation to the general legal obligations of the States, core obligations include to respect, protect and fulfil the enjoyment of the right to water and

sanitation. This obligation acquires special meaning in times of emergency and natural disasters, when States are obliged to protect “objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water.” Also, States have obligations to take steps towards the full realization of this human right, which must be deliberate, concrete and targeted at its realization, without discrimination of any kind. For the adequate realization of human dignity, water should be treated as a social and cultural good, ensuring that this right can be realized by present and future generations.

In ‘Covid-19 and Human Rights We are all in this together,’ the UN notes that strategies to contain the virus are difficult for those without good quality safe housing, such as the homeless or slums residents where lack of access to clean water and sanitation is a fundamental issue and promoting hand washing is impossible. In the same way, Townsend (2020)<sup>342</sup> remarks that privatization of water resources and its distribution may be one of the causes that increases the gap to achieve equal access to water. Understood as an indivisible whole, SDG 6 addresses water and sanitation to achieve universal and equitable access to safe and affordable drinking water, sanitation and hygiene for all, an objective within which is incorporated the restoration of water-related ecosystems and the implementation of integrated management of water resources at all levels.

#### **4.3. How the Human Right to Water Has Been Violated in Urban and Rural Areas**

The need for an access source to drinking water is vital in the midst of the Covid-19 pandemic. The pandemic has worsened certain gaps that, for example, Latin America has been experiencing in recent decades regarding the provision of drinking

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<sup>339</sup> Inter-American Commission on Human Rights, *Case of the indigenous communities of the Lhaka Honhat Association (Our Land) v. Argentina* (2020); Inter-American Commission on Human Rights, ‘Annual Report 2015’, Chapter IV A (2015); Inter-American Commission on Human Rights, *Case of the Indigenous Community Yakye Axa v. Paraguay* (17 June 2005); Inter-American Commission on Human Rights, ‘Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources, Norms and jurisprudence of the Inter-American Human Rights System’ (2009).

<sup>340</sup> Elena Valdés de Hoyos, Isabel Patricia and Enrique Uribe Arzate, ‘El derecho humano al agua: Una cuestión de

interpretación o de reconocimiento,’ (2016) 34 *Cuestiones Constitucionales*: 3-25.

<sup>341</sup> Becerra Ramírez, José de Jesús and Irma Salas Benítez, ‘El derecho humano al acceso al agua potable: Aspectos filosóficos y constitucionales de su configuración y garantía en Latinoamérica,’ (2016) 19(37) *Prolegómenos*: 125-146.

<sup>342</sup> Dina Townsend, ‘COVID-19 Symposium: COVID-19 and the Human Right to Water and Sanitation’ (March 2020) *OpinioJuris* <<http://opiniojuris.org/2020/03/31/covid-19-symposium-covid-19-and-the-human-right-to-water-and-sanitation/>> accessed 23 December 2020.

water and sanitation services. Given that water is essential for life, access to clean water must be guaranteed to people, and particularly in the context of pandemics such as Covid-19. Considering that, according to the Special Rapporteur on the human right to water and sanitation's report,<sup>343</sup> many of these issues must be addressed from the regulatory frameworks of domestic law that progressively enable responses from the States aimed at ensuring the exercise of the right to water and sanitation.

The effects of the pandemic in relation to the human right to water and sanitation are not distributed equitably, falling harder on marginalized groups. Women and girls are in an especially vulnerable situation with regard to contagion, since they are often assigned the tasks of care and hygiene in the home,<sup>344</sup> which in many cases translates into the search for drinking water to a high risk of contagion.<sup>345</sup> The most disadvantaged urban populations often have precarious systems for the provision of essential services, which leads to increasing discrimination that reduces the possibilities of access and affordability.<sup>346</sup>

As for urban and peri-urban areas, the main problem is related to access to plumbing infrastructure for accessing drinking water and sanitation, particularly in peri-urban zones of metropolitan areas. In these areas, drinking water is delivered by means of cistern or cistern trucks, in a discontinuous supply, and often implies higher costs than the rest of the population supplied at home. The high monetary expenses related to infrastructure for water-related services are one of the main reasons that increase the impacts on vulnerable populations.

In the case of rural populations, due to the lack of approaches in sanitation that attend different cultural visions about infrastructure as well as adequate technologies, the management of water and sanitation projects continues to be unsuccessful.

Furthermore, researchers have found a direct link between the lack of adequate water, sanitation and hygiene (WASH) and child morbidity and mortality.<sup>347</sup>

These problems are observed in Lima,<sup>348</sup> Buenos Aires,<sup>349</sup> Guayaquil<sup>350</sup> and Santiago,<sup>351</sup> where we can find similarities in the problems of peri-urban zones, where low-income populations live. The problem of infrastructure for access to drinking water became more complex with Covid-19. In all these cases, the States have to take actions to provide clean water to these persons, mainly through tanker trucks, but avoid relying on them as long-term policies. According to data provided by CONICET in Argentina, problems of access to drinking water and sanitation services are one of the main problems of Greater Buenos Aires, increasing social and environmental vulnerability as well as negatively enhancing health problems.<sup>352</sup> On the other hand, in countries like Colombia there is a greater impact on Afro-descendant populations and Indigenous peoples. Those towns located in rural and remote areas are more affected.

Ecuador, Bolivia, Perú, Colombia and México have taken measures to make charging for services more flexible, cheaper or are providing water with tanker trucks. In Lima, the provider of the Potable Water and Sewerage service of Lima (SEDAPAL) has distributed water free of charge to 700,000 inhabitants daily. In Colombia, the government announced the reconnection of service to households that had suspended drinking water

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<sup>343</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights to safe drinking water and sanitation* (2017).

<sup>344</sup> Economic Commission for Latin America and the Caribbean - CEPAL, *La pandemia del COVID-19 profundiza la crisis de los cuidados en América Latina y el Caribe* (2020) <[https://repositorio.cepal.org/bitstream/handle/11362/45335/5/S2000261\\_es.pdf](https://repositorio.cepal.org/bitstream/handle/11362/45335/5/S2000261_es.pdf)> accessed 23 December 2020.

<sup>345</sup> Human Rights Council, *Report by the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to El Salvador* (2016).

<sup>346</sup> Human Rights Council, *Report* (n 343).

<sup>347</sup> Amy Waller et al., 'Multiple and complex links between baby WASH and stunting: an evidence synthesis,' (2020) 265 *Journal of Water, Sanitation and Hygiene for Development*.

<sup>348</sup> National Geographic, *Perú: La problemática del acceso al agua potable en asentamientos humanos en la periferia de Lima* (5 June 2020) <<https://www.nationalgeographicla.com/medio-ambiente/2020/06/problematika-del-acceso-a-l-agua-potable-lima-peru>> accessed 23 December 2020.

<sup>349</sup> 'Contagio comunitario en las villas hacinadas de Buenos Aires' *El Diario.es* (29 May 2020), <[https://www.eldiario.es/internacional/covid-19-propaga-villas-buenos-aires\\_1\\_6012566.html](https://www.eldiario.es/internacional/covid-19-propaga-villas-buenos-aires_1_6012566.html)> accessed 23 December 2020.

<sup>350</sup> Agencia EFE, *Agua y alcantarillado preocupan más que el COVID-19 en suburbios de Guayaquil* (15 April 2020) <<https://www.efe.com/efe/america/sociedad/agua-y-alcantarillado-preocupan-mas-que-el-covid-19-en-suburbios-de-guayaquil/20000013-4221417>> accessed 23 December 2020.

<sup>351</sup> '700 familias viven sin agua potable en campamentos en Batuco en medio de la crisis sanitaria por COVID-19' *Futuro360* (9 June 2020) <[https://www.futuro360.com/desafiotierra/700-familias-viven-sin-agua-potable-batuco\\_20200609/](https://www.futuro360.com/desafiotierra/700-familias-viven-sin-agua-potable-batuco_20200609/)> accessed 23 December 2020.

<sup>352</sup> Consejo Nacional de Investigaciones Científicas y Técnicas - CONICET, *Relevamiento del impacto social de las medidas del Aislamiento dispuestas por el PEN* (April 19, 2020) <[https://www.conicet.gov.ar/wp-content/uploads/Informe\\_Final\\_Covid-Cs.Sociales-1.pdf](https://www.conicet.gov.ar/wp-content/uploads/Informe_Final_Covid-Cs.Sociales-1.pdf)> accessed 23 December 2020.



service due to non-payment, as well as the freezing of rates and charges for the purification of water. Subsequently, direct subsidies to rural and community aqueducts were announced. In June 2020, Ecuador published the Organic Law of Humanitarian Support, in which article 5° addressed the non-increase of costs in basic services, whether delivered by public or private services or delegations and the temporary suspension of cuts for non-payment.

In none of these cases did States discuss long-term measures to solve infrastructure problems in terms of access to drinking water. The crisis posed by Covid-19 has exposed a structural problem regarding the effectiveness and exercise of the human right to water at a time when access to hand washing is vital to prevent the increase of infections in the populations more vulnerable.

#### **4.4. Conclusions and Summary of Key Recommendations**

It is necessary to increase financial flows to provide adequate infrastructure for LAC areas, especially in peri-urban and rural zones, where people do not have available clean drinking water and sanitation services to achieve long-term solutions.

Infrastructure's expansion is key to ensure access to drinking water, and sanitation services cannot interrupt the exercise of the human right to water.

Long-term solutions should consider a controlled and organized growth of cities that allows expanded access to drinking water and sanitation services to people in the most vulnerable situations, and also strengthens resilience, sustainability and efficiency of cities, which is only possible with the participation and local governance designs considering different actors, improving their coordination, and enhanced alignment of national, subnational, and local policies with international agendas.<sup>353</sup> The assurance of these policies regarding access to drinking water will improve to the extent that

national legal systems incorporate elements of the human right to water.

Thus, as they ensure the right to access water and sanitation, the non-interference of this right and the collective right to have a network for the provision of this service, which enables joint action between public-private actors.

## **Chapter 5: Right to Food**

### **5. Introduction**

Food is essential for human survival and barriers to the enjoyment of this basic need can be considered a threat to life. The biggest challenges regarding food access and enjoyment of human rights are hunger and food security, as noted in SDG 2. The FAO reported that nearly 820 million people suffer from hunger every day.<sup>354</sup> In some countries, the quality of food is not enough to ensure healthy nutrients. Food insecurity and other food issues do not only concern access to food but also access to efficient tools and opportunities to produce food.<sup>355</sup>

Recognized in the Universal Declaration of Human Rights (UDHR), the right to adequate food stems from the right to an adequate standard of life. The right to adequate food has been recognized in the ICESCR as a 'fundamental right of everyone to be protected against hunger'.<sup>356</sup> Such right is realized when a person has "the physical and economic access to adequate food or means for its procurement," including through agriculture.<sup>357</sup> The IACHR, in Resolution 04/2020, called for better protection of the rights of people with Covid-19 and recommended that States provide sufficient water and food to people infected with the virus.<sup>358</sup> This was supported by Resolution 01/2020, which emphasized the difficulty that regions such as the Americas experience with food insecurity.<sup>359</sup> These vulnerabilities are intertwined with high levels of inequality and poverty, which are exacerbated by trade measures and policies that reduce support for small-scale, sustainable crop production.

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<sup>353</sup> Shyla Del-Aguila-Arcentales, Aldo Alvarez-Risco, and Marc A. Rosen. 'Sustainable Cities', in Marc A. Aldo Alvarez-Risco et al. (eds.), *Building Sustainable Cities: Social, Economic and Environmental Factors* (Springer 2020).

<sup>354</sup> FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2021. Transforming food systems for food security, improved nutrition and affordable healthy diets for all*. (Rome, FAO 2021) <<https://doi.org/10.4060/cb4474en>> accessed 8 December 2021.

<sup>355</sup> G. Kent, *Freedom from want The Human Right to Adequate Food* (Georgetown University Press 2005) 7, 12.

<sup>356</sup> International Covenant on Economic, Social and Cultural Rights (1976) article 11, 2.

<sup>357</sup> Committee on Economic, Social and Cultural Rights, General Comment 12 (1999).

<sup>358</sup> Inter-American Commission on Human Rights, Resolution 04/2020 (27 July 2020) <<https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-20-en.pdf>> accessed 23 December 2020.

<sup>359</sup> Inter-American Commission on Human Rights, *Pandemia y Derechos Humanos en las Américas*. Resolución 1/2020, Comisión Interamericana de Derechos Humanos (CIDH), <<https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>> accessed 23 December 2020.

## 5.1. Food Workers (Balance of Rights)

The pandemic has highlighted the weaknesses of the global food system currently based on industrial agriculture, long specialized chains and foreign and mostly undocumented migrant workers.<sup>360</sup> Covid-19 lockdowns have interrupted the lives of workers in several sectors. These lockdowns significantly underlined the vulnerability and precarious employment status of some workers in the food sector and have exposed a lack of adequate policies necessary to protect workers and enforce their rights in times of crisis. Many of these workers have lost their jobs in the pandemic, highlighting the challenging conditions they experience, such as living from pay-check to pay-check with very little savings and, in many cases, dependent on state aid. Most of the workers were left without free access to healthcare or financial support. For workers in the informal economy, this resulted in a loss of their livelihoods. The lack of a social safety net meant the inability to support their families, and the lockdowns and travel bans have prevented them from finding an alternative job.<sup>361</sup>

While food workers represent an important position in the economy of a State, they are also highly exposed to vulnerabilities. Food and agricultural workers risk Covid-19 infection because

of the close contact in which they must work. Such contacts are extended because of their long work shifts; exposure could also occur when they are in contact with contaminated surfaces or objects, such as tools, equipment, tractors, workstations, toilet facilities, or breakroom tables. Even off-work, they may be near each other during breaks, when sharing transportation and housing.<sup>362</sup>

## 5.2. Access to Food: Higher Prices, Economic Aspects

The Covid-19 pandemic has reduced access to food and adequate nutrition across the globe. New causes of food insecurity have emerged and preexisting causes have been exacerbated. While all have been affected in some way by the pandemic-induced changes in food access, certain communities – including the elderly,<sup>363</sup> those who obtain food through informal markets,<sup>364</sup> laborers in the informal economy,<sup>365</sup> and low-income families<sup>366</sup> – have been significantly impacted.

Pandemic-related furloughs and unemployment,<sup>367</sup> limitation of hours and services at supermarkets,<sup>368</sup> and restriction of economic activity to formal, ‘essential’ services<sup>369</sup> have caused food demand<sup>370</sup> and prices to skyrocket.<sup>371</sup> At a high level, pandemic responses have limited worker mobility,

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<sup>360</sup> Yael Pantzer, ‘Without Rights of Agri-Food Workers, EU’s Food Supplies Rests on Shaky Grounds’ *SlowFoodEurope* (16 April 2020) <<https://www.slowfood.com/without-rights-for-agri-food-workers-eus-food-supplies-rest-on-shaky-ground/>> accessed 8 December 2021.

<sup>361</sup> UNPRI, *Theme 1: protecting workers’ rights through the Covid-19 crisis* <<https://www.unpri.org/covid-19-resources/theme-1-protecting-workers-rights-through-the-covid-19-crisis/6342.article>>-accessed-23-December-2020.

<sup>362</sup> CDC, *Agriculture Workers and Employers: Interim Guidance from CDC and the U.S. Department of Labor* <<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.htm>> accessed 23 December 2020.

<sup>363</sup> Julia A. Wolfson, Cindy Leung, & Jeffrey Kullgren, ‘Food as a Critical Social Determinant of Health Among Older Adults During the Coronavirus Disease 2019 (COVID-19) Pandemic’ (July 2020) *JAMA* <<https://jamanetwork.com/channels/health-forum/fullarticle/2769122>> accessed 23 December 2020.

<sup>364</sup> See, e.g., Marc C. A. Wegerif, July 2020, ‘Informal’ food traders and food security: experiences from the Covid-19 response in South Africa,’ *12 Food Security* 797, <<https://link.springer.com/article/10.1007/s12571-020-01078-z>> accessed 23 December 2020.

<sup>365</sup> ‘COVID-19 and the crisis in food systems: Symptoms, causes, and potential solutions’ *iPES Food* (4 April 2020) <[http://www.ipes-food.org/\\_img/upload/files/COVID-19\\_CommuniqueEN.pdf](http://www.ipes-food.org/_img/upload/files/COVID-19_CommuniqueEN.pdf)> accessed 23 December 2020; see also HRW, *Nigeria: Protect Most Vulnerable in COVID-19 Response* (14 April 2020) <<https://www.hrw.org/news/2020/04/1>

<<https://www.hrw.org/news/2020/04/1/nigeria-protect-most-vulnerable-covid-19-response>> accessed 23 December 2020.

<sup>366</sup> Sameer M. Siddiqi, ‘Food Access: Challenges and Solutions Brought on by COVID-19’ *The RAND Blog* (31 March 2020) <<https://www.rand.org/blog/2020/03/food-access-challenges-and-solutions-brought-on-by.html>> accessed 23 December 2020.

<sup>367</sup> Martin Hensher, ‘Covid-19, unemployment, and health: time for deeper solutions?’ *The BMJ* (8 October 2020) <<https://www.bmj.com/content/371/bmj.m3687>> accessed 23 December 2020.

<sup>368</sup> Cormac O’Shea & Edel Hughes, ‘Opening hours and changes at Aldi, Tesco, Dunnes and Lidl as Ireland enters Phase 1’ *Irish Mirror* (21 May 2020) <<https://www.irishmirror.ie/news/irish-news/aldi-tesco-lidl-opening-hours-22064065>> accessed 23 December 2020.

<sup>369</sup> See, e.g., República de Colombia, Ministerio del Interior, Decreto Número 457 de 2020 (Mar. 18, 2020), <<https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20457%20DEL%2022%20DE%20MARZO%20DE%202020.pdf>> accessed 23 December 2020. (In Colombia, “essential goods” in the context of the pandemic can only be sold in markets, grocery stores, or other similar formal stores).

<sup>370</sup> OECD, *Food Supply Chains and COVID-19: Impacts and Policy Lessons* (2 June 2020), <<http://www.oecd.org/coronavirus/policy-responses/food-supply-chains-and-covid-19-impacts-and-policy-lessons-71b57aea/>> accessed 23 December 2020.

<sup>371</sup> See, e.g., Joseph Opoku Gakpo, ‘COVID-19 virus spread prompts food insecurity fears in Africa’, (26 March 2020) *Cornell Alliance for Science* <<https://allianceforscience.com>

which has in turn contributed to labor shortages and disruptions in transport and logistics services.<sup>372</sup> For example, transportation of food has been disrupted due to reduced air cargo capacity as well as new border requirements such as the necessity for drivers to get tested or quarantine, thus delaying farm labor, food processing, food availability, and access to food across the globe.<sup>373</sup> In some countries, border officials exploit the crisis to extract bribes in exchange for the authorization to bring food from one country to another.<sup>374</sup> Further, the shutdown of market floor trading has impacted the ability to exchange commodities.<sup>375</sup>

Disruptions in food supply chains<sup>376</sup> have accompanied shifts in consumer demand away from higher value items toward staples, ready-to-eat, and nonperishable food items.<sup>377</sup> Domestic food prices have increased<sup>378</sup> and commodity prices have decreased<sup>379</sup> as a result. Food price volatility has affected countries ranging from Argentina and Ecuador to France and Uganda.<sup>380</sup> In the United States<sup>381</sup> and Kenya, Covid-19-led market disruptions have left farmers with no choice but to euthanize livestock and destroy crops.<sup>382</sup> In a survey by the International Committee of the Red Cross (ICRC) across 11 countries in Africa, 94% of

respondents said that food prices had increased, while 82% also noted that their incomes had decreased.<sup>383</sup> A similar survey conducted in Ukraine found 75% of respondents reported an increase in the price of basic items.<sup>384</sup>

A subcategory of the concept of the right to adequate food under international human rights law,<sup>385</sup> the right of access to food is primarily derived from ICESCR Article 11. There are a number of ways that governments and interest groups have attempted to apply the laws on access to food during the pandemic or, in instances where the laws have not been properly applied, named and shamed relevant governments. In line with ICESCR Article 11, the Scottish Government put in place a £70 million Food Fund for those who would be otherwise unable to access food.<sup>386</sup> Despite this and other legislation put forth in Northern Ireland, England, and Wales, on August 5, 2020, the UN Special Rapporteur on extreme poverty and human rights and Special Rapporteur on the right to food sent a communication to the U.K. Government concerning 'the deepening level of food insecurity among low-income households, particularly families with children, and the lack of

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cornell.edu/blog/2020/03/covid-19-virus-spread-prompts-food-insecurity-fears-in-africa/> accessed 23 December 2020.

<sup>372</sup> OECD, *COVID-19 and the Food and Agriculture Sector: Issues and Policy Responses* (2-5, 29 April 2020) <[https://read.oecd-ilibrary.org/view/?ref=130\\_130816-9uut45lj4q&title=Covid-19-and-the-food-and-agriculture-sector-Issues-and-policy-responses](https://read.oecd-ilibrary.org/view/?ref=130_130816-9uut45lj4q&title=Covid-19-and-the-food-and-agriculture-sector-Issues-and-policy-responses)> accessed 23 December 2020.

<sup>373</sup> OECD, *OECD Policy Responses to Coronavirus: Food Supply Chains and COVID-19: Impacts and Policy Lessons* (2 June 2020) <<http://www.oecd.org/coronavirus/policy-responses/food-supply-chains-and-covid-19-impacts-and-policy-lessons-71b57aea/>> accessed 23 December 2020.

<sup>374</sup> Peter S. Goodman, Abdi Latif Dahir and Karan Deep Singh, 'The Other Way Covid Will Kill: Hunger' *New York Times* (11 September 2020) <<https://www.nytimes.com/2020/09/11/business/covid-hunger-food-insecurity.html?auth=login-email&login=email>> accessed 23 December 2020.

<sup>375</sup> *Ibidem*.

<sup>376</sup> FIAN International, *Monitoring Report on the Right to Food and Nutrition During COVID-19* (14 June 2020) <[https://www.fian.org/files/files/Covid\\_Monitoring\\_Report\\_Template\\_EN.pdf](https://www.fian.org/files/files/Covid_Monitoring_Report_Template_EN.pdf)> accessed 23 December 2020.

<sup>377</sup> OECD, *COVID-19 and the Food and Agriculture Sector: Issues and Policy Responses* (3, 29 April 2020) <[https://read.oecd-ilibrary.org/view/?ref=130\\_130816-9uut45lj4q&title=Covid-19-and-the-food-and-agriculture-sector-Issues-and-policy-responses](https://read.oecd-ilibrary.org/view/?ref=130_130816-9uut45lj4q&title=Covid-19-and-the-food-and-agriculture-sector-Issues-and-policy-responses)> accessed 23 December 2020.

<sup>378</sup> FAO, *Global food prices rise in August* (3 September 2020) <<http://www.fao.org/news/story/en/item/130585/icode/>> accessed 23 December 2020.

<sup>379</sup> The World Bank, *Most Commodity Prices to Drop in 2020 As Coronavirus Depresses Demand and Disrupts Supply*

(23 April 2020) <<https://www.worldbank.org/en/news/press-release/2020/04/23/most-commodity-prices-to-drop-in-2020-as-coronavirus-depresses-demand-and-disrupts-supply>> accessed 23 December 2020.

<sup>380</sup> FIAN International, *A Recipe for Disaster: COVID Response Based on the Industrial Food System* (June 17, 2020) <<https://www.fian.org/en/press-release/article/a-recipe-for-disaster-covid-response-based-on-the-industrial-food-system-2510>> accessed 23 December 2020.

<sup>381</sup> Michael Corkery & David Yaffe-Bellany, 'Meat Plant Closures Mean Pigs Are Gassed or Shot Instead' *New York Times*, (14 May 2020) <<https://www.nytimes.com/2020/05/14/business/coronavirus-farmers-killing-pigs.html>> accessed 23 December 2020.

<sup>382</sup> FIAN International, *Monitoring Report on the Right to Food and Nutrition During COVID-19* (14 June 2020) <[https://www.fian.org/files/files/Covid\\_Monitoring\\_Report\\_Template\\_EN.pdf](https://www.fian.org/files/files/Covid_Monitoring_Report_Template_EN.pdf)> accessed 23 December 2020.

<sup>383</sup> Goodman et. al., 'The Other Way Covid Will Kill: Hunger.' (n 374).

<sup>384</sup> ICRC, *ICRC: Protect livelihoods during COVID-19 or risk a boom in aid-dependency* (3 June 2020) <<https://www.icrc.org/en/document/icrc-protect-livelihoods-during-covid-19-or-risk-boom-aid-dependency>> accessed 23 December 2020.

<sup>385</sup> See, e.g., International Covenant on Economic, Social, and Cultural Rights, Article 11. See also CESCR General Comment No. 12: *The Right to Adequate Food* (Art. 11) 12 May 1999, E/C.12/1999/5.

<sup>386</sup> "Coronavirus (COVID-19: Food Fund guidance for local authorities)," Scottish Government (April 5, 2020) <<https://www.gov.scot/publications/coronavirus-covid-19-food-fund-guidance-to-local-authorities/pages/the-food-fund/>> accessed 23 December 2020.

comprehensive measures to ensure their access to adequate food'.<sup>387</sup>

Perhaps the paradigmatic case regarding the right to food in the context of the pandemic is an appeal of a June case in Uganda. Uganda-based civil society organization, the Center for Food and Adequate Living Rights, appealed the decision<sup>388</sup> of a Covid-19 related case in which the Kampala High Court declined to recognize a governmental violation of the right to food for its failure to establish food reserves in the context of the pandemic, which, the plaintiffs argued, are critical to mitigation of the food crisis.<sup>389</sup>

Drawing on the international framework underpinning the right to food, a number of human rights NGOs submitted an *amicus curiae* brief in support of the plaintiffs' case.<sup>390</sup>

### 5.3. Sustainable Agriculture

Using low levels of technology, many traditional farmers chose to preserve traditional farming knowledge and use locally adapted agricultural systems that guarantee both food security, sustainability and the conservation of agrobiodiversity.<sup>391</sup> Sustainable agriculture is thus based on small-scale farms using fewer off-farm inputs (such as chemicals) and technologies, and combining plant and animal production where and when appropriate.<sup>392</sup> Agricultural systems around the world are considered to be sustainable when they increase productivity, employment and value

addition in food systems, protect and enhance natural resources, and improve the resilience of people, communities and ecosystems.<sup>393</sup> As such, sustainable agriculture can be defined as 'an agriculture that can evolve indefinitely toward great human utility, greater efficiency of resource use, and a balance with the environment that is favorable both to humans and most other species'.<sup>394</sup>

The Global Forest Coalition, reflecting on the impacts of extensive agro-industrial production around the world and community responses to the challenges of Covid-19, noted that traditional practices are lighting the way towards transformational change in food systems.<sup>395</sup> They concluded that sustainable agriculture is vital to overcome health crises such as Covid-19.<sup>396</sup> This can be illustrated by examples such as the Ethiopian population who grazes its livestock over 60% of the country and managed to overcome outbreaks among livestock populations thanks to their traditional farming practices and knowledge.<sup>397</sup> In addition, community responses to the pandemic have illustrated the resilience of traditional farming practices such as methods to store food or agroecology.<sup>398</sup>

Even before the pandemic, industrial agriculture food production (mainly ovo-dairy and meat) negatively impacted populations and the environment, especially highly vulnerable populations suffering from food crises.<sup>399</sup> Land overexploitation, the modernization of the

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<sup>387</sup> *Mandates of the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the Right to Food*, United Kingdom of Great Britain and Northern Ireland, AL GBR 8/2020 (August 5, 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25477>> accessed 23 December 2020.

<sup>388</sup> *Center for Food and Adequate Living Rights (CEFROHT) v Attorney General (MISCELLANEOUS CAUSE NO. 75 OF 2020)* [2020] UGHCCD 157 (4 June 2020) <<https://ulii.org/ug/judgment/hc-civil-division-uganda/2020/157>> accessed 23 December 2020.

<sup>389</sup> FIAN International, *Human Rights Organizations Join Efforts to Defend the Right to Food in Uganda During COVID-19* (4 August 2020) <<https://www.fian.org/en/news/article/human-rights-organizations-join-efforts-to-defend-the-right-to-food-in-uganda-during-covid-19-2549>> accessed 23 December 2020.

<sup>390</sup> Center for Economic and Social Rights et al, *Amicus Curiae Brief* <[https://www.fian.org/files/files/FINAL\\_amicus\\_WEB.pdf](https://www.fian.org/files/files/FINAL_amicus_WEB.pdf)> accessed 23 December 2020.

<sup>391</sup> M. A. Altieri, 'Linking ecologists and traditional farmers in the search for sustainable agriculture,' (2004) *Frontiers in Ecology and the Environment* 2; 35, 42.

<sup>392</sup> L. Horrigan, R. S. Lawrence and P. Walker, 'How sustainable agriculture can address the environmental and human health harms of industrial agriculture,' (2002) *Environmental Health Perspectives*, 110; 5.

<sup>393</sup> See Food and Agriculture Organization of the United Nations, sustainable food and agriculture definitions, <[http://www.fao.org/sustainability/en/#:~:text=To%20be%20sustainable%2C%20agriculture%20must,and%20social%20and%20economic%20equity.&text=FAO%20promotes%20SFA%20to%20help,Sustainable%20Development%20Goals%20\(SDGs\)](http://www.fao.org/sustainability/en/#:~:text=To%20be%20sustainable%2C%20agriculture%20must,and%20social%20and%20economic%20equity.&text=FAO%20promotes%20SFA%20to%20help,Sustainable%20Development%20Goals%20(SDGs))> accessed 23 December 2020.

<sup>394</sup> Clive A. Edwards and Richard R. Harwood, *Sustainable Agricultural Systems*, 4.

<sup>395</sup> Milena Bernal, 'World Food Day: Lessons from COVID-19 can lead the way to sustainable food systems' (15 October 2020) Global Forest Coalition <<https://globalforestcoalition.org/world-food-day-2020/>> accessed 23 December 2020.

<sup>396</sup> *Ibidem*.

<sup>397</sup> *Ibidem*.

<sup>398</sup> *Ibidem*.

<sup>399</sup> Andrew Wasley and Alexandra Heal, 'Revealed: development banks funding industrial livestock farms around the world. Investigation uncovers finance worth \$2.6bn pumped into meat and dairy industries, despite warnings of links to climate catastrophe' *The Guardian* (2 July 2020) <<https://www.theguardian.com/environment/2020/jul/02/revealed-development-banks-funding-industrial-livestock-farms-around-the-world>> accessed 23 December 2020.

production chains, as well as difficult socioeconomic conditions greatly impacted the survival of rural and Indigenous populations that inhabit and conserve strategic ecosystems such as the Amazon region.<sup>400</sup>

The Covid-19 health crisis is further deepening the hunger crisis impacting the poorest and most vulnerable groups.<sup>401</sup> As a consequence of the pandemic's impacts on agriculture, it was estimated that more than 130 million additional people were going to face starvation by the end of 2020, doubling the number of people facing acute hunger to 265 million people.<sup>402</sup>

Yet, due to lockdowns measures, farmers and other actors in the food system were and continue to be unable to plant crops in a timely manner, to use the optimal quality and quantities of seeds, fertilizers and pesticides (also due to delayed deliveries), to harvest, to store crops adequately or to sell crops before they would become unmarketable.<sup>403</sup> As a consequence, farmers experienced disruptions to crop production from which their farming activities and sustainable food systems may take months or years to recover.<sup>404</sup>

For example, Afghan farmers were unable to sow their crops on time due to measures to prevent the spread of the virus.<sup>405</sup> Such disruptions also negatively impacted food supply chains. To mitigate these effects, FAO suggests that crop production intensification be built on sustainable farming systems using management practices such as minimum soil disturbance, permanent organic soil cover, species diversification, integrated pest management, plant nutrition based on healthy soils and efficient water management.<sup>406</sup>

In addition, mandatory health measures have discouraged the use of sustainable and small-scale production.<sup>407</sup> In Colombia, farmers, who represent 43.6% of the national population, are deeply

affected by the health crisis as well.<sup>408</sup> The Corabastos marketplace, a 420,000 square meter agricultural mini-city with 57 warehouses where the crops coming from all over the country is bought and sold to supply food to the population of Bogotá, and which used to be visited by 250,000 people every day, had to reduce its capacity to 35 percent, to close some warehouses and to reduce its operation to half.<sup>409</sup> In addition, amidst the concerns of the pandemic, people stopped buying fresh produce, leading to spoilage of tons of food and directly impacting farmers' already precarious lives.<sup>410</sup> Further, since the first week of March 2020, the price of the U.S. dollar rose rapidly to Colombian Peso, reaching 4,200 pesos on March 24, 2020, the highest price in its history, before decreasing to below 4,000 pesos.<sup>411</sup>

The rise of the price of the U.S. dollar in Colombia severely affected small producers due to the rise of production costs, as most inputs to feed chickens and inputs needed for milk production as well as herbicides, pesticides and fertilizers prices all significantly increased, and although the price of the dollar fell in May 2020, the price of imported inputs never decreased.<sup>412</sup>

The health crisis has highlighted that current food and agriculture systems are failing to address global challenges. Sustainable agriculture could help guarantee the right to food and could provide a path to shift towards a better post-Covid-19 sustainable and resilient agriculture. Therefore, the global effort to build back better should address farming activities and support farmers. Promoting investments in inclusive systems as well as small-scale and traditional farming systems securing access to land, water, land management and strengthening public policies that respond to needs of pastoralists are necessary steps towards the sustainability of our world.

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<sup>400</sup> Jon M. Nelson, 'Of farms and forests: farm-level land-use decisions, socio-environmental systems, and regional development in Brazil's Atlantic Rainforest' (2020) 6(3) *Environmental Sociology* 322, 341.

<sup>401</sup> Oxfam, *The Hunger Virus: How COVID-19 is Fuelling Hunger In A Hungry World* (July 2020) <<https://reliefweb.int/sites/reliefweb.int/files/resources/Final%20English%20Brief%20-%20The%20Hunger%20Virus%20-%20Emmbargoed%209%20July%202020-2.pdf>> accessed 23 December 2020.

<sup>402</sup> World Food Programme <<https://www.wfp.org/news/covid-19-will-double-number-people-facing-food-crises-unless-swift-action-taken#:~:text=The%20number%20of%20people%20facing,according%20to%20a%20WFP%20projection>> accessed 23 December 2020.

<sup>403</sup> *Ibidem*.

<sup>404</sup> *Ibidem*.

<sup>405</sup> World Bank Group, *Food security and Covid-19* <<https://www.worldbank.org/en/topic/agriculture/brief/food-security-and-covid-19>> accessed 23 December 2020.

<sup>406</sup> *Ibidem*.

<sup>407</sup> Molly D. Anderson and Marta Guadalupe Rivera Ferre, 'Unsustainable by Design: Extractive Narratives of Ending Hunger and Regenerative Alternatives' (2020) *Current Opinion in Environmental Sustainability*.

<sup>408</sup> 'Así son los campesinos colombianos' *Dinero* (16 April 2020) <<https://www.dinero.com/pais/articulo/asi-son-los-campesinos-colombianos/284136>> accessed 23 December 2020.

<sup>409</sup> Julián Ríos Monroy, 'El campo en pandemia' *El tiempo* (June 2020) <<https://www.eltiempo.com/colombia/otras-ciudades/coronavirus-en-colombia-vida-en-el-campo-dura-po-durante-la-cuarentena-por-covid-19-513268>> accessed 23 December 2020.

<sup>410</sup> *Ibidem*.

<sup>411</sup> *Ibidem*.

<sup>412</sup> *Ibidem*.

#### 5.4. Food Security

The FAO definition of food security comprises four key dimensions of food supplies: availability, stability, access, and utilization. Access to food is the ability of individuals, populations or even countries to buy and own sufficient quantities and qualities of food. Over the last 30 years, access to food improved in many developing countries thanks to the decline of food prices and the rise of household incomes. As a result of the increase of the population's purchasing power, people were able to purchase nutritious food containing more proteins, micronutrients, and vitamins, and thus food not only for survival but also for a better quality of life.<sup>413</sup>

Since the spread of the coronavirus in the early months of 2020, agricultural and food markets have faced disruptions and other issues due to labor shortages caused by lockdown measures adopted to limit the spread of the virus. In addition, there has been a shift in food demand due to loss of income as well as closures of restaurants and schools. A survey showed that the poorest households spend approximately 70% of their incomes on food while also having limited access to financial markets, which makes their food security especially vulnerable to income shocks.<sup>414</sup> South Asia and Africa are the most impacted, especially in countries that were already suffering from military conflicts, extreme poverty or climate-related disasters such as drought, flooding or soil erosion.<sup>415</sup> The European Commission (EC) highlighted the need to take action to reduce the environmental impact of the food system, especially in the aftermath of the pandemic and the economic downturn. The EC stressed that the pandemic has indeed underlined the interrelations between people's health, ecosystems, supply chains, consumption patterns and planetary boundaries.

Through its 'Farm to Fork' strategy, at the heart of the European Green Deal, the EU addresses the challenges of sustainable food systems and recognizes the link between healthy people and a healthy planet. It is a new comprehensive approach

mapping out ways for the EU to significantly decrease the use of pesticides and antibiotics, boost organic farming, promote plant-based proteins and make every link of the system more sustainable. The end goal is to create a favorable food environment that would make it easier to choose healthy and sustainable diets and thus, benefit consumers' health and quality of life.

The pandemic has exacerbated an already existing food crisis that leaves millions of people living in hunger. Governments should not only respect their existing duty to guarantee food for their citizens but also improve and empower their old mechanism or implement new ones in order to satisfy this fundamental need for human survival.

#### 5.5. Conclusions and Summary of Key Recommendations

The World Food Programme reported that an extra 265 million people were at risk, with the potential for multiple famines in the 2020.<sup>416</sup> Oxfam confirmed these claims and has also identified 10 countries and regions where the food crisis is getting worse after the pandemic: Yemen, Democratic Republic of Congo, Afghanistan, Venezuela, the West African Sahel, Ethiopia, Sudan, South Sudan, Syria and Haiti.<sup>417</sup>

There is no doubt that the Covid-19 pandemic presents an incomparable and unprecedented challenge for national authorities regarding food safety control systems and the need to continue functions and activities of food production following national regulations and international recommendations. For example, different food routine activities are hard to ensure, such as the inspection of food business operations, certifying exports, control of imported foods, monitoring and surveillance of the safety of the food supply chain, analysis of food quality, managing food incidents, providing advice on food safety and food regulations for the food industry.<sup>418</sup> In addition, the pandemic comes on top of other crises that smallholder food producers and marginalized communities are already experiencing as a result of

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<sup>413</sup> Josef Schmidhuber and Francesco N. Tubiello, 'Global food security under climate change' (11 December 2007) 104(50) PNAS 19703, 19708.

<sup>414</sup> D. Laborde, W. Martin, R. Vos, 'Estimating the poverty impact of COVID-19: The MIRAGRODEP and POVANA frameworks' (2020) IFPRI Technical Note, IFPRI <<https://tinyurl.com/y9fazbfz>> accessed 23 December 2020.

<sup>415</sup> Goodman *et al.*, 'The Other Way Covid Will Kill: Hunger' (n 374).

<sup>416</sup> World Food Programme <<https://www.wfp.org/news/covid-19-will-double-number-people-facing-food->

[crises-unless-swift-action-taken](https://www.wfp.org/news/covid-19-will-double-number-people-facing-food-crises-unless-swift-action-taken)> accessed 23 December 2020.

<sup>417</sup> Oxfam International (n.d.), *World on the brink of a 'hunger pandemic': coronavirus threatens to push millions into starvation* <<https://www.oxfam.org/en/world-midst-hunger-pandemic-conflict-coronavirus-and-climate-crisis-threaten-push-millions>> accessed 8 December 2021.

<sup>418</sup> FAO, *COVID-19 and Food Safety: Guidance for competent authorities responsible for national food safety control systems (Policy Support and Governance)* <<https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/1274826/>> accessed 23 December 2020.

climate change consequences and disasters. In 2019, of the total people suffering from acute food insecurity 77 million people lived in countries affected by conflict, 34 million were affected by climate change and 24 million people in economic crises, however, the virus has complicated existing crises, threatens to worsen others and creates new ones.<sup>419</sup>

One of the problems in facing this food crisis stems from the fact that developing countries do not have the same resources and infrastructure as developed countries. For example, severe lockdown measures that were taken at an early stage of the pandemic are sustainable only if combined with broad and inclusive social protection programs that can protect families and individuals. Effective ways are needed, like the ones used during Ebola, that can deliver support during difficult times. In addition, humanitarian activities, such as the distribution of food and cash should be considered as essential services. National authorities should cooperate with those NGOs without creating restriction and impediment.<sup>420</sup>

## Chapter 6: Rights of Indigenous Groups, Afro-descendant Communities and Environmental Defenders

### 6. Introduction

It is estimated that there are 476 million Indigenous peoples<sup>421</sup> living in 90 countries in the world.<sup>422</sup> In

general, Indigenous and tribal peoples are known for having deep connections to nature and the territories they occupy, which is why regional and international human rights frameworks protect Indigenous peoples' collective rights to their land and natural resources. As highlighted by the UN Special Rapporteur on Indigenous Peoples when explaining health risks to which Indigenous peoples are exposed to during the pandemic, '[o]ften depending on fragile ecosystems for their subsistence, they also suffer particular health impacts from environmental degradation, including pollution of water resources on their traditional lands caused by extractive industries and pesticides from monoculture'.<sup>423</sup>

As highlighted by the OHCHR, the pandemic is 'disproportionately affecting Indigenous peoples, exacerbating underlying structural inequalities and pervasive discrimination'.<sup>424</sup> For instance, in the United States, the rate of known cases in the eight counties with the largest populations of Native Americans is nearly double the national average.<sup>425</sup>

The Amazon rainforest has been particularly affected.<sup>426</sup> In the Brazilian Amazon region, Covid-19's death toll on Indigenous peoples was 150% higher than the rest of the country's average toll in June 2020.<sup>427</sup> In view of this situation, international and regional human rights bodies have issued recommendations on how states should respond to the pandemic considering their rights and special needs.

<sup>419</sup> Global Network Against Food Crises, *Key takeaways of the Global Network Against Food Crises on Preventing a food catastrophe during the COVID-19 pandemic* (2020) <[http://www.fightfoodcrises.net/fileadmin/user\\_upload/fightfoodcrises/doc/GN\\_KeyMessages\\_FoodCrises\\_Covid19.pdf](http://www.fightfoodcrises.net/fileadmin/user_upload/fightfoodcrises/doc/GN_KeyMessages_FoodCrises_Covid19.pdf)> accessed 23 December 2020.

<sup>420</sup> 'Concern – Covid Hunger. Extreme Poor' *ReliefWeb* <[www.concern.net](http://www.concern.net)> accessed 23 December 2020.

<sup>421</sup> Using the ILO's Convention on Indigenous and Tribal Peoples (Convention No. 169) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the modern understanding of Indigenous peoples is based on the individual's self-identification as Indigenous, his/her acceptance by the community as a member, and the community's historical continuity with pre-colonial and/or pre-settler societies, distinct social, economic or political systems, distinct language and culture and intent to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities. Other tribal peoples that are not Indigenous, such as Afro-Descendent communities in Latin America, are also protected under ILO Convention 169 for their choice to live in ethnically and culturally distinct collectives with a common identity, history, and tradition. United Nations Permanent Forum on Indigenous Issues, *Indigenous Peoples, Indigenous Voices: Factsheet* <[https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf)> accessed 23 December 2020.

<sup>422</sup> The World Bank, *Indigenous People* <<https://www.worldbank.org/en/topic/indigenouspeoples#:~:text=There%20are%20approximately%20476%20million,percent%20of%20the%20extreme%20poor>> accessed 23 December 2020.

<sup>423</sup> UNGA, *Rights of indigenous peoples* (20 July 2020) A/75/185 <<https://undocs.org/en/A/75/185>> accessed 23 December 2020.

<sup>424</sup> OHCHR, *Covid-19 and Indigenous Peoples' Rights* (29 June 2020) <[https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance\\_COVID19\\_IndigenouspeoplesRights.pdf](https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenouspeoplesRights.pdf)> accessed 23 December 2020.

<sup>425</sup> New Mexico Department of Health, *Covid-19 in New Mexico* <<https://cvprovider.nmhealth.org/public-dashboards.html>> accessed 23 December 2020.

<sup>426</sup> M. A. Tigre, 'How is COVID-19 affecting Amazonia? – Violations to Human Rights and the Environment' (*Völkerrechtsblog*, 2020) <<https://voelkerrechtsblog.org/how-is-covid-19-affecting-amazonia/>> accessed 13 December 2021.

<sup>427</sup> Yasmin Setubal, 'Covid-19: Taxa de mortalidade entre os indígenas da Amazônia Legal é 150% maior do que a média nacional, aponta estudo' *O Globo* (22 June 2020) <<https://oglobo.globo.com/sociedade/covid-19-taxa-de-mortalidade-entre-os-indigenas-da-amazonia-legal-150-maior-do-que-media-nacional-aponta-estudo-24492819>> accessed 22 December 2020.

The following were identified as factors that have contributed, in different degrees according to each communities' realities, to Indigenous and tribal peoples' vulnerability during the Covid-19 pandemic: (i) socio-economic disenfranchisement, such as pre-existing conditions of inequality, including lack of access to clean water, sanitation and health services that potentialize the spread of diseases; (ii) political marginalization, including exclusion from political arenas and representation mechanisms that would allow them to participate in shaping Covid-19 response policies for their communities; (iii) immunologic, as communities that lived in isolation have built less immune response to virus infections such as Covid-19; and (iv) territorial vulnerability, as traditional livelihoods depend on a harmonic relation with nature within their territories, which are increasingly under pressure from land use changes.<sup>428</sup>

### 6.1. Right to Self-isolation and Secluded Populations

The risks of contamination by Covid-19 are considered higher for communities living in significant levels of isolation since it is most likely that they do not present immune defense to viruses.

There are few tribes still living in almost complete isolation in the world,<sup>429</sup> and most of the groups identified as isolated or in stages of initial contact are located in the Amazon region. It is estimated that approximately 200 Indigenous communities live in higher levels of isolation in this region.<sup>430</sup> The option to live in self-isolation is an essential component of the right to self-determination as recognized in international and regional human rights frameworks, such as the

American Convention on Human Rights and ILO Convention 169.<sup>431</sup>

Indigenous organizations have strongly condemned the frequent entrance onto Indigenous territories by non-community members, especially where communities have lived in greater degrees of isolation, such as in the Amazon. Non-community members have not only acted as vectors for contamination, but have also caused environmental damage, which further hinders communities' ability to cope with the pandemic.<sup>432</sup> In fact, studies show that frequent entrance of non-Indigenous peoples is one of the main factors leading to contamination by Covid-19 in the Amazon. Specialists also observed a correlation between high rates of deforestation due to illegal activities in Indigenous lands and higher levels of vulnerability, such as the case of the Yanomami land.<sup>433</sup> Frequently trespassed by thousands of illegal miners, the territory which is home to approximately 27,000 Indigenous persons,<sup>434</sup> among which groups in voluntary isolation, has had three Covid-19-related deaths up until the first week of June, including a 15-year old boy.<sup>435</sup> Indigenous peoples living in the shared border between Colombia, Ecuador and Peru, who have struggled against the expansion of extractive activities and the dominance of armed non-state actors, have also pointed out how these activities increase their vulnerability and violate their rights. In this context and due to governments' insufficient response, Indigenous organizations have self-isolated and taken measures to avoid the entrance of outsiders in their lands.<sup>436</sup> In Colombia, Indigenous communities established a national prevention strategy to block the entrance of non-community members, including maintaining territorial control through Indigenous guards and

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<sup>428</sup> Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica (COICA), *Crisis multidimensional de la pandemia COVID-19 para los Pueblos Indígenas Amazonicos Transfronterizos en Colombia, Ecuador y Perú* <[https://www.cejil.org/sites/default/files/2020\\_04\\_20\\_carta\\_ppii\\_transfronterizos\\_cidh\\_onu.pdf](https://www.cejil.org/sites/default/files/2020_04_20_carta_ppii_transfronterizos_cidh_onu.pdf)> accessed 22 December 2020.

<sup>429</sup> Rainforest Foundation Norway, *Isolated tribes around the world* <<https://www.regnskog.no/en/isolated-tribes/this-is-isolated-tribes>> accessed 22 December 2020.

<sup>430</sup> OAS, *Indigenous and tribal peoples of the Pan-Amazon Region* <<http://www.oas.org/en/iachr/reports/pdfs/Panamazonia2019-en.pdf>> accessed 22 December 2020.

<sup>431</sup> IACHR, *Indigenous peoples in voluntary isolation and initial contact in the Americas* <<http://www.oas.org/en/iachr/indigenous/docs/pdf/report-indigenous-peoples-voluntary-isolation.pdf>> accessed 22 December 2020.

<sup>432</sup> 'Referendo Na Medida Cautelar Na Arguição De Descumprimento De Preceito Fundamental 709 Distrito

Federal' (Supremo Tribunal Federal) <<http://portal.stf.jus.br/processos/downloadPeca.asp?id=15344621000&ext=.pdf>> accessed 22 December 2020.

<sup>433</sup> 'Como desmatamento pode explicar casos de Covid-19 entre indígenas' *Instituto Socioambiental* <<https://acervo.socioambiental.org/acervo/noticias/como-desmatamento-pode-explicar-casos-de-covid-19-entre-indigenas>> accessed 22 December 2020.

<sup>434</sup> 'Terra Indígena Yanomami' *Terras Indígenas no Brasil* <<https://terrasindigenas.org.br/pt-br/terras-indigenas/4016>> accessed 22 December 2020.

<sup>435</sup> 'Covid-19 ameaça aldeias yanomamis vizinhas a garimpo' *BBC News* <<https://www.bbc.com/portuguese/brasil-52886924>> accessed 22 December 2020.

<sup>436</sup> 'Pueblos Indígenas se Atrincheraan para Protegerse del Coronavirus' *RFI* <<https://www.rfi.fr/es/am%C3%A9ricas/20200401-varios-pueblos-ind%C3%ADgenas-se-atrincheran-para-evitar-el-coronavirus>> accessed 22 December 2020.



drawing on knowledge of Indigenous medicine from community experts.<sup>437</sup>

Indigenous organizations have also reached out to national courts and regional human rights mechanisms to demand that governments enforce protections of Indigenous land rights and the right of communities to self-isolate. For instance, in its request to the IACHR's Rapporteur and the United Nations' Special Rapporteur on Indigenous Peoples Rights, the Indigenous Organizations of the Amazon River Basin underscored that the threat of Covid-19 is deeply related to the historical inaction of governments that have allowed the unfettered exploitation of natural resources in Indigenous territories and the persecution of environmental and human rights leaders.<sup>438</sup> In Brazil, Indigenous organizations appealed to the Constitutional Court to order the federal government to, among other things, implement sanitary barriers and remove invaders from their lands.<sup>439</sup>

## **6.2. Lack of Access to Health Services, Water and Sanitation**

According to General Comment 14 of the CESCR, the human right to health, as established in the ICESCR, includes four core components: availability, accessibility, acceptability and quality. The component of 'accessibility' entails that health services need to be accessible physically, economically (affordable), and that there should be no discrimination. States should also follow minimum human rights standards concerning Indigenous peoples' health and wellbeing, as established in the UNDRIP: the right to access, without any discrimination, all social and health services and to enjoy the highest attainable standard of physical and mental health.

Nevertheless, Indigenous communities have historically experienced poorer health, increased rates of disability and lower quality of life than non-Indigenous peoples.<sup>440</sup> The UN calculates Indigenous peoples' life expectancy to be up to 20 years lower than that of non-Indigenous peoples.<sup>441</sup> Health care is commonly less obtainable in communities that live in more remote areas as a result of an uneven distribution of healthcare services. Health care costs are another challenging factor for Indigenous communities. Finally, Indigenous peoples have been frequently excluded from the development of health policies that affect them.

These inequalities have been exacerbated during the pandemic and have become an obstacle for Indigenous communities to access health services.

When the pandemic broke out, Indigenous communities struggled to receive information on how to cope with the pandemic that was culturally appropriate and tailored to their social, economic and cultural realities.<sup>442</sup> In communities that received visits from government health care employees, the outsiders became vectors of contamination.<sup>443</sup> Even when communities obtained information on how to prevent the disease, lack of access to water and sanitation has also impacted Indigenous peoples' capacity to avoid contagion. In many Indigenous lands, water bodies have been polluted by extractive industries or by pesticides from agriculture and there is little sanitation infrastructure in place.<sup>444</sup>

Additionally, decisions regarding the closure of national borders have caused significant damage to some Indigenous communities. For example, in Venezuela, Indigenous communities are being left without access to health services, medicines, and food since the decision of the Brazilian and Colombian governments to close their borders.<sup>445</sup>

<sup>437</sup> 'Colombia's indigenous peoples fend off COVID-19 using time-tested traditions' *The city paper* <<http://thecitypaperbogota.com/news/colombias-indigenous-peoples-fend-off-covid-19-using-time-tested-traditions/24384>>-accessed 22 December 2020.

<sup>438</sup> Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica (COICA), *Crisis multidimensional de la pandemia COVID-19 para los Pueblos Indígenas Amazonicos Transfronterizos en Colombia, Ecuador y Perú* <[https://www.cejil.org/sites/default/files/2020\\_04\\_20\\_carta\\_ppii\\_transfronterizos\\_cidh\\_onu\\_.pdf](https://www.cejil.org/sites/default/files/2020_04_20_carta_ppii_transfronterizos_cidh_onu_.pdf)> accessed 22 December 2020.

<sup>439</sup> 'Referendo Na Medida Cautelar Na Arguição De Descumprimento De Preceito Fundamental 709 Distrito Federal' (Supremo Tribunal Federal) <<http://portal.stf.jus.br/processos/downloadPeca.asp?id=15344621000&ext=.pdf>> accessed 22 December 2020.

<sup>440</sup> United Nations Department of Economic and Social Affairs, *In the face of danger: looking back at a year like no*

*other* <<https://www.un.org/development/desa/en/>> accessed 22 December 2020.

<sup>441</sup> OHCHR, *The Right to Health* <<https://www.ohchr.org/documents/publications/factsheet31.pdf>> accessed 22 December 2020.

<sup>442</sup> OAS, *Resolution 01/20, Pandemic and Human Rights in the Americas* <<https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>> accessed 23 December 2020.

<sup>443</sup> 'Brazil losing a generation of indigenous leaders to Covid-19' *The Guardian* <<https://www.theguardian.com/global-development/2020/jun/21/brazil-losing-generation-indigenous-leaders-covid-19>> accessed 22 December 2020.

<sup>444</sup> UNGA, *Rights of Indigenous Peoples* <<https://undocs.org/en/A/75/185>> accessed 22 December 2020.

<sup>445</sup> 'Indigenous migrant women from Venezuela: extremely vulnerable to COVID-19' *OpenDemocracy* <<https://www.opendemocracy.net/en/democraciaabierta/mujeres-ind%C3%ADgenas-migrantes-de-venezuela-vul>

It is also important to highlight that Indigenous communities are not a homogeneous social group and therefore can have different health needs. For instance, Indigenous populations living in urban areas have felt different impacts of the pandemic, such as the 1,500 members of the Embera community who currently live in Bogotá who have been evicted from their homes. Depending on the informal economy and inability to pay rent as a result of the isolation measures adopted by the government, they are currently living in the streets with almost no access to food and in precarious sanitary conditions.<sup>446</sup>

On the other hand, cases from Africa, Latin America and Asia indicate that Indigenous peoples that live in rural areas may not have access testing.<sup>447</sup>

In Brazil, despite the existence of a specific public national health service for Indigenous peoples, the service is only offered to those living in rural areas and the federal government has restricted access to peoples living in territories that have been officially recognized as Indigenous land.

### 6.3. Right to Participation, FPIC and Access to Information

Notwithstanding international recognition of Indigenous peoples' rights to participate in matters that affect them, States routinely fail to comply with their duties.<sup>448</sup> At the beginning of the Covid-19 pandemic, Indigenous organizations sounded an alarm on the main causes of increased vulnerability of Indigenous peoples during the pandemic, including marginalization from decision-making processes, restricted access to information and lack of culturally adequate information about the disease, access to healthcare and preventing contagion.<sup>449</sup>

Based on internationally recognized human rights standards, the UNDRIP establishes that Indigenous peoples have the right to participate in decision-making in matters which would affect their rights and specifically mentions the right to participate in the development of Indigenous health programs. It also foresees States' duties to consult and cooperate in good faith with Indigenous peoples concerned through their own representative institutions in order to obtain their FPIC before adopting and implementing legislative or administrative measures that may affect them. These rights are not only an important expression of Indigenous peoples' right to self-determination, but also play a crucial role in the promotion of democratic governance and social inclusion.

However, states have failed to comply with these rights during the pandemic, for instance by not including Indigenous representatives in devising emergency plans for communities or ignoring recommendations by human rights bodies on how to ensure protection of these rights in times of social distancing. In Brazil, considering the insufficient efforts carried out by the federal government to avoid contagion in Indigenous territories, Indigenous organizations won a preliminary measure at the Constitutional Court condemning the federal government to elaborate a full emergency plan and create an 'emergency room' to monitor the spread of the disease in Indigenous territories ensuring Indigenous participation in both initiatives.

As noted above, there have been instances in which these rights and duties have been violated during the pandemic. In Colombia, the Ministry of Interior authorized the use of online consultations for legislative and administrative measures and FPIC procedures were conducted virtually. The process was later cancelled and met with strong critique from Indigenous and Afro-descendant communities.<sup>450</sup> In Brazil, the government did not

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nerabilidad-extrema-ante-la-covid-19-en/> accessed 22 December 2020.

<sup>446</sup> 'Colombia: miles de indígenas en riesgo de contraer COVID-19' *AP News* <<https://apnews.com/7182bd31a69478126927ee276f644944>> accessed 22 December 2020>.

<sup>447</sup> UNGA, *Rights of Indigenous Peoples* <<https://undocs.org/en/A/75/185>> accessed 22 December 2020.

<sup>448</sup> OHCHR, *Report of the United Nations Expert Mechanism on the Rights of Indigenous Peoples on the right to participate in decision making* <<https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/StudyDecisionMaking.aspx>> accessed 23 December 2020.

<sup>449</sup> Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica (COICA), *Crisis multidimensional de la pandemia COVID-19 para los Pueblos Indígenas Amazónicos Transfronterizos en Colombia, Ecuador y Perú* <[https://www.cejil.org/sites/default/files/2020\\_04\\_20\\_carta\\_ppii\\_](https://www.cejil.org/sites/default/files/2020_04_20_carta_ppii_)

transfronterizos\_cidh\_onu\_pdf> accessed 22 December 2020.

<sup>450</sup> 'Attempting to impose consultations by moving them on-line, under the guise of protecting Indigenous and Afro-Descendant Peoples from Covid-19, is disingenuous and considering its potential consequences can only be described as sinister. Consultations with ethnic peoples, whether conducted on-line or in-person, must be aimed at obtaining their free prior and informed consent (FPIC) in accordance with their own decision-making processes. This means that Indigenous and Afro-Descendant peoples must be able to practice their traditional consensus building processes, that often include all community members holding gatherings that can be of considerable duration. Requiring them to engage in such processes during a pandemic is highly irresponsible, if not criminal', *Open letter to the Colombian Ministry of the Interior and the President of the Republic of Colombia, Mr. Ivan Duque. Copy to: United*

suspend concession procedures of projects during the pandemic, as was the case with the mining project Belo Sun and the Space Center Alcântara and has not observed consultation rights of Indigenous and Afro-descendant communities affected.<sup>451</sup> Planning investments for post-Covid-19 recovery,<sup>452</sup> the government of Ecuador decided to draft, amidst the pandemic, a new bill on the right to consultation.

Indigenous organizations protested that not only the legislation entails a right to *consultation* and not to *consent*, but they have not been consulted in the drafting process.<sup>453</sup>

An important part of the right to participate in political life and decision-making is the right to have access to information, a fundamental human right enshrined in international legal documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

During the pandemic, it became evident that access to information is closely connected to the right to the enjoyment of the highest attainable standard of physical and mental health in the UNDRIP. As highlighted by the Special Rapporteur on Indigenous Peoples, “informed discussion among and within communities about potential preventive responses depends on communities receiving accessible, accurate and regularly updated information on the progression of the virus.”<sup>454</sup> In many regions, however, Indigenous communities are often not recognized as such by governments and have had no access to resources to support adequate responses to Covid-19 and

ensure their communities were healthy and well-informed regarding the virus.<sup>455</sup> Physical distance, social distancing measures and government measures restricting movement has also affected Indigenous groups that live in more remote areas in exchanging information with authorities.<sup>456</sup>

#### 6.4. Persecution of Environmental and Human Rights Defenders

Environmental and human rights defenders (EHRD) have been crucial in denouncing human rights violations, fighting environmental crimes, and demanding action when marginalized groups are being disproportionately affected. With States’ Covid-19 responses generating new societal challenges, this work has become pivotal during the pandemic. On the other hand, environmental and human rights defenders have historically faced threats against their lives and work, with defenders that specifically work with land, Indigenous and environmental issues being even more vulnerable as they are three times as likely to suffer attacks than others.<sup>457</sup>

Since the Covid-19 outbreak, environmental and human rights defenders have played an important role in monitoring governments’ responses, ensuring that vulnerable communities receive adequate and appropriate information about the outbreak, and raising the alarm when response measures harm communities and/or the environment. In fact, many EHRD leaders have increased mobilization, leading to a ‘reawakening’ of civic organization in some countries.<sup>458</sup> For

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*Nations Special Rapporteur on the rights of indigenous peoples Subject: Colombia’s Consultation Fiasco, Underlying Problems and Indigenous Peoples’ Solutions Berlin* (19 June 2020), <<https://www.forestpeoples.org/en/news-article/2020/open-letter-colombian-ministry-interior-and-president-republic-colombia-mr-ivan>>-accessed-23-December-2020.

<sup>451</sup> See also Liana Amin Lima da Silva and Priscylla Monteiro Joca, ‘Incumplimiento De Los Protocolos Autónomos De Consulta Durante El Covid-19 En Brasil’ *Debates Indigenas* (1 October 2020) <<https://www.debatindigenas.org/notas/73-incumplimiento-protocolo-con-sulta-brasil.html>> accessed 23 December 2020; Por Ana Mendes, ‘Alcântara: o custo do Centro Espacial para as comunidades quilombolas’ *Repórter Brasil* (7 December 2017) <<https://reporterbrasil.org.br/2017/12/alcantara-o-custo-do-centro-espacial-para-as-comunidades-quilombolas/>> accessed 23 December 2020; Ruam Oliveira, ‘Ameaça a quilombolas pode travar acordo espacial EUA-Brasil em Alcântara’ *Tilt Uol* <<https://www.uol.com.br/tilt/noticias/redacao/2020/10/19/ameaca-a-quilombolas-pode-travar-acordo-espacial-eua-brasil-em-alcantara.htm>> accessed 23 December 2020.

<sup>452</sup> Amazon Watch, *Manufacturing Consent: Ecuador to Draft New Bill on the Consultation of Indigenous Peoples, Without Consulting Them* (18 November 2020)

<<https://amazonwatch.org/news/2020/1118-manufacturing-consent-ecuador-to-draft-new-fpic-bill-without-indigenous-consultation>> accessed 23 December 2020.

<sup>453</sup> ‘Indígenas advierten a Ecuador sobre proyecto de ley de consulta previa’ *El Mercurio* (2 December 2020) <<https://elmercurio.com.ec/2020/11/19/indigenas-advier-ten-a-ecuador-sobre-proyecto-de-ley-de-consulta-previa/>> accessed 23 December 2020.

<sup>454</sup> United Nations General Assembly (July 20, 2020) A/75/185 <<https://undocs.org/en/A/75/185>> accessed 23 December 2020.

<sup>455</sup> ‘COVID-19 in Indigenous Communities’ *Cultural Survival* <<https://www.culturalsurvival.org/covid-19/tracking-indigenous-communities>> accessed 23 December 2020.

<sup>456</sup> UNGA A/75/185, (n 454).

<sup>457</sup> Front Line Defenders, *Front Line Defenders Global Analysis 2018* (Front Line Defenders, 2019) <<https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2018>> accessed 23 December 2020.

<sup>458</sup> The Fund for Global Human Rights, *How are Human Rights Defenders Responding to COVID-19?* (15 July 2020) <<https://globalhumanrights.org/blogs/how-are-human-rights-defenders-responding-to-covid-19/>> accessed 23 December 2020.

instance, in the Philippines, Tunisia, Nigeria and Kenya, EHRD have built coalitions to continue their work amidst the pandemic, by engaging with vulnerable communities and demanding meaningful participation in the adoption of new bills.<sup>459</sup>

The life and work of EHRD are protected by a series of international treaties, such as the ICCPR. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms also articulates the minimum internationally recognized standards that apply to human rights defenders.<sup>460</sup> Regarding EHRD specifically, in 2019 the UN Human Rights Council unanimously adopted a landmark resolution to protect environmental human rights defenders, calling on States to create a safe and enabling environment for EHRDs and ensure effective remedies for human rights violations.<sup>461</sup>

Despite these legal guarantees and the recognition of their important work for human rights monitoring, the situation of EHRD has worsened during the pandemic, including with regard to specific gendered violence.<sup>462</sup> As many governments have suspended constitutional guarantees and restricted public gatherings and freedom of movement claiming health concerns, EHRD have encountered greater obstacles in realizing their work. These include criminalization of their activities and attacks to their civic freedoms,<sup>463</sup> smearing and online defamation.<sup>464</sup>

Lockdown measures and the impossibility to carry out consultations have also allowed extractive projects to proceed without opposition from human rights defenders, for instance, in Peru and Colombia.<sup>465</sup> Weakening the protection of civil and political rights has been addressed by UN human rights specialists,<sup>466</sup> underscoring that some measures are being enforced in a discriminatory manner against opposition figures and groups.<sup>467</sup> The IACHR also highlighted how emergency measures taken by countries around the region could be used to attack EHRD and asked States to balance the need to restrict rights in order to protect public health and states' duty to defend and monitor human rights during the pandemic.<sup>468</sup>

Finally, Covid-19 response measures have also led to increased threats to EHRD's right to life, health and personal integrity. For instance, isolation measures have made EHRDs living in conflict-ridden areas an easy target to armed groups, which is worsened by the fact that they have lost protective accompaniment and media coverage in some places.<sup>469</sup> According to the IACHR, the situation of EHRD killings in the Americas, historically the deadliest region for defenders,<sup>470</sup> has become even more alarming during the pandemic.<sup>471</sup> This is specifically worrisome for Indigenous peoples, since in 2019 they accounted for 40% of the global killings due to their role protecting the environment and their territories.<sup>472</sup> In Colombia, the most dangerous country for EHRD in 2019, the number of killings increased in the first months of 2020,<sup>473</sup> reaching 287 killings of social

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<sup>459</sup> *Ibidem.*

<sup>460</sup> United Nations General Assembly (8 March 1999) RES 53/144 <<https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>> accessed 23 December 2020.

<sup>461</sup> United Nations Human Rights Council (March 20, 2019) A/HRC/40/L.22/Rev.1 <<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/071/97/PDF/G1907197.pdf?OpenElement>> accessed 23 December 2020.

<sup>462</sup> *Ibidem.*

<sup>463</sup> 'COVID-19: Human Rights Defenders and Civic Freedoms' *Business & Human Rights Resource Center*, (last updated: 21 December 2020) <<https://www.business-humanrights.org/en/big-issues/covid-19-coronavirus-outbreak/covid-19-human-rights-defenders-and-civic-freedoms/>> accessed 23 December 2020.

<sup>464</sup> 'FLD Documents Impacts of COVID-19 on HRD' *Front Line Defenders* (n.d.) <<https://www.frontlinedefenders.org/en/campaign/covid-19-attacks-hrds-time-pandemic>> accessed 23 December 2020.

<sup>465</sup> 'Defending Rights in Times of COVID: A Regional Review of the Conditions for Defending Human Rights and Freedom of Expression in Mexico and Central America' *Front Line Defenders* (Espacio\_OSC, Iniciativa Mesoamericana de mujeres defensoras de derechos humanos, Trade Unions for Energy Democracy, nacla, CEJIL, Red Nacional de Defensoras

de Derechos Humanos en México, UDEFEGUA, 2020) <[https://media.business-humanrights.org/media/documents/2020\\_10\\_15\\_Brief\\_-\\_Balance\\_regional\\_FINAL\\_EN.pdf](https://media.business-humanrights.org/media/documents/2020_10_15_Brief_-_Balance_regional_FINAL_EN.pdf)> accessed 23 December 2020.

<sup>466</sup> OHCHR, *COVID-19: States should not abuse emergency measures to suppress human rights – UN experts* (16 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E>> accessed 23 December 2020.

<sup>467</sup> *Ibidem.*

<sup>468</sup> OAS, *IACHR Calls on States to Protect and Preserve the Work of Human Rights Defenders During the COVID-19 Pandemic* (5 May 2020) <[https://www.oas.org/en/iachr/media\\_center/PReleases/2020/101.asp](https://www.oas.org/en/iachr/media_center/PReleases/2020/101.asp)> accessed 23 December 2020.

<sup>469</sup> *Ibidem.*

<sup>470</sup> Global Witness, *Defending Tomorrow: The climate crisis and threats against land and environmental defenders* (Global Witness, July 2020) <<https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/>> accessed 23 December 2020.

<sup>471</sup> *Ibidem.*

<sup>472</sup> *Ibidem.*

<sup>473</sup> Juan Carlos Garzón Vergara et al., *Impactos y Riesgos del COVID-19 en la paz y las dinámicas del conflicto* (Fundación Ideas par la Paz, 2020) <<http://ideaspaz.or>

leaders and human rights defenders between January and December 2020.<sup>474</sup> When not killed, imprisoned EHRD have faced grave risk of contracting Covid-19, as alerted by UN human rights experts concerned with the state of these prisoners in Egypt.<sup>475</sup>

### **6.5. Role of Indigenous Communities in Avoiding the Next Pandemic**

Despite suffering numerous historical injustices, Indigenous peoples' role in Covid-19 recovery goes beyond that of mere victims. As discussed above, while 'modern' society's unsustainable consumption and production patterns have stretched planetary boundaries to critical degrees,<sup>476</sup> Indigenous knowledge systems and practices have gained more attention. In practice, the positive impacts of many successful cases of ecosystem management by Indigenous peoples have been felt locally and on a global scale. Indigenous lands hold 80% of the world's forest biodiversity and store at least a fourth of the above-ground carbon that exists in tropical forests.<sup>477</sup>

Research also shows that forest land managed by Indigenous communities suffers less deforestation and emits at least 73% less carbon when compared to other territories in Bolivia, Brazil and Colombia.<sup>478</sup>

As emerging research shines a light on the interconnections between the increase of animal-borne diseases, such as Covid-19, and human disruption of ecosystems,<sup>479</sup> it is clear that Indigenous peoples are important collaborators in helping to avoid another pandemic. The extent of their contribution, however, is hampered by the

lack of protection and enforcement of their rights. Despite greater recognition of their rights and importance of their worldviews, Indigenous communities are still being marginalized from policy-making processes at the national and international levels.<sup>480</sup>

### **6.6. Conclusions and Summary of Key Recommendations**

Indigenous communities have suffered a differentiated impact stemming from Covid-19. Their health and lives have been affected not only by the pandemic itself, but also by the measures adopted by governments worldwide. Most of these measures do not take into consideration their particular situations, nor are they directed towards closing the pre-existing inequality gap. Therefore, a more conscious and intersectional framework needs to be applied when dealing with Covid-19 impacts on Indigenous communities.

The OHCHR issued specific recommendations and guidelines to be considered when adopting measures that could have an impact on the rights of Indigenous peoples during the pandemic, which aim at remaining mindful of their knowledge and modes of living.<sup>481</sup> In particular, ensuring access to reliable information and meaningful participation in decision-making processes is highly significant. The IACHR Resolution No. 01/2020 specifically encourages the application of an intersectional approach when dealing with issues that may affect Indigenous communities.<sup>482</sup>

On a broader scale, securing Indigenous peoples' collective land rights and protecting their culture and knowledge systems contributes to

[g/media/website/FIP\\_COVID19\\_web\\_FINAL\\_V3.pdf](https://www.ohchr.org/media/website/FIP_COVID19_web_FINAL_V3.pdf) accessed 23 December 2020.

<sup>474</sup> Instituto de estudios para el desarrollo y la paz, *Líderes Sociales y Defensores de Derechos Humanos Asesinados en 2020* (INDEPAZ) <<http://www.indepaz.org.co/lideres/>> accessed 23 December 2020.

<sup>475</sup> OHCHR, *Imprisoned human rights defenders in Egypt at grave risk of COVID-19, say UN human rights experts* (24 August 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26182&LangID=E>> accessed 23 December 2020. See also African Commission on Human and Peoples' Rights, *Press release of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa on the protection of Human Rights Defenders during the COVID-19 pandemic* (1 May 2020) <<https://www.achpr.org/pressrelease/detail?id=496>> accessed 23 December 2020.

<sup>476</sup> Will Steffen et al., 'Planetary boundaries: Guiding human development on a changing planet' *Science* (347, 6223, 2015).

<sup>477</sup> IUCN, *IUCN Director General's Statement on International Day of the World's Indigenous Peoples 2019* (9 August 2019) <<https://www.iucn.org/news/secretariat/201908/iucn-director-generals-statement-international-day>

[-worlds-indigenous-peoples-2019](https://www.ohchr.org/en/worlds-indigenous-peoples-2019)> accessed 23 December 2020.

<sup>478</sup> Allen Blackman et al., 'Titling indigenous communities protects forests in the Peruvian Amazon (2017) PNAS 114, 16

<sup>479</sup> John Vidal, 'Destroyed Habitat Creates the Perfect Conditions for Coronavirus to Emerge' *Scientific American* (18 March 2020) <<https://www.scientificamerican.com/article/destroyed-habitat-creates-the-perfect-conditions-for-coronavirus-to-emerge/>> accessed 23 December 2020.

<sup>480</sup> Dwayne Mamo, 'The Indigenous World 2020' *IWGIA* (2020) <[http://iwgia.org/images/yearbook/2020/IWGIA\\_The\\_Indigenous\\_World\\_2020.pdf](http://iwgia.org/images/yearbook/2020/IWGIA_The_Indigenous_World_2020.pdf)> accessed 23 December 2020.

<sup>481</sup> United Nations OHCHR, Office of the High Commissioner of Human Rights, *COVID-19 and Indigenous Peoples' Rights* (29 June 2020) <[https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance\\_COVID\\_19\\_IndigenouspeoplesRights.pdf](https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID_19_IndigenouspeoplesRights.pdf)> accessed 23 December 2020.

<sup>482</sup> OAS, *Resolution 01/20, Pandemic and Human Rights in the Americas* <<https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>> accessed 23 December 2020.

building a more sustainable planet for humanity as a whole, and allows them to be more prepared to face the next pandemic.<sup>483</sup> Thinking about the health of the planet as a whole and considering Indigenous peoples' role as environmental stewards, to decrease the chances of future pandemics, post-Covid-19 recovery must include respect for protection and promotion of Indigenous rights in all regions of the world according to international and regional human rights frameworks. This must include the protection of Indigenous cultures and knowledge systems, granting and enforcing land tenure to communities, while strengthening environmental protection of Indigenous territories and the regions surrounding them.

Likewise, specific and intersectional measures need to be adopted and strengthened to protect the rights of EHRD, especially rights to life and personal integrity, since their work is extremely relevant for vulnerable communities and the environment. Some guidelines are: (i) to encourage meaningful participation in Covid-19 response, (ii) maximize access to information in a timely fashion, (iii) respect freedom of expression and make laws penalizing it more specific and limited, (iv) for States to ensure non-discriminatory measures of restriction on freedom of movement and assembly, as well as the release of defenders that have been detained in connection to their human rights work, (v) the need for a proportionate and necessary restriction on freedom of assembly, and (vi) adequate management of health related data, as well as other impacts on privacy, such as proportional, lawful and necessary surveillance.<sup>484</sup>

Moreover, governments should take into effective consideration, respect, promote and fulfil the norms enshrined in international, regional, and national law, Indigenous protocols and customary law for the protection of Indigenous peoples' rights. Especially because of the circumstances imposed by the pandemic, the respect for Indigenous peoples' rights should be promoted and enhanced, not made subject to any restriction or violation. In respecting Indigenous rights to self-determination and FPIC, governments and non-governmental institutions should:

- recognize and respect Indigenous protocols and customary laws, and Indigenous leaders and authorities as communities' legitimate institutions, and include them in decision-making processes concerning Covid-19 and related health measures;
- recognize Indigenous peoples' right to self-determination, including their right to stay uncontacted and voluntarily isolated;
- respect Indigenous health protocols of isolation and limitations to avoid spreading the virus;
- abstain from entering Indigenous territories and lands – where this is not possible, permission must be obtained from the legitimate Indigenous representative institutions, respecting health protocols and all established precautions to minimize physical contact;
- respect the Indigenous right to FPIC for what concerns the prevention, development, application and monitoring of measures aimed at preventing the spreading of Covid-19;
- at the same time, suspend all consultation and FPIC-seeking procedures in Indigenous territories as established, *inter alia*, in Resolution 1/2020 of the IACHR and in Indigenous customary protocols;
- consider the establishment of a fund for the recovery of Indigenous communities that have been affected by the pandemic and commit specific public funds to the re-establishment of Indigenous livelihoods and customary economic system at a level at least comparable to the pre-pandemic period.

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<sup>483</sup> Enforcing the right to communal land and natural resources is considered an adequate strategy to reduce structural poverty and ensure that Indigenous peoples have a dignified life while respecting their cultural distinctiveness. On the interconnectedness of ensuring a dignified life and the right to traditional land, see Alejandro Fuentes, 'Protection of Indigenous Peoples' Traditional Lands and Exploitation of Natural Resources: The Inter-American Court of Human Rights' Safeguards' (2017) 24, 3 *International Journal on Minority and Group Rights* 229, 253. In line with this argument and proposing how to tackle

the root causes of severe poverty among Indigenous peoples, see Sustainable Development Goals Knowledge Platform, Permanent Forum on Indigenous Issues (PFII), *Suggestions For The High Level Political Forum's Consideration To Ensure That Indigenous Peoples Are Not Left Behind In The 2030 Agenda* (2017).

<sup>484</sup> United Nations OHCHR, Office of the High Commissioner of Human Rights, *Civic Space and COVID-19: Guidance* (4 May 2020) <<https://www.ohchr.org/Documents/Issues/CivicSpace/CivicSpaceandCovid.pdf>> accessed 23 December 2020.

## **Chapter 7: Right to Life/Health**

### **7. Introduction**

The WHO's 2005 International Health Regulations (IHRs) define health measures in Article 1.1. as 'procedures applied to prevent the spread of disease or contamination' although they should not imply necessarily 'law enforcement or security measures'.

The support of national competent authorities is explicitly mentioned in Article 4 since they are the main actors monitoring possible health risks affecting individuals. As one of the methods to make effective the right to health security, surveillance is defined as 'the systematic ongoing collection, collation and analysis of data for public health' with 'the timely dissemination of public health information for assessment and public health response as necessary'. Article 45(2) affirms that the Parties of the WHO may only reveal and process personal data relying on legal principles and procedures if the information corroborates the concept of international security agreed on by the IHR. Therefore, personal data should be disclosed under the principle of proportionality, that is to say, fairly, lawfully, adequate, relevant, and not excessively produced in relation to its purpose. It must be accurate, corrected when appropriate or erased when inaccurate as well as incomplete to be kept no longer than necessary.

The right to protection is also a legal requirement stated by the Charter of Fundamental Rights of the European Union (CFREU). That includes the access of individuals to preventive health care and the right to benefit from medical treatment in the union. Article 35 affirms that its application should coexist with the national laws and practices. Since the CFREU was conceived in a context when pandemics were an exclusive topic for epidemiologists, virologists, zoonotic researchers and other experts at public health safety, the meaning of protection was much more restricted to the safeguard of personal data, freedom of assembly and association, family and environment. Moreover, Article 53 avers that nothing in the Charter 'shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized [...] by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions'.

Taken together, the IHRs and the CFREU represent differing ends of the spectrum of international legal and regulatory structures

relating to the right to life and the right to health. The IHRs are geared toward a global scale and containing disease at a multiplicity of jurisdictions in order to balance recognized international law constructs of the right to health with the attendant concerns regarding privacy and individual rights that constitute fundamental elements of the right to life. As legal instruments, however, the IHRs lack the binding and justiciable qualities of other international human rights law treaties. Conversely, the CFREU, which is grounded in the legal principles of the European Community, reflects concerns regarding individual rights and protections, especially those for personal data such as that connected with health care services as a paramount element. And, as part of the European governance structure, the CFREU is binding and justiciable in various European forums as well as national legal mechanisms. In the context of the Covid-19 pandemic, understanding how these legal and regulatory mechanisms have worked in tandem and with concerns over environmental issues that, together, form fundamental elements of the rights to life and health in the international context is vital for gathering lessons and moving forward with planning for the next iteration of pandemic. With this in mind, Chapter 7 offers an in-depth case study on Sweden, a State which is part of the EU, an active international human rights advocate and an example of a State that responded in a different manner than most of the international community to the Covid-19 pandemic.

#### **7.1. General Laws on Health Security Applied in Sweden**

Sweden illustrates the paths one can follow when the Nordic region or other continents are under analysis with reference to Covid-19. As discussed below, the Communicable Disease Act, the Zoonosis Act and the Swedish Environmental Code are the main legal frameworks considered to be the principal laws used by the Swedes to face the pandemic outbreak. The Nordic governments have followed more or less the same paths to converge relatively, for instance, on public instructions and testing campaigns. This is why we selected the three Swedish legal texts aforementioned to indicate how they connect with the international agreements and regimes either to protect human rights or to prevent the spread of international threats through dangerous pathogens.

Furthermore, the Swedish legislation concerning disaster law puts emphasis on effective response and not preparedness being that assertion also valid to the Nordic region.

Due to the high number of cases and deaths in Sweden caused by Covid-19, the common inquiry is

if the Swedish authorities infringed any national and European laws concerning the notion of effective response. According to the Swedish laws and its harmonization in the European Union, Sweden has acted within the parameters of the law producing scientific evidence and proof on the dynamics of the pandemic in order to base its course of actions. Although Sweden is far behind in testing rates per 100,000, the number of tests increased by the Public Health Agency of Sweden (PHAS) since the beginning of the outbreak.

According to the Swedish Communicable Diseases Act, if there is a lack of information or scientific evidence, the law cannot enforce the regional and municipal authorities to take necessary measures against Covid-19 or any other infectious disease. The point is that the Swedish Communicable Diseases Act is much more effective about rapid responses to the outbreak of infectious diseases, including pandemics, than a legal framework based on preparedness.<sup>485</sup>

Chapter I, section 4, provides that 'Infection control measures shall be based on science and proven experience and may not be more far-reaching than is justifiable with regard to the danger to human health'. That may explain why the notion of disaster, risk or emergency concerning the Covid-19 outbreak for the Swedish authorities took a different path compared to other European countries not opting, for instance, for a lockdown. The same legal instrument says that the regions should follow the national guidelines and corroborate the implementation of actions or orientation decided by the PHAS.

Nevertheless, metropolitan areas have not been targeted with any special measure to avoid agglomeration in public means of transportation and in city services.

Another variable considered is the number of non-Swedish nationals and residents crossing the Swedish borders daily. A person that lives in Copenhagen and works in Malmö will not be easily tested in Sweden by the public services. The Swedish Communicable Diseases Act states only Swedish nationals and residents are entitled to receive treatments regarding infectious diseases free of charge. With reference to those nationals from the EU, they can only benefit from the healthcare system if they meet some legal requirements. In general, citizens from the EU must prove they have formally contributed to a health security system where they reside in order to

access the public health services in Sweden. However, there is not yet a consensus in the EU if the costs created by Covid-19 will be covered by a common fund in the organization. Additionally, every year millions of travelers depart from Swedish airports from the three biggest metropolitan areas, i.e., Göteborg, Malmö and Stockholm.

Regarding those diseases linked to animals as vectors, the legal formula is similar to the content of the Swedish Communicable Diseases Act. According to the *Zoonoslag* (Zoonoses Act), General Provisions, Section 1, knowledge and scientific evidence will be taken into consideration before any measure is implemented by the authorities.<sup>486</sup> The Act says, "the law only applies to such zoonoses for which there is sufficient knowledge for effective control" and the production of samples for tests explicitly mentioned 'there are provisions on control and preventive measures in the Act on sampling of animals'. Given the example seen from Covid-19 throughout 2020, it is clear that knowledge and scientific evidence are not always promptly available. Rather, countries should adopt a precautionary approach when addressing zoonotic diseases, following the development of international environmental law.

The mechanism of information should be coordinated and produce effective communication as Section 3 affirms: 'The veterinarian must promptly notify the Swedish Board of Agriculture and the County Administrative Board. The County Administrative Board shall without delay notify the infection control physician'. The County Administrative Board has the responsibility to contact the National Veterinary Institute, the National Food Administration, the Public Health Agency of Sweden, the infection control physician, the municipal council in charge of environmental and health protection areas but also those veterinarians in the affected district in case any zoonosis is detected. The legal pattern of material evidence connects, consequently, the Swedish Communicable Diseases Act and the *Zoonoslag* to issues concerning the environment.

Although a relatively recent code regulating fauna, flora, waters, air, climate and a myriad of other topics, the Swedish Environmental Code shows how the Swedish legal system is framed by material and scientific evidence.<sup>487</sup> Chapter 13 imposes compulsory investigation for genetically modified organisms, especially products placed in

<sup>485</sup> Smittskyddslag (2004) 168 <[https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/smittskyddslag-2004168\\_sfs-2004-168](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/smittskyddslag-2004168_sfs-2004-168)> accessed 23 December 2020.

<sup>486</sup> Zoonoslag (1999) 658 <[https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/zoonoslag-1999658\\_sfs-1999-658](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/zoonoslag-1999658_sfs-1999-658)> accessed 23 December 2020.

<sup>487</sup> The Swedish Environmental Code (2000) 61 <<https://www.government.se/legal-documents/2000/08/ds-200061/>> accessed 23 December 2020.



the market, if there is a potential risk of damage that should be assessed beforehand. Section 8 affirms that “[i]t shall constitute a proper basis for an acceptable assessment of the damage to health and the environment that the organisms are liable to cause.

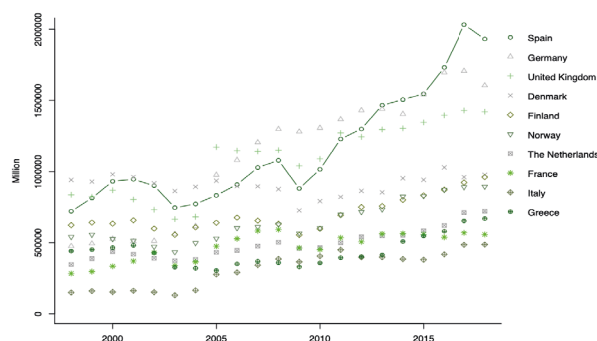
The investigation shall be made in accordance with scientific knowledge and proven experience.”

With respect to environmental and health impact assessments on chemical products and biotechnical organisms, Section 7 brings forward that the ‘Manufacturers and importers of chemical products or biotechnical organisms shall ensure that an appropriate investigation is carried out as a basis for assessment of the damage to human health or the environment that the product or organism is liable to cause. The investigation shall be carried out in accordance with scientific knowledge and proven experience’. The procedural law involved in possible litigation and the court composition are detailed in the Chapter 20, Section 4, predicting that ‘[a]n environmental court shall consist of a president, who shall be a legally qualified district court judge, an environmental adviser and two expert members. The court may also comprise an additional qualified judge and an additional environmental adviser’. Section 11 concerning the Superior Environmental Court and the Court of Appeal further states the judges must be legally qualified and have technical or scientific training and experience of environmental issues.

## 7.2. How Have the Nordic Authorities Promoted Health Security During the Covid-19 Outbreak?

The Swedish government, Parliament and national authorities, similarly to other Nordic countries, have acted within the limits of the law isolating groups of risk, incentivizing home-based work and creating a robust system of information advising the population of how individuals could avoid the spread of Covid-19 in urban areas, specifically Gothenburg, Malmö and Stockholm. With geographical points of intersection, especially Malmö, from where commuters head to Copenhagen daily to work, and Stockholm as an international urban region through Arlanda Airport, Sweden faced other complications to control the spread of the pandemic. Moreover, according to the official statistics published by the Swedish<sup>488</sup> and Spanish authorities,<sup>489</sup> the number

of flights between Sweden and Spain has increased significantly in the last few years (Fig. 1). The most affected European countries during the Covid-19 outbreak are also the ones in contact with the Nordic region based on the high number of travelers. This is why it is extremely important to take into consideration the urban dynamics and people’s dislocation to implement successful measures against potential pandemic threats in an international context.



The second lesson has to do with those municipalities more exposed to a pandemic. Göteborg, Malmö, Stockholm and Copenhagen have brutal statistics in terms of travelers and commuters crossing these urban areas. In that case, the mechanisms of surveillance, for example, tests, public information on social distance, the use of masks and sanitizers, are vital.

A third and final lesson is about the strengthening of primary health care attention alongside the creation of robust common funds with the purpose of financing the municipal system of surveillance.

According to the IHR, point 4 of the Annex I, letter “c”, makes clear the local communities have to ‘implement preliminary control measures immediately’. Therefore, the States are responsible to design models of governance from a bottom-up view forging a multi-layered strategy in which local, regional and national levels participate. A global health concept for human protection is conceived as an international regime under the umbrella of the IHR meaning countries shall pay attention to the weaknesses that may eventually put their populations at risk. The case of Sweden is a typical example of a territory exposed to millions of

<sup>488</sup> ‘Luftfart’ Trafik Analys <<https://www.trafa.se/luftfart/>> accessed 3 December 2019.

<sup>489</sup> Instituto Nacional de Estadística, *Estadística de Movimientos Turísticos de Frontera (FRONTUR), 2020* <[https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica\\_C&cid=1254736176996&menu=ultiDatos&id](https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176996&menu=ultiDatos&id)

p=1254735576863> accessed 30 September 2021. Read also on the number of visitors in Spain, even under the pandemic period, was around 17 million visitors. See Instituto Nacional de Estadística, *España Recibe un Millón de Turistas Internacionales en Octubre, un 86,6% menos que en el mismo mes de 2019* (News Release, 5 December 2020).

travelers crossing its borders with actions yet to be coordinated with countries such as Spain, Germany and UK where the effects of the Covid-19 were devastating to promote public health surveillance in international areas especially airports.