

Indigenous peoples in situations of pandemics – an old problem reappearing anew with COVID-19

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Abstract Deutsch

Indigene Völker sind den Auswirkungen von Katastrophen und anderen Plagen, die das menschliche Leben und die sozialen Beziehungen bedrohen, einschließlich Pandemien, viel stärker ausgesetzt als der Rest der Menschheit. Die jüngste COVID-19-Pandemie macht da keine Ausnahme, denn in vielen Teilen der Welt haben indigene Gemeinschaften unverhältnismäßig stark unter ihr gelitten. Gleichzeitig haben jedoch viele indigene Völker auf der ganzen Welt eine außergewöhnliche Widerstandsfähigkeit gegenüber der durch die COVID-19-Pandemie ausgelösten Notsituation bewiesen, oft ohne angemessene Unterstützung durch staatliche Behörden und trotz der Verletzung internationaler Normen über die Rechte indigener Völker durch viele Staaten. Indigene Völker benötigen spezifische Maßnahmen, die auf ihre kulturellen und sozialen Besonderheiten eingehen, während die Methoden, die für die Mehrheit der Gesellschaft gelten, für diese Völker im Allgemeinen unwirksam sind. Es ist von entscheidender Bedeutung, dass solche speziell zugeschnittenen Maßnahmen wirksam in die Praxis umgesetzt werden, nicht nur, um die Wahrnehmung ihrer international anerkannten Menschenrechte zu gewährleisten, sondern auch, um ein Wissen zu bewahren, das auf lange Sicht die gesamte Menschheit retten kann, nicht nur vor den tragischen Auswirkungen einer globalen Pandemie.

Abstract English

Indigenous peoples are much more exposed than the rest of humanity to the effects of disasters and other plagues threatening human life and social relations, including pandemics. The recent COVID-19 pandemic makes no exception, as in many parts of the world Indigenous communities have disproportionately suffered from it. At the same time, however, many Indigenous peoples throughout the globe have shown exceptional resilience to the emergency determined by the COVID-19 pandemic, often in the absence of adequate support by governmental authorities and despite the violation of international norms on Indigenous peoples' rights by many States. Indigenous peoples need specific measures addressing their cultural and social peculiarities, while the ways of dealing with the majority of the society are generally ineffective for such peoples. It is essential that such specially-tailored measures are effectively put in practice, not only in view of ensuring the enjoyment of their internationally-recognized human rights, but also for preserving a knowledge which in the long run may save the whole humanity, not only against the tragic effects of a global pandemic.

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1. Indigenous peoples: Reeds in the wind

In contemporary times most of the world is becoming accustomed to a standardized, frenetic, lifestyle, reflecting the Western model, which is being creepingly imposed to a progressively growing number of human communities. Cultural differences tend to converge towards homogeneous models which lead to the loss of a huge part of the richness and inheritance produced by humanity throughout its multi-millennial history.

In the context of such a rampant reality, Indigenous peoples resist as resilient custodians of tradition, biodiversity and sustainable life, usually in perfect consonance with nature. Their lifestyle is permeated with deep spirituality, driven by the belief that the world is something which must be respected and preserved in the interest of future generations, and not a commodity to be exploited and squeezed until a last drop of juice is available. In the framework of the frenetic race for profit at any cost which characterizes the contemporary world, their ‘diverse’ approach to life makes Indigenous peoples much more exposed than the rest of humanity – like reeds in the wind – to the effects of disasters and other plagues threatening human life and social relations, including pandemics. Furthermore, ‘many indigenous peoples live in remote areas where government social assistance programmes are practically absent’.¹ Numerous Indigenous communities ‘experience a high degree of socio-economic marginalization and are at disproportionate risk in public health emergencies [...] owing to factors such as their lack of access to effective monitoring and early-warning systems, and adequate health and social services’.² For instance, a research carried out by the Danish Institute for Human Rights’ Indigenous Navigator,³ concerning the impact of COVID-19 on Indigenous Communities, has revealed that 72 per cent of Indigenous persons who were questioned in Africa, Asia and Latin America described a given degree of inaccessibility of health facilities.⁴ Additionally, the traditional lifestyle of most Indigenous communities may represent another factor increasing the risk of spreading the infection among their members, as their traditional ceremonies and rites often presuppose the gathering of many people to celebrate special events, making it particularly difficult for them to reconcile ‘coronavirus restrictions with their relationally based cultural obligations’.⁵ Not to mention the fact that Indigenous families live in multi-generation-occupied houses, which further facilitate the spread

1 See *The impact of COVID-19 on indigenous communities: Insights from the Indigenous Navigator* (IWGIA and ILO 2020) at 32.

2 See Jeff Clyde G. Corpuz, ‘The Indigenous Peoples in time of a global pandemic’ [2021] *Journal of Public Health*, fdab223, <https://doi.org/10.1093/pubmed/fdab223>.

3 See <https://indigenusnavigator.org/>.

4 See *The impact of COVID-19 on indigenous communities: Insights from the Indigenous Navigator*, *supra* note 1, at 25.

5 See Tamara Power et Al., ‘COVID-19 and indigenous peoples: an imperative for action’, [2020] 29 *Journal of Clinical Nursing* 2737, at 2739.

of the virus.⁶ Last but not least, the anti-pandemic measures adopted by authorities are often likely to negatively affect Indigenous peoples more than other sectors of the society; in fact, such peoples ‘are facing an inexorable disruption of their traditional economy in terms of global quarantine, scoping from access to fully-featured medicine and education to breaking of trade and supply relations, which are crucial for marketing traditional products of their economic activities, purchasing of tools, ammunition, fuel, clothing and other goods for their families and households’.⁷

It is a fact that ‘Indigenous peoples [...] which already suffer the effects of socio-economic marginalization and constant human rights violations by those who want to exploit and plunder their territories, are particularly vulnerable. Already in the past they have been decimated by the spread of diseases coming from outside their communities’.⁸ There is historical evidence that in many situations of pandemics Indigenous peoples have been much more adversely affected than the general population, in terms of infection rates, severity of symptoms and casualties.⁹ For instance, ‘the history of the Amazon has been marked by epidemics that ravaged native populations. These calamities, recent or old, have left an indelible mark in the memory of communities: several Amerindian groups have been completely wiped out by exogenous diseases like measles and smallpox; others have barely survived, with mortality rates sometimes exceeding 98% (ie, worse than medieval plague and Spanish flu)’.¹⁰ Also, ‘[d]uring the 1918 Spanish Influenza pandemic, Māori died at a rate of seven times that of the European population, which is likely an underestimation because of undocumented Māori deaths [while] First Nations people in Canada were eight times more likely to die compared with

6 See United Nations, Department of Economic and Social Affairs, ‘COVID-19 and Indigenous peoples’, 2021, <https://www.un.org/development/desa/indigenouspeoples/covid-19.html>.

7 See Arctic Council, ‘The Impact of Covid-19 on Indigenous Peoples Living in The Russian Arctic. Input on Covid-19 by the Russian Association of Indigenous Peoples of the North’, 16 July 2020, <https://arctic-council.org/news/the-impact-of-covid-19-on-indigenous-peoples-living-in-the-russian-arctic/>.

8 See ‘Appello per i popoli indigeni in Amazonia e nel mondo’, *ASUD*, 11 June 2020, <https://asud.net/appello-popoli-indigeni/> (translated by the author). See also UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), ‘COVID-19 yet another challenge for indigenous peoples’, 6 April 2020, <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2020/04/EMPRIP-English.pdf>; Simona Beltrami, ‘Coronavirus exacerbates indigenous peoples’ historic vulnerabilities’, World Food Programme, 7 August 2020, <https://www.wfp.org/stories/coronavirus-exacerbates-indigenous-peoples-historic-vulnerabilities>.

9 See Power et Al., *supra* note 5, at 2737.

10 See Philippe Charlier, Leandro Varison, ‘Is COVID-19 being used as a weapon against Indigenous Peoples in Brazil?’ [2020] 369 *The Lancet* 1069, at 1069. See also United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, ‘The Impact of COVID-19 on Indigenous Peoples’, May 2020, <https://www.un.org/development/desa/dpadpublication/un-desa-policy-brief-70-the-impact-of-covid-19-on-indigenous-peoples/>.

non-First Nations’.¹¹ After the outbreak of the Pandemic (H1N1) 2009 influenza, it was ascertained that in the top end of Australia’s Northern Territory it had a disproportionate impact on Aboriginal people,¹² who experienced rates five times higher than the rest of the population.¹³ The situation was not dissimilar for other Indigenous communities who were affected by the same disease around the world.¹⁴

2. Indigenous peoples and the Covid-19 global pandemic

The emergence and outbreak of the COVID-19 global pandemic have confirmed the particular fragility of Indigenous peoples in facing epidemics.¹⁵ As emphasized by the UN Secretary General, ‘[t]he already-critical situation for many Indigenous Peoples, who face entrenched inequalities, stigmatization and discrimination, including poor access to health care and other essential services, is exacerbated by the pandemic. It presents particular existential and cultural threats to Indigenous people, and Indigenous elders and Indigenous Peoples in voluntary isolation are

11 See Power et Al., *supra* note 5, at 2737 (references omitted).

12 See Shaun M. Flint et Al., ‘Disproportionate impact of pandemic (H1N1) 2009 influenza on Indigenous people in the Top End of Australia’s Northern Territory’ [2010] 192 *The Medical Journal of Australia* 617. See also IWGIA, *The Indigenous World 2021* (Copenhagen 2021) at 8 ff.

13 See Power et Al., *supra* note 5, at 2737.

14 Ibid. The authors report that ‘Pacific Island and Māori people were seven times more likely to be hospitalised than Europeans and three and a half times more likely to die. Mortality for American Indian and Alaska Natives from H1N1 was four times higher than people from all other ethnicities combined. In Canada, First Nations people were three times more likely to be hospitalised, and six and a half times more likely to be admitted to an intensive care unit’ (references omitted). See also Ahmed Goha et Al., ‘Indigenous people and the COVID-19 pandemic: the tip of an iceberg of social and economic inequities’ [2021] 75 *Journal of Epidemiology and Community Health* 207, noting that ‘[i]n past pandemics (eg, the H1N1 pandemic of 2009/2010), indigenous people had higher attack rates and approximately threefold to sixfold higher risks of severe disease and death’.

15 Power et Al., *supra* note 5, at 2737, note that ‘Indigenous People’s increased vulnerability to disease is unquestionable, evident not only in shorter life expectancies but also in the lower age we become more vulnerable. In Australia, the Health Department advice is for Australians aged 70 years or over, or those aged 65 years or over with chronic medical conditions to stay at home and avoid all contact with other people. However, for Indigenous Peoples, this recommendation is for those aged over 50 years’. See also Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, UN Doc. A/75/185, 20 July 2020, paras. 5 (‘[a]lthough representing only 6 per cent of the world population, indigenous peoples are among the most harshly affected’) and 16 (‘COVID-19 presents significant risks for indigenous peoples, whose health in many countries is not as good as that of the rest of society, including due to a higher rate of pre-existing health conditions, poor access to health care and socioenvironmental factors that contribute to a low immune system’ [footnotes omitted]); see also paras. 64–89.

especially vulnerable'.¹⁶ Such a vulnerability is determined in particular by the social and environmental milieu in which most Indigenous communities conduct their existence; at the same time, a notable role is also played by the discrimination to which many Indigenous communities are subjected in several countries.

Indigenous communities already experience poor access to healthcare, significantly higher rates of communicable and non-communicable diseases, lack of access to essential services, sanitation, and other key preventive measures, such as clean water, soap, disinfectant, etc. Likewise, most nearby local medical facilities, if and when there are any, are often under-equipped and under-staffed. Even when Indigenous peoples are able to access healthcare services, they can face stigma and discrimination.¹⁷

In fact, '[w]ith little reason to presume differences in SARS-CoV-2 virulence across communities [...] high attack or case-fatality rates in indigenous people can only result from higher risk of exposure and spread and/or increased susceptibility to infection or complications. High poverty rates and associated social risks create conditions for the spread of COVID-19 in indigenous populations'.¹⁸ This situation is further exacerbated by the fact that – as noted for instance by the Working Group on the Rights of Indigenous Populations/Communities in Africa (a Special Mechanism of the African Commission on Human and Peoples' Rights) – 'the responses of some States to COVID-19 have a disproportionate impact on Indigenous Peoples, including the closure of markets in Indigenous areas, which curtails their livelihoods, as well as restrictions on mobility that hamper their pastoral activities'.¹⁹ In sum, to use the words of the International Labour Organization (ILO), '[a] combination of century-old marginalization and a set of distinct socioeconomic, health and environmental vulnerabilities in the COVID-19 context,

16 See 'COVID-19 and Human Rights, We are all in this together', April 2020, https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf.

17 See United Nations, Department of Economic and Social Affairs, 'COVID-19 and Indigenous peoples', *supra* note 6, at 1.

18 See Goha et Al., *supra* note 14, at 207.

19 See 'ACHPR Press Release: Impact of the COVID-19 Virus on Indigenous Populations/Communities in Africa', 28 April 2020, <https://www.achpr.org/pressrelease/detail?id=493>. See, for example, the case of Indigenous peoples of Arctic Russia, who have suffered from containment measures taken by regional authorities consisting in 'restricting reindeer herders from entering settlements out of fear that they may come in contact with infected workers from the extractive projects. This policy disrupted the local economy by limiting nomadic peoples' ability to buy food and sell their products like reindeer meat and fish'; see Pavel Devyatkin, 'Vulnerable Communities: How has the COVID-19 Pandemic affected Indigenous People in the Russian Arctic?', The Arctic Institute, 10 December 2020, <https://www.thearcticinstitute.org/vulnerable-communities-covid-19-pandemic-indigenous-people-russian-arctic/>; Elena Bogdanova et Al., 'Food Sovereignty of the Indigenous Peoples in the Arctic Zone of Western Siberia: Response to COVID-19 Pandemic' [2020] 17 International Journal of Environmental Research and Public Health 7570, doi:10.3390/ijerph 17207570.

expose Indigenous and tribal peoples to particularly severe impacts of the current crisis'.²⁰

The situation may even be more critical for Indigenous peoples living remotely or in voluntary isolation, because they are generally defenceless against new diseases. In particular, '[i]t is feared that further encroachment on indigenous lands, for instance, by illegal loggers and miners will result in significant deaths due to the easily compromised immune systems of indigenous peoples',²¹ as well as on account of their 'higher rates of other health issues [...], difficulties accessing health care, people often being very mobile and travelling often, and in many cases relying more on outreach services'.²²

Examples from many countries across the globe provide clear evidence of how Indigenous communities have been disproportionately affected by the spread of the pandemic in comparison with the rest of the population. For instance, in Bangladesh Indigenous populations have suffered loss of livelihoods and income, increased food insecurity and starvation, exacerbation of poverty, lack of access to health services, in addition to human rights violations which include intimidation and harassment, violence against women and girls and land grabbing by individuals, private companies and security forces. The response to this situation by the government has been inadequate.²³

In Bolivia, no specific measures for Indigenous communities were contemplated in the package of anti-COVID remedial economic measures adopted by the government since March 2020. Consequently, Indigenous persons 'had to move from the most remote territories to the population centres in order to access those subsidies, with the attendant risk of becoming infected'.²⁴ In addition, the Inter-American Commission on Human Rights 'has expressed its concern about the lack of medical care and access to biosecurity equipment, food and assistance vouchers in indigenous territories, in addition to the pre-existing precarious health conditions and infections among the employees of oil companies operating near the territories of the Guarani [Indigenous] people'.²⁵ Furthermore, either legal or ille-

20 See ILO, Policy Brief, 'COVID-19 and the world of work: A focus on indigenous and tribal peoples', May 2020, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_746893.pdf.

21 See United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 2.

22 See Gabrielle O'Kane, 'COVID-19 and the vulnerability of remote Indigenous communities', CEO, National Rural Health Alliance, 30 October 2020, <https://www.hospitalhealth.com.au/content/aged-allied-health/article/covid-19-and-the-vulnerability-of-remote-indigenous-communities-866945513>.

23 See Trimita Chakma, 'A Rapid Assessment Report. The impact of COVID-19 on Indigenous and Tribal Peoples in Bangladesh', Kapaceng Foundation, June 2020, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_753064.pdf at 11–20.

24 See Economic Commission for Latin America and the Caribbean (ECLAC), *The impact of COVID-19 on indigenous peoples in Latin America (Abya Yala). Between invisibility and collective resistance* (Santiago 2021) at 39.

25 Ibid.

gal extractive activities – particularly gold mining – have continued to be carried out in Indigenous lands, increasing the rates of infection among Indigenous persons and continuing to pollute the rivers that in time of pandemic are all the more crucial for the survival of the communities living on their banks.²⁶

In Brazil, as of 15.9.2020, 27,000 members of 146 different Indigenous communities across the country had been infected with COVID-19, with a mortality rate of 3%.²⁷ By October 2020 this number increased to more than 38,000, involving 161 communities,²⁸ and at the end of 2020 it was reported that in the Brazilian Amazon the rate of COVID-19-related fatalities among Indigenous people was 9.1%, almost double of the 5.2% rate of the general population in Brazil.²⁹ The assumption that the President Bolsonaro's administration would have strongly contributed to this situation – either deliberately or by not sufficiently considering the needs of Indigenous peoples – is more than a speculation. It has also been denounced that the government has relied on 'a pattern of lies and misinformation [...] [which] has consistently underreported and downplayed the extent of the impact of COVID-19 on [Indigenous] communities'.³⁰ On 7.7.2020 Law No. 14,021 was adopted, which established specific provisions to protect Indigenous communities during the sanitary emergency. However, 'in line with the regressive policies on the rights of indigenous peoples that have been implemented in Brazil, the law was published in the Official Gazette with 16 vetoes by the executive [...] [including veto on] provisions requiring the Government to ensure that indigenous peoples had access to emergency financial assistance for the poor during the COVID-19 crisis, drinking water, free distribution of cleaning products, Internet and food, as well as hospital and intensive care beds'.³¹ In addition, extractive activities and deforestation have continued in Indigenous lands despite the emergency determined by the pandemic. In particular, 'between January and June 2020 the Brazilian Amazon registered a record amount of deforestation in a six-month period, with 3,070 square kilometres of forest lost to illegal logging, mining and

26 Ibid., at 60.

27 See Charlier, Varison, *supra* note 10, at 1069. See also Matheus Ferreira Mendes et Al., 'COVID-19 pandemic evolution in the Brazilian Indigenous population' [2021] Journal of Racial and Ethnic Health Disparities, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8006870/>. On the impact of COVID-19 on Brazilian Indigenous peoples see also Camila Vantini Capasso Palamim et Al., 'COVID-19 in the Indigenous Population of Brazil' [2020] 7 Journal of Racial and Ethnic Health Disparities 1053.

28 See National Committee for Indigenous Life and Memory, 'Our Fight Is for Life', November 2020, https://emergenciaindigena.apiboficial.org/files/2020/12/APIB_relatorio_covid_v7EN.pdf, at 4 and 14.

29 See Devyatkin, *supra* note 19.

30 See Thais Mantovanelli et Al., 'Brazil: The dangers of rolling back social and environmental safeguards for indigenous and forest peoples during COVID-19', February 2021, https://www.forestpeoples.org/sites/default/files/documents/Brazil%20Rollback%20report%20EN_0.pdf, at 11.

31 See ECLAC, *supra* note 24, at 39.

livestock farming in protected areas'.³² More in general, evidence shows that 'Indigenous peoples in Brazil have suffered [...] continued attacks on their cultures, their territories and their way of life [...] com[ing] as part of the government's attempts to further neoliberal development and undermine environmental and indigenous rights, taking advantage of what the Minister of Environment called "a moment of calm while the press is focusing on the pandemic"'.³³ On 17 July 2020 the Inter-American Commission on Human Rights (IACHR) released precautionary measures requesting the Brazilian government to protect the members of the Yanomami and Ye'kwana Indigenous communities against the effects of COVID-19, considering that such peoples were in a situation of gravity and urgency, risking that their rights were irreparably prejudiced.³⁴ On 5.8.2020 the Brazilian Supreme Court ordered the government to adopt specific measures to protect Brazilian Indigenous peoples from the pandemic, especially through removing miners – responsible of crimes like deforestation, illegal extraction and pollution, especially through mercury pollution – from indigenous lands.³⁵ However, in concrete terms, the action carried out by the government to relieve Indigenous communities from the effects of the COVID-19 – if any – has not proven really effective, and some of them, e.g. the Paiter Suruí and Parque Indígena do Xingu peoples, have decided to place themselves in voluntary isolation.³⁶ In November 2020 the National Committee for Indigenous Life and Memory denounced that 'between March and October 2020 [...] violence against indigenous peoples increased both inside and outside our territories. The criminals who invade our lands have not been quarantined let alone working home office. We affirm that the worsening of violence against indigenous peoples, during the pandemic, was encouraged by Bolsonaro [...] [trying] to use the health crisis and the pandemic to "pass the cattle" over our rights, our bodies and our lands'.³⁷ On 9.8.2021, the Articulation of Indigenous Peoples from Brazil (APIB) filed a statement before the International Criminal Court (ICC) requesting the Prosecutor to investigate on genocide and crimes against humanity allegedly committed by President Bolsonaro,³⁸ arguing

32 Ibid., at 60–61. The links between deforestation and emergence of the pandemic in the Amazon is analyzed by Amy Y. Vittor et Al., 'The COVID-19 crisis and Amazonia's indigenous people: Implications for conservation and global health' [2021] 145 World Development 105533.

33 See Mary Menton et Al., 'The COVID-19 pandemic intensified resource conflicts and indigenous resistance in Brazil' [2021] 138 World Development 105222, Abstract.

34 See Resolución 35/2020, Medida Cautelar No. 563–20, Miembros de los Pueblos Indígenas Yanomami y Ye'kwana respecto de Brasil, 17 June 2020, <http://www.oas.org/es/cidh/decisiones/pdf/2020/35-20MC563-20-BR.pdf>.

35 See Débora Álvares, 'Top court rules Brazil must protect Indigenous in pandemic', The Washington Post, 5.8.2020, https://www.washingtonpost.com/world/the_americas/top-court-rules-brazil-must-protect-indigenous-in-pandemic/2020/08/05/8698bdd0-d77a-11ea-a788-2ce86ce81129_story.html.

36 See Charlier, Varison, *supra* note 10, at 1069.

37 See National Committee for Indigenous Life and Memory, *supra* note 28, at 4–5.

38 See Jordan Murphy, 'Indigenous group asks ICC to investigate Brazil president for crimes against humanity', JURIST, 10 August 2021, <https://www.jurist.org/news/2021/>

that, among the methods through which Bolsonaro would have perpetrated such crimes, propagation of the spread of COVID-19 would be included.³⁹ On 12.10. 2021 a similar initiative was undertaken by the All-Rise Association, a group of lawyers and environmental activists originating in Austria, which requested the ICC Prosecutor to carry out investigation for crimes against humanity allegedly committed by the Brazilian government in the Amazon.⁴⁰ Among other things, All-Rise denounced that ‘land-grabbing and invasions of territories cause the spread of infectious zoonotic diseases and COVID-19’.⁴¹

In India, the diffusion of COVID-19 and the government responses to it have determined especially harmful consequences on Indigenous communities (i.e. *Scheduled Tribes*), which range from the effects resulting from the use of violence by security forces to enforce the lockdown⁴² to severe lack of access to lockdown relief and food aid,⁴³ from lack of access to healthcare⁴⁴ to stigmatisation and social boycott,⁴⁵ from severe impact on the livelihood of the communities⁴⁶ to eviction of Indigenous peoples from their traditional lands,⁴⁷ with all the ensuing consequences. Furthermore, ‘the current government used the COVID-19 lockdown to step up the exploitation of the country’s natural wealth for the benefit of private companies and to the detriment of the poor, ignoring India’s constitutional and legal protections of the rights of Indigenous Peoples, as well as legal safeguards for the protection of the environment’,⁴⁸ while it ‘has failed to adopt any specific policy or programme for its Indigenous Peoples’.⁴⁹

In Mexico, Indigenous communities were particularly affected by the pandemic on account of a number of reasons, particularly of the delay by the central and local governments to disseminate information about the virus and the sanitary

08/indigenous-group-asks-icc-to-investigate-brazil-president-for-crimes-against-humanity/.

39 See ‘Indigenous Brazilians accuse Jair Bolsonaro of genocide at ICC’, DW, August 2021, <https://www.dw.com/en/indigenous-brazilians-accuse-jair-bolsonaro-of-genocide-at-icc/a-58810568>.

40 See All-Rise, ‘Communication under Article 15 of the Rome Statute of the International Criminal Court regarding the Commission of Crimes Against Humanity against Environmental Dependents and Defenders in the Brazilian Legal Amazon from January 2019 to present, perpetrated by Brazilian President Jair Messias Bolsonaro and principal actors of his former or current administration’, 12 October 2021, on file with the author (kindly provided by All-Rise member Professor René Kuppe).

41 Ibid., paras. 37 and 126.

42 See National Campaign Against Torture, ILAI and IWGIA, ‘Bearing the Brunt. The Impact of Government Responses to COVID-19 on Indigenous Peoples in India’, 11.9. 2020, <https://www.iwgia.org/en/resources/publications/3838-bearing-the-brunt.html>, at 13.

43 Ibid., at 14–16.

44 Ibid., at 17.

45 Ibid., at 17–18.

46 Ibid., at 18.

47 Ibid., at 19–20.

48 Ibid., at 11.

49 Ibid., at 29–30.

measures to be adopted in Indigenous languages, of the limited access to sanitary facilities and medicines, as well as of the aggressive expansion of large-scale infrastructure projects on Indigenous territories.⁵⁰ As regards the latter in particular, ‘[t]here is evidence that the government is taking advantage of the COVID-19 pandemic, as it can more easily impede injunctions issued against megaprojects with the argument that the works cannot be stopped because they are now a “national priority”’.⁵¹

In Northern Russia, specifically in the Yamalo-Nenets Autonomous Okrug of West Siberia – home of the Nenets Indigenous people – at the end of 2020 there was ‘the highest coronavirus cases per capita of all 85 Russian federal subjects and four of the top ten federal subjects by deaths per capita’ were in the Arctic region.⁵² This was likely due to the migration of workers from across Russia and other former Soviet republics to be employed in the extractive industry in the Arctic, to whom no effective quarantine regime was imposed.⁵³

As regards the United States, in Arizona, during the first months of the spread of the pandemic the infection rate among the Navajo Nation was ten times higher than the general population of the state.⁵⁴ In New Mexico, 57% of the COVID-19 cases and 50% of casualties have regarded members of Native Americans, despite the fact that they only represent 11% of the state’s population.⁵⁵

Indigenous peoples living in many other countries have experienced – or are still experiencing at the moment of this writing – similar situations. This confirms the particular vulnerability of Indigenous communities *vis-à-vis* pandemics like the one determined by the COVID-19.

3. Covid-19 and indigenous peoples’ resilience

‘Indigenous Peoples are known to survive historical and contemporary adversities, demonstrating resourcefulness and resilience in adversity’.⁵⁶ This has been confirmed by the way most Indigenous communities have reacted to the emergency determined by the COVID-19 pandemic, often in the absence of adequate support by State authorities. In general, ‘Indigenous organizations around the world have [...] been quick to respond [to the emergency], including by providing key messages through written, social media and radio broadcasts in indigenous lan-

50 See Susanne Hofmann, ‘Putting Large-Scale Infrastructure Projects First: The COVID-19 Pandemic in Indigenous Mexico’ [2020] 39 *Bulletin of Latin American Research* 47.

51 *Ibid.*, at 49.

52 See Devyatkin, *supra* note 19.

53 *Ibid.*

54 See United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 1.

55 See Goha et Al., *supra* note 14, at 207.

56 See Power et Al., *supra* note 5, at 2739.

guages'.⁵⁷ Also, in many areas of the world Indigenous peoples have relied on their traditional practices to face the pandemic. For example, the UN Department of Economic and Social Affairs reports that the Karen people of Thailand have resumed their ancient ritual of *Kroh Yee* (village closure), precluding entrance into their areas to non-members of the community. This measure was also adopted by many other communities in numerous countries, including Malaysia, Bangladesh⁵⁸, and many areas of Latin America,⁵⁹ reiterating a practice already implemented during past epidemics.⁶⁰ Among the Indigenous peoples which closed their own territories to non-members, communities living in Argentina, Bolivia, Chile, Guatemala, Mexico, Nicaragua, Panama and Peru, among others, are included.⁶¹ In particular, in Chile – including in Rapa Nui (Easter Island) – in a context in which adequate support by State authorities was lacking, local indigenous communities have been able to develop effective means of self-management, based on their own cultural models, which have actually relieved the effects of the pandemic on their people.⁶²

In Brazil, Amazon Indigenous communities have adopted sturdy measures to remain isolated, set up blockades to keep the virus out of their territories and expelled gold-miners from their villages.⁶³ In general, Brazilian Indigenous peoples have intensified their struggle for life, strongly opposing the governmental policy which has been defined 'genocide by omission'.⁶⁴ In the manifesto 'Our Fight Is for Life', published in November 2020, the National Committee for Indigenous Life and Memory declared that their lives – which have been the subject of attacks, persecution and extermination – have been 'saved by solidarity', through protecting 'our territories, our identity and ways of life, forests, rivers, biodiversity ... Mother Earth'.⁶⁵ The resistance of Brazilian Indigenous peoples has been realized through the creation of 'hundreds of health barriers to prevent the virus from reaching communities. A measure that the Federal Government does not just neglected but tried to sabotage in different ways. This basic action, that our communities have implemented on their own, was instrumental in minimizing the impacts of the new coronavirus among our relatives across the country'.⁶⁶

57 See United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 2. On Indigenous resilience see also Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, *supra* note 15, paras. 37–42 and 51–63; 'Indigenous knowledge – and resilience – in a COVID-19 world', IFAD, 6.7.2020, <https://www.ifad.org/ar/web/latest/-/story/indigenous-knowledge-and-resilience-in-a-covid-19-wor-1>.

58 See Chakma, *supra* note 23, at 8–9.

59 Ibid.

60 See ECLAC, *supra* note 24, at 51.

61 Ibid., at 52.

62 See Luis Campos, Javiera Chambeaux and Claudio Espinoza, 'Incidencia del COVID-19 en Pueblos Indígenas y Afrodescendientes de Chile y la importancia de la autogestión comunitaria' [2021] 13 Revista Albuquerque, n. 25, 143.

63 See Menton et Al., *supra* note 33, Abstract.

64 Ibid.

65 See National Committee for Indigenous Life and Memory, *supra* note 28, at 4.

66 Ibid., at 6.

As regards Indigenous peoples in the Arctic, their resilience has been ‘embedded in Indigenous knowledge’, including ‘[g]enerations-long disease-fighting experience and memory of previous pandemics’.⁶⁷ In fact, although many Indigenous Arctic residents suffered from COVID-19, traditional subsistence practices and Indigenous knowledge provided strong emotional, mental, spiritual and physical support throughout the pandemic. Places of traditional subsistence, such as tundra, rivers, lakes and forests, became zones of safety where Indigenous people were able to continue living without worries about getting infected, as well as avoiding hunger due to the store closures in the settlements. In addition, remoteness and cultural memory of devastating past epidemics, such as the 1918 influenza pandemic, in Indigenous-dominant regions may have afforded residents with a level of protection not seen in the nearby mining and other industrial settlements.⁶⁸

Similar approaches have been followed in other areas of the world. In Aotearoa (New Zealand) Māori communities have been distributing food to older people to allow them to remain at home with their *whanau* (family) without risking to be infected by the virus.⁶⁹ In Canada, ‘First Nation populations are gathering their bundles for medicine, food, birthing and death, while developing innovative ways to protect themselves such as making their own protective facemasks’.⁷⁰ In Costa Rica, the National Indigenous Roundtable of Costa Rica (MNICR) and local Indigenous organizations ‘began to take measures to prevent infection from the very start, taking into account the recommendations of the Ministry of Health and supplementing them with their own actions, for example checkpoints on entering and leaving their territories, in exercise of their right to self-determination [...] While the first case of COVID-19 in the country was recorded in March, it was not until the end of June that cases were detected in Indigenous territories, thanks in large part to the measures that they themselves had implemented’.⁷¹

4. States obligations, violations of indigenous peoples’ rights and actions to be undertaken

Article 25, para. 1, of ILO Convention C169 of 1989⁷² establishes that ‘Governments shall ensure that adequate health services are made available to [Indigenous and tribal peoples], or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health’. This

67 See Andrey N. Petrov et Al., ‘Lessons on COVID-19 from Indigenous and remote communities of the Arctic’ [2021] 27 *Nature Medicine* 1491, at 1492.

68 Ibid.

69 See Power et Al., *supra* note 5, at 2739.

70 Ibid.

71 See IWGIA, ‘The Indigenous World 2021: Costa Rica’, 18 March 2021, <https://www.iwgia.org/en/costa-rica/4213-iw-2021-costa-rica.html>.

72 C169 – *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

provisions has clearly been violated by those countries – among the 24 States parties to the Convention⁷³ – which have not provided Indigenous communities within their own territories with adequate anti-COVID-19 health services, which must ‘take into account [the] economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines’.⁷⁴ Admittedly, the impact played by the Convention in point is quite limited, in consideration of the limited number of countries which have ratified it, most of them situated in Latin America. However, the same principle is expressed by Article 24 of the UN Declaration on the Rights of Indigenous Peoples of 2007 (UNDRIP),⁷⁵ which recognizes the right of Indigenous individuals ‘to access, without any discrimination, to all social and health services’, in addition to ‘an equal right to the enjoyment of the highest attainable standard of physical and mental health’. Although the UNDRIP is not, in itself, an instrument of binding character, the provision just mentioned simply contextualizes to the situation of Indigenous peoples a rule which is well entrenched in the context of general international law. In fact, as stressed by ILA Resolution No. 5/2021, ‘[m]embers of indigenous peoples are entitled to the enjoyment of all internationally recognised human rights – including those specific to their indigenous identity – in a condition of full equality with all other human beings’.⁷⁶

Consistently, On 9.4.2020 the Inter-American Court of Human Rights declared that, ‘[d]ada la naturaleza de la pandemia, los derechos económicos, sociales, culturales y ambientales deben ser garantizados sin discriminación a toda persona bajo la jurisdicción del Estado y, en especial, a aquellos grupos que son afectados de forma desproporcionada porque se encuentran en situación de mayor vulnerabilidad, como son las [...] comunidades indígenas [...]’.⁷⁷ This position reflects the one previously taken by the UN Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment on the right to the highest attainable standard of health, concerning Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights.⁷⁸ This provision establishes that States parties to the Covenant ‘recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’; among the steps to be taken in this regard, those necessary for the ‘prevention, treatment and control of epidemic, endemic, occupational and other diseases’ are included. According to the CESCR, ‘health facilities, goods and services [must be] accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in

73 See https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314.

74 See Article 25, para. 2.

75 UN GA Res. 61/295 of 13 September 2007.

76 See International Law Association, Resolution No. 5/2012, ‘Rights of Indigenous Peoples’, <https://www.ila-hq.org/index.php/committees>, para. 1.

77 See Declaración de la Corte Interamericana de Derechos Humanos 1/20, ‘COVID-19 y Derechos Humanos: los problemas y desafíos deben ser abordados con perspectiva de derechos humanos y respetando las obligaciones internacionales’, 9 April 2020.

78 993 UNTS 3.

fact, [...] [and] must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations’.⁷⁹ The Committee also noted that ‘indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health’.⁸⁰ This all the more applies in a situation of pandemic like the one determined by the spread of the COVID-19, implying that ‘the denial of access to health facilities, goods and services to particular individuals or groups as a result of de jure or de facto discrimination’⁸¹ – as happened with regard to Indigenous peoples in several countries during the COVID-19 emergency – represents an unjustifiable violation of the internationally recognized human right to the highest attainable standard of health. In fact, while it is true that a serious emergency like the one determined by the current pandemic may bring with itself a burden that States may be objectively unable to properly address – inevitably resulting in a detriment in the level of health guaranteed to individuals – this may not in any case be used for justifying a differentiated treatment between different sectors of the national society. It follows that, as emphasized by the African Commission on Human and Peoples’ Rights, the rights to health and life provided for by Articles 16 and 4 of the African Charter on Human and Peoples’ Rights⁸² determine on States parties the obligation to adequately protect indigenous populations/communities against the effect of the pandemic, through adopting all appropriate measures, including, among others, ensuring their ‘access to medical services, food, adequate shelter and clean water to manage the spread of the virus; and to ensure their inclusion in all social and economic services’.⁸³ Such measures must ‘not lead to [their] discrimination [...] and further marginalization’,⁸⁴ and States are also called to ‘conduct advocacies relating to COVID-19 in indigenous languages’.⁸⁵

The COVID-19 pandemic has determined a devastating impact on Indigenous Peoples’ cultural rights. Proper enjoyment of the latter by Indigenous communities is fundamental for the very preservation of their own cultural identity and, *a fortiori*, physical existence. In other words, as emphasized by ILA Resolution No. 5/2021, “[c]ultural rights are at the [very] core of indigenous cosmology, ways of

79 See CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 11.8.2000, UN Doc. E/C.12/2000/4, para. 12(b).

80 Ibid., para. 27.

81 Ibid., para. 50.

82 Adopted on 27 June 1981, 1520 UNTS 217.

83 See African Commission on Human and Peoples’ Rights, 449 Resolution on Human and Peoples’ Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts – ACHPR/Res. 449 (LXVI) 2020, August 2020, para. 6.

84 Ibid., para. 5.

85 Ibid., para. 6.

life and identity, and must therefore be safeguarded in a way that is consistent with the perspectives, needs and expectations of the specific indigenous peoples”.⁸⁶ As is well known, elders represent the sector of the society which is most exposed to the harmful effects of the pandemic in terms of health. For most Indigenous peoples elders are the custodians of the traditions and knowledge of the community and transmit ‘indigenous traditional knowledge and culture and practices. These include conservation of biodiversity, upholding traditions and customs, leading community gatherings and ceremonies, and serving as custodians of customary law and governance. Indigenous elders are often the last remaining bastions of traditional knowledge and have a key role in teaching and transmitting their indigenous languages to future generations’.⁸⁷ More in general, the management of a pandemic basing on the needs of the dominant part of the society, without properly taking into account the cultural specificities of minority groups, is very likely to disproportionately impact the cultural integrity of the latter, including with regard to the relationship of Indigenous peoples with their own ancestral lands and natural resources.⁸⁸ Conversely, using the shrewdness of adequately considering the cultural and social peculiarities of Indigenous peoples may notably minimize the detrimental effects of the pandemic over their communities.⁸⁹ For instance, the measures of lockdown imposed by most States during the periods when the spread of the COVID-19 reached its peaks included, as is well known, the closure of national borders. However, many Indigenous communities live and carry out their daily activities across State borders. This is the case, for instance, of the Saami people in the Northern countries of Europe. ‘Months of closing of [the] borders [of such countries] interferes [sic.] with the Saami families living on different sides of a border. It interferes with the social life of Saami as a people. And not least, it impacts the economy’.⁹⁰ Nevertheless, the decision of the governments of Norway and Sweden to apply an exception for Saami reindeer husbandry, allowing herders to freely move across the border between the two countries, pre-

86 See International Law Association, Resolution No. 5/2012, *supra* note 76, para. 6.

87 See United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 2.

88 See Gretchen Walters et Al., ‘COVID-19, Indigenous Peoples, Local Communities and Natural Resource Governance’ [2021] 27 Parks (Special Issue) 57.

89 See, consistently, IACHR, ‘Pandemic and Human Rights in the Americas’, Resolution 1/2020, para. 56, recommending States to ‘[t]ake utmost measures to protect the human rights of indigenous peoples in the context of the COVID-19 pandemic, bearing in mind that these groups are entitled to receive health care that is culturally appropriate, and that takes into account traditional preventive care, healing practices, and traditional medicines’; along the same lines see also Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Cali Tzay, *supra* note 15, para. 99.

90 See Arctic Council, ‘The Impact of Covid-19 on Saami Communities. Interview with Christina Henriksen, President of the Saami Council’, 16 July 2020, <https://arctic-council.org/news/the-impact-of-covid-19-on-saami-communities/>, at 2. See also Saami Council, ‘COVID-19 and the Sámi people: Rights of cross-border families and communities must be respected even at times of crisis’, 15 January 2021, <https://www.saami-council.net/news-archive/covid-19-and-sami-people>.

vented Saami economy – and, *a fortiori*, Saami culture – from suffering highly harmful consequences.⁹¹

The example just described shows how, in most concrete situations, Indigenous peoples need specific measures addressing their cultural and social peculiarities,⁹² while the ways of dealing with the majority of the society are generally ineffective for such peoples. It follows that ‘a multisectoral strategy of intervention and a preferential option for the indigenous peoples during this global pandemic’ is needed.⁹³ Consequently, the primary – elementary – measure which must be undertaken in order to protect Indigenous communities against the effects of the pandemic, i.e. ‘to take all appropriate measures for the protection of indigenous communities [in their territories] from contamination by COVID-19 through proper prevention due to their vulnerability [...] by facilitating their access to safe drinking water, soap and sanitizers, accessible and appropriate health facilities and other basic social services’,⁹⁴ would not be enough if it is not accompanied by other opportune approaches. First – since nobody knows the specific needs of Indigenous peoples better than Indigenous peoples themselves – before any action is undertaken aimed at protecting them against the effects of the pandemic, their free, prior and informed consent must be obtained.⁹⁵ Also, support should be provided ‘for community protection plans devised autonomously by indigenous peo-

91 See Arctic Council, ‘The Impact of Covid-19 on Saami Communities. Interview with Christina Henriksen, President of the Saami Council’, *supra* note 90, at 2.

92 See Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, *supra* note 15, para. 91. See also ILO, Policy Brief, *supra* note 20, at 3–4.

93 See Corpuz, *supra* note 2, Abstract. See also ‘On World Indigenous Peoples’ Day, IACHR and OSRESCER Urge States to Step Up Their Efforts to Protect Indigenous Peoples’ Territories as an Essential Measure to Protect Nature and Biodiversity, and to Guarantee Their Rights During the COVID-19 Pandemic’, Press Release, 9.8.2021, https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/207.asp, with the Inter-American Commission on Human Rights (IACHR) and the Office of the Special Rapporteur on Economic, Social, Cultural, and Economic Rights (OSRESCER) urging States ‘to provide differentiated care for indigenous peoples during the COVID-19 pandemic and to guarantee they have effective access to vaccines’; IACHR, ‘Pandemic and Human Rights in the Americas’, Resolution 1/2020, *supra* note 89, at 6, according to which, ‘when issuing emergency containment measures to address the COVID-19 pandemic, the countries of the region should apply an intersectional approach and pay particular attention to the needs and differentiated impact of those measures on the human rights of historically excluded or high-risk groups, such as older people and people of any age who have preexisting medical conditions, persons deprived of liberty, women, indigenous peoples’.

94 See ‘ACHPR Press Release: Impact of the COVID-19 Virus on Indigenous Populations/Communities in Africa’, *supra* note 19. See also United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 3.

95 See ECLAC, *supra* note 24, at 10. See also Committee on the Elimination of Racial Discrimination, Statement 2(2020), Peru, 7 August 2020, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PER/INT_CERD_SWA_PER_9236_E.pdf, para. 6.

ples',⁹⁶ and medical services designed for them should be culturally appropriate, ensuring 'the participation of [Indigenous peoples'] representatives, leaders and traditional authorities in their design and implementation'.⁹⁷ Furthermore, 'availability of disaggregated data of indigenous peoples [should be guaranteed], including on rates of infection, mortality, economic impacts, care burden, and incidence of violence, including gender-based violence',⁹⁸ and 'culturally appropriate information strategies' should be defined, 'in the languages of the indigenous peoples themselves, not only on COVID-19, transmission mechanisms, symptoms and prevention measures, but also on ways to access State measures to mitigate the impact of the pandemic'.⁹⁹ Another necessary measure would consist in establishing, in consultation and cooperation with indigenous peoples, special measures for the protection of indigenous territories, such as strict restrictions and controls on access by anyone outside such territories who does not perform essential functions

96 Ibid., at 11. See also United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 3.

97 See ECLAC, *supra* note 24, at 11. See also United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 3; 'ACHPR Press Release: Impact of the COVID-19 Virus on Indigenous Populations/Communities in Africa', *supra* note 19; Committee on the Elimination of Racial Discrimination, *supra* note 95, para. 1.

98 See United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 3. See also, in this respect, Power et Al., *supra* note 5, at 2739, noting that 'data will be essential to understand the true impact of COVID-19 on [Indigenous] communities, justify the demand for resources like food and personal protection equipment (PPE) and allow service access and delivery to ensure already existing inequities do not worsen further. Indigenous communities across Canada are urging provincial and federal health leaders to disclose COVID statistics to their nations, reporting that these numbers will help nations prepare and respond appropriately to potential outbreaks. In Central America, statistical transparency among Indigenous groups related to previous pandemics and other health outcomes is lacking, further perpetuating the lack of Indigenous voice and increasing the health disparity gap. Failure to recognise the differences in morbidity and mortality among Indigenous Peoples contributes to inequities. There is not only a lack of information sharing but the delay in funding to support nations, and the growing jurisdictional disputes over who will provide these services has once again been intensified in the response to COVID pandemic planning. If ever there was a time to acknowledge the need to collect accurate ethnicity data and disseminate adequate resources to address health disparities among Indigenous people globally, now is that time. The needs of Indigenous Peoples must be made visible and not subsumed instead, in generalised universal response strategies' (references omitted).

99 See ECLAC, *supra* note 24, at 11. See also United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 3; 'ACHPR Press Release: Impact of the COVID-19 Virus on Indigenous Populations/Communities in Africa', *supra* note 19; IACHR, 'Pandemic and Human Rights in the Americas', Resolution 1/2020, *supra* note 89, para. 54; 'Indigenous Peoples and COVID-19. An Internal Guidance Note for the UN System prepared by the UN Inter-Agency Support Group on Indigenous Issues', 23 April 2020, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2020/04/Indigenous-peoples-and-COVID_IASG_23.04.2020-EN.pdf, at 2.

in the context of the health emergency, including health professionals, public officials and associated agencies; and protect those territories through a moratorium on mining and hydrocarbon extraction activities, forest exploitation and agroindustry, and promote efforts to formalize and enforce indigenous collective property rights.¹⁰⁰

Last but not least, ad hoc measures should be arranged in view of addressing the special needs of indigenous peoples living in border areas¹⁰¹ and those in voluntary isolation,¹⁰² and special funds and resources should be made available ‘for post-COVID-19 reconstruction to address the needs of indigenous peoples and to support and restore their traditional livelihoods and economies and sustain their communities’,¹⁰³ with the participation of Indigenous peoples themselves.¹⁰⁴

5. Conclusion: We are all part of the circle of life

In April 2020, the UN Special Rapporteur on the Rights of Indigenous Peoples declared that ‘COVID-19 has shown us that atomized societies which put individualism and profit-making as the pinnacle of modern civilization will further lead us to more disasters and crises. If people love and have more compassion, empathy and solidarity for and with other human beings and nature, our world will not be in this state’.¹⁰⁵ While Indigenous peoples usually base their existence on a life-

100 See ECLAC, *supra* note 24, at 11. See also IACHR, ‘Pandemic and Human Rights in the Americas’, Resolution 1/2020, *supra* note 89, para. 57, requesting States to ‘[r]efrain from introducing legislation and/or moving forward to carry out production and/or extractive projects in the territories of indigenous peoples during the period the pandemic may last, given the impossibility of conducting prior informed and free consent processes’; Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, *supra* note 15, para. 106; Committee on the Elimination of Racial Discrimination, *supra* note 95, para. 4 (urging States ‘to ensure the urgent and full respect of indigenous territories in association with indigenous peoples, by strictly enforcing controls on the entry of any unwanted person into indigenous territories in agreement and close collaboration with indigenous peoples, including compulsory testing for COVID-19 and medical evaluation of individuals wishing to enter these territories’).

101 See Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, *supra* note 15, para. 105.

102 See IACHR, ‘Pandemic and Human Rights in the Americas’, Resolution 1/2020, *supra* note 89, para. 55, recommending States to ‘[r]espect unconditionally non-contact with indigenous peoples or groups who are in voluntary isolation, given the very severe impact that contagion with the virus could have on their livelihood and survival as a people’.

103 See ECLAC, *supra* note 24, at 11; United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 3.

104 See Socrates Vasquez, ‘Recommendations for Post-Pandemic Measures for Indigenous Peoples’, Cultural Survival, 7 July 2021, <https://www.culturalsurvival.org/covid-19>, at 4.

105 Victoria Tauli-Corpuz, UN Special Rapporteur on the Rights of Indigenous Peoples, ‘Statement on COVID 19 and Indigenous Peoples’, 15.4.2020, <https://www.iwgia.org/>

style of which compassion, empathy and solidarity are predominant ingredients, in many States they have not received the same treatment in the context of the fight against the spread of the COVID-19 pandemic. On the contrary, they have often been ignored or not sufficiently considered by State authorities, stigmatized, discriminated and, in some cases, even persecuted. All this, coupled with the inherent social vulnerability of Indigenous communities, the difficulty for them of accessing to adequate health services, and the other problems described in the previous pages, has made them particularly exposed to the detrimental effects of the pandemic, to an extent usually wider than the rest of the population.

Fortunately, also in a dark night there are sparks of light. Not *every* governments have used an indifferent or hostile approach towards Indigenous peoples, as virtuous attitudes have also been implemented. For instance, a number of Latin American countries have adopted specifically-tailored measures for Indigenous communities to face the effects of the pandemic,¹⁰⁶ and ‘COVID-19 related guidelines were issued in indigenous languages by the Governments of Colombia, Guatemala, Mexico and Peru. In Australia, the Government established a National Indigenous Taskforce to develop an emergency response plan for Aboriginal communities to combat the potential spread of COVID-19’.¹⁰⁷ Actually, ‘the Australian Government was quick to act. From midnight on Thursday, 26 March [2020] – the day after the most widespread “lockdown” measures were introduced across the country – travel restrictions for many remote communities were put in place. This was after some communities had taken matters into their own hands, such as the Anangu Pitjantjatjara Yankunytjatjara (APY) lands, which had closed their borders in early March. As of September, these restrictions have eased to varying degrees across the country, but fortunately we have not seen a single COVID-19 case among Aboriginal or Torres Strait Islander people in remote communities’.¹⁰⁸

en/news-alerts/news-covid-19/3553-statement-on-covid-19-and-indigenous-peoples-by-victoria-tauli-corpuz,-un-special-rapporteur-on-the-rights-of-indigenous-peoples.html.

106 See ‘IACHR Warns of the Specific Vulnerability of Indigenous Peoples to the COVID-19 Pandemic, Calls on States to Adopt Targeted, Culturally Appropriate Measures that Respect These Peoples’ Land’, Press Release, 6 May 2020, https://www.oas.org/en/iachr/media_center/PReleases/2020/103.asp.

107 See United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 2.

108 See O’Kane, *supra* note 22, at 4. See also Nikki Moodie at Al., ‘Roadmap to recovery: Reporting on a research taskforce supporting Indigenous responses to COVID-19 in Australia’ [2021] 56 Australian Journal of Social Issues 4; Vicki Xafis, “‘What is Inconvenient for You is Life-saving for Me’: How Health Inequities are playing out during the COVID-19 Pandemic’ [2020] 12 Asian Bioethics Review 223, at 226. See also, however, Tony Dreise, ‘Introduction’, in Francis Markham et Al. (eds.), *Indigenous Australians and the COVID-19 crisis: Perspectives on public policy* (Canberra 2020) 1, stating that ‘[t]he pandemic risks exacerbating deep-seated health, social and economic inequities in Australian society, especially the long-standing inequalities between First Nations people and other Australians. The pandemic has also made plain the shortcomings of federalism, and the nation-to-nation relationships between Indigenous people and Australian governments, revealing a governance gap that

Also, '[t]he Governments of Canada and the US earmarked specific medical support and economic stimulus funding for indigenous communities'.¹⁰⁹ In particular, the former, already on 18 March 2020, set a \$305 million Indigenous Community Support Fund, aimed at supporting 'Indigenous communities and organizations prevent, prepare and respond to COVID-19';¹¹⁰ thanks to the combination of governmental measures and First Nations resilience, 'Indigenous communities have fared better than the rest of Canada in the first wave of the COVID-19 pandemic'.¹¹¹ As regards the United States, on 6 March 2020 the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 was enacted,¹¹² which allocated 'not less than \$40,000,000 [...] to tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes'.¹¹³

Certainly, prompt action by governments can be decisive in relieving the effects of a pandemic on Indigenous communities. However, as seen *supra*, in Section 3, Indigenous peoples' resilience can be even more important. Such a resilience is often based on the traditional knowledge of Indigenous peoples themselves, which may provide formidable lessons to be used outside the Indigenous context as well. Consistently,

'Indigenous knowledge should be investigated as a potential tool for post-COVID-19 rehabilitation and for future pandemic responses [...] Lessons learned [in certain areas of the world] may provide important resiliency tools against the spread of COVID-19 among vulnerable populations in other parts of the world, particularly in remote or Indigenous communities. These lessons can be crucial not just for addressing COVID-19 today, but for public-health strategic planning purposes to mitigate future emerging infectious disease epidemics that could become more frequent in the years to come'.¹¹⁴

Indigenous peoples are the custodians and promoters of a sustainable model of life, in harmony with nature and with the other human communities, which would

is difficult to ignore'; Aryati Yashadhana et Al., 'Indigenous Australians at increased risk of COVID-19 due to existing health and socioeconomic inequities' [2020] 1 The Lancet Regional Health – Western Pacific 100007.

109 See United Nations, Department of Economic and Social Affairs, Policy Brief No. 70, *supra* note 10, at 2.

110 See <https://www.sac-isc.gc.ca/eng/1585189335380/1585189357198>. See, however, Stephanie Russo Carroll et Al., 'Indigenous Peoples' Data During COVID-19: From External to Internal' [2021] *Frontiers in Sociology*, Volume 6, Article 617895, 1, at 3, asserting that '[t]his amount is less than proportionate to investments in the general Canadian population'.

111 See Jolene Banning, 'Why are Indigenous communities seeing so few cases of COVID-19?' [2020] 192 *Canadian Medical Association Journal* E993.

112 Public Law 116–123, <https://www.congress.gov/116/plaws/publ123/PLAW-116publ123.pdf>.

113 See Title 3.

114 See Petrov et Al., *supra* note 67, at 1492 (footnotes omitted). See also Diosey Ramon Lugo-Morin, 'Global Mapping of Indigenous Resilience Facing the Challenge of the COVID-19 Pandemic' [2021] *Challenges* 12, 15, <https://doi.org/10.3390/challe12010015>, describing how Indigenous 'peoples provide lessons on how they cope with adversity, the COVID-19 pandemic being one of them' (see Abstract).

guarantee the existence of future generations. Such a model is symbolized by the *Circle of Life*, which

‘represents all the essential elements that make up life. Together, these elements form a whole and are constantly interacting with one another [...] Human beings are an integral part of this Circle and must never hold themselves apart from it, although people today increasingly tend to forget about or deny our powerful bonds with Mother Earth and its biodiversity [...] This harmony – essential to life – is the basis of traditional Native medicine: within the Medicine Circle, health depends on maintaining the proper balance between the body, heart and mind. By protecting biodiversity, we restore this harmony with nature. This means that we have to take care of not only our bodies, but also our souls, because nothing can be separated from the oneness of life’.¹¹⁵

When a terrible pandemic like COVID-19 occurs, human beings – rather than disunite and try to prevaricate their fellow beings – should rely on solidarity and empathy and keep in mind that ‘Nobody wins unless Everybody Wins’.¹¹⁶ In the end, we are all part of the Circle of Life. In this regard, while Indigenous peoples may appear the most vulnerable human groups, they are depositaries of a knowledge which in the long run may save the whole humanity, not only against the tragic effects of a global pandemic.

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115 See ‘The Circle of Life A First Nations Vision of Nature. Space for Life Lecture Series’, 27 September 2012, <https://m.espacepoulavie.ca/en/press-releases/circle-life-first-nations-vision-nature>.

116 This sentence was often used by the songwriter and musician Bruce Springsteen during his ‘Born in the USA tour’, in 1984–85, to introduce his song ‘Born to Run’. In 2016 Royal Bustards published a song entitled ‘Nobody wins (unless everybody wins)’.

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