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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Rights of indigenous peoples

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, in accordance with Human Rights Council resolution [42/20](#).

* [A/75/150](#).



Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay

Summary

In the present report, the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, focuses on the impact of the coronavirus disease on the individual and collective rights of indigenous peoples, including increased health risks, as well as the sources of resilience of indigenous peoples, State and indigenous responses to the pandemic and the adverse and disproportionate impact of confinement and emergency measures observed on indigenous peoples. He concludes with a set of recommendations geared towards an inclusive economic and social recovery and better preparedness for future similar situations.

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I. Introduction

1. This is the first report to the General Assembly by the new holder of the mandate of Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, pursuant to Human Rights Council resolution [42/20](#). It summarizes the activities of the mandate since the last report of the previous mandate holder ([A/74/149](#)) and analyses the specific impacts on indigenous peoples of the coronavirus disease (COVID-19) pandemic.

II. Activities of the Special Rapporteur

2. Since the previous report to the General Assembly, the Special Rapporteur carried out an official country visit to the Congo from 14 to 24 October 2019 (see [A/HRC/45/34/Add.1](#)) and initiated an official country visit to Denmark and Greenland, scheduled for 10 to 19 March 2020. The latter visit was interrupted on 13 March owing to the coronavirus pandemic and postponed until it could be compatible with health security considerations. A detailed description of activities by the mandate during the past year is included in the report of the Special Rapporteur to the Human Rights Council ([A/HRC/45/34](#)).

III. Vision and priorities of the new mandate holder

3. The twentieth anniversary of the mandate in 2021 is an opportunity to take stock of its achievements in advancing the rights of indigenous peoples, identifying good practices and persistent gaps and challenges, and proposing strategies for the next decade. After consultations with indigenous organizations, Governments, experts of the Permanent Forum on Indigenous Issues and of the Expert Mechanism on the Rights of Indigenous Peoples and other specialists, the Special Rapporteur has identified several topics for particular focus during his mandate:

(a) The impact of large-scale agriculture and deforestation on the rights of indigenous peoples, with a particular focus on palm oil, soya beans, sugar, plantations and cattle ranching, including remedy and redress mechanisms and recommendations for accountability and protection;

(b) Good practices and lessons learned in identifying, demarcating, titling and registering indigenous peoples' lands and territories, including from land commissions, ministries, indigenous organizations and communities and other experts, and the elaboration of relevant guiding principles;

(c) The consequences of climate change for indigenous peoples, including effective and sustainable practices to prevent or mitigate negative impacts on their individual and collective rights, emphasizing that, as recognized by article 7 of the Paris Agreement, climate change adaptation action should be guided by indigenous peoples' knowledge systems and integrated into relevant socioeconomic and environmental policies;

(d) The impact of criminalization, arbitrary detention, torture and other cruel, inhuman or degrading treatment or punishment on the individual and collective rights of indigenous peoples, with recommendations for prevention and protection and redress measures;

(e) The impact of forced and bonded labour;

(f) Good practices and lessons learned in the design and conduct of cultural, environmental and social impact assessments regarding developments proposed to

take place on lands and territories traditionally occupied or used by indigenous peoples;

(g) Good practices and lessons learned in indigenous conservation management.

4. The Special Rapporteur also plans a regional consultation with and a report on indigenous peoples in Africa.

IV. Indigenous peoples in the coronavirus pandemic

5. In the first half of 2020, the global coronavirus pandemic has caused illness to at least 11 million people (and likely many more), killed at least half a million people and exacerbated economic and social inequalities around the world. Virtually no population has gone untouched by some form of restriction or hardship as a result of measures to contain the pandemic. Although representing only 6 per cent of the world population, indigenous peoples are among the most harshly affected. Indigenous societies, already facing numerous existential threats, face higher risks of dying of the disease, of experiencing discrimination and a disproportionate impact as a result of confinement measures, and of being left without support to defend their peoples from intensifying rights violations even as the pandemic rages.

6. The Special Rapporteur assumed his mandate on 1 May 2020, amid reports from all regions of a sharp deterioration in respect for the rights of indigenous peoples. COVID-19 has created an unprecedented wave of fear, sadness and hardship around the globe, yet indigenous peoples feel particularly forgotten and left behind.

7. The present report was compiled on the basis of publications from indigenous organizations and civil society organizations, participation in pertinent webinars and expert discussions and over 150 submissions from States and indigenous and human rights organizations in response to a joint questionnaire by several special procedures mechanisms and a call from the mandate. The Special Rapporteur thanks all Governments and organizations for their responses, not all of which can be cited here but all of which will assist the Special Rapporteur throughout the discharge of his mandate.

A. Legal framework and international guidance

Legal framework

8. The right of indigenous peoples to the enjoyment of the highest attainable standard of physical and mental health without discrimination is specifically recognized in the International Covenant on Economic, Social and Cultural Rights (art. 12) and the United Nations Declaration on the Rights of Indigenous Peoples, which specifically provides for the right of indigenous peoples to be actively involved in developing, determining and administering health programmes through their own institutions (art. 23) and the right to their traditional medicines and health practices (art. 24).

9. Article 12 (2) of the International Covenant on Economic, Social and Cultural Rights specifies that the right to health includes steps necessary for the “prevention, treatment and control of epidemic, endemic, occupational and other diseases”. The Committee on Economic, Social and Cultural Rights has further emphasized the

requirements of non-discrimination, under articles 2 and 3 of the Covenant.¹ In particular, the Committee considered that “indigenous peoples have the right to specific measures to improve their access to health services and care”, entailing, among other things, that “health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines”, that “States should provide resources for indigenous peoples to design, deliver and control such services” and that “vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected”. In that regard, the Committee considered that “development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health”.²

10. Furthermore, under, for instance, the International Covenant on Civil and Political Rights (art. 6), the obligation of States to respect and ensure the right to life extend to reasonably foreseeable threats and life-threatening situations that can result in loss of life.³ The Human Rights Committee has held this to include general conditions such as “degradation of the environment”, “deprivation of indigenous peoples’ land, territories and resources” and “the prevalence of life-threatening diseases”. Measures required can include access without delay to food, water, shelter, health care, electricity, sanitation and effective emergency health services, as well as contingency plans and disaster management plans to prepare for and address life-threatening disasters, whether of natural or human origin.⁴ The Committee has emphasized that “the right to life must be respected and ensured without distinction of any kind”, including “membership of an indigenous group”.⁵ For indigenous women, the Convention on the Elimination of All Forms of Discrimination against Women additionally requires protection from discrimination against women in accessing health care services (art. 12) and social security (art. 11), including for women in rural settings (art. 14).

11. At the regional level, the African Charter on Human and Peoples’ rights provides for the right to health with no discrimination (art. 16). The American Declaration on the Rights of Indigenous Peoples also recognizes both the collective and the individual right of indigenous peoples to enjoy the highest level of physical, mental and spiritual health and to maintain their own health systems (art. XVIII).

12. Many States have imposed temporary confinement measures restricting the rights to freedom of movement and association of the general population; pre-existing inequalities mean that indigenous persons have been particularly affected by such measures. Moreover, the scope for States to impose such measures on indigenous peoples is restricted by the rights of self-determination and autonomy of indigenous peoples on their traditional lands (United Nations Declaration on the Rights of Indigenous Peoples, arts. 3 and 4).

¹ See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 18. Equal access for indigenous peoples is also provided for by United Nations Declaration on the Rights of Indigenous Peoples (art. 24) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 20. States must also ensure employers provide safe and healthy working conditions without discrimination (International Covenant on Economic, Social and Cultural Rights, art. 7; and Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 20).

² See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 27.

³ See Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 7.

⁴ *Ibid.*, para. 26.

⁵ *Ibid.*, para. 61.

International and regional guidance

13. The April 2020 United Nations framework for the immediate socioeconomic response to COVID-19⁶ acknowledges that indigenous peoples are among the most at-risk, experiencing the highest degree of socioeconomic marginalization and requiring specific attention in the immediate development response. The framework also highlights that social cohesion and community-led resilience and response systems are particularly relevant for indigenous peoples; it includes as an indicator for monitoring human rights implications of COVID-19 the mapping out of populations at risk and the existence of special measures for the protection of indigenous peoples (see annex 1 to the framework). The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) has proposed additional analysis to help make indigenous women and girls visible in the implementation of this system-wide framework to manage the crisis.⁷

14. The Office of the United Nations Commissioner for Human Rights (OHCHR)⁸ and the Food and Agriculture Organization of the United Nations (FAO)⁹ have issued recommendations specifically applicable to indigenous peoples during and in the aftermath of the pandemic. The International Labour Organization (ILO) issued a policy brief¹⁰ and the Inter-Agency Support Group on Indigenous Peoples' Issues published a guidance note for the United Nations system.¹¹ The Inter-American Commission on Human Rights adopted a resolution on human rights and the pandemic, including recommendations to protect indigenous peoples' rights.¹² The Organization of American States (OAS) General Secretariat urged member States to generate specific programmes and policies to sustain the economies of their indigenous communities¹³ and dedicated parts of its *Practical Guide to Inclusive and Rights-Based Responses to COVID-19 in the Americas* to the need for a differentiated response for indigenous peoples.¹⁴ The Working Group on Indigenous Populations/Communities in Africa of the African Commission on Human and Peoples' Rights issued recommendations related to access to health services, water and sanitation and urged States to take into account indigenous peoples' way of life in all decisions taken for the prevention of COVID-19.¹⁵ The Organization for Security and Cooperation in Europe issued a set of recommendations on short-term responses to COVID-19 that support social cohesion.¹⁶

⁶ Available at <https://unsdg.un.org/resources/un-framework-immediate-socio-economic-response-covid-19>.

⁷ See <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2020/04/Prioritizing-indigenous-women-in-the-MPTF-April-2020.-UN-Women.pdf>.

⁸ See https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenousPeoplesRights.pdf.

⁹ See <http://www.fao.org/indigenous-peoples/covid-19/en>.

¹⁰ Available at https://www.ilo.org/global/topics/indigenous-tribal/publications/WCMS_746893/lang--en/index.htm.

¹¹ Available at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2020/04/Indigenous-peoples-and-COVID_IASG_23.04.2020-EN.pdf.

¹² Inter-American Commission on Human Rights, resolution 1/2020. Available at <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>.

¹³ See https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-029/20.

¹⁴ See http://www.oas.org/es/sadye/publicaciones/GUIDE_ENG.pdf and submission by OAS.

¹⁵ See <https://www.achpr.org/pressrelease/detail?id=493>.

¹⁶ See <https://www.osce.org/hcnm/449170>.

15. The Expert Mechanism on the Rights of Indigenous Peoples¹⁷ and the Permanent Forum on Indigenous Issues¹⁸ have urged that indigenous peoples' health and lives be protected and for immediate steps to be taken to ensure that indigenous peoples are informed, protected and prioritized. A joint call by the Chairs of the United Nations treaty bodies urged Governments to give particular attention to the effects of COVID-19 on indigenous peoples.¹⁹

B. Risks and resilience

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,²⁰ 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.

Health risks

17. Indigenous collective memory is marked by pandemics, as diseases such as smallpox, measles and influenza were spread by colonizers, sometimes deliberately, ravaging and decimating their communities.²¹ In the COVID-19 pandemic, indigenous peoples have already reported alarming levels of transmission among their communities²² and sometimes higher rates of fatalities.²³

18. Respiratory infections, diabetes, cardiovascular illnesses and HIV/AIDS, as well as malnutrition, are already common in many indigenous populations. Often 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. Indigenous persons with chronic health conditions or disabilities requiring regular medical check-ups or treatment experience disproportionately the consequences of lockdown measures, overwhelmed national health systems and depletion of medical equipment.

19. Indigenous peoples in voluntary isolation have reduced immunity to imported diseases and are farther from medical services if they contract a disease. In the Amazon, these peoples are already on the brink of cultural extinction. They report exponential rates of transmission of the virus introduced by logging and mining workers, religious missionaries²⁴ and, in certain cases, health professionals who had not been tested for COVID or quarantined themselves before entering their territories.

20. Mental health issues and substance abuse are reportedly on the increase, particularly in urban contexts of overcrowded housing. The lack of face-to-face

¹⁷ See <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2020/04/EMPRIP-English.pdf>.

¹⁸ See https://www.un.org/development/desa/indigenous-peoples-es/wp-content/uploads/sites/34/2020/04/UNPFII-Chair-statement_COVID19.pdf.

¹⁹ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25742&LangID=E>.

²⁰ See Laurence Kirmayer, "Addressing global health disparities among Indigenous peoples", *The Lancet*, vol. 388, No. 10040 (9 July 2016). Available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)30194-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)30194-5/fulltext).

²¹ David M Morens, Gregory K Folkers and Anthony S Fauci, "Emerging infections: a perpetual challenge" *The Lancet*, vol. 8 (November 2008), p. 713. Available at <https://www.thelancet.com/action/showPdf?pii=S1473-3099%2808%2970256-1>.

²² Submissions by Rede Pró-Yanomami e Ye'kwana and Carmela Roybal (University of New Mexico).

²³ Joint submission by the Coordinating Body of Indigenous Organizations of the Brazilian Amazon and the Indian Law Resource Center, and submission by National Congress of American Indians.

²⁴ Joint submission by the Coordinating Body of Indigenous Organizations of the Brazilian Amazon and the Indian Law Resource Center.

contact and mental health support for many indigenous peoples amplifies the harms of the pandemic.

21. While community-living practices such as extended family co-residence, communal labour, food sharing and spiritual ceremonial practices are a fundamental aspect of many indigenous cultures, measures adopted by States to control the virus do not always acknowledge or respect their deep and particular importance for indigenous peoples.

Poverty, marginalization and racism

22. Across the world, neo-colonialism and globalization contribute to dispossession of indigenous peoples' lands and keep their societies in a state of marginalization and extreme poverty. Indigenous communities are at increased risk because of the systemic inequities and discrimination they face,²⁵ and COVID-19 has further exacerbated racism against indigenous men and women across all continents,²⁶ including stigmatization when indigenous communities are accused of not respecting preventive measures or of having high infection rates.²⁷ Indigenous peoples also suffer the consequences of food insecurity and lack access to clean water, soap and sanitation.²⁸

23. Indigenous peoples often face obstacles in accessing public health services and medication: many indigenous peoples live long distances from health structures, cannot afford the cost of consultations and treatment, face discriminatory attitudes and are denied the right to speak in their own language or to receive care that takes into account their cultural specificities. Public health care structures servicing indigenous territories may be insufficiently equipped.²⁹ Many indigenous communities do not have their own health-care system and are not sufficiently represented among the medical and paramedical staff of the public health system. Stateless indigenous peoples may be denied care if they cannot show identification papers.³⁰ Indigenous women face additional risks related to their sexual and reproductive health and are stigmatized and discriminated against when they seek health care. Indigenous peoples, and particularly indigenous women, are also less likely to be medically insured.

24. Reports from Africa, Latin America and Asia indicate that indigenous peoples outside urban areas may not have access to testing.³¹ Many cannot afford personal protective equipment, and distribution by public authorities may reach remote communities too late or not at all.³² In certain communities, indigenous peoples are reluctant to access public health care because of more general practices of avoiding outside contact and distrust that they will be treated with dignity.³³

²⁵ See Amanda Carling and Insiya Mankani, "Systemic inequities increase COVID-19 risk for indigenous people in Canada", Human Rights Watch, 9 June 2020. Available at <https://www.hrw.org/news/2020/06/09/systemic-inequities-increase-covid-19-risk-indigenous-people-canada>.

²⁶ Submissions by the Asian Indigenous Women's Network; the Asia Pacific Forum on Women, Law and Development and partners; and Red de investigaciones sobre indígenas urbanos.

²⁷ Submission by Comité de Derechos Humanos de Base de Chiapas Digna Ochoa.

²⁸ Submissions by Equipo nacional de pastoral aborigen (Pastoral Team for Ministry to Indigenous Peoples) (ENDEPA) and many others.

²⁹ See communication addressed to Mexico, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25283>.

³⁰ Submissions by Protection International and the Asia Indigenous Peoples Pact.

³¹ Submissions by Association des femmes peuples autochtones du Tchad, the Global Greengrants Fund and the Asia Indigenous Peoples Pact.

³² Submissions by the Ogiek Peoples' Development Program, Fundación Proclade and Corporación Claretiana.

³³ Individual submission by YiYi Prue.

25. The situation for indigenous peoples in cities is not necessarily better.³⁴ Many displaced indigenous families in urban areas live in poverty and in overcrowded housing³⁵ and suffer deep racism and structural discrimination that further hinders their access to basic health and social services and protective equipment.

Limited access to information and communication

26. 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.

27. COVID-19 prevention guidelines and advisories are not always translated into indigenous languages, may not be culturally relevant in content or presentation³⁶ or may be disseminated only via television, online or in other formats inaccessible to certain indigenous peoples. Information for indigenous persons with visual, hearing or intellectual impairment is also rarely available.³⁷ Communication platforms, such as local radio, phone calls, texting and social networks, should be used, depending on the medium most accessible by the communities, to convey information in accessible and culturally appropriate formats. In Africa, some communities appear to be completely unaware of the crisis or perceive the virus as an urban issue and have therefore not taken any preventive measures. In communities living outside the range of communication platforms, measures should be taken to facilitate the visit of outreach persons, with all the necessary precautions taken to avoid potential transmission.³⁸ Civil society has in most cases filled this gap, while its work has at times been obstructed by the police.³⁹ Indigenous women, who are often less likely to understand official State languages, and illiterate indigenous peoples⁴⁰ may depend on secondary sources of information and thus be more open to manipulation, exploitation or misinformation.

28. Another obstacle to access to information is the lack of trust or interest that some indigenous peoples may have in the dominant society's media, particularly where their indigenous status is not recognized. In such cases, they may be relying more on social media.⁴¹

29. In the Bolivarian Republic of Venezuela, 20 indigenous leaders from the Amazonas region created a working group on COVID, researching impacts and risks for their communities and working on tailored outreach activities such as radio announcements.⁴² In Mexico, the national institution for indigenous peoples supported the establishment of a national network of traditional healers acting as

³⁴ Submission by Red de investigaciones sobre indígenas urbanos.

³⁵ See Australian Institute of Health and Welfare, "Housing circumstances of Indigenous households: tenure and overcrowding", 16 July 2014, available at <https://www.aihw.gov.au/reports/indigenous-australians/housing-circumstances-of-indigenous-households/contents/summary>; submission by the Inuit Circumpolar Council; and response to the joint questionnaire by the National Institution for Human Rights of Argentina.

³⁶ Sandra del Pino and Alex Camacho, "Considerations on indigenous peoples, Afro-descendants, and other ethnic groups during the COVID-19 pandemic" (Pan American Health Organization, 2020), p. 9. Available at <https://www.paho.org/en/documents/considerations-indigenous-peoples-afro-descendants-and-other-ethnic-groups-during-covid>.

³⁷ Submission by National Indigenous Disabled Women Association Nepal.

³⁸ Joint submission by Réseau des associations autochtones pygmées and partners.

³⁹ See communication addressed to Angola, available at <https://spcommreports.ohchr.org/TmSearch/TMDocuments>.

⁴⁰ Submissions by Association Dewran and Association des femmes peules autochtones du Tchad.

⁴¹ Submissions by Moroccan Amazigh organizations and the National Council of Displaced Persons of Guatemala.

⁴² See <https://watanibasocioambiental.org/equipo-multietnico-visita-radios-en-puerto-ayacucho-para-informar-a-las-comunidades-indigenas-sobre-el-coronavirus>.

intermediaries to broadcast prevention messages.⁴³ In Argentina and Paraguay, the Government broadcast messages related to COVID-19 in indigenous languages via a radio station that reaches remote communities and via WhatsApp.⁴⁴ In India, village councils and elders, including indigenous women, translated and helped disseminate information on COVID-19 in indigenous languages.⁴⁵ In the Lao People's Democratic Republic, assistance in the Hmong language has been available since May 2020 through the national COVID hotline as part of broader efforts by governmental bodies to ensure access to accurate information on COVID-19 and protective measures in different indigenous languages, including through two-way communication between the health authorities and local communities.

Exposure to the virus in detention

30. Indigenous peoples are commonly overrepresented in prison and other places of detention,⁴⁶ placing them at greater risk where States do not fulfil their responsibilities to maintain physical distancing or other control measures. Transparent protocols and culturally adapted protection measures are required, and take on particular importance in places where indigenous peoples comprise a majority or significant portion of inmates.⁴⁷ Indigenous peoples also make up a large proportion of migrants and reports indicate that, in some receiving countries, indigenous peoples have been disproportionately exposed to the virus while in administrative detention.⁴⁸

31. In all situations of deprivation of liberty, States should consider release and alternatives to detention to mitigate the risk of harm within places of detention, including for persons who have committed minor, petty and non-violent offences, those with imminent release dates, those in immigration detention, those detained because of their migration status, people with underlying health conditions and those in pretrial or administrative detention.⁴⁹

Lack of data

32. Health disparities between indigenous peoples and non-indigenous populations is a global reality that requires further research. COVID infections and deaths among indigenous peoples is being tracked by some States, but globally such efforts remain the exception. Lack of disaggregated data relative to indigenous experiences means such peoples continue to be invisible in the consciousness of majority populations and are likely to be left behind in prevention and care programmes and in the provision of other socioeconomic support.

33. The Special Rapporteur acknowledges the challenges linked to accurately collecting such data, in particular in remote areas, in contexts where testing capacities are limited or where communities distrust the Government or wish to assert exclusive ownership of such information.⁵⁰ Some indigenous communities have collected data themselves, which were not reflected or only partially reflected in national periodic COVID reports.⁵¹ Cooperation and exchange of information between Governments acting in good faith and indigenous communities are essential to develop adapted

⁴³ Submission by Mexico.

⁴⁴ Submissions by Argentina (Defensoría del Pueblo de la Nación) and Paraguay.

⁴⁵ Joint submission by the Asia Pacific Forum on Women, Law and Development and partners.

⁴⁶ See A/HRC/42/37, paras. 45–46.

⁴⁷ Joint submission by National Aboriginal and Torres Strait Islanders Legal Services and partners.

⁴⁸ Submission by Contacto Ancestral.

⁴⁹ OHCHR, "COVID guidance", available at <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>.

⁵⁰ Submission by Chiefs of Ontario and the National Congress of American Indians.

⁵¹ Submission of the Oswaldo Cruz Foundation, the working group on indigenous health of the Brazilian Association of Public Health and the Union of British Columbia Indian Chiefs.

responses to the pandemic. Infected indigenous persons in urban contexts are rarely considered in public records, thereby also revealing the lack of culturally specific approaches to health care in cities.

34. Data disaggregation should be structured to reflect the diversity of lifestyles of indigenous populations, for example, whether they live in an urban or a community setting. At a minimum, national health registries should include ethnic and indigenous variables, in addition to other variables such as gender, age and disabilities, to allow tailoring of COVID-19 interventions to the needs of indigenous peoples.

35. In Canada, statistical authorities have used online crowdsourcing tools to rapidly generate data and analysis on the extent to which COVID-19 is affecting the lives and well-being of indigenous peoples in that country. While such tools have accessibility and reliability limitations, they may be useful to provide a snapshot of how COVID-19 is affecting those who respond.⁵² Indigenous Services Canada also announced dedicated funding to improve data collection for indigenous peoples affected by COVID-19, acknowledging that previously available data were insufficient.⁵³

36. In Latin America, the Regional Platform of Indigenous Peoples facing COVID-19 has developed a series of information-gathering and analysis and dissemination tools at the regional level to facilitate dialogue and policy development with Governments and regional institutions and push for effective responses to protect indigenous peoples during the crisis.⁵⁴

Resilient communities

37. Notwithstanding higher infection risks, indigenous peoples also possess resources to face and stop the pandemic. Their lifestyle, culture and connection to their lands is a source of resilience in the face of the pandemic and State-imposed confinement. Modalities of resilience vary greatly from one community to the other; States, through their local governments, should therefore take into account these strengths as they tailor prevention and mitigation strategies jointly with indigenous organizations or authorities.

38. The Special Rapporteur observes that indigenous peoples enjoying their collective right to autonomy as part of their right to self-determination are best placed to control the virus and to cope with months of isolation. Those able to freely rely on their sustainable farming practices and the availability of food in their territories⁵⁵ and make community decisions, such as on restricting movement in and out of their communities,⁵⁶ have, in many respects, shown more resilience in the crisis.

39. Indigenous community support and strong family bonds have also helped indigenous communities to cope with the stress, sadness and financial and other hardships caused by months of State-imposed confinement, and social and physical isolation, particularly in urban contexts. In New Zealand, Maori leaders have sought to mitigate the toll on mental health in their communities by organizing the delivery of food parcels, hygiene packs and other resources to people's doorsteps and fostering social connectivity as part of what they call *mahi aroha*, the essential work undertaken

⁵² Submission by Statistics Canada.

⁵³ Submission by the Union of British Columbia Indian Chiefs.

⁵⁴ https://observatorio.cl/wp-content/uploads/2020/05/filac_fiay_primer-informe-pi_covid19.pdf, p. 19.

⁵⁵ Submissions by the Asian Indigenous Women's Network and the Tebtebba Foundation.

⁵⁶ Hillard S. Kaplan and others, "Voluntary collective isolation as a best response to COVID-19 for indigenous populations? A case study and protocol from the Bolivian Amazon", *The Lancet*, vol. 395 (30 May 2020), p. 1732. Available at <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2820%2931104-1>.

out of a love for the people.⁵⁷ Similar community-led initiatives have been reported worldwide, including in El Salvador and Morocco, without the need for support from Governments.⁵⁸

40. A study about indigenous communalism highlights that “the benefits of group life to health ... are unmistakable” and community membership, “if mobilized in health-promoting ways, is linked to reduced community prevalence of disease”. The study also highlighted that:

“Having and engaging in relationships, feeling a sense of belonging and participating with one’s community in meaningful ways are all healing activities. If we can somehow place greater emphasis on these communal engagements, not at the expense of but alongside individual health measures, we will harness a poorly tapped source of health.”⁵⁹

41. Indigenous traditional medicine and deep knowledge of local biodiversity and pharmacopoeia, including anti-inflammatory or antipyretic plants, coupled with indigenous holistic concepts of health, are important resources for indigenous peoples to maintain their well-being even when they do not have access to national health structures. Their use of traditional medicine is specifically protected by United Nations Declaration on the Rights of Indigenous Peoples, and more generally by the Convention on Biological Diversity (art. 8) and the Paris Agreement (art. 7), and should be maintained and supported alongside inclusive and culturally adapted government health services.

42. Indigenous values, wisdom and sources of resilience can also inspire solutions for the wider society: the confinement has already, for instance, kindled among many people around the world a desire to grow and prepare their own food, renew their connection with the natural world and develop stronger levels of solidarity with family and neighbours. The traditional knowledge of indigenous peoples can be relied on to find a balance between human needs and those of the planet, new mechanisms that can guarantee environmental and social justice and new models of food production, distribution and consumption.⁶⁰

C. Participation and inclusion in State responses

43. The essential element for an efficient State response to the pandemic for indigenous peoples is to respect the autonomy of indigenous peoples to manage the situation locally while providing them with the information and the financial and material support they identify as necessary. Coordination between indigenous and non-indigenous authorities as equals is essential to the overall effort to respond to the pandemic.

44. Unfortunately, indigenous peoples appear to have been largely left out of the COVID response. While the level of preparedness for the pandemic was low around the globe, indigenous peoples were even less likely to be included in any form of national pandemic contingency plan. Nationwide measures to stop the pandemic were applied to indigenous territories without their free, prior and informed consent and

⁵⁷ Fiona Cram, “*Mahi aroha: COVID-19 and Māori essential work*”, submitted to the *MAI Journal* in June 2020.

⁵⁸ Submissions by Consejo Coordinador Nacional Indígena Salvadoreño and Moroccan Amazigh organizations.

⁵⁹ Carolyn Smith-Morris, “Indigenous communalism: belonging, healthy communities and decolonizing the collective” (Rutgers University Press, 2019).

⁶⁰ See <http://www.fao.org/indigenous-peoples/faq/en>.

did not take into account the systemic barriers faced by recipients. Some Governments relied entirely on civil society or volunteers to ensure the care of indigenous peoples.

45. Health support and economic relief for indigenous peoples, where it took place, was generally arranged months after the first declared cases of COVID-19 in spite of the predictable disproportionate impact on indigenous populations. The response was rarely developed in concert with indigenous authorities or organizations and was often part of a wider strategy for “vulnerable” groups. As a result, these responses failed to adequately take into account their specific needs across their various lifestyles or whether they live in their communities, in urban settings, in voluntary isolation or in initial contact. For example, remote indigenous communities from the Amazon reported facing a dilemma in deciding whether to take the risk of contracting COVID-19 by travelling to cities on public transport to collect financial assistance to which they were entitled.⁶¹

46. Some Governments have adopted specific responses, with variable levels of participation by indigenous peoples. Financial support has in some cases been channelled through intermediary government agencies, instead of directly to affected communities, and excluded peoples living off-reserve or in urban settings.

47. Some positive examples exist. In El Salvador, it was reported that efforts by indigenous communities to create communication channels with municipalities had in some cases yielded benefits, resulting in coordination with the local government on developing and implementing appropriate measures.⁶² In Canada, Indigenous Services Canada is financially supporting each indigenous community in developing its own emergency response plan.⁶³ In Australia, the Aboriginal and Torres Strait Islander Advisory Group on COVID-19 provides culturally appropriate advice on COVID-19 to the Department of Health, including for Aboriginal and Torres Strait Islander health services and communities. In Mexico and Paraguay, the Governments have supported shelter initiatives for families of indigenous patients staying in cities while they receive treatment in hospitals.⁶⁴ In Costa Rica, guidelines and an action plan for the prevention of COVID-19 in indigenous territories were adopted in the early stages of the pandemic, including specific guidance for the care of indigenous patients in health centres.

48. Inclusion and participation are essential to preserve distinct ancestral cultures, knowledge and practices, which can be compromised by the imposition of measures that do not acknowledge the specific role and characteristics of indigenous peoples. Governments should support measures that indigenous communities have themselves judged appropriate in application of their collective right to autonomy and self-governance. In order to ensure timely and culturally appropriate responses by States with regard to a pandemic or any other crisis, indigenous peoples, in all their diversities, need to be included at the early stages of contingency planning.

49. As highlighted in an article in *The Lancet*: “Investing in [indigenous communities’] health is an investment in all of our futures. Valuing the unique contribution of such communities demands that our goal with respect to their well-being should not simply be that they survive this pandemic, but that they thrive after it.”⁶⁵

⁶¹ Submission by Rede Pró-Yanomami e Ye’kwana.

⁶² Submission by Consejo Coordinador Nacional Indígena Salvadoreño.

⁶³ Submissions by Chiefs of Ontario and the Union of British Columbia Indian Chiefs.

⁶⁴ Submissions by Mexico and Paraguay.

⁶⁵ Kaitlin Kurtice and Esther Choo, “Indigenous populations: left behind in the COVID-19 response”, *The Lancet*, vol. 395 (6 June 2020). Available at <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2820%2931242-3>.

D. Responses and solutions by indigenous peoples to the crisis

50. Throughout their histories, indigenous peoples have repeatedly, in some cases almost continuously, had to overcome adversity and threats to their very survival. When faced during the current pandemic with inadequate support from national authorities, they have once again resorted to their own institutions, creativity and knowledge to manage the virus and keep their communities alive. Indigenous organizations have mobilized at the regional level to relay information about their situation, to present an indigenous perspective on the crisis and solutions to address it, and to push national Governments to action.

Self-isolation

51. The most common immediate measure taken by most indigenous peoples across the world has been to prevent transmission of the virus by restricting movement in and out of their communities. In fact, many groups have practised community-wide self-isolation historically. In the Philippines, the Igorot peoples drew on *ubaya*, an annual tradition predating the COVID-19 crisis which is a period of isolation for the community to rest and self-reflect during the agricultural cycle.⁶⁶ Rapa Nui indigenous leaders in Chile, lacking the administrative power to suspend the two daily incoming flights to their island, invoked an ancestral law called *Tapu* calling for coexistence and respect for the rules of nature, on the basis of which the whole community went into voluntary quarantine and reportedly managed the spread of the virus.⁶⁷ In Denmark and Greenland, indigenous authorities have stopped the propagation of the virus by imposing an isolation period on all their communities. In Algeria, wherever they could organize themselves autonomously, Amazigh communities reportedly closed their territories to non-essential foreign visitors, set up entry and exit controls and advised their members to stay home. According to the communities, this form of self-governance yielded positive results, as the number of infected people in these territories has remained very low.⁶⁸

52. Indigenous communities who decided to close access to their communities did not always receive police or financial support to do so or to enforce community health checkpoints,⁶⁹ in some cases, indigenous communities were reportedly warned that closing the roads to their communities would result in criminal charges.⁷⁰

53. Mitigation of the virus based on isolation is not always an all-or-nothing proposition. In the Plurinational State of Bolivia, for instance, the Mositén people, in agreement with trusted merchants, instituted controlled markets near, yet outside, their villages to avoid the need for people from the indigenous community to visit the town or for outside merchants to enter the indigenous communities. In the market, sellers and buyers maintain physical distance and use personal protective equipment.⁷¹

⁶⁶ See <https://www.culturalsurvival.org/news/kasiyanna-particular-challenges-indigenous-peoples-facing-covid19>.

⁶⁷ Submission by Rapa Nui people.

⁶⁸ Submission by the World Amazigh Congress.

⁶⁹ Submissions by Chiefs of Ontario and the Navajo Nation.

⁷⁰ Joint submission by Federación Nativa del Río Madre de Dios y Afluentes and EarthRights International.

⁷¹ Hillard Caplan and others, "Voluntary collective isolation as a best response to COVID-19 for indigenous populations? A case study and protocol from the Bolivian Amazon", *The Lancet*, vol. 395 (15 May 2020). Available at <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2820%2931104-1>.

Health and hygiene initiatives

54. In Australia, a regional clinic led by aboriginal people opened in Toowoomba, Queensland. The clinic provides locals with a culturally safe place to be tested and treated for COVID-19. The clinic also treats non-indigenous vulnerable residents.

55. Indigenous peoples are utilizing a variety of traditional and non-traditional techniques and knowledge, sometimes in combination, to respond to the current pandemic. Traditional air purification processes such as smudging are reported in Africa and in the Americas. Community manufacture of cleansing and disinfecting products for hands and for their homes, made from plants and ashes, are reported in such places as the Democratic Republic of the Congo, Kenya and Morocco.⁷² Medicinal plants are widely relied upon worldwide.

56. In El Salvador, an initiative led by indigenous youth has carried out sanitization days for vehicles entering their municipality and smudging in homes. In another community, indigenous youth working on a memorial garden have focused on growing medicinal plants to produce hygiene products with sanitizing properties.⁷³ In the United States of America, the community of Pojoaque in New Mexico has made hotel rooms in its casino available to house infected individuals from tribes across the state who need to be quarantined.⁷⁴ In Peru, an indigenous peoples' organization has set up a community surveillance system, with a network of focal points in each community to record on a daily basis the number of new infections.⁷⁵ In Nagaland, India, many indigenous communities have built eco-friendly quarantine centres without any support from the Government. These quarantine centres have been used for 14-day isolation of returnees and villagers working in cities and abroad.⁷⁶

Community care

57. Indigenous communities' strong sense of solidarity has been crucial for the survival of individuals and communities as a whole. Indigenous women are playing a pivotal role in this respect: in Morocco, indigenous women are transmitting the traditions of *tiwizi* and *tada* to help members of their own communities and other tribes through small fundraising activities to alleviate the difficulties of families most in need during the lockdown.⁷⁷

58. In Canada, increased remote mental health support platforms, including counselling materials and a secure online platform to reach out to communities, have been put in place and supported by the First Peoples Wellness Circle, an indigenous organization. In British Columbia, the First Nations Health Authority supported traditional food-sharing by releasing a guide on "Sharing the harvest during the pandemic", with information on safe preparation, distribution and sanitization.⁷⁸

Planning and documenting

59. In Thailand, young women researchers interviewed 90 indigenous women to assess community concerns and needs related to the pandemic; on the basis of their analysis, indigenous organizations started an online fundraising campaign to support

⁷² Submissions and contributions by Action pour la promotion des minorités autochtones en Afrique Centrale, Minority Rights Group International and Moroccan Amazigh organizations.

⁷³ Submission by Consejo Coordinador Nacional Indígena Salvadoreño.

⁷⁴ Submission by Carmen Roybal.

⁷⁵ Joint submission by Federación Nativa del Río Madre de Dios y Afluentes and EarthRights International.

⁷⁶ Joint submission by the Asia Pacific Forum on Women, Law and Development and partners.

⁷⁷ Submission by Moroccan Amazigh organizations.

⁷⁸ Submissions by Chiefs of Ontario and the Union of British Columbia Indian Chiefs.

women, children and lesbian, gay, bisexual, transgender, queer and intersex groups. Nearly 90 indigenous families (almost 500 community members) were provided with food, first-aid kits, hand sanitizers, masks and sanitary pads for women.⁷⁹

60. In Canada, each First Nation reportedly has a unique plan for COVID and other pandemics, addressing the specific challenges faced by their community while respecting their cultural protocols and specific needs. A government health officer supports the coordination of their COVID-19 and pandemic planning processes and responds to First Nations needs at the regional level.⁸⁰

61. The National Indigenous Organization of Colombia is using its territorial monitoring system to issue periodic bulletins, including those containing data, analysis and recommendations. These contribute to timely and relevant decisions by traditional and government authorities acting for the protection of territories and communities and to efforts to ensure the survival and integrity of indigenous peoples and nations in the face of the pandemic.⁸¹

Self-subsistence

62. Ensuring respect for indigenous rights to autonomy can accordingly also free up resources for non-indigenous communities. In the Philippines, it is reported that an indigenous community declined food packs offered by the Government's social welfare agency on the grounds that there were families in greater need and that their community would be able to cope with the lockdown thanks to its self-subsistence.⁸² In Chile, Mapuche artisanal fisherfolk have shared their catch with other non-indigenous communities struck by the economic consequences of the lockdown.⁸³

63. In India, an indigenous organization raised international funding to remunerate local women for producing masks, purchase and distribute sanitation supplies in their communities, produce preventive public health programming for radio in local indigenous languages and promote traditional medicine.⁸⁴

E. Disproportionate impact of State response on indigenous peoples

64. State-imposed lockdown, confinement and other restrictions on freedom of movement, even when nominally applied in an equal manner to all segments of populations, have disproportionately had an impact on indigenous peoples, in particular those living in urban areas and those indigenous communities which are not self-subsistent.

Women and girls

65. Reports from the Americas,⁸⁵ Asia⁸⁶ and Africa⁸⁷ indicate a correlation between confinement and a rise in domestic and other violence against indigenous women and

⁷⁹ Joint submission by the Asia Pacific Forum on Women, Law and Development and partners.

⁸⁰ Submissions by Chiefs of Ontario and the Union of British Columbia Indian Chiefs.

⁸¹ See, for example, <https://www.onic.org.co/noticias/70-desta-cadas/3784-boletin-013-sistema-de-monitoreo-territorial-smt-onic-informacion-para-prote-ger-la-vida-y-los-territorios>.

⁸² Submission by the Tebtetba Foundation.

⁸³ See https://observatorio.cl/wp-content/uploads/2020/05/filac_fiay_primer-informe-pi_covid19.pdf, p. 34.

⁸⁴ See <https://www.culturalsurvival.org/news/indigenous-peoples-finding-solutions-own-communities-response-covid-19>.

⁸⁵ Submission by the Native Women's Association of Canada.

⁸⁶ Submissions by Asia Indigenous Peoples Pact and Nepalese indigenous women's organizations.

⁸⁷ Joint submissions by Moroccan Amazigh organizations; and submission by Minority Rights Group International and partners.

children, including female genital mutilation, as well as forced marriage. Furthermore, indigenous women are also particularly affected financially, and violence against women is correlated with economic insecurity.⁸⁸ Rates of maternal mortality are also reportedly rising as a result of deprioritizing non-COVID-related treatments and where hospitals require a negative COVID test report to receive treatment, without providing assistance to those who do not have access to the test or cannot afford one.⁸⁹

66. The workload of women increased when families were confined at home; in addition to carrying out their usual tasks (getting firewood, cooking, etc.), they have often been the ones responsible for ensuring preventive hygienic measures, which has increased their need for safe water that needs to be collected from longer distances while respecting restrictions, and caring for the sick.⁹⁰ The Continental Network of Indigenous Women in the Americas has produced a report on the impact of COVID-19 on women, with a wealth of information and a description of good practices in the region.⁹¹

Access to food and livelihood

67. COVID-19 has increased existing hardships for indigenous peoples with regard to access to food and safe water and has disrupted their local and traditional economies. Indigenous communities whose land rights are denied or who do not have self-determination on their territories are not able to exercise control over their food production and access to fields, forest or beaches; lockdown has therefore reduced their ability to sustain themselves.⁹²

68. The closure of local markets prevents the sale and purchase of food and the bartering of first-necessity items and deprived families of disposable income. Communities depending on cash crops are particularly affected and may lack adequate resources for the next planting season. In Africa and Asia, agricultural producers and creators of indigenous artwork,⁹³ as well as gatherers of small forest products,⁹⁴ have been unable to sell their goods. In Asia, the period between March and June before the monsoon is of particular importance for indigenous peoples to earn sufficient money from such sales before employment opportunities decrease.⁹⁵

69. Semi-nomadic and pastoral communities have been unable to freely roam in search of grazing lands for their cattle or to sell their animals in markets.⁹⁶ In Sapmi, reindeer herders have seen a drop in the sale of meat as restaurants closed down, reducing their income and also having implications on land management, as their herds are larger than normal and may create conflicts over the use of land.⁹⁷

⁸⁸ Submission by the Native Women's Association of Canada.

⁸⁹ Joint submission by Nepalese indigenous women's organizations.

⁹⁰ Joint submission by Franciscans International and partners.

⁹¹ See list of contributions to the report at https://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/Callforinput_COVID19.aspx.

⁹² See <https://www.forestpeoples.org/en/increased-hunger-and-poverty-for-Batwa-in-Uganda-amid-covid-19> and submission by Union Nationale du Peuple Kanak.

⁹³ Submissions by the Ogiek Peoples' Development Programme and Moroccan Amazigh organizations.

⁹⁴ See Asia Indigenous Peoples Pact, "COVID-19 and humanity: human rights in peril", May 2020, available at <https://aippnet.org/wp-content/uploads/2020/05/AIPPs-flash-update-3.pdf>, and submission by Action pour la promotion des minorités autochtones en Afrique Centrale.

⁹⁵ International Indigenous Peoples Movement for Self-Determination and Liberation, "Weaponizing pandemic against indigenous peoples: continuing plunder and rights investigations" (May 2020), p. 4. Available at <https://www.ipmsdl.org/news/new-publication-on-weaponizing-pandemic-against-indigenous-peoples-continuing-plunder-and-rights-violations>.

⁹⁶ Submission by Association des femmes peuples autochtones du Tchad.

⁹⁷ Joint submission by Swedish civil society organizations in response to the joint questionnaire of the special procedures.

70. The suspension of rural air carriers has greatly affected remote Nordic communities, effectively ending with little notice the provision of food, medicine, personal protective equipment, mail, freight and any other essential items and preventing urgent evacuation to hospitals or protection shelters.⁹⁸

71. With regard to livelihoods, some indigenous peoples in Asia have reportedly been prohibited from performing their traditional subsistence activities such as fishing, farming or entering forests to collect forest products.⁹⁹ Many face the dilemma of either harvesting their crops, notwithstanding the risk of crippling fines or violence for breaking curfews, or seeing their harvest fail, which entails a loss of income from cash crops and the threat of impeding famine.¹⁰⁰ For example, police violence against women seeking to sell items in the street or gathering wild produce in the forest was reported.¹⁰¹ Indigenous peoples selling artwork or earning income through cultural performances were particularly affected by the abrupt halt to tourism.

72. In urban contexts, indigenous workers rely largely on the informal and labour markets. Construction, domestic and other daily workers, in particular those with disabilities, were the to be first hit by job losses.¹⁰² Street vendors and homeless people have been banned from the streets as a result of lockdowns and curfews. The closure of public transport prevents those living farther away from reaching their workplaces. Domestic workers have been affected when their employers feared virus transmission.¹⁰³ Reports from Latin America and Asia indicate that thousands of indigenous persons living in urban areas were left with no other choice but to return to their communities, as they could no longer afford to pay rent or buy food.¹⁰⁴ Migrants who were working across borders have found themselves stranded in border regions in destitute conditions with limited access to basic amenities.

Access to government financial aid

73. Indigenous peoples have not had equal access to government-led financial support during or following confinement.¹⁰⁵ In certain countries, the distribution of such relief has relied on databases of vulnerable peoples which did not include a comprehensive list of all indigenous peoples in need.¹⁰⁶ In some cases, civil society intervention was necessary for Governments to adapt relief packages, by replacing, for example, canned food with culturally appropriate food items such as dried fish.¹⁰⁷ In other cases, financial relief could be claimed only in cities, requiring isolated communities to take risks and travel closer to pandemic hotspots.¹⁰⁸ Financial compensation and other measures to boost national economies have privileged larger companies over the small family businesses typical among indigenous communities.¹⁰⁹

⁹⁸ Joint submission by the Indian Law Resource Center, the Alaska Native Women's Resource Center and the National Indigenous Women's Resource Center.

⁹⁹ Submissions by the Organization for Community Development and LILAK (Purple Action for Indigenous Women's Rights); and joint submission by Dhaatri Trust and partners.

¹⁰⁰ Submission by the Asia Indigenous Peoples Pact.

¹⁰¹ Submissions by Centro de Estudio e Investigaciones Mapuche and the Asia Indigenous Peoples Pact.

¹⁰² Joint submission by Nepalese indigenous women's organizations.

¹⁰³ Submission by LILAK (Purple Action for Indigenous Women's Rights).

¹⁰⁴ Submissions by Oxfam International and the Asia Indigenous Peoples Pact.

¹⁰⁵ Submission by the Tebtebba Foundation.

¹⁰⁶ Joint submission by the Kenya Human Rights Commission and partners.

¹⁰⁷ Submission by the Pan-Amazonian Ecclesiastical Network.

¹⁰⁸ Submission by Rede Pró-Yanomami e Ye'kwana and joint submission by the WakuBorun and Pariri Indigenous Association.

¹⁰⁹ Submission by the Sami Parliament of Sweden.

Cultural impact

74. The pandemic is causing irreparable cultural loss as indigenous elders, who are the guardians of indigenous culture, traditions, spirituality and language (amid rapid globalization), are at high risk of fatality because of their age and pre-existing medical conditions. The loss of elders also represents a loss of role models and teachers, as well as caretakers in multigenerational households.

75. The suspension of cultural, spiritual and religious activities due to confinement and social distancing measures has had serious impacts on indigenous communities. The cancellation of winter solstice celebrations was, for some Mapuche communities, unprecedented and a lost opportunity to express and transmit their culture to the younger generation to preserve it against the cultural tide of the dominant society.¹¹⁰ State directives regarding the management of dead bodies have had an impact on the exercise of traditional funeral rituals in various regions.¹¹¹

76. Indigenous peoples fear the impacts of the COVID pandemic on the public allocation of funds and priorities, including to support cultural life and also in terms of environmental protection. Support for the intergenerational transmission of traditional knowledge and social structures of indigenous peoples must remain a priority for the survival of indigenous peoples after the crisis.¹¹²

Impact on self-governance

77. Where State authorities did not recognize indigenous self-governance, community cohesion and rapid decision-making was in some cases impeded by State enforcement of physical distancing measures. Reports from Latin America and Africa indicate that community meeting activities were greatly affected, making such communities unable to take decisions or participate in the consideration of proposed measures to address the pandemic. For cultural or practical reasons, online meetings may not have been possible for some communities.¹¹³

Education

78. Globally, shifts to online or otherwise remote education have created particular challenges for indigenous peoples and deepened the more general digital divide between indigenous and non-indigenous segments of society,¹¹⁴ including due to high Internet access costs and usually low or non-existent network reliability or speeds. Some communities in Latin America and Asia used mobile phones to receive and send homework, implying the existence of hard-to-cover phone credit expenses. Communities without computer equipment were left with no other educational alternative for their children.¹¹⁵ The closure of classrooms also meant for certain indigenous children that they no longer benefited from school food programmes. In Mexico, however, the National Institute for Indigenous Peoples provided food packages to recipients of the food programme for indigenous children, (Casas y Comedores de la Niñez Indígena) when the operation of school canteens was suspended.¹¹⁶ Globally, the crisis has shown the limitations linked to the lack of control indigenous peoples have over their educational systems.

¹¹⁰ Submission by ENDEPA.

¹¹¹ Submissions by Rede Pró-Yanomami e Ye'kwana and the Tebtebba Foundation.

¹¹² Submission by the Sami Parliament of Sweden.

¹¹³ Joint submission by Minority Rights Group International and partners and submission by ENDEPA.

¹¹⁴ Submission by the Navajo Nation.

¹¹⁵ Submission by Oxfam International.

¹¹⁶ Submission by Mexico.

Restrictions imposed on indigenous human rights defenders

79. Indigenous peoples increasingly fear for their and their families' lives while they seek to defend their lands and environments during lockdown, particularly where States have broadened their laws through declarations of emergency.¹¹⁷ In some cases, states of emergency have been used as a basis for targeting particular groups or individuals¹¹⁸ and for criminalizing indigenous peoples' rights-defending activities. Restrictions on the freedom of movement and assembly, including bans on protests,¹¹⁹ have hampered the work of indigenous human rights defenders, journalists and civil society, creating a void in their ability to monitor and draw attention to human rights violations and abuses. The suspension or restriction of court operations has impeded access to justice or remedy. This has opened the door for companies or criminal networks to take possession of indigenous peoples' lands without scrutiny or accountability.¹²⁰ Lockdown measures limit the ability of indigenous rights defenders to mobilize their emergency support network for the protection of members of indigenous communities, while authorities and private actors continue to gain wider abilities to silence them, for example, by criminalizing them for breaking quarantine as they prevent incursion on their lands.¹²¹

80. Confinement has increased the exposure of land and environmental defenders to attacks and killings. Indigenous leaders were reportedly assassinated in Latin America when perpetrators knew where they lived and that they could not leave their homes.¹²² Journalists were reportedly harassed for raising alarm on social media on the lack of preparedness of their community hospitals.¹²³ In Asia, threats against and harassment of indigenous rights defenders have reportedly intensified, including against women leaders providing aid and assistance.¹²⁴

Border closure

81. National borders often artificially divide communities from the same indigenous peoples. The free movement within Sápmi was, for example, restricted by border closures in March 2020, hindering the provision of support to family members across borders and cross-border reindeer herding.¹²⁵ Similarly, Tuareg youth also reportedly demonstrated in a cross-border city of the Sahel against closure of the border and its impacts.¹²⁶ The lack of a coordinated multi-State response has contributed to high rates of transmission among indigenous communities living across porous borders.¹²⁷

¹¹⁷ Land and environmental rights defenders are among those most at risk; see <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25517&LangID=E>.

¹¹⁸ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E>; submissions by Asia Indigenous Peoples Pact and the Tebtebba Foundation.

¹¹⁹ Joint submission by the Canadian Feminist Alliance for International Action and Pamela Palmater, Chair in Indigenous Governance, Ryerson University.

¹²⁰ See International Work Group for Indigenous Affairs, "Indigenous Peoples at increased risk due to coronavirus", 31 March 2020, available at <https://www.iwgia.org/en/news/3547-iphrd-health-covid-19.html>.

¹²¹ See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25850&LangID=E>.

¹²² Submissions by Oxfam International and Peace Brigades International.

¹²³ Joint submission by Franciscans International and partners.

¹²⁴ See International Work Group for Indigenous Affairs, "Indigenous Peoples' Human Rights Defenders in the Philippines threatened and harassed" (11 May 2020), available at <https://www.iwgia.org/en/news-alerts/news-covid-19/3582-indigenous-peoples-human-rights-defenders-in-the-philippines-threatened-and-harassed.html>; submissions by Protection International and the Asia Indigenous Peoples Pact.

¹²⁵ Submission by the Sami Parliament of Sweden.

¹²⁶ Submission by Association Tin Hinan.

¹²⁷ Joint submission by the National Indigenous Organization of Colombia and partners.

Exacerbation of violations of land rights

82. The COVID-19 pandemic is critically aggravating the situation of those peoples already facing daily violations of their rights. It was labelled by some as the “double pandemic”: the health risks and freedom restrictions have compounded their struggle to protect their lives, lands and territories from the presence of military forces or corporate actors, or against natural disasters such as cyclones or forest fires, which have hit South and South-East Asia during the pandemic. Indigenous peoples have been made more vulnerable to losing their land. Legal and illegal land-grabbing is being expanded while indigenous peoples are confined and unable to guard their lands and civil society has less capacity to monitor and denounce displacement, violations and abuses.

Conflict and militarization

83. In spite of the call by the Secretary-General of the United Nations for a global ceasefire in March 2020, which was eventually taken up by the Security Council on 1 July, when it adopted resolution 2532 (2020), conflicts on indigenous lands have continued unabated, impeding the provision of assistance by humanitarian agencies to the population in combating COVID-19. Indigenous leaders have also been intimidated or threatened with arrest for accepting COVID-19-related assistance offered by opposition groups.¹²⁸ Indigenous peoples displaced as a result of conflict live in overcrowded camps, with little access to water, poor sanitation and a lack of health services, which is further compounded by the logistical difficulties imposed on the provision of humanitarian assistance during these times.¹²⁹

84. In response to COVID-19, some countries have introduced or increased the presence of the military and the police in rural areas, treating the crisis as a security issue instead of a public health one. The presence of State police and military forces has exacerbated racism and profiling already experienced by indigenous peoples. In addition, State and business security personnel in indigenous territories have reportedly prevented livelihood practices and the harvesting of food produce.¹³⁰

85. Indigenous peoples living at the edges of protected areas and national parks also have continued to be harassed by park rangers. Some conservation organizations reportedly invoked the pandemic as grounds for a ban on wildlife consumption and for the creation of more protected areas, without obvious evidence that this would help stop the pandemic or consideration of the importance of consulting indigenous peoples affected by such decisions.¹³¹

Business operations on indigenous land

86. State measures to support national economies in an emergency context have in some cases given priority to the interests of the private sector, favouring the expansion of agribusiness and extractive industries, logging and hydroelectric projects or declaring them to be “essential” operations.¹³² These companies have continued

¹²⁸ See International Work Group for Indigenous Affairs, “While the world focuses on COVID-19, Indigenous Peoples in Myanmar are being killed”, 28 April 2020, available at <https://www.iwgia.org/en/news/3568-while-the-world-focuses-on-covid-19,-indigenous-peoples-in-myanmar-are-being-killed.html>; submission by the Tebtebba Foundation.

¹²⁹ Submission by the Asia Indigenous Peoples Pact.

¹³⁰ Submission by the Legal Rights and Natural Resources Center.

¹³¹ Submission by Survival International.

¹³² Earthworks, Institute for Policy Studies - Global Economy Program, London Mining Network, MiningWatch Canada, Terra Justa, War on Want and Yes to Life, No to Mining, “Voices from the Ground: how the global mining industry is profiting from the COVID-19 pandemic” (June 2020), available at https://miningwatch.ca/sites/default/files/covid-19_and_mining_snapshot_report_-_web_version.pdf.

operating on indigenous peoples' traditional land in spite of nationwide lockdowns and without their free prior and informed consent, thus exposing them to a heightened risk of contagion.¹³³

87. In Asia and Latin America, indigenous peoples have expressed a deep feeling of injustice regarding the fact that large companies appear to be freely continuing their activities and encroaching on indigenous lands while restrictions on the indigenous peoples' own movement and freedom to use and protect their lands is repressively enforced. Civil society and indigenous organizations have also criticized the measures of certain Governments giving approvals to businesses during states of exception, without transparent consultation processes, permission for peaceful demonstrations or the possibility of suspensive appeal decisions in courts. It was also reported that, under COVID-related states of emergency, some Governments have relaxed the environmental assessment rules applicable to corporate actors.¹³⁴

88. Also, without government authorization or surveillance, businesses have used quarantines to increase the presence of illegal miners, illegal loggers, hunters and land-grabbers in indigenous peoples' territories.¹³⁵ In March, indigenous communities of the Amazon issued a statement demanding an immediate moratorium on logging, mining, oil extracting and agribusiness activities on their territories;¹³⁶ the call was relayed internationally by 225 organizations expressing their solidarity with and support for an Amazon-wide moratorium on all industrial activities.¹³⁷

89. Emergency measures appear to have infringed on the right of indigenous peoples to free, prior and informed consent with regard to industrial, conservation and development projects. In Asia, the displacement and eviction of indigenous peoples were reportedly carried out during the confinement period without consent or compensation.¹³⁸ It is important to document such violations during the pandemic to ensure that affected indigenous peoples ultimately receive reparation. In other countries, consultations reportedly went on without any regard to the fact that attendance by indigenous peoples could be impeded by health and confinement advisories.

V. Conclusion and recommendations

90. The pandemic has exposed weaknesses and exacerbated disparities in public health and social security systems, leaving indigenous peoples behind in national responses and compounding the wider range of systemic violations they already faced. As the world prepares strategies to mitigate the socioeconomic consequences of confinement and reduced economic activity, human rights, including the rights of indigenous peoples, must be at the centre of recovery

¹³³ Organization of American States (OAS), "Indígenas amazónicos están 'en grave riesgo' frente a COVID-19, alertan ONU Derechos Humanos y CIDH", press release, 4 June 2020, available at <http://www.oas.org/es/cidh/prensa/comunicados/2020/126.asp>; submissions by International Platform against Impunity and the Bristol Bay Native Association.

¹³⁴ Submission by the Global Greengrants Fund.

¹³⁵ Submission by Friends of the Earth Sweden.

¹³⁶ Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, "Indígenas de tierras bajas exigen parar todas las actividades extractivas en sus territorios", 29 April 2020, available at http://www.filac.org/wp/comunicacion/actualidad-indigena/indigenas-de-tierras-bajas-exigen-parar-todas-las-actividades-extractivas-en-sus-territorios/?fbclid=IwAR0w2fU6Gn_VUWj6woNW-N3OTGRzo8U6Fi7TPwFKSM5MCkpwKhE6m0Kd2Wo.

¹³⁷ Amazon Watch, "Indigenous peoples across the Amazon issue demands in response to coronavirus pandemic", press statement, 20 April 2020, available at <https://amazonwatch.org/news/2020/0420-indigenous-peoples-across-the-amazon-issue-demands-in-response-to-coronavirus-pandemic>.

¹³⁸ Submissions by the Housing and Land Rights Network and the Asia Pacific Forum on Women, Law and Development and partners.

programmes. Given continuing or resurgent waves of transmission, national and local governments must also ensure that human rights-based pandemic emergency protocols are developed together with indigenous peoples. Ensuring that women have a leadership role is particularly important to ending the intersecting discrimination they face,¹³⁹ and the situation of indigenous older persons, persons with disabilities, women, children, youth, lesbian, gay, bisexual, transgender, queer and intersex persons and human rights defenders must also receive specific attention.¹⁴⁰

91. The collective right of indigenous peoples to health entails the possibility of running their own health-care systems and applying a holistic approach to health care, incorporating their rights to culture, land, language and the natural environment.

92. Many indigenous peoples rely on fragile ecosystems for their sustenance and survival. As they are already threatened by climate change, reducing environmental protection in the name of promoting economic recovery would disproportionately have an impact on indigenous peoples.¹⁴¹ The pandemic must be an occasion for transformative change, including by ending the overexploitation of natural resources and emissions contributing to global warming, and reversing increasing socioeconomic inequality within and between nations.

93. The Special Rapporteur encourages all Member States and other international actors to act collectively and in solidarity to rapidly scale up emergency support for indigenous peoples in all their diversities, including for sufficient and culturally appropriate testing, personal protective equipment and treatment and for community services such as those relating to water and sanitation, health and social protection. Distribution of relief should never discriminate against anyone on such grounds as indigenous status, ethnicity, race, nationality (including statelessness), disability, age, sexual orientation or gender identity.

94. The Special Rapporteur endorses already issued guidance and recommendations on the rights of indigenous peoples in the context of the COVID-19 pandemic, including from OHCHR¹⁴² and the Inter-Agency Support Group on Indigenous Peoples' Issues.¹⁴³

95. The Special Rapporteur further highlights the below recommendations to States, indigenous authorities and organizations, international donors, United Nations entities and business companies.

Planning and delivery of health care

96. Indigenous authorities, communities and associations should prepare or update contingency plans for pandemics, identifying the areas they can manage entirely independently and those where they may require support. The plans should

¹³⁹ See United Nations Entity for Gender Equality and the Empowerment of Women, "In Guatemala, investing in indigenous women's economic empowerment is key to building back better after COVID-19", 29 June 2020, available at <https://www.unwomen.org/en/news/stories/2020/6/feature-empowering-indigenous-women-in-guatemala-in-covid-19-response>.

¹⁴⁰ See OAS, "Indígenas amazónicos están 'en grave riesgo' frente a COVID-19, alertan ONU Derechos Humanos y CIDH".

¹⁴¹ See Daniel Wilkinson and Luciana Tellez-Chavez, "How COVID-19 could impact the climate crisis", *Foreign Policy in Focus* (16 April 2020). Available at <https://fpif.org/how-covid-19-could-impact-the-climate-crisis>.

¹⁴² See https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenousPeoplesRights.pdf.

¹⁴³ See http://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2020/04/Indigenous-peoples-and-COVID_IASG_23.04.2020-EN.pdf.

include options for the isolation of sick members of the community, as well as a communication tree, clearly identifying the counterparts within the local and regional governments with which they will coordinate or collaborate. They should designate individuals within the community as focal points for implementation.

97. Indigenous peoples are encouraged to share information with State authorities and independent institutions such as national human rights institutions on the public health and human rights situation they face during the pandemic, provided that such authorities reciprocate and respect the continuing right of indigenous peoples to control their information. Indigenous peoples are also encouraged to share their good practices and traditional knowledge to inform solutions for the wider society.

98. States should update pandemic contingency plans and laws and ensure that such plans include specific measures and dedicated funding for indigenous peoples, and identify specific proactive communication channels, such as a directory with contact information for chiefs and other leaders, including in urban areas.¹⁴⁴ States should also rely on indigenous knowledge to inform their overall responses.

99. To respect the rights to self-determination and self-governance, States and indigenous communities should prepare forward-looking tailored health-care and prevention protocols and virus containment measures, on the basis of transparent and accountable two-way consultation with representatives of indigenous authorities and organizations. Any emergency or unplanned State measures that could have an impact on the rights of indigenous peoples must first receive their free prior and informed consent, if necessary with the assistance of intercultural facilitators to explain the necessity and impact of the measures. The specific situation of indigenous peoples living in voluntary isolation must be taken into account, and planning may involve collaboration with other non-isolated indigenous communities in the area.

100. Data on indigenous women, children, elders, persons with disabilities and lesbian, gay, bisexual, transgender, queer and intersex and two-spirit persons in the health-care system should be systematically collected and analysed to identify and address any discrimination in the impact of measures or in access to health care, recognizing the potentially differing experiences of indigenous peoples living in urban settings, indigenous communities (including in voluntary isolation and in initial contact) and mixed settings.

101. Indigenous peoples in urban and rural settings should receive timely and accurate information on care and prevention during the pandemic, as well as, for instance, on support services for victims of gender-based violence during any periods of confinement, in accessible languages and formats (radio, social media, easy-read) that have been identified by the communities. States should also fund indigenous peoples' own initiatives in this regard.

102. Health-care protocols and preventive measures applicable to indigenous peoples should take into account their distinctive concepts of health, including their traditional medicine. They should be jointly developed and delivered by State health institutions and indigenous health systems that complement each other. Where distinct indigenous health structures do not exist, States should

¹⁴⁴ See Sandra del Pino and Alex Camacho, "Considerations on indigenous peoples, Afro-descendants, and other ethnic groups during the COVID-19 pandemic" (Pan American Health Organization, 2020).

support their creation. States should also coordinate with indigenous peoples to ensure continuity of medical care for non-COVID indigenous patients.

Prevention and containment measures

103. States should support, and when requested assist in the enforcement of, any decision by indigenous communities to restrict access to their territories to prevent virus spread. Where health professionals from outside the community enter the community, for example, for mobile testing clinics, such persons may in principle be expected to have tested negative for the virus before arrival.

104. Nationwide lockdown and quarantine measures should be non-discriminatory in their application and enforcement, demonstrably necessary and proportionate, authorized for specific prescribed periods of time (potentially subject to renewal) and compliant with international human rights laws and standards. Such measures must accommodate indigenous peoples' traditional way of life, practices and institutions to mitigate any disproportionate impact on them.

105. If States close or restrict border crossings, special safeguards should protect the rights of indigenous peoples whose families, communities or peoples are divided by the borders.

106. Given the new pandemic-related risks, the resumption or continuation of business activity occurring on indigenous territory should take place only with the renewed consent of concerned indigenous peoples. States should consider a moratorium on all logging and extractive industries operating in proximity to indigenous communities. Neither State authorities nor businesses should be permitted to exploit the situation to intensify activities to which indigenous peoples have objected.

107. States should refrain from introducing legislation or approving extractive or similar projects in the territories of indigenous peoples in any circumstance where measures against COVID-19 prevent proper consultation and consent. States should equally refrain from proceeding to or threatening indigenous peoples with eviction of from their lands and seek to demilitarize indigenous lands.

108. Regular evidence-based evaluation of prevention and containment measures should take place with the participation of indigenous authorities and organizations.

Human rights defenders

109. States should provide additional protection to indigenous and other human rights defenders who may be at additional risk due to confinement or other measures. States should recognize the monitoring and reporting of human rights violations and abuses by defenders as an essential service that should be permitted to continue.

110. Emergency powers must not be abused to quash dissent or silence indigenous leaders and rights defenders. States should urgently remove or reduce the presence of State militaries in indigenous territories and communities. Attacks on indigenous, land, environmental and women human rights defenders must be stopped, perpetrators held accountable and access to justice and remedy and reparation guaranteed.

Economic and social recovery

111. In designing and implementing economic and social recovery plans, States must respect, protect and promote indigenous peoples' right to self-determination,

including autonomy and self-governance, particularly their rights to control the use of and access to their lands and resources, and to operate their own health and educational systems. Relevant processes and plans must be driven by indigenous peoples themselves with the financial and material support of States, with a leadership role for indigenous women. Given pre-existing marginalization exacerbated by the pandemic, housing, access to food, health care and education for indigenous peoples, in both rural and urban contexts, should be a priority.

112. States should reinforce their commitments and actions aimed at curbing emissions and mitigating the impacts of climate change, taking into consideration the specific dependence of indigenous peoples on their lands and natural resources, including by supporting environmental conservation projects and initiatives led by indigenous peoples.
