

THE GLOBAL FORUM ON LAW, JUSTICE AND DEVELOPMENT REVIEW OF LEGAL EXPERIENCES AND GLOBAL PRACTICES RELATING TO COVID-19



The *Review of Legal Experiences and Global Practices Relating to COVID-19* is a report compiled by the Global Forum on Law, Justice and Development (GFLJD). Initiated at the beginning of the global COVID-19 pandemic in May 2020 and continue and complete in 2021 to deliver a more comprehensive and up-to-date document.

This review aims to provide a holistic and non-exhaustive overview on the various laws and policies that have been implemented by states, international organizations, the private sector and civil society organizations in response to the COVID-19 pandemic.

The COVID-19 pandemic has had legal impacts on all aspects of life and all groups of people. The review focuses on the following areas for scope: (a) the role of the stakeholders; (b) the impact of the pandemic on vulnerable groups; and (c) impacted sectors. Based on contributions submitted by GFLJD Partners and further research, the Review highlights best practices from states and various organizations worldwide with regard to each area. The *Review* then provides recommendations in each area of interest, which the GFLJD hopes will guide future policymaking in relation to COVID-19 and future crises.

The GFLJD envisions that the *Review* will serve as a useful guide for policymaking. By bringing together more than 140 partners and legal practitioners, the GFLJD is a strategic hub in the field of law and development. In the context of the pandemic, we believe it is our duty to share this expertise and knowledge with as many people as possible. The *Review* spotlights the many best practices that states and organizations have implemented in the light of COVID-19, and illustrates the many obstacles created by the pandemic. In doing so, the GFLJD hopes that this *Review* shares and co-generates knowledge among policymakers.

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- Barreau de Paris
- Basel Institute on Governance
- Benedict Abrahamson Tendayi Chigara, Professor of Public Law, College of Law, Qatar University, Ph.D. (Nottingham), LL.M with Distinction & Best Performance Award (Hull), Dual BA Hons. in Law & Psychology (Keele), MCIArb (London), FHEA (UK), FInstLM (London), FReachSoc (London), FGoA (USA), FAiADR (Malaysia)
- David Satola, Lead Counsel, Technology & Innovation, The World Bank
- Dr. Alexandra R. Harrington, Research Director and Lead Counsel (Peace, Justice & Governance Programme), Centre for International Sustainable Development Law
- Federal Bar Association
- French National Bar Council
- George Washington University Law School International and Comparative Law Program
- GPW Group
- International Institute for the Unification of Private Law (UNIDROIT)
- International Bridges to Justice
- International Centre for Missing and Exploited Children
- International Union of Judicial Officers

- International Union of Notaries
- Leif Villadsen, Deputy Director of UNICRI
- Maria Socorro Manguiat, Senior Legal Officer and Head of the National Environmental Law Unit, Law Division, United Nations Environment Programme (UNEP), Nairobi, Kenya and Jackline Wanja Wanjiru, Junior Legal Officer, National Environmental Law Unit, UNEP Law Division
- Penal Reform International
- Singapore Ministry of Law
- The Conseil Supérieur du Notariat (France's High Council for the Notarial Profession)
- The Center for Water Security and Cooperation and The Geneva Water Hub/University of Geneva
- UNESCO
- UN Women, IDLO, UNDP, UNODC, World Bank and The Pathfinders
- World Bank Group
- Yong-Shik Lee, Director and Professorial Fellow, The Law and Development Institute; Ph.D., M.A., B.A. (law) (University of Cambridge) and B.A. (economics) (University of California at Berkeley) and Hye Seong Mun, Fellow, The Law and Development Institute and former Assistant Professor of Medicine, Chiba University (Japan); Ph.D. (medicine) (Chiba University), M.A. and B.A. (food & life science) (Pukyong National University).

DISCLAIMERS AND LIMITATIONS

This review is based on information on law and policy available in English online and/or offline, and based on information collected from research conducted and verified between May 2020 and June 2021. Because this review is carried out primarily based on information publicly available online, it has more than several hundred URLs and links to publicly available laws, regulations, and electronically published documents. All referenced URLs and links were checked at the time when they were inserted into the footnotes. There is no guarantee as to their future accessibility. Where the URL links to active websites rather than document files, the footnotes include mention of “last visited month, date, and year.” In addition, in case of citing a published document in a footnote, the footnote may include information on an author (or an authoring institution), a year of publication, title, page range, and URL or a link where the referenced publication was uploaded.

The findings, interpretations, and conclusions expressed in this work do not necessarily reflect the views of The World Bank.

FOREWORD BY SANDIE OKORO

The COVID-19 pandemic has created unprecedented and exceptional circumstances all around the world, as hundreds of millions of people have been infected by the virus, over four million individuals have sadly deceased, and nearly all our lives have been disrupted in one way or another. The global economy contracted 3.5 percent in 2020, and this economic downturn is increasingly pronounced in the poorest parts of the world, with 120 million people being pushed into extreme poverty due to the pandemic. These daunting numbers come on top of the enormous structural inequalities and systemic biases COVID-19 has exposed in many of our member states, as well as the additional challenges it has created in achieving the Sustainable Development Goals (SDGs) by 2030.

Yet, like many other crises, the COVID-19 pandemic too has the potential to create new opportunities for growth and development. Governments may now be better positioned to ameliorate public health responses and strengthen health care systems to benefit everyone, including those who were previously left behind. By the same token, COVID-19 forces us to opt for measures to wane social disparities across the board and build more inclusive and resilient communities. The possibility of accelerated innovation and digital transformation in all economic spheres in the post-pandemic world cannot be overlooked either. Neither can we gloss over the probable fortification of existing institutions to prevent and mitigate the impact of future health crises.

However, even nearly two years into the crisis, the full extent of implications generated by COVID-19 are still difficult to grasp. What nonetheless seems to be pellucid are the adjustments that governments, private and public entities, as well as individuals will have to institute to address the legal challenges posed by, and to seize opportunities afforded by COVID-19. This *Review of Legal Experiences and Global Best Practices of COVID-19* by the Global Forum on Law, Justice and Development (GFLJD) is a modest contribution to the already existing literature to take stock of actions taken, inspire and support decision-making in light of necessary adjustments, and locate workable legal solutions for the handling of future pandemics.

In line with its objective to share and co-generate knowledge, as well as to convene stakeholders around key legal topics, I could not think of any better platform than the Global Forum on Law, Justice and Development to craft this publication. GFLJD, through its extensive network of intellectual development partners, has a unique position to collect, aggregate, and share legal expertise and best practices to effectively respond to legal and development challenges the international community faces. GFLJD's current publication is an epitome of global legal and developmental cooperation in a time of crisis.

The *Review of Legal Experiences and Global Best Practices of COVID-19* integrates diverse legal experiences and lessons learnt from around the globe into a single resource. It outlines the legal, policy, and practical steps that have been taken to address the pandemic and its impacts, as well as the need to employ legal solutions that align with the global commitment to achieve SDG 16. The publication aims to enable governments, international organizations, and public and private

institutions to readily access legal knowledge on the pandemic to aid decision-making. The *Review* is also aimed to stimulate thought-provoking and much-needed dialogue on what the road ahead ought to look like as we navigate out of the crisis and what steps to take in preparation for and in light of future emergencies of a similar nature.

The *Review of Legal Experiences and Global Best Practices of COVID-19* would have been impossible without the munificent contributions of more than 25 GFLJD Partners hailing from various government entities, multilateral development agencies, the academia, and civil society organizations. Among these contributors, I specifically want to acknowledge the efforts of the team of students led by Dean Rosa Celorio of The George Washington University Law School who has graciously amalgamated all submissions and made significant additions to the final product.

I trust that the *Review of Legal Experiences and Global Best Practices of COVID-19* will prove to be a useful tool for all readers and contribute to legal responses to pandemics and other crises that we may encounter in the years ahead.

Sandie Okoro

Steering Committee Chair,
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Senior Vice President and Group General Counsel,
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Disclaimer: The World Bank Group, the GFLJD, and its contributors, are not offering an official endorsement of any of the views/positions expressed by other organizations or individuals in this document.

FOREWORD BY DAYNA BOWEN MATHEW

The COVID-19 pandemic is one of the most profound world crises in recent history. As of October 2020, over 38 million cases of COVID-19 and more than 1 million resultant deaths have been confirmed globally. More than 180 countries have reported the spread of the virus. The COVID-19 crisis has reshaped the way we live and conduct our lives. Governments around the globe have struggled to combat the spread with orders to socially distance, shelter in place, pause in-person education and business activities, and restrict most international travel. Even with the implementation of these measures, the COVID-19 virus is still an ongoing public emergency displaying high contagion rates in many countries. States face complex, intricate, and immediate challenges to develop legal, policy, and programmatic responses to adequately respond to this crisis. As an African American woman trained in public health and civil rights law, I am honored and deeply grateful for the issues and insights confronted in this conference and this volume.

The coronavirus pandemic threatens progress in the advancement of the Sustainable Development Goals, Civil and Human Rights, and the Rule of Law around the world. The pandemic has shed light on longstanding, but hitherto unresolved problems of structural, gender and racial inequality in our societies. These problems are not new. Many persons, groups, and communities around the world suffer daily forms of discrimination because of their race, ethnic background, sex, age, and income status, among other variables. That these groups are also overrepresented in the death rates from the COVID-19 virus is wholly predictable. This discrimination is structural and systemic, displayed formally in laws and in unequal access to health services, food security, water, education, employment, and social security, among other paramount economic, social, and cultural rights. Adopting prompt and exhaustive measures, both legal and programmatic to effectively address and respond to these forms of inequality is of crucial importance to advance the Sustainable Development Goals during this moment of crisis. Inclusion, equality, and non-discrimination driven approaches are key to ensuring continued international economic and social development for all, well beyond this pandemic.

The work of multilateral organizations in documenting legal experiences and best practices during moments of crisis must extend solutions to every stratum of society and sector of the global economy. This crisis presents an opportunity for states facing the arduous task of developing responses to emergency situations to sustainably advance access to justice, meaningfully move toward peaceful and inclusive societies, and reconstruct strong and equitable institutions. These are all important mandates contained in the 2030 Agenda for Sustainable Development and Sustainable Development Goal 16. The work of multilateral and international organizations can produce important knowledge and roadmaps to inform state efforts to reform legislation and adopt new initiatives to curb this public health emergency and others which may arise in the future.

I commend the invaluable work of the Global Forum for Law, Justice, and Development of the World Bank for providing a space through this initiative to create legal knowledge to share with both state and non-state actors to respond to this crisis in line with the Sustainable Development

Goals, rule of law principles, and human rights. I also acknowledge the wonderful contribution of GW Law and our students in the development of this initiative and publication. The academic sector must play a key role in producing research and supporting the work of international organizations, civil society entities, and states in developing effective, evidence-based responses.

Moments of crisis test our societies and provide the opportunity to build a present and a future that is more inclusive, sustainable, and peaceful. This publication is an invaluable contribution to states, international organizations, civil society organizations, and other actors to ensure a balance between addressing the spread and effects of COVID-19 and the need to continue the advancement of equality, the Sustainable Development Goals, rule of law, and human and civil rights.

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ABOUT THE GLOBAL FORUM ON LAW, JUSTICE AND DEVELOPMENT

Strong legal and justice systems and institutions are internationally recognized as key drivers in development. However, the knowledge required to fully leverage this relationship is unevenly accessible to development experts, legal practitioners, policymakers and academics worldwide. The Global Forum on Law, Justice and Development (GFLJD), initiated and supported by the World Bank's Legal Vice-Presidency, was created to address such constraints. The GFLD provides an innovative and dynamic system of exchange and knowledge translation by connecting government, think-tanks, regional and international organizations, international financial institutions, private sector and civil society organizations with relevant research and practices to improve development outcomes. By paving the way for increased international collaboration among these players, the GFLJD aims to accelerate knowledge dissemination in line with the sustainable development goal of providing access to justice for all and build effective, accountable and inclusive institutions at all levels. The GFLJD provides an active framework that comprises a coherent, sustained program of collaborative research and special pilot projects by promoting a multidisciplinary approach, combining the economic, legal and technical aspects of target issues.

The objective of the GFLJD is to act as a collaborative, transparent, and efficient vehicle for the exchange and co-generation of legal knowledge, based on the following principles:

- a. Strengthening and promoting a better understanding of the role of law and justice in sustainable development through multi-stakeholder dialogue and collaboration;
- b. Reaching the targets of better integrating the legal approach, the judicial institutions, and access to justice in the development process to increase development effectiveness;
- c. Encouraging the co-generation of innovative legal solutions and practices to development issues;
- d. Supporting the dissemination of legal solutions to development challenges;
- e. Encouraging an inclusive partnership built upon shared principles, values and visions.

With the active participation of more than 140 intellectual development partners, the GFLJD aims to strengthen a wide range of topics in the field of law and development.



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INTRODUCTION

Background

The novel challenges introduced by the COVID-19 pandemic have jeopardized development gains and goals worldwide.¹ It has affected all spheres of society and threatened the progress of the Sustainable Development Goals (SDGs) on an unprecedented scale.² It has also exacerbated the vulnerability of the most marginalized groups, highlighting the inequalities and inequities that exist within and between countries.

One of the crucial challenges faced by States today is how to develop efficient responses to emergency situations while pursuing the 2030 Agenda for Sustainable Development, and in particular SDG 16.³ SDG 16 is dedicated to the promotion of peaceful and inclusive societies, access to justice for all and effective, accountable and inclusive institutions. At its core is the principle of the rule of law, which at a minimum, requires government officials and citizens to be bound by and act consistently with the law.⁴

The law plays an essential role in overcoming emergency situations. It establishes the institutional structures and formal processes that could be utilized during outbreaks and sets limits for the exercise of extraordinary powers over citizens and businesses.⁵ Numerous legal frameworks recognize the ability of States to use such emergency powers during a time of crisis. These powers confer to states, under strict conditions, the power to resort to derogatory measures ordinarily prohibited under national and international law.

Beyond the immense death toll and strain on the healthcare sector, COVID-19 has impacted every aspect of daily life. In response to the pandemic, countries have entered into nation-wide lockdowns and imposed movement restrictions. Due to the uncertainties surrounding the spread of the virus, the lack of testing, and the possibility of healthcare systems being overwhelmed, large-scale quarantines and travel bans have been put in place.⁶

The pandemic has also changed the way many institutions operate and provide services. For example, the justice sector has had difficulty functioning optimally as some judges, clerks and

1 World Bank, *Saving Lives, Scaling-up Impact and Getting Back on Track: World Bank Group COVID-19 Crisis Response Approach Paper* (2020), <http://documents1.worldbank.org/curated/en/136631594937150795/pdf/World-Bank-Group-COVID-19-Crisis-Response-Approach-Paper-Saving-Lives-Scaling-up-Impact-and-Getting-Back-on-Track.pdf>.

2 United Nations Human Rights Office of the High Commissioner, *COVID-19 Guidance*, <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx> (last visited Jun. 30, 2021).

3 G.A. Res.70/1 (Oct. 21, 2015), https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

4 World Bank, *World Development Report 2017: Governance and the Law* (2017).

5 World Health Organization, *Advancing the right to health: the vital role of law* (2017).

6 See *BBC, Coronavirus: Italy extends emergency measures nationwide* (Mar. 10, 2020), <https://www.bbc.com/news/world-europe-51810673> (last visited Jun. 30, 2021); see also South African Government News Agency, *President Ramaphosa announces a nationwide lockdown* (Mar. 23, 2020), <https://www.sanews.gov.za/south-africa/president-ramaphosa-announces-nationwide-lockdown> (last visited Jun. 30, 2021); see also Beehive, *Prime Minister's statement on State of National Emergency and Epidemic Notice* (Mar. 25, 2020), <https://www.beehive.govt.nz/speech/prime-minister%E2%80%99s-statement-state-national-emergency-and-epidemic-notice>. (last visited Jun. 30, 2021).

other legal professionals could not access their emails, files, or necessary court documents outside of the workplace.⁷ Notaries and courts were forced to operate through digital means.⁸

Lockdowns and stay-at-home orders have also impacted both the supply and demand side of the market, creating disruptions to national as well as global economies. With reductions in labor, spending and consumption, many businesses, especially small and medium enterprises, have struggled to keep their businesses afloat.⁹ Approximately 130 million full-time jobs were lost worldwide in the first quarter of 2020.¹⁰ According to the World Bank, the global economy is estimated to have contracted 3.5% in 2020, and that the pandemic has caused a global recession which depth was surpassed only by the two World Wars and the Great Depression over the past 150 years.¹¹ Further, the World Economic Outlook suggests that economic recovery will depend on the decline in cases accompanied by a well-supported health care system.¹² The WHO calculates that 60-70% of the world's population will have to exhibit immunity before transmission is radically reduced and measures can be lifted.¹³

Objective

The severity and scope of the impact from COVID-19 and the potential for future pandemics have demonstrated that global preparedness is essential. All stakeholders play important roles in designing, implementing and enforcing emergency measures to confront unprecedented global health threats.

As States work on recovery plans and prepare to transition to a post-COVID world, there are unique opportunities to develop policies that further global commitments toward the SDGs. In particular, crisis management policies that are based on the SDGs could not only result in more responsive solutions to the pandemic, but will also prepare the ground for more sustainable and inclusive societies.¹⁴ By integrating SDG 16 into COVID-19 measures and decision processes, States have a momentous opportunity to promote more inclusive, sustainable and peaceful societies in global development.¹⁵

While knowledge on the law and development impacts of the pandemic is available on many levels throughout the globe, these concepts have not been readily made available through a sustained international collaborative platform. In an effort to fill this gap, the GFLJD initiated a platform for the exchange of knowledge to connect governments, think-tanks, regional and IOs, international financial institutions, private sector and civil society organizations with relevant

7 Contribution from Barreau de Paris to author (2020) (on file with the Global Forum on Law, Justice and Development).

8 Contribution from International Union of Notaries to author (2020) (on file with the Global Forum on Law, Justice and Development).

9 Organisation for Economic Cooperation and Development, OECD Policy Responses to Coronavirus (COVID-19) Coronavirus (COVID-19): SME policy responses (Jul. 15, 2020), <https://www.oecd.org/coronavirus/policy-responses/coronavirus-covid-19-sme-policy-responses-04440101/> (last visited Jun. 30, 2021).

10 International Labour Organization, *ILO Monitor: COVID-19 and the world of work. Third edition* (Apr. 29, 2020), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_743146.pdf (last visited Jun. 30, 2021).

11 World Bank, Global Economic Prospects, at 3 (2021), <https://openknowledge.worldbank.org/bitstream/handle/10986/35647/9781464816659.pdf>.

12 International Monetary Fund, World Economic Outlook Update (2020), <https://www.imf.org/-/media/Files/Publications/WEO/2020/Update/June/English/WEOENG202006.ashx?la=en>.

13 World Health Organization, *Episode #1 - Herd Immunity* (Aug. 28, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/media-resources/science-in-5/episode-1> (last visited Jun. 30, 2021).

14 Pathfinders, Briefing One: Justice for All and the Public Health Emergency, at 2 (2020), <https://www.un.org/ruleoflaw/wp-content/uploads/2020/05/Pathfinders-Justice-for-All-and-Public-Health-Emergency.pdf>.

15 United Nations, COVID-19 and Human Rights: We are all in this together, at 3 (2020), <https://unsdg.un.org/sites/default/files/2020-04/COVID-19-and-Human-Rights.pdf>.

research and practice to improve development outcomes.¹⁶ It has provided a space to collect and consolidate information on the pandemic's impact towards development, as well as outline best practices. In this way, the Guideline aims to assist institutions and organizations in mitigating the impact of public emergencies as they arise.

Through this platform, the GFLJD received contributions to this discussion from:

- Advocates for International Development
- Barreau de Paris
- Basel Institute on Governance
- Benedict Abrahamson Tendayi Chigara, Professor of Public Law, College of Law, Qatar University, Ph.D. (Nottingham), LL.M with Distinction & Best Performance Award (Hull), Dual BA Hons. in Law & Psychology (Keele), MCIArb (London), FHEA (UK), FInstLM (London), FReachSoc (London), FGoA (USA), FAiADR (Malaysia)
- David Satola, Lead Counsel, Technology & Innovation, The World Bank
- Dr. Alexandra R. Harrington, Research Director and Lead Counsel (Peace, Justice & Governance Programme), Centre for International Sustainable Development Law
- Federal Bar Association
- French National Bar Council
- George Washington University Law School International and Comparative Law Program
- GPW Group
- International Institute for the Unification of Private Law (UNIDROIT)
- International Bridges to Justice
- International Centre for Missing and Exploited Children
- International Union of Judicial Officers
- International Union of Notaries
- Leif Villadsen, Deputy Director of UNICRI
- Maria Socorro Manguiat, Senior Legal Officer and Head of the National Environmental Law Unit, Law Division, United Nations Environment Programme (UNEP), Nairobi, Kenya and Jackline Wanja Wanjiru, Junior Legal Officer, National Environmental Law Unit, UNEP Law Division
- Penal Reform International
- Singapore Ministry of Law
- The Conseil Supérieur du Notariat (France's High Council for the Notarial Profession)
- The Center for Water Security and Cooperation and The Geneva Water Hub/University of Geneva
- UNESCO
- UN Women, IDLO, UNDP, UNODC, World Bank and The Pathfinders
- World Bank Group
- Yong-Shik Lee, Director and Professorial Fellow, The Law and Development Institute; Ph.D., M.A., B.A. (law) (University of Cambridge) and B.A. (economics) (University of California at Berkeley) and Hye Seong Mun, Fellow, The Law and Development Institute and former Assistant Professor of Medicine, Chiba University (Japan); Ph.D. (medicine) (Chiba University), M.A. and B.A. (food & life science) (Pukyong National University)

¹⁶ The Global Forum on Law, Justice and Development, *About Us*, <https://globalforumljd.com/new/about-us/about-gfljd> (last visited Jun. 30, 2021).

Ultimately, the GFLJD hopes to contribute to the ongoing conversation concerning the impact of COVID-19 by identifying national and global best practices which respect and implement the rule of law. This compilation seeks to assist stakeholders in mitigating the impacts of COVID-19 and future pandemics or crises. While effort has been taken to ensure that this report is wide in its scope, it should be noted that this report is not exhaustive of all topics that might arise from, nor stakeholders that might be affected by the impact of COVID-19. Nonetheless, the GFLJD hopes that this report serves as a useful starting point for distilling national and global best practices. Given the dynamic situation that the COVID-19 crisis presents, we look forward to an expanded and updated version of this report in the future.

PROMOTING A MULTI-STAKEHOLDER APPROACH TO PUBLIC EMERGENCIES

Overview

International cooperation and multilateralism are particularly essential in tackling large-scale global threats such as pandemics, climate change and global inequality. Considering the asymmetric and heterogeneous consequences of the pandemic within and among countries, international solidarity is important in ensuring that no community or individual is left behind.¹⁷

The COVID-19 crisis has underscored the relevance of building trans-territorial governance, furthering collaboration with non-state actors, and involving civil society in responses.¹⁸ Each stakeholder plays an indispensable role in the road to recovery, and current efforts have demonstrated the critical relationship between the state and its people in shaping and determining strategies to tackle the crisis.¹⁹ States, international organizations (IOs), civil society organizations and the private sector can work together and collaborate to resolve the challenges posed by the pandemic and identify long-term solutions to achieve the SDGs.

The following sections aim to discuss the legal principles that apply in emergency situations and best practices that have been developed to address the COVID-19 pandemic. It will provide an overview of existing treaties and legal and policy frameworks and practices of stakeholders that promote the rule of law, especially as highlighted in the contributions submitted through the GFLJD's Knowledge-Sharing Platform.

International Organizations

The role of international organizations

Although there is no universal agreement as to what constitutes an IO, guidance can be found in the International Law Commission (ILC)'s Draft Articles on Responsibility of International Organizations. Article 2 of the Draft Articles defines international organizations as organizations “established by a treaty or other instrument governed by international law and possessing its own international legal personality.”²⁰ They may include States or other entities, and may constitute of international, regional, or group-like minded countries as well as institutions sharing common

17 United Nations, Share Responsibility, Global Solidarity: Responding to the socio-economic impacts of COVID-19, at 2, 17 (2020), <https://unsdg.un.org/sites/default/files/2020-03/SG-Report-Socio-Economic-Impact-of-Covid19.pdf>.

18 *Id.*, at 20-21.

19 John-Mary Kauzya, United Nations Department of Economic and Social Affairs, *UN/DESA Policy Brief #75, COVID-19: Reaffirming State-People Governance Relationships* (May 15, 2020), <https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-75-covid-19-reaffirming-state-people-governance-relationships/> (last visited Jun. 30, 2021).

20 International Law Commission, Draft articles on the responsibility of international organizations, at para. 87, U.N. Doc. A/66/10 (2011), https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf.

issues and priorities.²¹ International organizations exercise specific functions and work across different focus and sectors,²² but primarily work within the bounds of their mandates.²³

For example, international financial institutions, such as the World Bank Group, primarily provide financial products and services such as long-term loans, credits, and technical assistance.²⁴ They also offer advisory services and analytical assistance through their development expertise and economic research.²⁵ Organizations such as the International Committee of the Red Cross (ICRC), on the other hand, may offer, conduct, or coordinate relief through different programs, and even provide supplies, food and/or services.²⁶

IOs also function as bridges between States to share solutions, resources and knowledge,²⁷ they also provide technical guidance, keep countries updated with the different measures being taken to address global issues, and provide financial assistance and or supplies to States.²⁸ They also offer opportunities for large-scale cooperation by providing platforms for continuous dialogue.²⁹ Through these platforms, IOs facilitate comparisons of approaches, highlight best practices and disseminate key information or data.³⁰ This allows for the exchange of information and experiences, data collection and research and policy analysis. These efforts support and complement those of national institutions and promote them at an international level.

For instance, efforts such as the Access to COVID-19 Tools (ACT) Accelerator, a global collaboration launched by the World Health Organization (WHO), have been created to accelerate the development, production, and equitable access to COVID-19 diagnostics, therapeutics, and vaccines. The initiative brought together the WHO with Epidemic Preparedness Innovations (CEPI), Gavi, as well as multinational and developing country vaccine manufacturers worldwide. The COVAX (Covid-19 Vaccine Access Facility), one of the pillars of the initiative, has been a powerful tool to help lower-income funded nations as well as higher-income self-financing countries that have no bilateral deals with vaccine manufacturers have more equitable access to COVID-19 vaccines.

21 Organisation for Economic Cooperation and Development, *The Contribution of International Organisations to a Rule-Based International System: Key Results from the partnership of international organisations for effective rulemaking*, at 1 (2019), <https://www.oecd.org/gov/regulatory-policy/IO-Rule-Based%20System.pdf>.

22 *Id.*, at 3.

23 Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs, United Nations Legal Counsel, *Keynote Address at International Law Weekend 2015: UN70 - Contributions of the United Nations to the Development of International Law* (Nov. 6, 2015), https://legal.un.org/ola/media/info_from_lc/mss/speeches/MSS_Oxford_2015_Fordham-6-Nov-2015.pdf.

24 World Bank, *Products and Services*, <https://www.worldbank.org/en/projects-operations/products-and-services> (last visited Jun. 30, 2021).

25 *Id.*

26 International Committee of the Red Cross, *The ICRC in Afghanistan - Overview* (Sep. 2, 2016), <https://www.icrc.org/en/document/icrc-afghanistan-overview> (last visited Jun. 30, 2021); International Committee of the Red Cross, *Our work in the Middle East: Operational response to COVID-19* (May 10, 2020), <https://www.icrc.org/en/document/middle-east-icrc-operational-response-covid-19> (last visited Jun. 30, 2021).

27 *Id.*

28 Zeliha Koçak Tufan & Bircan Kayaaslan, *Crushing the curve, the role of national and international institutions and policy makers in COVID-19 pandemic*, in 50(3) *Turkish Journal of Medical Sciences*, 495-508 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7195989/>.

29 Organisation for Economic Cooperation and Development, *The Contribution of International Organisations to a Rule-Based International System: Key Results from the partnership of international organisations for effective rulemaking* (2019), <https://www.oecd.org/gov/regulatory-policy/IO-Rule-Based%20System.pdf>.

30 *Id.*

The World Health Organization during the COVID-19 crisis

One of the most important efforts the WHO undertakes is publishing information to ensure that all countries know how to prepare and respond to COVID-19. This includes information regarding the handling of cases, the identifying and monitoring of people, the collecting and testing of samples, patient treatment, prevention efforts, the controlling of virus transmission, the maintaining of adequate stock of supplies and communication with the public about the pandemic. The WHO has published guidelines, technical guidance and gathered the latest international multilingual scientific findings and knowledge on COVID-19, such as expert-referred scientific articles and bibliographic databases. The WHO has activated its program R&D Blueprint to accelerate diagnostics, vaccines and therapeutics for this novel coronavirus, which aims to improve coordination between scientists and global health professionals, accelerate the research and development process and develop new norms and standards to learn from and improve upon the global response. WHO has also provided a space for experts and scientists to meet and assess the current level of knowledge about COVID-19, agree on critical research questions that need urgent answers and to find ways to work together to accelerate and fund priority research to fight this pandemic and even prepare for any future ones.

At the global level, the United Nations Inter-Agency Standing Committee activated the *Humanitarian System-Wide Scale-Up Activation – Protocol for the Control of Infectious Disease Events* to coordinate the UN's response with the WHO. The WHO established an Incident Management Support Team to ensure coordination of activities and responses across WHO's headquarters, regional, and country levels for public health emergencies. They also worked with the Global Outbreak Alert and Response Network (GOARN), which partners with major public health agencies, laboratories, NGOs, and international organizations to share epidemic intelligence and research ways to stop the outbreak.

Best practices

- The **African Union**, in collaboration with **Africa CDC and WHO**, established the Africa Taskforce for Coronavirus to promote unified collaboration efforts in preparing and responding to the pandemic, with a focus on six technical areas: (1) surveillance, including screening at points-of-entry; (2) infection prevention and control (IPC) in healthcare facilities; (3) clinical management of persons with severe COVID-19 infection; (4) laboratory diagnosis and subtyping; (5) risk communications; and (6) supply chain and stockpiling medical commodities.³¹
- The **Central American Integration System (SICA)** adopted a regional contingency plan that mobilizes existing Council of Ministries of Health for the sub-region to engage in negotiations and purchases of medical equipment for SICA member States; and coordinated communication and response measures related to health and risk management. This has led to the test kit purchases using SICA funds from the Central American Bank for Economic

³¹ Africa Centres for Disease Control and Prevention (Africa CDC) & African Union Commission, Africa Joint Continental Strategy for COVID-19 Outbreak (2020), https://au.int/sites/default/files/documents/38264-doc-africa_joint_continental_strategy_for_covid-19_outbreak.pdf.

Integration.³² The Joint Summit Working Group consisting of the **Organization of American States**, the **Pan American Health Organization**, the **World Bank**, the **United Nations Development Program**, the **Organizations for Economic Cooperation and Development** and others met on April and agreed on the need to coordinate efforts to provide support in the areas of crisis preparedness, mitigation and recovery in the Latin American and Caribbean region.³³

- **China**, along with **WHO**, has developed a report on their joint mission regarding COVID-19. This joint mission consisted of 25 national and international experts from China, Germany, Japan, Korea, Nigeria, Russia, the United States and the WHO. As the first country hit with the pandemic, China has more experience and has had more time to develop strategies. The report included information on the virus, explained China's response, identified knowledge gaps, explained possible next steps and gave major recommendations for the public, the international community, uninfected countries, and countries with imported cases or outbreaks of COVID-19. The report recommended the international community to recognize that solidarity and collaboration is essential, to rapidly share information as required under the International Health Regulations, to recognize the changing risk profile of affected countries, and to continually monitor outbreak trends and control capacities to reassess any additional health measures.³⁴
- In addition to adhering to the **European Union** guidelines, countries have made efforts to coordinate and cooperate through the EU's facilitation. In January, **Croatia** activated the EU's Integrated Political Crisis Response Mechanism (IPCR) in information sharing mode, allowing member states access to regular situation awareness and analysis reports by the European Commission and the European External Action Service and a dedicated page on a secured web platform to share information. In July, **Germany** decided to keep the IPCR mechanism activated. Furthermore, the EU's Horizon 2020 research program funds 18 research projects and 140 teams to help find a vaccine.³⁵
- The **International Committee of the Red Cross (ICRC)** provided support to health institutions across Iraq. For instance, the ICRC donated drugs to 18 primary health-care centers and 2 hospitals.³⁶ It also equipped medical facilities with goods and products like soap, disinfectant and personal protective equipment such as gloves, gowns and goggles. The ICRC redirected planned program funds for 2020 to assist the Iraqi Red Crescent Society's efforts to complement the government's response to health emergencies. The International Committee of the Red Cross and the Red Crescent Movement have provided aid to other countries, such as Egypt, Iran, Israel, Jordan, Lebanon and Yemen.³⁷

32 Organization for Economic Cooperation and Development (OECD), Policy Responses to Coronavirus (COVID-19): COVID-19 in Latin America and the Caribbean: An overview of government responses to the crisis (2020), <https://www.enterprisegreece.gov.gr/assets/content/files/c38/a4200/f495/document.pdf>.

33 Organization of American States, *Joint Summit Working Group Works to Reduce Corruption Risks during COVID-19 Crisis* (Sep. 14, 2020), https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-094/20 (last visited Jun. 30, 2021).

34 World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* (2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

35 European Council & Council of the European Union, *COVID-19 coronavirus pandemic: the EU's response* (Jun. 25, 2021), <https://www.consilium.europa.eu/en/policies/coronavirus/> (last visited Jun. 30, 2021); European Council & Council of the European Union, *10 things the EU is doing to fight COVID-19* (Jun. 15, 2021), <https://www.consilium.europa.eu/en/policies/coronavirus/10-things-against-covid-19/> (last visited Jun. 30, 2021).

36 International Committee of the Red Cross, *Our work in the Middle East: Operational response to COVID-19* (May 10, 2020), <https://www.icrc.org/en/document/middle-east-icrc-operational-response-covid-19> (last visited Jun. 30, 2021).

37 *Id.*

- **UNICEF's** response in the **Middle East and North African region** is aligned with the 2020 WHO Global Strategic Preparedness and Response Plan, the Inter-Agency Standing Committee Global Humanitarian Response Plan and UNICEF's COVID-19 Global Humanitarian Action for Children (HAC) appeal. In **Djibouti**, UNICEF, along with the Djibouti City Council and local NGOs, have set up handwashing stations in public places in the most vulnerable areas. The Ministry of Social Affairs and Solidarity, in collaboration with ONARS and UNHCR, also distributed a three-month food voucher to urban refugees and Djiboutian households. The UN and its sub-organizations have provided aid and guidelines to help States in their response to COVID-19 and achieving the SDGs.³⁸

Recommendations

- **Ensure that States have access to guidelines produced by international and regional organizations** to support them in addressing the short-term and long-term consequences of the pandemic. Guidelines should ensure that all persons have equal and non-discriminatory access to health services and key information to exercise their rights and access services during the pandemic.
- **Collect information, recommendation and best practices offered by international organizations and other stakeholders.** The information collected can help States, organizations, and other public or private actors make informed decisions and foster a coordinated international community response to present and future pandemics.
- **Encourage cooperation and solidarity between key stakeholders.** Continuous dialogue, the sharing of approaches and practices, and the highlighting of best practices and dissemination of key information or data could help bring about better results on the national and international level.

States

The role of States

In public emergencies, national governments lead the overall coordination and communication efforts. According to the WHO, the central government's role is to: (1) identify, appoint and lead the coordinating body for pandemic preparedness and response; (2) enact or modify legislation and policies needed to sustain and optimize the response efforts across all sectors; (3) prioritize and guide the allocation and targeting of resources to achieve goals; (4) provide resources for national pandemic preparedness, capacity development and response efforts across all sectors; and (4) consider providing resources and technical assistance to other countries experiencing similar situations.³⁹

38 UNICEF, Middle East & North Africa region COVID-19 Situation Report No. 5 (2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20MENARO%20COVID-19%20Situation%20Report%20No.%205%20-%20for%2015-31%20May%202020.pdf>; UNICEF, Middle East & North Africa region COVID-19 Situation Report No. 6 (2020), https://www.unicef.org/mena/media/9146/file/UNICEF%20MENARO%20COVID-19%20Situation%20Report%20#6_1-15%20June%202020.pdf%20.pdf; United Nations Djibouti, COVID-19 Situation Report #6 (2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/Djibouti%20COVID19%20Sitrep%206.pdf>.

39 World Health Organization, *Pandemic Influenza Preparedness and Response: A WHO Guidance Document* (2009), <https://www.ncbi.nlm.nih.gov/books/NBK143067/>.

Constitutions, national laws, and international laws grant governments the general power to issue decrees to support emergency responses. As the main goal is to contain the situation and to return to normalcy as soon as possible, these powers have a limited duration.⁴⁰ The general view is that it is not permissible for the executive to have these exceptional powers indefinitely.⁴¹ Emergency powers are necessarily temporary to avoid any kind of abuse of power or violation of rights.⁴² Once the cause of the emergency no longer persists, the state of emergency should similarly cease to exist.⁴³ Up until April 2020, 79 countries had declared a state of emergency.⁴⁴ Due to the uncertainty of the pandemic and uneven vaccine rollout processes, it is difficult to ascertain when this state of emergency will end.⁴⁵

In a report published in April 2020, the Organization for Economic Cooperation and Development (OECD) noted the “growing concern that COVID-19 will accelerate the ongoing worldwide trend towards more autocratic governance, taking the opportunity to increase executive authority and citizen control, by restricting civic and political rights and freedoms.”⁴⁶ They highlight the risk that certain restrictive emergency measures may not be entirely withdrawn when the situation improves, which could have long term negative impacts on democratic and inclusive governance.⁴⁷

The rule of law during public emergencies

The rule of law is a core component of SDG 16.⁴⁸ The UN has defined it as a principle of governance “in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards.”⁴⁹ This calls for the promotion and implementation of concepts such as the supremacy of the law, equality before the law, accountability, fairness, separation of powers, participation in decision-making and transparency.⁵⁰

One way to uphold the rule of law during crises is to ensure that all derogations made in light of the emergency circumstances are justified by the principles of legality, necessity, proportionality

40 *Id.*

41 Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states, at 3 (2020), <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

42 European Commission for Democracy Through Law (Venice Commission), Compilation of Venice Commission Opinions and Reports on State of Emergency (2020), <https://rm.coe.int/16809e38a6>.

43 Contribution from Ben Chigara, Qatar University, to author (2020) (on file with the Global Forum on Law, Justice and Development).

44 Centre for Civil and Political Rights, *States of Emergencies in Response to the COVID-19 Pandemic*, <https://datastudio.google.com/reporting/1sHT8quopdfavCvSDk7t-zvqKISOLjju0/page/dHMKB> (last visited Jun. 30, 2021).

45 Contribution from Qatar University to author (2020) (on file with the Global Forum on Law, Justice and Development).

46 The Organization for Economic Cooperation and Development (OECD), *Policy Responses to Coronavirus (COVID-19): COVID-19, crises and fragility*, at 7 (Apr. 29, 2020), <https://www.oecd.org/coronavirus/policy-responses/covid-19-crises-and-fragility-2f17a262/> (last visited Jun. 30, 2021).

47 *Id.*

48 United Nations and the Rule of Law, *Sustainable Development Goal 16*, <https://www.un.org/ruleoflaw/sdg-16/#:~:text=Goal%2016%20Targets&text=Promote%20the%20rule%20of%20law,all%20forms%20of%20organised%20crime> (last visited Jun. 30, 2021).

49 United Nations and the Rule of Law, *What is the Rule of Law*, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> (last visited Jun. 30, 2021).

50 *Id.*

and non-discrimination.⁵¹ The principle of legality requires measures or restrictions to be provided by law.⁵² The United Nations Office of the High Commissioner for Human Rights elaborates that the measures “must be contained in a national law of general application, which is in force at the time the limitation is applied.”⁵³ Restrictions cannot be arbitrary or unreasonable, and must be clear and made available to the public.⁵⁴ Law includes not only acts of the legislature, but also decrees of executives. Even though some States in their constitutions provide for special legal regimes that increase the powers of the executive authorities in the case of a war or other calamities, these emergency laws should comply with relevant constitutional and international standards.⁵⁵ In addition, the presence of an independent, impartial, and effective judiciary is essential. The judiciary enables accountability and makes it possible for government measures and actions to be reviewed and challenged if they do not comply with laws and regulations.⁵⁶

The principle of necessity means that these measures must be necessary for the protection of a permissible ground such as public health, and that they respond to a very important social interest.⁵⁷ These measures should achieve their purpose with minimal alteration of normal rules and procedures of decision-making.⁵⁸ Even when an event is unpredictable, like the current experience with COVID-19, measures should be formulated as narrowly as possible in order to reduce any possible abuse.⁵⁹

Lastly, restrictions must be proportionate to the interest at stake and be the least intrusive option available.⁶⁰ The European Convention on Human Rights (ECHR), American Convention on Human Rights (ACHR) and the African Charter on Human and Peoples’ Rights each mention other rights that are important and are affected by pandemics, such as the rights to private life, freedom of conscience, freedom of expression and freedom of association.⁶¹ These texts state that these rights and freedoms are the “benchmark of modern democratic societies;” so restrictions to these should only be permissible if established by law and are proportional to legitimate aims such as

51 All these principles and limitations are codified in the International Covenant on Civil and Political Rights (ICCPR) of 1966, which also states that even in times of emergency that might threaten the life of the nation, States should not derogate from the Covenant’s guarantees of the right to life; freedom of torture; freedom from slavery; the right to recognition as a person before the law; and freedom of thought, conscience and religion; among others. Contribution from Qatar University to author (2020) (on file with the Global Forum on Law, Justice and Development); American Association for the International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (1985), <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>; Contribution from the George Washington University Law School to author (2020) (on file with the Global Forum on Law, Justice and Development). See generally, U.N. Human Rights Committee, General comment no. 29, States of emergency (article 4) : International Covenant on Civil and Political Rights, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001); United Nations High Commissioner for Human Rights, *COVID-19 Response, Guidance* (May 13, 2020), https://www.ohchr.org/Documents/Events/COVID-19_Guidance.pdf (last visited Jun. 30, 2021); Council of Europe, *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states* (2020), <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-%20in-th/16809e1f40>.

52 United Nations Office of the High Commissioner for Human Rights, *Emergency Measures and COVID-19: Guidance*, at 1 (Apr. 27, 2020), https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

53 *Id.*

54 *Id.*

55 *Id.*

56 World Bank, *Legal and Judicial Reforms: Strategic Directions* (2003), <http://documents1.worldbank.org/curated/en/218071468779992785/pdf/269160Legal0101e0also025078OSCODE09.pdf>.

57 United Nations Office of the High Commissioner for Human Rights, *Emergency Measures and COVID-19: Guidance*, at 1 (Apr. 27, 2020), https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

58 Council of Europe, *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states*, at 4 (2020), <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-%20in-th/16809e1f40>.

59 *Id.*

60 United Nations Office of the High Commissioner for Human Rights, *Emergency Measures and COVID-19: Guidance*, at 1 (Apr. 27, 2020), https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

61 Organization of African Unity, *African Charter on Human and Peoples’ Rights*, Jun. 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); Council of Europe, *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states*, at 6 (2020), <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-%20in-th/16809e1f40>.

the protection of health or the right to health.⁶² On the freedom of expression and information, media freedom and access to official information, the Council of Europe notes that “the public’s access to official information must be managed on the basis of the existing principles set down” and “any restriction on access to official information should be exceptional and proportionate to the aim of protecting public health.”⁶³

Best practices

The United Nations Office of the High Commissioner for Human Rights and the International Labour Organisation report that most States have put in place wide-ranging economic support measures to compensate for loss of income related to the outbreak and mitigate the impact on workers and their families. These measures include wage supplements, fixed sum compensation to employees who have been made redundant, support for self-employed persons, support for people with caring responsibilities, extending paid sick leave and unemployment benefits, as well as direct cash transfers and in-kind benefits.⁶⁴

- In **Belgium**, two laws were adopted in March to enable the implementation of measures aimed at controlling the spread of COVID-19 for a period of three months. Under Belgium’s special powers provision, decrees need to be confirmed by law within a set deadline.⁶⁵ In addition, a new parliamentary committee was created to monitor and oversee, the members of the federal government with regard to measures taken under the ‘special powers’ provision.⁶⁶
- In **New Zealand**, the Human Rights Commission helped analyze the countries’ response and report on what might be missing to ensure that rights are respected.⁶⁷
- In **France**, the Cour de Cassation decided that a provision in an emergency ordinance passed during the pandemic, which had the effect of extending the maximum time limit for pre-trial detention beyond ordinary time limit and without judicial intervention, constituted a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁶⁸ The Constitutional Council later found this provision unconstitutional.⁶⁹

62 *Id.*

63 Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states, at 7 (2020), <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-%20in-th/16809e1f40>.

64 United Nations Office of the High Commissioner for Human Rights, *Racial Discrimination in the Context of the COVID-19 crisis* (Jun. 22, 2020), https://www.ohchr.org/Documents/Issues/Racism/COVID-19_and_Racial_Discrimination.pdf; International Labour Organization (ILO), Country Policy Response, <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang-en/index.htm> (last visited Jun. 30, 2021).

65 European Parliamentary Research Service, States of emergency in response to the coronavirus crisis: Situation in certain Member States, at 2 (2020), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649408/EPRS_BRI\(2020\)649408_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649408/EPRS_BRI(2020)649408_EN.pdf).

66 *Id.*, at 3.

67 <https://covid19.hrc.co.nz/about>.

68 *Id.*; Loi 2020-290 du 23 mars 2020 d’urgence pour faire face à l’épidémie de covid-19 [Law 2020-290 of March 23, 2020 on the emergency response to the COVID-19 epidemic], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Mar. 24, 2020, no. 72; Cour de cassation, *Lire le communiqué : état d’urgence sanitaire et détention provisoire* (May 26, 2020), https://www.courdecassation.fr/jurisprudence_2/communiqués_liés_activité_juridictionnelle_8004/urgence_sanitaire_detention_provisoire_9738/etat_urgence_44888.html (last visited Jun. 30, 2021).

69 Cour de cassation [Cass.] [Supreme Court for Judicial Matters] Jan. 29, 2021, 2020-878/879 QPC (Fr.) https://www.conseil-constitutionnel.fr/decision/2021/2020878_879QPC.htm.

- The **United Kingdom's** Coronavirus Act 2020 allows a minister to “by regulation make transitional, transitory or saving provision in connection with the expiry of any provision of this Act.”⁷⁰ It also states that the Act will expire in 2 years from the day it was passed.⁷¹

Recommendations

- **Take into account considerations from human rights monitoring bodies during emergencies.** States could benefit from the participation or supervision of human rights monitoring bodies. These bodies could advise on approaches to be taken during the crisis and in the aftermath of the pandemic, so as to ensure that responses are in line with the rule of law and human rights standards.
- **Ensure that measures are based on principles of legality, necessity, proportionality and non-discrimination.** Restrictions need to be justified, stipulated clearly and be made available to the public. The aim should be to return to normalcy as soon as the exigent circumstances terminate.
- **Promote checks and balances at all levels.** Maintaining the separation between the roles of the executive, legislature and judiciary could help States be more accountable in the decisions and measures taken, thus avoiding any potential abuses of power.

The Private Sector

The role of the private sector

The private sector is the main engine of economic growth and the principal source of employment creation.⁷² The pandemic has created a decline in demand and slowed down regular business activities, making it difficult for businesses to afford employee wages, rent, and other overhead expenses.⁷³ Although some have been able to continue operating by adopting measures to protect the health and safety of its employees and customers, the pandemic has caused many businesses to suffer significant setbacks in their operations and financial stability. A May 2020 World Bank survey observing approximately 26,000 businesses in over 50 countries found that globally, 26% of businesses were non-operational.⁷⁴ Many firms, especially small and medium-sized enterprises (SMEs), have been forced to partially or fully shut down, with female-owned more likely to close their business.⁷⁵ As a result, many have lost their jobs and source of income.

70 Coronavirus Act 2020 c. 7, part 2, section 89 (UK), <https://www.legislation.gov.uk/ukpga/2020/7/section/89/enacted>.

71 *Id.*

72 UN, *Private Sector Indispensable Engine of Economic, Social Development Speakers Told as Committee Focuses on African Marginalization* (Nov. 4, 1999), <https://www.un.org/press/en/1999/19991104.gaef2888.doc.html> (last visited Jun. 30, 2021).

73 Caroline Freund & Alfonso Garcia Mora, *Keeping the lights on: Supporting firms and preserving jobs from crisis through recovery*, World Bank Blogs (Apr. 30, 2020), <https://blogs.worldbank.org/psd/keeping-lights-supporting-firms-and-preserving-jobs-crisis-through-recovery> (last visited Jun. 30, 2021).

74 Markus Goldstein et al., *The Global State of Small Business during COVID-19: Gender Inequalities*, World Bank Blogs (Sep. 8, 2020), <https://blogs.worldbank.org/developmenttalk/global-state-small-business-during-covid-19-gender-inequalities> (last visited Jun. 30, 2021).

75 *Id.*

At the same time, some businesses have the capacity, resource, expertise and networks that would enable them to help mitigate the impact of the pandemic on society.⁷⁶ Since the start of the pandemic, the private sector has been a critical player in the production of supplies and equipment needed by healthcare workers and centers. Together with the government, they have set up quarantine areas or hospitals, increased food supply, medicines and other essential products, contributed equipment, transportation, manpower and logistics, and developed particular solutions or products based on their area of expertise.

For example, tech companies such as Facebook and Jumia have assisted governments in disseminating health alerts and information on COVID-19.⁷⁷ Digital platforms have enabled people to carry out daily activities such as work, study, and shop online.⁷⁸ Media companies have monitored and supervised government actions and disseminate crucial information on prevention measures.⁷⁹ Social media platforms, such as TikTok, Google, WhatsApp and Youtube, are working with the WHO to ensure that accurate, science based information dominate search results for information on COVID-19.⁸⁰ Lastly, the private sector could mobilize resources to rebuild the workplace and business environment, which has been significantly affected by COVID-19.⁸¹

76 Tuan Vu, *Coronavirus and The Role of Private Sector*, OXFAM in Asia Blog (Apr. 27, 2020), <https://asia.oxfam.org/latest/blogs/coronavirus-pandemic-and-role-private-sector> (last visited Jun. 30, 2021).

77 Sara Nyman, *COVID-19, tech firms, and the case for data sharing*, World Bank Blogs (Jul. 14, 2020), <https://blogs.worldbank.org/psd/covid-19-tech-firms-and-case-data-sharing> (last visited Jun. 30, 2021).

78 Rong Chen, *Harnessing digital technologies to sustain the economy during the COVID-19 crisis*, World Bank Blogs (Apr. 22, 2020), <https://blogs.worldbank.org/developmenttalk/harnessing-digital-technologies-sustain-economy-during-covid-19-crisis> (last visited Jun. 30, 2021).

79 Stefan Hall & Cathy Li, *COVID-19 proves that media's value is growing – but we need to find better ways to measure it*, World Economic Forum (Apr. 2, 2020), <https://www.weforum.org/agenda/2020/04/covid-19-media-value/> (last visited Jun. 30, 2021).

80 World Health Organization, *Immunizing the public against misinformation* (Aug. 25, 2020), <https://www.who.int/news-room/feature-stories/detail/immunizing-the-public-against-misinformation> (last visited Jun. 30, 2021).

81 World Health Organization, *'Asks' to the private sector in the response to COVID-19* (Jun. 11, 2020), <https://www.who.int/publications/m/item/asks-to-the-private-sector-in-the-response-to-covid-19> (last visited Jun. 30, 2021).

The Ruggie Principles

The private sector is governed under the national laws of States. They are not bound by the legal obligations imposed by international treaties. In 2011, the UN's Guiding Principles for Business and Human Rights, also known as the Ruggie Principles, were endorsed. These non-binding Principles define the criteria by which States and companies should adhere to in developing policies, standards and procedures for their respective responsibilities and particular circumstances. They also define the parameters for human rights due diligence, which require business enterprises to act with human rights due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. The Ruggie Principles are framed on three complementary and interdependent pillars: the duty of the State to protect against human rights abuses, the corporate responsibility to respect human rights, and the need for greater access to remedy for victims of business-related abuse.

The COVID-19 pandemic has displayed the critical role of both government and the private sector in overcoming crises, keeping economies afloat, and promoting sustainable development. While governments have the responsibility to protect and respect the rights of their people, businesses should ensure that their activities do not adversely impact others. Human rights due diligence can help uncover any risks to workers, suppliers, consumers, the environment, or others that need to be mitigated.

Source: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25837&LangID=E>
<https://www.bsr.org/en/our-insights/blog-view/covid-19-a-rapid-human-rights-due-diligence-tool-for-companies>

Best practices

- A pan-African business organization, **AfroChampions**, which was created to help fight Ebola, has launched a COVID-19 response fund in partnership with the African Union and the Africa Centres for Disease Control and Prevention (Africa CDC). It aims to raise over \$150 million to support the continental response and procure the necessary medical supplies.⁸²
- **China's** private sector, which contributes over 60 percent of the country's GDP, is playing an important role in aiding epidemic control as well as economic recovery. Big tech companies such as Alibaba and Tencent, have assisted the tracking of virus-carriers, while private insurance firm Ping An leveraged artificial intelligence to help with the early diagnosis of COVID-19.⁸³
- The **French** government has supported businesses by expanding compensation schemes for small businesses.⁸⁴ To prevent firms from shutting down, the **United Kingdom** government announced that it will make 100% state-backed loans of up to GBP 50,000 (USD 62,700) available beginning in the following week after small businesses complained about lengthy credit checks by banks, which had been delaying access to the emergency support.⁸⁵ Through research and technical support for government agencies, the private sector in Basel,

82 Aubrey Hruby, *African private sector mobilizes COVID-19 response*, Atlantic Council (Apr. 20, 2020), <https://www.atlanticcouncil.org/blogs/africasource/african-private-sector-mobilizes-covid-19-response/> (last visited Jun. 30, 2021).

83 Xinhua News Agency, *China accelerates reform to empower private sector amid COVID-19*, China Daily (Sep. 9, 2020), <https://www.chinadaily.com.cn/a/202009/09/WS5f58b95da310675eafc58957.html> (last visited Jun. 30, 2021).

84 Contribution from GPW Group to author (2020) (on file with the Global Forum on Law, Justice and Development).

85 *Id.*

Switzerland has addressed many different angles of corruption, governance, the rule of law and development in the context of COVID-19. In **Switzerland's** private sector, collective action has succeeded in streamlining anti-corruption compliance and risk management processes.⁸⁶

- In the whole-of-country approach that the **United States** has taken to address the pandemic, companies large and small, and from a variety of industries, have jointly worked to develop diagnostic tests, alter production to make medical equipment and necessary supplies and donate resources to those who need them.⁸⁷ In **Canada**, the private sector is involved in developing procedures and protocols, allowing their business operations to accommodate pandemic-related changes. Canadian businesses are also responding to the crisis positively by contributing their resources for both employee and public safety through restructuring and donations.⁸⁸ In **Brazil**, federal government agencies worked with the private sector to guarantee the supply of lung ventilators, gel alcohol, protective masks and hospital gowns to combat the effects of coronavirus on public health.⁸⁹
- In **Australia**, the government has partnered with private hospitals to ensure the full resources of their world-class health system are ready and focused on treating patients as required, throughout the coronavirus pandemic, in an agreement that will ensure that over 30,000 hospital beds and the sector's 105,000 skilled workforces, are available alongside the public hospital sector.⁹⁰ The **New Zealand** government delivered around \$13 billion in wage subsidies and imposed a mortgage holiday to delay payments.⁹¹

Recommendations

- **Collaboration with the private sector is crucial.** Comprehensive coordination with the private sector requires States to provide timely, effective and supportive measures to protect the enjoyment of core economic and social rights of the private sector affected by emergency restrictions. The measures may include the use of active fiscal policy, accommodative monetary policy and social welfare benefits, such as tax benefits and cuts, extending deadlines for loans and unemployment compensation.⁹² States should protect and promote livelihoods, social interaction and health of the private sector at different levels in a non-discriminatory manner to enable the private sector at different levels to respond constructively and to promote mutual assistance.⁹³

86 Contribution from Basel Institute on Governance to author (2020) (on file with the Global Forum on Law, Justice and Development).

87 Abigail Slagle, *4 Ways the Private Sector Is Combating COVID-19*, The Heritage Foundation, (May 7, 2020), <https://www.heritage.org/public-health/commentary/4-ways-the-private-sector-combating-covid-19> (last visited Jun. 30, 2021).

88 Global Compact Network Canada, *How the Canadian private sector is responding to COVID-19*, <https://www.globalcompact.ca/covid-19-company-examples/> (last visited Jun. 30, 2021).

89 KPMG, *Brazil Government and institution measures in response to COVID-19* (Sep. 9, 2020), <https://home.kpmg/xx/en/home/insights/2020/04/brazil-government-and-institution-measures-in-response-to-covid.html> (last visited Jun. 30, 2021).

90 Australian Government Department of Health, *Australian Government partnership with private health sector secures 30,000 hospital beds and 105,000 nurses and staff, to help fight COVID-19 pandemic* (Apr. 1, 2020), <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/australian-government-partnership-with-private-health-sector-secures-30000-hospital-beds-and-105000-nurses-and-staff-to-help-fight-covid-19-pandemic> (last visited Jun. 30, 2021).

91 Nika McKechnie, *Economic Systems after COVID-19: Towards A More Resilient, Sustainable and Inclusive Recovery*, Restore Your Economy (Aug. 7, 2020), <https://restoreyoureconomy.org/index.php?src=blog&srctype=detail&blogid=448> (last visited Jun. 30, 2021).

92 Alberto Cavello et al., *COVID-19 Business Impact Center, Global Policy Tracker*, Harvard Business School (May 2020), <https://www.hbs.edu/covid-19-business-impact/Insights/Economic-and-Financial-Impacts/Global-Policy-Tracker> (last visited Jun. 30, 2021).

93 International Labour Organization, *COVID-19 and the world of work, Country policy responses*, <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm> (last visited Jun. 30, 2021).

- **Use social dialogue between governments, workers and employers to find solutions.** In addition to strengthening the capacity of governments, States can strengthen social dialogue, collective bargaining and labor relations, institutions and processes to lessen the impact of COVID-19 on businesses, the private sector and vulnerable members of society.⁹⁴
- **Consider the implementation of new and sustainable business practices.** The COVID-19 pandemic has provided an opportunity for the private sector to reconsider new ways of carrying out business that are adaptable for emergencies. This could also mean adopting new office modes and breaking out of silos. As the pandemic has changed the way people communicate and work, a change in the traditional office model thereby requires the private sector to adopt more individual independence, flexibility, transparency and collaborative work platforms. Renewing and reinforcing good workplace practices can make a big difference in the productivity as well as well-being of employees.⁹⁵
- **Take the initiative to undertake social responsibility.** The pandemic presents both a challenge and an opportunity. The private sector should involve itself in social responsibility efforts, which can allow the sector to improve their adaptive capacity, survive the impact of the pandemic, and increase their visibility.
- **Coordinate with authorities to protect stakeholders and business.** Private sector leaders should develop their responses in coordination with international and national authorities to ensure that they carry out activities in line with the health, sanitary and security measures in place.
- **Accelerate digital transformation and innovation.** The sudden economy-wide lockdown has demonstrated the need for the private sector to develop and adopt new digital technologies to ensure more efficiency.⁹⁶ The adjustment in digitizing the workplace and effective communication in remote offices plays an important role in the workplace. The crisis has also highlighted the importance of enabling technologies like cloud, data and cyber security.⁹⁷

94 *Id.*

95 Dina Gerdeman, *How the Coronavirus Is Already Rewriting the Future of Business*, Harvard Business School Working Knowledge (Mar. 16, 2020), [https://hbswk.hbs.edu/item/how-the-coronavirus-is-already-rewriting-the-future-of-business?cid=springmailing-32007749-3-16-2020-KYHBS%20\(1\)-March%2016,%202020](https://hbswk.hbs.edu/item/how-the-coronavirus-is-already-rewriting-the-future-of-business?cid=springmailing-32007749-3-16-2020-KYHBS%20(1)-March%2016,%202020) (last visited Jun. 30, 2021).

96 Das Narayandas, Vinay Hebbar & Li Liangliang, *Lessons from Chinese Companies' Response to Covid-19*, Harvard Business Review (Jun. 5, 2020), <https://hbr.org/2020/06/lessons-from-chinese-companies-response-to-covid-19> (last visited Jun. 30, 2021).

97 3i Infotech, *A Look into Post COVID – 19 World Economy*, <https://orionproductzone.3i-infotech.com/orionerp/a-look-into-post-covid-19-world-economy/> (last visited Jun. 30, 2021).

Civil Society Organizations

The role of civil society organizations

As defined by the World Bank, civil society organizations (CSOs) include a “wide array of non-governmental and not-for-profit organizations that have a presence in public life and express the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.”⁹⁸ CSOs have been vital in filling gaps, as societies around the world adapt to the impacts of the pandemic. They have assisted States by observing and collecting data, liaising with States to provide aid and identify solutions, disseminating information to the public and assisting vulnerable communities.⁹⁹ They also help in ensuring transparency and accountability, which are needed to build a fairer and more rights-respecting future.¹⁰⁰

At the same time, CSOs have not been immune to the effects of the COVID-19 crisis.¹⁰¹ The pandemic has impacted their ability to operate in person and has forced CSOs to adapt to operating online. However, many CSOs have managed to adapt by implementing modern technologies to carry out their operations.

Best practices

- The **Center for Strategic and International Studies** created a Southeast Asia Covid-19 Tracker to assist in identifying hotspots in Southeast Asia so governments can react quickly and effectively in responding to the spread of COVID-19.¹⁰² The Tracker also identifies information such as national responses throughout Asia, GDP growth rate projections and the availability of international assistance.¹⁰³
- In South Africa, **Relativ** and **SocialSuite**, in collaboration with other CSOs, created a comprehensive survey to analyze how South Africans were fairing during the pandemic compared to the globe.¹⁰⁴ Through the Free COVID-19 Impact Assessment Survey, CSOs were able to engage with over 4,000 participants worldwide and gather data pertaining to the stress levels of individuals, the disproportionate impact on individuals based on their ages, how the pandemic was causing stress and what provided the most relief during this time.¹⁰⁵
- **Transparency International** has tracked over 1,800 reports of corruption related to COVID-19. These reports include police and healthcare workers withholding aid related to the pandemic

98 World Bank, *Consultations with Civil Society: A Sourcebook*, at 1 (2007) https://www.worldbank.org/content/dam/Worldbank/Civil%20Society/cso_documents/ConsultationsSourcebook_Feb2007.pdf (last visited Jun. 30, 2021).

99 Johanna Rick, *3 reasons why civil society is essential to COVID-19 recovery*, World Economic Forum (May 29, 2020), <https://www.weforum.org/agenda/2020/05/why-civil-society-is-essential-to-covid-19-pandemic-recovery/>.

100 *Id.*

101 Saskia Brechenmacher, Thomas Carothers & Richard Youngs, *Civil Society and the Coronavirus: Dynamism Despite Disruption* (Apr. 21, 2020), <https://carnegieendowment.org/2020/04/21/civil-society-and-coronavirus-dynamism-despite-disruption-pub-81592> (last visited Jun. 30, 2021).

102 See Center for Strategic and International Studies, *Southeast Asia COVID-19 Tracker*, <https://www.csis.org/programs/southeast-asia-program/southeast-asia-covid-19-tracker-0#analysis> (last visited Jun. 30, 2021).

103 *Id.*

104 See *Relativ, SocialSuite COVID-19 Social Impact Survey Interim Report -South Africa* (May 2020), <https://www.relativimpact.com/research/SocialSuite-COVID-Report-May-2020.pdf> (last visited Jun. 30, 2021).

105 *Id.*

unless bribes are paid. Efforts like this help to ensure that measures undertaken by states are accountable and transparent.¹⁰⁶

- Governments can also support the work of CSOs. For example, **Canada** recognized the vital work of CSOs during the COVID-19 pandemic and provided over \$160 million to various international and domestic CSOs to combat the effects of COVID-19.¹⁰⁷ This financial support allow CSOs to continue to provide their vital services, limiting the impact of COVID-19.¹⁰⁸ In **India**, the city municipality Brihanmumbai Municipal Corporation (BMC) quickly coordinated CSOs, community leaders and medical practitioners to ensure the distribution of personal protection equipment, installation of regular sanitation measures within Dharavi's community centers, training of grass-root level medical workers and widespread testing and contact-tracing.¹⁰⁹ This effort by BMC was responsive, inclusive and participatory on all levels, epitomizing the effectiveness of engaging CSOs to mitigate the effects of COVID-19.

Recommendations

- **Support and partner with CSOs** to document social issues and gather vital information and data that could be important in decision-making and the determination of responses.
- **Include and coordinate with CSOs in creating and implementing policies.** States can utilize the new and different insights that CSOs may be able to offer from their on-the-ground experience.

¹⁰⁶ Transparency International, *Anti-corruption response to COVID-19 must include women* (Jun. 10, 2020), <https://www.transparency.org/en/news/anti-corruption-response-to-covid-19-must-be-transparent-and-include-women> (last visited Jun. 30, 2021).

¹⁰⁷ Government of Canada, *Backgrounder - Canada provides funding to address COVID-19 pandemic* Apr. 5, 2020), https://reliefweb.int/sites/reliefweb.int/files/resources/Backgrounder%20-%20Canada%20provides%20funding%20to%20address%20COVID-19%20pandemic%20-%20Canada.ca_.pdf (last visited Jun. 30, 2021).

¹⁰⁸ See, e.g., Canadian Red Cross, *Granting Program for Non-profits*, <https://www.redcross.ca/how-we-help/current-emergency-responses/covid-19-%E2%80%93-novel-coronavirus/information-for-community-organizations-affected-by-covid-19> (last visited Jun. 30, 2021).

¹⁰⁹ *Id.*

IMPACT ON VULNERABLE GROUPS

Overview

Although the COVID-19 pandemic has impacted the international community as a whole, it is essential to bear in mind that the crisis does not impact everyone equally.¹¹⁰ The impact is much greater for people in vulnerable situations, with limited or no access to medical care, goods and services.¹¹¹ Thus, the pandemic will likely widen the gaps in their access to fundamental economic, social and cultural rights. While there are many vulnerable groups, in the light of scope, this report focuses specifically on indigenous peoples, racial minorities, persons with disabilities, children and women.

Defining vulnerability

Although the definition of vulnerable persons or groups in legal instruments varies, there are some commonalities in identifying whether a specific person or group is “vulnerable.” Vulnerability regularly refers to those historically marginalized because of their gender, race, ethnicity, economic, and social status or adversely affected by poverty.

The World Bank Group defines disadvantaged or vulnerable as individuals or groups who may be more likely to be adversely affected by the project impacts and/or more limited than others in their ability to take advantage of a project’s benefits. Such an individual or group is also more likely to be excluded from or find themselves unable to participate fully in the mainstream consultation process. Thus, they may require specific measures and/or assistance to do so. This definition of vulnerability takes into account considerations relating to age, including the elderly and minors and including in circumstances where they may be separated from their family, the community or other individuals upon whom they depend.

Source: World Bank Environmental and Social Policy for Investment Project Financing, <http://pubdocs.worldbank.org/en/360141554756701078/World-Bank-Environmental-and-Social-Policy-for-Investment-Project-Financing.pdf>.

110 United Nations Sustainable Development Group, COVID-19 and Human Rights: We are all in this together, at 2 (2020), https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf.

111 Organization of American States, Practical Guide to Inclusive and rights Based responses to COVID-19 in the Americas, at 11 (2020), http://www.oas.org/es/sadye/publicaciones/GUIDE_ENG.pdf.

Prisoners

Background

The lack of resources and overcrowding in prison systems worldwide have made prisoners especially vulnerable to the pandemic. Penal Reform International found that although 102 countries reported prison occupancy levels of over 110% of their capacity, the budgets for these institutions in 54 countries amount to less than 0.3% of their GDP.¹¹² Among the 11 million people in prison worldwide, there is an over-representation of the most marginalized groups in society.¹¹³ The reduction of prison overcrowding and excessive use of pretrial detention measures, either in crisis or non-crisis situations, could have a positive impact on the right to health of prisoners, especially during the crisis.

Before COVID-19, the mortality rate for people in prison was as much as 50% higher than for people in the wider community, due to the conditions of detention facilities, increased risk of self-harm, and lack of adequate access to healthcare.¹¹⁴ These conditions are put to the test in the light of infectious diseases, which are potentially disastrous for closed facilities such as prisons as these diseases may spread quickly due to overcrowding, poor or unsanitary conditions, the lack of resources for protective equipment, and the lack of food and clean water. COVID-19 thus has introduced new challenges to the prison environment, especially since that the primary prevention measures for COVID-19 are hand-washing and social distancing. PRI's Justice Project Pakistan, which is a live global map tracking all reported cases of prisoners infected by COVID, noted that at least 303,000 prisoners in 116 countries have been affected by COVID-19, with at least 2,600 reported deaths.¹¹⁵

Frameworks such as the Nelson Mandela Rules¹¹⁶ and Tokyo Rules¹¹⁷ lay out the international protection standards for the health of prisoners and prison conditions. These principles include enjoying the same standards of healthcare that are available in the community (Rule 24), promoting the use of alternatives to imprisonment (Rule 1) and pre-trial detention as a last resort (Rule 6). The United Nations Office on Drugs and Crime has emphasized that States and citizens must remember that “prison health is public health,” and the rapid increase in COVID-19 cases in prisons will have an amplifying effect on the general public.¹¹⁸ According to the Inter-American Commission on Human Rights, States should take measures to address overcrowding in prisons, find alternatives to incarceration and prioritizing people with greater health risks.¹¹⁹ In the same vein, the Council of Europe has mentioned that the basic principle must be to take all possible action to protect the health and safety of all persons deprived of their liberty,¹²⁰ and that certain

112 Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020*, at 4-5 (2020), <https://www.penalreform.org/resource/global-prison-trends-2020/>.

113 *Id.*, at 4.

114 Aldyen Krieger, *UN reports mortality rates for people in prison as much as 50 percent higher than wider community*, Penal Reform International Blog (Nov. 18, 2019), <https://www.penalreform.org/blog/un-reports-mortality-rates-for-people-in-prison/> (last visited Jun. 30, 2021).

115 Justice Project Pakistan, *COVID-19 and Prisoners*, <https://www.jpp.org.pk/covid19-prisoners/> (last visited Jun. 30, 2021).

116 G.A. Res. 70/175 (Jan. 8, 2016), https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

117 G.A. Res. 45/110 (Dec. 14, 1990), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TokyoRules.aspx>.

118 United Nations Office on Drugs and Crime, *COVID-19 preparedness and responses in prisons*, at 2 (Mar. 31, 2020), https://www.unodc.org/documents/justice-and-prison-reform/COVID-19/20-02110_Position_paper_EN.pdf.

119 Inter-American Commission on Human Rights, *Resolution No. 1/2020. Pandemic and Human Rights in the Americas*, at 14 (2020), <https://reliefweb.int/report/antigua-and-barbuda/pandemic-and-human-rights-americas-resolution-12020>.

120 Council of Europe, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, at Principle 1 (2020), <https://rm.coe.int/16809cfa4b>.

convention rights do not allow the derogation of certain rights:¹²¹ the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, and the rule against punishment without law.¹²²

Best practices

- In **Europe**, 18 countries have taken measures to reduce prison populations,¹²³ with the highest percentages of prison populations released being: Turkey (35%); Cyprus (16%); Slovenia (16%); Portugal (15%); Norway (13%); Ireland (12%); Italy (9.4%); Spain (7.4%). In other countries, governments have prioritized health protection measures and economic subsidies.
- In **France**, Between March and May 2020, the prison population fell from 72,422 to 58,926 between March and May 2020 due to various government measures. These measures included release on parole, the postponement of short-term sentences, early release (less than two months of the sentence left) and suspension of sentences (e.g. for medical reasons). This resulted in a lowering of the occupancy rate from 119% to 100%.¹²⁴ In order to protect detained persons, domestic and international transfers of prisoners were suspended. In addition, free hotlines and video conferences were widely used for lawyer-client interviews and assistance in hearings and confrontations.¹²⁵ To enable equal access to justice and communication with relatives, each detainee was granted a credit of €40 per month for phone calls, and were provided free TV. To facilitate communications between prisoners and the outside world, France has started to implement measures to facilitate physical visits in prisons by requiring visitors to fill out a form or questionnaire about their health or provide health declarations.¹²⁶
- In March, the **Spanish** government adopted measures aimed at reducing inmates' contacts with the outside world. Prison management adopted several sanitary measures, including specific instructions for suspected coronavirus infection and social distancing requirements, for example through the establishment of shifts for lunch and dinner. At the end of April, prison isolation measures were relaxed and family and lawyer visits and transfers of prisoners resumed under strict sanitary measures. An open regime with electronic monitoring has helped to reduce the prison population, including 5,300 inmates who are serving their sentences at home with different control systems in May.¹²⁷
- In **Belgium**, the government adopted measures to reduce detainee numbers, including the suspension of detention, early release and the suspension of sentences, in order to guarantee access to health services. The number of prisoners fell from around 10,900 to 9,635. When it was not possible to make visits, each prisoner received extra calling credit so that they can

121 Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis A toolkit for member states, at 2 (2020), <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

122 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, art. 2, 3, 7, Nov. 4, 1950, ETS 5.

123 European Parliament, *Coronavirus and prisons in the EU Member-State measures to reduce spread of the virus*, at 11 (Jun. 2020), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651976/EPRS_BRI\(2020\)651976_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651976/EPRS_BRI(2020)651976_EN.pdf) (last visited Jun. 30, 2021).

124 *Id.*, at 6.

125 Contribution from the French National Bar Council to author, at 11 (2020) (on file with the Global Forum on Law, Justice and Development).

126 Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020*, at 17 (2020), <https://www.penalreform.org/resource/global-prison-trends-2020/>.

127 European Parliament, *Coronavirus and prisons in the EU Member-State measures to reduce spread of the virus*, at 11 (Jun. 2020), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651976/EPRS_BRI\(2020\)651976_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651976/EPRS_BRI(2020)651976_EN.pdf) (last visited Jun. 30, 2021).

stay in touch with family, friends and lawyers. Video calls were made possible from April 29, 2020.¹²⁸

- In **Portugal**, the government adopted several measures to reduce the prison population, such as pardoning shorter prison sentences and arranging release on parole. In May 2020, approximately 15% of the prison population had benefited from these exceptional measures and COVID-19 tests in prisons were increased from 250 to 450 a day.¹²⁹ The government has granted immigrants and asylum seekers whose applications are being processed temporary residency rights, which gives them access to public services such as national health services and welfare benefits. Prisoners were allowed to make three daily phone calls and lawyers were allowed to enter prisons to deal with urgent cases.¹³⁰
- In **Italy**, 3,200 smartphones were distributed in prisons to facilitate communication between detainees and their families, friends and lawyers.¹³¹
- Medical staff in **Georgia** are tested, screened and undergo temperature checks every time they enter prison facilities. ‘Disinfecting corridors’ have been installed in prisons so that everyone who enters or visits the prison is sprayed with disinfectants. People were also tested upon arrest, and those who tested positive were transferred to hospitals in the community and were placed under electronic monitoring.¹³² Georgia, among other countries, has started to implement measures to facilitate physical visits in prisons requiring measuring visitors’ temperatures and fill out a form about their health or provide health declarations.¹³³
- The **Indian** Supreme Court ordered the government to consider forms of early release to reduce overcrowding of both pre-trial detainees and people serving sentences. In May, over 42,000 pre-trial detainees and 16,000 sentenced persons were released from prisons.¹³⁴ The prison Tihar Jail in New Delhi, which is Asia’s largest prison complex, has since released 2,124 inmates on parole or bail.¹³⁵
- In **Rwanda**, the Supreme Court and Correctional Service have formally requested for Rwanda Bridges to Justice to assist in establishing a system of digital courts and prisons (e.g., using electronic monitors to ensure that house arrest sentences are respected). The aim of this is to clear the backlog of pre-trial detainees and reduce the flow of inmates into prison facilities. By maintaining functioning justice systems, those detained before trial can be given bail and depart from an already overcrowded system, so as to keep them, their lawyers and the wider prison population safer.¹³⁶

128 *Id.*, at 3.

129 *Id.*, at 10.

130 World Bank, *Potential Responses to the COVID-19 Outbreak in Support of Migrant Workers* (Jun. 19, 2020), <http://documents1.worldbank.org/curated/en/428451587390154689/pdf/Potential-Responses-to-the-COVID-19-Outbreak-in-Support-of-Migrant-Workers-June-19-2020.pdf>.

131 Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020*, at 17 (2020), <https://www.penalreform.org/resource/global-prison-trends-2020/>.

132 Contribution from Penal Reform International to author, at 3 (2020) (on file with the Global Forum on Law, Justice and Development).

133 Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020*, at 17 (2020), <https://www.penalreform.org/resource/global-prison-trends-2020/>.

134 Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020*, at 28 (2020), <https://www.penalreform.org/resource/global-prison-trends-2020/>.

135 Contribution from Elizabeth Hassan & Riya Rathi to author, at 4 (2020) (on file with the Global Forum on Law, Justice and Development).

136 Contribution from International Bridges to Justice to author, at 5 (2020) (on file with the Global Forum on Law, Justice and Development).

- The **Chilean** government has granted house arrest to approximately 1,600 people, which amounts to around 5 percent of the 29,000 convicted detainees. At the same time, judges have released about 10 percent of 13,000 pre-trial detainees. The beneficiaries were prisoners convicted with low-level offenses who are senior citizens, pregnant women and women with small children.
- In **Paraguay**, a direct phone line for complaints was established. Some also monitor social media to gather information on specific conditions in prisons or communicate with released detainees to get very recent information.¹³⁷
- In the **Islamic Republic of Iran**, the government has temporarily released 85,000 prisoners in an effort to combat the virus.¹³⁸
- In **Afghanistan**, the government has ordered the release of 10,000 prisoners, mostly women, juveniles, sick prisoners and those aged 55 years and above.¹³⁹
- In **Ethiopia**, the government pardoned more than 4,000 prisoners in an effort to contain the spread of COVID-19, focusing on those with a maximum sentence of three years and those approaching their release.¹⁴⁰

Recommendations

- **Recognize prison health as part of public health.** The pandemic has made it clear that the health of prisoners is a public health issue as prisoners are in contact with people who will be mobilized outside the prison, such as family members and workers. One way this could be implemented is by making the budget for the health of the prisons (drugs, facilities, etc.) part of the public health budget.
- **Promote long-term reform to comply with international standards.** COVID-19 has revealed some of the structural flaws of the penitentiary systems and the potential for reform to ensure their compliance with international law and standards.
- **Identify alternative measures to pre-trial detention.** This is an opportunity to reform national justice systems to reduce the number of pre-trial detentions and increase the use of alternative mechanisms. States must evaluate whether artificial intelligence and virtual monitoring are safe tools to progressively replace prisons.
- **Consider early release as an alternative way to save lives and reduce the impact of COVID-19.** Governments must prioritize the early release of senior citizens, people with illnesses and people who have not committed criminal offenses.

¹³⁷ Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020*, at 5 (2020), <https://www.penalreform.org/resource/global-prison-trends-2020/>.

¹³⁸ United Nations Office on Drugs and Crime, *COVID-19 preparedness and responses in prisons*, at 5 (Mar. 31, 2020), https://www.unodc.org/documents/justice-and-prison-reform/COVID-19/20-02110_Position_paper_EN.pdf.

¹³⁹ *Id.*

¹⁴⁰ *Id.*, at 4.

- **Contemplate criminal justice reforms in the stage of sentencing.** States should consider reforming rules and standards as to the individualization of punishment in order to promote the principles of the rule of law of equality before the law, predictability, and congruence.
- **Recognize that people in immigration detention centers are protected within the scope of international regulations on people deprived of liberty.** This health crisis can be an opportunity to discuss the legal responsibilities of the host States regarding detention centers and the minimum international standards that they must meet.

Racial Minorities and Indigenous Populations

Background

The recent wave of movements against racial discrimination and social injustice has highlighted how marginalized groups face various barriers in accessing equal opportunities and accountability.¹⁴¹ Minority populations, particularly people of African-descent and indigenous populations, often face discrimination at every level and find it difficult to fulfill basic necessities such as health, education, and employment. For example, a study carried out by the World Bank found that poverty gaps between Afro-descendants and non-Afro-descendants are persistent in various regions of the world.¹⁴² People of African descent have significantly lower education levels in most states, particularly in primary education in rural areas, creating additional barriers to information and opportunity.¹⁴³ They also have higher levels of unemployment in all countries; and among those who have employment, a higher proportion of them work in low-skilled employment and are more likely to have precarious employment in most countries.¹⁴⁴

These vulnerabilities are made worse by the pandemic. These minority populations thus will bear the brunt of the damaging effects stemming from the pandemic.¹⁴⁵ Racial and ethnic minorities are found in higher numbers in jobs that carry an increased risk of contamination, such as in the transport, health and cleaning sectors. In some countries, both in urban and rural areas, they face challenges such as the lack of access to water and sanitation services, making it impossible to follow the sanitary measures required to fight the pandemic.¹⁴⁶ In some countries, they are also more likely to live in overcrowded homes.¹⁴⁷

Similarly, the pandemic has posed significant challenges to indigenous populations. Approximately 476.6 million indigenous individuals live across 90 countries in the world.¹⁴⁸ In nearly all regions,

141 World Bank, *Everyone Equal: Making Inclusive Growth a Priority for Ethnic Minorities* (Jun. 13, 2020), <https://www.worldbank.org/en/news/feature/2020/07/13/everyone-equal-making-inclusive-growth-a-priority-for-ethnic-minorities> (last visited Jun. 30, 2021).

142 The World Bank, *Afro-descendants in Latin America: Toward a Framework of Inclusion* (Aug. 29, 2018), <https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america> (last visited Jun. 30, 2021).

143 *Id.*

144 *Id.*

145 World Bank, *Everyone Equal: Making Inclusive Growth a Priority for Ethnic Minorities* (Jun. 13, 2020), <https://www.worldbank.org/en/news/feature/2020/07/13/everyone-equal-making-inclusive-growth-a-priority-for-ethnic-minorities> (last visited Jun. 30, 2021).

146 World Health Organization, *2.1 billion people lack safe drinking water at home, more than twice as many lack safe sanitation* (Jul. 12, 2017), <https://www.who.int/news/item/12-07-2017-2-1-billion-people-lack-safe-drinking-water-at-home-more-than-twice-as-many-lack-safe-sanitation> (last visited Jun. 30, 2021).

147 Economic Commission for Latin America and the Caribbean, *Situation of people of African descent in Latin America and challenges of policies to guarantee their rights* (2017), https://lac.unfpa.org/sites/default/files/pub-pdf/S1701063_es.pdf.

148 International Labor Organization, *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an Inclusive, Sustainable and Just Future*, at 13 (2019), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_735607.pdf.

indigenous peoples belong to the most marginalized and vulnerable groups in terms of health, social, and economic conditions.¹⁴⁹ The COVID-19 pandemic has particularly threatened their health and survival as they often lack access to healthcare services, emergency facilities, water and sanitation, early warning systems and other important preventive measures.¹⁵⁰ The spread of the virus into indigenous communities has led to severe rates of contamination and death, due to the immunologic vulnerability of certain groups such as indigenous peoples in voluntary isolation and initial contact.¹⁵¹ For example, with approximately 35,000 members living in the Amazon rainforest between Venezuela and Brazil, the Yanomami tribe has been severely affected by COVID-19.¹⁵²

The pandemic has also posed unprecedented challenges to the inclusion of indigenous peoples in governance systems at the local, national and international levels.¹⁵³ It has triggered disproportionate socio-economic consequences for them, including the fragilization of local economies, food and water insecurity, rise of poverty rates and lack of access to basic services such as justice or education.¹⁵⁴ Furthermore, the COVID-19 outbreak has particularly affected certain categories of indigenous individuals who experience intersectional forms of marginalization. The side-effects of the crisis have aggravated the vulnerability of indigenous women and girls, who are over-represented in informal economic sectors and confronted with disproportionate rates of gender-based violence and discrimination.¹⁵⁵ With regard to indigenous youth, the hazards of long-term marginalization has been reinforced by school shutdowns throughout the world.¹⁵⁶ Indigenous elders have also been at great risk, due to the more fatal impact of the virus on older persons generally and to the situations of multi-generational housing in certain communities. The loss of elders has severe cultural and spiritual implications for indigenous communities, since they are usually the keepers and transmitters of traditional practices, knowledge and beliefs.¹⁵⁷

The 2030 Agenda promises to leave no one behind and thus offers states with distinctive opportunities to pursue global efforts in addressing the socio-economic vulnerabilities facing indigenous peoples, in times of crisis and beyond.¹⁵⁸ SDG 16 specifically aims to ensure inclusive, participatory and representative decision-making (16.7) and to promote non-discriminatory laws and policies (16.B). Moving forward, the strengthening of fair and inclusive governance systems will ensure that national and global commitments are met and that indigenous peoples do not suffer structural disparities resulting in greater vulnerabilities to pandemics or other crises.¹⁵⁹

149 United Nations Department of Economic and Social Affairs, Policy Brief No. 70: The Impact of Covid-19 on Indigenous Development, at 1 (2020), https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/PB_70.pdf.

150 United Nations Department of Economic and Social Affairs, *COVID-19 and Indigenous Peoples*, <https://www.un.org/development/desa/indigenouspeoples/covid-19.html> (last visited Jun. 30, 2021).

151 Laura Cahier, *The Right to Live in Voluntary Isolation: Indigenous Peoples of the Amazon in the Age of Covid-19*, Unrepresented Nations & Peoples Organization (UNPO) (May 20, 2020), <https://unpo.org/article/21899> (last visited Jun. 30, 2021).

152 Manuela Andreoni et al., *Brazil Health Workers May Have Spread Coronavirus to Indigenous People*, The New York Times (Jul. 28, 2020), <https://www.nytimes.com/2020/07/19/world/americas/coronavirus-brazil-indigenous.html> (last visited Jun. 30, 2021).

153 Contribution from Alexandra R. Harrington to author, at 1 (2020) (on file with the Global Forum on Law, Justice and Development).

154 *Id.*, at 2.

155 Laura Cahier, *La pandémie de Covid-19 au Guatemala : la perspective des femmes autochtones*, COVIDAM (May 21, 2020), <https://covidam.institutdesameriques.fr/la-pandemie-de-covid-19-au-guatemala-la-perspective-des-femmes-autochtones/> (last visited Jun. 30, 2021).

156 UNICEF, UNICEF Call to Action: Indigenous Communities and the Right to Education in Times of COVID-19, at 4 (2020), <https://www.unicef.org/lac/media/14566/file/UNICEF%20Call%20to%20Action.pdf>.

157 United Nations Department of Economic and Social Affairs, Policy Brief No. 70: The Impact of Covid-19 on Indigenous Development, at 2 (2020), https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/PB_70.pdf.

158 International Labor Organization, Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an Inclusive, Sustainable and Just Future, at 12 (2019), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_735607.pdf.

159 Contribution from Alexandra R. Harrington to author, at 4 (2020) (on file with the Global Forum on Law, Justice and Development).

Legal Protection of Indigenous Peoples

The ILO Convention No. 169 on Indigenous and Tribal Peoples and the UN Declaration on the Rights of Indigenous Peoples are key documents that guide the inclusion of the needs and rights of indigenous peoples in COVID-19 emergency measures and recovery plans.¹⁶⁰ Article 2 of the ILO Convention No. 169 states that “governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.” Article 25 of the ILO Convention No. 169 further provides significant elements for the realization of the right to enjoy the highest attainable standard of physical and mental health for Indigenous communities. It states that “governments shall ensure that adequate health services are made available to the peoples concerned or shall provide them with resources to allow them to design and deliver such services,” and that “health services shall, to the extent possible, be community-based.”¹⁶¹

As a framework of minimum standards for the well-being, protection and survival of indigenous peoples, the UNDRIP also recognizes key health-related rights, including: the right to the advancement of their health, sanitation and social security under Article 21§1; the right to determine their own health development under Article 23; and the right to maintain their traditional health practices and medicines under Article 24§1.

Furthermore, the realization of the right to health of indigenous peoples is inextricably linked to the implementation and protection of other rights guaranteed under the ILO Convention No. 169, the UNDRIP as well as regional instruments like the American Declaration on the Rights of Indigenous Peoples. These rights include, *inter alia*, their right to self-determination and to freely pursue their social, economic and cultural development,¹⁶² their right to self-government,¹⁶³ their right to participate in decision-making,¹⁶⁴ their right to practice their cultural traditions and customs¹⁶⁵ as well as their languages,¹⁶⁶ and their rights to lands, territories and resources which they have traditionally owned or occupied.¹⁶⁷ Article 19 of the UNDRIP and Article 6 of the ILO Convention No. 169 particularly emphasize the need to include the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples at all levels of decision-making in matters which concern or affect them. Carrying out consultations with indigenous peoples eventually allows for better acceptability, legitimacy and efficiency of public measures facing present and future crises.¹⁶⁸

160 United Nations Declaration on the Rights of Indigenous Peoples, Sep. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); 46 I.L.M. 1013 (2007).

161 International Labour Organization, Indigenous and Tribal Peoples Convention art. 25, Jun. 27 1989, C169.

162 United Nations Declaration on the Rights of Indigenous Peoples art. 3, Sep. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); 46 I.L.M. 1013 (2007); International Labour Organization, Indigenous and Tribal Peoples Convention art. 7, Jun. 27 1989, C169.

163 United Nations Declaration on the Rights of Indigenous Peoples art. 4, Sep. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); 46 I.L.M. 1013 (2007);

164 United Nations Declaration on the Rights of Indigenous Peoples art. 18, Sep. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); 46 I.L.M. 1013 (2007); International Labour Organization, Indigenous and Tribal Peoples Convention art. 6, Jun. 27 1989, C169.

165 United Nations Declaration on the Rights of Indigenous Peoples art. 11, Sep. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); 46 I.L.M. 1013 (2007); International Labour Organization, Indigenous and Tribal Peoples Convention art. 5, Jun. 27 1989, C169.

166 United Nations Declaration on the Rights of Indigenous Peoples arts. 13-14, Sep. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); 46 I.L.M. 1013 (2007); International Labour Organization, Indigenous and Tribal Peoples Convention art. 28, Jun. 27 1989, C169.

167 United Nations Declaration on the Rights of Indigenous Peoples art. 26, Sep. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); 46 I.L.M. 1013 (2007); International Labour Organization, Indigenous and Tribal Peoples Convention arts. 13-14, Jun. 27 1989, C169.

168 Contribution from Alexandra R. Harrington to author (2020) (on file with the Global Forum on Law, Justice and Development).

Best practices

- In some Southern parts of **Tunisia** where the Amazigh people are concentrated, governors have taken steps to distribute food staples in the mountain areas with the assistance of the National Army and in coordination with the Regional Office of Commerce as food solidarity measures for rural areas.¹⁶⁹
- In the **United States of America**, the Centre for Disease Control (CDC) is collecting data to monitor and track disparities among racial and ethnic groups on the number of COVID-19 cases, complications and deaths to share broadly and inform decisions on how to address effectively observed disparities. These data will help improve the clinical management of patients, allocation of resources and targeting of public health information.¹⁷⁰
- In **Iraq**, Iraqi of African descent have been supported by NGOs, the Iraqi High Commission for Human Rights and UNAMI to benefit from food distribution and to register online for an emergency cash grant scheme established by the Government.¹⁷¹
- In **Brazil**, the Ministry of Women, the Family and Human Rights Ministry launched materials on social networks to guide afro descendant communities through the COVID-19 crisis to ensure the promotion of the rights of traditional communities, including accessing information to prevent COVID-19 according to their traditional customs.¹⁷²
- In **Norway**, based on the findings that some minority communities had infection rates more than 10 times above the national average, Somali doctors and activists created public health videos on YouTube to reach the Somali community in the country and share information and guidance about protection and hygiene measures and about what to do in case of symptoms.¹⁷³
- In **Bangladesh**, to prevent an additional humanitarian crisis in the already-vulnerable Rohingya refugee camps in Cox's Bazar, Rohingya women volunteers have been working with UN Women to mobilize their communities and raise awareness on COVID-19.¹⁷⁴
- In **Canada**, the Indigenous Services Canada (ISC) has worked closely with the national Public Health Agency and the First Nations and Inuit communities in order to develop relevant emergency responses to COVID-19.¹⁷⁵

169 United Nations Human Rights Office of the High Commissioner, COVID-19 and minority rights: Overview and promising practices (2020), https://www.globalprotectioncluster.org/wp-content/uploads/OHCHRGuidance_COVID19_MinoritiesRights.pdf.

170 Centers for Disease Control and Prevention, *Health Equity Considerations and Racial and Ethnic Minority Groups* (Apr. 19, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> (last visited Jun. 30, 2021).

171 United Nations Human Rights Office of the High Commissioner, COVID-19 and minority rights: Overview and promising practices (2020), https://www.globalprotectioncluster.org/wp-content/uploads/OHCHRGuidance_COVID19_MinoritiesRights.pdf.

172 Governo do Brasil, *Ministério lança material nas redes sociais para orientar quilombolas, ciganos e indígenas sobre o novo coronavírus* (Mar. 27, 2020), <https://www.gov.br/pt-br/noticias/assistencia-social/2020/03/ministerio-lanca-material-nas-redes-sociais-para-orientar-quilombolas-ciganos-e-indigenas-sobre-o-novo-coronavirus> (last visited Jun. 30, 2021).

173 Clive Cookson & Richard Milne, *Nations look into why coronavirus hits ethnic minorities so hard*, Financial Times (Apr. 29, 2020), <https://www.ft.com/content/5fd6ab18-be4a-48de-b887-8478a391dd72> (last visited Jun. 30, 2021).

174 UN Women, *Women mobilize to prevent COVID-19 in crowded Rohingya refugee camps* (Apr. 16, 2020), <https://www.unwomen.org/en/news/stories/2020/4/feature-women-mobilize-to-prevent-covid-19-in-rohingya-refugee-camps> (last visited Jun. 30, 2021).

175 Organization for Economic Cooperation and Development, *The territorial impact of COVID-19: Managing the crisis across levels of government*, at 43 (Nov. 10, 2020), <http://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/> (last visited Jun. 30, 2021).

- In the **United States**, Congress passed the Coronavirus Aid, Relief and Economic Security Act (CARES Act) which directly allocated \$4.8 billion to the 574 federally recognized tribes to help counter the impacts of the COVID-19 pandemic.¹⁷⁶
- **Costa Rica** has implemented of specific emergency health plans adjusted to the needs of indigenous peoples to improve efficiency, such as the Technical Guidelines for the Prevention of COVID-19 in Indigenous Territories.¹⁷⁷ Similar examples include **Panama**, where the government elaborated an emergency plan to provide medical supplies to Indigenous communities, ensure access to water and buy ambulances,¹⁷⁸ and **Russia**, where a medical plan dedicated to Indigenous nomadic communities was implemented to ensure assistance through telemedicine.¹⁷⁹
- Communicating preventive measures and policies with the participation of indigenous peoples and in a manner compatible with their traditions, languages and ways of life promotes accessibility of information and inclusivity. For example, the Ka' Kuxtal Much Meyaj Mayan communities in Mexico established a community protocol based on traditional decision-making which focuses on identifying the community's basic needs, monitoring contingency plans, protecting the population at risk, and monitoring signs of infection.¹⁸⁰ Furthermore, information and educational content on COVID-19 are broadcasted on TV and radio in indigenous languages.¹⁸¹ Some States have also designed pandemic responses based on indigenous practices and worldviews, such as the guidelines on COVID-19 developed by the Ministry of Māori Development in **New Zealand**.¹⁸² In Guatemala, the **Mayan Language Academy (ALMG)** has translated prevention notices into various Mayan sublanguages.¹⁸³
- States have adopted special protection measures for IPVI&IC, such as border closure, strict health protocols based on the no-contact principle and surveillance of activities in the territories inhabited by these tribes. Many indigenous peoples have enforced emergency border closures to prevent entry into their territories and have simultaneously organized sanitary cordons, like in the Maya Chorti and Lenca communities of **Honduras**.¹⁸⁴ **Colombia** enforced the closure of the Tayrona and Sierra Nevada National Parks to prevent the spread of COVID-19 in areas which are home to IPVI&IC.¹⁸⁵ The COVID-19 Binational Committee was created by **Colombia** and **Peru** to monitor the evolution of the pandemic in the trans-border

176 Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/748>.

177 Office of the United Nations High Commissioner for Human Rights, COVID-19 and Indigenous Peoples' Rights, at 2 (2020), https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenouspeoplesRights.pdf.

178 *Id.*, at 8.

179 *Id.*, at 2.

180 *Id.*, at 5.

181 Matt Rivers, Karol Suarez & Natalie Gallón, *Mexico's solution to the Covid-19 educational crisis: Put school on television*, CNN (Aug. 27 2020), <https://edition.cnn.com/2020/08/22/americas/mexico-covid-19-classes-on-tv-intl/index.html> (last visited Jun. 30, 2021).

182 Ministry of Māori Development, *COVID-19 Information for Māori* (Jun. 30, 2021), <https://www.tpk.govt.nz/en/whakamahia/covid-19-information-for-maori> (last visited Jun. 30, 2021).

183 United Nations Department of Economic and Social Affairs, Policy Brief No. 70: The Impact of Covid-19 on Indigenous Development, at 2 (May 2020), https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/PB_70.pdf.

184 *Id.*, at 3.

185 Government of Magdalena, *Caicedo decreta emergencia sanitaria para evitar, prevenir y contrarrestar coronavirus* (Mar. 14, 2020), <http://www.magdalena.gov.co/noticias/caicedo-decreta-emergencia-sanitaria-para-evitar-prevenir> (last visited Jun. 30, 2021).

zones where IPVI&IC live and transit.¹⁸⁶ In **Thailand**, the Karen People have reinstalled their traditional practice of *Kroh Yee* (village closure) to avoid the spread of the virus.¹⁸⁷

- Information, data gathering and monitoring of the COVID-19 pandemic by indigenous self-governing institutions can enable informed decision-making. The **National Indigenous Organization in Colombia (ONIC)** has gathered health data and monitored the signs of coronavirus infections within Indigenous communities.¹⁸⁸
- In various countries of Africa, like **Ethiopia** or **Morocco**, Indigenous tribes have used traditional plants with the aim of alleviating COVID-19 symptoms.¹⁸⁹ In the Mayan communities of **Guatemala**, indigenous midwives have continued practicing traditional care in remote areas. In **Colombia**, women of the **Nasa people** have provided Training Programs in the Time of the Wee Wala (i.e. “the disease of these times”) to traditional healers to share information and resources against COVID-19.¹⁹⁰
- Special attention should be given to groups with intersecting marginalities, such as IPVI&IC and indigenous women. The International Working Group on Indigenous Peoples Living in Voluntary Isolation or in Initial Contact in the Amazon and Gran Chaco has issued public recommendations to raise awareness about the situation of IPVI&IC in Latin America and called for States to intensify the surveillance of illegal activities in protected territories.¹⁹¹ The **International Indigenous Women’s Forum**, the **Continental Network of Indigenous Women** and the **National Indigenous Women’s Resource Center** have provided special support to women and girls facing the rise of gender-based violence.¹⁹²

Recommendations

- **Include minority populations and promote inclusive dialogue in crisis management efforts to help identify appropriate and non-discriminatory measures:** This is an essential step in meeting SDG 16 Target 7, to “ensure responsive, inclusive, participatory and representative decision-making at all levels” and SDG 10 to “reduce inequality within and among countries.” For example, the inclusion of indigenous populations in decision-making processes help to ensure their free, prior and informed consent. Indigenous self-governments and representatives must be treated as legitimate partners in all emergency measures and recovery plans.¹⁹³ Measures must build in collaboration with indigenous peoples and respect for their worldviews, livelihoods and practices.

186 Government of Colombia, *Gobiernos de Colombia y Perú crearon el Comité Binacional Covid-19* (May 14, 2020), <https://id.presidencia.gov.co/Paginas/prensa/2020/Gobiernos-de-Colombia-y-Peru-crearon-el-Comite-Binacional-Covid-19-200514.aspx> (last visited Jun. 30, 2021).

187 United Nations Department of Economic and Social Affairs, Policy Brief No. 70: The Impact of Covid-19 on Indigenous Development, at 2 (May 2020), https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/PB_70.pdf.

188 *Id.*, at 5.

189 Office of the United Nations High Commissioner for Human Rights, COVID-19 and Indigenous Peoples’ Rights, at 3 (2020), https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenouspeoplesRights.pdf.

190 *Id.*, at 2.

191 International Indigenous Women’s Forum (FIMI) et al., COVID-19 Indigenous Women’s Collective Call (Mar. 26, 2020), https://drive.google.com/file/d/1akZ9mOag32ks67_bhSiLzU1ScjW0Vycv/view.

192 National Indigenous Women’s Resource Centre (NIWRC), *Resources in response to the Coronavirus (COVID-19)*, NIWRC News (Apr. 8, 2020), <https://www.niwrc.org/news/resources-response-coronavirus-covid-19> (last visited Jun. 30, 2021).

193 Contribution from Alexandra R. Harrington to author (2020) (on file with the Global Forum on Law, Justice and Development).

- **Promote the collection of demographic data to improve understanding on how the pandemic and crises situations impacts minority populations.** Although there is much discussion on the disproportionate impacts of COVID-19 on racial and ethnic minorities, it is difficult to ascertain the magnitude of the disparity due to a lack of data.¹⁹⁴ Data collection can help decision-makers better understand the situation and related challenges, enabling them to make informed decisions that meet the needs of minority populations in society.
- **Implement measures** that ensure effective and adequate health care, water and sanitation access in places where minority populations reside because of their particular relationship with their lands. Such measures will comply with SDG 3 to “ensure healthy lives and promote wellbeing for all at all ages” as well as SDG 6 to “ensure availability and sustainable management of water and sanitation for all.”
- **Provide financial, technical and political support to measures and plans decided by indigenous peoples.** Respecting and supporting the decision of some indigenous communities to close their borders, to impose lockdowns or some sorts of movement restrictions is key to preventing the spread of COVID-19 in their communities.¹⁹⁵
- **Elaborate, implement and monitor adequate emergency health plans in cooperation with indigenous authorities and with cultural relevance.** These measures should include, *inter alia*, data gathering about the virus and publication of disaggregated health data, culturally relevant public health campaigns in communities, easily accessible information about COVID-19 and available in indigenous languages, health protocols adjusted to the specific vulnerabilities of indigenous peoples, financial and technical support for medical infrastructure, and, cooperation with traditional Indigenous healers.¹⁹⁶
- **Elaborate, implement and monitor long-term recovery strategies and stimulus plans to address the structural marginalization facing Indigenous communities.** SDG 16 can be achieved through recovery plans which ensure the accessibility, availability, affordability and cultural relevance of basic services—especially health, education and justice—for indigenous communities.
- **Address the specific needs of the most vulnerable categories, including indigenous women and girls¹⁹⁷ and IPVI&IC.** It is crucial to respect the right of IPVI&IC to remain and stay in isolation, by not entering into their territories, protecting them against outsiders’ entry in their lands and developing strict no-contact protocols.¹⁹⁸

194 United Nations, *Address ‘appalling impact’ of COVID-19 on minorities, UN rights chief urges*, UN News (Jun. 2, 2021), <https://news.un.org/en/story/2020/06/1065272> (last visited Jun. 30, 2021).

195 United Nations Department of Economic and Social Affairs, *Indigenous Peoples and the Covid-19 Pandemic: Considerations*, at 1-2 (2020), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2020/04/COVID19_IP_considerations.pdf.

196 Office of the United Nations High Commissioner for Human Rights, *COVID-19 and Indigenous Peoples’ Rights*, at 3 (2020), https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenouspeoplesRights.pdf.

197 For specific measures to better protect the rights of women and girls, see *infra* section on Women.

198 Laura Cahier, *The Right to Live in Voluntary Isolation: Indigenous Peoples of the Amazon in the Age of Covid-19*, Unrepresented Nations & Peoples Organization (UNPO) (May 20, 2020), <https://unpo.org/article/21899> (last visited Jun. 30, 2021).

Women

Background

The pandemic has created complex challenges for women and girls worldwide and threatens to reverse years of progress in gender equality.¹⁹⁹ Stay-at-home orders, lockdowns and shelter-in-place measures have increased the risk of gender-based violence (GBV),²⁰⁰ and more specifically, violence against women and girls (VAGW).²⁰¹ At the same time, legal, medical, and psychological services, which are critical to assisting survivors of violence, have been curtailed or limited due to COVID-19.²⁰² The pandemic has limited the ability of courts and justice services to function, which could have severe impacts on the gender justice gap.²⁰³ Many are forced to temporarily halt non-urgent legal cases, cease in-person hearings, and resort to online measures. Restraining orders and protection orders are also harder to obtain and may not be even enforced during this time.²⁰⁴

In addition, social norms that consider women as the primary care providers have also led to increased household chores and caregiving responsibilities for women.²⁰⁵ This not only creates barriers to women who work, but also disproportionately exposes them to the virus and its economic impacts. It is estimated that 88 percent of personal care workers and 69 percent of healthcare workers worldwide are female. In some countries, the number of COVID-19 infections among female health workers are twice their male counterparts.²⁰⁶

The pandemic has also put women's work security at risk. Female-dominated service sectors such as food, hospitality and tourism have experienced the harshest contraction under restrictions, closures and bankruptcies.²⁰⁷ Women are also more likely than men to work informally and part-time.²⁰⁸ Such jobs often do not offer the same benefits as full time employment, and in some cases, women do not have the same access to health services.²⁰⁹

199 World Bank, Gender Dimensions of the COVID-19 Pandemic (2020), <http://documents1.worldbank.org/curated/en/618731587147227244/pdf/Gender-Dimensions-of-the-COVID-19-Pandemic.pdf>.

200 Gender-based violence (GBV) refers to harmful acts directed at an individual or a class of individuals, on the basis of their gender. GBV has been seen as rooted in gender inequality and other harmful norms. Both women and girls, and men and boys may be targeted. While GBV may also be used to describe violence against LGBTQI+ persons, this section focuses on GBV against women and girls for the purpose of scope. See UN Women, *Frequently asked questions: Types of violence against women and girls*, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence> (last visited Jun. 30, 2021).

201 Violence against women and girls (VAGW) comprises of gender-based violence against women and girls that results or is likely to result in physical, sexual or mental harm. This includes threats, coercion, arbitrary deprivation of liberty, and physical, sexual and psychological violence in both public and/or private life. See UN Women, *Frequently asked questions: Types of violence against women and girls*, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence> (last visited Jun. 30, 2021).

202 UN Women, COVID-19 and Essential Services Provisions for Survivors of Violence Against Women and Girls, at 3 (2020), <https://www.unwomen.org/en/digital-library/publications/2020/04/brief-covid-19-and-essential-services-provision-for-survivors-of-violence-against-women-and-girls>.

203 Sandie Okoro & Paul Prettitore, Will COVID-19 widen the gender justice gap? World Bank Blogs (Jun. 15, 2020), <https://blogs.worldbank.org/voices/will-covid-19-widen-gender-justice-gap> (last visited Jun. 30, 2021).

204 *Id.*

205 Ginette Azcona, Antra Bhatt & Kaitlin Love, *Ipsos survey confirms that COVID-19 is intensifying women's workload at home*, UN Women and Women Count (Jul. 9, 2020), <https://data.unwomen.org/features/ipsos-survey-confirms-covid-19-intensifying-womens-workload-home> (last visited Jun. 30, 2021).

206 UN Women, COVID-19: *Emerging gender data and why it matters* (Jun. 26, 2020), <https://data.unwomen.org/resources/covid-19-emerging-gender-data-and-why-it-matters> (last visited Jun. 30, 2021).

207 UN Women et al., Justice for women amidst COVID-19, at 22 (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-amidst-covid-19-en.pdf?la=en&vs=5442>.

208 *Id.*, at 21.

209 Ann Linde & Arancha González Laya, *What the COVID-19 pandemic tells us about gender equality*, World Economic Forum (May 3, 2020), <https://www.weforum.org/agenda/2020/05/what-the-covid-19-pandemic-tells-us-about-gender-equality/> (last visited Jun. 30, 2021); UN Women et al., Justice for women amidst COVID-19, at 21 (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-amidst-covid-19-en.pdf?la=en&vs=5442>.

Pre-existing barriers to women's economic participation

Even before the pandemic, women have been facing several barriers that have impeded them from effectively joining the workforce. Some of these barriers are detailed below:

- **Violence against women.** Domestic or intimate partner violence is a barrier to women's participation in work and education. When facing violence, women often lack access to basic essential services like emergency helplines, police and justice sector response, healthcare, safe accommodation, shelter and psycho-social counselling. Even if these services were made readily available, evidence still shows that only 40 per cent of some who experience violence seek help and many of them do not report it to formal mechanisms due to fear, shame, or the lack of knowledge on how to access such services.
- **Discrimination and violence in the workplace.** As compared to men, women undertake unpaid work and care at home most of the time and are more likely to work informally, part-time and in the services sector. These areas of work are often unevenly regulated and monitored by law. In the formal sector as well, women often face discriminatory behavior such as unequal pay, sexual harassment and exclusion from leadership or decision-making roles.
- **Discriminatory family and property laws.** In many countries, women do not possess the same legal rights as men in initiating divorce, or in becoming the legal guardian of a child. Additionally, child marriage still affects many girls today. The Food and Agriculture Organization (FAO) has reported that while women represent about 43% of workers in agriculture, they only account for about one-eighth of total land ownership in developing countries. Property rights of women are often insecure and dependent on their relationship with their husband or male relatives. Additionally, there are obstacles for women when it comes to the ownership and registration of land. The inheritance regime is no different—women often face obstacles in obtaining legal identity documents, which affects their access to property and other services.

The gender digital divide is another threat to the promotion of gender equality. Many low-income or marginalized populations do not have access to phones, computers or internet. But even if these instruments are available in homes, many women and girls cannot access them freely because they do not have control over their use and may be monitored when they do.²¹⁰ Increasing online and ICT violence may restrict or alter women's use of the internet and access to services online as well.²¹¹ Beyond technological access, women and girls might also have limited control over household finances and resources, and this may further widen the gender gap during the pandemic.

The conditions mentioned above could have a worse impact on women and girls who experience intersectional forms of discrimination due to their other identities. Female migrants, members of a minority group, have a disability, with low-financial status, or those in groups that are often marginalized or excluded from humanitarian programming, are even more at risk and less likely to

210 UN Women, COVID-19 and Essential Services Provisions for Survivors of Violence Against Women and Girls, at 4 (2020), <https://www.unwomen.org/en/digital-library/publications/2020/04/brief-covid-19-and-essential-services-provision-for-survivors-of-violence-against-women-and-girls>.

211 *Id.*

be able to receive the support they need.²¹² Discrimination towards these women and girls tend to increase during emergency settings, such as COVID-19.²¹³

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the primary legal framework on the inclusion and rights of women.²¹⁴ CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”²¹⁵ As noted by the Committee on the Elimination of Discrimination Against Women, state parties have an obligation to ensure that measures taken to address the COVID-19 pandemic do not directly or indirectly discriminate against women and girls. In addition, measures should be taken to protect women from GBV, ensure accountability for GBV perpetrators, enable the socio-economic empowerment of women and guarantee their participation in policy and decision-making in all crisis responses and recovery efforts.²¹⁶

Best practices

- In **Canada**, domestic violence shelters are deemed essential services and have remained open even during lockdown.²¹⁷
- Taking into consideration the important role that temporary protection orders and restraining orders play in protecting women and children, various countries like **Argentina, Australia, Canada** and **Colombia** have taken steps to ensure access to the courts through virtual means and continued protection through judicial extensions.²¹⁸
- In **France**, the government set up an online platform allowing both victims and witnesses to benefit from free, anonymous, secure and 24/7 assistance and advice.²¹⁹ The French government also developed an initiative that allows people to notify gender violence in pharmacies and supermarkets.²²⁰ Other countries with similar initiatives are **Argentina, Germany, Italy, Norway, Spain** and the **United States**.²²¹

212 UN Women, The COVID-19 Shadow Pandemic: Domestic Violence in the World of Work: A Call to action for the private sector, at 2 (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/brief-covid-19-domestic-violence-in-the-world-of-work-en.pdf?la=en&vs=5715>. For more information on indigenous women and girls, see *supra* section on Indigenous Peoples.

213 *Id.*

214 Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980).

215 *Id.* Other conventions and protocols address women rights, such as the Council of Europe Convention on preventing and combating violence against women and domestic violence, May 11, 2011, CETS No. 210; the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol Text), Jul. 11, 2003; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belem do Para”), Jun. 9 1994. They all emphasize and recall the duty that State has with regards to women's rights and due diligence.

216 Committee on the Elimination of Discrimination against Women, *Guidance Note on CEDAW and COVID-19*, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/STA/9156&Lang=en (last visited Jun. 30, 2021).

217 UN Women, COVID-19 and Essential Services Provisions for Survivors of Violence Against Women and Girls, at 8 (2020), <https://www.unwomen.org/en/digital-library/publications/2020/04/brief-covid-19-and-essential-services-provision-for-survivors-of-violence-against-women-and-girls>.

218 UN Women et al., Justice for women amidst COVID-19, at 29 (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-amidst-covid-19-en.pdf?la=en&vs=5442>.

219 Contribution from French National Bar Council to author (2020) (on file with the Global Forum on Law, Justice and Development).

220 *Id.*

221 UN Women et al., Justice for women amidst COVID-19, at 28 (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-amidst-covid-19-en.pdf?la=en&vs=5442>.

- Countries like **China, Spain** and the **United Kingdom** are using social media as a platform to combat Intimate Partner Violence.²²²
- Countries like **Canada, Chile, China, Italy, Spain** and the **United Kingdom** have developed solutions that offer direct help to victims through helplines and emergency services that do not require cell phones and internet access.²²³
- In **Ireland**, the Government and frontline services have launched a major campaign across TV, radio and social media aimed at reaching out to victims of domestic abuse and reassuring them that services for them are still available. Campaigns led in Latin America on gender-based violence awareness like **Peru** with the UNDP and their Violet Masks campaign to eradicate Violence Against Women.²²⁴ On a similar note, **Cameroon, Kenya and Nigeria, Rwanda, Somalia, South Sudan** and **Tanzania**, UN Women has supported the development of information, education, and communication materials on COVID-19 and violence against women are being disseminated on radio and television in different local languages.²²⁵
- Across **Southeast Asia**, as part of the EU-UN Spotlight Initiative program on Safe and Fair Migration, UN Women is developing a safety plan checklist for dissemination for all women, including women migrant workers, to help them to mitigate the risks of violence and abuse and take appropriate steps to ensure their safety.²²⁶

Recommendations

- **Adopt measures to distribute needed technology for education to women and girls** in low-income and rural areas, to narrow the education gap and digital gender divide.
- **Protect women's access to justice and ensure equitable and safe responses and services for survivors of violence against women and girls**, are included in national COVID-19 preparedness, response and recovery plans and are informed by women's and girls' groups.²²⁷ These responses should include support to civil society and women's rights organizations. Shelters and crisis centers should remain open while adhering to safety precautions and incidents of violence against women and girls should also be given high priority. Judicial protection measures should remain available, for example by allowing remote applications for administering and compliance with protection orders; admitting testimony and evidence through electronic means; or by introducing special duty shifts for lawyers, prosecutors and judges.

222 *Id.*, at 28-29.

223 *Id.*

224 United Nations Development Programme in Peru, *Violet Masks*, <https://www.pe.undp.org/content/peru/es/home/presscenter/articles/2020/violet-masks.html> (last visited Jun. 30, 2021).

225 UN Women, COVID-19 and Essential Services Provisions for Survivors of Violence Against Women and Girls, at 10 (2020), <https://www.unwomen.org/en/digital-library/publications/2020/04/brief-covid-19-and-essential-services-provision-for-survivors-of-violence-against-women-and-girls>.

226 European Union & United Nations, *Safe and Fair: Realizing women migrant workers' rights and opportunities in the ASEAN region* (2020), https://asiapacific.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2019/03/safe-and-fair-factsheet_04mar2019-en-r03-compressed.pdf?la=en&vs=1848.

227 UN Women, COVID-19 and Essential Services Provisions for Survivors of Violence Against Women and Girls, at 5 (2020), <https://www.unwomen.org/en/digital-library/publications/2020/04/brief-covid-19-and-essential-services-provision-for-survivors-of-violence-against-women-and-girls>.

- **Raise social awareness through campaigns through online and other means to inform of available mechanisms to report gender-based violence, and to ensure the security and safety of women and girls.** Continue adopting alternative mechanisms to report such violence, such as in pharmacies, through WhatsApp and other means.
- **Provide economic and livelihood support** such as cash transfers, tax relief, unemployment insurance, and vouchers for provisions or assets, to reduce financial strain and poverty which are risk factors for abuse.
- **Ensure the availability of free or affordable childcare for women** who are essential workers. The pandemic has shown the necessity of childcare services for working parents, especially women.²²⁸ For women working in sectors providing essential services, such as healthcare, medicine, and food, childcare enables them to continue working and perform life-saving services.²²⁹
- **Provide support and promote the leadership of women in decision-making** concerning COVID-19 and public emergencies. Although women comprise seven out of ten health and social care workers, only an estimated 25% of global health leaders are women.²³⁰ The IFC notes that women dominate the market of health care consumers and are responsible for no less than 80% of purchasing and access decisions which affect their health and those of their family members. Therefore, having more women in leadership could help the health sector better understand needs, experiences, and perspectives that can help expand innovation and business opportunities.²³¹
- **Safeguard maternal, sexual and reproductive health and rights** during the pandemic and beyond.²³²

Children

Background

Children and their need for special protection, have been a unique point of consensus within the international community. They permeate almost every SDG and serve as a proverbial barometer for ensuring the continued stability of the rule of law. The Geneva Declaration of the Rights of the Child of 1924 served as a rallying cry behind this cause,²³³ which culminated in the monolithic United Nations Convention on the Rights of the Child (UNCRC).²³⁴ This sentiment is perhaps best epitomized by the UN General Assembly, which stated that “the child, by reason of his physical

228 Katya el Tayeb et al., *Tackling childcare in a global pandemic*, World Bank Blogs (Sep. 17, 2020), <https://blogs.worldbank.org/developmenttalk/tackling-childcare-global-pandemic> (last visited Jun. 30, 2021); Tea Trumbic, *New measures are needed to safeguard women’s economic opportunities during COVID-19*, World Bank Blogs (Sep. 10, 2020), <https://blogs.worldbank.org/developmenttalk/new-measures-are-needed-safeguard-womens-economic-opportunities-during-covid-19> (last visited Jun. 30, 2021).

229 International Finance Corporation, *Childcare in the COVID-19 Era: A Guide for Employers* (2020), <https://www.ifc.org/wps/wcm/connect/2e12d33a-ce55-46b2-aae5-ee8304a6506a/202004-Childcare-COVID-19-Guide-for-Employers+B.pdf?MOD=AJPERES&CVID=ncQxRT9>.

230 World Health Organization, *6 Priorities for women and health* (Mar. 25, 2021), <https://www.who.int/news-room/spotlight/6-priorities-for-women-and-health> (last visited Jun. 30, 2021); World Health Organization, *Gender equity in the health workforce: Analysis of 104 countries* (2019), <https://www.who.int/publications/i/item/gender-equity-in-the-health-workforce-analysis-of-104-countries>.

231 International Finance Corporation, *Women’s Leadership In Private Health Care* (2020), https://www.ifc.org/wps/wcm/connect/a062e443-5503-4e87-af07-593db1bed033/IFC+Women+Leaders+Healthcare_FinalWeb4.pdf?MOD=AJPERES&CVID=mCRI3Yb.

232 Women Deliver, *COVID-19 and Gender: What the Numbers are Saying*, <https://us7.campaign-archive.com/?u=e69da45c3392f8ea394c1b872&id=d8d8234ed7&e=1b64730e1d>.

233 Geneva Declaration of the Rights of the Child, League of Nations, Sep. 26, 1924, O.J. Spec. Supp. 21.

234 Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989).

and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”²³⁵ Since its entry into force in September 1990, the principles and concepts enshrined within the Convention have been galvanized, dissected and expanded upon through the work of the Committee of the Rights of the Child (CRC) and various other international actors.

Yet, as of 2019, only 25% of all countries were on track or had achieved the Sustainable Development Goals concerning children.²³⁶ Nearly a billion children resided in countries where the SDGs are off track, especially in their protections for children against violence.²³⁷ As the World Bank Group’s Identification for Development (ID4D) initiative outlined,²³⁸ more than 1.1 billion people are unable to legally prove their identity, with 40% being children under the age of 18 and 1 in 6 under the age of 5.²³⁹ The lack of data, or access to it, also remains a major barrier in achieving the child-oriented SDGs. There is a 56% likelihood that a country has no or insufficient data to assess its trajectory towards a child SDG target.²⁴⁰

As of 2018, 258 million eligible children, adolescents and youth were not in school, and up to one-third who are in school are digitally excluded.²⁴¹ The rise of COVID-19 has only served to exacerbate and complicate these issues further. With 1.5 billion children’s education worldwide being affected and their parents’ economic stability being put at risk, a whole new set of challenges have emerged since the rise of COVID-19. The importance of State civil registration authorities is also magnified, due to the need for accurate and timely statistics in addition to the continued issuance of birth certificates and other forms of legal identification.²⁴² While children may not be as vulnerable to the COVID-19 virus itself, the potential ramifications for a child’s overall wellbeing are numerous. Some notable forecasts include:

- Roughly 42-66 million children are at risk of falling into extreme poverty, thus increasing the worldwide total by at least 11%.
- 188 countries have imposed statewide school closures, impacting over 1.5 billion children. More than 2/3 of States have implemented distance learning platforms, but only 30% of low-income States have done so. Such programs, whilst beneficial for most, have also exacerbated the gap that digitally excluded children already faced.
- 368.5 million children who rely on school meals may now be at greater risk of malnutrition.
- One area that is difficult to quantify is the amount of learning loss that children will experience as a result of COVID-19. Outside of learning, children’s mental health is at risk.

235 G.A. Res 1386 (1959).

236 *Id.*

237 *Id.*

238 World Bank Group, *The Global ID4D Dataset* (Jun. 25, 2018), <https://datacatalog.worldbank.org/dataset/identification-development-global-dataset> (last visited Jun. 30, 2021).

239 *Id.* See also Vyjayanti Desai et al., *Counting the uncounted: 1.1 billion people without IDs*, World Bank Blogs (Jun. 6, 2017), <https://blogs.worldbank.org/digital-development/counting-uncounted-11-billion-people-without-ids> (last visited Jun. 30, 2021).

240 UNICEF, *Progress for Every Child in the SDG Era: Are we on track to achieve the SDGs for children? The situation in 2019* (Jul., 2019), <https://data.unicef.org/resources/progress-for-every-child-in-the-sdg-era-2019/> (last visited Jun. 30, 2021).

241 UNESCO, Fact Sheet no. 56: New Methodology Shows that 258 Million Children, Adolescents and Youth Are Out of School (2019), <http://uis.unesco.org/sites/default/files/documents/new-methodology-shows-258-million-children-adolescents-and-youth-are-out-school.pdf>.

242 United Nations Department of Economic and Social Affairs, *Maintaining Civil Registration and Vital Statistics during the COVID-19 pandemic* (Apr. 14, 2020), <https://covid-19-response.unstats.org/statistical-programmes/maintaining-crvs/> (last visited Jun. 30, 2021).

- A regression of at least 2-3 years of infant mortality progress, as child deaths increase due to the economic impact of the pandemic and interruption to services.
- Lockdowns could serve as a catalyst to increase the vulnerability of children, who are in conflict zones, refugees and displaced persons, and at risk of witnessing or experiencing physical and online violence and abuse.²⁴³

The International Centre for Missing and Exploited Children (ICMEC) has identified numerous vital issues: increased social isolation and online exposure (for those that have access), decreased in-person interactions/access to services and the fact that child protection services themselves are under-resourced and over-exhausted.²⁴⁴

Best practices

With most countries facing disruptions in all of their services, adaptation has been crucial for child and family protection services to continue. Facing the subsequent threat of an increase in domestic violence, various States have instituted measures to mitigate service interruptions, provide targeted messaging, or establish new services altogether to their respective populations. This section will divide this section into multiple parts: Emergency Services for Children, Mental Health Services & Interfacing At-Risk Children, Adapting Education and Family Economic Challenges.

Emergency Services for Children

With the new risks that children face and, in many cases, a lack of physical platform to engage at-risk populations, new lines of communication have been implemented in numerous States.

- **Egypt, Kenya** and **Papua New Guinea** have established and bolstered help-hotlines to help maintain child protection services and enable children to receive services such as counseling, information, support and service referrals remotely.²⁴⁵ **Kazakhstan** has established an official WhatsApp line to report violence against children and women, and the country's Children's Rights Protection Committee disseminated phone contacts of child rights focal points in the regional authorities.²⁴⁶
- Children may not be registered at birth due to disruptions such as COVID-19. Unregistered or "invisible" children are at a higher risk of experiencing violence, trafficking, and other vulnerabilities. The **UN Legal Identity Agenda Task Force** thus has developed guidelines for States to maintain international standards for civil registration during COVID-19.²⁴⁷

²⁴³ United Nations Sustainable Development Group, Policy Brief: The Impact of COVID-19 on children (2020), <https://unsdg.un.org/resources/policy-brief-impact-covid-19-children> (last visited Jun. 30, 2021).

²⁴⁴ Contribution from International Centre for Missing & Exploited Children to author (2020) (on file with the Global Forum on Law, Justice and Development).

²⁴⁵ UNICEF, Protecting Children from Violence in the Time of COVID-19: Disruptions in prevention and response services (2020), <https://www.unicef.org/media/74146/file/Protecting-children-from-violence-in-the-time-of-covid-19.pdf> (last visited Jun. 30, 2021).

²⁴⁶ *Id.*

²⁴⁷ United Nations Legal Identity Agenda Task Force, Working Document: Maintaining Civil Registration and Vital Statistics during the COVID-19 pandemic (2020), <https://unstats.un.org/legal-identity-agenda/documents/COVID-19-Guidelines.pdf> (last visited Jun. 30, 2021).

- In **Malaysia**, online and teleservices were launched to increase support for children and adolescents with disabilities.²⁴⁸
- A rapid assessment in **Pakistan** showed that the confinement of children is linked to increased stress in children and reduced patience of caregivers. More than 2,600 social service professionals were given training in psychosocial support and stigma prevention to respond to these challenges.²⁴⁹
- By advocating that social workers are essential workers, **UNICEF China** has expanded the reach of their services while safeguarding well-being of social workers.²⁵⁰
- **UNICEF Cambodia** utilized targeted social media campaigns and physical loudspeakers within communities to ensure that COVID-19 prevention measures and parenting tips were communicated to the population.²⁵¹

Adapting Education

With education being remote in most States, access to education is of the utmost importance. This includes technology to access education.

- States such as **North Macedonia** have been working to subsidize internet access.²⁵² **Paraguay, Jordan, Rwanda,** and **South Africa** have removed data costs for education content.²⁵³ In **Kyrgyzstan**, free or low-cost SIM cards were distributed to their citizens in order to ensure data access.²⁵⁴
- To counter the increased risk of exposure to explicit online content and potential exploitative users, countries such as **Australia** have developed online e-training and tools to help educate children, parents and child-oriented workers to adapt to these technological challenges.²⁵⁵
- Many States have used technology-distribution platforms to connect children to educational services. In **Jordan**, refugee children receive learning packages and in Jamaica, learning and play kits are distributed to children in quarantined zones.²⁵⁶ In **Greece**, UNICEF collaborated with the Akelius foundation to deliver tablets with preloaded language learning content to refugees and migrants.²⁵⁷
- In 68% of the 127 countries where data was available, countries use a combination of digital and non-digital delivery of remote education. 75% of countries, including **Mexico** and

248 UNICEF, Protecting Children from Violence in the Time of COVID-19: Disruptions in prevention and response services (2020), <https://www.unicef.org/media/74146/file/Protecting-children-from-violence-in-the-time-of-covid-19.pdf> (last visited Jun. 30, 2021).

249 *Id.*

250 *Id.*

251 *Id.*

252 Thomas Dreesen et al., Promising practices for equitable remote learning Emerging lessons from COVID-19 education responses in 127 countries, UNICEF (2020), <https://www.unicef-irc.org/publications/pdf/IRB%202020-10%20CL.pdf>.

253 *Id.*

254 *Id.*

255 Kellie Britnell & Amanda Day, *COVID-19: 5 Steps to Keep Students Safe During Online Learning*, Australian Government (Apr. 23, 2020), <https://www.esafety.gov.au/about-us/blog/covid-19-5-steps-keep-students-safe-during-online-learning> (last visited Jun. 30, 2021).

256 *Id.*

257 *Id.*

Montenegro, use TV to deliver content for pre-primary school children and their families.²⁵⁸ Some countries, including **Morocco** and **Uzbekistan** use sign language to provide accessible classes for children with hearing impairment. In **Lao PDR** and **Madagascar**, radio was used to deliver audio content and implement education programs which were developed from prior crises.²⁵⁹ In **Somaliland** and **Burkina Faso**, radio sets and mobile phones with preloaded content were delivered to families in remote areas.²⁶⁰

Family Economic Challenges

Parental financial security is paramount in ensuring the safety of the child. Additional economic support has been implemented in numerous countries.

- **Germany** has sought to simplify procedures for families attempting to access child support and benefits.²⁶¹
- In **Jamaica**, the government has developed guidance on how parents can help create education learning spaces at home, in addition to setting up psychosocial support helplines targeted at parents.²⁶²
- **Cameroon, Poland** and **Russia** have implemented an increase in the amount of financial support for families.²⁶³
- **Italy, Malta** and **Spain** have created new sources of COVID-19 related financial support to support families.²⁶⁴
- **Costa Rica** has provided childcare for essential workers.²⁶⁵
- **Republic of Korea** has modified their governmental support to accommodate the increased amount of home childcare in the country.²⁶⁶

Recommendations

- **Integrate age-appropriate and gender-sensitive measures into COVID-19 prevention and response plans** to ensure the protection of children of children from violence, neglect and abuse and to ensure their continued access to education.

258 *Id.*

259 World Bank, *How countries are using edtech (including online learning, radio, television, texting) to support access to remote learning during the COVID-19 pandemic*, <https://www.worldbank.org/en/topic/edutech/brief/how-countries-are-using-edtech-to-support-remote-learning-during-the-covid-19-pandemic> (last visited Jun. 30, 2021).

260 Thomas Dreesen et al., Promising practices for equitable remote learning Emerging lessons from COVID-19 education responses in 127 countries, UNICEF (2020), <https://www.unicef-irc.org/publications/pdf/IRB%202020-10%20CL.pdf>.

261 *Id.*

262 *Id.*

263 International Monetary Fund, *Policy Responses to COVID-19*, <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19> (last visited Jun. 30, 2021).

264 *Id.*

265 Government of Costa Rica, *National Child Care and Development Network Maintains Operations* (Apr. 3, 2020), <https://www.presidencia.go.cr/comunicados/2020/04/red-nacional-de-cuido-y-desarrollo-infantil-mantiene-operaciones/> (last visited Jun. 30, 2021).

266 Republic of Korea Ministry of Health and Welfare, *Childcare coupons for 2 million households with children* (May 7, 2020), https://www.mohw.go.kr/eng/nw/nw0102vw.jsp?PAR_MENU_ID=1007&MENU_ID=100703&page=1&CONT_SEQ=354408 (last visited Jun. 30, 2021).

- **Guarantee funding at the national level, to ensure proper reporting mechanisms, monitoring and for essential health and social welfare services**, including mental health and parental support.
- **Continue to utilize adaptive measures to help counter the newfound risks created by COVID-19**. For example, by increasing staff to moderate explicit content targeted towards children to counter its potential increase during the pandemic, or by creating new platforms to communicate with emergency services.
- **Create inclusive education plans that also target potentially excluded populations**. This may include having an alternative to online education for those digitally excluded populations, distributing education materials and mediums throughout the population, or adapting curriculums to ensure migrants' equitable progress.
- **Minimize and potential interruptions to the civil registration of children**, especially with regard to birth certificates and legal identification of children under 18. Digitization of procedure and the adaptation existing registration preconditions are alternative viable solutions.

Persons with disabilities

Background

According to the WHO, around 15% of the population worldwide, or 1 billion people, live with a disability.²⁶⁷ Many legal and policy instruments serve to ensure the protection and inclusion of people with disabilities as beneficiaries of social policies and active participants in national development. Most prominently, the Convention on the Rights of Persons with Disabilities stipulates that States have to provide persons with disabilities with the same range, quality and standard of free or affordable health care, an adequate standard of living for themselves and their families, education and an effective learning process and freedom from discrimination.²⁶⁸ In line with the commitment to leave no one behind, the SDGs recognize the importance of inclusion of people with disabilities in the pursuit of development objectives.

People with disabilities have faced disproportionate negative impacts as a result of the pandemic. In addition to the greater possibility of contracting the virus with fatal consequences, they are also at risk of facing the economic consequences of the pandemic—unemployment, reduced access to public services, among others.²⁶⁹ A resolution adopted by the Human Rights Council in July 2020, led by the Special Rapporteur on the Rights of Persons with Disabilities, highlighted the States' responsibility to take all appropriate measures to eliminate discrimination against persons with disabilities and to promote, protect and respect their human rights.²⁷⁰ At the regional level, the European Parliament has expressed its deep concern over the disproportionate impact of the COVID-19 crisis on persons with disabilities and their families. In the same resolution, the Parliament highlighted the fact that persons with disabilities should be treated as a priority during

267 World Health Organization, *Disability and health* (Dec. 1, 2020), <https://www.who.int/en/news-room/fact-sheets/detail/disability-and-health> (last visited Jun. 30, 2021).

268 Convention on the Rights of Persons with Disabilities, May 3, 2008, A/RES/61/106, Annex I.

269 World Health Organization, *Disability and health* (Dec. 1, 2020), <https://www.who.int/en/news-room/fact-sheets/detail/disability-and-health> (last visited Jun. 30, 2021).

270 Human Rights Council, U.N. Doc. A/HRC/RES/44/10 (Jul. 16, 2020), <https://undocs.org/A/HRC/RES/44/10>.

this crisis and underscored that lockdowns and isolation have aggravated existing problems.²⁷¹ The Inter-American Commission on Human Rights has also indicated that States should guarantee that people with disabilities participate in the design, implementation and monitoring of measures adopted to address the COVID-19 pandemic and make reasonable adaptations and provide the necessary support to ensure that persons with disabilities can exercise their human rights equally.²⁷²

Best practices

- The Bioethics Committee of the **San Marino Republic** produced COVID-19 guidance on triage, which prohibits discrimination on the basis of disability; the Office for Civil Rights at the United States Department of Health and Human Services issued a bulletin to ensure that authorities prohibit discrimination on the basis of disability. In the **Philippines**, the Commission on Human Rights has published information to support health agencies tailor public messages for vulnerable groups of the communities, including children and people with disabilities. In **Canada**, the COVID-19 Disability Advisory Group was established with the participation of persons with disabilities and their representative organizations to advise the government on disability-specific issues.²⁷³
- In **Argentina**, assistants of persons with disabilities, also known as support persons, are exempted from restrictions of movement and physical distancing to provide support to persons with disabilities and persons receiving disability benefits will receive an additional amount in light of the COVID. The Supreme Court and the Criminal Appeal court identified persons with disabilities as beneficiaries of prison. Persons with disabilities without adequate housing In Argentina, over 1,000 beds were installed in a large facility to provide emergency shelter to those who may require physical distancing without high medical requirements.²⁷⁴
- In **Peru**, persons receiving disability benefits will receive an additional amount because of the COVID-19 crisis. The government approved guidelines to reach out persons with disabilities by phone. The Municipality of Lima decided to use the historic Peruvian bull ring as a homeless shelter since the pandemic began.²⁷⁵
- In **Colombia**, prisoners who are also persons with disabilities and who may face functional restrictions that prevent them from autonomously implementing protection measures, were included among the beneficiaries of early release.²⁷⁶
- In **Panama**, specific opening hours for the sale of essential goods have been allocated for persons with disabilities and their personal assistants.²⁷⁷

271 European Parliament, Resolution of 8 July 2020 on the rights of persons with intellectual disabilities and their families in the COVID-19 crisis, 2020/2680(RSP) (Jul. 8, 2020), https://www.europarl.europa.eu/doceo/document/TA-9-2020-0183_EN.html.

272 Inter-American Commission on Human Rights, Pandemic and Human Rights in the Americas, at 18, Resolution No. 1/2020 (Jun. 10, 2020).

273 Government of Canada, Backgrounder: COVID-19 Disability Advisory Group (Apr. 10, 2020), <https://www.canada.ca/en/employment-social-development/news/2020/04/backgrounder--covid-19-disability-advisory-group.html> (last visited Jun. 30, 2021).

274 United Nations, COVID-19 and the rights of persons with disabilities: Guidance, at 4, 5, 8 (2020) https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf.

275 *Id.*, at 5; France 24, *Historic Peruvian bull ring converted to virus homeless shelter* (Apr. 1, 2020), <https://www.france24.com/en/20200401-historic-peruvian-bull-ring-converted-to-virus-homeless-shelter> (last visited Jun. 30, 2021).

276 United Nations, COVID-19 and the rights of persons with disabilities: Guidance, at 8 (2020) https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf.

277 *Id.*, at 4.

- In the **United States**, the government has established tax relief programs that aim to alleviate the financial situation of persons with disabilities. The Office for Civil Rights at the United States Department of Health and Human Services issued a bulletin to ensure that authorities prohibit discrimination on the basis of disability, stating that “persons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person’s relative worth based on the presence or absence of disabilities or age.” The bulletin also provides guidance to authorities regarding outreach and the accessibility of information to persons with disabilities. This ensures equal opportunity for persons with disabilities to benefit from emergency response efforts.²⁷⁸
- The **South African** government has set aside \$10.6 million to assist small, medium and micro enterprises in the hospitality and tourism sector, with priority given to people with disabilities and women.²⁷⁹
- In **Ethiopia**, authorities are translating COVID-19 messages into local languages and the country plans to make communication materials accessible to those with hearing, seeing and learning difficulties, as well as to those with mental illness.
- In **Sierra Leone**, the government has provided \$25 and half a bag of rice for each person with disability.²⁸⁰
- In **Switzerland**, persons with disabilities living in institutions were moved out so that they can live with their families, where possible.²⁸¹
- The **French** government announced that people with disabilities will receive an additional amount of disability allowance. At the same time, it relaxed strict confinement rules and introduced exceptions to permit autistic persons and other persons with disabilities to go outside.²⁸² The government has also created a website which combines texts with easy-to-understand images to explain prevention measures, symptoms and government agencies to go to in an emergency.²⁸³
- In **Spain**, the government moved persons with disabilities who were living in institutions to their families’ home.²⁸⁴ The Ministry of Health approved that people with autism can go out on the streets with a caregiver or family member while the lockdown lasts.²⁸⁵
- The **New Zealand** Ministry of Health has a section of its website dedicated to providing information on Covid-19 in accessible and easy-to-read formats.²⁸⁶

278 *Id.*, at 5-6, 8.

279 Kingsley, Ighobor, *COVID-19: People with disabilities facing tougher times* (May 8, 2020), <https://www.un.org/africarenewal/magazine/coronavirus/april-2020-special-edition-covid-19/covid-19-people-disabilities-facing-tough-times> (last visited Jun. 30, 2021).

280 *Id.*

281 United Nations, COVID-19 and the rights of persons with disabilities: Guidance, at 3 (2020) https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf.

282 *Id.*, at 4-5.

283 Ministry of Health, France, *Coronavirus* (Jun. 30, 2021), <https://www.santepubliquefrance.fr/l-info-accessible-a-tous/coronavirus#block-275760> (last visited Jun. 30, 2021).

284 United Nations, COVID-19 and the rights of persons with disabilities: Guidance, at 3 (2020) https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf.

285 Autism Confederation, *El Ministerio de Sanidad dicta una instrucción que permite a las personas con trastorno del espectro del autismo salir a la calle acompañadas mientras dure el estado de alarma* (Mar. 20, 2020), <http://www.autismo.org.es/actualidad/articulo/el-ministerio-de-sanidad-dicta-una-instruccion-que-permite-las-personas-con> (last visited Jun. 30, 2021).

286 United Nations, COVID-19 and the rights of persons with disabilities: Guidance, at 4 (2020) https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf.

- In the **United Kingdom** and **Northern Ireland**, the government disseminated information and established systems to guide parents on how to face competing responsibilities while at home and to better support the educational process of children with disabilities. The authorities have relaxed strict confinement rules and introduced some exceptions to allow autistic persons and other persons with disabilities to go outside.²⁸⁷
- In **Italy**, the Ministry of Health launched a commercial in sign language called “Let’s help each other” to raise awareness of good daily practices that help to contain the risk of contagion from COVID-19.²⁸⁸
- The **United Arab Emirates** government has launched a national program to test persons with disabilities in their homes and as of mid-April had conducted 650,000 COVID-19 tests on persons with disabilities.²⁸⁹

Recommendations

- **Progressively include representatives of persons with disabilities in social dialogue processes.** In addition to enabling their opinions and voices to be heard, this could also erase stigmatization and discrimination against people with disabilities.
- **Make information, especially on health and safety measures on COVID-19 accessible.**
- **Ensure access to education for persons with disabilities.** Some government actions that can promote the right to education are online education programs, assisting parents to monitor the learning process and the free distribution of reading materials.
- **Ensure that government financial aid take into account the growing financial needs of persons with disabilities and their families.** The provision of subsidies is important because persons with disabilities have suffered a disproportionate impact on unemployment and loss of income.

287 United Nations, COVID-19 and the rights of persons with disabilities: Guidance, at 6 (2020) https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf.

288 Ministero della Salute, “Let’s help each other. Together we will make it”, the commercial with Amadeus against the Coronavirus (Mar. 27, 2020), <http://www.salute.gov.it/portale/nuovocoronavirus/dettaglioCampagneNuovoCoronavirus.jsp?lingua=english&menu=campagne&p=dacampagne&id=143> (last visited Jun. 30, 2021).

289 United Nations, COVID-19 and the rights of persons with disabilities: Guidance, at 2 (2020) https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf.

IMPACTED AREAS AND SECTORS

Healthcare

Adherence to the rule of law is essential in times of public emergency, such as natural disasters and crises. Health is a fundamental right, and is an essential factor to fulfilling the SDGs. The WHO has stated that states have a legal obligation “to ensure access to timely, acceptable, and affordable healthcare of appropriate quality as well as to providing for the underlying determinant of health.”²⁹⁰ Prevention, preparedness, readiness, response and recovery will help states not only face this pandemic, but also build stronger, peaceful, just, and inclusive societies and institutions for a better future. Promoting the rule of law, ensuring equal access to justice for all, ascertaining public access to information, protecting fundamental freedoms, and strengthening relevant national institutions as well as international cooperation are all imperative in fighting the pandemic.²⁹¹

Health and SDGs

Health emergencies such as COVID-19 have shown the critical need for preparedness. States during such crises should not only work on response effectiveness, but should keep in mind that, in order to maintain good health and well-being (Goal 3), good sanitation is equally important. Goal 6 (clean water and sanitation) and Goal 10 (reduced inequalities) are linked to SDG 16, especially when it comes to healthcare and COVID-19.

Globally, two out of five people do not have basic hand-washing facilities such as soap and water.²⁹² In 2017, an estimated 3 billion people worldwide lack the ability to safely wash their hands at home. Considering that handwashing is a necessary preventative measure to curb the spread of COVID-19, the lack of access to these basic facilities threatens efforts to curb the spread of COVID-19.

As diseases and viruses do not discriminate, everyone should have access to quality essential healthcare services and access to safe, effective, and affordable essential medicines and vaccines under Goal 3.8.²⁹³ States and institutions should employ all reasonable efforts at their disposal to reduce inequalities, not only in emergency situations, but also after the end of emergencies. The pandemic has not only shown the importance of collaboration to promote objectives such as supporting research and developing vaccines and medicines, but also provides a unique opportunity to develop new risk reduction and management strategies for future emergencies.²⁹⁴

290 World Health Organization, *Human rights and health* (Dec. 29, 2017), <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health> (last visited Jun. 30, 2021).

291 United Nations Sustainable Development Goals, *Goal 16: Promote just, peaceful and inclusive societies*, <https://www.un.org/sustainabledevelopment/peace-justice/> (last visited Jun. 30, 2021).

292 United Nations Sustainable Development Goals, *Goal 6: Ensure access to water and sanitation for all*, <https://www.un.org/sustainabledevelopment/water-and-sanitation/> (last visited Jun. 30, 2021).

293 United Nations Sustainable Development Goals, *Goal 3: Ensure healthy lives and promote well-being for all at all ages*, <https://www.un.org/sustainabledevelopment/health/> (last visited Jun. 30, 2021).

294 *Id.*

The right to health

The right to health was first articulated in the Constitution of the World Health Organization in 1946, which defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”²⁹⁵ It also states that the right to health is a fundamental right that has no distinction of race, religion, political belief, economic, or social condition. Article 25 of the Universal Declaration of Human Rights adopts a broader view on the right to health, recognizing that all persons have a right to an adequate standard of living, including guarantees for health and well-being.²⁹⁶ Article 12 of the International Covenant Economic, Social and Cultural Rights also recognizes the right to the enjoyment of the “highest attainable standard of physical and mental health.”²⁹⁷

The following table illustrates how other fundamental international and regional human rights instruments address the right to health:

<p>Articles 11(1)(f), 12 and 14(2)(b) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women</p>	<p>Article 11(1)(f) highlights that “state parties shall take all appropriate measures to eliminate discrimination against women in the field of employment...to ensure... [t]he right to protection of health and to safety in work conditions...;” Article 12 conveys that states shall take appropriate measures to eliminate discrimination against women “in the field of health care” and “access to health care services;” and Article 14(2)(b) states that parties shall take measures to eliminate it in rural areas and to ensure they have the right “[t]o have access to adequate health care facilities, including information, counselling and services in planning.”²⁹⁸</p>
<p>Articles 28, 43(e) and 45(c) of the 1990 International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Family</p>	<p>Article 28 states that “migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality treatment with nationals of the State concerned;”²⁹⁹ Article 43(e) conveys that migrant workers shall enjoy equal treatment with respect to “access to social and health services, provided that the requirements for participation in the respective schemes are met;” and Article 45(c) provides that “members of the families of migrant workers, in the State of employment, enjoy equality of treatment with nationals of that State...[regarding the] access to social and health services...”</p>

295 Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health: Fact Sheet No. 31, at 1 (2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf> (last visited Jun. 30, 2021).

296 Universal Declaration of Human Rights art. 25, Dec. 8, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

297 International Covenant on Economic, Social and Cultural Rights art. 12, Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19; 6 I.L.M. 360 (1967).

298 Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health: Fact Sheet No. 31, at 9 (2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf> (last visited Jun. 30, 2021); Convention on the Elimination of All Forms of Discrimination against Women arts. 11(1)(f), 12 & 14(2)(b), Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980).

299 Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health: Fact Sheet No. 31, at 9 (2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf> (last visited Jun. 30, 2021); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families arts. 28, 43(e) & 45(c), New York, Dec. 18, 1990, entered into force Jul. 1, 2003, 2220 U.N.T.S. 93; 30 I.L.M. 1517 (1991).

<p>Article 34 of the Organization of American States and Article 26 of the American Convention on Human Rights</p>	<p>Article 34 of this regional treaty conveys that member states agree to accomplish basic goals including “protection of man’s potential through the extension and application of modern medical science” and “proper nutrition;” and Article 26 entitled “Progressive Development” hints at healthcare as “State Parties undertake to adopt measures...with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards.”³⁰⁰</p>
<p>Article 11 of the European Social Charter complements Articles 2 and 3 of the European Convention on Human Rights</p>	<p>Article 11 of the European Social Charter entitled “The right to protection of health” imposes a range of positive obligations designed to secure the effective exercise of the right to health including “to prevent as far as possible epidemic, endemic and other diseases.” This article complements Articles 2 and 3 of the European Convention on Human Rights, as interpreted by the case-law of the European Court of Human Rights. Articles 2 and 3 refer to the Right to Life and the Prohibition of Torture respectively.³⁰¹</p>
<p>African Charter on Human Rights and Peoples’ Rights</p>	<p>Notably, Article 16(2) of the Charter concerning the “Right to Health” recognizes that “State Parties...shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”³⁰²</p>

International and regional human rights instruments address the right to health differently. Some address it in a more general manner, while others do so with regards to specific groups such as women and children.³⁰³

Additionally, the right to health has been adopted into domestic and/or constitutional law in about 115 country.³⁰⁴ At least six constitutions have set out duties in relation to health, such as the duty on the state to develop or to allocate a budget to health services.³⁰⁵ For instance, the French Constitution (1946) states that the nation “guarantees to all, including children, mothers and older

300 Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health: Fact Sheet No. 31, at 9 (2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf> (last visited Jun. 30, 2021); Organization of American States (OAS), Protocol of Amendment to the Charter of the Organisation of American States (“Protocol of Buenos Aires”) art. 34, 27 February 1967; American Convention on Human Rights “Pact of San Jose, Costa Rica” art. 26, Nov. 22, 1969, S. Treaty Doc. No. 95-21;1144 U.N.T.S.123; O.A.S.T.S. No. 36; 9 I.L.M. 99 (1970).

301 European Social Charter art. 11, Oct. 18, 1961, 529 U.N.T.S. 89, Europ. T.S. No. 35; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, art. 2, 3, Nov. 4, 1950, ETS 5; Secretariat of the European Social Charter, The Right to Health and the European Charter (2009), https://www.ilga-europe.org/sites/default/files/right_to_health_and_esc.pdf.

302 Organization of African Unity, African Charter on Human and Peoples’ Rights, art. 16, Jun. 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); Circle of Rights: Economic, Social & Cultural Rights Activism: A Training Resource, *Sec. 5 Understanding Specific ESC Rights, Module 14 The Right to Health*, <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module14.htm> (last visited Jun. 30, 2021).

303 Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health: Fact Sheet No. 31, at 9 (2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf> (last visited Jun. 30, 2021).

304 *Id.*, at 10.; Contribution from French National Bar Council to author (2020) (on file with the Global Forum on Law, Justice and Development).

305 Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health: Fact Sheet No. 31, at 10 (2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf> (last visited Jun. 30, 2021).

workers, health protection.”³⁰⁶ Chapter II, Section 27 of the South African Constitution (1996) states: “(1) Everyone has the right to have access to health-care services.”³⁰⁷ The Indian Constitution of 1950 articulates a duty of the state to improve public health and Japan’s Constitution on Article 25 emphasizes that “the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.”³⁰⁸

Aspects of the right to health

The right to health is an inclusive right. The Committee on Economic, Social and Cultural Rights identified some underlying determinants of health, which are “safe drinking water and adequate sanitation; safe food, adequate nutrition and housing; healthy working and environmental conditions; health-related education and information; and gender equality.”³⁰⁹ This right contains freedoms, like the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.³¹⁰ It also contains the following entitlements:

- “The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health;
- The right to prevention, treatment and control of diseases;
- Access to essential medicines;
- Maternal, child and reproductive health;
- Equal and timely access to basic health services;
- The provision of health-related education and information;
- Participation of the population in health-related decision-making at the national and community levels.”³¹¹

As stated above, health services, goods, and facilities should be made accessible, available, acceptable, and of good quality and in a non-discriminatory manner. Additionally, they should be timely, efficient, effective, people-centered, and equitably integrated. People should not have to travel long distances to find and receive medical care or supplies. Services, goods, and health-related information too should be medically and culturally acceptable, as well as sensitive to gender-based concerns. They should also be financially and physically accessible and affordable as well as respect medical ethics. Finally, health services, goods, and facilities should be scientifically approved, safe, and have adequate equipment and sanitation. It is equally crucial that healthcare workers are appropriately trained.

306 France’s Constitution of 1958 with Amendments through 2008, https://www.constituteproject.org/constitution/France_2008.pdf?lang=en.

307 Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health: Fact Sheet No. 31, at 11 (2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf> (last visited Jun. 30, 2021).; Constitution of South Africa 1996, chap. II, sec. 27(1)(a).

308 Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health: Fact Sheet No. 31, at 11 (2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf> (last visited Jun. 30, 2021).; Constitution of Indian 1950, part IV, art. 47; Constitution of Japan 1947, art. 25, https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.

309 Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health: Fact Sheet No. 31, at 3 (2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf> (last visited Jun. 30, 2021).

310 *Id.*

311 *Id.*, at 3-4.

Impacts of COVID-19 on healthcare

COVID-19 has severely impacted the healthcare sector and has taken many countries by surprise, as they have had little time to develop strategic plans under ample pressure. Since the onset of the crisis, shortages of personnel and frontline responders, insufficient equipment, and the lack of infrastructure, have made it challenging to provide the necessary care for those infected. Many states endeavored to build ICU field hospitals in short periods of time. In Wuhan, China, for example, a two-story emergency hospital was built within 10 days, with the capacity to hold up to 1,000 patients in several isolation wards and 30 ICUs.³¹²

In addition, states began cooperating with other states and the private industry to address shortages of ventilators, respirators, personal protective equipment, and testing kits. For example, when Milan, Italy was running out of beds and artificial respirators, Germany assisted by delivering one million masks.³¹³ The private sector also stepped in to produce the goods and equipment needed. Companies like Ford, 3M, Tesla, General Electric, and General Motors joined in the effort to make ventilators and masks. General Motors partnered with ventilator manufacturer Ventec Life Systems and offered the company help with manufacturing and logistics to increase its output. In addition, other companies like Apple and Facebook helped by donating supplies to healthcare workers across the United States.³¹⁴

Various segments of the population have encountered difficulties with availability, accessibility and affordability of healthcare during COVID-19, especially low-income families, minorities, and people living in rural areas. Many individuals have lost their jobs around the world. In the U.S., 43 percent of parents living with children report they or a family member has lost a job or working hours as a result of the pandemic.³¹⁵ Many have experienced material hardship and are struggling to pay for basic necessities such as housing, food, and medical care.³¹⁶ According to recent statistics, approximately one-third of families in the U.S. experienced material hardship in May 2020,³¹⁷ as they struggle to buy the materials they need to protect themselves from COVID-19, such as masks, hand sanitizer, and alcohol. Others reside in areas that are too far from medical centers or hospitals and they do not have access to the information needed to understand how the virus spreads. Recruiting village leaders and religious figures could help distribute public health messages faster and more efficiently to these remote areas.³¹⁸

National, ethnic, racial, religious, and linguistic minorities have been particularly impacted by the pandemic. These minorities are more likely to live in overcrowded housing conditions, making physical distancing almost impossible. It is also common that they live in housing facilities with little or no access to water and sanitation or where such utilities are communal.³¹⁹ In other places,

312 Sophia Ankel, *A construction expert broke down how China built an emergency hospital to treat Wuhan coronavirus patients in just 10 days*, Business Insider (Feb. 5, 2020), <https://www.businessinsider.com/how-china-managed-build-entirely-new-hospital-in-10-days-2020-2> (last visited Jun. 30, 2021).

313 Rym Momtaz, *Germany to send face masks to Italy to help deal with coronavirus*, Politico (Mar. 14, 2020), <https://www.politico.eu/article/germany-to-send-face-masks-to-italy-to-help-deal-with-coronavirus/> (last visited Jun. 30, 2021).

314 Sean O'Kane, *Ford joins Tesla and GM in helping with ventilator and mask supply*, The Verge (Mar. 24, 2020), <https://www.theverge.com/2020/3/24/21192282/ford-tesla-gm-elon-musk-coronavirus-masks-ventilators-pandemic> (last visited Jun. 30, 2021).

315 Melissa Jenco, *Study: COVID-19 pandemic exacerbated hardships for low-income, minority families*, AAP News (Jun. 3, 2020), <https://www.aapublications.org/news/2020/06/03/covid19hardships060320> (last visited Jun. 30, 2021).

316 *Id.*

317 *Id.*

318 Peter Ranscombe, *Rural areas at risk during COVID-19 pandemic*, 20(5) *The Lancet: Infectious Diseases* 545 (2020), [https://doi.org/10.1016/S1473-3099\(20\)30301-7](https://doi.org/10.1016/S1473-3099(20)30301-7).

319 United Nations Office of the High Commissioner for Human Rights, *COVID-19 and Minority Rights: Overview and Promising Practices*, at 1 (2020), https://www.ohchr.org/Documents/Issues/Minorities/OHCHRGuidance_COVID19_MinoritiesRights.pdf.

minorities often have risky and low-paying jobs, usually in the frontlines, which leaves them more exposed to the virus.³²⁰ Minorities may often be subject to certain laws and policies that further marginalize them or make it harder for them to access healthcare prevention, treatment, rehabilitation, and care services. All these could have additional negative implications on minorities' access to healthcare services, goods, and facilities.

Past experiences

Numerous regions and states have had to deal with epidemics or natural disasters in their recent past and many have already had strategic plans in place. Recent crises include HIV/AIDS emergency since the 1980s, Severe Acute Respiratory Syndrome (SARS) in 2003, H1N1 Influenza in 2009, and the Ebola crisis in 2014-2016.

Sub-Saharan Africa is the hardest hit region in the world by AIDS and HIV, followed by Western and Central Africa, and Asia, and the Pacific.³²¹ In their efforts to combat HIV, countries such as **Kenya, Uganda, and Malawi** have adopted national campaigns aimed at encouraging HIV testing and counselling (HTC).³²² One notable campaign is DREAMS, a partnership to reduce HIV/AIDS in adolescent girls by 40 percent.³²³ Communities and districts involved in this program have seen immediate and long-term positive impacts including a decline in HIV diagnoses from 25 percent to 40 percent in 2017.³²⁴ Besides having mitigated the HIV crisis, DREAMS has also successfully contributed to the fight against structural vulnerabilities, including economic disadvantage, discriminatory practices, gender-based violence, and lack of proper education.³²⁵ These successes provide useful lessons-learned, as countries in Sub-Saharan Africa combat the current pandemic and vulnerabilities surrounding it.³²⁶

As the 2003 Severe Acute Respiratory Syndrome (SARS) affected numerous countries around the globe, it also prompted states to take a more active stance in epidemic combat and preparedness. **Singapore**, for example, prior to COVID-19, already had a Readiness and Response Plan for novel acute respiratory infections with pandemic potential, with recommendations on the appropriate public health measures and response actions prior to and during a pandemic.³²⁷ Singapore's plan outlined a national strategy, as well as an outbreak response and components of a pandemic response. The national strategy seeks to establish an effective surveillance system to detect novel acute respiratory pathogens with pandemic potentials and to mitigate consequences when the first wave hits.³²⁸ Its objective is to minimize mortality and morbidity through the use of measures that are proportional to the assessed public health impact, while ensuring preparedness for vaccination of the entire population when a vaccine becomes available.³²⁹ The plan also states how the state should communicate with and educate the public and secure their cooperation

320 *Id.*

321 Kaiser Family Foundation, *The Global HIV/ AIDS Epidemic* (Mar. 2, 2021), <https://www.kff.org/global-health-policy/fact-sheet/the-global-hiv-aids-epidemic/> (last visited Jun. 30, 2021).

322 Avert, *Global information and education on HIV and AIDS* (Aug. 25, 2020), https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/overview#footnote72_7h995c1 (last visited Jun. 30, 2021).

323 *Id.*

324 *Id.*

325 *Id.*

326 Kaiser Family Foundation, *The Global HIV/ AIDS Epidemic* (Mar. 2, 2021), <https://www.kff.org/global-health-policy/fact-sheet/the-global-hiv-aids-epidemic/> (last visited Jun. 30, 2021).

327 Contribution from Singapore Ministry of Health to author (2020) (on file with the Global Forum on Law, Justice and Development).

328 *Id.*

329 *Id.*

with the government's efforts.³³⁰ Singapore has created a Homefront Management System which is a national framework for coordinating a whole-of-government approach towards planning and response during a national crisis. It also has enacted laws that deal with the prevention and control of infectious diseases in the country.³³¹

The 2009 H1N1 Influenza severely impacted Latin America and South Asia. During this time, **Mexico**, for instance, adopted a series of measures that were instrumental in containing the H1N1 outbreak.³³² These include the creation of effective risk communication plans, promotion of research and development, the launch of a health promotion campaign, and measures to guarantee the supply of healthcare goods, including the reinforcement of a strategic stockpile.³³³ Mexico took measures to release public funds following the National Defense Plan III (DN-111) which allows the use of military assets amid natural disasters. The Plan also grants credits for small businesses and agreements with the private sector to help workers affected by COVID-19.³³⁴ Countries like Mexico can rely on these past experiences as an advantage in handling the current pandemic.

The Ebola crisis was prevalent in African countries between 2014 and 2016. **Sub-Saharan African countries** have applied their prior experiences in handling outbreaks and infectious diseases into fighting COVID-19.³³⁵ Pre-existing emergency plans on public health intervention, community engagement programs, and trained healthcare workers and emergency medical experts have been redirected to swiftly respond to the pandemic.³³⁶ Most Sub-Saharan African states have successfully isolated individuals diagnosed with COVID-19 early on for care and medical assistance and these measures have delayed the rapid spread of the virus amongst the African population.³³⁷

Best practices

- **Colombia** announced the virtual deployment of about 2,500 mental health professionals, to support national quarantine “shelter at home” measures.³³⁸
- Countries like **Argentina, Brazil, China, Croatia, France, Germany, Iran, Italy, Mexico, the Netherlands, Russia, Serbia, Spain, Sweden, the United Kingdom**, and the **United States** have built ICUs, hospitals, and tent hospitals in short periods of time.³³⁹
- **Ecuador** made COVID-19 tests free-of-charge for anyone with symptoms.³⁴⁰

330 *Id.*

331 *Id.*

332 Pablo Reynoso Brito, *What Mexico's response to H1N1 can teach us about coronavirus and future pandemics*, Atlantic Council (Mar. 25, 2020), <https://www.atlanticcouncil.org/blogs/new-atlanticist/what-mexicos-response-to-h1n1-can-teach-us-about-coronavirus-and-future-pandemics/> (last visited Jun. 30, 2021).

333 *Id.*

334 *Id.*

335 Gisele Umviligihozo et al., *Sub-Saharan Africa preparedness and response to the COVID-19 pandemic: A perspective of early career African scientists*, 5 Wellcome Open Research 163 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7499400/>.

336 *Id.*

337 *Id.*

338 Organisation for Economic Co-operation and Development, *COVID-19 in Latin America and the Caribbean: An overview of government responses to the crisis*, at 5 (2020), <https://www.enterprisegreece.gov.gr/assets/content/files/c38/a4200/f495/document.pdf>.

339 Idoia Sota & Carlos Primo, *Hospitales de campaña: Así se prepara el mundo para combatir el coronavirus*, El País (Apr. 2, 2020), https://elpais.com/elpais/2020/04/01/album/1585741720_773591.html#foto_gal_25 (last visited Jun. 30, 2021).

340 *Id.*

- **Brazil** dedicated at least USD 1 billion to battle the virus; and around USD 185 million has been distributed according to state populations to states and municipalities to cover extended hours in public health facilities.³⁴¹
- **Singapore** and many other **Southeast Asian countries** have disease prevention and control plans, which are now being used to deal with the spread of the coronavirus. Using Singapore as an example, their response consisted of:
 - A Pandemic Readiness and Response Plan (created to combat SARS and H1N1).
 - The Homefront Crisis Management System led by a Homefront Crisis Ministerial Committee chaired by the Minister for Home Affairs to provide strategy and political guidance during a crisis.
 - The Infectious Diseases Act of 1977 aims to prevent and control the spread of communicable infections. Amongst its various provisions, it authorizes the Director of Medical Services to require investigations into outbreaks and epidemiological surveys and to order disinfection or closure of premises suspected to be the source of transmissions. It also authorizes the Director to prohibit meetings, gatherings, and public entertainment if these are likely to increase the spread and empowers the Director to order a medical examination and treatment of persons suspected to be infected.
 - The National Centre for Infectious Diseases is a 330-bed purpose-built facility that has been fully operational since May 2019. It contains a large screening center, isolation, cohort, and negative pressure wards, as well as a High-Level Isolation Unit. During the COVID-19 outbreak, the facility has expanded its capacity to accommodate close to 500 beds.
 - Multi-Ministry Taskforce has been formed to direct the national whole-of-government response to the coronavirus outbreak, coordinate the community response to protect Singaporeans, stay vigilant against the spread of the virus; and work with the international community for more optimal national decision-making.
 - Singapore's Medical Strategy has involved scaling up medical facilities, augmenting the healthcare workforce by incorporating private sector healthcare professionals, retirees, and volunteers, making full use of technology as an enabler, and instituting a whole-of-society effort with an emphasis on contact tracing and testing.³⁴²
- The SICA Regional Contingency Plan mobilized various Council of Ministries of Health for the sub-region to jointly engage in negotiations and purchases of medical equipment for SICA member states such as **Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and the Dominican Republic**. The Plan also includes various coordinated communication and response measures related to health and risk management. During the current crisis, the Plan has led to the purchase of 180,000 COVID-19 test kits, using SICA funds from the Central American Bank for Economic Integration.³⁴³
- Three days after WHO declared the coronavirus outbreak a public health emergency of international concern on January 30, 2020, **New Zealand** began introducing disease prevention measures guided by public health advice and evolving evidence and continued strengthening these measures in the weeks that followed. Given these early and across

341 Organisation for Economic Co-operation and Development, COVID-19 in Latin America and the Caribbean: An overview of government responses to the crisis (2020), <https://www.enterprisegreece.gov.gr/assets/content/files/c38/a4200/f495/document.pdf>.

342 Contribution from Singapore Ministry of Law to author (2020) (on file with the Global Forum on Law, Justice and Development).

343 Organisation for Economic Co-operation and Development, COVID-19 in Latin America and the Caribbean: An overview of government responses to the crisis (2020), <https://www.enterprisegreece.gov.gr/assets/content/files/c38/a4200/f495/document.pdf>.

the board measures, New Zealand has experienced comparatively low case numbers and transmission rates.³⁴⁴

Recommendations

States should:

- **Prioritize access to free or affordable testing, medications and needed procedures**, such as ventilation, for those at higher risk, including members of racial and ethnic groups who have been disproportionately affected by COVID-19.
- **Promote international cooperation on vaccine distribution and develop an efficient plan for vaccines to be readily accessible** for everyone when available, prioritizing vulnerable groups and minorities.
- **Put in place effective health and social protection systems**, especially those that recognize universal coverage, to ensure that systems are better prepared to respond to the crisis.
- **Educate and inform the population on the findings, guidance, and/or guidelines** of international organizations with specialized knowledge, such as the WHO.
- **Implement healthcare programs for vulnerable communities** to further equal access to healthcare and the elimination of discriminatory practices against racial or ethnic groups.
- **Widen the use of mobile clinics to reach out and deliver services directly to marginalized and vulnerable communities**, who may be disadvantaged when it comes to access to health services.
- **Distribute essential medical and preventive information in minority languages** throughout vulnerable areas by way of digital and printing means.
- **Facilitate practical ethical information to clinical teams** to aid the decision-making process in the current pandemic.
- **Rely on the findings, guidance, and/or guidelines of international organizations to promote the continuity of related and non-related health services** to COVID-19, such as sexual and reproductive health, during the pandemic.³⁴⁵

³⁴⁴ World Health Organization, *New Zealand takes early and hard action to tackle COVID-19* (Jul. 15, 2020), <https://www.who.int/westernpacific/news/feature-stories/detail/new-zealand-takes-early-and-hard-action-to-tackle-covid-19> (last visited Jun. 30, 2021).

³⁴⁵ Contribution from UNESCO to author (2020) (on file with the Global Forum on Law, Justice and Development).

The Economy

The global economy has been greatly affected by COVID-19, making economic stability and the growth of states a matter of widespread interest and concern.³⁴⁶ The virus has posed fiscal capacity challenges for governments and an imminent threat to businesses and households worldwide. These economic implications in turn have had an enormous social impact, causing disproportionate harm to economic agents (especially vulnerable groups, such as children, women, persons with disabilities, the elderly, and developing countries in general). It is estimated that the world gross product shrunk by 5.2 percent in 2020.³⁴⁷ The International Labor Organization (ILO) estimates a loss of 255 million full-time equivalent jobs in 2020 and projects a baseline loss of 90 million to 130 million (in a more pessimistic scenario) full time jobs in 2021.³⁴⁸ Global poverty is predicted to increase by 100 million people, whereas the number of those facing food insecurity will double by the end of 2020.³⁴⁹

These epidemic-related economic disruptions also have serious legal implications. States have to step up to tackle with the socioeconomic effects of the disease, marshal a public health response that mitigates the impact of the virus on citizens' livelihoods, and maintain or enhance democratic processes. Under the prevailing notion of the rule of law and SDG 16, countries with a long-standing tradition in investing in fundamental rights are proven to be more resilient during this unprecedented crisis.³⁵⁰

SDG 16 and Fundamental Rights Principles

Economic rights

As far as economic rights are concerned, COVID-19 has endangered the right to an adequate standard of living as set in Article 25 paragraph 1 of the United Nations Declarations of Human Rights³⁵¹ and Article 11 of the International Covenant on Economic, Social and Cultural Rights.³⁵² As per General Comments issued by The Human Rights Committee on Economic, Social and Cultural Rights, the right to an adequate standard of living is essential to human development, including the right to adequate housing (General Comments 4 and 7), the right to food (General Comment 12), and the right to water (General Comment 15). The connection between the entitlement to adequate food, clothing, housing, and the right to health and medical care is evident, as sanitary

346 GPW Group, *The G20 Resilience Radar: Analysing coronavirus impact, government response & policy direction, and country resilience* (May 22, 2020), <https://gpwglobalaccess.com/gpw-hub-reports/the-g20-resilience-radar-issue3-3el3f-hzk2r-dzxsy-w3ktx-yseg2-mm5pp-wgfmz-mnpwc> (last visited Jun. 30, 2021).

347 World Bank, *The Global Economic Outlook During the COVID-19 Pandemic: A Changed World* (Jun. 8, 2020), <https://www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world#:~:text=The%20baseline%20forecast%20envisions%20a,fiscal%20and%20monetary%20policy%20support> (last visited Jun. 30, 2021).

348 Michael Weber & David Newhouse, *Developing countries introduced an unprecedented social protection and jobs policy response to mitigate the effects of the pandemic*, World Bank Blogs (Mar. 30, 2021), <https://blogs.worldbank.org/jobs/developing-countries-introduced-unprecedented-social-protection-and-jobs-policy-response> (last visited Jun. 30, 2021).

349 United Nations Department of Economic and Social Affairs, *Sustainable Development Outlook 2020: Achieving SDGs in the wake of COVID-19: Scenarios for policymakers* (Jul. 13, 2020), <https://www.un.org/development/desa/dpad/publication/sustainable-development-outlook-2020-achieving-sdgs-in-the-wake-of-covid-19-scenarios-for-policymakers/> (last visited Jun. 30, 2021).

350 United Nations, *We are All in this Together: Human Rights and COVID-19 Response and Recovery* (Apr. 23, 2020), <https://www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and> (last visited Jun. 30, 2021).

351 Article 25 paragraph 1 states that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

352 Article 11 paragraph 1 states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent".

measures such as hand-washing and physical distancing are not an option for people who lack adequate access to water or proper housing.³⁵³

As far as social protection rights are concerned, the right to social security is stipulated under Article 9 of ICESCR.³⁵⁴ Human Rights Committee's General Comment 19 elaborates that States should "provide social benefits (in cash or in-kind) without discrimination to secure protection, inter alia, from (a) the lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; and (c) insufficient family support, particularly for children and adult dependents."³⁵⁵ The overarching value for sustainable growth is further supported by numerous ILO standards and is organized around the following pillars:³⁵⁶

- Averting job losses and sustaining income levels;
- Occupational safety and health;
- Prevention of and protection against discrimination, violence, and harassment, and protection of privacy;
- Leave entitlements and special working arrangements;
- Flexibility in international labor standards during emergencies; and
- Protection measures for specific categories of workers and sectors (healthcare workers, domestic workers, seafarers, migrant workers, indigenous people, and tribal members are at particularly elevated risk of contracting the virus).

The aforementioned basic rights are also protected at a regional level. The following legal instruments are particularly noteworthy:

- In the Inter-American scheme, Article 26 of the American Convention on Human Rights (progressive development), Articles 6 (right to work), 7 (just, equitable and satisfactory conditions of work), 9 (right to social security), and 12 (right to food) of the San Salvador Protocol.
- In the African Charter on Human and People's Rights, Article 15 (right to work) and Article 22 (right to economic, social, and cultural development).
- At the European level, Article 4 paragraph 1 and Article 31 (right to housing) of the European Social Charter.
- Articles 27 (right to work), 28 (adequate standard of living), and 30 (social protection) of the Association of Southeast Asian Nations Human Rights Declaration.

Taking into account the above legal references, in light of the COVID-19 crisis, a strong correlation exists between SDG 16 and other Sustainable Development Goals, such as SDG 1 on the elimination of poverty, SDG 2 on the elimination of hunger, SDG 3 on the promotion of good health and well-being, SDG 6 on access to clean water and sanitation, and SDG 8 on decent work and economic

353 World Bank, *COVID-19 Makes Handwashing Facilities and Promotion More Critical Than Ever* (Apr. 30, 2020), <https://www.worldbank.org/en/news/feature/2020/04/30/covid-19-makes-handwashing-facilities-and-promotion-more-critical-than-ever> (last visited Jun. 30, 2021).

354 Article 9 of the ICESCR stipulates that "[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance."

355 U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security (Art. 9 of the Covenant), U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008), <https://www.refworld.org/docid/47b17b5b39c.html>.

356 International Labour Organization, ILO Standards and COVID-19(coronavirus): Key provisions of international labour standards relevant to the evolving COVID19 outbreak (2020), https://www.ilo.org/global/standards/WCMS_739937/lang--en/index.htm.

growth.³⁵⁷ States ought to adopt multifaceted approaches to target the successful implementation of these above standards.

International business transactions & enforcement of court decisions

In addition to disruptions to people's fundamental rights, the economic recession has caused since the onset of the COVID-19 crisis, global trade and commercial flows have also been severely affected. Since international trade presently relies mostly on international business transactions, a comprehensive legal framework that could provide certainty of law and predictability to economic actors is needed. To this end, the International Institute for the Unification of Private Law (UNIDROIT) has been embarking on the harmonization of private law provisions to be used as a common basis for approaching legal questions. UNIDROIT presented the Principles on International Commercial Contracts and defined notions crucial to the economic performance of legal contracts.³⁵⁸

Principles set by UNIDROIT could address contractual challenges and questions caused by the pandemic, such as whether COVID-19 can be invoked as an excuse for non-performance, or the meaning of generally accepted notions of force majeure (Article 7.1.7) and hardship (Articles 6.2.2 – 6.2.4). These Principles have the role to (a) assist with the interpretation or drafting of contracts; (b) assist the adjudication of disputes; and (c) provide a tool for legislators to modernize their contract law provisions. Moreover, under its auspices, the Convention on International Interest in Mobile Equipment and its Protocols facilitate the efficient financing and leasing of mobile equipment by reducing risks for financiers and the cost of credit.

In addition to the above, the enforcement of court decisions in a reasonably timely manner has serious economic implications. In *Hornsby v. Greece*, the European Court of Human Rights established the existence of a right to the enforcement of court decisions within a reasonable time as an integral component of the right to a fair trial, based on Article 6 paragraph 1 of the European Convention on Human Rights.³⁵⁹ This showcases that efficiency and effectiveness of the enforcement of court decisions provide a critical tool for states to overcome an economic crisis, sustain future economic prosperity, maintain trust in the legal system, prevent corruption, protect the rights of creditors and debtors, and convince economic stakeholders to undertake investments and develop trade relations.³⁶⁰

Best Practices

To alleviate the aforesaid exigent conditions, governments around the globe have supplied dynamic measures to mitigate effects of the economic crisis. Countries that already had in place strong health and social protection systems and relevant institutional capacities have been in a better position to act. The following section addresses in a non-exhaustive manner documented best practices taken by states to ease the crisis:

- The **European Union** implemented a collective plan, within which it put forward several systems such as the European Stability Mechanism and the SURE (Support to mitigate

357 United Nations Department of Economic and Social Affairs, Sustainable Development, *The 17 Goals*, <https://sdgs.un.org/goals> (last visited Jun. 30, 2021).

358 Contribution from UNIDROIT to author (2020) (on file with the Global Forum on Law, Justice and Development).

359 *Hornsby v. Greece*, Eur. Ct. H.R. (1997).

360 Contribution from the International Union of Judicial Officers to author (2020) (on file with the Global Forum on Law, Justice and Development).

Unemployment Risks in an Emergency) scheme to ensure continuity of employment. As one of the earliest regions to be affected by the pandemic, European states have reacted rigorously.³⁶¹ In **Italy**, for example, two decree-laws have been passed by the President, namely, the “Cure Italy Decree” and the “Cash Decree” injecting a stimulus package of 424 billion euros in the internal market.³⁶² With regard to workers in vulnerable sectors, **Belgium** announced 23 million euros in support of the domestic cleaning sector, whereas **Spain** introduced special benefits for domestic workers.³⁶³

- The **United States** via its House Committee on Small Business has provided small interest loans to small businesses under a stimulus bill that included the Paycheck Protection Program for relief.³⁶⁴
- **Singapore** adopted a multi-faceted approach to combat the pandemic.³⁶⁵ To tackle severe economic disruptions, the state provided relief of S\$100 billion to support businesses, households and to save jobs. The government co-funded wages and provided direct cash assistance to self-employed persons, and additional special payments to certain other categories of workers. Moreover, it assisted families with cash payouts of up to \$1,600 as well as grocery vouchers. It likewise applied an automatic deferment of income tax payments for companies, deferred capital payments on qualifying loans, moved to beneficiary tax reforms, and provided financing support for innovating startups. For foreign workers on work permits, Singapore waived the monthly Foreign Worker Levy.
- In **Madagascar**, the government enacted a Social Emergency Plan to secure income for informal workers (washerwomen, sexual workers, and street workers), one of the sectors in the supply chain where workers have been most affected by the lack of social protection coverage.³⁶⁶
- According to data from the Organization for Economic Co-operation and Development (OECD), the use of job retention schemes during the last months has been unprecedented. Employment schemes have been activated in a series of countries including **Germany**, **Australia**, **Greece**, and **the Netherlands**.³⁶⁷ **Japan** provided easier access to the Employment Adjustment Subsidy mechanism while **New Zealand** introduced lump-sum subsidies for employees.³⁶⁸

361 European Stability Mechanism, *ESM Pandemic Crisis Support*, <https://www.esm.europa.eu/content/europe-response-corona-crisis> (last visited Jun. 30, 2021).

362 Fernanda G. Nicola, *Exporting the Italian Model to fight COVID-19*, *The Regulatory Review* (Apr. 23, 2020), <https://www.theregreview.org/2020/04/23/nicola-exporting-italian-model-fight-covid-19/> (last visited Jun. 30, 2021).

363 European Union Agency for Fundamental Rights, *Coronavirus Pandemic in the EU-Fundamental Rights Implications*, Bulletin #1, at 21 (2020), https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin_en.pdf.

364 Federal Emergency Management Agency, *COVID 19 Best Practice Information* (2020), https://www.fema.gov/sites/default/files/2020-07/fema_covid_bp_economic-recovery.pdf.

365 Contribution from Singapore Ministry of Law to author (2020) (on file with the Global Forum on Law, Justice and Development).

366 United Nations Human Rights Office of the High Commissioner, *COVID-19 and Women’s Human Rights Guidance*, at 5 (2020), https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf (last visited Jun. 30, 2021).

367 Organisation for Economic Co-operation and Development, *OECD Policy Responses to Coronavirus, Job Retention Schemes during the COVID-19 lockdown and beyond* (Oct. 12, 2020), <https://www.oecd.org/coronavirus/policy-responses/job-retention-schemes-during-the-covid-19-lockdown-and-beyond-0853ba1d/> (last visited Jun. 30, 2021).

368 *Id.*

Recommendations

- **Invest in government policies and practices with a citizen-centric approach.** Taking into account that social protection lies in the heart of every immediate preparedness and responsiveness plan against public health crises, states should form their social security architecture with diverse floors to ensure all strata of society is covered.³⁶⁹
- **Provide relief programs for citizens to cover their necessities** (i.e. food items, meals, or cash transfers for food).
- **Make COVID-19 testing, treatment, and vaccines affordable** based on the principles of non-discrimination, social justice, and solidarity.
- **Suspend housing evictions, reduce rent payments, and provide emergency shelters for homeless people** (examples include **El Salvador, France, Spain**).³⁷⁰
- **Provide robust social protection** in conformity with ILO's Social Security standards, by adopting measures to support employees in all forms of employment, including, but not limited to, income support, short-time work benefits/partial unemployment benefits, facilitation of job search, training allowances, and skills development.³⁷¹
- **Provide paid sick leave and augment sickness benefit coverage to include workers in non-standard employment, including cleaners, and transport, delivery, and domestic workers.**
- **Forge stronger partnerships between governments and the private sector.**³⁷² A series of regulations on bankruptcy, insolvency, credit payment moratoria, and tax collection have been enacted and further measures should be instituted to ascertain the private sector (especially small and medium-sized companies) receives adequate financial support.
- **Provide emergency responses to countries that are severely affected by the crisis.** This process needs safeguards of transparency and accountability. Along these lines, the **International Monetary Fund** has made \$50 billion available for low income and emerging market countries,³⁷³ while the **World Health Organization**, the **Organization of Petroleum Exporting Countries Fund for International Development**, and the **United Nations Development Program** have also provided significant assistance.³⁷⁴ The **World Bank Group**

369 International Labour Organization, *Social Protection Spotlight – Social protection responses to the COVID-19 crisis: Country responses and policy considerations* (Apr. 23, 2020), <https://www.social-protection.org/gimi/RessourcePDF.action?id=56044> (last visited Jun. 30, 2021). In the cases of epidemic outbreaks such as SARS, MERS and Ebola, the lack of social protection measures aggravated poverty, unemployment and informality.

370 Organisation for Economic Co-operation and Development, *OECD Policy Responses to Coronavirus (COVID-19), Housing amid Covid-19: Policy responses and challenges* (Jul. 22, 2020), <https://www.oecd.org/coronavirus/policy-responses/housing-amid-covid-19-policy-responses-and-challenges-cfdc08a8/> (last visited Jun. 30, 2021).

371 International Labour Organization, *International Labour Standards on Social Security*, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm> (last visited Jun. 30, 2021).

372 See the initiatives taken by giant consumer companies such as H&M and Unilever at United Nations Human Rights Office of the High Commissioner, *COVID-19 and its impact on businesses and workers, International Organisation of Employers Digital Dialogue, Statement by Michelle Bachelet, UN High Commissioner for Human Rights*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25843&LangID=E> (last visited Jun. 30, 2021).

373 Juan Pablo Bohoslavsky, United Nations Human Rights Special Procedures, *COVID-19: Urgent appeal for a human rights response to the economic recession*, at 12 (2020), https://www.ohchr.org/Documents/Issues/Development/IEDebt/20200414_IEDebt_urgent_appeal_COVID19_EN.pdf.

374 United Nations Economic and Social Council, *Funding Mechanisms for COVID-19 Response* (2020), <https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-05/Mapping%20of%20COVID-19%20Response.pdf> (last visited Jun. 30, 2021).

has taken an active involvement in the mitigation of the COVID-19 global crisis,³⁷⁵ such as by financing of up to \$160 billion for 15 months towards health, economic, and social support, as well as financing emergency support operations such as the Pandemic Response Effectiveness Project in Pakistan and the Emergency COVID-19 Project in Tajikistan.³⁷⁶ The World Bank Group also provided fast-financing of up to \$8 billion by the International Finance Corporation to support the private sector to operate and preserve jobs.³⁷⁷

Financial and Non-Financial Crimes

COVID-19 has exposed cracks in systems designed to protect communities from financial and non-financial crimes. As discussed earlier, the pandemic poses not only threats to global health and safety, but also to the economy and institutions. Cybercrime and fraud activities are only the tip of the iceberg, which suggests a fundamental need for greater vigilance.

Synergies between SDG 16 and other SDGs

Financial and non-financial crimes affect development of any state or institution. Reducing crime is one of the key elements of people's well-being and is essential for sustainable development.³⁷⁸ Crime and violence undermine growth and impede social development, while money laundering, corruption, terrorism, organized crime, and other illicit acts hinder economic growth.

Target 16.4 explicitly indicates that to fulfill SDG 16 and other SDGs, states and institutions should reduce illicit financial flows, strengthen the recovery and return of stolen assets, and combat all forms of organized crime.³⁷⁹ Target 16.5 states the importance of substantially reducing corruption and bribery in all their forms. Anti-corruption measures are even more important in case of emergencies, so that populations can feel safe and trust their governments. In addressing challenges posed by COVID-19, citizens are more likely to follow and cooperate with governments to combat COVID-19 if institutions are transparent and accessible. As such, financial institutions should strive to be more accountable and transparent.

Bringing financial investigations and asset recovery opportunities into areas such as environmental crime or human trafficking could contribute not only to the immediate recovery of needed assets, but also to the construction of stronger institutional foundations to achieve the SDGs.³⁸⁰ This will allow the public to see the value of fighting financial and non-financial crimes and will likely make them eager to participate in these efforts.³⁸¹

375 Contribution from Elizabeth Hassan & Riya Rathi to author (2020) (on file with the Global Forum on Law, Justice and Development).

376 World Bank, *The World Bank in Social Protection: COVID-19 (coronavirus) Response*, <https://www.worldbank.org/en/topic/socialprotection/coronavirus> (last visited Jun. 30, 2021).

377 World Bank, *How the World Bank Group is helping countries with COVID-19 (coronavirus)* (Jul. 1, 2021), <https://www.worldbank.org/en/news/factsheet/2020/02/11/how-the-world-bank-group-is-helping-countries-with-covid-19-coronavirus> (last visited Jun. 30, 2021).

378 United Nations Office on Drugs and Crime, UNODC and the Sustainable Development Goals, at 2, https://www.unodc.org/documents/SDGs/UNODC-SDG_brochure_LORES.pdf.

379 *Id.*; United Nations Sustainable Development Goals, Goal 16: *Promote just, peaceful and inclusive societies*, <https://www.un.org/sustainabledevelopment/peace-justice/> (last visited Jun. 30, 2021).

380 Contribution from Basel Institute on Governance to author, at 5 (2020) (on file with the Global Forum on Law, Justice and Development).

381 *Id.*

Types of crimes that may occur during emergency situations

Financial and non-financial crimes tend to rise during public emergencies and civil unrest. For example, after Hurricane Katrina had passed through the United States, criminals created fraudulent schemes to achieve financial gains through exploitation of the hurricanes' effects on the Gulf Coast region.³⁸² Principal types of fraud included government-contract and procurement fraud, public corruption, identity theft, fraudulent charities, and government and private-sector benefit fraud.³⁸³ During other natural disaster relief efforts, there have been instances of price inflation, embezzlement, kickbacks, as well as misappropriation of loans and other aid.³⁸⁴

As natural disasters often lead to a massive influx of money and supplies, extreme circumstances could make compromised institutions even more vulnerable.³⁸⁵ Criminals see crises as major diversions and believe that their crimes have an increased likelihood to go unnoticed.³⁸⁶ Further, needs assessment that are rushed under time-pressure can result in poor targeting of aid repartition and the circumvention of standard procurement procedures, creating opportunities for exploitation.³⁸⁷ Transfer of aid during emergencies can result in a power imbalance, leading to low levels of transparency and accountability, which increases the chances of corruption.³⁸⁸ Complexity in the assistance process, lack of coordination, poor management, and poor planning can also increase corruption, fraud, and abuse.³⁸⁹

Just like other public emergencies, the COVID-19 crisis too has created new opportunities for criminals and terrorists to engage in fraud, cyberattacks, and many other criminal activities. Financial and non-financial crimes during this pandemic have been sparked by the advent of remote working arrangements, increased online banking and financial service activities, as well as governmental and non-governmental efforts to distribute critical medical supplies and financial assistance.³⁹⁰ COVID-19 has increased the global demand for supplies, particularly medical supplies like personal protective equipment, masks, ventilators, and medicine. Criminals have taken advantage of these vulnerabilities at the detriment of states and institutions.

Private sector entities, NGOs, and international organizations have joined states in implementing programs, providing specialized knowledge, and publishing guidance and guidelines to combat financial and non-financial crimes. Such major actors in this fight include the Financial Industry Regulatory Authority, Inc., the European Banking Authority, European Securities and Markets Authority, French Prudential Supervision and Resolution Authority, United Nations Interregional

382 Contribution from UNICRI to author, at 4 (2020) (on file with the Global Forum on Law, Justice and Development).

383 *Id.*

384 Contribution from Basel Institute on Governance to author, at 2 (2020) (on file with the Global Forum on Law, Justice and Development).

385 Gretta Fenner, *Corruption in natural disaster situations – can our experiences help prevent corruption related to covid-19?*, Basel Institute on Governance (Apr. 23, 2020), <https://baselgovernance.org/blog/corruption-natural-disaster-situations-can-our-experiences-help-prevent-corruption-related>; Erica Harper & Mirella Mahlstein, *Chapter 5: Curbing the risks of and Opportunities for Corruption in Natural Disaster Situations*, in *International Law and Standards Applicable in Natural Disaster Situations* 241-254 (2009), <https://baselgovernance.org/sites/default/files/2019-01/Corruption%20in%20natural%20disaster%20situations.pdf>.

386 *Id.*

387 *Id.*

388 *Id.*

389 *Id.*

390 Jeanine McGuinness et al., *COVID-19 Creates Increased Risk of Financial Crimes and AML Exposure; FATF and FinCEN Provide Guidance* (May 28, 2020), <https://www.jdsupra.com/legalnews/covid-19-creates-increased-risk-of-21057/> (last visited Jun. 30, 2021); Financial Action Task Force, *COVID-19-related Money Laundering and Terrorist: Risks and Policy Responses* (2020), <https://www.fatf-gafi.org/media/fatf/documents/COVID-19-AML-CFT.pdf>.

Crime and Justice Research Institute, United Nations Office on Drugs and Crime, the World Bank, and the International Monetary Fund.³⁹¹

Typologies of crimes

- **Fraud Schemes:** There have been increasing reports of unfair, misleading and fraudulent commercial practices online, which include financial scams, false claims of health treatment or prevention, price gouging of essential goods, and the promotion of unsafe or counterfeit products. These schemes especially have targeted people who are more financially or psychologically vulnerable, such as the elderly or low-income consumers.³⁹²
 - **Impersonation of officials:** Criminals may contact individuals, identifying themselves as officials, with the intention of obtaining their personal information or stealing money. This type of crime can increase in crises, as governments offer social benefit programs (food vouchers, unemployment benefits, tax credits, pensions, etc.) to individuals and businesses.³⁹³
 - **Counterfeiting:** Malfeasants may offer to furnish fake supplies and goods and claim to be employees of businesses, charities, and international organizations.³⁹⁴
 - **Fundraising:** Offenders posing as international organizations or charities may circulate emails or approach individuals via phone requesting credit card information or donations for emergency-related fundraising campaigns.³⁹⁵
 - **Investment:** Criminals may falsely promote that certain products or services of publicly traded companies can help deter the current crisis and ask for personal payment information.³⁹⁶
- **Cybercrimes, such as email and SMS phishing, social engineering, business email compromise, and ransomware attacks:** Malefactors may initiate spam campaigns via emails or links that could launch malicious websites or attachments with the intention of

391 Nicolle Kost De Sèvres et al., *Financial Crimes Compliance and Risk Management for Financial Institutions and Other Market Participants Amid the COVID-19 Outbreak*, Mayer Brown (Apr. 2, 2020), <https://www.mayerbrown.com/en/perspectives-events/publications/2020/04/financial-crime-compliance-and-risk-management-for-financial-institutions-and-other-market-participants-amid-the-covid19-outbreak> (last visited Jun. 30, 2021).

392 Organisation for Economic Co-operation and Development, *OECD Policy Responses to Coronavirus (COVID-19), Protecting online consumers during the COVID-19 crisis* (Apr. 28, 2020), <https://www.oecd.org/coronavirus/policy-responses/protecting-online-consumers-during-the-covid-19-crisis-2ce7353c/> (last visited Jun. 30, 2021).

393 Centers for Disease Control and Prevention, *COVID-19-Related Phone Scams and Phishing Attacks* (Apr. 3, 2020), <https://www.cdc.gov/media/phishing.html> (last visited Jun. 30, 2021); Organisation for Economic Co-operation and Development, *OECD Policy Responses to Coronavirus (COVID-19), Safeguarding COVID-19 social benefit programmes from fraud and error* (Jun. 15, 2020), <https://www.oecd.org/coronavirus/policy-responses/safeguarding-covid-19-social-benefit-programmes-from-fraud-and-error-4e21c80e/> (last visited Jun. 30, 2021).

394 They may request credit card information for payment, but end up either never delivering the goods, directing individuals to collect the goods from various locations and then inform them that no arrangements were ever made, or delivering counterfeit or ineffective supplies. Financial Action Task Force, *COVID-19-related Money Laundering and Terrorist: Risks and Policy Responses*, at 6 (2020), <https://www.fatf-gafi.org/media/fatf/documents/COVID-19-AML-CFT.pdf> (last visited Jun. 30, 2021); US Food and Drug Administration, *There Are No FDA-Approved Drugs or Vaccines To Treat COVID-19* (Mar. 1, 2021), <http://www.fda.gov/consumers/consumer-updates/beware-fraudulent-coronavirus-tests-vaccines-and-treatments> (last visited Jun. 30, 2021); Cellule de Renseignement Financier Luxembourg, *Typologies COVID-19* (2020), <https://justice.public.lu/dam-assets/fr/organisation-justice/crf/2020-04-02-COVID19-EN.pdf>; Interpol, *Global Operation Sees a Rise in Fake Medical Products Related to COVID-19* (Mar. 19, 2020), <https://www.interpol.int/en/News-and-Events/News/2020/Global-operation-sees-a-rise-in-fake-medical-products-related-to-COVID-19> (last visited Jun. 30, 2021); Europol, *COVID-19: Fraud*, <http://www.europol.europa.eu/covid-19/covid-19-fraud> (last visited Jun. 30, 2021).

395 Financial Action Task Force, *COVID-19-related Money Laundering and Terrorist: Risks and Policy Responses*, at 6-7 (2020), <https://www.fatf-gafi.org/media/fatf/documents/COVID-19-AML-CFT.pdf> (last visited Jun. 30, 2021).

396 *Id.*; Europol, *COVID-19: Fraud*, <http://www.europol.europa.eu/covid-19/covid-19-fraud> (last visited Jun. 30, 2021).

obtaining personal payment information.³⁹⁷ Cybercriminals may also use malicious websites or applications to gain access to and lock victims' devices until a payment is made.³⁹⁸

- **Organized crime:** Terrorists or criminal groups may infiltrate the legal economy and take control over certain territories.³⁹⁹
- **Public and private corruption:** Forms of corruption include tax evasion and waste, loss or misuse of public funds and resources, assistance, and/or aid, public procurement manipulation, nepotism, trading of influence, conflict of interest, and bribes paid by the private sector to public officials seeking to obtain or retain business.

New and emerging forms of crime

The aforementioned crimes have all worsened during the COVID-19 pandemic. Many of the identified current fraud schemes are based on known fraud tactics, but prey on consumer fear surrounding COVID-19. We have seen instances where criminals had impersonated hospital officials claiming a relative of the individual was sick and required payment for treatment. In other instances, offenders have impersonated government officials asking for personal banking information for tax relief purposes.⁴⁰⁰ Additionally, some criminals have falsely claimed to be employees of businesses, charities, and international organizations offering personal protective equipment, masks, and testing kits, thereby requesting payments. While others have offered and delivered counterfeit or ineffective products and goods. An increase in false and misleading COVID-19 treatment claims and vendors selling illegal products marketed as 'miracle' cures has also been a common criminal activity.⁴⁰¹

Taking advantage of the scarcity of essential goods, organized criminal groups have infiltrated or taken over medical and food distribution chains by initiating the production and distribution of articles or by simply advertising or counterfeiting medicines and supplies. These groups have been known to approach entrepreneurs facing financial difficulties in order to purchase their businesses or offer them loans. In such schemes, loan repayments are likely to be eventually

397 Cybercriminals can exploit weaknesses of business or government networks to gain access to employee or consumer contact and transaction information. For example, a bad actor can take this information to create target phishing emails and pose as the compromised business and request payment for legitimate goods but instead direct the payments to illicit accounts. See Financial Action Task Force, COVID-19-related Money Laundering and Terrorist: Risks and Policy Responses, at 7 (2020), <https://www.fatf-gafi.org/media/fatf/documents/COVID-19-AML-CFT.pdf> (last visited Jun. 30, 2021); Federal Bureau of Investigation, *FBI Anticipates Rise IN Business Email Compromise Schemes related To The COVID-19 Pandemic* (Apr. 6, 2020), <http://www.fbi.gov/news/pressrel/press-releases/fbi-anticipates-rise-in-business-email-compromise-schemes-related-to-the-covid-19-pandemic> (last visited Jun. 30, 2021).

398 Financial Action Task Force, COVID-19-related Money Laundering and Terrorist: Risks and Policy Responses, at 7 (2020), <https://www.fatf-gafi.org/media/fatf/documents/COVID-19-AML-CFT.pdf> (last visited Jun. 30, 2021).

399 This can be done by infiltrating the market's supply chain by initiating the production and distribution of these products or by building the image of a "state within the state," providing aid and support to communities and, at the same time, discouraging any form of dissent through intimidation and violence. See contribution from UNICRI to author, at 2 (2020) (on file with the Global Forum on Law, Justice and Development).

400 Financial Action Task Force, COVID-19-related Money Laundering and Terrorist: Risks and Policy Responses, at 6 (2020), <https://www.fatf-gafi.org/media/fatf/documents/COVID-19-AML-CFT.pdf> (last visited Jun. 30, 2021); Interpol, *INTERPOL Warns of Financial Fraud Linked to COVID-19* (Mar. 13, 2020), <http://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-warns-of-financial-fraud-linked-to-COVID-19> (last visited Jun. 30, 2021); US Department of the Treasury, *COVID-19 Scams*, <https://home.treasury.gov/services/report-fraud-waste-and-abuse/covid-19-scams> (last visited Jun. 30, 2021).

401 Financial Action Task Force, COVID-19-related Money Laundering and Terrorist: Risks and Policy Responses, at 6 (2020), <https://www.fatf-gafi.org/media/fatf/documents/COVID-19-AML-CFT.pdf> (last visited Jun. 30, 2021); US Immigration and Customs Enforcement, *ICE HIS arrests Georgia resident for selling illegal pesticide, claiming it protects against coronavirus* (Apr. 14, 2020), <https://www.ice.gov/news/releases/ice-hsi-arrests-georgia-resident-selling-illegal-pesticide-claiming-it-protects> (last visited Jun. 30, 2021).

impossible and entrepreneurs are then forced to relinquish control over their company to a crime group.⁴⁰²

These criminal groups have also infiltrated sectors that have strategic potentials after the pandemic.⁴⁰³ Owning or controlling legitimate stakeholders of the production and distribution chains in these sectors will give them the possibility to launder money and maximize profits by inserting into the legitimate distribution substandard products and raw materials, creating further risks for the health and safety of citizens and generating new resources to expand other illicit traffics.⁴⁰⁴ There have been instances where criminal groups have stepped in to provide aid packages such as groceries and cleaning products to support local populations in an effort to replace the state and take control of a territory.⁴⁰⁵

Finally, cyberattacks have become increasingly common, given the opportunities created by the large number of jobs and services now being performed and offered online due to lockdowns. Criminals are using COVID-19-related information to attract people and businesses into opening emails, websites, and SMS messages. Cybercriminals have even posed as World Health Organization officials and sent email and mobile messages to lure individuals into clicking malicious links or opening attachments with the intention of obtaining individuals' usernames and passwords.⁴⁰⁶ Hospitals have been targets of ransomware attacks and the circulation of fake medical supplies and medicines by criminal groups; thereby having significant negative implications on the healthcare sector and lessening trust in government institutions.⁴⁰⁷

Society's response and participation

A rapid influx of donor funds and assistance has triggered stronger calls for accountability and transparency.⁴⁰⁸ Citizens have been putting extra pressure on governments so that funds and aid are delivered correctly as well as in a timely manner. At the same time, the pressure on governments to demonstrate their commitment against corruption and to enhance their investments in public services is also increasing. Governments need timely and transparent reporting, ex-post audits and accountability procedures, and close cooperation with civil society and the private sector.⁴⁰⁹ Citizens should be able to trust their governments and institutions, as trust is crucial for cooperation between governments and citizens when dealing with crises like COVID-19. Cooperation amongst states, civil society organizations, the private sector, and international organizations creates relationships of checks and balances necessary for proper functioning of legitimate systems.

402 Contribution from UNICRI to author, at 2 (2020) (on file with the Global Forum on Law, Justice and Development).

403 *Id.*

404 *Id.*

405 *Id.*

406 Financial Action Task Force, COVID-19-related Money Laundering and Terrorist: Risks and Policy Responses, at 7 (2020), <https://www.fatf-gafi.org/media/fatf/documents/COVID-19-AML-CFT.pdf> (last visited Jun. 30, 2021)

407 Contribution from UNICRI to author, at 1 (2020) (on file with the Global Forum on Law, Justice and Development).

408 Contribution from Basel Institute on Governance to author, at 4 (2020) (on file with the Global Forum on Law, Justice and Development).

409 Vitor Gaspar et al., *Corruption and COVID-19*, IMFBlog (Jul. 28, 2020), <https://blogs.imf.org/2020/07/28/corruption-and-covid-19/> (last visited Jun. 30, 2021).

Best practices

- In **France**, the Anti-Money Laundering Working Group of the French National Bar Council continues to update its practical guide on combating money laundering and its work on creating an e-learning system.⁴¹⁰
- In **Kenya**, USD 19 million in recovered stolen assets has been allocated to the fight against the virus.⁴¹¹
- **Malawi** has fostered citizenship engagement and improved trust by reviewing its National Anti-Corruption Strategy with the participation of anti-corruption actors and citizens in the design of emergency relief mechanisms and monitoring of high-risk processes.⁴¹²
- The **Financial Task Action Force** (FATF) has shared guidelines indicating measures that could be taken to combat illicit financing:
 - Governments should work with non-profit organizations to ensure that aid is arriving to its intended recipients through legitimate and transparent channels and without disruption.
 - Financial intelligence units and law enforcement agencies should share information with the private sector to address key money laundering and terrorist financing risks linked to COVID-19.
 - The usage of novel financial, regulatory, and supervisory technology could provide opportunities to mitigate risks associated with transactions.⁴¹³
- **UNICRI and INTERPOL's** Innovation Centre in Singapore have recently released a new joint report entitled "Towards Responsible AI Innovation." While **UNICRI and the Organization of American States** have recently organized webinars on tourism security in Central America and the Caribbean.⁴¹⁴

Recommendations

States should:

- **Invest recovered assets to fund healthcare and the general COVID-19 response** as a way for governments to demonstrate their commitment to tackle financial crime and support sustainable development.⁴¹⁵
- **Strengthen their asset recovery system** to aid asset recovery efforts.⁴¹⁶

410 Contribution from French National Bar Council to author, at 11 (2020) (on file with the Global Forum on Law, Justice and Development).

411 *Id.*

412 Contribution from Basel Institute on Governance to author, at 4-5 (2020) (on file with the Global Forum on Law, Justice and Development).

413 Tookitaki, *Money Laundering Amid COVID-19: What Regulators Across Globe Say*, <https://www.tookitaki.ai/news-views/money-laundering-amid-covid-19-what-regulators-across-globe-say/> (last visited Jun. 30, 2021); Financial Action Task Force, *Statement by the FATF President: COVID-19 and measures to combat illicit financing* (Apr. 1, 2020), <https://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-covid-19.html> (last visited Jun. 30, 2021).

414 Contribution from UNICRI to author, at 1 (2020) (on file with the Global Forum on Law, Justice and Development).

415 *Id.*

416 *Id.*, at 5.

- **Enhance reliance on e-government** that has the potential to reduce the risk of corruption, particularly around public procurement.⁴¹⁷
- **Simplify the rules of the public procurement procedures** as a recipe against bribery and other forms of corruption.
- **Involve anti-corruption actors and citizens** in designing emergency relief mechanisms and monitoring high-risk processes.⁴¹⁸
- **Introduce internet access in government authorities** charged with tackling financial crimes.⁴¹⁹
- **Prioritize investments in technology** to digitalize case management systems and upgrade IT equipment. Professional email services with end-to-end encryption, for instance, should be used to avoid insecure transmission of sensitive case files.⁴²⁰
- **Ensure that personnel working remotely have the resources, support, and training** needed to adequately perform their duties.⁴²¹
- **Educate and alert citizens and businesses of prevailing scams.**
- **Promote transparency and accountability of government institutions and disclose information on emergency spending to mitigate risks of corruption.**
- **Provide and enhance financial investigations training** focusing on mobile money and the use of cryptocurrencies for money laundering.⁴²²
- **Recognize that anti-corruption solutions must be effective over the long-run,** not just for immediate challenges posed by COVID-19.
- **Recognize solutions to combat financial and non-financial crimes** and prepare institutions to address them in the short-, medium-, and long-term.⁴²³
- **Continue striving for flexibility** amid uncertainty created by the current pandemic, as new threats may arise that necessitate adequate and rapid adaption.
- **Fully avail of specialized information and best practices** provided by international organizations, civil society organizations, and the private sector.
- **Reduce the multi-jurisdictional issues** collaborating with the global enforcement of corruption.⁴²⁴
- **Improve the effectiveness of prosecution** of offenders (individuals, companies and government officials).

417 *Id.*

418 *Id.*, at 4.

419 *Id.*, at 2.

420 *Id.*, at 2.

421 *Id.*

422 *Id.*

423 Contribution from Basel Institute on Governance to author, at 1 (2020) (on file with the Global Forum on Law, Justice and Development).

424 A few examples of these issues are collection of data and obtaining evidence abroad, mutual legal assistance requests, extradition, statute of limitations, blocking statutes and data privacy, among others.

- **Implement the corporate criminal liability** and policies of identifying the ultimate beneficial owners of business organizations.

Companies and financial institutions should

- **Comply with anti-bribery laws** and anti-money laundering standards.⁴²⁵
- **Train personnel to identify potential criminal activities and address new threats.**
- **Review current customer identification and transaction monitoring controls** and address any deficiencies or gaps.⁴²⁶
- **Develop, promote, and implement anti-corruption and compliance programs** to encourage ethical behaviors.⁴²⁷

Technology, Surveillance, Security, and Privacy

Widespread utilization of advanced technological means has been central to multilateral efforts conducted by states in their worldwide combat against the COVID-19 pandemic. Various aspects of everyday life for millions of people have been affected by the virus, and many services that used to operate in the traditional way have now been digitized. These include the use of video conference systems incorporated in the work environment to allow for telework, the adoption of telemedicine to ensure healthcare is affordable and accessible to those living even in remote areas, distance learning platforms that facilitate education, and online court proceedings for the administration of justice, and others.

The unprecedented situation created by COVID-19 has raised serious concerns in the legal community and amongst policymakers on the possible effects of technology and its consequent implications on the rule of law and individual rights. The law sets the framework in which technology may advance with due regard to the interests and rights of the people.

During this period, individuals have globally been urged to enforce social distancing measures to protect themselves and others from this communicable disease. Technology has assisted in that effort.

SDG16 and Technology

The digital gap

The first critical issue arising from the pandemic to be presented from a legal standpoint is the digital divide that has widened⁴²⁸ amongst states, as well as equity gaps within societies. The International Telecommunications Union estimated that at the end of 2019, almost 3.6 billion

425 Contribution from Basel Institute on Governance to author, at 3 (2020) (on file with the Global Forum on Law, Justice and Development).

426 *Id.*

427 See generally United Nations Office on Drugs and Crime, *Anti-Corruption Ethics and Compliance Handbook for Business* (2013), https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf (last visited Jun. 30, 2021).

428 United Nations, *Digital Divide 'a Matter of Life and Death' Amid COVID-19 Crisis, Secretary General Warns Virtual Meeting, Stressing Universal Connectivity Key for Health Development* (Jun. 11, 2020), <https://www.un.org/press/en/2020/sgsm20118.doc.htm> (last visited Jun. 30, 2021).

people were offline.⁴²⁹ Questions around access to technology are being addressed by states so that more segments of society may benefit from the advantages of technology. These include issues regarding the availability of I infrastructure, the possession of sufficient financial resources by certain constituents to obtain equipment, and computer literacy. As elaborated previously, vulnerable groups are particularly affected by this technological inequality and limited accessibility. Therefore, special protection measures need to be put into place to enhance social inclusion, development and digital rights for the underserved.

Public health surveillance

Public health surveillance poses challenges, as it intersects with the rule of law and relevant individual rights principles. These challenges should be examined in light of SDG16 Target 10, which promotes the protection of fundamental freedoms following national legislation and international agreements and asks for equitable solutions and legal safeguards.

States around the globe have utilized both manual processes, such as interviews conducted by healthcare officials, and digital technologies to slow the spread of coronavirus. Such digital means include artificial intelligence (AI) utilized for facial recognition, geographic mapping, contact tracing, and tracking applications during the quarantine periods. To start with, contact tracing as a key strategy involves tracking down individuals who might have contacted an infected person and the practice of monitoring them to protect citizens. For contact tracing, mobile apps are used to detect contacts, collect information, provide notifications, and advise on precautions to be taken.⁴³⁰ Although the purpose of contact tracing is to curb further transmission, it also leads to the processing of different types of personal data, such as sensitive personal health-related data, or large-scale personal data collected through mobile or computer devices and processed by government officials or employers.

Concerns arise regarding the risk of abuse or manipulation of these personal data by governmental authorities and/or third parties. First, devices that collect information based on the location of individuals pose a threat to unwarranted surveillance, since location data is easily traceable and identifiable.⁴³¹ Second, personally identifiable information (PII) and sensitive PII (SPII) could be potentially accessed by third parties. Third, there are concerns about the inaccuracy and practical inefficacy of apps collecting data in light of asymptomatic patients. What is particularly at stake is an emerging human rights challenge: individuals' right to privacy is jeopardized if the use of surveillance technology to gather information for epidemiological goals opens doors for the exploitation of personal data.

The right to privacy

The right to privacy is a fundamental right, and is closely related to the social value of data, including the value of disaggregated SDG indicators with regard to the implementation of the 2030 Agenda.⁴³² To effectively prevent and control COVID-19, the government has a legitimate interest in collecting, filtering, and analyzing personal data on a large scale. In particular, the

429 ITU, *New ITU data reveal growing Internet uptake but a widening digital gender divide*, <https://www.itu.int/en/mediacentre/Pages/2019-PR19.aspx>.

430 Contribution from David Satola to author (2020) (on file with the Global Forum on Law, Justice and Development).

431 Natalie Ram & David Gray, *Mass surveillance in the age of COVID-19*, 7 *Journal of Law and the Biosciences* 17 (2020).

432 United Nations Development Group, *Data Privacy, Ethics and Protection Guidance Note On Big Data For Achievement Of The 2030 Agenda*, at 2 (2017), https://unsdg.un.org/sites/default/files/UNDG_BigData_final_web.pdf (last visited Jun. 30, 2021).

identification, tracing, and health information of infected persons, suspected infectious persons, and close contacts become the prerequisites for screening, isolating, and eliminating infection sources. The government then may disclose relevant personal data and information to the public about the latest news on the pandemic, to assist the prevention of further spread of the infection. However, this may involve infringements of the right to privacy, which could not only affect the parties' private life and lead to potential discrimination, but it may also lay hidden dangers for future illegal use of personal data and information. Thus, privacy concerns raise the need to balance both the public interest in accessing information and personal interest in privacy.

The protection of personal data is a crucial element of the rule of law. Personal data relates to privacy and dignity and has the dual nature of personal right and property right. It must be underscored that the government's collection and release of personal information necessary to protect the public during a pandemic must be limited to the extent that it is necessary, appropriate, and proportionate to the needs.⁴³³ Moreover, the collection and use of sensitive personal data and information must be based on the apparent consent of the individual, who must be provided with full knowledge on the procedures and risks related to processing and disclosing such data.⁴³⁴ In conclusion, an adequate balance between public access to information and public privacy protection should be maintained and ensured.

The right to privacy has been expressed in various legal instruments: Article 12 of the United Nations Declaration on Human Rights states that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation...” everyone has the right to the protection of the law against such interference or attacks.” It is further stipulated in Article 17 of the International Covenant on Civil and Political Rights (as elaborated by the Human Rights Committee General Comment No. 16.) that:

- “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.”

Article 45 (paragraph 1) of the International Health Regulations supports privacy protection and clarifies that information collected or received by a state that refers to an identified or identifiable person shall be kept confidential and processed anonymously as required by national law.⁴³⁵ Article 45 (paragraph 2) further provides the principles for states to follow when there is a need to disclose personal data and information:

- “2. Notwithstanding paragraph 1, States Parties may disclose and process personal data where essential for the purposes of assessing and managing a public health risk, but State Parties, in accordance with national law, and WHO must ensure that the personal data is:
 - (a) Processed fairly and lawfully, and is not further processed in a way incompatible with that purpose;
 - (b) Adequate, relevant and not excessive in relation to that purpose;
 - (c) Accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that inaccurate or incomplete data is erased or rectified; and

433 European Data Protection Board, Statement on the processing of personal data in the context of the COVID-19 outbreak (2020), https://edpb.europa.eu/system/files/2021-03/edpb_statement_art_23gdpr_20200602_en.pdf.

434 Contribution from French National Bar Council to author (2020) (on file with the Global Forum on Law, Justice and Development).

435 World Health Organization, International Health Regulations (2005), <https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf;jsessionid=D626E71A2CA9FE925E3F2E0035FBEECD?sequence=1>.

(d) Not kept longer than necessary”.⁴³⁶

The United Nations General Assembly passed Resolution 68/167 in 2013 on the right to privacy in the digital age. Additionally, several regional instruments for human rights protection entail a provision on the right to privacy. Examples include Article 8 of the European Union’s Charter on Fundamental Rights,⁴³⁷ Article 8 of the European Convention on Human Rights,⁴³⁸ which guarantees the right to respect private and family life, home and correspondence, the General Data Protection Regulation of the EU, Article 11 of the American Convention on Human Rights,⁴³⁹ and the Health Insurance Portability and Accountability Act (HIPAA) in the United States. Within the Council of Europe, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Protocols (Convention 108+) was adopted providing for high standards of protection of personal data from the use of new information and communication technologies.⁴⁴⁰ Convention 108 requires that: a) data subjects must be aware of the processing of their data and provide their informed consent, b) an impact assessment is a prerequisite to the processing, and c) processing of data should comply with the notions of necessity and proportionality under a legitimate purpose set on a legal basis.⁴⁴¹ The new Article 11 of the Convention provides for exceptions that “respect the essence of the fundamental rights and freedoms and constitute a necessary and proportionate measure in a democratic society.”⁴⁴²

The right to privacy is further recognized in the constitutions of over 150 states and in various national legislations.

Best practices

Two main versions of contact-tracing applications exist, both using Bluetooth signals to send alerts when someone is in the vicinity of an infected person.⁴⁴³ The **United Kingdom** adopted a centralized approach, where data is collected and uploaded to a remote central server that alerts other app users who had significant contact with the infected person. This is monitored by the National Health Service (NHS). In the **United States**, Google and Apple chose a decentralized model with data remaining privately stored on users’ phones. This version comes with safeguards and is based on transparency and an opt-in system.

⁴³⁶ *Id.*

⁴³⁷ “1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority.”

⁴³⁸ “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

⁴³⁹ “1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.”

⁴⁴⁰ Council of Europe, *Modernisation of Convention 108*, <https://www.coe.int/en/web/data-protection/convention108/modernised> (last visited Jun. 30, 2021).

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ Christina Criddle & Leo Kelion, *Coronavirus contact-tracing: World split between two types of app*, BBC News (May 7, 2020), <https://www.bbc.com/news/technology-52355028> (last visited Jun. 30, 2021).

- In **Europe**, a Pan-European Privacy-Preserving Proximity Tracing (PEPP-PT)⁴⁴⁴ community has been developed. PEPP-PT is a multi-stakeholder consortium that produces contact tracing apps that comply with European privacy and data protection laws and operate on open protocols and mechanisms for personal data to remain on an individual's phone. In the EU, it has been proposed that data be retained only for 14 days⁴⁴⁵ and that non-essential digital measures be lifted once the pandemic ends. Furthermore, the European Parliament issued an EU toolbox⁴⁴⁶ based on the following guidelines: a) users are in full control of their data and voluntarily install the apps, b) only the relevant data are received, c) data storage should be limited to the time necessary, d) data should be secure and stored on an individual's device under encryption, e) apps are to be used in all EU countries to ensure interoperability, and f) national data protection authorities should be involved to review and scrutinize the relevant processes.
- In **Singapore**, technology has been used as complementary to governmental measures for the dissemination of information, preparedness, and for enforcing individual responsibility to keep the community safe.⁴⁴⁷ The following digital mechanisms have been introduced: a Gov.sg Whatsapp Service (to inform the public), a Link Shortener to prevent phishing, COVID-19 chatbots used by businesses and government agencies, useful websites such as the COVID-19 Situation Report dashboard, FluGoWhere, MaskGoWhere, and COVID GoBusiness Portal. Singapore deploys temperature-screening in public areas, such as SPOTON or VigilantGantry (VG) that are examples of AI thermal scanners. In the field of contact-tracing, applications based on open-source technology have been developed, such as TraceTogether, where data is stored for 21 days and then deleted. For strategic locations (supermarkets, businesses, etc.), SafeEntry traces high flows of human traffic using a central server available only to government authorities.
- **South Korea** is another successful example of the use of technology while respecting data privacy, as any collected data is considered legally protected personal information under the provisions of Korea's Personal Information Protection Act.⁴⁴⁸ The release of such data is allowed only under exceptional circumstances in light of public safety concerns (such as public health emergencies). South Korea has been proactive to reduce unnecessary data breaches by limiting the types of information requested as well as authorized personnel to access them.
- Other countries such as **China, Sweden, Taiwan**, and the **United States** use data dashboards, migration maps, machine learning, and real-time data from smartphones and wearable technology for contact tracing purposes. Iceland has made use of digital thermometers and thermal cameras to screen for infection along with thorough contact tracing of infectious individuals.⁴⁴⁹ **Australia** has relied on digital recorders, quick response codes, and global

444 Douglas Busvine, *European experts ready smartphone technology to help stop coronavirus*, Reuters (Apr. 1, 2020), <https://www.reuters.com/article/us-health-coronavirus-europe-tech-idUSKBN21J4HI> (last visited Jun. 30, 2021).

445 European External Action Service, Privacy Statement-Data Protection Notice for the Purpose of Processing Personal Data by the EEAS Related to the Extraordinary Measures in view of the Covid-19 Pandemic (2021), https://eeas.europa.eu/sites/default/files/eeas_privacy_statement_covid_19_review202103_0.pdf.

446 European Parliament, Covid-19 tracing apps: ensuring privacy and data protection (Dec. 1, 2020), <https://www.europarl.europa.eu/news/en/headlines/society/20200429STO78174/covid-19-tracing-apps-ensuring-privacy-and-data-protection> (last visited Jun. 30, 2021).

447 Contribution from Singapore Ministry of Law to author (2020) (on file with the Global Forum on Law, Justice and Development).

448 Contribution from Lee Yong-Shik & Hye Seong Mun to author (2020) (on file with the Global Forum on Law, Justice and Development).

449 Bobbie Johnson, *Nearly 40% of Icelanders are using a covid app—and it hasn't helped much*, MIT Technology Review (May 11, 2020), <https://www.technologyreview.com/2020/05/11/1001541/iceland-rakning-c19-covid-contact-tracing/> (last visited Jun. 30, 2021).

position systems for the implementation of quarantine and self-isolation; whereas, **Canada** and **Ireland** have utilized AI for diagnostics and clinical management.⁴⁵⁰

- The **International Telecommunication Union** (ITU), an international organization with the support of Japan and Saudi Arabia, launched the Connect2Recover Initiative to reinforce infrastructure in the African continent that has gravely been hit by COVID-19 in socio-economic terms.⁴⁵¹ An initiative by the World Bank that has been particularly successful is the COVID-19 Crisis Response: Digital Development Joint Action Plan and Call for Action.⁴⁵²

Recommendations

The aforementioned examples reveal an inevitable tradeoff between people's digital rights and the management of public health emergencies, under which states operate to serve the public interest. Like other public emergencies, to the COVID-19 emergency must be officially proclaimed by law and the measures taken must be consistent with states' obligations under international law. They must also be time-limited, non-discriminatory, and non-arbitrary.⁴⁵³ In the legal analysis of the aforesaid balancing of interests, the legal standards of necessity and proportionality should be taken into account when limitations and restrictions are imposed upon human rights and freedoms.⁴⁵⁴ Therefore, the restrictions of the right to privacy under the extraordinary circumstances of the COVID-19 pandemic must be legitimate, following the principle of legality (the rule of law should prevail) and necessity, meaning that emergency measures must be capable of achieving their purpose with minimal alteration of normal rules and procedures of democratic decision-making.⁴⁵⁵

The Coalition of Cities for Digital Rights, a coalition of 42 urban centers from diverse countries that has been working for universal equal access to the Internet as well as on privacy, data protection, and security-related questions vis-à-vis the Internet, has put together a comprehensive set of guidelines.⁴⁵⁶ These guidelines that could serve practitioners and decision-makers on the use of technology as well as privacy and personal data elaborate on the following principles:

- **Purpose and Proportionality:** Derogations or exceptions to the right of privacy must be purpose-driven and strictly necessary for the crisis response or recovery at hand; therefore, the least intrusive solution should always be preferred.
- **Impermanence:** The data storage is to be limited in time and deleted when no longer needed.
- **Consent and Trust:** Processing of data is based upon voluntary use (of apps), notice, and consent without coercion or reward system. For instance, a user should be in the position to deactivate or uninstall the app from all devices and delete their user data to be protected

450 Sera Whitelaw et al., *Applications of Digital Technology in COVID-19 Pandemic Planning and Response*, 2 Viewpoint 435 (2020).

451 ITU, *Connect2 Recover Initiative*, <https://www.itu.int/en/ITU-D/Pages/connect-2-recover.aspx> (last visited Jun. 30, 2021).

452 World Bank, *The World Bank, WEF, GSMA and ITU Mobilized in the Fight Against COVID-19* (Apr. 21, 2020), <https://www.worldbank.org/en/news/statement/2020/04/21/the-world-bank-wef-gsma-and-itu-mobilized-in-the-fight-against-covid-19> (last visited Jun. 30, 2021).

453 European Law Institute, *ELI Principles for the COVID-19 Crisis*, at 2 (2020), https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_for_the_COVID-19_Crisis.pdf.

454 European Commission for Democracy Through Law (Venice Commission), *Compilation of Venice Commission Opinions and Reports on States of Emergency*, at 23 (2020), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)003-e).

455 Council of Europe, *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states*, <https://www.coe.int/en/web/congress/covid-19-toolkits>, (last visited Jun. 30, 2021).

456 Cities for Digital rights, *CC4DR Recommendations: Safeguarding Digital Rights When Using Covid-19 Related Technologies* (2020), https://www.uclg.org/sites/default/files/cc4dr_recommendations_-_covid19_technologies.pdf.

online and offline. Furthermore, app usage should not be mandatory, and the government should not penalize citizens for non-use.

- **Privacy by Design:** Users' privacy and that of all related individuals (e.g. contacts) is at the center of privacy engineering and cybersecurity. The real risks of re-identification, privacy loss, and data leaks are to be mitigated.
- **Control:** Citizens are the primary owners of the data they generate. For instance, employers should not monitor employees via intrusive measures.
- **Openness and Transparency:** States should promote open technologies, data models, formats, and code, so that the code can be audited, verified, and adopted by other cities/states and organizations for transparency.
- **Responsiveness:** Technologies should meet societal needs. A private company providing the technological platform should not exploit available technology developed for the pandemic for commercial or for-profit gains. This requires strong partnerships between governments and telecommunication companies, social media platforms, and internet service providers.
- **Participation:** Citizens and civil societies ought to participate in the decision-making process on new digital technologies through open social dialogues and public debates to enhance public trust and confidence. Elimination of asymmetrical effects should be a top priority to eradicate demographic or socioeconomic inequalities amongst marginalized groups (minorities, women and girls, children and youth, the elderly, persons with disabilities, and poor households).
- **Principle of Social Innovation:** Citizens should provide their feedback and participate in the design, development, and testing of these novel technologies to achieve social cohesion.
- **Fairness and Inclusion:** Technologies should be accessible and serve all people to assure equal treatment.

Whilst building regulatory frameworks to govern the use of digital technologies, governments are encouraged to follow the above principles and thus grant legal safeguards to their citizens. An additional important consideration is to prevent discrimination against infected people. The publication of sensitive data (such as health-related data) of specific individuals as well as its disclosure, as mentioned earlier, should be avoided. In **Cyprus**, for instance, the Data Protection Authority ruled that publishing personal data of patients by the media is illegal.⁴⁵⁷ Data protection authorities in other states may undertake a similar approach. At the same time, they may carefully assess measures undertaken by state authorities and provide oversight mechanisms.⁴⁵⁸ State authorities should endeavor to keep data confidential and anonymously processed, while national health authorities should rely on precautionary methods (pre-tests and risk management strategy) while approving apps, and be accountable for compliance with relevant personal data protection rules.

457 European Union Agency for Fundamental Rights, Coronavirus Pandemic in the EU: Fundamental rights implications, Bulletin 1, at 42 (2020), <https://fra.europa.eu/en/publication/2020/covid19-rights-impact-april-1>.

458 Inter-American Commission on Human Rights, Pandemic and Human Rights in the Americas, at 5, Resolution 1/2020 (Jun. 10, 2020).

In addition to privacy considerations, states should consider the following principles related to cybersecurity, education, and public access to information:

- With regard to **cybersecurity**, governments and corporate businesses that operate remotely or use the web extensively should expand their cybersecurity laws/regulations to provide legal solutions and be protected from malicious actors.⁴⁵⁹ In this field, potential cyber threats that should be addressed include data breaches, operation disruption, and cybercrimes.
- At the intersection of technology and **education**, states should be encouraged to continue introducing and developing national learning platforms and tools.⁴⁶⁰ The COVID-19 pandemic has demonstrated the need to expand the definition of the right to education to include connectivity entitlement and remove barriers to connectivity. In this regard, successful and safe use of technology must play the role of an equalizer in the learning process.⁴⁶¹ States should step up their efforts to provide additional educational materials, TV, and/or radio programs, and subsidize the internet for educational purposes. While doing so, states should not infringe the rights of data subjects and should avoid processing more data than necessary to ensure the legitimate purpose of educational continuity.⁴⁶²
- States should adopt regulatory frameworks to handle **disinformation/misinformation** (a.k.a. fake news) to satisfy peoples' right for accuracy, facts, and science (see next Section on Public Access to Information).

Public Access to Information

The public's right to access to information plays a critical role in the global combat against COVID-19. As UNESCO noted, "access to accurate and timely information helps people make safe choices for themselves and their families, with governments having a corresponding obligation to disseminate widely public interest information and to address disinformation."⁴⁶³

A review of national portals of the 193 United Nations member states showed that, by March 25, 2020, close to 57 percent (110 countries) had put in place some kind of mechanism to provide information on COVID-19. Approximately 43 percent (83 countries) did not provide any such information. This trend improved by April 8, 2020, when around 86 percent (167 countries) had included information and guidance on COVID-19 on their portals.⁴⁶⁴ The UN Secretary General has called on states to be open and transparent in their decision-making and to make more information accessible in response to COVID-19.⁴⁶⁵

459 INTERPOL, *Interpol report shows alarming rate of cyberattacks during COVID-19* (Aug. 4, 2020), <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-report-shows-alarming-rate-of-cyberattacks-during-COVID-19> (last visited Jun. 30, 2021).

460 UNESCO, *National Learning Platforms and Tools*, <https://en.unesco.org/covid19/educationresponse/nationalresponses> (last visited Jun. 30, 2021).

461 United Nations, *Policy Brief: Education during COVID-19 and beyond*, at 24 (2020), https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/08/sg_policy_brief_covid-19_and_education_august_2020.pdf.

462 Council of Europe, *Joint Statement of Alessandra Pierucc & Jean-Philippe Walter on the principles of data protection in these times of fight against the COVID-19 pandemic* (Mar. 30, 2020), <https://www.coe.int/en/web/data-protection/statement-by-alessandra-pierucci-and-jean-philippe-walter> (last visited Jun. 30, 2021).

463 UNESCO, *The Right to Information in Times of Crisis: Access to Information – Saving Lives, Building Trust, Bringing Hope!*, at 2 (2020), https://en.unesco.org/sites/default/files/unesco_ati_iduai2020_english_sep_24.pdf.

464 United Nations Department of Economic and Social Affairs, *UN/DESA Policy Brief #61: COVID-19: Embracing digital government during the pandemic and beyond* (Apr. 14, 2020), <https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-61-covid-19-embracing-digital-government-during-the-pandemic-and-beyond/> (last visited Jun. 30, 2021).

465 United Nations, *Human Rights and COVID-19 Response and Recovery: We Are All In This Together* (2020), https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf.

Public access to information is a fundamental component of SDG 16. SDG 16 Target 10 aims to “ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.”⁴⁶⁶ Furthermore, Targets 6 and 7 of SDG 16 are to “develop effective, accountable and transparent institutions at all levels” and “ensure responsive, inclusive, participatory, and representative decision-making at all levels.”⁴⁶⁷

Best practices indicate that the public should have access to the following information during a pandemic:

- **Basic information on the pandemic:** Basic information on the development and evolution of the pandemic should be updated daily on publicly accessible platforms and in a commonly agreed, open, and reusable format;⁴⁶⁸
- **Information on governmental measures and guidelines adopted to respond to the pandemic:** States should publish clear and practical information in a timely manner to guide the public on pandemic preparedness and response, such as travel bans, stay-at-home orders, medical treatment channels, social distancing rules, and hygiene requirements;
- **Information beneficial to vulnerable persons, groups, and communities:** Vulnerable communities may have specific needs that should be addressed while related information should be published separately. These include social welfare benefits and programs established by the government, and preventive measures targeting the vulnerable;⁴⁶⁹
- **Relevant market information during the pandemic:** Supply and procurement information on daily consumables, medical recourses, protective equipment, and other daily necessities should be arranged and publicized to meet people’s basic protection needs;⁴⁷⁰
- **Information on governmental budgets and expenditure, and charity donations:** Billions of dollars are now being committed by governments and charities worldwide, so the disclosure of such information should be fully guaranteed. This, on the one hand, will help the public supervise the adequate use of the governmental funds and prevent corruption. On the other hand, this will help maintain the credibility of charitable organizations and ensure the smooth functioning of donation channels.⁴⁷¹

Failure to provide the information mentioned above in a timely manner or restricting public access to such information in the face of general fear and civil unrest would deprive the public of the ability to defend itself from the pandemic.⁴⁷² It may also weaken the public’s fundamental freedoms and human rights. In conclusion, ensuring public access to full, accurate, and relevant information in a timely, transparent, and effective manner can help the public understand and prepare for the emergency, which will aid pandemic prevention and control, and can stabilize societies by diminishing fear and panic amidst the public emergency.

466 United Nations, *Sustainable Development Goal 16: Promote just, peaceful and inclusive societies*, <https://www.un.org/sustainabledevelopment/peace-justice/> (last visited Jun. 30, 2021).

467 *Id.*

468 ARTICLE 19, *Ensuring the Public’s Right to Know in the COVID-19 Pandemic*, at 10 (2020), https://www.article19.org/wp-content/uploads/2020/05/Ensuring-the-Publics-Right-to-Know-in-the-Covid-19-Pandemic_Final-13.05.20.pdf.

469 *Id.*, at 12.

470 Ning Li-chen & Tian Ji-wei, *Government Information Disclosure in the Context of Major Pandemic*, Academic Exploration (2020).

471 *Id.*

472 Contribution from Lee Yong-Shik and Hye Seong Mun to author (2020) (on file with the Global Forum on Law, Justice and Development).

The right to freedom of expression

During a pandemic, access to relevant information can help the public be informed on preventative measures. Moreover, adequate and effective access to information will encourage public oversight on the government's decision-making process, thereby promoting effective, accountable, and transparent institutions.⁴⁷³ Therefore, in line with SDG 16, the protection of public access to information requires the promotion of free flow of information.

The right to freedom of expression is a fundamental right, as elaborated in Article 19 of the Universal Declaration of Human Rights (UDHR)⁴⁷⁴ and Article 19 of the International Covenant on Civil and Political Rights (ICCPR).⁴⁷⁵ The UN Human Rights Committee has stated that the freedom of expression is of “paramount importance for any democratic society.”⁴⁷⁶ Freedom of expression can allow people to help fight the pandemic. By expressing and sharing valuable information on the pandemic, more people can be informed and take protective measures in a timely manner. Moreover, freedom of expression guarantees that authorities are held accountable and do not abuse the emergency measures as they respond to the crisis.⁴⁷⁷

However, as Article 19 of the ICCPR (paragraph 3) has noted, the exercise of the right of expression may be subject to certain restrictions, such as “the protection of national security or of public order, or of public health or morals.”⁴⁷⁸ Accordingly, an important issue arising from such restrictions is how to tackle the “infodemic” and deal with false information. “Misinformation operates as [a] manifestation of existing structural issues, but has the ability to exacerbate these in the context of the COVID-19 pandemic.”⁴⁷⁹ In today's multi-channel information environment, rumors, such as those about how the disease is transmitted and the effectiveness of false cures, can spread widely and quickly. These rumors may mislead the public, cause social panic, and weaken the government's credibility with negative implications on public health and national security.⁴⁸⁰ Therefore, the emerging dangers of disinformation and misinformation provide the government grounds to limit the free flow of information to combat falsehoods.

The pandemic has underscored how freedom of expression reinforces public health initiatives.⁴⁸¹ While it is legitimate for the government to restrict certain kinds of expression of information to protect public health, public order, and national security, freedom of expression should always be safeguarded and strengthened.

473 United Nations Department of Economic and Social Affairs, *UN/DESA Policy Brief #74: Resilient institutions in times of crisis: transparency, accountability and participation at the national level key to effective response to COVID-19* (May 15, 2020), <https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-74-resilient-institutions-in-times-of-crisis-transparency-accountability-and-participation-at-the-national-level-key-to-effective-response-to-covid-19> (last visited Jun. 30, 2021).

474 Universal Declaration of Human Rights art. 19, Dec. 8, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

475 International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967).

476 Tae Hoon Park v Republic of Korea (628/1995), CCPR/C/64/D/628/1995 (1998), 20 October 1998; 6 IHRR 623 (1999) at para 10.3.

477 UNESCO, *Freedom of expression as a fundamental right amid the COVID-19 pandemic* (Jul. 8, 2020), <https://en.unesco.org/news/freedom-expression-fundamental-right-amid-covid-19-pandemic> (last visited Jun. 30, 2021).

478 International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967).

479 Lisa Cornish, *Targeting false information on COVID-19: What the funding data shows*, Devex (Jul. 1, 2020), <https://www.devex.com/news/targeting-false-information-on-covid-19-what-the-funding-data-shows-97536> (last visited Jun. 30, 2021).

480 Ning Li-chen & Tian Ji-wei, *Government Information Disclosure in the Context of Major Pandemic*, Academic Exploration (2020).

481 United Nations Human Rights Office of the High Commissioner, *COVID-19 pandemic exposes repression of free expression and right to information worldwide, UN expert says* (Jul. 10, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26075&LangID=E> (last visited Jun. 30, 2021).

Best practices

- **The United Nations Educational, Scientific and Cultural Organization (UNESCO)** has a specific mandate to promote “free flow of ideas by word and image,” and thus welcomes the immense efforts of communication and information communities to tackle the current COVID-19 crisis, including sharing lifesaving information, debunking misinformation, strengthening the implementation of the fundamental right to information, leveraging the use of public interest media, and connecting people online. UNESCO has also created a resource center of selected responses to COVID-19, which collects examples of actions related to communication and information made available for the purposes of sharing and amplifying good practices, identifying priorities, facilitating partnerships, and providing advice and technical assistance to foster international cooperation.⁴⁸²
- In **South Korea**, the Korea Centers for Disease Control and Prevention (KCDC) posts and updates information on the pandemic, including daily changes in the number of reported infections and reported deaths caused by the pandemic across the country and regionally. KCDC has updated this resource daily and made the information available on its publicly accessible website since Korea’s first reported COVID-19 infection in January 2020. Korea has also developed the world’s most advanced online platform that traces infected individuals’ movements by simultaneously retrieving relevant information from 28 agencies. Heeding privacy concerns in Korea, health care inspectors request this information to be available only when it is deemed necessary to control further spread, and the information obtained by the government is legally protected personal information.⁴⁸³
- The **French** government launched the “Health Data Hub” platform to ensure the governance and use of health data by making them available to third parties to promote research and innovation. “Health Data Hub” is a public entity that aims to allow project leaders to easily access non-nominative data while cross-referencing and analyzing it to improve the quality of care and patient support.⁴⁸⁴
- In **Singapore**, to ensure timely dissemination of accurate and useful information to the public, the government has introduced various digital services on COVID-19, including a trustworthy link shortener for any webpage it may wish to use to inform the public, as well as daily updated information from various government agencies. The government has also provided the public with a quick way to address questions related to COVID-19 from businesses. Their COVID-19 Situation Report dashboard and various websites present key statistics and figures on how the pandemic is evolving in Singapore.⁴⁸⁵
- The government of the **United Kingdom** partnered the WHO to curb misinformation around COVID-19. The joint campaign focuses on proactively identifying and reporting potentially wrong or misleading information, as part of WHO’s efforts to address the spread of inaccurate and harmful information during the pandemic.⁴⁸⁶

482 UNESCO, *Resource Center of Responses to COVID-19*, <https://en.unesco.org/covid19/communicationinformationresponse/mediasupport> (last visited Jun. 30, 2021).

483 Contribution from Lee Yong-Shik & Hye Seong Mun to author (2020) (on file with the Global Forum on Law, Justice and Development).

484 Contribution from French National Bar Council to author (2020) (on file with the Global Forum on Law, Justice and Development).

485 Contribution from Singapore Ministry of Law to author (2020) (on file with the Global Forum on Law, Justice and Development).

486 World Health Organization, *How to report misinformation online*, <https://www.who.int/campaigns/connecting-the-world-to-combat-coronavirus/how-to-report-misinformation-online> (last visited Jun. 30, 2021).

Recommendations

- **Collect and release relevant information.** As governments are at the helm of public health and national security, they are the core entities to provide the public with information transparently and effectively. A stable, transparent and timely information disclosure mechanism is the fundamental guarantee for government information disclosure during a pandemic.⁴⁸⁷ Transparency is critical for accountability and public trust in government.⁴⁸⁸ At the same time, timeliness of epidemic information disclosures helps to achieve information parity between the government and the public.
- **Promote the role of free and professional media.** States should highlight the media's monitoring role and work with media companies to ensure that they are transparent enough for the government to take meaningful steps to promote and protect public health.⁴⁸⁹ The media also plays a crucial role in combating misinformation and disinformation. As the fourth estate, the media must verify the authenticity of information and make judgments about the information they disseminate to quell rumors and deliver only useful information.
- **Guarantee active public participation.** To guarantee public access to information, it is necessary to strengthen public participation, unblock feedback channels for information disclosure, and promptly meet the public's information needs. The public's active participation through fora and advisory groups will encourage administrative institutions to disclose relevant information in a timely and active manner, thereby enriching the supervision of government information disclosures during the pandemic.
- **Accelerate the implementation of innovative information technology and digital services.** COVID-19 is the first pandemic in human history during which technology and social media are being used on a massive scale to keep people connected and informed while being physically apart.⁴⁹⁰ The COVID-19 crisis has also brought new needs for digital government services and a higher demand for existing ones.⁴⁹¹ It is now crucial to use information technology to collect, sort, and analyze complex and fragmented information and data. Advanced technologies, such as artificial intelligence and big-data diagnostics, can contain and predict outbreaks better and faster. Moreover, states should launch digital services, such as online data hubs and mobile apps, to ensure the timely dissemination of accurate and useful information to the public in an easy and convenient fashion.
- **Encourage states to engage in further international cooperation.** States should maintain an open attitude and active interactions with the international community to better respond to pandemics. By transparently sharing domestic practices and high-quality response measures, states have a unique ability to learn from one another and establish a global

487 Ning Li-chen & Tian Ji-wei, *Government Information Disclosure in the Context of Major Pandemic*, Academic Exploration (2020).

488 United Nations Department of Economic and Social Affairs, *UN/DESA Policy Brief #74: Resilient institutions in times of crisis: transparency, accountability and participation at the national level key to effective response to COVID-19* (May 15, 2020), <https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-74-resilient-institutions-in-times-of-crisis-transparency-accountability-and-participation-at-the-national-level-key-to-effective-response-to-covid-19> (last visited Jun. 30, 2021).

489 United Nations Human Rights Office of the High Commissioner, *COVID-19 pandemic exposes repression of free expression and right to information worldwide, UN expert says* (Jul. 10, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26075&LangID=E> (last visited Jun. 30, 2021).

490 World Health Organization, *ITU-WHO Joint Statement: Unleashing information technology to defeat COVID-19* (Apr. 20, 2020), <https://www.who.int/news-room/detail/20-04-2020-itu-who-joint-statement-unleashing-information-technology-to-defeat-covid-19> (last visited Jun. 30, 2021).

491 United Nations, *COVID-19: Embracing digital government during the pandemic and beyond* (2020), https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/PB_61.pdf (last visited Jun. 30, 2021).

public-health consensus. With increased cooperation among states, negative implications of future pandemics can be mitigated. States should welcome international information-sharing platforms and technical support while respecting sovereignty and appropriate procedures. By exploring the ways of north-south, triangular, and multilateral cooperation, the international community can create a new mechanism for regional and global governance of public health.⁴⁹²

Access to Justice in Times of COVID-19

Access to justice is a basic principle of the rule of law. It enables people to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. Traditionally, access to justice is understood synonymously as the administration of justice,⁴⁹³ but modern understanding of the concept also covers efforts in informal justice systems and legal empowerment.

Although the promotion of access to justice permeates through each SDG, it is most explicitly found in SDG 16.3, which targets the promotion of the rule of law at the national and international levels and ensures equal access to justice for all. Aside from the SDGs, the need for a proper administration of justice is also affirmed in international conventions, such as in Article 14 of the ICCPR.⁴⁹⁴ Efforts have also been made to supplement these principles, such as the milestone UNGA resolution on the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (PGALACJS)⁴⁹⁵ and The Declaration of the High-level Meeting on the Rule of Law (HMRoL).⁴⁹⁶

In this section, the administration of justice extends beyond judges and courts, to officers of the law, informal justice systems, and other actors whose duties are necessary to ensure the effective delivery of justice.

Access to Justice: The COVID-19 pandemic and the legal industry

The COVID-19 pandemic has impacted different sectors of activity, including the legal industry.⁴⁹⁷ As legal actors are called upon to adapt to the crises, many have resorted to carrying out their work through digital means. However, these efforts have led to several critical legal challenges. For example, in some parts of the world, including France and the EU, the legal sector's digitalization has raised concerns on the right to privacy and correspondence.⁴⁹⁸ Another concern is whether this solution can somehow fulfill the gap for human interactions, which largely shape the legal

492 UNESCO, *Resource Center of Responses to COVID-19*, <https://en.unesco.org/covid19/communicationinformationresponse/mediasupport> (last visited Jun. 30, 2021).

493 The other three pillars being legality, legal certainty and equality. See Lord Bingham, *The Rule of Law*, 66(1) *The Cambridge Law Journal* 67 (2011); Jeffrey Jowell & Colm O'Cinneide, *The Changing Constitution*, at 16 (OUP, 9th ed., 2019); Robert McCorquodale, *The Rule of Law in International and Comparative Context*, British Institute of International and Comparative Law (2010).

494 Article 10 of the Universal Declaration of Human Rights clearly outlines the fundamental right to a fair trial and due process. This right has also been reinforced by almost every regional human rights instrument, as can be seen in Article 6 of the European Convention on Human Rights and Article 8 of the American Convention on Human Rights.

495 United Nations Office on Drugs and Crime, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (2013), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

496 G.A. Res. 67/1 (Sep. 19, 2012).

497 Contribution from Federal Bar Association to author (2020) (on file with the Global Forum on Law, Justice and Development).

498 Contribution from French National Bar Council to author (2020) (on file with the Global Forum on Law, Justice and Development).

sector. Based on these considerations, the section below will address some of the concerns and challenges faced by the three key actors in the justice sector, namely judges, lawyers, and notaries.

The COVID-19 outbreak and the rise of new legal actors' challenges

Lawyers

COVID-19 has impacted lawyers in various ways. First, with courts being closed and/or partially closed, there are fewer cases being heard, often resulting in backlog. Interestingly, it has also led to the reduction of cases being filed, or the postponement of cases about to take place. These cases include those regarding worker compensation, landlord-tenant cases, etc. Most family courts and criminal courts are operational.

With fewer cases being filed or heard, law firms are adversely affected as attorney and firm incomes decrease. In order to survive, many law firms have had to reduce their workforce. According to the U. S. Department of Labor, in April alone, 64,000 jobs were lost in the legal industry. That leaves the industry at its lowest workforce in the past 20 years.

Working-from-home arrangements may also be unfeasible for certain legal sectors, such as those involving estate planning or those that require on-the-ground investigation. With restrictions put in place for air travel restricted, all cases that would require travel on the part of attorneys, witnesses, taking depositions, etc. have been put on hold indefinitely. In certain places of the world, the lack of public health safety renders impossible the presence of a lawyer. This could adversely impact their clients' cases, and cause litigants to suffer the infringement of their defense rights. Yet on the other hand, lawyers could be at risk of being exposed to the virus when they conduct in-person activities to defend their clients, such as litigating.

Notaries

Notaries perform essential functions in society, especially those dealing with legal documents and contracts.⁴⁹⁹ The notarial profession is a major stakeholder in the rule of law and the application of human rights. Notarization is essential to prevent fraud and protect both the person executing the document and third parties relying on the statements and information in the document presented.⁵⁰⁰ Trusts, creditor agreements, loans, real estate contracts, mortgages, deeds, bills of sale, and affidavits are just a few examples of documents that often require notarization.⁵⁰⁰

Notwithstanding the differences and particularities in each country, every notarial act requires a notary to (i) demand personal appearance; (ii) identify the customer; (iii) apply their seal and signature; and (iv) fill in their register. While the world has become increasingly digital and electronic, notaries generally are required to be physically present to witness the signature of the person whose signature they are being asked to attest.⁵⁰¹ Given their status as ministerial officers providing public services on the State's behalf, civil law notaries must continue their work

499 Obermayer Rebmann, *Notarization in a COVID-19 World*, JD SUPRA (Mar. 25, 2020), <https://www.jdsupra.com/legalnews/notarization-in-a-covid-19-world-48159/> (last visited Jun. 30, 2021).

500 *Id.*

501 McGuire Woods, *Proving a Real Signature in a Surreal World: Notarization Concerns in a Pandemic* (Apr. 6, 2020), <https://www.mcguirewoods.com/client-resources/Alerts/2020/4/proving-real-signature-surreal-world-notarization-concerns-pandemic> (last visited Jun. 30, 2021).

of providing legal advice and drafting legal documents as requested by individuals or corporate clients, no matter the circumstance.

Due to the pandemic, notaries in many places cannot demand the personal appearance of those who need their services. However, without personal appearance, notaries are unable to authenticate documents, and it thus becomes difficult for them to perform their work. In that context, States must look for alternative methods to allow individuals to execute essential legal documents.⁵⁰²

Judges

The outbreak of COVID-19 has affected litigation in various ways, ranging from an increased use of remote hearings to general court closures.⁵⁰³ As courts and tribunals in many countries are completely or partially closed, judges are also facing unprecedented challenges. Many are forced to adapt to the changing circumstances, such as by using modern technology to encourage teleworking, and the teleconferencing of judicial proceedings. Courts, which are often underfunded, now face budget cuts, which further strains their ability to purchase the equipment and software necessary for telework.⁵⁰⁴

Judges have been faced with dilemmas of applying principles and requirements such as legality, proportionality, adequacy, necessity, equality and non-discrimination to pandemic measures. Social distancing and lockdown measures have resulted in the disruption of courts' work, including delays in proceedings, and have impacted on procedural time limits and on the provision of legal aid services.⁵⁰⁵

Best practices

- In the **United States**, the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 (the "SECURE Act"), was introduced on March 18, 2020 as bipartisan legislation in the Senate to authorize and establish minimum standards for electronic and remote notarizations that occur in or affect interstate commerce.⁵⁰⁶ A substantially identical version of the bill was introduced in the House on March 23, 2020 as H.R.6364.⁵⁰⁷ If the SECURE Act becomes law in its current form, it would authorize every notary in the US to perform remote online notarizations (RON) using audio-visual communications and tamper-evident technology in connection with interstate transactions.⁵⁰⁸

502 Obermayer Rebmann, *Notarization in a COVID-19 World*, JD SUPRA (Mar. 25, 2020), <https://www.jdsupra.com/legalnews/notarization-in-a-covid-19-world-48159/> (last visited Jun. 30, 2021).

503 Clyde & Co, *COVID-19 Global: Arbitration and Court impacts* (May 1, 2020), <https://www.clydeco.com/en/insights/2020/05/covid-19-impact-on-courts-and-arbitration> (last visited Jun. 30, 2021).

504 Consultative Council of European Judges, *Statement of the President of the CCJE: The role of judges during and in the aftermath of the COVID-19 pandemic: lessons and challenges* (2020), <https://rm.coe.int/ccje-2020-2-statement-of-the-ccje-president-3-lessons-and-challenges-c/16809ed060>.

505 *Id.*

506 Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020, S. 3533 (2020), <https://www.congress.gov/bill/116th-congress/senate-bill/3533?q=%7B%22search%22%3A%5B%223533%22%5D%7D&s=2&r=4>.

507 Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020, H.R.6364 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6364?q=%7B%22search%22%3A%5B%22notarization%22%5D%7D&s=1&r=2>.

508 Margo H. K. Tank et al., *Coronavirus: Federal and state governments work quickly to enable remote online notarization to meet global crisis*, DLA Piper (Jun. 29, 2021), <https://www.dlapiper.com/en/us/insights/publications/2020/03/coronavirus-federal-and-state-governments-work-quickly-to-enable-remote-online-notarization/> (last visited Jun. 30, 2021).

- In **Morocco**, notary offices resumed their activity as of April 23, 2020, in strict compliance with the health measures in force and the preventive recommendations established by the National Council of the Moroccan Order of Notaries (CNONM). The CNONM has initiated several consultation meetings with government departments and partner administrations to accelerate the process of dematerialization of the notarial act, particularly with the land registry and commercial courts. Consultations are continuing, and technical work has been launched.⁵⁰⁹
- In **China**, the Supreme People’s Court has promoted the use of ‘mobile micro court’ on the social media platform WeChat in a number of provinces and cities to help courts conduct trials on the Internet. There are three “internet courts” in China,⁵¹⁰ which handle litigation procedures online from filing a case to issuing judgment documents.⁵¹¹
- In **India**, the Supreme Court has suspended limitation periods and has issued general guidelines on the use of video conferencing.⁵¹²
- In **France**, an order dated 3 April 2020 introduced an additional tool for the critical lockdown period. This new “remote appearance” technique allows notaries to establish their client’s consent by means of a videoconference. A qualified electronic signature, in accordance with the current regulations, confirms the client’s consent to the remote appearance. This technique, which was introduced as a temporary measure during the public health state of emergency, does not affect its authenticity. This is because authenticity is conferred by:
 - The quality of the notary’s explanations and discussion with clients to inform their consent;
 - The clarity with which the consent is expressed;
 - The signature of the notary, a public officer whose status presumes and, more importantly, demands impartiality, professional secrecy, professional ethics and professional rigor.⁵¹³
- The **International Chamber of Commerce** has released a guidance note helping parties, counsel and arbitral tribunals progress their cases despite the current crisis. It includes two annexes containing a checklist for a protocol on virtual hearings and suggested clauses for cyber-protocols and relevant procedural orders.⁵¹⁴
- The **International Union of Notaries (UINL) and the Conseil Supérieur du Notariat** reported that “on a national level, notaries all over the world are doing their best efforts to keep providing citizens, including the most vulnerable with notarial public service. Many initiatives have been engaged for the information of all citizens and the institutional support of the elderly, the people with disabilities or illness, to safeguard the respect of

509 Association du Notariat Francophone, *Le notariat marocain face au Coronavirus* (Apr. 28, 2020), <https://notariat-francophone.org/2020/04/28/le-notariat-marocain-face-au-coronavirus/> (last visited Jun. 30, 2021).

510 Xinhua, *Internet court handles cases despite coronavirus epidemic*, Supreme People’s Court of the People’s Republic of China (Mar. 11, 2020), http://english.court.gov.cn/2020-03/11/content_37534291.htm (last visited Jun. 30, 2021).

511 Sayra Kakkar, *Global Court Functioning and the Impact of COVID-19 on Arbitration*, Jurist (May 17, 2020), <https://www.jurist.org/commentary/2020/05/sayra-kakkar-court-functioning-covid19/> (last visited Jun. 30, 2021).

512 LexOrbis, *Directions issued by the Supreme Court During Country-wide lock down*, <https://www.lexology.com/library/detail.aspx?g=223fca6d-5179-474c-a857-f3c531ee192d> (last visited Jun. 30, 2021).

513 Contribution from Conseil Supérieur du Notariat to author (2020) (on file with the Global Forum on Law, Justice and Development).

514 International Court of Arbitration, *Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic* (2020), <https://iccwbo.org/content/uploads/sites/3/2020/04/guidance-note-possible-measures-mitigating-effects-covid-19-english.pdf> (last visited Jun. 30, 2021).

their rights despite the state of emergency and the lockdowns.”⁵¹⁵ The Conseil Supérieur du Notariat, has expressed the need for notaries to persevere and continue to operate under all circumstances, including COVID-19, because “the notarial profession is a major stakeholder in the rule of law and the application of human rights.”⁵¹⁶ The International Union of Notaries sends regular communications and guidelines to its members in order to adapt to the situation.⁵¹⁷ Similarly, the **Conseil Supérieur du Notariat**, has provided “updated information on what to do under the current circumstances and on all of the health, legal, social and technological issues raised by the current crisis” through a digital portal.⁵¹⁸ They have also created a public telephone number: 3620 DITES NOTAIRES, to answer the public’s requests for information. Callers looking for free advice were automatically referred to a civil law notary.⁵¹⁹ These measures have enabled civil law notaries to stay in contact with clients and helped ensure that notaries can continue to work and serve their communities.

Recommendations

- **Identify good practices** based on the experiences of justice systems during COVID-19. This includes the use of technology (such as the use of online procedures to file cases), the legal recognition of electronic evidence or evidence presented by electronic means, and the establishment of electronic case file and evidence management systems.
- **Provide equipment and training to enable court systems to function virtually.**
- **Ensure that the emergency measures related to contagion containment do not preclude people from having effective access to justice and legal information.** Access to legal information including rights awareness as well as understanding of court procedures to realize those rights is necessary. To this end, access to free legal aid for those who are being disproportionately impacted by emergency regulations or practices should be provided.

Access to Justice: Courts, Tribunals, and Informal Justice

Background

The administration of justice is far from uniform worldwide, with many regions facing unique challenges in implementing the SDGs. Data is inconsistent and often difficult to quantify, especially with regard to matters of civil justice.⁵²⁰ It is also important to highlight the global informal justice sector, which could supplement judicial stability during the pandemic.⁵²¹ In both formal and informal sectors, the legal needs for any population are extensive. From 2016 to 2018, over half

515 Contribution from International Union of Notaries to author (2020) (on file with the Global Forum on Law, Justice and Development).

516 Contribution from Conseil Supérieur du Notariat to author (2020) (on file with the Global Forum on Law, Justice and Development).

517 Contribution from International Union of Notaries to author (2020) (on file with the Global Forum on Law, Justice and Development).

518 Contribution from Conseil Supérieur du Notariat to author (2020) (on file with the Global Forum on Law, Justice and Development).

519 *Id.*

520 Peter Chapman & Alejandro Ponce, *How Do We Measure Access to Justice? A Global Survey of Legal Needs Shows the Way*, Open Society Justice Initiative (Mar. 16, 2018), <https://www.justiceinitiative.org/voices/how-do-we-measure-access-justice-global-survey-legal-needs-shows-way> (last visited Jun. 30, 2021).

521 For example, formal complaint mechanisms are rarely used in low-income countries. However, informal mechanisms such as religious organizations may play a large role in resolving a dispute or legal problem. See Open Government Partnership, *Justice Policy Series Part I: Access to Justice* (2019) <https://www.opengovpartnership.org/wp-content/uploads/2019/09/Justice-Policy-Series-Access-to-Justice.pdf>.

of people in 45 countries had faced some sort of legal problem.⁵²² The majority of those people did not turn to the courts or lawyers for resolution. With over half of those individuals unable to afford the respective costs involved, 1 in 6 of individuals gave up all attempts to resolve their legal problem at all, and 1 in 5 individuals suffered loss of employment or were forced to relocate because of their problem.⁵²³ Worldwide, the six top categories of legal need were identified as:⁵²⁴

1. Problems relating to money and debt or consumer issues;
2. Disputes over housing, land or neighbors;
3. Problems related to violence and crime;
4. Problems accessing public services
5. Family disputes; and
6. Legal needs related to employment or businesses.

Additionally, some issues may disproportionately affect specific demographics. For example, in family law matters, up to 65% of women are more likely to experience problems than men in some countries.⁵²⁵ Whereas the proportion of population brought into contact with the police or criminal justice system per year can vary wildly depending on the country. In 2018 this number ranged anywhere from 140 people to over 8,000 for every population of 100,000.⁵²⁶

In response to this challenge in the administration of justice, several states have begun to prioritize cases depending on their urgency and importance. However, this prioritization comes with many legal risks. For instance, the challenge for States is to determine what exactly qualifies as an “urgent” case. In many jurisdictions, the judge is the sole arbiter in determining the urgency of a case. This importance-oriented approach does help ensure that immediately at-risk groups, such as victims of domestic violence, can receive relatively quick and effective reparations. Nevertheless, States should remain mindful that characterizing certain cases as “non-urgent” could potentially lead to an accumulation of cases at a faster rate than the courts can lead to or reinforce a “bottlenecking” in the justice system if not anticipated.

Best practices

As States attempt to adapt to this new judicial ecosystem, there may be impacts on the enforcement of decisions, and on whether decisions are being made being in a reasonable timeframe. Furthermore, even in a remote setting, access to technologies themselves (stable internet connection, phone line, etc.) remains a major obstacle. However, States have demonstrated a plethora of best practices addressing access to the physical courts, innovations in digitalization, adaptive relief and enforcement measures, and collaborations with non-State actors.

522 World Justice Project, *Global Insights on Access to Justice*, WJP (Jan. 29, 2018), <https://worldjusticeproject.org/news/global-insights-access-justice> (last visited Jun. 30, 2021).

523 *Id.*

524 *Id.*

525 Open Government Partnership, *Justice Police Series Part I: Access to Justice* (2019) <https://www.opengovpartnership.org/wp-content/uploads/2019/09/Justice-Policy-Series-Access-to-Justice.pdf>.

526 United Nations Office on Drugs and Crime, *Criminal Justice System Process: Persons brought into formal contact with the police and/or criminal justice system: 2018* (2018), <https://dataunodc.un.org/data/crime/Persons%20brought%20into%20formal%20contact> (last visited Jun. 30, 2021).

Access to Physical Courts

- In **Burundi**, efforts were made to identify the core functions of their judiciary, in order to understand what implementing measures should be taken to ensure their continuing functioning.⁵²⁷
- **Syria** has established a task force to ensure that actors related to access to justice are held accountable, such as the police.⁵²⁸
- In **Democratic Republic of Congo**, judicial cases still occur physically, but with many physical safety precautions put into place. This ranges from checking temperatures, mandatory sanitizing and social distancing of parties, to the rotation of officials and staff.⁵²⁹
- Various emergency measures have been implemented in **France** to take measures to mitigate the administrative and jurisdictional consequences of the pandemic, adapt applicable rules to both criminal and non-criminal matters, and simplify civil and commercial legal procedures (where it is necessary and proportionate).⁵³⁰
- In the early stages of the pandemic, the **Kenyan** High Court held outdoor proceedings to prevent potential transmission of COVID-19.⁵³¹

Advancement and Innovation in Online Courts, Digitalization, & Remote Features

Technological advancement has not been as rapid as is required under the current circumstances. With physical limitations placed upon the courts themselves, rather than delaying proceedings, many courts have proceeded with efforts to digitalize the legal processes.

- The **United Kingdom, Italy** and **Spain** have used discreet phone apps and messaging services for victims of domestic violence and at-risk populations.⁵³²
- **Singapore, Myanmar, Thailand, Bahrain,** and **Iraq** are amongst many States which have piloted full or partial online court proceedings.⁵³³
- In **Trinidad** and **Tobago**, many platforms have been utilized effectively, such as an initiative where judges have been using mobile phones to conduct court proceedings.⁵³⁴
- In **Colombia**, the **United States, Canada,** and **France**, online and teleconferencing prioritization has been given for cases that are deemed to be “urgent” or an emergency.⁵³⁴

527 Contribution from International Bridges to Justice to author (2020) (on file with the Global Forum on Law, Justice and Development).

528 *Id.*

529 Contribution from UN Women, International Development Law Organization, United Nations Development Program, United Nations Office on Drugs and Crime, World Bank & the Pathfinders to author (2020) (on file with the Global Forum on Law, Justice and Development).

530 Contribution from French National Bar Council to author (2020) (on file with the Global Forum on Law, Justice and Development).

531 Contribution from Elizabeth Hassan & Riya Rathi to author (2020) (on file with the Global Forum on Law, Justice and Development).

532 *Id.*

533 *Id.*; Contribution from Singapore Ministry of Law to author (2020) (on file with the Global Forum on Law, Justice and Development).

534 Contribution from Elizabeth Hassan & Riya Rathi to author (2020) (on file with the Global Forum on Law, Justice and Development).

- In order to understand the infrastructural implications of completely digitalizing their judicial processes, **Rwanda** has solicited assistance from third party organizations, including the IBJ, to assist in the online transition process.⁵³⁵
- In **Kenya**, transparency is one of the more challenging aspects in a remote setting. To ensure continued transparency, once a court's decision has been made, they have to ensure that their decisions are published digitally within a short time span of 48 hours.⁵³⁶
- In the **United Kingdom**, governments have attempted public preventative educational measures for the public, as they predict a spike in COVID-19 related financial and fraud crimes.⁵³⁷
- **Australia** has amended its family laws among other laws, to allow courts to electronically monitor the requirements for bail and enable restraining orders to be filed online.⁵³⁸

Temporary Relief and Enforcement of Court Decisions

- With the immense slowdown in many judicial systems, there may be difficulties in enforcing decisions. Further, considering the financial burdens that many individuals and businesses are experiencing, many States have endeavored to adapt and loosen existing regulations.
- In the **United States**, many states have extended court deadlines, including those for payment of fees/fines.
- Many countries, including **Singapore** and **Turkey**, have established temporary relief periods from legal actions, such as for the enforcement of certain types of contracts, rental obligations. Additionally, certain financial regulations have been loosened, including for bankruptcy cases. Singapore has also established an ad hoc panel of assessors to arbitrate disputes where parties may be harmed by COVID-19 measures.⁵³⁹
- In **Syria**, one of the greatest burdens upon a judicial system is that of excessive punishment for what are generally considered to be minor infractions. Syria has determined that certain minor infractions should be reclassified, or at least encouraged to not be as harshly enforced, if at all by law enforcement and judicial officers. Conversely, in the **United Kingdom**, some crimes that may result in interference with the operation of COVID services, such as an attack on essential workers, have increased their penalties in order to ensure the safety of these workers.

Practices of Non-State Actors in Supporting the Administration of Justice

Many non-state actors that have also both adapted and endeavored to ensure stability in the administration of justice.

⁵³⁵ Contribution from International Bridges to Justice to author (2020) (on file with the Global Forum on Law, Justice and Development).

⁵³⁶ Contribution from UN Women, International Development Law Organization, United Nations Development Program, United Nations Office on Drugs and Crime, World Bank & the Pathfinders to author (2020) (on file with the Global Forum on Law, Justice and Development).

⁵³⁷ National Cyber Security Centre, *Advisory: COVID-19 exploited by malicious cyber actors* (Apr. 8, 2020), <https://www.ncsc.gov.uk/news/covid-19-exploited-by-cyber-actors-advisory> (last visited Jun. 30, 2021).

⁵³⁸ *Id.*

⁵³⁹ Contribution from Singapore Ministry of Law to author (2020) (on file with the Global Forum on Law, Justice and Development).

- The **International Chamber of Commerce (ICC)** has developed a procedural set of guidelines and checklist for virtual hearings, to ensure integrity of evidence and to prevent the risk of witness coaching. This may involve decisions on the number of participants allowed within a virtual room, and mandating a 360-degree view of a participant's room.⁵⁴⁰
- In a report provided to the World Bank, **Advocates for International Development (A4ID)** highlighted the continued importance of pro bono work in the third sector which it has been providing with partner organizations.⁵⁴¹
- **UNICEF**, together with **Bangladesh**, has established a virtual children's court, which has released hundreds of minors on bail.⁵⁴²
- **UNDP** has worked alongside **South Sudan** to expedite legal proceedings through remote hearings.⁵⁴³
- Building upon their work on the Navigating Complex Pathways to Justice Series, Women and Customary and Informal Justice Systems, the **IDLO** sought to analyze customary and informal justice systems for women within the context of COVID-19.⁵⁴⁴

Recommendations

- Reassess the principle of proportionality in sentencing to take into account the additional consequences and damages individuals face as a result of COVID-19. For example, avoiding custodial sentences for minor offenses and making bail an option for those awaiting trial, or allowing more flexibility in regard to debt repayment.
- Develop judicial infrastructure to cope with the immense impending workload, due to the delaying of many non-essential/urgent cases. Any undue delays could impede legal certainty.⁵⁴⁵
- Implement protections for populations without access to digital and remote proceedings. Similarly, access to court decisions and adjudicating processes must remain transparent and easily accessible for all populations.
- Engage with informal justice sectors, both from a data standpoint and in lessening the already greater burden placed upon courts.

540 International Court of Arbitration, ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic (2020), <https://iccwbo.org/publication/icc-guidance-note-on-possible-measures-aimed-at-mitigating-the-effects-of-the-covid-19-pandemic/?dm=bypass>.

541 Contribution from A4ID to author (2020) (on file with the Global Forum on Law, Justice and Development). The A4ID defines the third sector as the part of the economy and society that is neither the public nor the private sector, comprising non-profit and/or non-governmental organizations or associations, such as charities, voluntary groups, cooperatives and social enterprises.

542 Contribution from Elizabeth Hassan & Riya Rathi to author (2020) (on file with the Global Forum on Law, Justice and Development).

543 *Id.*

544 International Development Law Organization, Concept Note: Customary and Informal Justice Systems: Expanding Women's Access to Justice and Gender Equality (2020), https://www.idlo.int/sites/default/files/pdfs/events/webinar_women_and_customary_and_informal_justice_systems_-_concept_note_final.pdf.

545 This sentiment was also reiterated in the contribution from International Union of Judicial Officers to author (2020) (on file with the Global Forum on Law, Justice and Development).

Water, Food and Agriculture, and the Environment

The COVID-19 crisis has catalyzed various global challenges related to climate change, biodiversity, food security, agriculture, and access to water and sanitation, which the 2030 Agenda for Sustainable Development has sought to tackle.⁵⁴⁶ On the one hand, the pandemic has allowed for the temporary revitalization of some natural resources, mainly due to stay-at-home orders, the decrease in industrial production and consumption, and air traffic suspension. However, the pandemic has also emphasized the need to take urgent action to address ecosystem vulnerability, climate change, and food and water insecurity.⁵⁴⁷

Besides, the COVID-19 crisis has worsened the structural shortcomings in the food and agriculture systems throughout the world.⁵⁴⁸ Today, food insecurity and hunger still threaten the lives of millions of people globally. Children are the greatest victims. It is estimated that 14 million children under five suffer from severe acute malnutrition worldwide. That 3,1 million die annually as a result of undernutrition.⁵⁴⁹ Overall, the World Bank estimates that the global economy is experiencing the most severe recession in decades due to COVID-19, which affects the possibility for millions of people to afford food and meet their nutritional needs.⁵⁵⁰

The pandemic has revealed the interconnections between human health and the environment. The Center for International Governance Innovation highlights that “many of the same human activities that are contributing to climate change are also contributing not only to the emergence of new diseases but also to their spread.”⁵⁵¹ Recent outbreaks such as the West Nile virus, Ebola, SARS, monkeypox, and mad cow disease have all illustrated the strong connections between the protection of human health and the preservation of the environment and wildlife. Furthermore, while most media attention and policies have been oriented towards COVID-19, the challenge that is climate change remains unresolved.⁵⁵² Over the last years, greenhouse gas concentrations in the atmosphere have reached record levels due to human activities and have kept increasing during the pandemic.⁵⁵³ Today, the consequences triggered by climate change continue endangering ecosystems, wildlife as well as human life.⁵⁵⁴

The international community has taken significant steps to advance environmental protection and tackle climate change through the 1992 UN Framework Convention on Climate Change, the Kyoto Protocols, and the Paris Agreement.⁵⁵⁵ Nonetheless, COVID-19 is considered by many an

546 United Nations, *The Sustainable Development Goals: Our Framework for COVID-19 Recovery*, <https://www.un.org/sustainabledevelopment/sdgs-framework-for-covid-19-recovery/> (last visited Jun. 30, 2021).

547 Contribution from Alexandra Campbell-Ferrari et al. to author, at 1 (2020) (on file with the Global Forum on Law, Justice and Development).

548 Food and Agriculture Organization of the United Nations, *The dual-threat of extreme weather and the COVID-19 crisis: Anticipating the impacts on food availability*, at 1 (2020), <http://www.fao.org/3/cb0206en/CB0206EN.pdf>.

549 Action Against Hunger, *World Hunger: Key Facts And Statistics 2021* (2021), <https://www.actionagainsthunger.org/world-hunger-facts-statistics>, (last visited Jun. 30, 2021); Action Against Hunger, *2018 World Hunger And Poverty Facts And Statistics* (2018), <https://www.worldhunger.org/world-hunger-and-poverty-facts-and-statistics/> (last visited Jun. 30, 2021).

550 World Bank, *COVID-19 to Plunge Global Economy into Worst Recession since World War II* (Jun. 8, 2020), <https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recession-since-world-war-ii> (last visited Jun. 30, 2021).

551 John Cadham, *COVID-19 and Climate Change*, Center for International Governance Innovation (Aug. 24, 2020), <https://reliefweb.int/report/world/covid-19-and-climate-change> (last visited Jun. 30, 2021).

552 United Nations, *Global Issues: Climate Change*, <https://www.un.org/en/global-issues/climate-change> (last visited Jun. 30, 2021).

553 World Meteorological Organization, *United in Science report: Climate Change has not stopped for COVID19*, United Nations Press Release (Sep. 9, 2020), <https://public.wmo.int/en/media/press-release/united-science-report-climate-change-has-not-stopped-covid19> (last visited Jun. 30, 2021).

554 See Intergovernmental Panel on Climate Change, *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2013), <http://www.ipcc.ch/report/ar5/wg1/>.

555 Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

unprecedented wake-up call,⁵⁵⁶ which has exposed the failures and challenges with regards to the achievement of the 2030 Agenda for Sustainable Development and the Paris Agreement.⁵⁵⁷ There are, however, unprecedented opportunities to simultaneously beat COVID-19, ensure food and water security, preserve the environment, and tackle climate change. Collaboration between governments, international organizations, civil society, environmental human rights defenders, the private sector, and individuals will be essential to lead such global efforts.⁵⁵⁸

The implementation of SDGs will better equip countries to meet the pledge for more sustainable economies, resilient societies, and inclusive governance in times of crisis and beyond. It is particularly relevant to address environmental, water, and food-related impacts of the COVID-19 pandemic through the lens of SDG 16. Indeed, the targets comprising SDG 16 aim to “enforce non-discriminatory laws and policies for sustainable development” (16.B) explicitly, to “promote the rule of law at the national and international levels, and [to] ensure equal access to justice for all” (16-3), including the environmental rule of law. However, achieving the targets of SDG 16 requires the synergic implementation of other SDGs. Therefore, reaching a balance between all SDGs will be crucial to address the pandemic’s consequences while paving the way for more sustainability and inclusivity in water and sanitation, food and agriculture, environmental protection, and climate change.⁵⁵⁹

Water

Background

The right to water and sanitation has been recognized as a long-standing human right under international law. The 1999 Protocol on Water and Health establishes the necessity to improve water management and better safeguard water ecosystems to protect human health.⁵⁶⁰ In 2002, the UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 15, which calls for the respect, protection, and fulfillment of the water right, as part of the right to an adequate standard of living under Article 11§1 of the ICESCR and the right to attain the highest standard of health under Article 12§1 of the ICESCR.⁵⁶¹ Paragraph 12 of General Comment No. 15 defines the factors for determining the water right’s normative content. They include (a) the availability of water supply in sufficient quantities for personal and domestic use, including drinking, sanitation, personal and household hygiene, food preparation; (b) the quality and safety of water supply; (c) the accessibility of water supply to everyone without discrimination.⁵⁶²

556 Contribution from Maria Socorro Manguiat & Jackline Wanja Wanjiru to author, at 4 (2020) (on file with the Global Forum on Law, Justice and Development).

557 United Nations, *The Sustainable Development Goals: Our Framework for COVID-19 Recovery*, <https://www.un.org/sustainabledevelopment/sdgs-framework-for-covid-19-recovery/> (last visited Jun. 30, 2021).

558 United Nations Environment Program & Office of the United Nations High Commission for Human Rights, *Human Rights at the Heart of the Response: Human Rights, the Environment, and Covid-19*, at 5 (2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/HRE1.pdf>.

559 Contribution from Alexandra Campbell-Ferrari et al. to author, at 1 (2020) (on file with the Global Forum on Law, Justice and Development).

560 United Nations Economic and Social Council, *Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, Oct. 18, 1999, <http://www.unece.org/fileadmin/DAM/env/documents/2000/wat/mp.wat.2000.1e.pdf>.

561 U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, at para. 3, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), <https://digitallibrary.un.org/record/486454>.

562 *Id.*, paragraph 12.

In 2010, Resolution 64/292 of the UN General Assembly recommended that States and international organizations provide financial cooperation, technological support, and capacity-building to help countries ensure “safe, clean, accessible and affordable drinking water and sanitation for all.”⁵⁶³ Hence, the availability, quality, acceptability, accessibility, and affordability of WASH services and infrastructures for all are crucial in beating the COVID-19 pandemic, preventing future health outbreaks, and meeting SDGs in the long-run.⁵⁶⁴

Best practices

- The **WHO** has issued the Interim Guidance on Water, Sanitation, Hygiene, and Waste Management for the COVID-19 virus, including recommendations that States can adopt.⁵⁶⁵
- In **South Korea**, the government has elaborated the National Minimum Standards for Living Infrastructure to ensure accessibility to medical services in all countries. These standards incorporate the improvement of access to essential infrastructures, including WASH facilities.⁵⁶⁶
- In **Qatar**, the Ministry of Public Health launched a COVID-19 environmental testing pilot in partnership with research and governmental institutions to improve the surveillance and monitoring of water quality. This project aims to produce scientific evidence that policymakers can use to address the COVID-19 crisis.⁵⁶⁷
- The **Greek** Ministry of Interior launched the #CitySolidarityGR initiative to respond to the most vulnerable citizens’ needs, including access to WASH services.⁵⁶⁸ In **Spain**, a €300 million Extraordinary Social Fund was created to provide essential social services and water supply.⁵⁶⁹
- As part of the Consolidated Water Supply, Sanitation (WSS), and Hygiene Account Project for Ethiopia, the **World Bank** has reinforced its work with local communities to enhance access to WASH services and water management capacities in local communities.⁵⁷⁰

563 G.A. Res. 64/292, paragraph 2 (Jul. 28, 2010), https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292.

564 Contribution from Alexandra Campbell-Ferrari et al. to author, at 2 (2020) (on file with the Global Forum on Law, Justice and Development).

565 World Health Organization, Water, sanitation, hygiene, and waste management for the COVID-19 virus (2020), https://www.unece.org/fileadmin/DAM/RCM/Website/IBCs/WHO-2019-nCoV-IPC_WASH-2020.3-eng.pdf (last visited Jun. 30, 2021).

566 Organisation for Economic Cooperation and Development, *The territorial impact of COVID-19: Managing the crisis across levels of government*, at 44 (Nov. 10, 2020), <http://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/> (last visited Jun. 30, 2021).

567 Ministry of Public Health of Qatar, MOPH Conducts COVID-19 Environmental Testing Pilot (Aug. 12, 2020), <https://www.moph.gov.qa/english/mediacenter/News/Pages/NewsDetails.aspx?ItemId=267> (last visited Jun. 30, 2021); World Bank, *One WASH—Consolidated Water Supply, Sanitation, and Hygiene Account Project (One WASH—CWA)* (Mar. 29, 2021), <https://projects.worldbank.org/en/projects-operations/project-detail/P167794?lang=en> (last visited Jun. 30, 2021).

568 Organisation for Economic Cooperation and Development, *The territorial impact of COVID-19: Managing the crisis across government levels*, at 40-41 (Nov. 10, 2020), <http://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/> (last visited Jun. 30, 2021).

569 *Id.*, at 44.

570 World Bank Group, *One WASH—Consolidated Water Supply, Sanitation, and Hygiene Account Project (One WASH—CWA)* (Mar. 29, 2021), <https://projects.worldbank.org/en/projects-operations/project-detail/P167794?lang=en> (last visited Jun. 30, 2021).

Recommendations

- **Consider WASH issues a key priority within COVID-19 emergency measures and long-term policies.** The improvement of water storage, the development and funding of WASH infrastructures, or the identification and monitoring of new water resources—e.g., rainwater collection, and desalination—are useful measures to enhance access to safe water WASH services for all communities.
- **Implement emergency action plans to ensure the continuity of WASH services in times of crisis, and especially to ensure access for most vulnerable groups.** Water quality should be monitored to prevent further contamination and infectious diseases.
- **Intensify international cooperation for WASH-related projects.**

Food and agriculture

Background

The right to food is a cardinal human right protected under Article 25 of the UDHR and Article 11 of the ICESCR. The UN Special Rapporteur on the Right to Food defines the right to food as the possibility “to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate food.”⁵⁷¹ In 1999, the UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 12, which recognizes that the human right to adequate food “is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights.”⁵⁷² The Committee highlights that “the right to adequate food is realized when every man, woman, and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.” ICESCR encourages States to take steps to progressively realize the right to adequate food, even “in times of natural or other disasters” such as the COVID-19 crisis.⁵⁷³

The Special Rapporteur on the Right to Food notes that food should be culturally adequate, physically, and economically accessible to all human beings without discrimination. In particular, strategic policies that engage and empower communities and individuals will help people secure equitable and sustainable access to adequate food.⁵⁷⁴

The Food and Agriculture Organization (FAO) has issued Voluntary Guidelines to provide practical guidance to States regarding the progressive realization of the right to adequate food.⁵⁷⁵ These guidelines are useful tools for governments to address food insecurity and agriculture challenges during the COVID-19 pandemic and beyond while pursuing their SDGs efforts. Policy 2.4 highlights the relevance of a holistic approach, which entails:

- “Direct and immediate measures to ensure access to adequate food;

571 Office of United Nations High Commissioner on Human Rights, *About the Human Right to Food*, <https://www.ohchr.org/EN/Issues/Food/Pages/AboutHRFood.aspx> (last visited Jun. 30, 2021).

572 U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 12: the Right to Adequate Food, at para. 4, U.N. Doc. E/C.12/1999/5 (May 12, 1999), <https://www.refworld.org/pdfid/4538838c11.pdf>.

573 Id.

574 G.A. Res. 74/164, paragraph 21 (Jul. 15, 2019), <https://undocs.org/en/A/74/164>.

575 Food and Agriculture Organization of the United Nations, Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (2004), <http://www.fao.org/3/y7937e/Y7937E00.htm#TOC>.

- Investment in productive activities and projects to improve the livelihoods of the poor and hungry in a sustainable manner;
- The development of functioning markets and regulatory frameworks; and
- Access to employment, productive resources, and appropriate services.”

Best practices

- In **Ireland**, the government launched “The Community Call” initiative at the national level to create a broad support network composed of local governments, NGOs, and the voluntary sectors. Since its creation in April 2020, the initiative has focused on providing food and shopping vouchers to people in need.⁵⁷⁶ In **India**, the Union Cabinet chaired by Prime Minister Modi has permitted the extension of the Pradhan Mantri Garib Kalyan Anna Yojana (PMGKAY) plan as part of the response to COVID-19. As the largest food security welfare scheme globally, the PMGKAY allocates free-of-cost food grains to the poor communities (5kg per person, per month) throughout India.⁵⁷⁷
- The **European Union** and **Rwanda** have agreed on a €52.87 million financial plan enhance the social protection coverage facing COVID-19.⁵⁷⁸ The objective is to support agricultural supply chains via cash transfers and food assistance to Rwanda’s inhabitants and food security in the crisis context.
- In **Argentina**, the Ministry of Agriculture has launched the program of critical assistance to family and indigenous farmers with a \$420,000 to provide direct financial support to local peasants adversely impacted by the pandemic.⁵⁷⁹
- In **Latin America**, the “recovery, reaction, and resilience” (3R) approach has been used as a framework to provide local farmers with the necessary means to pursue their agricultural activities. With the **International Fund for Agricultural Development** (IFAD) support, these projects seek to empower local communities, especially women and the youth and develop resilient food production models.⁵⁸⁰ IFAD has also created a multi-donor COVID-19 Rural Poor Stimulus Facility (RPSF) to ensure access to information, markets, and inputs in rural communities during the pandemic.⁵⁸¹ In **Bolivia**, the ACCESOS project aims to incorporate ecosystem-based solutions and collaboration with peasants to guarantee food production continuity.⁵⁸²

576 *Id.*, at 44.

577 Barkha Mathur, *COVID-19 Relief: ‘Pradhan Mantri Garib Kalyan Anna Yojana Extended For Five Months’, Says PM Modi*, SwachhIndia (Jul. 8, 2020), <https://swachhIndia.ndtv.com/covid-19-relief-pradhan-mantri-gareeb-kalyan-anna-yojana-extended-for-five-months-prime-minister-narendra-modi-46399/> (last visited Jun. 30, 2021).

578 Tabaro J. Croix, *EU, Rwanda Sign Rwf 55 Bn Social Protection Grant*, KT Press (Jun. 8, 2020), <https://www.ktpress.rw/2020/06/eu-rwanda-sign-rwf-55-bn-social-protection-grant/> (last visited Jun. 30, 2021).

579 Government of Argentina, *Se creó el Programa de Asistencia Crítica y Directa para la Agricultura Familiar, Campesina e Indígena* (Jun. 19, 2020), <https://www.argentina.gob.ar/noticias/se-creo-el-programa-de-asistencia-critica-y-directa-para-la-agricultura-familiar-campesina> (last visited Jun. 30, 2021).

580 Rossana Polastri, *Solutions fondées sur la nature et résilience de l’agriculture familiale en Amérique latine et dans les Caraïbes*, The International Fund for Agricultural Development (Jun. 4, 2020), <https://www.ifad.org/fr/web/latest/blog/asset/41952700> (last visited Jun. 30, 2021).

581 The International Fund for Agricultural Development, *Rural Poor Stimulus Facility*, <https://www.ifad.org/en/rpsf> (last visited Jun. 30, 2021).

582 The International Fund for Agricultural Development, *Economic Inclusion Programme for Families and Rural Communities in the Territory of Plurinational State of Bolivia*, <https://www.ifad.org/en/web/operations/project/id/1100001598> (last visited Jun. 30, 2021).

- In **China**, the decision of “Comprehensively Prohibiting the Illegal Trade of Wild Animals, Eliminating the Bad Habits of Wild Animal Consumption, and Protecting the Health and Safety of the People” was adopted in February 2020.⁵⁸³

Recommendations

- **Provide financial and technical support for sustainable agriculture, and local food production.** Projects based on the “recovery, reaction and resilience” (3R) approach can simultaneously support the transition towards sustainable agricultural models, empower rural and local communities, and ensure food security in times of crisis. Direct financial support should also be provided to local farmers and food producers affected by the pandemic.
- **Develop emergency food plans and economic support to address food insecurity.**
- **Expand international cooperation in providing food assistance and social protection coverage in the poorest countries.**
- **Adopt measures to regulate the consumption of wild animals and to prevent future health crises.**

The Environment

Background

The recent development of the Environmental Rule of Law has led to the international recognition of the human right to a safe, clean, healthy, and sustainable environment. The procedural elements of this right include access to information, public participation, and access to justice and effective remedies. The substantive features encompass clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.

The human right to a safe, clean, healthy, and sustainable environment, in regional treaties, is ratified by various States, including the African Charter on Human and Peoples’ Rights, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, and the Arab Charter on Human Rights. In 2019, the Special Rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment reported that more than 80 percent of UN States Members legally recognize this right in their domestic laws or Constitution.

Including the human right to a safe, clean, healthy, and sustainable environment into governments’ responses to COVID-19 will be crucial to reconceptualize the relationship between human beings and nature and further our ability to forestall similar crises in the future. The fifth Montevideo Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V) provides meaningful recommendations to build COVID-19 responses in line with

⁵⁸³ Farah Master, *China bans trade, consumption of wild animals due to coronavirus*, Reuters (Feb. 25, 2020), <https://uk.reuters.com/article/us-china-health-wildlife/china-bans-trade-consumption-of-wild-animals-due-to-coronavirus-idUKKCN20J069> (last visited Jun. 30, 2021).

the Environmental Rule of Law. In particular, governments can consider adopting four types of measures as part of their COVID-19 policies: (i) promote, protect, and respect environmental rights; (ii) conduct assessments on ecological law; (iii) strengthen environmental law institutions; and (iv) enhance cooperation and partnerships. Besides, participatory and information rights constitute crucial elements of the Environmental Rule of Law. In this regard, empowering communities and citizens to participate in environmental decision-making is vital for emergency policies and long-term recovery plans.

Best practices

- In **France**, regional and local administrations have distributed free, washable, and reusable masks to all inhabitants. The French government has explicitly stressed the relevance of mixing COVID-19 efforts with environmental objectives.⁵⁸⁴
- Emergency measures have led to an increase non-reusable medical supplies, thus triggering more pressure on adequate waste management.⁵⁸⁵ The **UN Environment Program** (UNEP) has worked in collaboration with the WHO, governments, the UNDP, and NGOs to mitigate the adverse impacts of waste increase on the environment; to monitor and assess the release of toxic chemicals; and, to issue waste management guidelines that States can use.⁵⁸⁶
- In **Peru** and **Italy**, the regime surrounding waste management was reinforced since the beginning of the pandemic. In **South Africa**, a new project conducted by the South African Department of Environment, Forestry, and Fisheries aim to protect the ocean water by stemming marine litter from various rivers to reduce pollution.
- In **Canada**, the government has adopted a measure that urges large companies to fulfill environmental requirements to benefit from Covid-19 relief grants.⁵⁸⁷ The **European Union** is considering proposals for introducing new legislation on mandatory sustainable due diligence and stricter standards for companies that are responsible for environmental degradation.⁵⁸⁸
- In **Belgium**, the Flemish Minister for Mobility and Public Works announced a €2.2 billion investment in mobility plans to develop intelligent transportation and boost the hydraulic sector.⁵⁸⁹ A €100 million budgetary envelope will be dedicated to the support of innovative green projects, such as the installation of tree control or the transition to LED lighting. Economic recovery plans in line with SDGs and the Paris Agreement have been developed at various governance levels, such as the **European Union's** Green Deal.⁵⁹⁰

584 Asenya Dimitrova, *French cities distribute free reusable masks to everyone*, The Mayor (Apr. 24, 2020), <https://www.themayor.eu/en/a/view/french-cities-distribute-free-reusable-masks-to-everyone-4831> (last visited Jun. 30, 2021).

585 United Nations Environment Program & Office of the United Nations High Commission for Human Rights, *Human Rights at the Heart of the Response: Human Rights, the Environment, and Covid-19*, at 4 (2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/HRE1.pdf>.

586 United Nations Environment Program, *COVID-19 Waste management Factsheets* (Jun. 19, 2020), <https://www.unenvironment.org/resources/factsheet/covid-19-waste-management-factsheets> (last visited Jun. 30, 2021).

587 Contribution from Maria Socorro Manguiat & Jackline Wanja Wanjiru to author, at 4 (2020) (on file with the Global Forum on Law, Justice and Development).

588 Global Witness, *EU Leads the Way on Corporate Accountability* (May 5, 2020), <https://www.globalwitness.org/en/blog/eu-leads-way-corporate-accountability/> (last visited Jun. 30, 2021).

589 Sam Mehmet, *Flemish Minister announces 2.2 billion mobility investment in 2020*, Intelligent Transport (May 18, 2020), <https://www.intelligenttransport.com/transport-news/98969/flemish-minister-announces-e2-2-billion-mobility-investment-in-2020/> (last visited Jun. 30, 2021).

590 European Commission, *What is the European Green Deal* (2019), https://ec.europa.eu/commission/presscorner/detail/en/fs_19_6714 (last visited Jun. 30, 2021).

Recommendations

- **Design and implement green financial and economic recovery plans at the national and global levels.** As the world faces health, environmental, and economic crises, and pursues financial and economic recovery plans, these plans should be seen as opportunities to entrench ambitious environmental and climate change objectives.⁵⁹¹ Environmental protection and climate change objectives should be incorporated into national emergency plans. Private entities should be provided incentives to favor climate change actions and green stimulus packages.⁵⁹²
- **Pursue the advancement of Environmental Rule of Law at the national, regional, and international levels through legal reforms.**⁵⁹³ Enacting regulatory and legislative frameworks to further the protection of wildlife, water, and forest ecosystems. Implementing stronger binding standards to the food production industry, or reinforcing control over the use of pesticides and chemicals in agriculture are relevant measures to build a more sustainable world.
- **Engage in multilateral cooperation and knowledge-sharing.** There are strategic and meaningful opportunities for States to advance SDGs and Environmental Rule of Law by taking part in information-sharing platforms, collaborating to multilateral research projects, and exchanging best practices on the environment and climate change.⁵⁹⁴
- **Implement effective waste management systems to minimize the pandemic's impacts on the environment, as well as sustainable economic models based on green innovation.**

591 Contribution from Maria Socorro Manguiat & Jackline Wanja Wanjiru to author, at 3 (2020) (on file with the Global Forum on Law, Justice and Development).

592 United Nations Environment Program, *Working with the environment to protect people: Covid-19 Response* (May 14, 2020), <https://www.unenvironment.org/resources/working-environment-protect-people-covid-19-response> (last visited Jun. 30, 2021).

593 *Id.*, at 3-4.

594 *Id.*

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