INTRODUCTION

Amazonia, a uniquely biodiverse ecosystem shared among eight countries and a territory of France, plays a critical role in the regulation of the global climate. Its forests can absorb about 20 percent of the atmospheric carbon emitted by the burning of fossil fuels. However, despite its global significance, Amazonia is severely threatened. The 2019 forest fires brought the region once again to the covers of international media outlets. The images of São Paulo's skies turning black, thousands of miles away from the rainforest, yet coming directly from the raging Amazon fires, stunned the world. Not since 2009 had the Amazon experienced destruction at this scale. The year 2020 has proven even more daunting.

The new coronavirus SARS-CoV-2, which leads to the potentially deadly ‘coronavirus disease 2019’ (COVID-19), worsened Amazonia's already deteriorating circumstances, adding to a discouraging list of environmental, social and legal challenges. The urgent and all-encompassing nature of the pandemic's effect has complicated other environmental and human rights challenges in unpredictable and unprecedented ways. The global COVID-19 pandemic is, above all, a humanitarian crisis with severe health and socioeconomic consequences. It calls for greater multilateral economic cooperation and health care solidarity and exposes the fragility of coordinated global efforts.

The protection of biodiversity is essential to prevent future pandemics and protect human health. With rising deforestation levels, the Amazon basin is a centre stage in this debate. Lacking a regional strategy to protect the rainforest, Amazon countries are failing to protect their rich biodiversity. The transboundary effects of Amazonia's destruction are often overlooked. Simultaneously, the COVID-19 pandemic shows how cooperation between states is more critical than ever. This article examines how Amazon countries have jointly addressed the pandemic, demonstrating the effectiveness of regional agreements and their role in pandemic prevention. The right to a healthy environment is central to this investigation, given the role of forests and biodiversity in preventing zoonotic diseases. This article thus asks: What are the duties of States to protect the environment and indigenous communities during COVID-19 and potentially future pandemics? In this context, it considers the developing jurisprudence of the Inter-American System of Human Rights and its potential effects on regional and national implementation of environmental obligations.
circulation. As a consequence, the regulation of disease control efforts developed globally. The World Health Organization’s (WHO) International Health Regulations provide an overarching legal framework that defines countries’ rights and obligations in handling public health events and emergencies that can cross borders, institutionalizing a ‘Global Health Security’. These guidelines are vital in Amazonia’s shared ecosystem, in which physical borders are harder to enforce. All Amazon countries have ratified the Regulations, requiring mutual assistance and cooperation to contain outbreaks. However, as will be further detailed in this article, countries have continued to avoid regional collaboration despite the virus’s spread. On the contrary, nationalistic practices that raise concerns around discrimination and undermine international cooperation have been evident. These practices – and approaches that delayed notification, mutual assistance and information-sharing requirements – have helped spread the disease in Amazonia.

As this crisis develops over an extended period, it raises foundational questions for the international legal order. For example, how has COVID-19 affected fundamental human rights? Are particular groups more vulnerable? The impacts on indigenous peoples and traditional communities, in particular, have been disproportionate. The pandemic has highlighted underlying structural inequalities, pervasive discrimination, and inadequate health and social protection systems that require urgent attention. As such, the fight against COVID-19 can only be effective if it provides a human rights-based response to global threats. This response necessarily includes protecting the rights of indigenous groups and the autonomous right to a healthy environment as a prerequisite to implementing the rights to health and life.

Additionally, the relationship between our natural and social environment has never been more critical. Although the WHO is currently conducting an independent inquiry into the coronavirus’s origins, it likely travelled from the natural environment to human populations. Discovering how the pathogen entered the human population will help scientists understand current and future pandemics. The role of a deteriorating environment both as a cause and consequence of the pandemic is significant, raising the demand for international recognition of a right to a healthy environment. The recognition of the right to a healthy environment by the United Nations is crucial given the link between health and environmental protection, which will be further explored here.

This article contributes to understanding the link between COVID-19 and environmental protection in Amazonia from a rights-based perspective, especially as it relates to forest protection and indigenous peoples. Within this context, this article asks: what are the duties of States to protect the environment and indigenous communities during COVID-19 and potentially future pandemics? This question is analysed in light of international and regional law, explicitly noting the current negotiation of a new political declaration on international environmental law at the United Nations General Assembly (UNGA) and the inter-American system’s growing jurisprudence on environmental and indigenous rights.

The article is structured as follows. Section 2 briefly provides an overview of threats to Amazonia, including deforestation, forest fires, climate change and the ongoing COVID-19 pandemic, to give some background as to the challenges faced regionally. The underlying environmental degradation in the region defies the responses to the COVID-19 pandemic while increasing the risks of unleashing another zoonotic virus from Amazonia in the future. Section 3 addresses regional cooperation in Amazonia. Cooperation is a core aspect of environmental and humanitarian crises such as COVID-19. Based on a decades-old regional governance structure of cooperation, the section explains how the Amazon Cooperation Treaty Organization (ACTO) has responded to COVID-19 at the regional level. Section 4 addresses the relationship between human health and the environment. Noting the growing jurisprudence at the international and regional levels that recognizes this link, it specifically highlights the right to a healthy environment. The section notes the gap in international environmental law due to the lack of an express recognition of the right to a healthy environment, while noting the evolving green jurisprudence at the Inter-American System of Human Rights (IASHR). Section 5 goes over States’ duties to indigenous communities, which have often been overlooked, especially during the pandemic. Through recent case law at the regional and national levels, the section notes the evolving rights of indigenous communities and their particular vulnerability in light of the pandemic. Section 6 concludes that the fragile state of Amazonia needs a response from multiple stakeholders in environmental protection based on a rights-based approach.

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1MT Osterholm and M Olshaker, Deadliest Enemy: Our War against Killer Germs (Hachette 2017).
2A Ferhani and S Rushton, ‘The International Health Regulations, COVID-19, and Bordering Practices: Who Gets in, What Gets out, and Who Gets Rescued?’ (2020) Contemporary Security Policy 1.
3WHO, International Health Regulations (2nd edn, 2008) <https://apps.who.int/iris/bitstream/handle/10665/43883/9789241580410_eng.pdf?sequence=1>.
4See GL Burci, ‘The Outbreak of COVID-19 in Amazonia’s shared ecosystem, in which physical borders are harder to enforce. All Amazon countries have ratified the Regulations, requiring mutual assistance and cooperation to contain outbreaks. However, as will be further detailed in this article, countries have continued to avoid regional collaboration despite the virus’s spread. On the contrary, nationalistic practices that raise concerns around discrimination and undermine international cooperation have been evident. These practices – and approaches that delayed notification, mutual assistance and information-sharing requirements – have helped spread the disease in Amazonia.

5See JH Knox, ‘The Global Pact for the Environment: At the Crossroads of Human Rights and the Environment’ (2019) 28 Review of European, Comparative and International Environmental Law 40.
6A Ferhani and S Rushton, ‘The International Health Regulations, COVID-19, and Bordering Practices: Who Gets in, What Gets out, and Who Gets Rescued?’ (2020) Contemporary Security Policy 1.
7WHO, International Health Regulations (2nd edn, 2008) <https://apps.who.int/iris/bitstream/handle/10665/43883/9789241580410_eng.pdf?sequence=1>.
8See JH Knox, ‘The Global Pact for the Environment: At the Crossroads of Human Rights and the Environment’ (2019) 28 Review of European, Comparative and International Environmental Law 40.
AMAZONIA, ENVIRONMENTAL THREATS AND COVID-19: CHALLENGES AND POTENTIAL SOLUTIONS

The novel coronavirus is part of a class of viruses exchanged across species in a phenomenon known as zoonosis. While pandemics have their origins in diverse microbes carried by animal reservoirs, human activities drive their emergence. Around three-quarters of emerging infectious diseases, such as Ebola, SARS, and MERS, are zoonoses, meaning animals can transmit them to humans. The exploitation of wild species and deforestation have increased and modified the interface between people and wildlife, leading to a spillover of diseases from wildlife to people. The outbreak of the COVID-19 pandemic has been significantly linked to the human treatment of nature and animals, raising the importance of the environment to protect human health. Zoonotic viruses could arguably have been prevented if society had maintained the ecological health of forests and confined the viruses to their natural habitats.

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) recognized that pandemics’ underlying causes are the same global environmental changes that drive biodiversity loss and climate change, including land-use change, agricultural expansion and intensification, and wildlife trade and consumption. These drivers bring wildlife closer to humans, allowing microbes and outbreaks to move into people and lead to infections. The rise in consumption, trade and demographic pressure has led to many emerging diseases in biodiversity-rich countries. Pandemics, therefore, underscore the interconnectedness of the world community and the threat posed by global inequality to the health, well-being and security of people.

With high population density, poor sanitary conditions and high deforestation rates, Southeast Asia has become a natural birthplace for new infectious diseases. But other regions are also at risk. Since Amazonia contains a vast number of animal species and associated pathogens that could transfer to humans, the region’s environmental threats could increase the risk of future pandemics. The association between anthropogenic action in the rainforest, climate change, alterations in vector dynamics, human migration, genetic variations in pathogens, and the lacking social and environmental conditions can give rise to the ‘perfect storm’ for the emergence of infectious diseases. Tropical forests like Amazonia must be protected to avoid the next pandemic, unifying health and environmental policy. The first step in ensuring this protection lies in curbing deforestation.

Between January and August 2019, an area larger than Ireland was affected by forest fires in Brazil, Bolivia and Peru. These cause wide-ranging impacts that cross political boundaries, including the loss of biodiversity, ecosystem functions, sustainable agribusiness, and tourism opportunities, disease spread, threats to water security, and suspension of climate regulation. Several consequences, such as species extinction, are likely irreversible. Amazonia is reaching unpredictable tipping points. Considering potential negative synergies between deforestation, climate change and widespread fire use, estimates indicate a forest dieback threshold of 20–25 percent deforestation. Its resilience is deteriorating. The Amazon cannot withstand further deforestation and requires restoration to continue acting as a flywheel of the planetary climate. Along with the unprecedented forest fires, COVID-19 is a cautionary tale for Amazonia and a stark reminder that we can no longer ignore our interdependence with the natural world. Even amidst the pandemic, deforestation did not subside, and current trends suggest that degradation and natural disturbance will intensify. As a significant driver of pandemics, land-use change can drive climate change, leading to emerging diseases. This reality can no longer be ignored. Faced with the gravity of the risks posed by deforestation in Amazonia for animal and human health,

17 P Daszak et al, ‘IPBES Workshop Report on Biodiversity and Pandemics: Executive Summary’ (IPBES 2020) 5.
18 ibid.
19 DK Plowright et al, ‘Pathways to Zoonotic Spillover’ (2017) 15 Nature Reviews Microbiology 502; CL Faust et al, ‘Pathogen Spillover During Land Conversion’ (2018) 21 Ecology Letters 471.
20 N de Sadeleer and J Godfraid, ‘The Story behind COVID-19: Animal Diseases at the Crossroads of Wildlife, Livestock and Human Health’ (2020) 11 European Journal of Risk Regulation 210.
21 NA Robinson, ‘Global Health as a Foundation for World Peace: Preventing the “Next” Pandemic’ (2020); NA Robinson, ‘CORONAVIRUS, We Thought We Knew Yet! The Wuhan Potential Pandemic’ (American College of Environmental Lawyers 2020).
22 Daszak et al (n 17) 5.
23 ibid.
24 J Settele et al, ‘COVID-19 Stimulus Measures Must Save Lives, Protect Livelihoods, and Safeguard Nature to Reduce the Risk of Future Pandemics’ (IPBES 2020) <https://ipbes.net/sites/default/files/2020-04/COVID19%20Stimulus%20IPBES%20Guest%20Article_English.pdf>; PM Fearnsd, ‘Will the Next Coronavirus Come from Amazonia? Deforestation and the Risk of Infectious Diseases?’ (Mongabay, 8 April 2020).
policymakers face numerous challenges. They must find quick and practical solutions to maintain nature’s ecological integrity to halt biodiversity loss and reduce zoonotic spillover risk. Cooperation between the countries that share Amazonia’s biodiversity lies at the core of any policy response.

3 | COOPERATION IN AMAZONIA

As Etty and others have suggested: '[t]he Amazonian crisis provides a stark illustration of the limits of a binary national/international law perspective as a means to understand the role of law in responding to global environmental issues'. The fires, much like the pandemic, involve elements of national, regional and international protective efforts, as well as legal norms that extend across and beyond these categories. The global significance of the threats to Amazonia requires legal responses based on cooperation between and across countries. The UNGA recently called for a worldwide response to the pandemic based on unity, solidarity and renewed multilateral collaboration. It also acknowledged the need for all relevant stakeholders to work together at multiple levels. This call underlines the urgent need for international cooperation and multilateralism.

Given how Amazon countries were affected by the pandemic, it is essential that this coordinated response also takes place regionally. Amazonia’s regional environmental governance formally began in 1978 with the adoption of the Amazon Cooperation Treaty (ACT), reinforced in 1998 with the Amazon Cooperation Treaty Organization (ACTO). As an international organization, the ACTO promotes political and diplomatic coordination both within Amazon countries and beyond the region. While it strategically represents a forum for regional analysis, cooperation remains a rhetorical intention. The organization suffers from technical and financial capacity limitations as well as institutional weaknesses that hinder its effectiveness. Political interest in environmental cooperation remains low due to governments’ conflicting views on critical issues such as energy, drug trafficking, transnational security and defence.

As a result, the vast majority of ACTO projects have not been implemented. The Forest Cover project arguably represents its most successful venture, providing countries with a blueprint of regional deforestation. The project functioned through an exchange of technological capacity to provide each State with tools to monitor changes in forest cover. Data gathering is the first step towards joint policies. Yet, the ACTO has not developed a long-term regional strategy to translate the data into collaborative policies. To address the COVID-19 pandemic, the ACTO took a similar approach to the Forest Cover project, focusing on technology sharing for data gathering. The organization has encouraged the exchange of information on managing the spread of COVID-19 during the pandemic, provided statistics on how the virus has affected the region, and jointly sought financial donations to increase resilience against the disease's further spread.

The ACTO’s Secretariat has sought to consolidate regional cooperation to support Amazon countries, reducing the coronavirus’s spread and the population’s mortality rate, especially among vulnerable people and indigenous groups. Specifically, the ACTO signed a technical cooperation framework agreement with the Pan-American Health Organization’s sub-regional programme for South America, which promotes collaboration in implementing strategic regional health and knowledge management. The agreement includes activities – not limited to the COVID-19 response – in epidemiological surveillance, environmental health, border health management and technologies for improving the efficiency and effectiveness of health interventions. Additionally, it established a Health Situation Room to improve health management actions in Amazonian border areas.

Health interventions for COVID-19 focus in particular on the triple border of Peru, Brazil and Bolivia. The information is dis-
played on a collaborative dashboard to improve the response of Amazonian countries to the pandemic.55

While the ACTO contributes to the region’s handling of the pandemic, its activities remain limited to data gathering and information sharing, with few commitments on specific responses. In comparison, the Association of Southeast Asian Nations (ASEAN) adopted the Declaration of the Special ASEAN Summit on Coronavirus Disease 2019,56 in which the countries committed to act jointly and decisively to control the spread of disease while mitigating its adverse impact on people’s livelihood, societies, and economies.57 The regional organization recognized the need for a multi-sectoral and multi-stakeholder approach,58 with practical measures such as regional reserves of medical supplies, strengthening the emergency response capacity and developing a post-pandemic recovery plan. ASEAN recognized that all human health ultimately depends on ecosystem services made possible by biodiversity; a similar recognition would be crucial to develop regional environmental policies that aim at reducing the risk of zoonosis in Amazonia.59 Additionally, ASEAN has pledged to ensure food security, with studies on assessment needs, particularly of vulnerable groups.50 Using ASEAN’s initial response as an example, the ACTO could consider a specific task force to jointly propose measures to respond to the pandemic while also considering the broader effects it could have in the future, especially in ensuring a sustainable and healthy future for Amazonia.

Separate from the efforts of the ACTO, Amazon leaders signed the Leticia Pact in September 2019.61 While countries agreed to monitor the rainforest to respond to emergencies and rapidly avoid forest fires, it remains unclear how the Pact translates into concrete policies or fosters a more assertive regional approach. The Pact could offer an opportunity for shared responsibility in forest protection. Still, it lacks specific details on how to do so, explicitly regarding environmental policies and enforcement mechanisms. The non-binding document only has one concrete action: creating an Amazon Network for Cooperation in the face of natural disasters – not yet formed at the time of writing – which will rely on national systems of disaster prevention to act on emergencies with regional impacts, such as the fires, with early alerts.

To go beyond a declaration of intent, the Leticia Pact urgently requires specific targets, resources, and measurable, well-defined actions and milestones to address deforestation from a regional perspective.62 A presidential summit held in August 2020 shows the first step in that direction, as the States invited the ACTO to join the discussions about the future of the Leticia Pact, possibly using the existing governance structure of the ACTO to advance its goals.63 Within that context, the ACTO is considering launching a regional study on the integral development of the Amazon, proposing actions and measures to face the pandemic’s impacts and consequences in the region. However, the presidential summit offered little concrete guidance on how to improve regional cooperation for addressing health and environmental emergencies. Drawing from the constitutional commitments made by Amazon countries, the following section relies on the right to a healthy environment as the foundation for potential responses to the environmental and health crisis faced in the region.

4 | THE RIGHT TO A HEALTHY ENVIRONMENT

The COVID-19 global pandemic and its responses have threatened virtually every human right guaranteed by international law.64 More than a year into the pandemic, there is still no global strategy to fight the virus, leading to disparate national responses.65 The rights most affected by the pandemic include the rights to life and health. The right to life is considered a ‘supreme right’, the adequate protection of which is a prerequisite for the enjoyment of all other human rights.66 Yet the unnecessary loss of lives, especially in Latin America,67 can often be traced to a lack of appropriate public health policies and effective leadership, in a direct violation of a State’s duty to protect.68 Similarly, COVID-19 has affected the health of millions, including physical and mental health, secondary effects on primary health care, and lingering consequences of the disease (known as ‘long COVID’).69 The right to the highest attainable standard of health includes an obligation on States to take the steps necessary for ‘[t]he prevention, treatment and control of epidemic ... diseases’.70

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55Organización Panamericana de la Salud (OPS) / Organización Panamericana de la Salud (OPS), América del Sur, ‘Respuesta de países de América del Sur frente al COVID-19’ [https://infogod.maps.arcgis.com/apps/opsdashboard/index.html#/3b4ef76920b64e21a2546a8be3430857].
56ASEAN, Declaration of the Special ASEAN Summit on Coronavirus Disease 2019’ (14 April 2020) [https://asean.org/storage/2020/04/FINAL-Declaration-of-the-Special-ASEAN-Summit-on-COVID-19.pdf].
57Ibid para 4.
58Ibid para 6.
59ASEAN, Joint Statement to the Fourteenth Meeting of the Conference of the Parties to the Convention on Biodiversity (CBD COP 14)’ (2018).
60ACTO (n 56).
61Pacto de Leticia por la Amazonia (adopted 6 September 2019) [https://id.presidencia.gov.co/Documents/190906-Pacto-Leticia-Amazonia-Espanol.pdf].
62Take Action to Stop the Amazon Burning’ (2019) 573 Nature 163.
63ACTO, ‘La OTCA participa del panel de alto nivel en la Cumbre Presidencial del Pacto de Leticia’ [11 August 2020] <http://www.otca-oficial.info/news/details/953>.
64K Bennoune, “¨Lest We Should Sleep¨: COVID-19 and Human Rights’ (2020) 114 American Journal of International Law 666. See International Labour Organization (ILO), ‘ILO Monitor: COVID-19 and the World of Work’ (2nd edn, 7 April 2020) 2 (noting that COVID-19 is the ‘worst global crisis since the Second World War’).
65See Global Pandemic Network, ‘Webinar – Covid-19: Supernational, National and Regional Responses. Building Resilience through Comparison of Experiences’ (5 March 2021) [https://www.globalpandemicnetwork.org/news_events/webinar-5th-march-2021].
66UN Human Rights Committee ‘General Comment No. 36: Article 6, The Right to Life’ UN Doc CCPR/C/GC/36 (3 September 2019) para 2.
67See Johns Hopkins University Coronavirus Resource Center, ‘COVID-19 Case Tracker’ [https://coronavirus.jhu.edu].
68Bennoune (n 64) 667– 668; UN Human Rights Committee (n 66) para 26.
69Bennoune (n 64) 668.
70International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).
The United Nations (UN) Committee on Economic, Social and Cultural Rights underscores that the rights to life and health are indispensable for exercising other human rights.\(^{71}\) These encompass the rights to food and nutrition and access to safe and potable water, and adequate sanitation.\(^{72}\) Likewise, the rights to life and health could become meaningless if the person’s environment is so degraded that these become, in effect, threatened.\(^{73}\) As environmental destruction spreads across the globe, it becomes clear that human rights depend on healthy ecosystems and biodiversity.\(^{74}\) In Portillo Cáceres v Paraguay, the UN Human Rights Committee (HRC) recognized that a State’s failure to take action against environmental harm could violate its obligations to protect the rights to life and private and family life.\(^{75}\)

This evolving jurisprudence sets an essential precedent for understanding environmental protection as an instrumental component of the right to life, becoming ever more critical as we face the coronavirus pandemic.\(^{76}\) Due to the spillover of disease from wildlife to humans – caused, in part, by damage to ecosystems and biodiversity – COVID-19 has threatened the lives of millions of people across the globe. International human rights bodies have similarly reinforced this relationship between human rights in the context of the pandemic. The UN Human Rights Council (HRC) warned that the pandemic’s socioeconomic consequences could threaten the realization of human rights, yet emphasized human rights’ essential role in shaping responses to COVID-19.\(^{77}\) The Council specifically noted climate change as a risk-increasing factor for vulnerable groups. Still, it failed to recognize environmental protection in considering how human rights have been affected by the pandemic.

On the other hand, the UN Special Rapporteur on Human Rights and the Environment and the Special Rapporteur for Economic, Social, Cultural and Environmental Rights from the Inter-American Commission on Human Rights (IACHR) jointly highlighted the causes of emerging infectious diseases as a combination of human actions that damage ecosystems and biodiversity.\(^{78}\) By unequivocally recognizing the role of environmental protection in the pandemic’s causes and consequences, the rapporteurs brought attention to an issue often overlooked by human rights experts: that human health is inextricably tied to ecosystem health.\(^{79}\)

While the right to a healthy environment is widely adopted at the national level, it has yet to be recognized internationally.\(^{80}\) Given the lack of an express recognition, the international level remains ill-equipped to deal with ‘new’ environmental crises such as COVID-19.\(^{81}\) Recognition of the right to a healthy environment at the international level can secure environmental standards as it calls on States to prevent environmental damage from a human rights perspective.\(^{82}\) Additionally, it would ensure justiciability in human rights courts and tribunals, providing victims of environmental harm with access to justice.\(^{83}\) It would specifically protect nature against the backsliding of environmental protection.\(^{84}\) Ensuring environmental regulations are strengthened, enforced, and protective of human rights should be a particular concern of governments, especially as States consider addressing the pandemic through stimulus packages or deliberate on building back better.\(^{85}\) Specifically, the right to a healthy environment encompasses healthy biodiversity and ecosystems.\(^{86}\) Thus, the full enjoyment of human rights depends on biodiversity, and the degradation and loss of biodiversity undermine human beings’ ability to enjoy their human rights.

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\(^{71}\)UN Committee on Economic, Social and Cultural Rights ‘General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)’ UN Doc E/C.12/2000/4 (11 August 2000) para 1.

\(^{72}\)Ibid para 4; Constitution of the World Health Organization (adopted 22 July 1946, entered into force 7 April 1948) 14 UNTS 185.

\(^{73}\)Atappattu, ‘The Right to a Healthy Life or the Right to Die Polluted? The Emergence of a Human Right to a Healthy Environment under International Law’ (2002) 16 Tulane Environmental Law Journal 65.

\(^{74}\)UNGA ‘Gaps in International Environmental Law and Environment-Related Instruments: Towards a Global Pact for the Environment’ UN Doc A/73/419 (10 November 2018) para 18; UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities ‘Review of Further Developments in Fields with which the Sub-Commission has been Concerned, Human Rights and the Environment’ UN Doc E/CN.4/Sub.2/1994/9 (6 July 1994) para 243. See Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Judgment, Separate Opinion of Vice-President Weeramantry) [1997] ICJ Rep 7, 88.

\(^{75}\)UN Human Rights Committee ‘Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2751/2016’ UN Doc CCPR/C/126/D/2751/2016 (20 September 2019) para 2.3. See also UN Human Rights Committee (n 66); and UN Human Rights Committee ‘Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016 UN Doc CCPR/C/127/D/2728/2016 (23 September 2020) paras 9.4–9.5 (confirming the potential of the commentary to address matters relating to climate change, displacement and the right to life).

\(^{76}\)G Le Moli, ‘The Human Rights Committee, Environmental Protection and the Right to Life’ (2020) 69 International and Comparative Law Quarterly 735.

\(^{77}\)HRC ‘The Central Role of the State in Responding to Pandemics and Other Health Emergencies, and the Socioeconomic Consequences Thereof in Advancing Sustainable Development and the Realization of All Human Rights’ UN Doc A/HRC/44/L.23/Rev.1 (15 July 2020).

\(^{78}\)UN Human Rights, ‘The Americas: Governments Should Strengthen, not Weaken, Environmental Protection During COVID-19 Pandemic’ [13 August 2020] <https://media.business-humanrights.org/media/documents/files/UN_Covid_State ment_-_The_Americas.pdf>.

\(^{79}\)BA Jones et al, ‘Zoonosis Emergence Linked to Agricultural Intensification and Environmental Change’ (2013) 110 Proceedings of the National Academy of Sciences of the United States of America 8299.

\(^{80}\)JR May and E Daly, Global Environmental Constitutionalism (Cambridge University Press 2015).

\(^{81}\)Please note that several regional agreements recognize the right to a healthy environment. See, e.g., Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, (adopted 4 March 2018, entered into force 22 April 2021) art 4(1) and art 22(1); Charter of Fundamental Rights of the European Union, [2012] OJ C326/2 art 66.

\(^{82}\)AE Boyle, ‘Human Rights and the Environment: Where Next?’ (2012) 23 European Journal of International Law 613; D Boyd, J Knox and M Limon, ‘The Case for Universal Recognition of the Right to a Safe, Clean, Healthy, and Sustainable Environment’ [Universal Rights Group 2021] <https://www.universal-rights.org/wp-content/uploads/2021/02/2021_URG_R2HE_TIME_REPORT_MM.pdf>.

\(^{83}\)HRC ‘Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ UN Doc A/HRC/37/59 (24 January 2018) paras 13–14.

\(^{84}\)See, e.g., the deregulation of environmental policy in the United States. Sabin Center for Climate Change Law, ‘Climate Deregulation Tracker’ <https://climate.law.columbia.edu/climate-deregulation-tracker>.

\(^{85}\)See Settele et al (n 24).

\(^{86}\)UNGA ‘Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ UN Doc A/HRC/34/49 (19 January 2017).
rights. Biodiversity contributes to ecosystem services that support the full enjoyment of human rights, particularly the rights to life and health. As evidenced by the pandemic, threatening biodiversity as an element of the right to a healthy environment has consequences for human health.

Recognition would contribute to various positive procedural and substantive outcomes, ranging from increased public participation in environmental management to cleaner air and water. Where the right exists at the national level, its adoption has catalysed effective and equitable action of people and the planet. COVID-19 represents a wake-up call for the revitalization of universal human rights principles. Responses to the crisis should necessarily include the respect, protection and fulfilment of the right to a healthy environment. In this context, the Office of the High Commissioner for Human Rights and the UN Environment Programme have called for the integration of the right to a healthy environment in key environmental agreements and processes as a critical step in a holistic response to COVID-19 that includes a re-conceptualization of the relationship between people and nature that will reduce risks and prevent future harms from environmental degradation.

The UN Special Rapporteur on Human Rights and the Environment similarly urged the recognition of the right to the environment in the post-2020 global biodiversity framework. In his latest report, he illustrated the devastating effects of the coronavirus and the global nature emergency on the enjoyment of human rights and the crucial role of human rights in catalysing action to safeguard nature. He specifically clarified that damage to the biosphere has a significant impact on a wide range of human rights and could have catastrophic effects in the future.

In 2018, the UN Secretary-General provided a roadmap for the progressive development and consolidation of international environmental law. A 2019 resolution subsequently adopted by the UNGA called for the approval of a political declaration to strengthen international environmental law implementation by 2022. There is now an opportunity for an international agreement on a new set of comprehensive and holistic environmental principles that provide legal tools for humanity to deal with converging complex environmental crises, such as biodiversity extinction, climate change and water scarcity. The content of a human right to a safe, clean, healthy and sustainable environment has already been delineated by human rights institutions, only waiting for a vessel to integrate it and give it shape. The recognition would specifically provide for the justiciability of the right, giving rise to a legal claim at human rights courts and tribunals.

At the regional level, the Inter-American System of Human Rights has increasingly recognized the link between human rights and the environment, specifically noting that the protection of the environment is a precondition for a decent life. In 2017, the Inter-American Court of Human Rights (IACHR) recognized in an advisory opinion the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the effective enjoyment of human rights. The IACHR further recognized an autonomous and universal right to a healthy environment ‘fundamental to the existence of humanity’ to present and future generations. Without a healthy environment, other human rights are often nullified. With this advisory opinion, followed by the report of the Ad Hoc Open-Ended Working Group Established Pursuant to General Assembly Resolution 72/277 (5 September 2019), the ‘Global Pact for the Environment’ (Environmental Law Institute Press 2020) for a comprehensive analysis of the development of this process. See also C Voigt, ‘How a Global Pact for the Environment’ Could Add Value to International Environmental Law’ (2019) 28 Review of European, Comparative and International Environmental Law 13; D French and LJ Kotzé, ‘Towards a Global Pact for the Environment’: International Environmental Law’s ‘Factual, Technical and (Un)mentionable’ Normative Gaps’ (2019) 28 Review of European, Comparative and International Environmental Law 25; J Juste Ruiz, ‘Global Pact Negotiations: Building a Normative Framework for Ecological Sustainability in the Anthropocene’ (2020) 50 Environmental Policy and Law 35; J Juste Ruiz, ‘The Process towards a Global Pact for the Environment at the United Nations: From Legal Ambition to Political Dilution’ (2020) 29 Review of European, Comparative and International Environmental Law 479.

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the right to a healthy environment has become directly 'justiciable', falling under the contentious jurisdiction of the IACtHR.102

Building on this development, the Court explicitly recognized in 2020, for the first time in a contentious case, a violation of an autonomous right to a healthy environment.103 In Indigenous Communities Members of the Lhaka Honhat Association v Argentina, the IACtHR notably recognized the right of indigenous communities to a healthy environment, adequate water and food.104 This decision is significant for dealing with environmental crises, including climate change and COVID-19. The UN Special Rapporteur on Human Rights and the Environment, David Boyd, argues that existing commitments to protect the planet lack accountability because of the scarcity of enforcement mechanisms for halting environmental destruction.105 The recognition of the right to a healthy environment by the IACtHR partially addresses this gap regionally as it provides citizens with a forum and a justiciable legal claim. Thus, a rights-based approach increases accountability by offering enforcement mechanisms at the national, regional and global levels.106 Amazon States could, for example, bring a claim at the IASHR to question the lack of adequate environmental policies that protect Amazonia, thus prompting a response to challenges such as forest fires, deforestation and a potential zoonotic spillover of future viruses.

**Lhaka Honhat** gains special relevance in the context of the COVID-19 pandemic as it reveals the importance of a holistic human rights approach for combating structural inequalities.107 Providing safe water to vulnerable populations is essential to avoid spreading the virus, yet billions of people lack access to safe water services.108 The IACtHR’s approach in **Lhaka Honhat** to promote indigenous peoples’ equal access to water reinforces the need for adequate measures for addressing the current crisis.109

Similarly, future cases at the IACtHR could further delineate the specific obligations that States should meet to ensure the recently recognized rights are respected. This could develop, for example, in the context of the increasing rates of deforestation as a consequence of the pandemic, the lack of enforcement of environmental laws, or the lack of access to water, further spreading the disease.

In Resolution 1/2020 by the Special Rapporteur for Economic, Social, Cultural and Environmental Rights, the IACtHR clarified that the human right to health has many social determinants related to the contents of other human rights, including environmental rights.110 Similarly, Resolution 4/2020 called for better protection of the rights of people with COVID-19 and recommended that States provide sufficient water and food to people infected by the virus.111 These obligations mainly apply to vulnerable communities, including indigenous and traditional communities, as detailed in the next section.

**5 | DUTIES OF STATES TO INDIGENOUS AND TRADITIONAL COMMUNITIES**

Like the pandemic itself, States’ responses to COVID-19 have threatened a wide range of human rights.112 Latin America quickly became the region with the highest number of confirmed cases globally.113 The hotspot was exacerbated by weak social protection, fragmented health systems and profound underlying inequalities.114 The Amazon basin was significantly affected due to limited transportation, remote communities and reduced healthcare access.115 Within this context, the health of indigenous peoples is particularly problematic.116

As of March 2021, more than 51,600 indigenous people have been infected with COVID-19 in Brazil reaching 163 indigenous groups.117 Data from the Articulation of Indigenous Peoples of Brazil

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102American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 9 ILM 673 art 26. See J Peel and HM Osowski, ‘A Rights Turn in Climate Change Litigation?’ (2018) 7 Transnational Environmental Law 37.
103Lhaka Honhat Association (Our Land) v Argentina, Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 400 (6 February 2020). See MA Tigre, ‘Implementing Constitutional Environmental Rights in the Amazon Rainforest’ (2020) 24 ASIL Insights.
104MA Tigre, ‘Lhaka Honhat Association vs. Argentina: The Human Right to Environment in the Inter-American Court’ (GNHRE 2020); A Cabrera, D Cerquiera and S Herencia-Carrasco, ‘Remarks on the Judgment of the Inter-American Court in the Lhaka Honhat vs. Argentina Case’ (Justice in las Americas blog, 29 July 2020) <https://dpflblog.com/2020/07/29/remarks-on-the-judgment-of-the-inter-american-court-in-the-lhaka-honhat-vs-argentina-case/>
105S Wickramasinghe, ‘Q&A: How the Human Right to a Healthy Environment Can Help Protect Us All (Interview with David Boyd)’ (Phys.Org, 28 October 2020). HRC (n 97) para 27.
106All Amazon countries except Suriname have recognized the right to a healthy environment as a constitutional environmental right. MA Tigre, ‘Implementing Constitutional Environmental Rights in the Amazon Rainforest’ in E Daly and JR May (eds), Implementing Environmental Constitutionalism: Current Global Challenges (Cambridge University Press 2018) 59.
107F Plovesan and MM Antoniazzi, ‘COVID-19 and the Need for a Holistic and Integral Approach to Human Rights Protection: On Latin America and the Inverted Principle of Interdependence and Indivisibility of Human Rights’ (Verfassungsblog, 11 April 2020).
108UN, ‘COVID-19 Will Not Be Stopped without Providing Safe Water to People Living in Vulnerability – UN Experts’ (20 March 2020).
109MM Antoniazzi, ‘How a Landmark Decision from the Inter-American Court on Argentina Can Help Shape a Response to COVID-19 and the Right to Water – New Momentum for the Ius Commune’ (Center for Justice and International Law 2020); MM Antoniazzi and GCB Navarro, ‘Tackling Inequality in Times of Pandemics: Right to Water in the Inter-American Court of Human Rights’ (Max Planck Institute for Comparative Public Law and International Law 2020).
109IACHR, ‘Resolution 1/2020, Pandemic and Human Rights in the Americas’ (10 April 2020) <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>.
110IACHR, ‘Resolution 4/2020, Human Rights of Persons with COVID-19’ (27 July 2020) <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-20-en.pdf>.
111Gennoune (n 64) 669. See, e.g., UN Security Council, ‘Senior Officials Sound Alarm Over Food Insecurity, Warning of Potentially “Biblical” Famine, in Briefings to Security Council’, UN Press Release SC/14164 (21 April 2020).
112AS/COA, ‘The Coronavirus in Latin America’ (21 October 2020) <https://www.as-coa.org/articles/coronavirus-latin-america>.
113UN, ‘The Impact of COVID-19 on Latin America and the Caribbean’ (July 2020) <https://www.un.org/sites/un2.un.org/files/sg_policy_brief_covid_lac.pdf>; D Enriquez, 5 Rojas Cabal and MA Centeno, ‘Latin America’s COVID-19 Nightmare: Lessons From the World’s Hardest-Hit Region’ (Foreign Affairs, 1 September 2020).
114Doctors Without Borders, ‘Brazil: Chasing COVID-19 in the Amazon Rainforest’ (12 August 2020) <https://www.doctorswithoutborders.org/what-we-do/news-stories/story/brazil-chasing-covid-19-amazon-rainforest>.
115UN Inter-Agency Support Group (IASG) on Indigenous Issues, ‘Indigenous Peoples and COVID-19: A Guidance Note for the UN System’ (2020). See also R Peña Lizarazo, ‘COVID-19 Response: The Importance of Providing Special Protection to Indigenous Peoples and Afro-Descendants’ (AIZDA 2020).
116See update data on cases and deaths at ABI-P, ‘Emergencia Indígena’ <https://emergenciaindigena.apibojficial.org/dados_covid19/>.
(APIB) show that 9.1 percent of indigenous people who contract the disease are dying, nearly double the general population rate. The Pan-American Health Organization similarly reports 4,498 infections and 144 deaths among indigenous peoples in Ecuador as of July 2020. In Venezuela, indigenous communities are being left without means to access health services, medicines and food since the Brazilian and Colombian governments’ decision to close their borders.

COVID-19 has threatened indigenous people’s way of life, health and dignity. With the rapid death of elders, traditional knowledge and practices are threatened. Many communities lack the means to reduce contagion risk due to inadequate access to safe drinking water, sanitation and nutrition. The UN Special Rapporteur on the Right to Health previously pointed out profound disparities between indigenous peoples and non-indigenous populations’ health. They face limited access to health services, making it challenging to receive proper care or test and identify infection cases.

Indigenous groups in voluntary isolation are particularly exposed as they lack immunological defences to pathogens brought in by outsiders, making them more susceptible to respiratory diseases. Yet, it remains essential to respect these communities’ human rights and address their specific needs and priorities.

It is crucial to support access to water, food and sanitation during the pandemic, as those are essential to avoid the spread of disease and promote recovery in case of contamination. Whereas the rest of the world has been instructed to follow specific preventative guidelines, indigenous communities have not only not received adequate communication of these guidelines but also have not accessed provisions such as clean water, sanitation, soap and disinfectant. Health care and preventive measures should be culturally appropriate and developed in partnership with indigenous peoples. Yet, the Brazilian government’s limited measures do not consider the socio-cultural realities of indigenous people or provide realistic means for self-isolation.

The IACHR has previously held States accountable for violating the right to life if the State fails to provide vulnerable groups with essential services. Primarily, such efforts should be built upon effective and clear communication in indigenous languages. The IACHR further expressed the importance of bridging the language gap and suggested using intercultural facilitators to explain regulations being brought into action by the State. Specifically, there needs to be a balance between public health concerns and safeguarding Indigenous peoples’ right to be consulted in a culturally appropriate manner.

The Food and Agriculture Organization (FAO) further recommends the inclusion of Indigenous peoples’ representatives, leaders and traditional authorities in emergency and health response committees or entities dedicated to the COVID-19 pandemic, both during the outbreak and in its aftermath.

Human rights experts, including the UN Special Rapporteur on the Rights of Indigenous Peoples, have noted that the risks from COVID-19 go beyond health and include opportunistic land grabs or reduced governmental protection. In particular, their procedural rights are being denied as some countries push forward megaprojects without consultation or environmental impact assessments, using the social measures of COVID-19 as an excuse. In Colombia, the Ministry of Interior authorized online consultations for legislative and administrative measures, and free, prior and informed consent procedures were conducted virtually. The process was later cancelled and met with strong critique from indigenous and

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127S Wallace, ‘Disaster Looms for Indigenous Amazon Tribes as COVID-19 Cases Multiply’ (National Geographic, 12 June 2020).
129Pan American Health Organization, ‘Epidemiological Alert: COVID-19 among Indigenous Peoples’ (15 July 2020) <https://www.paho.org/en/documents/epidemiological-alert-covid-19-among-indigenous-peoples-americas-15-july-2020>.
130IACHR, Resolution 1/20 (n 110) para 54.
131IACHR, Resolution 1/20 (n 110) para 54.
132ibid; see also FAO (n 126) Recommendation 8.
133IACHR, Resolution 1/20 (n 110) para 54.
134ibid; see also FAQ (n 126) Recommendation 8.
135IACHR, Resolution 1/20 (n 110) para 54.
136ibid; see also FAQ (n 126) Recommendation 8.
137ibid; see also FAQ (n 126) Recommendation 8.
138UN IASG on Indigenous Issues (n 116) 1.
139UN Department of Economic and Social Affairs, ‘Indigenous Peoples & the COVID-19 Pandemic: Considerations’ (2020) <https://www.un.org/development/desa/indigenous-peoples/wp-content/uploads/sites/19/2020/04/COVID19_IP_considerations.pdf>.
140IACHR, Resolution 1/20 (n 110) para 54.
141ibid; see also FAQ (n 126) Recommendation 8.
142ibid; see also FAQ (n 126) Recommendation 8.
143ibid; see also FAQ (n 126) Recommendation 8.
144ibid; see also FAQ (n 126) Recommendation 8.
145ibid; see also FAQ (n 126) Recommendation 8.
146ibid; see also FAQ (n 126) Recommendation 8.
147ibid; see also FAQ (n 126) Recommendation 8.
148ibid; see also FAQ (n 126) Recommendation 8.
Afro-descendant communities. In Brazil, the government did not suspend concession procedures of projects during the pandemic, as was the case with the mining project Belo Sun and the Space Center Alcântara, and it has not observed consultation rights of indigenous and Afro-descendant communities affected. Planning investments for post-COVID-19 recovery, the government of Ecuador decided to draft, amidst the pandemic, a new bill on the right to consultation. Indigenous organizations protested that they had not been consulted in the drafting process.

Indigenous groups also face additional threats given the illegal activities, especially mining and logging, that continue unmonitored in their territories. In Brazil, illegal miners, loggers and land grabbers may be using the health crisis as a cover to step up incursions into indigenous territories. These invaders are vectors for the introduction of COVID-19. However, using the pandemic as an excuse, governments have failed to adopt protective measures. Nonetheless, the protection of the indigenous natural environment and territories is an integral aspect of protecting their right to health, as indigenous peoples’ well-being is traditionally linked to the conservation of the ecosystem and community well-being. The Brazilian Federal Court ordered the immediate adoption of an emergency plan to contain the spread of COVID-19 in the Yanomami territory and evict illegal miners in the region based on a request from the Ministério Público Federal.

The Federal Supreme Court further asked the government to take precautionary measures to prevent the spread of COVID-19 in indigenous territories. These include the creation of sanitary barriers to safeguard communities in isolation and an emergency response room. The government has only partially complied with the measures and has yet to enact comprehensive and effective policies to safeguard the communities. Similarly, a provincial court in Ecuador ruled in favour of the Waorani in a lawsuit against the government, forcing several ministries to take urgent action to contain COVID-19 in their territory. The precautionary measures granted include not only health protection but also access to food and essential supplies.

When governments adequately comply with international norms by recognizing indigenous groups and their territories, the communities are better prepared to manage their lands and resources, ensuring their right to food and water and limiting access to their territories, with better chances of avoiding the spread of the virus. To respect their isolation and social distancing measures but provide necessary access to health services, checkpoints could be established at indigenous territories’ borders. Such checkpoints should only be regulated by officials who have been tested negative for COVID-19 and work as a central point for exchanging sanitary products and test kits. Additionally, they could provide a safe zone where new regulations and data supplied by the government can be communicated to the indigenous peoples.

In March 2020, the IACHR installed the Rapid and Integrated Response Coordination Unit (SACROI) to strengthen institutional capacities to protect and defend fundamental freedoms and human rights in the context of the pandemic. By optimizing available mechanisms, the IACHR can provide timely responses to potential human rights violations, especially by guaranteeing adequate access to the IASHR and efficient and quick protection for victims. SACROI closely monitors COVID-19-related human rights violations in the region, gathering evidence on its impact, monitoring State responses, identifying urgent cases within the petitions, cases and precautionary measures, and proposing actions to members States to effectively protect human rights. The SACROI mechanism is not in itself essential for addressing the pandemic. As a procedural mechanism, its effectiveness relies on the IACHR’s resolutions and decisions. However, it is key to ensuring that rights are respected and, most importantly, that there is enforcement...
at the national level. Specifically, SACROI safeguards groups in vulnerable situations, including Indigenous peoples. The IACHR has already granted precautionary measures in favour of three Indigenous groups in Brazil, asking the government to adopt the necessary measures to protect the rights to health, life and personal integrity while implementing culturally appropriate actions against the spread of COVID-19 and providing them with adequate medical care.149

In the first case, related to the Yanomami Indigenous Land, the IACHR pointed out severe flaws in the Brazilian government’s actions against COVID-19 and demanded that an effective strategy be presented to safeguard the indigenous peoples’ human rights.150 The Commission considered the seriousness of possible consequences of exposing the Yanomami indigenous communities to COVID-19, the urgency of the threat and the irreparability of the effects over the rights to health, life and personal integrity.151 The resolution adopted by the IACHR appears to be the first international protective measure addressing the risks posed to indigenous peoples by the pandemic.152 The subsequent requests for precautionary measures from other indigenous communities in Brazil evidence the precarious conditions of COVID-19 in the region and the complete disregard of vulnerable groups’ human rights.

6 | CONCLUSION

The IPBES warned that ‘without preventive strategies, pandemics will emerge more often, spread more rapidly, kill more people and affect the global economy with more devastating impact than ever before.’ COVID-19 has exacerbated the multiple crises Amazonia was already facing: deforestation, the reduction of biodiversity and the lack of protection of the human rights of Indigenous peoples. The measures taken by authorities at the national and regional levels to respond to the pandemic have been insufficient and culturally inadequate. As a result, COVID-19 has disproportionately spread among indigenous groups. Deforestation has reached even more alarming rates due to the lack of enforcement of environmental rules during the pandemic. These facts threaten the region’s present and future. If the degradation in the region continues, Amazonia could be the birthplace of the next pandemic. The realities of the threats to Amazonia, the risks of a future pandemic and the magnitude of potential solutions reinforce the need for cooperation between the Amazon countries.

Recovery from the pandemic should necessarily rely on rights-based approaches. The international recognition of the right to a healthy environment, along with its increased implementation at the regional level by the IASHR, will significantly improve the conditions of communities in the Amazon region and ensure that its environment is protected. It is likely that the IASHR will continue expanding its green jurisprudence and the human rights recognized in Lhaka Honhat.154 The precautionary measures granted in light of the human rights of indigenous groups during the pandemic have already evidenced the need for adequate measures to protect them. Importantly, enforcement of the human rights recognized at the international, regional and national levels is necessary, which remains one of the biggest challenges in the region.

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149IACHR, ‘Resolution 35/2020, Members of the Yanomami and Ye’kwana Indigenous Peoples regarding Brazil’ (17 July 2020) <http://www.oas.org/en/iachr/decisions/pdf/2020/res_35-20_mc_563-20_br_en.pdf>; IACHR, ‘Resolution 94/20, Members of the Munduruku Indigenous People regarding Brazil’ (11 December 2020) <http://www.oas.org/en/iachr/decisions/pdf/2020/res_94_mc_679-20_br_en.pdf>; IACHR, ‘Resolution 1/2021, Members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous Land regarding Brazil’ (4 January 2021) <http://www.oas.org/en/iachr/resolutions/pdf/2021/res_1-21_mc_754-20_br_en.pdf>.

150Instituto Socioambiental, ‘Brasil sofre derrita internacional e deve apresentar plano para Covid-19 em Terra Indígena Yanomami’ (21 July 2020).

151Resolution No. 35/2020 (n 149) paras 3, 51 and 57.

152MA Tigre, ‘Inter-American Commission Calls on the Brazilian Government to Take Measures to Protect Indigenous Communities from COVID-19’ (GNHRE 2020).

153Daszak et al (n 17) 5.

154MA Tigre, ‘Lhaka Honhat v Argentina’ (2021 fc) 115 American Journal of International Law.