

Mandates of the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Working Group on discrimination against women and girls

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 42/20, 37/8, 41/12 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding **the disproportionate and differentiated impacts of COVID-19 on indigenous communities across the United States of America, and indigenous women in particular, the inadequacy of the measures taken to support tribes in their efforts to reduce the spread and address the harms caused by COVID-19 on indigenous peoples and communities, as well as the lack of recognition and support of the legitimate actions undertaken by tribes in the exercise of their self-determination.**

According to the information received,

The COVID-19 pandemic has disproportionately impacted American Indian and Alaska Native communities, who have experienced the loss of family members, as well as of culture, history and language. As of July 8, 2020, the Indian Health Service (IHS) was reporting 23,074 confirmed cases within the IHS, tribal and urban Indian health care system¹ The age-adjusted COVID-19 mortality rate for indigenous peoples was significantly higher than for Caucasians.² Data showing the impact of the disease on indigenous women seem to be lacking. In some areas, the pandemic seems to have struck deeply along racial lines. In the state of New Mexico, for example, where indigenous peoples amount to 11 percent of the general population of the state, they reportedly represent 43.7 percent of the state's COVID-19 related deaths. In Arizona, whereas the indigenous population is 2 percent, they represent 21.6 percent of COVID related deaths in the state. Specifically, as of mid-May 2020, the Navajo Nation had the highest per capita COVID-19 infection rate in the United States.

¹ Indian Health Service, [Coronavirus \(COVID-19\) interactive page](#), last accessed on July 10, 2020.

² APM Research Lab, [Covid deaths by race](#), last accessed on July 10, 2020.

Flaws with data collection indicate that the currently available figures undercount the actual extent of COVID-19 within American Indian and Alaska Native communities. Of the large network of facilities within the IHS, tribal and urban Indian health care system, only the IHS-run facilities are required to report their data. Apparently, only 33 percent of tribally managed facilities and 44 percent of urban Indian organizations are reporting their data on cases and deaths.³ Second, these statistics generally tend to report only on tribal residents, failing to include the over 71 percent of indigenous peoples living in urban areas. In these cases, however, data is obtained through county and state health services, whose current data collection practices often omit or misclassify Indigenous populations as “others”. Finally, coronavirus testing has been lacking across indigenous communities in the USA, with many tribal nations reporting shortages of test kits and an inability to test their citizens. For example, it was reported that the Center for Disease Control and Prevention (CDC) provided the Oyate Health Center, a tribally managed facility in Rapid City, South Dakota with only 24 test kits per week whereas the Great Plains Tribal Chairmen’s Health Board had estimated its need at 1,400 test kits.

Causes for higher contagion among indigenous peoples

Health disparities between indigenous and non-indigenous communities, lack of housing infrastructure and access to water and sanitation, unequal access to broadband internet, chronic underfunding of indigenous-led health and other infrastructures and the lack of support to indigenous peoples’ autonomous decision to close off their communities and territories are all reportedly contributing to the vast contagion and grave impacts of coronavirus in American Indian and Alaska Native communities. For instance, health disparities within indigenous communities, such as higher rates of diabetes, heart disease, and asthma, have meant an increased lethality of COVID-19.

Substandard and overcrowded housing have made compliance with the quarantine and social distancing guidelines unfeasible. According to the Department of Housing and Human Development, “the lack of housing and infrastructure in Indian Country is severe and widespread, and far exceeds the funding currently provided to tribes.” Tribal communities experience overcrowded homes at 16 percent, roughly eight times the national average.⁴ This reality is also true in urban areas. The issue is compounded by the lack of access to running water and basic sanitation infrastructure, which makes it even more difficult for tribal members to comply with the CDC’s sanitation and hygiene guidelines that require frequent hand washing.

³ COVID-19 in Indian Country, [Indian Health Service \(Department of Health and Human Services\)](#), last accessed on July 9, 2020.

⁴ Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>

Furthermore, whereas non-indigenous communities have turned to telehealth and telemedicine as a critical way to continue providing essential health care services during the pandemic, many rural tribal nations have been excluded from these in reason of their lack of internet broadband capacity, or radio communication and cellular service. Only 65 percent of American Indian and Alaska Natives living on tribal lands have access to fixed broadband services compared to 92 percent of all Americans. Treatment, screenings and early detection programs for unrelated health concerns have also been disrupted given the previously limited number of medical service providers now focused on attending the Covid-19 crisis, and the inability in rural areas to transition these programs towards telehealth services.

The federal government is underfunding their trust and treaty responsibilities. In 2018, IHS health care expenditures per person were 3,779 USD, compared to 9,409 USD for federal health care spending nationwide.⁵ This made the need for strong financial support during the pandemic all the more essential.

To address the pandemic, in May 2020, the United States Congress enacted the CARES Act, a Bill that included an 8-billion-dollar allocation for American Indian Tribes to use for emergency expenditures associated with fighting COVID-19. This amount was well below the 25 billion USD at which tribes had estimated their needs. Non-statutory funding requirements and spending deadlines were reportedly unrealistic given the existing infrastructural barriers in indigenous communities. These expenditure restrictions directly prevented indigenous communities from investing in areas that could help address systemic issues, such as investments in access to running water, basic sanitation, roads, or broadband internet access, among others. In addition, it appears that, while states swiftly received their relief packages, it took the Federal government more than one month to disburse the first 60 percent of the relief funding, while it still has not completed payments to this day.

Tribes also were significantly hampered in their ability to address the crisis and protect their members when measures such as border shutdowns, taken in the exercise of their right to autonomy and self-determination, were dismissed and attacked. In South Dakota, the Cheyenne River and the Oglala Sioux Nations set up their own checkpoints and began patrolling entry points as a means to protect their communities but were then reportedly threatened with legal action by the state Governor. The Bureau of Indian Affairs also threatened to withdraw their federal funding.

State governments across the United States have refused to take into consideration the specific vulnerabilities of indigenous communities in making decisions about deconfinement. For instance, information was received that in Bristol Bay, Alaska, the Governor has chosen to reopen the fishery, which will

⁵ Reclaiming Tribal Health: a National Budget Plan to Rise Above Failed Policies and Fulfill Trust Obligations to Tribal Nations, The National Tribal Budget Formulation Workgroup, www.nihb.org/docs/05042020/FINAL_FY22%20IHS%20Budget%20Book.pdf, p.10.

attract tens of thousands of workers from all over the world, despite it not having the facilities, funding, or health care professionals required to address a potential spread of COVID 19. This has forced the indigenous inhabitants of the region to self-isolate in sub-standard housing, oftentimes without running water or sewage treatment, in overcrowded and multi-generational households.

Situation of indigenous women during COVID

Indigenous women who experience multiple forms of discrimination will be impacted to a much greater degree by the pandemic. Pre-existing issues like rates of domestic violence have been magnified by the pandemic. Indeed, some measures like curfews, quarantines, lockdowns, and travel restrictions that have been imposed in order to limit outbreaks of the virus have also meant restrictions for survivors of abuse from getting help, reaching shelters, and distancing themselves from abusers. Information has been provided that in Alaska, geographic isolation, limited and often overcrowded housing, a lack of domestic violence shelters, limited law enforcement and inconsistent prosecution of crimes are issues that have been compounded during the pandemic.

Discriminate impact of government measures on indigenous peoples

Great Sioux Nation were reportedly not consulted on the decision of the President of the United States to call a mass gathering at Mt. Rushmore, located on their traditional treaty recognized lands, and in which social distancing and masks were not going to be required despite there being an estimated 7,500 attendees at the event. Approximately 15 peaceful demonstrators, primarily members of the Lakota Nation, who were blocking access to the Mt. Rushmore site to protest the failure to honour the treaty obligation to consult them and the lack of biosecurity measures at the event, were reportedly arrested and taken into custody on July 3, 2020.

Indigenous Peoples' right to free prior and informed consent is reportedly being weakened as a result of COVID preventive measures, including when consultations are transferred online with insufficient regard to limitations faced by indigenous peoples to access internet. In Nuiqsut, Northern Alaska, indigenous peoples faced major impediments to participate in online consultations regarding an oil and gas expansion project because of their lack of access to internet service. Lack of access to broadband internet is a recurrent issue for many indigenous peoples in the United States and hampers their right to participation

The adoption of national measures to protect the national economy in the face of the pandemic are bound to have a severe and disproportionate impact on the right of indigenous peoples to conservation and protection of their environment. Since 4 June, a presidential Executive Order provides for the possibility for corporate actors to ease or bypass the enforcement of environmental regulations

by the United States' Environmental Protection Agency, which could have a serious impact on the indigenous lands where such business projects are developed.⁶

In addition, indigenous peoples in several states are prevented to rightfully protest against encroachment or pollution caused by infrastructure projects on their lands. South Dakota, West Virginia, Utah, Mississippi and Kentucky have reportedly enacted laws during the pandemic restricting or criminalizing protests against fossil fuel infrastructure bringing the total number of States with similar legislation to fifteen.⁷ In Kentucky, the bill was however amended to remove the language penalizing activity that "impeded" or "inhibited" operations of infrastructure like a pipeline and slightly narrowed the scope of certain offences.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed as to the striking health disparities between indigenous and non-indigenous populations in the United States, and the devastating and rapid progression of COVID-19 in tribal communities and within urban Indian communities.

We express particular concern with regards to the apparent correlation between this situation and the chronic underfunding of tribal health services, the continuous infrastructural barriers faced by indigenous nations with regards to necessities such as running water, appropriate housing and access to broadband internet, as well as the failure to provide the essential COVID-19 relief funds in due time and free of excessive requirements and barriers to access.

Deep concern is also expressed with regards to the specific impacts of this crisis on indigenous women, who are left to face dramatic increases in domestic violence, while their access to shelters and other critical resources and community services is seriously impeded by lockdowns

Finally, we wish to highlight our preoccupation with regards to the limitations imposed by state and federal governments to the self-determination of indigenous peoples, including their right to autonomously administer their communities and their lands, as well as to the failure of these governments to adequately consult indigenous communities who may be impacted by their decisions. We are concerned that some of the measures taken to support the national economy in the pandemic are in fact favouring corporate actors' interests without any regard for the implication for the rights of indigenous peoples, including their right to free, prior and informed consent and their right to self-determination over their lands. We are concerned at potential environmental degradation of indigenous lands, and at the restrictions on freedom of peaceful assembly which appear to give legal authority to silence the voice of indigenous peoples and facilitate businesses and other entities' activities on their traditional territories. We are

⁶ <https://www.whitehouse.gov/presidential-actions/eo-accelerating-nations-economic-recovery-covid-19-emergency-expediting-infrastructure-investments-activities/>

⁷ <https://www.icnl.org/usprotestlawtracker/?location=&status=enacted&issue=&date=&type=legislative>

concerned that such laws will have a profound chilling effect on indigenous peoples seeking to protect their lands against the operation of business infrastructure project.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information or any comments you may have on the above-mentioned allegations.
2. Please provide information on how the federal government is collecting data on the number of testing, positive cases and death rate among indigenous communities, highlighting data pertaining to indigenous women.
3. Please provide information on the measures taken by the State to prevent and address the spread of the COVID-19 pandemic in indigenous communities and provide information on measures taken to address the particular dire situation in the Navajo Nation.
4. Please provide information on measures taken or foreseen to be taken by the State to address the vast health disparities between indigenous and non-indigenous communities, with a particular attention to the situation of indigenous women
5. Please specify what are the structural health challenges as well as COVID-19 related health challenges identified by the State and measures to address them.
6. Please provide information on the apparent disparities in accessing health care treatment and social services, appropriate equipment (such as ICU beds, respirators, personal protective equipment), adequate housing, as well as access to clean running water and broadband internet.
7. Please provide information on the current situation of CARES Act funding disbursement, in particular with regards to the delays, and reason behind the administrative requirements attached to the funding relief.
8. Please provide information on protection and accountability measures being set in place to address the increase in domestic and sexual violence against indigenous women during quarantine and lockdowns, as well as

measures taken to continue providing critical resources and services for indigenous women.

9. Please provide information on measures taken by the State to respect and support the right to autonomy and self-determination of indigenous communities who have chosen to take action to protect their population from COVID-19 infection.
10. Please provide information on how the State ensures that any COVID-19 restrictions on the exercise of freedom of peaceful assembly for indigenous peoples are proportionate to the risk of transmission and to the importance of the reason for the assembly, and are applied equally to businesses or other entities operating in indigenous peoples' territories?
11. Please provide information on how the State is guaranteeing full respect for the right of indigenous peoples to adequate consultation and free, prior and informed consent with regards to any development, infrastructure and extractive projects on their territories. Further indicate the measures taken to guarantee that the easing of environmental regulations to address the particular circumstances of the pandemic will not impact negatively on the right of indigenous peoples to thorough environmental impact assessments prior to the development of energy and infrastructure projects

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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Annex

Reference to international human rights law

In relation to the above-mentioned facts and concerns, we would like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. The United States has ratified international treaties relevant to the rights of indigenous peoples, including the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter, "CERD") and the International Covenant on Civil and Political Rights (hereinafter, "ICCPR").

Your Excellency's government has also endorsed, on 16 December 2010, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). By its very nature, the Declaration on the Rights of Indigenous Peoples is not legally binding, but it is nonetheless an extension of the commitment assumed by United Nations Member States – including the United States – to promote and respect human rights under the United Nations Charter, customary international law, and multilateral human rights treaties to which the United States is a Party.⁸

As a universal framework setting out the minimum standards of protection of indigenous peoples' rights, the Declaration establishes, at Article 7, the right of indigenous individuals to life, physical and mental integrity, and at Article 24, their right to access, without any discrimination, all social and health services, and to the equal enjoyment of the highest attainable standard of physical and mental health. UNDRIP also affirms the right of indigenous peoples to be actively involved in developing and determining health programmes affecting them and, as far as possible, to administer such programmes through their own institutions (article 23).

Article 5 of the CERD establishes that "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (iv) The right to public health, medical care, social security and social services." As a result, States are required to take effective and, where necessary, special measures to guarantee indigenous people's equal enjoyment of the right to health.

In its Concluding observations on the combined seventh to ninth periodic reports of the United States of America, the International Committee on the Elimination of All Forms of Racial Discrimination called upon the State party "to intensify its efforts to prevent and combat violence against women, particularly American Indian and Alaska Native women, and ensure that all cases of violence against women are effectively investigated, perpetrators are prosecuted and sanctioned, and victims are provided with appropriate remedies." The Committee also reiterated its previous recommendation "that the State party provide sufficient resources for violence prevention and service programmes." ([CERD/C/USA/CO/7-9](#).)

⁸Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America, 30 Aug. 2012, [A/HRC/21/47/Add.1](#).

In 2015 the Special Rapporteur called on States to “[i]mprove access by indigenous peoples, including women and girls, to culturally sensitive health-care services; learn from and build on existing examples of the good practices promoted by the United Nations Population Fund and the Pan American Health Organization to develop an intercultural approach to health; and support reinforcement of traditional healing and health practices of indigenous peoples that have been proven to be effective.” ([A/HRC/30/41](#).)

Article 4 of the Declaration provides for the right of Indigenous peoples to the exercise of their right to self-determination and autonomy in matters relating to their internal and local affairs. In the recent report on the right of indigenous peoples’ to autonomy or self-government, the Special Rapporteur has reiterated that the right to self-determination is fundamentally a human right and its realization, through autonomy or self-government, is indispensable for indigenous peoples to enjoy all their collective and individual human rights and called on States to “adopt the measures necessary to provide ways and means for the financing of indigenous peoples’ autonomous functions. Systems to access and utilize State resources should be culturally adequate and under the direct control of indigenous peoples. States should refrain from imposing their own priorities on the use of State funds corresponding to indigenous autonomous governments.” Once again, the Special Rapporteur stresses that the adequate implementation of the right implies changes in the general governance of States, which will have a constructive impact on human rights compliance, the remedying of discrimination and inequality, the building of more democratic and inclusive societies and the enhancement of the legitimacy of the State itself. ([A/74/149](#))

The Declaration also establishes, at Article 18, the right of indigenous peoples to participate in decision-making in matters which would affect their rights; at Article 19, their right to free, prior, and informed consent before the adoption of legislative or administrative measures that may affect them; and at Article 23, their right to determine and develop priorities and strategies for exercising their right to development.

Since its general recommendation No. 23 (1997) on indigenous peoples, the International Committee on the Elimination of All Forms of Racial Discrimination has consistently called upon the United States to: “Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them, based on their free, prior and informed consent”.

States therefore are required to consult and cooperate in good faith with indigenous peoples in order to obtain their free, prior and informed consent before approving any project, including energy and infrastructure projects, affecting their lands or territories and other resources. Indigenous peoples must be able to have decision-making power over the means by which consultation will be undertaken and the impacts of development projects on their lands.

While not a State party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the United States, as signatory to this instrument since 1980, is bound to ensure that nothing is done which would defeat the object and purpose of the treaty, pending a decision on ratification. Gender-based violence against women constitutes discrimination against women under Article 1 of the CEDAW Convention and therefore engages all obligations under the Convention. Article 2 provides that the overarching obligation of States parties is to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women. Article 2 (e) of the Convention explicitly provides that States parties are to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. That obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole⁹ and accordingly States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women.

In General recommendation No. 28 and General recommendation No. 33, the CEDAW Committee confirmed that discrimination against women was inextricably linked to other factors that affected their lives. The Committee, in its jurisprudence, has highlighted the fact that such factors include women's ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, and being in prostitution, as well as trafficking in women, situations of armed conflict, geographical remoteness and the stigmatization of women who fight for their rights, including human rights defenders. Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.

In its General Recommendation 35 on Gender-based violence against women, the CEDAW Committee considers gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard. The Committee recommends to develop and implement effective measures, with the active participation of all relevant stakeholders, such as representatives of women's organizations and of marginalized groups of women and girls, to address and eradicate the stereotypes, prejudices, customs and practices set out in article 5 of the Convention, which condone or

⁹ Ibid., para. 13.

promote gender-based violence against women and underpin the structural inequality of women with men.

In the report on its visit to the United States (A/HRC/32/44/Add.2), the Working Group on discrimination against women and girls expressed concern at the disproportionate number of women from ethnic minorities who are subjected to heightened levels of violence. The experts noted that The United States, which is a leading State in terms of formulating international human rights standards, is allowing its women to lag behind in the respect for these standards. While all women are victims of these “missing” rights, women who are poor; Native American, African-American, Hispanic and Asian women; women who are members of ethnic minorities; migrant women; lesbian, bisexual, transgender or intersex persons; women with disabilities; and older women are in a situation of heightened vulnerability. The Working Group recommended addressing the legacies of racism and persistent forms of racial discrimination and ethnic disparities in every sphere of life.

In a press statement of 20 April 2020, the Working Group noted that, as Governments attempt to tackle the unprecedented public health and economic crises caused by the COVID-19 pandemic, women and girls are suffering even more egregious violations of their human rights. In the absence of gender sensitive intersectional responses, different forms of systemic discrimination already faced by women and girls are exacerbated. The measures taken by Governments to mitigate the risks to health and life posed by COVID-19 must take into account the specific attributes and circumstances faced by women and girls. Restrictions on the provision of health services essential to women and girls, imposed in many countries to address the excessive demands on health services caused by the pandemic, also affects women and girls’ health disproportionately. The crisis is an opportunity to address structural inequalities and deficits that have consistently held women back, and to re-imagine and transform systems and societies. In order to fully comprehend the gendered impact of the crisis, it is crucial to understand the structural discrimination underlying this emergency which is not only causing but exacerbating serious violations of women and girls’ human rights (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E>)

The Special Rapporteur on the rights of indigenous peoples highlights its previous report in which it called on the United States to conduct thorough environmental impacts assessments in the context of energy and infrastructure projects, taking into account their impacts on indigenous peoples. ([A/HRC/36/46/Add.1](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E))

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.