



McGill Centre for
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Centre sur les droits de la
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POST-PANDEMIC MEASURES: ENABLING A GREEN RECOVERY

Policy Brief

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Executive Summary

Pandemics, by their global nature, subject the international community to a collective experience at once humbling and unifying, unjust and yet entirely predictable. COVID-19 is the sixth infectious disease to have reached pandemic scale since Spanish influenza claimed nearly 40 million lives in 1918. Between 2008 and 2011 alone, the WHO reports a further 1483 epidemic events spanning 172 countries (de Guttery 2020). Indeed, the modern world economy fosters “near-ideal conditions” for viral transmission due to an unprecedented volume of global trade and travel. This reality informs the imperative for global collective action in developing pandemic prevention, preparedness, and recovery strategies simultaneously tailored to national circumstances while also responsive to broader social, economic, and environmental challenges. As COVID-19 has exploited failures of existing measures to comprehensively address the myriad intersections of disease and human well-being, placing international institutions under severe strain, it is critical to design and deploy novel law and governance approaches sensitive to this need. To this end, the UN Sustainable Development Goals (SDGs) lend an important framework which must guide decision-making as COVID-19 relief packages take shape around the world.

Introduction

After several months of speculation and concern, the WHO announced COVID-19 to be a global pandemic on March 11, 2020. The disease has an extremely high transmission rate, can be fatal, and sick people can be contagious for 14 days before exhibiting symptoms, or may be asymptomatic. The most serious cases of the disease require hospitalization and respirators. Fearing overwhelmed hospital systems, many countries implemented lockdown, self-isolation, or physical distancing protocols to limit the spread of the disease and “flatten the curve” (WHO 2020). In many cases, such restrictions have been implemented for over six months, and will remain in place amid second waves coinciding with the onset of flu season, and an uncertain timeline for the development of a safe and effective vaccine. Impacts of the COVID-19 pandemic—which as of 1 November had inflicted nearly 1.2 million deaths worldwide and exceeded 39 million reported cases -- extend far beyond direct health

outcomes (Johns Hopkins COVID-19 Dashboard). Indeed, research finds a “comparable number of deaths” could result “from deprivation and preventable diseases” due to the numerous economic and social consequences of the virus (Mushfiq & Barnett-Howell 2020).

International commitments to achieving the SDGs take on heightened significance during a global pandemic that exacerbates existing inequalities at all scales. In the case of food insecurity, the Food and Agricultural Organization estimates an increase in pandemic-induced undernourishment by between 83 and 132 million people in 2020, with severe aggravation in countries combatting existing food crises (FAO et al. 2020). In addition, the prevalence of both moderate and severe food insecurity is on the rise across Africa, Asia, the Caribbean, and the Pacific (FAO et al. 2020, 20). This stark example alone illustrates the pandemic’s prolific power to reverse progress toward implementation of the SDGs.

Although the SDGs may not be binding treaty obligations or reflective of customary international law, States are required to consider them as a commitment made by the international community in good faith. Moreover, the SDGs can be considered as providing the normative context for treaty implementation. As such, post-pandemic recovery strategies must aim to “build back better” – to foster, rather than frustrate, human rights protections, and support efforts to achieve the global SDGs and more effectively protect natural capital (Zenghelis et. al., 2020). Importantly, this approach must be grounded in sound law and policy frameworks (Ramanujam et. al., 2012).

National Practices and the Nexus with the SDGs

Recent good practices demonstrate that innovative legal and policy measures can help to ensure that targeted economic stimulus packages help countries achieve the SDGs (Cordonier Segger 2020; IMF Policy Responses to COVID-19).

Key themes, identified by the UN Office of the High Commissioner for Human Rights, which may be essential for post-pandemic law and policy measures:

*** Transformation:** As an agenda for “people, planet, prosperity, peace and partnership”, the SDGs offer a paradigm shift from the traditional model of development, providing a transformative vision for post-pandemic measures that are people and planet-centred, human rights-based, and gender-sensitive.

*** Comprehensiveness:** Alongside a wide range of social, economic and environmental objectives, post-pandemic measures which contribute to the SDGs will promote “more peaceful, just and inclusive societies which are free from fear and violence” with attention to democratic governance, rule of law, access to justice and personal security (in Goal 16), as well as an enabling international environment (in Goal 17 and throughout the framework). They cover issues related to all human rights, including economic, civil, cultural, political, social rights and the right to development.

*** Inclusion:** Post-pandemic measures which contribute to the SDGs will leave no-one behind, envisaging “a world of universal respect for equality and non-discrimination” between and within countries, including gender equality, by reaffirming the responsibilities of all States to “respect, protect and promote human rights, without distinction of any kind as to race, colour, sex, language, religion, political or other opinions, national and social origin, property, birth, disability or other status.”

Poverty and Justice (SDG 1 No Poverty, SDG 16 Peace, Justice & Strong Institutions)

- Protecting citizens from the economic impacts of the COVID-19 pandemic has been attempted by Chile's US\$2 billion in fiscal measures to provide additional support for the most vulnerable and independent workers and to enhance subsidies and unemployment benefits.
- Supporting vulnerable individuals and groups has been attempted by the Philippines' fiscal package focusing on cash transfers and social protection measures for workers. The cash transfer program dispersed PHP \$205 billions of aid to 18 million low-income households, while a social protection program for the most vulnerable workers was provided PHP \$56 billion in support.
- Supporting migrant workers has been attempted by Canada, which has allowed many foreigners to overstay visas or residence permits which had not yet been renewed due to the pandemic. Provinces have discovered that many health care workers in the lowest paying jobs (such as orderlies) were migrant workers, often with precarious status, and have deemed them essential workers.

Food Security and Biodiversity (SDG 2 Zero Hunger, SDG 14 Life Below Water, SDG 15 Life on Land)

- Reducing acute national food insecurity caused by the global pandemic has been attempted by The Gambia's measure to fund a US \$15.8 million national food distribution program, which has reached 84 percent of households nationwide.
- Ensuring worker safety and the continuation of the production of food during the pandemic outbreaks has been attempted by Canada's Emergency On-Farm Support Fund and Emergency Processors Fund. The programs have been allotted CND \$35 million and CDN \$77.5 million respectively to stabilize and support the food system.
- Supporting biodiversity initiatives has been attempted by the United Kingdom's economic stimulus package dedicating £640 million for the Nature for Climate Fund to plant over 40 million trees and to restore 35,000 hectares of peatland in England. It also dedicated £25 million to create a new Nature Recovery Network in England and £10 million in support per year for the Darwin Plus programme, which protects unique wildlife in the UK Overseas Territories.

Health and Education (SDG 3 Good Health and Well-Being, SDG 4 Quality Education)

- Reinforcing the healthcare system to better support citizens throughout the COVID-19 pandemic has been attempted by Malawi's pandemic response plan that includes US\$20 million towards health care, including the hiring of 2000 more health care workers across the country, and to support social assistance programs.
- Advancing the development of a COVID-19 vaccine for the global community has been attempted by Finland's €5 million investment into international non-profit organizations working towards a vaccine and €16 million in domestic funding for research and development of a vaccine.
- Promoting quality education to support citizens through pandemic job losses has been attempted by Ireland's €200 million educational financing for skills development and work

placement schemes, training and education to help those who would like to retrain or develop new skills.

Innovation, Infrastructure and Employment (SDG 8 Decent Work & Economic Growth, SDG 9 Industry, Innovation & Infrastructure)

- Strengthening the national economy through investment in entrepreneurs has been attempted by Azerbaijan's measure of creating a AzN 50 million Entrepreneur Development Fund as well as investing AzN 295 million for immediate support for entrepreneurs and microentrepreneurs.
- Investing in research and development to stimulate the national economy while supporting innovation has been attempted by Singapore's S\$20 billion in funding to support research in high impact areas over the next five years. These areas include health and biomedicine, artificial intelligence and climate change.
- Stabilizing pandemic impact on employment has been attempted by Bangladesh's Tk. 50 billion stimulus package for exporting industries, which prioritized the creation of industry loans to ensure industry stakeholders could pay worker salaries. The loans have benefited close to 4 million workers across the country since the beginning of the pandemic.

Climate Change and Renewables (SDG 7 Affordable & Clean Energy, SDG 13 Climate Action)

- Promoting renewable energy as a form of economic stimulus has been attempted by Fiji's efforts to raise the Substitution Export Finance Facility by FJ\$100 million. The facility is meant to provide credit to renewable energy businesses at a concessional rate.
- Decarbonizing to reduce climate change and bolster green economic activity domestically has been attempted by South Korea's New Deal, a policy package that is dedicating KRW 6.3 trillion spending this year, KRW 67.7 trillion by 2022 and KRW 150 trillion by 2025 to invest in the digital economy, green technology and improving the social safety net for citizens.
- Reducing the impacts of climate change has been attempted by Lithuania's dedication of €50 million for co-financing of climate change investments that include climate-related innovation, research and infrastructure development.

Exploring Public Policy Intersections

Post-pandemic measures may be further enhanced by rights-based approaches, elevating livelihoods by ensuring human-centered development. The recent 2020 Global Symposium on Human Rights, the Sustainable Development Goals & the Law convened by the Centre for International Sustainable Development Law, in partnership with the McGill Centre for Human Rights and Legal Pluralism, discussed how post-pandemic measures can best leverage human rights (CISDL/CHRLP 2020). Key options for legal and policy reforms based on global calls for action include:

Indigenous Peoples Rights

Partnerships with indigenous communities can be established through the:

- Adoption of the nation to nation principle, which recognizes the important role of Indigenous people in society;
- Recognition of the jurisdiction of Indigenous peoples;

- Adoption of the United Nations Declaration on the Rights of Indigenous Peoples;
- Inclusion of an inclusive trade chapter with Indigenous people (as Canada has done);
- Coordination of responses and consultation with regional indigenous authorities to make sure that the basis of food, jobs and resources can be maintained sustainably;
- Effort to reduce adversarial processes that remain in indigenous homelands, such as land grabs and violence against indigenous women;
- Endorsement of co-management schemes and joint governance provisions, like the ones that currently exist in Canada for fisheries and wildlife management;
- Adoption of culturally sensitive laws and policies that respect the right to self-governance of Indigenous peoples;
- Recognition of indigenous rights at the constitutional level, such as s.35 of the Canadian Constitution.

Rights of People with Differing Abilities

- Recognize people with disabilities as agents and beneficiaries of inclusive sustainable development;
- Adopt the United Nation Convention on the Rights of Persons with Disabilities;
- Provide accommodations such as large font material or adapted technology for the vision and hearing impaired, provision of prosthetic limbs, etc.;
- Increase access to health facilities (for instance, skin cancer detection centres for albino people), to shelters with trained personnel (for example, staff that knows sign language) and to counselling (such as trauma counselling for victims of attacks);
- Encourage donors to promote the inclusion of women with disabilities when they support activities of non-governmental organizations;
- Provide special arrangements to women with disabilities for their children's caregiving;
- Remove structural barriers to education and employment opportunities for people with disabilities;
- Increase awareness campaigns to prevent discriminatory practices and beliefs, such as witchcraft claims;
- Educate persons with disabilities on the health risks that underlie their conditions (for example, the increased risk of skin cancer for albino people);
- Strengthen the investigation of attacks and prosecute people who commit hate crimes against people with disabilities;
- Ensure the access to adequate housing for persons with disabilities.

Children's Rights

- Improve the quality of education in order to increase children's participation in sustainable development projects;
- Adopt ambitious and urgent plans to strengthen the resilience of children to climate change, taking into account the children that express greater vulnerability;
- Develop climate policies that are rights-based and take into account the substantive and procedural rights of children;

- Include children’s participation and consultation through initiatives such as children parliaments and counsels, or the United Nations’ Voices of Future Generations Children’s Rights Initiative;
- Consider lowering the voting age to allow children’s voices to be heard;
- Increase children’s access to justice.

Women’s Rights

- Prohibit practices such as forced sterilization, forced abortion and virgin testing;
- Increase access to education and employment opportunities for women and girls;
- Ensure that health, legal and psychosocial services remain open even in times of emergency;
- Fund awareness campaigns on women’s issues;
- Promote sexual and reproductive rights and gender equality through legislation;
- Include women’s voices in policy discussions and consultation processes;
- Avoid detrimental practices such as mass layoffs in industries that disproportionately affect women, or the closing of shelters and abortion clinics while gun stores remain open.

The Way Forward

Integration of the SDGs and human-rights approaches in policy and planning is beneficial at all levels of government, and grounded in a range of international treaty commitments, and domestic legal measures (Atapattu et. al., 2016; Bruce et. al. 2016; Cabrera et. al. 2016; Fenton-Glynn et. al., 2016; Gehring et. al., 2016; Harrington et. al., 2016; Koutouki et. al., 2016; Lofts et. al. 2016; Phillips et. al., 2016; Prabhu et al., 2016; Cordonier Segger, et. al. eds., 2020). Legal preparedness for achieving the SDGs follows a stepwise approach of adoption, consultation, implementation and refinement:

1. **Policy formulation and outline:** Begin by adopting relevant SDGs and the targets and establishing a commitment for development, implementation, and refinement based on a clear timeline and metrics. This often consists of a policy statement and high-level targets such as a designated percentage of protected areas by 2030.
2. **Legal preparedness assessment:** Take stock of law and governance instruments in place within and/or applicable to the jurisdiction and identify those that support the designated objective.
3. **Prioritize policy initiatives and reforms:** Engage with relevant stakeholders – governmental, civil society, and aboriginal – to consult on prioritization of relevant programs, initiatives, and reforms. Through consultations, relevant aspects of the SDG targets may be contextualized and informed by local stakeholder considerations.
4. **Legal action plan:** Identified priorities should be outlined in a formal action plan with established milestones and metrics, as well as appropriate financial resources to support the initiatives.
5. **Monitoring and refinement:** Legal and policy reform would benefit from a learning-by-doing model informed by iterative reporting and refinement. Established reporting requirements should continue to inform fine-tuning of initiative to broaden implementation.

In post-COVID-19 measures and contexts, States are obliged to seek an integration that protects nature, addresses climate change and values human dignity in a comprehensive manner. Among the first key steps, Member States must listen to the perspectives of stakeholders outside of political and legal communities for increased transparency, inclusivity and accountability. To forge solid partnerships, States must prioritize data acquisition, accessibility of information, integration of human rights in the design and implementation of public policies, as well as the elimination of discrimination and removal of structural barriers.

Indeed, such an approach must be adopted with great urgency, quite simply as a matter of life or death. Take, for instance, the livelihoods of over 275 million migrant persons worldwide, contending with the sudden and devastating impacts of COVID-19-induced border closures, expulsion from countries of employment, confinement in labour camps, and detention of suspected virus carriers. Emerging from the pandemic, States must heed the call of the 2018 Global Compact on Migration, which details how SDG targets should be implemented regarding migrants, in order to facilitate human mobility. Measures will need to include migrants comprehensively, with the words “for all” in several of the SDGs designed to ensure maximal inclusion.

In 2020, as global leaders take stock of five years of ongoing efforts to implement the SDGs, the need for increased policy ambition is readily apparent. The challenge of worsening inequality has demonstrated the inadequacy of current development practices, while acceleration of the planet toward critical climatic tipping points demands reassessment of social and economic systems. COVID-19 has brought into sharp focus the costs of remaining on a status quo trajectory without realizing the institutional reforms enumerated here.

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“ It is finally time for the United Nations to recognize...the global right at a human level to a healthy environment...this would elevate the importance of environmental protection...would integrate human rights law on the environment providing an underlying principle that would unite the [various legal] strands and...would provide a strong for action at both the international and domestic level.”

Prof. John Knox,

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