

## FOUNDATIONAL RESEARCH DOCUMENT FOR OHCHR'S POLICY BRIEF ON HUMAN RIGHTS IMPLICATIONS OF COVID-19 RESPONSE MEASURES IN THE CONTEXT OF CLIMATE CHANGE

An important lesson from the COVID-19 pandemic concerns the need to balance different potentially competing uses of financial resources and fiscal space in unforeseen and extremely challenging circumstances. States, international organizations and other non-State actors ordinarily face competing uses for funds. Deciding between such uses is challenging enough in normal circumstances. However, with the increasingly serious and widespread manifestations of climate change and environmental degradation, as well as the demands that may arise from an unexpected challenge such as the need to respond to a pandemic, these difficult choices may lead to complex distributional choices, where the budgetary capacity is insufficient to simultaneously address several policy challenges at once, however pressing they may be. This is particularly challenging for low- and middle-income countries which do not have the same capacity to borrow funds as high-income countries. In this context, this Analytical Study examines the extent to which the human rights dimension has been integrated into the measures adopted to respond to the distributional trilemma presented by the competing needs to address the COVID-19 pandemic and respond to climate change, while respecting, protecting and fulfilling human rights. Its overall conclusion is that much work is still needed for human rights to be at the centre of the processes, decisions and policies that guide economic policy, climate actions and the response to sudden emergencies. The study recommends steps to advance a human rights enhancing economy through climate change and sustainable development finance, including in response to sudden emergencies like COVID-19. A human rights enhancing economy integrates cross-cutting obligations arising from human rights. This includes obligations to effectively mobilize financial and other resources for the realization of human rights, to cooperate internationally, to provide social protection and to ensure participatory and inclusive decision-making processes.

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## 1. INTRODUCTION

An important lesson from the COVID-19 pandemic concerns the need to balance different potentially competing uses of financial resources and fiscal space in unforeseen and extremely challenging circumstances. States, international organizations and other non-State actors ordinarily face competing uses for funds. Deciding between such uses is challenging enough in normal circumstances. However, with the increasingly serious and widespread manifestations of climate change and environmental degradation, as well as the demands that may arise from an unexpected challenge such as the need to respond to a pandemic, these difficult choices may lead to complex distributional choices, where the budgetary capacity is insufficient to simultaneously address several policy challenges, however pressing they may be. This is particularly challenging for low- and middle-income countries which do not have the same capacity to borrow funds as high-income countries.

In such distributional trilemmas, the position of human rights deserves special attention. Whether resource allocation questions arise in normal circumstances or in a crisis context, the respect, protection and fulfilment of human rights must be a core consideration of any policy intervention and guide budgetary allocations. Anchoring distributive choices in human rights, both as (1) a minimum requirement under all circumstances and (2) as the ultimate overarching goal of public policy, are the two main prongs of a human-rights enhancing economy (HREE). For this to be possible, (3) human rights must be understood and fleshed out in their normative and operational dimensions. In order to equip States with relevant tools to advance the three prongs of a HREE, the Office of the High Commissioner for Human Rights (OHCHR) launched, in late 2019, the Surge Initiative, which has worked with over 90 field presences and UN country teams to embed the HREE in their processes, decision- and policy-making.

### **Three prongs of a human rights-enhancing economy (HREE)**

- (1) Human rights are a **minimum requirement** that must be upheld by economic policies under all circumstances
- (2) Human rights must be the **ultimate overarching goal** of economic policies
- (3) To enable (1) and (2), human rights must be understood and fleshed out in their **normative and operational dimensions**

The principles and standards derived from international human rights law, especially the Universal Declaration of Human Rights and the core universal human rights treaties, should guide all relevant COVID-19 recovery and climate policies and programming. The interlinked crises of climate change, economic downturn and health security have showed how challenging such choices may be. The adverse implications of such distributional trilemmas on human rights must therefore be anticipated, prevented and remedied through policies and strategies that pursue a HREE.

In this context, this Analytical Study examines the extent to which the human rights dimension has been integrated into the measures adopted to respond to the distributional

trilemma presented by the competing needs to address the COVID-19 pandemic and respond to climate change, while respecting, protecting and fulfilling human rights. Its overall conclusion is that much work is still needed for human rights to be at the centre of the processes, decisions and policies that guide economic policy, climate actions and the response to sudden emergencies. The study recommends steps to integrate the HREE in contexts of particular relevance to climate change and sustainable finance, by reference to cross-cutting obligations arising from human rights such as the obligations to effectively mobilize financial and other resources, to cooperate internationally, to provide social protection and to ensure participatory and inclusive decision-making processes.

Section 2 of the Analytical Study examines the nature, scope and effects of the COVID-19 rescue and recovery policies, paying particular attention to their interconnection with climate finance and their human rights implications. Section 3 analyzes how international human rights law frames complex distributional choices. Section 4 provides more detailed discussion of certain international (G20 debt relief initiatives and the Green Climate Fund's gender responsiveness policies), regional (the EU's framework for sustainable finance) and domestic developments (in Fiji and Senegal). Section 5 concludes with recommendations for further action. Two appendices provide a more detailed examination of the evidence-base for Sections 2 and 3.

## 2. MAPPING THE PLACE OF HUMAN RIGHTS IN A DISTRIBUTIONAL TRILEMMA: COVID-19 POLICIES, CLIMATE FINANCE AND HUMAN RIGHTS

### 2.1. Overview

The COVID-19 pandemic led States around the world to greatly expand their fiscal stimulus policies first and foremost to contain in the short-term the adverse economic and social impacts of the pandemic and the related lock-down measures ('rescue policies') but also to reactivate their economies in the medium to the longer-term ('recovery policies'). Out of the USD 18.16 trillion spent of fiscal stimulus, the vast majority of the funds (USD 15.05 trillion) were allocated to 'rescue', with only USD 3.11 trillion focusing on 'recovery'.<sup>1</sup>

The ability to adopt these measures as well as their nature and specific goals varies significantly across countries. Developed countries, which generally benefit from lower interest rates when borrowing funds in capital markets, adopted massive fiscal packages, whereas middle- and low-income countries faced significant obstacles to do so. The types of policies and the goals pursued by such policies also vary greatly, not only in their timeframe (rescue vs recovery) but also in their magnitude (higher vs lower spending), type (with different taxonomies proposed) and overall goals (economic, social, environmental or a combination thereof).

Climate finance is relevant in this context in three main respects. When stimulus policies are multidimensional (i.e. they pursue not only an economic and/or social goal but also an environmental one, which is climate-related), they can support both mitigation of and adaptation to climate change, as part of what has been called an effort to 'build back better'.

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<sup>1</sup> See Appendix I for details.

In addition, funds mobilized as part of climate finance, by a range of multilateral, domestic and private institutions, can contribute to post-COVID-19 recovery while re-orienting recipient economies towards a low-carbon pathway. However, stimulus policies may also undermine the transition to a low-carbon economy, whether by investing funds in fossil-fuel intensive sectors or by increasing the debt-burden of States conducting such policies, which in turn diverts funds away from their later use for mitigation or adaptation.

The connection between stimulus policies and climate finance has been examined in some detail in a growing number of publications. This section relies on a selection of reports and other studies published between January 2021 and September 2022, which take stock of earlier studies and describe trends regarding COVID-19 rescue and recovery policies, climate finance and their interconnections. As a general matter, only a third of the fraction spent on recovery (31.2% of the USD 3.11 trillion (USD 0.97 trillion)) qualified as ‘green spending’, understood by reference to the associated emissions of greenhouse gases (GHG), air pollution and impact on natural capital (see Appendix 1 for further detail). The analysis also takes into account other sources when relevant. The specific focus of the section is to understand, on this basis, the implications of these trends for human rights. One significant aspect arising from the analysis is that the human rights dimension remains under-explored, both at an empirical and normative level. When this dimension is addressed, it is mainly through a focus on the social implications (for inequality and livelihoods) of the relevant policies. Yet, little or no explicit reference to the need to respect, protect and fulfil human rights is made as such, and the international cooperation dimension tends to concentrate on addressing crises without fleshing out the implications (positive or negative) for human rights.

The analysis covers three key issues from the perspective of human rights: (1.2) differences between advanced economies and low- and middle-income countries in terms of impact and ability to respond; (1.3) the policy ‘trilemmas’ faced by the latter; and (1.4) possible routes to integrate economic, social and environmental goals in this policy landscape, with particular reference to knowledge gaps as regards human rights.

## **2.2. Differences between advanced economies and low- and middle-income countries**

Differences between countries relative to the impact of the pandemic and their ability to respond is a recurrent theme in the studies surveyed. There is, indeed, a ‘grave danger of a sharply diverging world—with one group of countries recovering on the back of strong stimulus measures and digital acceleration, and many others sinking deeper into a cycle of poverty, hunger, unsustainable debt and austerity’.<sup>2</sup> This is because the crisis resulting from the COVID-19 pandemic has affected developing countries much more deeply than the 2008 sub-prime crisis,<sup>3</sup> including with respect to the number of people facing food insecurity (which has more than doubled from 135 million in 2010 to 272 million in 2020), losing their jobs, and falling below the poverty line (500 million additional people, which is the first such

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<sup>2</sup> United Nations Inter-agency Task Force on Financing for Development, *Financing for Sustainable Development Report 2021* (25 March 2021) [*Financing for Sustainable Development Report 2021*], at xiii.

<sup>3</sup> Green Climate Fund (GCF), *Scaling up climate finance in the context of COVID-19. A science-based call for financial decision makers* (25 May 2021) [GCF, *Scaling up climate finance*], at xix. See generally section 3 of the report (Scaling climate finance in the context of COVID-19).

increase in 30 years).<sup>4</sup> These effects have been particularly acute in developing countries, including small island developing States.

Despite the relevance of such findings to understand the situation of human rights in the most affected countries, this dimension often remains underexplored. One exception is a report of the World Health Organization (WHO) published in October 2021.<sup>5</sup> The emphasis of this report, and of its ten recommendations, is on the co-benefits of climate action for health.<sup>6</sup> But it specifically includes an action point under its recommendation no. 3 that emphasizes the need to ‘honour everybody’s right to health’, and it refers to the increasing recognition of the right to a safe, clean, healthy and sustainable environment (see further Section 3 and Appendix 2 of the present Analytical Study).<sup>7</sup> In explaining the grounds for this action point, the WHO report highlights both the disparate impact of the climate crisis on certain States, persons and groups, and the need for a ‘rights-based approach’ to tackle this impact.<sup>8</sup>

The need for a rights-based approach appears all the more pressing given that low- and middle-income countries face genuine distributional dilemmas, and they should be supported not as a mere matter of discretion, but as a matter of international human rights law (see Section 3 below).

### **2.3. Policy ‘trilemmas’ faced by low- and middle-income countries**

The conundrum faced by low- and middle-income countries is clearly recognized in a *Joint statement by the Adaptation Fund, the Climate Investment Funds, Green Climate Fund, Global Environment Facility, Least Developed Countries Fund, and Special Climate Change Fund* of 26 July 2021, which notes that ‘[d]eveloping countries are particularly vulnerable to compound risks from climate change and the COVID-19 pandemic, including the economic fallout from the pandemic. These nations require urgent access to long-term, affordable finance to implement climate-resilient recovery measures that will avoid emissions and climate-vulnerability lock-in for decades to come’.<sup>9</sup> But these countries do not just need climate resilient COVID-19 recovery, they also need to take measures to ensure the effective enjoyment of human rights. Indeed, rather than a ‘dilemma’, the situation is more accurately described as a ‘trilemma’ which requires addressing economic, environmental and social needs with decreasing funds and access to funding.

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<sup>4</sup> Ibid, at xix.

<sup>5</sup> World Health Organization (WHO), *COP26 Special Report on Climate Change and Health: The Health Argument for Climate Action* (11 October 2021) [WHO, *COP26 Special Report*]

<sup>6</sup> Ibid, at 4.

<sup>7</sup> Ibid, at 21-22.

<sup>8</sup> Ibid, at 21. This rights-based approach expressly relies, as indicated in footnote 64 of the report, on the *Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Office of the High Commissioner for Human Rights (6 May 2016).

<sup>9</sup> Supporting developing countries on the road to a climate-resilient recovery from the COVID-19 pandemic, *Joint statement by the Adaptation Fund, the Climate Investment Funds, Green Climate Fund, Global Environment Facility, Least Developed Countries Fund, and Special Climate Change Fund* (26 July 2021) [*Joint Statement of Climate Finance Institutions*], preamble (emphasis added).

Although there are variations reflecting the specific circumstances of each country, in general, low- and middle-income country must face this trilemma in conditions that are rendered extremely challenging by their limited funds, the costs of servicing their foreign debt, the higher interest rates they face in capital markets when compared to advanced economies as well as the capital outflows and foreign exchange risks they must manage when borrowing.<sup>10</sup> In short, they are more affected and less able to mobilize the resources to respond.

Yet, the evidence reviewed suggests that international support remains insufficient, and, in some cases, it has decreased. A study focusing on the impact of the COVID-19 crisis on domestic and international climate finance in 17 developing countries from different continents, finds that between 2019 and 2020 the proportion of official development aid (ODA) for projects where climate change is the principal focus fell from 18% to 14% and, for projects where climate change is a significant (but not the main) focus, it fell from 25% to 17%.<sup>11</sup> In over a third of the 17 countries surveyed, domestic climate finance also went down as a result of natural disasters and the need to reallocate funds to tackle the effects of the pandemic.<sup>12</sup> This is consistent with the conclusions of another study focusing on finance for projects relating to adaptation to climate change.<sup>13</sup> Financial needs for adaptation are between five and ten times greater than current international public adaptation finance flows.<sup>14</sup>

In the case of least developed countries (LDCs), the evidence suggests that the effects of the pandemic, combined with pre-existing social and economic challenges, have ‘reversed the progress that had been painstakingly achieved on several dimensions of development, notably on the fronts of poverty, hunger, education and health’.<sup>15</sup> These superseding budgetary pressures have shifted the policy focus away from wider goals, including some of the sustainable development goals (SDGs).<sup>16</sup>

Recognizing such challenges, there is a tendency to emphasize integration of financial flows to support projects and policies that pursue social, economic and environmental (climate) purposes. However, such integration has largely failed to materialize and relatedly has often

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<sup>10</sup> *Financing for Sustainable Development Report 2021*, at 3 (Box I.1).

<sup>11</sup> World Resources Institute (WRI), *Financing climate action and the COVID-19 pandemic: An analysis of 17 developing countries*. Working Paper (28 October 2021) [WRI, *Financing climate action*]

<sup>12</sup> WRI, *Financing climate action*, at 2.

<sup>13</sup> United Nations Environment Programme (UNEP), *Adaptation Report Gap 2021: The Gathering Storm. Adapting to climate change in a post-pandemic world* (1 November 2021) [UNEP, *Adaptation Report Gap 2021*], at xii.

<sup>14</sup> *Ibid.*, at xv, and more generally at pp. 27-36. A consistent assessment is provided in another report focusing specifically on adaptation finance: Global Center on Adaptation, *Adaptation finance in the context of COVID-19* (January 2021), at 18.

<sup>15</sup> United Nations Conference on Trade and Development (UNCTAD), *The Least Developed Countries in the post-COVID World: Learning from 50 years of experience* (27 September 2021) [UNCTAD, *LDC Report*], at II.

<sup>16</sup> *Ibid.*, at 105-106.

been conceptualized in a manner that lacks a clear articulation of a human rights-based approach.

#### 2.4. Integrating economic, social and environmental goals

In the context of COVID-19 stimulus policies, developing countries face four main challenges to scale up climate finance: making COVID-19 recovery and climate action mutually supportive; increasing investment while managing the debt-burden; attracting private investment despite their higher investment risk profile; and accessing affordable long-term finance. All the while, they must confront these challenges with policies that are consistent with their human rights obligations. Integrated policies pursuing climate, sustainable development and COVID-19 response objectives are a key approach to these challenges. Additional fiscal space for such policies can be made available by a range of innovative instruments such as green or social bonds (borrowing earmarked for specific environmental or social projects) or ‘debt-for-climate swaps’ (conversion of foreign debt into obligations of the debtor country to make payments in local currency in support of specific climate-related projects).<sup>17</sup>

In most studies surveyed, the social dimension pervades the discussion of possible actions, but there is no explicit reference to human rights.<sup>18</sup> Two partial exceptions include the aforementioned report of the WHO<sup>19</sup> and a working paper from the International Labour Organization (ILO) of October 2021.<sup>20</sup> The WHO report includes several action points on the use of climate finance to pursue integrated climate and health goals, such as the scaling up of finance for vulnerable countries to tackle the health and climate change crises<sup>21</sup> and build resilience,<sup>22</sup> or the removal of harmful subsidies for fossil fuels and unsustainable

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<sup>17</sup> See Climate Policy Initiative, *Debt for Climate Swaps. Supporting a Sustainable Recovery* (May 2021); New Climate Institute, *Climate, COVID-19, and the Developing Country Debt Crisis. Potential criteria for prioritising debt-for-climate swap support* (1 April 2021) [NCI, *Debt for Climate Swaps*]

<sup>18</sup> The *Joint Statement of Climate Finance Institutions* strongly emphasizes integration, but it omits any specific reference to human rights. UNEP’s 2021 *Are we building back better* report focuses on integrated policies in five specific areas, but it does not expressly address the relevance of human rights. A joint report from the World Bank and the Climate Investment Funds (CIF) expressly links COVID-19, climate and human health as a starting point to recommend integration of climate-smart healthcare into COVID-19 response and recovery policies, but it falls short of linking such concerns to human rights (see CIF/World Bank, *COVID-19 and Climate-Smart Health Care. Health Sector Opportunities for a Synergistic Response to the COVID-19 and Climate Crises* (3 November 2021)). A joint report from the UN Economic and Social Commission for Asia and the Pacific (ESCAP) and the Global Green Growth Initiative (GGGI) focuses on integrating climate and environmental considerations in COVID-19 response and recovery policies by means of a range of financial instruments, such as project finance, funds and facilities, thematic bonds, carbon pricing and debt-for-climate swaps, but it makes no explicit reference to human rights (see ESCAP/GGGI, *Green and Climate Finance Options to Support the Post COVID-19 Pandemic Recovery and Climate Action* (4 November 2021)).

<sup>19</sup> WHO, *COP26 Special Report*.

<sup>20</sup> International Labour Organization (ILO), *Financing human-centred COVID-19 recovery and decisive climate action worldwide. International cooperation’s twenty-first century moment of truth* (7 October 2021) [ILO, *Financing human-centred COVID-19 recovery*].

<sup>21</sup> WHO, *COP26 Special Report*, recommendation 2, action points 2 and 3.

<sup>22</sup> *Ibid*, recommendation 4, action points 2 and 4.

agriculture.<sup>23</sup> In its Recommendation no. 3, the report stresses the requirement to ‘honour everybody’s right to health’ and refers to the need for a human rights-based approach.<sup>24</sup> In a similar vein, the ILO working paper focuses on the action of multilateral financial institutions to support integrated policies and, in discussing options, it refers to human rights and international labour standards.<sup>25</sup>

The lack of articulation of the human rights dimension of the link between COVID-19 rescue and recovery and climate finance is largely a matter of what aspects are (or are not) being emphasized. This is an important gap which requires specific attention. A similar need arose in the context of climate finance and human rights,<sup>26</sup> following the recognition that climate action may have not only synergistic but also adverse effects on human rights. Similarly, in the more challenging context of a distributional trilemma, it is also important to recognize both the synergies and the possible tensions, and to seek guidance in international human rights law on how to address them.

### 3. A HUMAN RIGHTS-BASED APPROACH TO A DISTRIBUTIONAL TRILEMMA: COVID-19 POLICIES, CLIMATE FINANCE AND THE PURSUIT OF A HUMAN RIGHTS-ENHANCING ECONOMY

#### 3.1. Overview

The gap identified in the previous section requires an extension of the analysis to a context characterized by a distributional trilemma in the allocation of limited financial resources. Specifically, resource allocation must be aligned with the fulfilment of human rights, measures to address climate change, and COVID-19 rescue and recovery policies. Section 3 explores why a human rights-based approach to such a distributional trilemma is needed and the most relevant obligations/responsibilities arising for a range of duty-bearers (States but also certain entities, such as businesses, investors and financial institutions) under international human rights law. As with Section 2 of this Study, a more detailed examination of the relevant evidence base is provided in an appendix (see Appendix 2).

#### 3.2. Reasons requiring a human rights-based approach

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<sup>23</sup> Ibid, recommendation 1, action point 2; recommendation 8, action point 2; recommendation 9, action point 1.

<sup>24</sup> Ibid, at 21-22.

<sup>25</sup> See ILO, *Financing human-centred COVID-19 recovery*, at 16 (‘MDB participation would be conditioned on safeguards to ensure financial additionality and integrity and proper public governance and oversight, including those reflected in the Blended Finance Guidance produced by the Organisation for Economic Co-operation and Development and in the Equator Principles, as well as adherence to international labour, human rights and environmental standards, including those enshrined in ILO core labour standards and other conventions.’).

<sup>26</sup> See the guidelines and standards reviewed in *Promoting rights-based climate finance for people and planet*, 18 April 2018, A/HRC/WG.2/19/CRP.4 [*Study – Rights-based climate finance*].

The need for a human rights-based approach to the extended context of both climate finance and COVID-19 rescue and recovery policies rests on five main reasons already identified by previous work on climate finance.<sup>27</sup>

First, there is a clear and strong imperative arising from international human rights law, including treaties and customary international law, for both climate finance and COVID-19 rescue and recovery policies to ensure that human rights standards are fully integrated, respected, protected and fulfilled through policies, decisions and processes adopted in this context. The integration of the human rights dimension is not a matter of discretion but a matter of law. Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) expressly requires States parties ‘individually and through international assistance and co-operation’ and ‘to the maximum of their available resources’ to undertake steps to achieve the full realization of economic, social and cultural rights.<sup>28</sup> Similarly, Article 2, paragraphs (1) and (2) of the International Covenant on Civil and Political Rights (ICCPR) require States parties ‘to respect and to ensure to all individuals’ within their territory or jurisdiction the rights recognized in the ICCPR and ‘to adopt such laws or other measures’ necessary to give effect to these rights.<sup>29</sup>

Secondly, a human rights-based approach performs two complementary functions. It provides a legal basis for requiring proactive actions to respect, protect and fulfil human rights and a normative framework defining the bounds within which other policies (including climate action and COVID-19 rescue and recovery policies) must evolve to be consistent with human rights. This is what the two main prongs of a HREE aim at, and the third prong of the HREE concept is intended to equip States with the operational means to pursue those two goals.

Thirdly, integration of human rights alongside the economic and environmental goals of climate finance and COVID-19 rescue and recovery policies is important to ensure policy coherence. The 2030 Agenda for Sustainable Development,<sup>30</sup> the Addis Ababa Action Agenda<sup>31</sup> and the preamble of the Paris Agreement,<sup>32</sup> re-emphasized in the Glasgow Climate Pact,<sup>33</sup> all call for policy integration and coherence. As discussed earlier in this Analytical Study, integration and coherence is all the more necessary in a context of decreasing available funds, particularly in low- and middle-income countries.

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<sup>27</sup> See *Study – Rights-based climate finance*, at paras. 6-10.

<sup>28</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3 [ICESCR]

<sup>29</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 [ICCPR].

<sup>30</sup> Resolution 70/1, ‘Transforming our World: The 2030 Agenda for Sustainable Development’, 21 October 2015, UN Doc. A/RES/70/1 [2030 Agenda for Sustainable Development], Target 17.13 and 17.14.

<sup>31</sup> *Addis Ababa Action Agenda of the Third International Conference on Financing for Development*, UNGA Resolution 69/313, 27 July 2015, UN Doc. A/RES/69/313, Annex [Addis Ababa Action Agenda], paras. 9, 75, 103.

<sup>32</sup> Adoption of the Paris Agreement, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/L.9 [Paris Agreement], preamble.

<sup>33</sup> Glasgow Climate Pact, Decision 1/CMA.3, 13 November 2021, FCCC/PA/CMA/2021/L.16 [Glasgow Climate Pact], preamble.

Fourthly, a human rights-based approach to climate finance and COVID-19 policies strengthens the fairness and acceptability of the policy response<sup>34</sup> because it shifts the focus from aggregate figures to the specific situation of individuals and communities with a human face. This perspective still lacks specific articulation in the body of reports and studies reviewed in section 2 of this Analytical Study. This makes it all the more important that such reports recognize the disproportionate impact of the pandemic on those who face situations of discrimination or vulnerability.<sup>35</sup> In addition, a human rights-based approach can greatly contribute to participatory, democratic, fair and accountable policy- and decision-making processes.<sup>36</sup>

The fifth reason is that a human rights-based approach is important to clarify and allocate the specific rights and responsibilities of a range of actors, public and private, domestic and international, which are affected by and/or involved in the development of climate finance and COVID-19 rescue and recovery policies. A rights-based approach emphasizes that provision and allocation choices are not a matter of discretion, but a matter of legal rights and responsibilities, as further discussed next.

### **3.3. International human rights obligations and responsibilities**

The primary duty-bearers of the obligations under treaty and customary international law to respect, protect and fulfill human rights are States and State agencies (including, for example, development agencies and export credit agencies (ECAs)). However, other entities, including intergovernmental organizations (e.g. international financial institutions (IFIs) and multilateral development banks (MDBs)) and the private sector (e.g. investors, financial intermediaries, insurance companies) also have obligations and/or responsibilities. The landscape and contours of such obligations and responsibilities have been discussed in detail in OHCHR's previous work on the human rights-based approach to climate finance.<sup>37</sup>

The framework developed in that work is also applicable to the context of climate finance and COVID-19 rescue and recovery policies, with some adjustment as regards individuals and groups particularly affected by the pandemic as well as the provision of financial means to low- and middle-income countries through approaches ranging from grants, loans, guarantees, debt suspension and cancellation, among others.

This section summarizes the approach developed in connection with climate finance, adjusting it when necessary to reflect specificities of the extended climate finance and COVID-19 rescue and recovery context.

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<sup>34</sup> OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (2006); OHCHR, *Applying a Human Rights-based Approach to Climate Change Negotiations, Policies and Measures* (2010); UNICEF, *Human Rights-based approach to Programming* at [https://www.unicef.org/policyanalysis/rights/index\\_62012.html](https://www.unicef.org/policyanalysis/rights/index_62012.html); Council of the European Union, *Council Conclusions on a rights-based approach to development cooperation, encompassing all human rights* (2014); OHCHR, *Frequently Asked Questions on Human Rights and Multilateral Development Banks* (2016).

<sup>35</sup> UNEP, *Are we building back better?*, at 6.

<sup>36</sup> UN Practitioners Portal on Human Rights Based Approaches to Programming, at <http://hrbaportal.org/> (visited 26.11.2021).

<sup>37</sup> See *Study – Rights-based climate finance*, at paras. 30-89.

### 3.3.1. *Obligations of States*

Under international human rights law, States have both internal and external obligations in relation to the respect, protection and fulfilment of human rights.<sup>38</sup> In addition, they have collective obligations to cooperate to realize human rights.<sup>39</sup> In the context of climate finance and COVID-19 rescue and recovery policies the emphasis of these obligations should be on effectively providing sufficient funding for not only economic and environmental needs to be met but also social protection, and this in a manner consistent with human rights law, norms and standards. Social protection should not only be understood as an aggregate variable but, crucially, also as a requirement under international human rights law to respect, protect and fulfil human rights for all.

#### 3.3.1.1. Internal dimension

Internally, a human rights-based approach is required in the development, financing and implementation of both climate action<sup>40</sup> and COVID-19 rescue and recovery policies.

Given the trilemma faced by low- and middle-income countries, this can be achieved, first, by adopting policies that pursue economic, environmental and social objectives in an *integrated manner*. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has emphasized that ‘[a] rights-based approach must be applied to the investment of trillions of dollars in economic recovery, ensuring that investments advance human rights, prevent future pandemics, alleviate climate change and biodiversity loss, provide a just transition for vulnerable workers and communities and accelerate progress to achieve the Sustainable Development Goals’.<sup>41</sup>

Secondly, considering the disproportionate effect of both climate change and the pandemic on people and communities in or at risk of vulnerable situations, which has increased inequality and reversed progress made in the last three decades to reduce poverty,<sup>42</sup> both climate finance and COVID-19 strategies must be designed to *benefit these individuals and groups*. Good practices aligned with human rights obligations include meaningful and informed public participation in decision- and policy-making processes,<sup>43</sup> the conduct of

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<sup>38</sup> See e.g. ICCPR, Art. 2(1); ICESCR, Art. 2(1). The legal authorities elaborating on this dimension are mentioned in note 52 below.

<sup>39</sup> See, e.g. ICESCR, Art. 2(1).

<sup>40</sup> *Study – Rights-based climate finance*, at paras. 31-43.

<sup>41</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, Human rights depend on a healthy biosphere, A/75/161, 15 July 2020, para. 83.

<sup>42</sup> UNEP, *Are we building back better?*, at 4 and 6; WHO, *COP26 Special Report*, at 21.

<sup>43</sup> ICCPR, article 25; Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 25 June 1998, 2161 UNTS 447; ‘Rio Declaration on Environment and Development’, 13 June 1992, UN Doc. A/CONF.151/26. Rev.1, Principle 10; Decision SS.XI/5, Part A ‘Guidelines on Developing National Legislation on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters’, 26 February 2010, Doc GCSS.XI/11; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú, 4 March 2018.

human-rights impact assessments (HRIAs) in decision- and policy-making, specifically assessing the situation of these individuals and groups,<sup>44</sup> and the adoption of gender-responsive approaches.<sup>45</sup>

A third aspect of the internal dimension concerns State *regulation of the business sector*.<sup>46</sup> Such regulation must support a transition to a low-carbon and resilient economy which is socially just and leaves no one behind.<sup>47</sup> That may mean, for example, to ensure that businesses navigate the pandemic in a manner that does not compromise economic, social and cultural rights of workers, which could be achieved by linking bailouts or other forms of short- and medium-term liquidity support to regulation concerning human rights and labour standards as well as environmental requirements.<sup>48</sup> It also requires effective *regulation of polluting activities*, including the coal, oil and gas industries and the financial intermediaries supporting them, so as to ensure that they neither encroach directly or indirectly on human rights nor continue to deplete the carbon budget left to remain within the global average temperature goal of the Paris Agreement.<sup>49</sup> A specific policy implication is to stop financing fossil fuel companies, redirect subsidies towards supporting a just transition towards a low-

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<sup>44</sup> See e.g. OHCHR, *The Other Infrastructure Gap: Sustainability* (2018); Danish Institute for Human Rights, *Human Rights Impact Assessment guidance and toolbox*, available at: <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox> (visited on 26 November 2021); *Study – Rights-based climate finance*, at para. 42.

<sup>45</sup> See L. Schalatek, S. Nakhooda, *Gender and Climate Finance* (November 2016); GGCA, UNDP, *Gender, Climate Change and Food Security* (2017); General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, 13 March 2018, CEDAW/C/GC/37, paras. 8-46, 63-64; *Indigenous women and their role in the 25-year review of the implementation of the Beijing Declaration and Platform for Action*, 30 January 2020, E/C.19/2020/8, 12-16, 46-49; *Women's and girls' sexual and reproductive health rights in crisis, Report of the Working Group on discrimination against women and girls*, A/HRC/47/38, 28 April 2021, paras 8, 21-29, 38-52, 73-76.

<sup>46</sup> Committee on Economic, Social and Cultural Rights, *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, 10 August 2017, E/C.12/GC/24 [CESCR, General Comment 24]; Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, HRC Resolution 17/4 (16 June 2011) [Principles on Business and Human Rights], part I.B 'Operational Principles'.

<sup>47</sup> ILO, *Financing human-centred COVID-19 recovery*; ILO, *Guidelines for a just transition towards environmentally sustainable economies and societies for all* (2 February 2016); *Supporting the conditions for a just transition internationally. Green growth, decent work, and economic prosperity in the transition to net zero*, 4 November 2021 (Declaration adopted by 15 States and the EU during COP26).

<sup>48</sup> UNEP, *Are we building back better?*, at 15.

<sup>49</sup> CESCR, General Comment 24, para. 32; *Statement on Human Rights and Climate Change*, Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, 14 May 2020, HRI/2019/1 [Joint Statement – May 2020], paras. 11 and 12; Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, 17 April 2013, CRC/C/GC/16 [CRC, General Comment 16], para. 45; *International Obligations Governing the Activities of Export Credit Agencies in Connection with the Continued Financing of Fossil Fuel-Related Projects and Activities*, Legal Opinion by K. Cook and J. E. Viñuales (4 May 2021).

carbon economy,<sup>50</sup> and require stringent climate change and human rights disclosures by companies and financial intermediaries.<sup>51</sup>

### 3.3.1.2. External dimension

States must comply with their human rights obligations both in their internal and external action. This includes the obligation to ensure that extraterritorial activities under a State's jurisdiction respect, protect and fulfil human rights.<sup>52</sup> In the context of climate finance and COVID-19 rescue and recovery policies, a key aspect of the external obligations of advanced economies is to enable sufficient budgetary space in low- and middle-income countries to pursue integrated action and policies.

This aspect concerns, more generally, the relations between *human rights and foreign debt*. The general aim in this context should be 'to balance a debtor and a creditor State's contractual obligations arising from external debt arrangements and both debtor and creditor's international legal obligations to respect, protect and fulfil all human rights, particularly economic, social and cultural rights'.<sup>53</sup> Such balancing must respect the

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<sup>50</sup> WHO, *COP26 Special Report*, at 53; Glasgow Climate Pact, para. 36.

<sup>51</sup> See Task Force on Climate-Related Financial Disclosures (TCFD), *Implementing the Recommendations of the Task Force on Climate-Related Financial Disclosures* (October 2021).

<sup>52</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory, ICJ Reports 2004, p. 136, paras. 108–113; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, ICJ Reports 2008, p. 353, para. 109; *Delia Saldias de Lopez v. Uruguay*, HRC Communication no. 52/1979 (29 July 1981), paras. 12.1 and 12.3; *Basem Ahmed Issa Yassin v. Canada*, HRC Communication no. 2285/2013 (26 July 2017), para. 6.5; *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 30 October 2018, CCPR/C/GC/36, paras. 21–22; CESCR, *General Comment 24*, paras. 31–33; *General Comment No. 15: The Right to Water (arts. 11 and 12 of the International Covenant on Economic Social and Cultural Rights)*, E/C.12/2002/11, 20 January 2003, paras. 31–34; *General Comment No. 18: The Right to Work*, E/C.12/GC/18, 6 February 2006, para. 30; *General Comment No. 14: The Right to the Highest Attainable Standard of Health (article 12 of the International Covenant on Economic Social and Cultural Rights)*, E/C.12/2000/4, 11 August 2000, para. 39; *Concluding Observations on Canada*, CERD/C/CAN/CO/18, 25 May 2007, para. 17; *Association pour la sauvegarde de la paix au Burundi v. Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia*, Communication no. 157/96 (29 May 2003), para. 75; *Al-Skeini and Others v UK*, ECtHR Application no. 55721/07 (7 July 2011), paras. 130–140; *Jaloud v the Netherlands*, ECtHR Application no. 47708/08 (20 November 2014), para. 139; *Alejandro and Others v. Cuba* (1999), IACommHR Case 11.589, Report no. 86/99, paras. 23–25; *Ecuador v. Colombia* (2010), IACommHR, Inter-State Petition IP-02, Report no. 112/10, para. 91; *Advisory Opinion OC-23/17 of November 15, 2017, requested by the Republic of Colombia: The Environment and Human Rights (State obligations in relation to the environment within the framework of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4.1 and 5.1 in relation with Articles 1.1 and 2 of the American Convention on Human Rights)*, paras. 101–102.

<sup>53</sup> Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina, *Guiding principles on foreign debt and human rights*, 10 April 2011, A/HRC/20/23 [Guiding principles on foreign debt and human rights], para. 2, endorsed by Resolution 20/10: The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, 18 July 2012, A/HRC/RES/20/10, operative part, para. 2.

overriding principle of the primacy of human rights, stated in paragraph 6 of the *Guiding principles on foreign debt and human rights* of the UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. Therefore, ‘their lending and borrowing decisions, those of international or national public or private institutions to which they belong or in which they have an interest, the negotiation and implementation of loan agreements or other debt instruments, the utilization of loan funds, debt repayments, the renegotiation and restructuring of external debt, and the provision of debt relief when appropriate’ must all respect human rights.<sup>54</sup> In addition, as further discussed in [section 4.2], foreign debt strategies must support the ability of debtor States ‘to meet their social and economic needs and their development requirements’ as well as to fulfil their human rights obligations.<sup>55</sup>

In the context of the pandemic, the *disparity across countries* in their ability to borrow and spend has been striking, with advanced economies having spent on average 17 times more per capita than low- and middle-income countries.<sup>56</sup> As for climate finance, three quarters (USD 479 billion) of all climate finance provided on average in 2019-2020 (USD 632 billion) flowed domestically and the majority (approx. USD 115 billion) of all international flows (USD 153 billion) went to East Asia, the Pacific, North America and Western Europe, with only a quarter being invested in the rest of the world.<sup>57</sup>

A human rights-based approach in this context requires the provision of sufficient finance to those countries, groups and individuals abroad which are most vulnerable not only to climate change but also to the impact of the pandemic. Appropriate policies must be introduced in the relevant financial agencies, including export credit agencies, national development agencies providing bilateral support and bodies managing foreign debt, to ensure that financial flows are consistent with the human rights obligations of States.

### 3.3.1.3. Collective obligations

As for the collective obligations of States, despite the much more substantial spending on COVID-19 rescue and recovery policies than on climate finance, the international organization of the latter is much more structured and institutionalized than that of the former. In the area of COVID-19-related finance or, more generally, international financing of public health-related measures, there are no institutions comparable to the GCF, the Adaptation Fund, the Global Environment Facility (GEF), the Climate Investment Funds (CIFs) or the range of market mechanisms designed to channel funding for climate change-related projects.<sup>58</sup>

The need for integration of economic, social and environmental goals could be addressed, in this context, through a clearer integration of health as part of the human rights dimension of climate finance. It could also be addressed through cooperation to develop a suitable financial

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<sup>54</sup> Guiding principles on foreign debt and human rights, para. 6.

<sup>55</sup> Ibid, para. 8.

<sup>56</sup> UNEP, *Are we building back better?*, at 7; GRO, October 2021 update, at 3.

<sup>57</sup> *Global Landscape of Climate Finance 2021*.

<sup>58</sup> WHO, *COP26 Special Report*, at 53.

architecture for global health in the context of the ongoing discussions relating to a global pandemic treaty and/or, more generally, by global coordinated action enabling low- and middle-income countries to have sufficient budgetary space to adopt integrated policies. [Section 4.2] of this Analytical Study discusses the G20's Debt Service Suspension Initiative (DSSI) and Common Framework for Debt Treatment beyond the DSSI.

### 3.3.2. *Obligations and/or responsibilities of other entities*

In addition to States, other entities, including IFIs, MDBs, private investors, financial intermediaries, insurance companies, etc., also play a significant role in both climate finance and COVID-19 rescue and recovery policies. For example, approximately half (49%) of climate finance provided in 2019-2020 came from private sources, and much of the funds borrowed by advanced economies to finance COVID-19-related spending are provided through capital markets.

States are not the only entities that have obligations and/or responsibilities under international human rights law. Several IFIs and MDBs, including the GCF, the GEF, the Adaptation Fund, the World Bank, the International Finance Corporation (IFC) as well as regional development banks, have adopted environmental and social standards to ensure their action is consistent with international standards, including human rights.<sup>59</sup> Where these institutions are controlled by States, those States have human rights obligations with respect to their direction of them. Private actors, including business organizations, also have responsibilities under international human rights law, which have been recognized by a range of instruments, decisions of international bodies, and international and domestic courts.<sup>60</sup>

A key dimension of the activities of non-State entities is to enable and support the adoption by low- and middle-income countries of actions and policies pursuing integrated economic, social and environmental goals, in the context of climate finance and COVID-19 responses. When the human rights-based approach is not clearly articulated in relevant guidelines, such integration must be a priority at the level of policy and implementation.

This includes the integration of the human rights-based approach into the policies of certain key regional and global sustainable finance initiatives. At the regional level, the ongoing work on human rights standards in EU sustainable finance frameworks offers an important

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<sup>59</sup> See *Study – Rights-based climate finance*, at paras. 111-156.

<sup>60</sup> See e.g. OECD, *Guidelines for Multinational Enterprises*, Annex I to the Declaration on International Investment and Multinational Enterprises, 25 May 2011; Principles on Business and Human Rights; International Labour Organization, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, 5<sup>th</sup> edition (2017); Equator Principles Financial Institutions, *The Equator Principles* (July 2020); CRC General Comment 16, para. 45; *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, 4 May 2016, A/HRC/32/45 [*Report on human rights and transnational corporations*], para. 35; CESCR, General Comment 24, para. 5; Findings and recommendations with regard to communication ACCC/C/2009/37 concerning compliance by Belarus (adopted by the Compliance Committee on 24 September 2010), paras. 68-69; *Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic*, Award (8 December 2016), paras. 1193-1195; Report of the independent international commission of inquiry on the Syrian Arab Republic, 22 February 2012, A/HRC/19/69, para. 106; Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, 17 September 2018, A/HRC/39/CRP.2, para. 49; *Nevsun Resources Ltd. v. Araya*, Judgment (28 February 2020), 2020 SCC 5 (CanLII), para. 113.

illustration of how a human rights-based approach can be integrated (this is discussed in [Section 4.4] of this Analytical Study). At the global level, engagement with the Glasgow Financial Alliance for Net Zero (GFANZ), a global coalition of financial institutions managing assets worth USD 130 trillion which aims to accelerate and mainstream the low carbon transition,<sup>61</sup> also offers a window of opportunity to integrate a human rights-based approach.

#### 4. IN-DEPTH FOCUS: INTERNATIONAL, REGIONAL AND DOMESTIC CASE-STUDIES

##### 4.1. Overview

This section discusses the relevance of and need for a human rights-based approach in distributional trilemmas and, specifically, in the context of climate finance and COVID-19 rescue and recovery policies. It does so by examining in some detail five case studies at the international, regional and domestic level.

At the international level, the focus is on two international initiatives, one concentrating on debt suspension and relief by G20 and Paris Club countries and the other on the gender dimension of climate finance provided by the GCF (Section 4.2). These two examples shed light on distinct issues and highlight that human rights-based approaches are not yet fully integrated.

At the regional level, the study analyzes the ongoing work on human rights standards in EU sustainable finance frameworks (Section 4.3). This illustration is useful to show how minimum human rights safeguards (the first prong of the HREE concept) can be integrated as a threshold to be preserved in all circumstances in laws and regulations governing the conduct of investors and multinational companies.

At the domestic level, we examine how two specific countries, Fiji and Senegal, which are both vulnerable to climate change and have been impacted by the COVID-19 pandemic, have coped with the distributional trilemma presented by the need to pursue economic rescue and recovery and climate action while ensuring the respect, protection and fulfilment of human rights (Section 4.4).

##### 4.2. International initiatives: G20 debt relief and GCF's gender responsiveness

###### 4.2.1. *The G20/Paris Club's DSSI and Common Framework initiatives*

###### 4.2.1.1. Overview

The effects of the COVID-19 pandemic added extreme pressure to the debt burden of many low- and middle-income countries, which were already in debt distress or at high risk thereof before the pandemic.<sup>62</sup> As discussed earlier in this Analytical Study, these countries have been left facing a 'distributional trilemma' in that they must address economic, environmental and social needs, with decreasing funds and limited access to funding. A major

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<sup>61</sup> See the website of the [Glasgow Financial Alliance for Net Zero](#) (visited on 10.10.2022).

<sup>62</sup> See the list maintained jointly by the IMF and the World Bank at this [link](#) (as of 30 June 2021).

source of pressure in this regard is the need to service foreign debt, which drains already scarce funds diverting them from domestic use.

In this context, responding to a call for action issued by the IMF and the World Bank, on 15 April 2020, countries of the G20 and of the Paris Club announced a Debt Service Suspension Initiative (DSSI).<sup>63</sup> The DSSI concerns official bilateral lending by traditional Paris Club creditor countries, such as France or the United States, and increasingly important lenders of the G20, such as China. Under this initiative, 73 low- and lower middle-income countries could request suspension of their debt payments for limited periods of time, which were subsequently extended up until December 2021. According to estimates from the IMF and the World Bank, over 40 countries requested suspension of their foreign debt payments, for a total exceeding USD 10 billion.

Debt service suspension helps the relevant countries maintain liquidity, but it does not solve the debt problem and even less, so the ‘trilemma’ faced by these countries. One important shortcoming of the system is the fact that only official bilateral creditors take part in the DSSI, which does not cover either multilateral institutions or private sector creditors. Although a set of ‘Terms of Reference to facilitate voluntary private sector involvement in the DSS’ were released by the International Institute of Finance on 28 May 2020,<sup>64</sup> private sector uptake remained limited. Another shortcoming is that the system does not tackle the more general need for debt restructuring, either to make it sustainable or to address liquidity problems.

To tackle this broader problem, in an extraordinary meeting of G20 finance ministers and central bank governors held on 13 November 2020, a ‘Common Framework for Debt Treatments beyond the DSSI’ was announced<sup>65</sup> as a cooperative effort to facilitate the restructuring of the debt of the 73 countries eligible for the DSSI. However, the uptake and the speed of the restructuring process have fallen short of expectations, with only three countries (Chad, Ethiopia and Zambia) having initiated a restructuring process under the Common Framework so far.

Although the economic and social dimensions of the DSSI and the Common Framework are clear, these initiatives do not articulate in any detail their implications for human rights or the manner in which human rights obligations could shape the design and implementation of debt-relief programs. These two aspects are briefly examined in the following paragraphs.

#### 4.2.1.2. Implications for human rights

Despite significant attention to economic and social dimensions of these initiatives, their specific implications for human rights, positive or negative, remain under-researched. It is reasonable to assume that a suspension of foreign debt payments, making funds immediately available for other purposes, has likely supported the adoption of COVID-19 rescue policies

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<sup>63</sup> See <https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative>

<sup>64</sup> Terms of Reference for Voluntary Private Sector Participation in the G20/Paris Club DSSI, available at this [link](#) (visited on 02.12.2021).

<sup>65</sup> The announcement is available at the following [link](#) (visited on 02.12.2021).

in the short-term. This is a positive development, given the trade-off between debt service and social expenditure.<sup>66</sup>

However, a report from Eurodad estimates that, between 2022 and 2024, countries participating in the DSSI would need to repay the amounts that fell due in 2020 and 2021, in addition to those due between 2022 and 2024, with a resulting increase in the debt burden in the coming years.<sup>67</sup> This may explain the very limited uptake in the DSSI restructuring option, with only three countries having engaged with it. In addition, 12 lower-middle income countries, 18 small island developing States (SIDS) and 48 upper-middle income countries have remained outside of the DSSI and Common Framework initiatives,<sup>68</sup> despite their significant exposure to debt distress.<sup>69</sup>

With respect to the specific implications for human rights law, the Independent expert on the effects of foreign debt<sup>70</sup> noted the ‘lack of an equitable and effective debt crisis resolution mechanism’ and emphasized the obligation under Article 2 of the ICESCRs to take steps to make use of the maximum of available resources to achieve progressively the full enjoyment of all rights in the Covenant.<sup>71</sup> The borrower country has therefore the obligation to ‘ensure that loan conditions do not reduce its ability to respect, protect and fulfil the Covenant rights’<sup>72</sup> and the overall relationship between lenders and borrowers must be based, as stated in the 2011 Guiding Principles on Foreign Debt and Human Rights,<sup>73</sup> on the primacy of human rights over debt-service.<sup>74</sup> Therefore, Government-controlled lenders must ensure that lending decisions, the negotiation and implementation of debt instruments, debt repayments,

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<sup>66</sup> Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Yuefen Li, International debt architecture reform and human rights, 4 August 2021, A/76/167 [Yuefen Li – August 2021 Report], para. 12.

<sup>67</sup> I. Fresnillo, ‘The G20 Debt Service Suspension Initiative. Draining Out the Titanic with a Bucket’, *European Network on Debt and Development – Briefing Paper* (October 2020) [Eurodad Briefing], at 3.

<sup>68</sup> *Ibid*, at 3.

<sup>69</sup> See L. Jenson, *Sovereign Debt Vulnerabilities in Developing Economies* (United Nations Development Programme, New York, 2021), available at this [link](#) (visited on 02.12.2021); Annex to the note verbale dated 9 July 2020 from the Permanent Mission of Belize to the United Nations addressed to the Secretary-General, AOSIS statement on debt, 10 July 2020, A/74/943.

<sup>70</sup> Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Yuefen Li, addressing, from a human rights perspective, the debt-related problems of developing countries caused by the coronavirus disease (COVID-19) pandemic, 31 July 2020, A/75/164 [Yuefen Li – July 2020 Report]; Yuefen Li – August 2021 Report.

<sup>71</sup> Yuefen Li – August 2021 Report, paras. 16-17.

<sup>72</sup> *Ibid*, para. 18.

<sup>73</sup> See Guiding principles on foreign debt and human rights; Guiding principles on human rights impact assessments of economic reforms. Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, 19 December 2018, A/HRC/40/57.

<sup>74</sup> Yuefen Li – August 2021 Report, para. 22.

the renegotiation and restructuring of external debt, and the provision of debt relief respect human rights.<sup>75</sup>

On the DSSI and the Common Framework specifically, the main areas of criticism concern the form of the suspension (its non-concessional terms and the need to resume payments in 2022) and the exclusion of many affected States.<sup>76</sup> Given that such criticism focus on the modalities of debt relief, it may be possible to address the problems raised by such criticism by means of innovative financial instruments.

#### 4.2.1.3. Debt-for-climate swaps and other analogous instruments

Among the financial instruments that have been suggested to align debt relief, climate finance COVID-19 rescue/recovery action, one option which is receiving increasing attention is that of ‘debt-for-climate swaps’.<sup>77</sup>

These instruments can be broadly characterized as ‘transactions where debt is forgiven or restructured in exchange for a commitment by the debtor (for example a developing country) to use the increased fiscal flexibility for mitigation or adaptation measures’.<sup>78</sup> More specifically, debt denominated in a foreign currency, such as USD or EUR (hence more expensive to service as it involves acquiring sufficient amounts of such currency), would be converted into the debtor country currency and used in it for an agreed purpose relating to climate change mitigation or adaptation.

The agreed purpose on the basis of which debt is forgiven or restructured could also be defined more specifically to address not only climate change but also, concurrently, the respect, protection and fulfilment of human rights. Such ‘triple impact swaps’ would be structured in a manner similar to ‘debt-for-climate swaps’, but for the fact that human rights would not be a mere parameter to be respected in the design of the project but also part of the impact to be achieved.

The human rights enhancing potential of these instruments would lie not only in the fact that it embodies an investment in ‘impact’ which is not confined to climate change or COVID-19 response but also in that it would provide a way of addressing a distributional trilemma. By re-orienting funds previously earmarked for debt service towards specifically agreed and monitored human rights enhancing purposes and with due assessment of the potential short-, medium- and longer-term human right impacts such instruments could provide a realistic approach to integration.

#### 4.2.2. *Gender responsiveness in the GCF’s projects and programs*

##### 4.2.2.1. Overview

One important dimension of both COVID-19 rescue and recovery policies and climate finance concerns the integration of gender equality.<sup>79</sup> The 2011 Governing Instrument of the

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<sup>75</sup> Guiding principles on foreign debt and human rights, para. 6.

<sup>76</sup> Yuefen Li – August 2021 Report, paras. 32-33.

<sup>77</sup> NCI, *Debt for Climate Swaps*.

<sup>78</sup> *Ibid*, at 1.

<sup>79</sup> UNEP, *Are we building back better?*, at 4 and 6; WHO, *COP26 Special Report*, at 21.

GCF expressly recognizes the need to integrate this dimension when, in its paragraph 3, it states that ‘[t]he Fund will strive to maximize the impact of its funding for adaptation and mitigation, and seek a balance between the two, while promoting environmental, social, economic and development co-benefits and taking a gender-sensitive approach’.<sup>80</sup> Moreover, paragraph 31 further adds that ‘[t]he Fund will provide simplified and improved access to funding, including direct access, basing its activities on a country-driven approach and will encourage the involvement of relevant stakeholders, including vulnerable groups and addressing gender aspects’.

Such express recognition is particularly relevant because, in addition to the importance of the gender dimension from a human rights perspective, the GCF has a special position in setting the standards for climate finance practices globally. This is so because of its ability to mobilize substantial financial flows for climate-related projects and programs, both directly (USD 9.31 billion between 2014-2019, USD 9.87 billion between 2020-2023 and USD 2.34 billion so far for 2024-2027<sup>81</sup>) and indirectly (by leveraging wider sources of funding amounting to some USD 38.3 billion). And also because of the GCF’s position in the climate change legal regime, as the main financial mechanism under the UNFCCC and the Paris Agreement to support developing countries (non-Annex I countries).

Given the express mandate in its Governing Instrument, the GCF has integrated the gender dimension in its processes since early on, and it adopted a Gender Policy and a 3-year Gender Action Plan in 2015. In 2019, a revised Gender Policy<sup>82</sup> and a new Gender Action Plan<sup>83</sup> were adopted. These documents require initial gender and social assessments as well as project- or program-specific gender action plans as conditions for funding approval. These materials have been made available on the GCF website since December 2016. In 2017, the GCF and UN Women co-developed a manual on Mainstreaming gender in Green Climate Fund projects.<sup>84</sup>

However, a recent study on the integration of the gender dimension in a sample of 30 projects and programs approved for funding (out of a total of 190) has found that gender integration in GCF activities remains insufficient.<sup>85</sup>

#### 4.2.2.2. GCF’s Gender Policy and Gender Action Plan 2020-2023

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<sup>80</sup> Governing Instrument for the Green Climate Fund, Decision 3/CP.17, 11 December 2011, FCCC/CP/2011/9/Add.1.

<sup>81</sup> Status of pledges and contributions (as of 31 October 2023), available at this [link](#) (visited on 30.11.2023).

<sup>82</sup> Gender Policy, decision of the GCF Board B.24/12 [GCF Gender Policy], available at this [link](#) (visited on 02.12.2021).

<sup>83</sup> Gender Action Plan of the GCF 2020-2023, decision of the GCF Board B.24/12 [GCF Gender Action Plan], available at this [link](#) (visited on 02.12.2021).

<sup>84</sup> GCF/UN Women, *Mainstreaming gender in Green Climate Fund projects* (15 August 2017), available at this [link](#) (visited on 22.06.2022).

<sup>85</sup> Heinrich Boll Stiftung/Gender Action, *More than an add-on? Evaluating the integration of gender in Green Climate Fund projects and programs* (October 2021) [HBS/GA Assessment]

The GCF developed a Gender Policy and a Gender Action Plan from early on, based on an express mandate in its Governing Instrument. Whereas the Policy sets the main principles fleshing out this mandate, the Action Plan provides a triennial implementation strategy.

The Gender Policy has three main objectives, namely: to support climate change interventions through a comprehensive gender approach applied throughout the entire network of entities involved in the delivery of GCF finance; to promote climate investments that advances gender equality in mitigation and adaptation actions and minimizes their gender-related risks; and to contribute to reducing the gender gap caused by climate change-exacerbated vulnerabilities and exclusions through mainstreaming of gender equality.<sup>86</sup>

The Policy's scope of application encompasses all the GCF's funding activities, whether undertaken by the public or the private sector, at four levels: the GCF's own institutions and processes; the project or program level; at the national level (entities taking part in the application and delivery process, such as 'accredited entities', 'national designated entities' and 'focal points'); and at the sectoral level (this is more of an information-gathering focus to track the GCF's impact).

Importantly, the wide network of entities involved in the channeling of GCF finance, including the GCF's own institutions, must be guided by four main principles which emphasize gender equality, women's empowerment, and participatory arrangements. Principle 1 is of particular importance because it grounds the requirements of the Gender Policy in international legal standards, including the UNFCCC, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the SDGs, the ILO's core conventions and the Paris Agreement.<sup>87</sup> It is therefore clear that the Gender Policy rests, in part, on international human rights law and standards, and that these are applicable to all the entities involved in the delivery of finance and at all levels. Certain specific requirements are defined for each level (GCF, accredited entities, and project-level requirements).

At the level of projects or programs, a distinction is made between the 'project preparation stage', which must include among other things a gender assessment and a project-level gender action plan,<sup>88</sup> and the 'project implementation, monitoring and reporting stage'.<sup>89</sup> This distinction is relevant also for practical purposes given that the great majority of projects and programs funded by the GCF remain at an early stage and, therefore, their gender responsiveness has mainly been assessed from the perspective of project preparation.

The Gender Policy (Section VII) envisions five main areas for its operationalization, namely: governance; competencies and capacity development; resource allocation, accessibility, and budgeting; operational procedures; and knowledge generation and communications. Each of

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<sup>86</sup> GCF Gender Policy, para. 11.

<sup>87</sup> Ibid, paras. 15 to 18.

<sup>88</sup> Ibid, para. 29(b).

<sup>89</sup> Ibid, para. 30.

these areas is described in detail, including a set of indicators to assess progress, in the GCF's GAP 2020-2023.<sup>90</sup>

#### 4.2.2.3. GCF's gender responsiveness in practice

The framework described in the previous paragraphs shows the express integration of gender equality as a goal anchored in human rights law and standards to be promoted by gender-responsive programs. This is certainly an important step from the perspective of a human rights-based approach to climate finance. However, a detailed assessment of the implementation of this framework at the project preparation stage in 30 approved projects and programs suggests that the gender equality goal is not yet sufficiently integrated, i.e. it is not a core consideration in practice.

The assessment scored each of the 30 projects and programs as 'strong', 'adequate' or 'weak' for a number of indicators organized around four main clusters<sup>91</sup>: quality of gender considerations in the proposal for funding; understanding and analysis of gender issues in other documents of the project or program; gender risk management through safeguards, grievance and compensation procedures at the project or program level; and integration at the project/program level of marginalized gender groups, Indigenous Peoples, and local communities and their priorities.

The overall result of the assessment is that 90% of projects and programs in the sample were considered to fall short of complying with the GCF's Gender Policy. The gap is larger for certain indicators. From the perspective of the extended context of climate finance and COVID-19 rescue and recovery policies, one noteworthy shortcoming is the finding that two-thirds of the projects and programs in the sample failed to elaborate on their gender co-benefits in any detail. This is a clear confirmation, based on a systematic review of the evidence in a specific context, of the general finding of this Analytical Study that the human rights dimension is not sufficiently spelled out in practice. Another converging finding is that in 60% of the sample, the results of gender assessments are not integrated into the design of the project/program, but only presented as an add on during the approval process. Similarly, almost 60% of the assessed projects/programs fail to involve local women, LGBTQ+ people, and Indigenous Peoples in advisory or oversight boards. However, the assessment also concludes that two-thirds of the projects/programs 'strongly' or 'adequately' ensure full and effective participation of local women and other gender groups in project/program planning and design.

The results of this assessment therefore point to a still unfulfilled process both of implementation of existing policies and of strengthening of some of their contents. There are concrete steps that can be taken to move from the level of mandate to that of meaningful implementation,<sup>92</sup> including the conduct of assessments like the one reviewed in this case-study in other financial institutions, the development of gender policies and guidelines where

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<sup>90</sup> GCF Gender Action Plan, Annex IV (Gender Action Plan Indicators).

<sup>91</sup> HBS/GA Assessment, chapter 2 (Methodology).

<sup>92</sup> Some of these steps have been suggested in a previous study from the Heinrich Böll Foundation North America: L. Schalatek, *From Innovative Mandate to Meaningful Implementation. Ensuring Gender-Responsive Green Climate Fund (GCF) Projects and Programs* (Heinrich Böll Foundation, 2015).

these are still missing, management action to ensure that Secretariat staff understand gender equality as a key goal, and the development of specific incentives and pathways for organizations actively working to advance gender equality to seek accreditation with the GCF and other funds, among others. Although the assessment does not flesh out the implications for the context of COVID-19 rescue and recovery finance, given the disproportionate effects of the pandemic on marginalized gender groups, stronger integration of the gender dimension could also help to align climate finance and COVID-19 finance.

### **4.3. Regional efforts: Human rights in the EU sustainable finance framework**

#### *4.3.1. Overview*

The implications of financial flows for environmental protection, social protection and good governance have long been recognized. The terminology has varied over time, with terms such as ‘sustainable responsible investment’ (SRI), sustainable finance or ‘environment, social and governance’ (ESG) being used to describe the overall effort to both reflect the wider social and environmental implications of investment in certain companies and sectors and to incentivize investors to reorient financial flows towards more sustainable investments.

The EU has been a leader in the field, with the development in the last five years of an increasingly comprehensive set of instruments to improve sustainability in finance. Two key instruments in this context are the Sustainable Finance Disclosure Regulation (SFDR)<sup>93</sup> and the Taxonomy Regulation (TR).<sup>94</sup> In addition, the EU is working on additional instruments going beyond finance and financial reporting, namely the proposal for a Corporate Sustainability Reporting Directive (proposed CSRD),<sup>95</sup> and the proposal for a Corporate Sustainability Due Diligence Directive (proposed CSDDD).<sup>96</sup>

This ongoing effort, despite its significant limitations, offers a good illustration of how human rights standards can be realistically introduced in a sustainable finance governing framework. As such, it has a wider relevance, including for international initiatives (e.g. GFANZ and those discussed in Section 4.2 above) and domestic processes in a variety of financial centers around the world.<sup>97</sup>

#### *4.3.2. The place of human rights in the sustainable finance framework*

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<sup>93</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR).

<sup>94</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Taxonomy Regulation or TR).

<sup>95</sup> See Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (proposed CSRD).

<sup>96</sup> See Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (proposed CSDDD).

<sup>97</sup> An overview of policies and regulations relating to green finance adopted in different countries is available at [Green Finance Measures Database](#) of the Green Finance Platform.

The Taxonomy Regulation (TR) is an effort to clarify the criteria to determine whether an economic activity qualifies as environmentally sustainable (Article 1.1 TR). By introducing some additional clarity on which investments can be said to be ‘green’ or ‘sustainable’, which is an attractive feature for many investors today, the TR aims at removing ambiguity and tackling, to some extent, the problem of ‘greenwashing’.

An ‘environmentally sustainable investment’ is defined as ‘an investment in one or several economic activities that qualify as environmentally sustainable’ under the TR (Article 2.1 TR). To qualify as environmentally sustainable, an activity must meet four criteria (Article 3 TR): it contributes substantially to one or more out of six objectives (climate change mitigation, climate change adaptation, sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, protection and restoration of biodiversity and ecosystems); it does not significantly harm any of the other objectives; it complies with certain technical screening requirements that, among other things, specify how to meet the other criteria (e.g. specific indicators); and, importantly, it ‘is carried out in compliance with the minimum safeguards laid down in Article 18’ (Article 3(c) TR).

The ‘minimum safeguards’ clause is intended to integrate human rights considerations into an instrument which focuses, essentially, on environmental sustainability. Article 18 TR fleshes out this integration by referring to certain core standards and by restating, in this context, the ‘do no significant harm’ principle stated in the SFDR, i.e. the alignment with a core standard cannot be at the expense of another core standard. From the perspective of a HREE, two out of three prongs would be pursued, namely (1) (human rights as minimum standards) and (3) (human rights operationalization in data and processes). It does not clearly encompass the actual promotion of economic policy to achieve the respect, protect and fulfilment of human rights (prong (2) of the HREE). In the TR, that promotion aspect is limited to environmental sustainability.

The Sustainable Finance Disclosure Regulation (SFDR), which is a reporting instrument, is broader in its promotion goal and encompasses both environmental and social objectives (the safeguard clause is limited to ‘good governance’). Article 2(17) of the SFDR defines a ‘sustainable investment’ for reporting purposes as: ‘an investment in an economic activity that contributes to an environmental objective ... *or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities,* provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance’.

The SFDR relies on the TR in that investments in activities that qualify as ‘environmentally sustainable’ under the TR can be presented and marketed as ‘sustainable investments’ in SFDR disclosures. It thus gives meaning to what investments are ‘in an economic activity that contributes to an environmental objective’ without a need for complex causality and data requirements.

An effort to develop a taxonomy instrument for social aspects, which would further incentivise investment in a HREE (or, in the terms of the SFDR, ‘an investment in an economic activity that contributes to a social objective’), has been attempted<sup>98</sup> but the differences of view on how to conceptualize and measure this instrument led to its postponement until the end of the European Commission’s current term of office in 2024.

Thus, in the present context, the social dimension of the EU sustainable finance framework rests mainly on the TR’s safeguard clause (Articles 3(c) and 18 TR) and the SFDR’s definition of sustainable investment (Article 2(17) SFDR). From the perspective of the HREE, that means that the focus in this context is on the first rather than the second prong of the HREE.

#### 4.3.3. *Content of the minimum ‘safeguard clause’*

On content, the minimum safeguard clause in Article 18(1) TR expressly refers to international human rights law: ‘The minimum safeguards referred to in point (c) of Article 3 shall be procedures implemented by an undertaking that is carrying out an economic activity *to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights*’.

In addition, paragraph 35 in the preamble of the TR, after referring to the above instruments, notes that ‘those minimum safeguards are without prejudice to the application of more stringent requirements related to the environment, health, safety and social sustainability set out in Union law, where applicable’.

In July 2022, the Platform on Sustainable Finance, a permanent expert group of the European Commission established by Article 20 of the TR with membership spanning the public and private sectors, published a Draft Report on Minimum Safeguards.<sup>99</sup> In this report, it suggested a reference to certain aspects of the SFDR in order to further clarify the minimum safeguards of the TR.

Under the SFDR, financial market participants making sustainable investments must disclose whether and how they take into account their and their product’s ‘principal adverse impacts’ (PAI). A set of Regulatory Technical Standards (RTS) adopted in April 2022<sup>100</sup> to clarify the scope and terms of the SFDR identifies a number of indicators of principal adverse impacts relating to the social dimension. Five of them are mandatory and must be used by financial market participants in their reporting: violations of UN Global Compact principles and Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises; lack of processes and compliance mechanisms to monitor compliance with UN Global Compact principles and OECD Guidelines for Multinational Enterprises; unadjusted gender pay gap; board gender diversity; and exposure to

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<sup>98</sup> See Platform on Sustainable Finance, Final Report on Social Taxonomy (February 2022).

<sup>99</sup> See Platform for Sustainable Finance, Draft Report on Minimum Safeguards (July 2022).

<sup>100</sup> Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 (RTS).

controversial weapons (anti-personnel mines, cluster munitions, chemical weapons and biological weapons).

The additional – non-mandatory – indicators include some which are more specific to human rights: lack of a human rights policy; lack of due diligence; lack of processes and measures for preventing trafficking in human beings; operations and suppliers at significant risk of incidents of child labour; operations and suppliers at significant risk of incidents of forced or compulsory labour; and number of cases of severe human rights issues and incidents connected to investee companies on a weighted average basis.

The Platform on Sustainable Finance considers that at least the mandatory indicators must be taken into account in populating the content of the minimum safeguard. This is a useful suggestion, but it does not add any specific reference to human rights treaties other than those mentioned in Article 18(1) TR. These include key instruments, such as the international bill of rights (encompassing the rights recognized in the Universal Declaration of Human Rights and the two International Covenants of 1966) and the UN Guiding Principles on Business and Human Rights.

However, these instruments are far from exhausting the body of instruments from which human rights obligations relevant to sustainable finance and, more generally, to complex financial allocation choices arise (see Appendix 2). Moreover, human rights law is constantly evolving, with a meaning and scope which is continuously clarified through the work of courts, treaty-bodies, and special procedures. For these reasons, a fuller and evolving statement of the minimum safeguard is challenging to establish, and authoritative and clear guidance would be an important contribution. Given its positioning, OHCHR may have a role in providing such guidance.

#### *4.3.4. Possible role of the OHCHR*

The Platform for Sustainable Finance published its aforementioned draft report on 11 July 2022, and it opened a consultation process seeking feedback from stakeholders. The consultation is now closed, and, at the time of writing, the Platform was in the process of preparing its Final Report to the European Commission. Formal or informal engagement with this process offers a useful window to ensure that human rights are adequately taken into account in the EU framework for sustainable finance. In addition to participating in consultation processes, it would be useful to strengthen the presence of human rights organizations, including the OHCHR, in the composition and processes of the Platform. The OHCHR should also enter into consultations with both the Platform and the Commission, and indeed with other relevant stakeholders, in relation to the content and operation of the minimum safeguard.

More generally, several countries have introduced or are in the process of developing frameworks analogous to the EU Taxonomy Regulation, including Colombia, China, Japan, members of the ASEAN and the UK. There is a risk that these taxonomies may differ from one another and that they may fail to adequately integrate human rights. An International Platform for Sustainable Finance (IPSF) was launched in October 2019 bringing together 18 jurisdictions in order to harmonize the taxonomic effort and develop a ‘Common Ground

Taxonomy'.<sup>101</sup> The human rights community is not strongly represented in the list of observer organizations. Seeking observer status could be a first step in an effort to engage with the ongoing work of the IPSF.

#### **4.4. Country illustrations: Fiji and Senegal**

##### *4.4.1. Overview*

The distributional trilemma between human rights, climate finance and COVID-19 response and recovery can also be illustrated by reference to the experience of two climate vulnerable countries, Fiji, and Senegal. These two countries were selected in consultation with the Climate Vulnerable Forum, their Governments and OHCHR field presences. The assessment identified substantial knowledge gaps and other differences that varied across the two countries as well as the need for a more coherent and consistent application of the human rights-based approach to climate finance and COVID-19 recovery. On this basis, specific recommendations are made to each of these countries in the conclusions of this Analytical Study.

##### *4.4.2. Fiji*

The Fiji Climate Vulnerability Assessment (CVA) that was developed with the support of the World Bank presents a comprehensive report on green recovery in Fiji, which can help the government plan investments for a green recovery through its proposed sustainability checklist.<sup>102</sup> Fiji's first National Adaptation Plan (NAP)<sup>103</sup> builds on the CVA calling explicitly for both a human rights-based and ecosystem-based approaches to adaptation in prioritized actions.<sup>104</sup> Green recovery in the context of these plans would require COVID-19 stimulus measures to create jobs and enhance human, social, natural, cultural, and physical capital as well as access to technologies.

The CVA relied on a previously developed sustainability checklist<sup>105</sup> distinguishing short-term considerations (6-18 months, including the following three dimensions: impact on employment, impact on economic activity, timeliness and risk) and long-term considerations (including the following seven dimensions: impact on human and social capital, impact on technologies, impact on natural and cultural capital, impact on physical capital, impact on fundamental market failures, increased resilience and adaptive capacity, decarbonization and sustainable growth and long-term risk). This check-list could be used to screen, score, prioritize and identify tools that create synergies between short-term and long-term

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<sup>101</sup> See the platform's website : [https://finance.ec.europa.eu/sustainable-finance/international-platform-sustainable-finance\\_en](https://finance.ec.europa.eu/sustainable-finance/international-platform-sustainable-finance_en)

<sup>102</sup> S. Fargher, S. Hallegatte, *Best investments for an economic recovery from Coronavirus: An illustration based on the Fiji Climate Vulnerability Assessment to pinpoint stimulus options* (World Bank Group) [Fiji CVA].

<sup>103</sup> *Republic of Fiji National Adaptation Plan. A Pathway towards Climate Resilience* (Government of the Republic of Fiji, 2018) [Fiji NAP].

<sup>104</sup> Fiji NAP, at 36ff.

<sup>105</sup> See World Bank, [Proposed Sustainability Checklist for Assessing Economic Recovery Interventions](#) (April 2020).

objectives.<sup>106</sup> For green recovery, the CVA recommends a multi-criteria approach to identify the most promising interventions, including short-term stimulus, long-term growth, resilience and decarbonisation.<sup>107</sup> The report highlights specific interventions in several sectors that can be considered as entry points for recovery generally and especially in Fiji. These include housing and land use, hazard management, social protection, transport, fisheries, water, energy, environment and health/education.

Interventions identified by the CVA, such as housing micro-finance, upgrading of schools and health facilities, water conservation and extension of sewer systems, can directly promote several economic, social and cultural rights of Fijians, including the rights to housing, health, education, water and sanitation. As the focus of the Fijian economy shifts from crisis response aimed at protecting persons in vulnerable situations in the wake of the pandemic to one that is focused on growth and climate resilient recovery, government and other relevant stakeholders should keep human development and the rights of all Fijians at the core of recovery decisions, projects and programming efforts, as emphasized in Fiji's NAP.

The analysis of Fiji's situation conducted for this Analytical Study identified the following four steps which could be taken to integrate a human rights-based approach in Fiji's approach to complex distributional choices. First, it is important to financially empower entities in Fiji which have expertise in taking integrated action on COVID-19 response measures, climate action and a human rights-enhancing economy. This could be done by bringing them in as executing entities/implementing partners with existing Green Climate Fund (GCF) accredited entities, like the Fiji Development Bank, the Asian Development Bank and the Secretariat of the Pacific Community, that are active in the country/region, or by designating them as direct access entities of the GCF or by encouraging them to use private capital instruments, like green or social bonds or, possibly, bonds designed to have a triple impact.

Secondly, multi-benefit financing priorities and key financing gaps must be identified, for instance by undertaking an assessment of the costs and impacts of Fiji's NAP and related efforts like community relocation. On this basis, such gaps could be specifically addressed in Fiji's national financing strategy.

Thirdly, the integration of human rights in climate change interventions and climate finance decisions must be strengthened. One way to do so is by capacity supplementation and technical assistance in projects and programs to flesh out and bolster their positive human rights aspects and reduce negative implications. OHCHR, other UN entities and climate finance contributors committed to a rights-based approach can provide guidance and assistance in developing project metrics that include human rights dimensions with key performance indicators, where possible. Fourthly, the climate adaptation policies centred in human rights which Fiji's NAP calls for should be prioritized in project design, with a focus on providing benefits to people in vulnerable situations. Such projects should make fulfilment of human rights an explicit objective, ensure free, meaningful and effective participation, including, when applicable, free, prior and informed Consent (FPIC) of Indigenous Peoples in project design and implementation, prioritize direct benefits to the

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<sup>106</sup> Fiji CVA, at 5-7.

<sup>107</sup> Ibid, at 3.

people and communities in vulnerable situations, and ensure access to effective remedy should harms occur.. Specifically, action relating to COVID-19 and/or climate change must integrate human rights-based approaches and actively promote gender equality. For example, Fiji’s planned relocation and displacement guidelines need to be supplemented by standard operating procedures consistent with human rights. When the private sector is involved, their actions must comply with the UN Guiding Principles on Business and Human Rights.

#### 4.4.3. *Senegal*

In Senegal, a detailed climate change vulnerability assessment (CVA) was conducted by USAID and published in October 2014, with a focus on the impacts and adaptations strategies of farmers and herders of four departments (Matam, Kanel, Goudiry, and Bakel departments) of Eastern Senegal.<sup>108</sup> In addition, a project to strengthen the science-policy interface in the context of national adaptation planning (PAS-PNA) is also ongoing, with support from Germany, which has generated several vulnerability studies, mainly in the Fatick region.

However, the development of a national adaptation plan, launched in 2015, was still ongoing at the time this Analytical Study was being written, with financial support of the Global Environment Facility (GEF) and relying on the United Nations Development Programme (UNDP) as implementing agency. Its focus is mainly on the impact of climate change on the agricultural, livestock, fisheries and forestry sectors, where the majority of the Senegalese rural population works, and on food security, given that Senegal imports most of its food. Some key challenges identified so far include (i) the limited integration of climate change mitigation and adaptation priorities in the formulation of policies in the above-mentioned sectors, (ii) the lack of capacity and coordination in intersectoral planning and implementation of climate action, and (iii) the need for information gathering and dissemination.<sup>109</sup>

The need to respond to the COVID-19 pandemic required a redefinition of priorities in all sectors.<sup>110</sup> Senegal adopted a National Response Plan for COVID-19 including a comprehensive economic stimulus plan (Programme the résilience économique et sociale (PRES)<sup>111</sup>) to protect lives and livelihoods. But limited fiscal buffers and safety nets, a vulnerable healthcare system, and a large informal sector posed major challenges. COVID-19, inequality, environmental degradation and climate destabilization, as well as new surges in economic uncertainty, and mounting public health threats, forced budgetary reprogramming to supply the National Response Fund, which has in turn led to delays in certain economic development programs.

The household support measures implemented by the Government in response to the pandemic (food distribution and payment of water and electricity bills) increased household

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<sup>108</sup> D. Miller et al, *Senegal Climate Change Vulnerability Assessment and Options Analysis* (USAID, October 2014) [Senegal CVA].

<sup>109</sup> Strengthening transformative approaches in Senegal’s climate action plans, [UNDP website](#), 8 November 2021.

<sup>110</sup> Ibid; V. Ridde, A. Faye (2022) ‘Policy response to COVID-19 in Senegal: power, politics, and the choice of policy instruments’ (2022) 5:3 *Policy Design and Practice* 326 [Ridde/Faye].

<sup>111</sup> See the website of the [Programme de Résilience économique et sociale \(PRES\)](#).

resilience by limiting the negative effect of income losses. In order to limit the economic impact of the health crisis, the government created a response and solidarity fund, Force-Covid-19, and announced that it would endow it with FCFA 1000 billion (about USD 164 million). An envelope of FCFA 50 billion (about USD 82 million) has been devoted to making purchases for emergency food aid. An evaluation of March 2021 showed that FCFA 773 billion had been effectively mobilised, 84% of which came from international donors, 13% from the State, and 6% from individuals or national companies.<sup>112</sup> These actions contributed to resilience and to the promotion of economic, social and cultural rights of the population. However, it is unclear to what, if any, extent they contributed to addressing climate change or if they have led to institutional or structural changes effective when financing ends. OHCHR's analysis of Senegal's situation identified the following four recommendations for integrating human rights in Senegal's approach to complex distributional choices. First, there is a need to improve institutional coordination mainly by supporting greater integration of climate change mitigation and adaptation priorities in the formulation of agricultural, livestock, fisheries and forestry policies, and by improving capacity for the intersectoral planning and implementation of climate action. Secondly, and consistent with the third prong of the HREE, the lack of data and information on climate finance, COVID-19 recovery and human rights must be specifically addressed. This would involve ascertaining information and information-gathering gaps across government agencies as well as the development of a baseline with sufficiently disaggregated information/data by gender ethnicity and other protected status on the linkages between climate finance, COVID-19 responses and human rights and making the information available to ensure fiscal transparency and accountability.

Thirdly, proactive measures are needed to ensure the meaningful and informed participation of all people in climate action, particularly of persons, groups and peoples in vulnerable situations. The ongoing development of Senegal's NAP offers a key window of opportunity to involve such groups, gather information about their needs, and disseminate information about impacts to support their ability to adapt while advancing human rights. Fourthly, it is important to promote human rights policy coherence in building on existing commitments and opportunities. In its communications to the UNFCCC, Senegal has highlighted the need for capacity building to support the implementation of human rights-based actions (2016), and the need for carbon trading to respect human rights (2017). Senegal's Nationally Determined Contribution (NDC) also addresses the socio-economic impacts of climate change. As a Least Developed Country, Senegal can profit from GCF's ringfenced allocation of adaptation funding, as well as its readiness support and simplified access procedures. Senegal also has three Designated Accredited Entities to GCF and access to other funds, such as the Adaptation Fund, through which it can seek to mobilize funds for rights-based climate action. Such finance should prioritise the three action areas identified in the previous recommendations.

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<sup>112</sup> Rapport public des activités du comité de suivi de la mise en œuvre des opérations du fonds de riposte et de solidarité contre les effets de la COVID-19 (FORCE COVID-19) (2021), at 301. Some media reports suggest larger figures (some USD 880) mostly from international donors. See R. Chakamba, [‘How Senegal has set the standard on COVID-19’](#), *Devex*, 8 October 2020.

## 5. CONCLUSION AND RECOMMENDATIONS

The *overall conclusion* of this Analytical Study is that, although the evidence reviewed suggests a shared concern for social protection in the context of both climate finance and COVID-19 response measures, the human rights dimension remains insufficiently fleshed out and integrated, and there are often inconsistencies between the pursuit of economic, social and environmental objectives.

The *overarching recommendation* resulting from this conclusion is to explicitly integrate the human rights dimension by means of a human rights-based approach to the combined context of climate finance and COVID-19 response measures and, more generally, in the design of policies addressing distributional choices, so as to ensure that such measures support a human rights enhancing economy. This recommendation is addressed to all duty-bearers subject to human rights obligations and/or responsibilities, including States and State agencies (e.g. development agencies and export credit agencies), intergovernmental organizations (e.g. international financial institutions and multilateral development banks) and the private sector (e.g. investors, financial intermediaries, insurance companies).

To implement this recommendation, three areas of further work are identified, namely general steps to advance a HREE, action to build the knowledge base underpinning the HREE, and priorities for enhanced institutional coordination. For each area, *more specific recommendations* are identified, based on the analysis in this Study. In addition, other more focused recommendations arising from case-studies are also provided.

Area of further action	Recommendation
Advancing a human rights enhancing economy	(1) All duty-bearers subject to human rights obligations and/or responsibilities, particularly States and their affiliated financial institutions, must explicitly integrate a human rights-based approach in policies, plans and measures relating to COVID-19 rescue and recovery and climate finance, as well as embed the HREE concept in policies addressing complex distributional choices. To guide this effort, OHCHR could develop, through a participatory process, a concept paper on the core prongs of the HREE and its operational implications.
	(2) The integration of a human rights-based approach (recommendation 1) should, as a minimum, entail obligations and/responsibilities in relation to the effective mobilization of financial and other resources, international cooperation, the provision of social protection and the organization of participatory and inclusive decision-making processes.
	(3) States should cooperate among themselves and with other relevant stakeholders, including the OHCHR and financial institutions, in order to more clearly understand the economic and environmental benefits of a HREE in the context of

	<p>COVID-19 rescue and recovery and climate finance, as well as in addressing other complex distributional choices. Such an understanding would rest on a knowledge base to be developed in accordance with recommendations (4) to (6), mainstreamed following recommendations (7) to (9), and specifically tested and implemented in areas such as those mentioned in recommendations (10) to (14).</p>
<p>Improving the knowledge base for the HREE</p>	<p>(4) Relevant international organizations and financial institutions should initiate a project to map empirically (i) the human rights implications of climate finance and COVID-19 rescue and recovery policies and (ii) the combined effects of integrated policies targeting the intersection between post-COVID economic recovery, climate change and human rights.</p> <p>(5) The OHCHR and other relevant stakeholders, including financial institutions (providing financial support), should develop a comprehensive study of the core cross-cutting legal obligations (or a specific sub-set of them) arising under international human rights law in the combined context of climate finance and COVID-19 response measures, or of other complex distributional choices.</p> <p>(6) The OHCHR and other relevant stakeholders, including financial institutions (providing financial support), should develop specific and measurable indicators of progress toward the integration of a human rights-based approach in climate finance and COVID-19 response measures, and/or other complex distributional choices.</p>
<p>Institutional coordination</p>	<p>(7) The OHCHR and other relevant stakeholders should develop formal or informal dialogues with key existing financial institutions (e.g. GCF, Global Environmental Facility, Adaptation Fund, Climate Investment Funds, LDCs Fund, World Bank, IMF, regional development banks) on the need to better integrate human rights.</p> <p>(8) The OHCHR and other relevant stakeholders should develop formal or informal dialogues with key emerging processes and initiatives (e.g. the G20's Common Framework, the intergovernmental process to negotiate a global pandemic treaty, the Glasgow Financial Alliance for Net Zero, the EU Platform for the Sustainable Finance, the International Platform for Sustainable Finance, national authorities in charge of developing sustainable finance frameworks (e.g. taxonomies)) on the need to better integrate human rights.</p> <p>(9) The OHCHR and other relevant stakeholders should establish a general coordination platform for the integration of a human</p>

	rights-based approach to climate and COVID-19-related finance.
Focused recommendations arising from case-studies	<p>(10) The government of Fiji should:</p> <p>(10.1) Financially empower entities with expertise in taking integrated action on COVID-19, climate change and a human-rights enhancing economy, for example by bringing them in as executing entities/implementing partners with existing Green Climate Fund (GCF) accredited entities, like the Fiji Development Bank, the Asian Development Bank and the Secretariat of the Pacific Community, that are active in the country/region, or by designating them as direct access entities of the GCF or by encouraging them to use private capital instruments like green or social bonds or, possibly, bonds designed to have a triple impact.</p> <p>(10.2) Ascertain financing gaps and define multi-benefit funding priorities, for instance by undertaking an assessment of the costs and impacts of Fiji's NAP and related efforts like community relocation, and address them in Fiji's national financing strategy.</p> <p>(10.3) Strengthen human rights integration in climate change interventions and climate finance decisions. Climate change interventions present a huge potential for the realisation of human rights and vice versa. On-going capacity supplementation and technical assistance in projects and programs can bolster positive human rights aspects of a project/program and reduce negative implications. OHCHR and other UN entities and climate finance contributors committed to a rights-based approach can provide guidance and assistance in developing project metrics that include human rights dimensions with key performance indicators, where possible.</p> <p>(10.4) Design projects that are centred in human rights and prioritize direct benefits for the most marginalized as called for by Fiji's NAP and climate policies. Such projects should make fulfilment of human rights an explicit objective, ensure meaningful community participation, including, when applicable, free, prior and informed Consent (FPIC) of Indigenous Peoples in project design and implementation, prioritize direct benefits to the most vulnerable and marginalized people and communities, and provide independent and effective redress mechanisms. Specifically, action relating to COVID-19 and/or climate change must integrate human rights-based approaches and actively promote gender equality. For example, Fiji's planned relocation and displacement guidelines need to be</p>

	<p>supplemented by standard operating procedures consistent with human rights. When the private sector is involved, their actions must comply with the UN Guiding Principles on Business and Human Rights.</p>
	<p>(11) The government of Senegal should:</p> <p>(11.1) Improve institutional coordination mainly by supporting greater integration of climate change mitigation and adaptation priorities in the formulation of agricultural, livestock, fisheries and forestry policies, improving and enhancing capacity in intersectoral planning and implementation of climate action.</p> <p>(11.2) Address the lack of data and information on climate finance, COVID-19 recovery and human rights. This would involve ascertaining information gathering gaps across government agencies, the development of a baseline with sufficiently disaggregated information/data by gender and other intersecting socio-economic factors on the linkages between climate finance, COVID-19 responses and human rights and making the information available to ensure fiscal transparency and accountability.</p> <p>(11.3) Take measures to ensure the meaningful and informed participation of all people in climate action, particularly of persons, groups and peoples in vulnerable situations in a way that is gender-responsive and protects and enhances the rights of Indigenous Peoples and ensures their FPIC. For example, take advantage of the ongoing development of Senegal’s NAP to involve such groups, gather information about their needs, and disseminate information about impacts to support their ability to adapt while ensuring respect of human rights obligations.</p> <p>(11.4) Promote human rights policy coherence in building on existing commitments and opportunities. In its communications to the UNFCCC, Senegal has highlighted the need for capacity building to support in the implementation of human rights-based actions (2016), and the need for carbon trading to respect human rights (2017). The Nationally Determined Contribution (NDC) of Senegal also addresses the socio-economic impacts of climate change. As a Least Developed Country, Senegal can profit from GCF’s ringfenced allocation of adaptation funding, as well as its readiness support and simplified access procedures. Senegal also has three Designated Accredited Entities to GCF and access to other funds, such as the Adaptation Fund, through which it can seek to mobilize funds for rights-based climate action. Such finance should</p>

	<p>prioritise the three action areas identified in the previous recommendations.</p>
	<p>(12) The OHCHR and other relevant stakeholders should develop a pilot project to integrate human rights in the emerging legal regulations of sustainable finance. This would include seeking participation in relevant advisory bodies, such as the EU Platform on Sustainable Finance and the International Platform on Sustainable Finance, developing a baseline of ongoing regulatory processes and windows of opportunity to engage with them, developing a participatory strategy (community of practice) to engage with a wider range of stakeholders from different sectors, and begin work on a standardized guidance instrument on human rights minimum safeguards in sustainable finance.</p>
	<p>(13) The OHCHR and other relevant stakeholders should develop general assessments of social and environmental policy implementation (akin to the one on GCF's gender responsiveness) focusing on a wider range of funds and/or human rights (focus on the groups which find themselves in most vulnerable situations, e.g. Indigenous Peoples, migrants, etc.).</p>
	<p>(14) The OHCHR and other relevant stakeholders should develop a dialogue with key organizations (e.g. the New Climate Institute, the Climate Policy Initiative, the G20's Common Framework, etc.) in order to refine and advance the idea of 'triple impact' swaps, as a revised version of debt-for-climate swaps, along with assessment of the potential short-, medium- and longer-term human right impacts of such innovative instruments.</p>

**Appendix 1**  
**Evidence-base for section 2 :**  
**Survey of major reports on COVID-19 rescue and recovery policies**  
**and climate finance**

**Global trends in COVID-19 and climate finance**

From a quantitative standpoint, the evidence gathered by the Global Recovery Observatory (GRO), a joint initiative of academic and intergovernmental institutions, shows that only a small fraction of all spending on COVID-19 rescue and recovery policies was aligned with environmental objectives. Specifically, as of August 2022, out of the USD 18.16 trillion that had been spent on COVID-19 fiscal stimulus in the 89 countries monitored by the GRO since the beginning of the pandemic,<sup>113</sup> the large majority of the funds (USD 15.05 trillion) had gone into short-term ‘rescue’ policies, with only USD 3.11 trillion focusing on longer term ‘recovery’ measures.<sup>114</sup> In turn, only a third of the fraction spent on recovery (31.2% of the USD 3.11 trillion (USD 0.97 trillion)) qualified as ‘green spending’, understood by reference to the associated emissions of greenhouse gases (GHG), air pollution and impact on natural capital.<sup>115</sup>

The GRO methodology underpins a report from the UN Environment Programme (UNEP) of March 2021, which concludes that ‘global green spending is so far incommensurate with the scale of ongoing environmental crises and that associated economic and social gains are not being fully captured’.<sup>116</sup> This report highlights that the global pandemic laid bare and exacerbated pre-existing problems, including climate change and widespread inequality. The focus on inequality touches on human rights aspects, without however analysing them explicitly. The report highlights that ‘employment impacts and the health impacts of the pandemic are disproportionately burdening low-income communities, women and gender minorities, and other marginalised individuals’.<sup>117</sup> Specifically, the report reviews evidence that the disease burden as well as job losses have affected mainly groups in vulnerable situations, women and gender minorities and low-income earners, increasing inequality and reversing progress made in the last three decades to reduce poverty.<sup>118</sup>

Although the focus of some spending in COVID-19 rescue policies on social protection was important, there were major disparities between advanced economies and low- and middle-income countries, with the former having spent on average 17 times more per capita than the

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<sup>113</sup> B. O’Callaghan, *Global Recovery Observatory. Draft Methodology Document* (1<sup>st</sup> February 2021) [GRO – Methodology], at 5.

<sup>114</sup> See the website of the [Global Recovery Observatory](#), figures are stated as of 26 November 2021.

<sup>115</sup> GRO – Methodology, at 10.

<sup>116</sup> United Nations Environment Programme (UNEP), *Are we building back better? Evidence from 2020 and pathways to inclusive green recovery spending* (10 March 2021) [UNEP, *Are we building back better?*], at 3.

<sup>117</sup> *Ibid*, at 4.

<sup>118</sup> *Ibid*, at 6.

latter.<sup>119</sup> One key reason explaining the disparity is the greater ability of advanced economies to borrow at low interest rates during the height of the pandemic due to their solid credit ratings and monetary policies pushing interest rates down in that period. By contrast, low- and middle-income countries often have riskier credit profiles and face much higher interest rates, which in turn places a substantial burden on their ability to borrow and repay and, more generally, to have sufficient budgetary space to pursue other goals.

An update to this report published in late October 2021 estimated COVID-19 rescue and recovery spending per capita at USD 15,139 for advanced economies (and USD 15,889 for the largely overlapping category of countries listed in Annex II of the UNFCCC), USD 726 for countries not included in Annex I of the UNFCCC (in essence developing countries) and only USD 64 for the sub-set of non-Annex I countries which are Least-Developed Countries (LDCs).<sup>120</sup> At the same time, out of the total funds spent in COVID-19 rescue and recovery policies by Annex II countries (in essence advanced economies), only 3% was green spending.

This evidence strongly suggests that COVID-19 rescue and recovery spending fell short of tackling both climate change and inequality.

The Climate Policy Initiative's *Global Landscape of Climate Finance 2021*<sup>121</sup> provides some indication of the sources and main targeted sectors of such financial flows. Overall, the average of 2019-2020 climate finance flows amounted to USD 632 billion (broadly consistent with the USD 0.5 trillion figure in the 2021 UNEP Report, which covers only a sub-set of countries). The specific estimate for 2019, i.e. pre-COVID-19, was between USD 608 and 622 billion.<sup>122</sup> This suggests that COVID-19 rescue and recovery policies have added little to climate finance. This is consistent with the fact that the rate of increase from 2017-2018 (USD 574 billion on average) to 2019-2020 (USD 632 billion on average) is significantly lower (10%) than in the previous two bienniums (approx. 25%).

The origin of the USD 632 billion was almost evenly split between public (51%) and private (49%) funds, with the largest source represented by national development finance institutions investing domestically (USD 120 billion). Bilateral and multilateral public sources accounted together for just over USD 100 billion. The overwhelming majority of climate finance went to mitigation (USD 571 billion), mainly to the energy (USD 334 billion) and transport sectors (USD 175 billion).

The format of such support measures can be clarified by reference to the incentive measures (types 20, 21 and 22) and investment measures (types 30, 32 and 34) identified in the GRO's taxonomy. Seen from a budgetary perspective, the bulk of the support took the form of debt

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<sup>119</sup> Ibid, at 7.

<sup>120</sup> Global Recovery Observatory, *Global COVID-19 recovery investment is not aligned with COP rhetoric* (28 October 2021) [GRO, October 2021 update], at 3.

<sup>121</sup> Climate Policy Initiative, *Global Landscape of Climate Finance 2021* (18 October 2021). Another authoritative stock-taking exercise regarding climate finance is the Organization for Economic Cooperation and Development (OECD), *Climate Finance Provided and Mobilised by Developed Countries: Aggregate Trends Updated with 2019 Data* (17 September 2021).

<sup>122</sup> Climate Policy Initiative, *Updated View on the Global Landscape of Climate Finance 2019* (18 December 2020).

(USD 384 billion) and equity (USD 206 billion) instruments. Grant assistance remained very limited (USD 36 billion or 6% of overall climate finance flows).

From a geographic perspective, three quarters of all climate finance (USD 479 billion) flowed domestically, which further highlights the disparities in the ability of different countries to invest in climate action. Such disparity is further compounded by the fact that, out of all international flows (USD 153 billion), the large majority went to East Asia and the Pacific, Western Europe and North America, with only a quarter being invested in Central Asia & Eastern Europe, Latin America & the Caribbean, Middle East & North Africa, Other Oceania, South Asia and Sub-Saharan Africa.<sup>123</sup>

The disparity of financial means across countries is therefore a matter relevant both for COVID-19 stimulus and climate finance. This is further indication of the need to increase, redirect and align these two types of financial flows to overcome such disparities.

### **Types of COVID-19 rescue and recovery policies**

The policies forming the body of COVID-19 fiscal stimulus are regularly compiled by programs such as the International Monetary Fund (IMF)'s Fiscal Monitor database<sup>124</sup> and the aforementioned GRO.<sup>125</sup> With respect to the related question of climate finance policies, information on their main types can be derived from the regular reports of the Climate Policy Initiative.<sup>126</sup> Relying on these sources, this section looks at the nature and focus of COVID-19 stimulus and climate finance policies adopted by countries and intergovernmental organisations.

The classification of COVID-19 stimulus policies used by the IMF for its Fiscal Monitor publication is structured around the budgetary implications of each policy.<sup>127</sup> Policies are seen from the perspective of 'spending' and, more specifically, from that of five categories of spending with different implications for government budget and debt: additional government spending or tax cuts; tax deferrals; loans; equity injections; guarantees.

A more granular and descriptive classification is provided by the GRO, based on a set of over 3000 specific policies adopted around the world. This classification is structured around two broad categories, namely 'rescue' and 'recovery' policies. There are policies that cannot be neatly categorized under either category, but they represent a small proportion of the overall body of policies. Within 'rescue' and 'recovery' policies, some subcategories can be identified, each with their more granular types. Table 1 is adapted from the methodological

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<sup>123</sup> For a consistent assessment of these shortcomings focusing on African countries see South African Institute of International Affairs, *Implications of COVID-19 for Climate Finance in Africa* (20 May 2021), at 6.

<sup>124</sup> See the website of the [Fiscal Monitor database](#).

<sup>125</sup> See the website of the [Global Recovery Observatory](#)

<sup>126</sup> Climate Policy Initiative, *Global Landscape of Climate Finance 2021* (18 October 2021)

<sup>127</sup> IMF, *Fiscal Monitor. Policies to Support People During the COVID-19 Pandemic* (April 2020), at 22, Box 1.1.

paper underpinning the GRO’s taxonomy.<sup>128</sup> It describes the different categories, with a broad indication of their relative importance in monetary terms:

**Table 1: Types of COVID-19 stimulus policies<sup>129</sup>**

RESCUE POLICIES (USD 14.31 trillion)			RECOVERY POLICIES (USD 2.33 trillion)	
Temporary liquidity measures	Temporary life and livelihood measures	Temporary tax and payment relief measures	Incentive measures	Investment measures
(1) Liquidity support for subnational public entities (2) Liquidity support for large businesses (3) Liquidity support for start-ups and SMEs (4) Liquidity support for not-for-profit organizations (5) Temporary waiver of interest payments for businesses	(6) Direct provision of basic needs (7) Targeted welfare cash transfers (8) Job continuation support (9) Temporary waiver of interest payments for individuals (10) Healthcare services support (11) Emergency services (disaster management) support	(12) Income tax cuts (13) VAT and other goods and services tax cuts (14) Business tax cuts (15) Business tax deferrals (16) Reduced prices for centrally-controlled products and services (17) Other tax cuts and deferrals	(18) Targeted recovery cash transfers (19) Tourism and leisure industry incentives (20) Electric vehicle incentives (21) Electric appliance and efficiency incentives (22) Green market creation (23) Other incentive measures	(24) Working retraining and job creation (25) Education investment (non-infrastructure) (26) Health care investment (non-infrastructure) (27) Social and cultural investment (non-infrastructure) (28) Communications infrastructure investment (29) Traditional transport infrastructure investment (30) Clean transport infrastructure investment (31) Traditional energy infrastructure investment (32) Clean energy infrastructure investment (33) Local (project-based) infrastructure investment (34) Building upgrades and energy efficiency infrastructure investment (35) Natural infrastructure and green spaces investment (36) Other large-scale infrastructure investments (37) Armed forces investment (38) Disaster preparedness and capacity building investment (39) General research and development investment (40) Clean research and development investment

### Interactions between COVID-19 and climate finance

As noted in the previous section, out of the USD 3.11 trillion spent or announced for post-COVID-19 recovery policies as of August 2022, only a fraction (31.2% or USD 0.97 trillion) qualifies as ‘green spending’. ‘Green spending’ is understood by reference to three categories, namely GHG emission reductions, air pollution policies and natural capital protection. The 2021 UNEP report offers a more granular analysis of the allocation of funds within the three main categories, including the ambiguous effects of some spending (e.g.

<sup>128</sup> GRO – Methodology, at 8.

<sup>129</sup> Source: adapted from *ibid*, at 8.

recovery spending with adverse effects for one or more of the categories of green spending).<sup>130</sup>

Neither the IMF nor the GRO classification expressly link COVID-19 stimulus policies to the wider range of climate finance policies. Climate finance may interact with COVID-19 stimulus policies in complex ways. The latter may increase emissions or divert funding from climate-related goals, but the same policies, if designed and implemented integrating sustainability considerations, can also invest in social protection as the foundation of resilience and adaptation. Relying on the classification of table 1, this could be the case of policy types 6 (Direct provision of basic needs), 7 (Targeted welfare cash transfers), 8 (Job continuation support), 9 (Temporary waiver of interest payments for individuals), 10 (Healthcare services support) and/or 11 (Emergency services – disaster management – support), but also of wider business support ones, such as bail-outs (type 2 (Liquidity support for large businesses)).

The main issue is therefore ‘how’ these policies are designed and implemented. As noted by the 2021 UNEP report, ‘many of the largest of these policies could have included positive green attributes. For instance, airline bailouts in nations all over the world, including South Africa, South Korea, the United Kingdom, and the United States could have included green conditions [ ... ] tied to liquidity support, like requirements to reach net-zero emissions by 2050 or mandates to increase sustainable fuel use’.<sup>131</sup> A July 2022 study of different investment strategies in six major greenhouse gas emitters (Canada, China, the EU, India, Japan and the EU) concluded that COVID-19 recovery policies can be aligned with climate change objectives, but the optimal investment strategies and the scale of impacts vary across the economies studied.<sup>132</sup> Despite variations, the study suggested that investment strategies should allocate at least 50% of the recovery funds to solar photovoltaic to have a larger probability of aligning COVID-19 economic recovery with GHG reduction and creation of green jobs.

Climate finance may also support the COVID-19 recovery, when the funds mobilized by multilateral, domestic and private institutions for this purpose are also beneficial from a social and economic recovery perspective. Another July 2022 study<sup>133</sup> concludes that, in the post-COVID-19 context of growing inflation,<sup>134</sup> investment in low-carbon sectors (e.g. renewable energies, electrification and resource efficiency) would yield productivity gains in the medium to long term and, thereby, have a counter-inflationary effect and reduce vulnerability to global supply bottlenecks. The latter two effects would counter the increasing

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<sup>130</sup> UNEP, *Are we building back better?*, at 15.

<sup>131</sup> *Ibid.*, at 15.

<sup>132</sup> D.-J. van den Ven et al, ‘COVID-19 recovery packages can benefit climate targets and clean energy jobs, but scale of impacts and optimal investment portfolios differ among major economies’ (2022) 5 *One Earth* 1042.

<sup>133</sup> D. Zenghelis et al, ‘Policies for investing in sustainable growth: risks and opportunities in the current macroeconomic environment’, *Grantham Research Institute* (July 2022).

<sup>134</sup> According to the IMF World Economic Outlook 2022, COVID-19-related supply chain disruptions and the expansive monetary and fiscal support deployed during the pandemic explain, in part, the high inflation levels observed in late 2022. See IMF, *World Economic Outlook: Countering the Cost of Living Crisis* (October 2022), at 51.

cost of living pressures and the risk of famines driven by disruption in the global supply chain of food commodities.

**Appendix 2**  
**Evidence-base for section 3:**  
**Human rights framing of complex distributional choices**  
**in relation to COVID-19 and climate finance**

A human rights-based approach to climate finance and COVID-19 rescue and recovery policies must take into account all human rights, which are equally important. However, the specificities of the context present special risks for the respect, protection and fulfilment of some human rights, which are particularly implicated.

The preamble of the Paris Agreements makes an express reference to human rights, in which the parties ‘acknowledg[e]’ that they ‘should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of Indigenous Peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity’.<sup>135</sup> This paragraph has been restated in the preamble of the Glasgow Climate Pact adopted in November 2021 at COP26.<sup>136</sup> The wording emphasizes the requirement ‘to respect, promote and consider [States’] respective obligations on human rights’ without limitation. All human rights are relevant and applicable, although some may be particularly implicated in various contexts.

Human rights that may be particularly implicated in the context of climate finance and COVID-19 responses, include: the right to health; the rights to information, participation and free, prior and informed consent; the right to adequate housing; the right to adequate food; the rights to freedom of expression, opinion and assembly; and the right to an effective remedy.<sup>137</sup> Moreover, the right to a clean, healthy and sustainable environment, recently recognized by the Human Rights Council<sup>138</sup> and by the General Assembly,<sup>139</sup> must also be taken into account.

Matters of climate finance and/or COVID-19 impacts and responses have been expressly considered in the light of these human rights. The following paragraphs provide an initial examination of 54 studies, reports and guidelines adopted between June 2014 and October 2022, which provide specific guidance on the implications of a human rights-based approach for the extended context assessed in the Analytical Study.

*The rights to information, participation and free, prior and informed consent*

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<sup>135</sup> Paris Agreement, preamble.

<sup>136</sup> Glasgow Climate Pact, preamble.

<sup>137</sup> See *Study – Rights-based climate finance*, at paras. 11-29.

<sup>138</sup> Human Rights Council, Resolution 48/13: The human right to a clean, healthy and sustainable environment, 8 October 2021, A/HRC/48/L.23/Rev.1.

<sup>139</sup> UNGA Resolution 76/300, The human right to a clean, healthy and sustainable environment, A/RES/76/300, 28 July 2022.

Individuals and communities affected by measures adopted in the context of climate finance and/or COVID-19 responses enjoy a number of procedural rights which are recognized both in general<sup>140</sup> and in the context of certain groups.<sup>141</sup> According to the Special Rapporteur on the right to development, '[a]ccess to information regarding measures and policies put in place to address the COVID-19-related crisis has to be ensured for the entirety of the population, including those speaking minority or Indigenous languages, persons with disabilities and persons living in remote or rural areas'.<sup>142</sup> For this reason, States 'should strengthen social protection networks, including by [...] reviewing health financing policies periodically' to ensure that the specific needs of such groups are adequately addressed, guaranteeing 'the effective participation of organizations representing those groups.'<sup>143</sup>

Moreover, the Expert Mechanism on the Rights of Indigenous Peoples has specifically addressed participatory rights in relation to climate finance.<sup>144</sup> Despite the recognition of free, prior and informed consent (FPIC) of Indigenous Peoples as a requirement by financial institutions and the private sector,<sup>145</sup> the experience of Indigenous Peoples shows shortcomings in actual implementation,<sup>146</sup> including imprecise or ambiguous language in guidelines on FPIC.<sup>147</sup> More generally, there is a recognized need for financial institutions and the private sector to develop and implement stringent social, environmental and Indigenous Peoples' policies which are consistent with international human rights standards, including participatory rights.<sup>148</sup> But States are the primary duty bearers and are ultimately responsible for the adequate implementation of human rights standards by non-State entities.<sup>149</sup>

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<sup>140</sup> The main basis for this general recognition is ICCPR, Art. 25.

<sup>141</sup> See Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989, 28 ILM 1382 (1989) [ILO Convention No. 169]; 'United Nations Declaration on the Rights of Indigenous Peoples', 2 October 2007, UN Doc. A/RES/61/295 [UNDRIP], Annex. See also the discussion of the rights of indigenous peoples later in this Analytical Study.

<sup>142</sup> Report of the Special Rapporteur on the right to development, Saad Alfaragi, 'Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level', 6 July 2022, A/HRC/51/30, para 83.

<sup>143</sup> *Ibid.*, para 86.

<sup>144</sup> UNGA, Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, 10 August 2018, paras 52-59 [Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent*]. Previously, see, more generally, on the Durban Declaration and Programme of Action (2001) and how racism and racial discrimination limit opportunities for political and public participation UNGA, Factors that impede equal political participation and steps to overcome those challenges, Report of the OHCHR, A/HRC/27/29, 30 June 2014, para. 61.

<sup>145</sup> See, for instance, International Finance Corporation Performance Standard 7 on Indigenous Peoples (2012); World Bank, Environment and Social Standard (ESS) 7, 2016; Equator Principles Association, 'Equator Principles (June 2013) Implementation Note', 2013.

<sup>146</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent*, para. 54, noting operative issues in the implementation of the right to free, prior and informed consent and of full and effective participation and consultation of indigenous peoples with regard to (i) the first project of the Green Climate Fund in Peru in 2015, 'PROFONANPE'; and (ii) the World Bank Performance Standard 7.

<sup>147</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent*, para. 55.

<sup>148</sup> *Ibid.*, para. 56.

<sup>149</sup> *Ibid.*

Some recent developments have been welcomed as important to ‘promote both the rights of Indigenous Peoples and protect biodiversity and ecosystem health’.<sup>150</sup> One illustration is the Facilitative Working Group under the UNFCCC Local Communities and Indigenous Peoples Platform’s (LCIPP) workplans for the periods 2020–2021 and 2022-2024, which gave Indigenous Peoples greater representation in the climate change process.<sup>151</sup>

### *The right to adequate housing*

The impact of climate finance and COVID-19 rescue and recovery policies on the right to adequate housing<sup>152</sup> has been increasingly examined by the Special Rapporteur on adequate housing, who has addressed recommendations not only to States but also to financial institutions and development banks.<sup>153</sup>

As a general matter, it is noted that people are frequently forced to live in informal settlements by environmental factors, such as climate change and environmental degradation,<sup>154</sup> which have enormous impacts on the enjoyment of the right to housing.<sup>155</sup> States taking disaster risk management measures often do not consider their effects on persons and groups living in vulnerable situations and their right to housing.<sup>156</sup> The Special Rapporteur has therefore underlined, based on the requirements of the ICESCR, including Articles 2(1) and 11(1), that

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<sup>150</sup> Critical perspective on food systems, food crises and the future of the right to food, Report of the Special Rapporteur on the right to food, 21 January 2020, A/HRC/43/44, para. 43.

<sup>151</sup> See also United Nations Climate Change News ‘Indigenous peoples obtain stronger voice in climate action’ (1 July 2019). Moreover, in 2018, the Green Climate Fund adopted an Indigenous Peoples’ policy to grant them recognition, respect and promotion in climate-related funding. In 2016, in resolution 33/25, the Human Rights Council amended the mandate of the Expert Mechanism on the Rights of Indigenous Peoples to expand its capacity and impact.

<sup>152</sup> See Universal Declaration of Human Rights, UNGA Resolution 217 A (III), 10 December 1948 [UDHR], Art. 25(1); ICESCR, Art. 11(1); ICCPR, Art. 12.

<sup>153</sup> On climate finance, see Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/73/310/Rev.1, 19 September 2018, paras 95, 99, 101; Report of the Special Rapporteur on Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context, A/74/183, 17 July 2019, paras 41-44, 79(h)(o); Guidelines for the Implementation of the Right to Adequate Housing, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 26 December 2019, A/HRC/43/43, paras 70-72. On COVID-19 recovery policies, see Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Balakrishnan Rajagopal COVID-19 and the right to adequate housing: impacts and the way forward, A/75/148, 27 July 2020, para 5, 15-25, 62, 69; Twenty years of promoting and protecting the right to adequate housing: taking stock and moving forward Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Balakrishnan Rajagopal, 12 July 2021, A/HRC/47/43, para 62.

<sup>154</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/73/310/Rev.1, 19 September 2018, para. 99, see also para. 95.

<sup>155</sup> Guidelines for the Implementation of the Right to Adequate Housing, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 26 December 2019, A/HRC/43/43, para 70.

<sup>156</sup> Ibid.

both States individually and the international community must respond to the climate crisis and prioritize access to housing by those most in need.<sup>157</sup> Moreover, and consistent with a human rights-based approach to policy-making, the right to adequate housing must be integrated in strategies and plans on climate change mitigation and adaptation.<sup>158</sup> The Rapporteur has also called international financial institutions and development banks to financially support housing improvement schemes for residents of informal settlements,<sup>159</sup> while highlighting that at present these entities do not ‘sufficiently reference the right to adequate housing and its application to upgrading projects.’<sup>160</sup>

Regarding the right to housing as it concerns Indigenous Peoples,<sup>161</sup> the Rapporteur has called on States to ensure coordination of housing policies with Indigenous authorities and their coherence with policies relating to climate change mitigation and adaptation, the provision of water, sanitation, energy, health care and education.<sup>162</sup> In addition, the Rapporteur has made explicit the link between the right to housing and participatory rights, emphasizing that mitigation and adaptation policies must be carried out in meaningful consultation with Indigenous Peoples.<sup>163</sup>

In the context of the COVID-19 pandemic, having no home, lacking space for physical distancing in overcrowded living areas or having inadequate access to water and sanitation has adversely affected people and groups living in poverty and vulnerable situations. States have adopted temporary measures, such as eviction bans, rent and mortgage support payments and measures to protect persons living in homelessness, to reduce the impact of the COVID-19 crisis on housing. The Special Rapporteur has emphasized, also in this context, the need to specifically integrate the right to housing in COVID-19 rescue and recovery policies by formulating non-discriminatory housing strategies with sufficient budgetary allocations.<sup>164</sup> The Special Rapporteur has further noted that there must be ‘a rededication to a human rights-oriented response to the pandemic based on the Sustainable Development Goals, in which housing is at the heart of the recovery’.<sup>165</sup> More specifically,

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<sup>157</sup> Ibid., para. 71.

<sup>158</sup> Ibid., paras 72 (a), see also (b), (c), (d). See also A/HRC/16/42.

<sup>159</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/73/310/Rev.1, 19 September 2018, para. 99, see also para. 95.

<sup>160</sup> Ibid. On private investors, access to justice and the right to housing, see also *Access to justice for the right to housing*, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/40/61, 15 January 2019, paras 58-62.

<sup>161</sup> Report of the Special Rapporteur on Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context, A/74/183, 17 July 2019.

<sup>162</sup> Ibid., para 79 (h).

<sup>163</sup> Ibid., para 79(o).

<sup>164</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Balakrishnan Rajagopal COVID-19 and the right to adequate housing: impacts and the way forward, A/75/148, 27 July 2020, para 69 (a)-(b).

<sup>165</sup> *Twenty years of promoting and protecting the right to adequate housing: taking stock and moving forward*, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard

as regards measures and policies adopted by states to address the COVID-19 related crisis, the Special Rapporteur on the right to development has also clarified that states ‘should strengthen social protection networks, including by [...] reviewing health financing policies periodically’ to ensure that the specific housing needs of women and girls, as well as different groups in situations of marginalization, such as Indigenous People, minority groups and persons with disabilities, are adequately addressed.<sup>166</sup>

### *Right to adequate food*

The right to food<sup>167</sup> is also particularly implicated in the context of climate change and COVID-19 responses. Various reports of the Special Rapporteur on the right to food have examined the interconnections between this right, climate finance and COVID-19 rescue and recovery policies.<sup>168</sup>

As regards climate finance and funds set up to guarantee the effective implementation of the UNFCCC (the Special Climate Change Fund, the Least Developed Countries Fund and the Adaptation Fund), the Special Rapporteur has called attention to the lack of public participation in the allocation of funds<sup>169</sup> and, more generally, to the lack of support for funding options such as levies on aviation and shipping or carbon taxes.<sup>170</sup> In a subsequent report, the Special Rapporteur has further emphasized the shortcomings of climate-related financial support from a gender perspective<sup>171</sup> and called for States to ‘[p]romote accelerated efforts in terms of financial aid, in order to ensure that gender equality is mainstreamed throughout all climate change programs in all sectors.’<sup>172</sup> Importantly, the Rapporteur has

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of living, and on the right to non-discrimination in this context, Balakrishnan Rajagopal, 12 July 2021, A/HRC/47/43, para 62. See also Maimunah Mohd Sharif and Balakrishnan Rajagopal, “Opinion: Housing must be at the heart of the COVID-19 response and recovery”, Devex, 30 October 2020.

<sup>166</sup> Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level’, 6 July 2022, A/HRC/51/30, para 86.

<sup>167</sup> See UDHR, Art. 25(1); ICESCR, Art. 11(1)-(2).

<sup>168</sup> Climate finance: Interim report of the Special Rapporteur on the right to food, A/70/287, 5 August 2015, paras 70-72; Report of the Special Rapporteur on the right to food, A/HRC/31/51, 14 December 2015, paras 85, 90; Interim report of the Special Rapporteur on the right to food, A/72/188, 21 July 2017, para 97(e); Interim report of the Special Rapporteur on the right to food, 15 July 2019, A/74/164, para 58-59; Critical perspective on food systems, food crises and the future of the right to food, Report of the Special Rapporteur on the right to food, 21 January 2020, A/HRC/43/44, para 43. On COVID-19 recovery policies: Report of the Special Rapporteur on the right to food, Michael Fakhri, ‘The right to food’, A/HRC/46/334 December 2020, paras 28-30; Interim Report of the Special Rapporteur on the right to food, Michael Fakhri, ‘The right to food and the coronavirus disease pandemic’, A/77/177, 18 July 2022.

<sup>169</sup> Interim report of the Special Rapporteur on the right to food, A/70/287, 5 August 2015, para. 71.

<sup>170</sup> Ibid.

<sup>171</sup> Report of the Special Rapporteur on the right to food, A/HRC/31/51, 14 December 2015, paras 85. See also OECD Network on Gender Equality, “Making Climate Change finance work for women: Overview of the integration of gender equality in aid to climate change”, (2015). <http://www.oecd.org/dac/gender-development/Making-Climate-Finance-Work-for-Women.pdf>

<sup>172</sup> Ibid., para 90(h).

expressly called for a human rights-based approach to finance and investment<sup>173</sup> involving ex ante human rights assessment of proposed projects.<sup>174</sup>

As regards COVID-19 response measures, the Special Rapporteur has noted that the global economic recession resulting from the pandemic has forced governments to face difficult trade-offs, straining their capacity to provide social protection for those most affected by the crisis.<sup>175</sup> While recognizing that the offer to freeze the debt service payments for 73 of the poorest countries advanced in April 2020 by the Governments of the Group of 20 could help free up funds to address the fallout from the pandemic,<sup>176</sup> the Rapporteur has noted the limits in the implementation of the scheme.<sup>177</sup>

The 2022 Interim Report of the Special Rapporteur titled ‘The right to food and the coronavirus disease pandemic’, highlighted that States face ‘several structural constraints that make any additional spending unlikely in the near future’<sup>178</sup> and that ‘[d]ebt levels are projected to rise as pandemic response and recovery continues.’<sup>179</sup> For this reason, to address the debt crisis and financial needs, the Special Rapporteur has recommended Member States to, (i) first, ‘[e]stablish an international debt relief mechanism’ which should ‘include formal debt write-downs and cancellation of debt stock owed to both sovereign and private creditors’ and ‘not be accompanied by structural and macroeconomic conditionalities that limit public spending or by other austerity measures’;<sup>180</sup> (ii) second, ‘urgently ensure increased financing to support developing countries in tackling climate change impacts through adaptation and loss and damage mechanisms’. The latter recommendation, as specified, ‘is especially important given that the food systems most affected by climate change are in countries that have contributed the least to greenhouse gas emissions’.<sup>181</sup> Similarly, the Special Rapporteur on the right to development has also clarified that States ‘should strengthen social protection networks, including by [...] reviewing health financing policies periodically’ to ensure that the food needs of women and girls, as well as different groups in situations of marginalization, such as Indigenous Peoples, minority groups and persons with disabilities, are adequately addressed.<sup>182</sup>

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<sup>173</sup> Interim report of the Special Rapporteur on the right to food, 15 July 2019, A/74/164, para. 58.

<sup>174</sup> *Ibid.*

<sup>175</sup> *Right to food*, Report of the Special Rapporteur on the right to food, Michael Fakhri, 2 A/HRC/46/334 December 2020, para. 30 [*Right to food*, December 2020 Report].

<sup>176</sup> United Nations, ‘Debt and COVID-19: a global response in solidarity’, 17 April 2020.

<sup>177</sup> *Right to food*, December 2020 Report, para 30. See also Committee on World Food Security, High Level Panel of Experts on Food Security and Nutrition, ‘Impacts of COVID-19 on food security and nutrition: developing effective policy responses to address the hunger and malnutrition pandemic’, September 2020.

<sup>178</sup> Interim Report of the Special Rapporteur on the right to food, Michael Fakhri, ‘The right to food and the coronavirus disease pandemic’, A/77/177, 18 July 2022, para 49.

<sup>179</sup> *Ibid.*, citing in ft. 49 Debt Justice, ‘The growing debt crisis in lower income countries and cuts in public spending’, May 2022, at <[https://jubileedebt.org.uk/wp-content/uploads/2022/05/Debt-and-public-spending\\_May-2022.pdf](https://jubileedebt.org.uk/wp-content/uploads/2022/05/Debt-and-public-spending_May-2022.pdf)>.

<sup>180</sup> *Ibid.*, para 99(a).

<sup>181</sup> *Ibid.*, para 99(b).

<sup>182</sup> Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level’, 6 July 2022, A/HRC/51/30, para 86.

Two key aspects raised by the Special Rapporteur on the right to food, i.e. gender responsiveness in climate finance and debt-relief in the context of the pandemic, are issues of recurrent importance also in the context of other rights. This explains why the two more detailed examples selected for section 5 of this study focus on gender responsiveness and debt relief.

### *Right to health*

The right to health<sup>183</sup> has been addressed with regard to both climate finance and COVID-19 response measures.<sup>184</sup> The Special Rapporteur on the right to health has noted, with regard to climate finance, that the right to health deserves central attention in the context of adaptation strategies.<sup>185</sup> Based on the requirements of the ICESCR, including Articles 2(1) and 12, States must therefore provide ‘access to high-quality, rights-based support, that is responsive to the particular needs of persons affected by severe weather events and integrated into existing primary, general health- and social care services’.<sup>186</sup> The Committee on the Rights of the Child has also highlighted the importance of environmental health to children and recognized climate change as a particularly urgent threat to Indigenous children’s health and lifestyles, noting that States should put children’s health concerns at the center of their climate change adaptation and mitigation strategies.<sup>187</sup>

As regards COVID-19 response measures, the Special Rapporteur stressed the need for all countries to ‘revitalize universal human rights principles as part of the recovery from the pandemic’.<sup>188</sup> The Rapporteur further emphasized the need to ensure ‘transparency and accountability’ when large funds are made available in response and emergency assistance,<sup>189</sup>

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<sup>183</sup> See UDHR, Art. 25(1); ICESCR, Art. 12.

<sup>184</sup> Climate finance: Right to health and indigenous Peoples with a focus on children and youth Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/33/57, 10 August 2016, paras 27 and 75; Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/44/48, 15 April 2020, para 75. On COVID-19 recovery policies: Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Final report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, A/75/163, 16 July 2020, para 5-6, 16, 31, 39-41, 109; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, Sexual and reproductive health rights: challenges and opportunities during the COVID-19 pandemic, A/76/172, 16 July 2021, para 75-85.

<sup>185</sup> Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/44/48, 15 April 2020, para 75.

<sup>186</sup> Ibid. See also Jules Pretty and others, “Improving health and well-being independently of GDP: dividends of greener and prosocial economies”, *International Journal of Environmental Health Research*, vol. 26, No. 1 (2016).

<sup>187</sup> Committee on the Rights of the Child. General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health 17 April 2013, CRC/C/GC/15,

<sup>188</sup> Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Final report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, A/75/163, 16 July 2020, para. 16.

<sup>189</sup> Ibid., para. 39.

to mitigate corruption risks in COVID-19 responses<sup>190</sup> and also to allow for sufficient participation of affected communities.<sup>191</sup> In 2021, the Rapporteur further developed the implications of the pandemic for sexual and reproductive health rights, particularly the decrease in funding due to the redirection of funds to the pandemic response.<sup>192</sup>

### *The rights to freedom of expression, opinion and assembly*

The impact of the COVID-19 response measures has been examined with regard to the rights to freedom of peaceful assembly and of association.<sup>193</sup> In 2021, the Special Rapporteur on these rights noted that, while some restrictions may be justified for health purposes, the COVID-19 pandemic ‘has been used as a pretext to suppress assemblies, including environmental and climate demonstrations, or increase the limitations imposed on them.’<sup>194</sup>

Moreover, women continue to be severely underrepresented in the top leadership of decision-making bodies and in the formulation of development policy.<sup>195</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association has thus recommended that ‘development and donor agencies increase funding and flexibility so that local women’s organizations and movements can rapidly scale up their programmes and adapt to the risks posed by COVID-19’ and also ‘track and report how much funding towards the COVID-19 response reaches such groups.’<sup>196</sup> If women ‘are to regain lost ground and lead the recovery, their right to freedom of opinion and expression must be front and centre’.<sup>197</sup>

### *Gender equality*

The implications of climate finance and COVID-19 response measures for the human right to gender equality have been addressed in the context of several human rights.

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<sup>190</sup> Ibid. See also Aneta Wierzynska and others, “COVID-19: promoting accountability and transparency during the pandemic”, Health Systems Governance Collaborative, 22 May 2020.

<sup>191</sup> Ibid., para. 109.

<sup>192</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, Sexual and reproductive health rights: challenges and opportunities during the COVID-19 pandemic, A/76/172, 16 July 2021, para 75.

<sup>193</sup> See UDHR, Art. 19; ICCPR, Art. 19; Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, A/76/222, 23 July 2021, paras 28; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément N. Voule, Celebrating women in activism and civil society: the enjoyment of the rights to freedom of peaceful assembly and of association by women and girls, A/75/184, 20 July 2020, para. 74.

<sup>194</sup> Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, A/76/222, 23 July 2021, paras 28.

<sup>195</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément N. Voule, Celebrating women in activism and civil society: the enjoyment of the rights to freedom of peaceful assembly and of association by women and girls, A/75/184, 20 July 2020, para. 74.

<sup>196</sup> Ibid., para. 88.

<sup>197</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 30 July 2021, A/76/258, para 5.

Both climate finance<sup>198</sup> and COVID-19 response measures<sup>199</sup> have been specifically examined from the perspective of gender equality. In its General Recommendation No. 37, the Committee on the Elimination of Discrimination against Women (CEDAW) has noted that ‘States parties and other stakeholders have obligations to take specific steps to address discrimination against women in both disaster risk reduction and climate change fields, through the adoption of targeted laws, policies, mitigation and adaptation strategies, budgets and other measures.’<sup>200</sup> Measures should be ‘gender responsive and sensitive to Indigenous knowledge systems’ and respect human rights.<sup>201</sup>

CEDAW’s General Recommendation No. 37 is particularly relevant in this context because of its specific discussion of climate change, its examination of the gender dimension in several human rights (right to live free from gender-based violence against women and girls, rights to education and to information, rights to work and to social protection, right to health, right to an adequate standard of living, right to freedom of movement), and its recommendations addressed both to States and non-State actors.

Regarding the latter, the Committee clarified that States parties, both separately and in cooperation with others should ‘[i]ntegrate a gender equality perspective into relevant international, regional, national, sectoral and local programmes and projects, including those financed with international climate and sustainable development funds’;<sup>202</sup> ‘[s]hare resources, knowledge and technology to build disaster risk reduction and climate change adaptation capacity among women and girls, including by providing adequate, effective and transparent financing administered through participatory, accountable and non-discriminatory processes’;<sup>203</sup> and ‘[e]nsure that States, international organizations and other entities that provide technical and financial resources for disaster risk reduction, sustainable

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<sup>198</sup> General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, 13 March 2018, CEDAW/C/GC/37 [CEDAW GR 37], paras 8-46, 63-64; Indigenous women and their role in the 25-year review of the implementation of the Beijing Declaration and Platform for Action, 30 January 2020, E/C.19/2020/8, 12-16, 46-49.

<sup>199</sup> Women’s and girls’ sexual and reproductive health rights in crisis, Report of the Working Group on discrimination against women and girls, A/HRC/47/38, 28 April 2021, paras 8, 21-29, 38-52, 73-76; CEDAW, Call for joint action in the times of the COVID-19 pandemic, Statement adopted on 21 April 2021 [CEDAW COVID-10 Statement]; CEDAW, Guidance Note on CEDAW and COVID-19, 21 April 2021 [CEDAW COVID-19 Guidance]

<sup>200</sup> See CEDAW GR 37, para. 8. The gender dimensions of climate finance have also been addressed in a number of CEDAW concluding observations. See e.g. CEDAW/C/SLB/CO/1-3, paras. 40-41; CEDAW/C/PER/CO/7-8, paras. 37-38; CEDAW/C/GIN/CO/7-8, para. 53; CEDAW/C/GRD/CO/1-5, paras. 35-36; CEDAW/C/JAM/CO/6-7, paras. 31-32; CEDAW/C/SYC/CO/1-5, paras. 36-37; CEDAW/C/TGO/CO/6-7, para. 17; CEDAW/C/DZA/CO/3-4, paras. 42-43; CEDAW/C/NLZ/CO/7, paras. 9 and 36-37; CEDAW/C/CHI/CO/5-6, paras. 38-39; CEDAW/C/BLR/CO/7, paras. 37-38; CEDAW/C/LKA/CO/7, paras. 38-39; CEDAW/C/NPL/CO/4-5, para. 38; and CEDAW/C/TUV/CO/2, paras. 55-56. See also General recommendation No. 27 (2010) on older women and the protection of their human rights, para. 25, and General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 11.

<sup>201</sup> CEDAW GR 37, para. 8.

<sup>202</sup> *Ibid.*, para. 46(e).

<sup>203</sup> *Ibid.*, para. 46(f).

development and climate change incorporate a gender equality and women's rights perspective into the design, implementation and monitoring of all programmes and establish appropriate and effective human rights accountability mechanisms.<sup>204</sup> The extent to which the latter recommendation has permeated the practice of international climate finance is analyzed in one of the two case-studies in section 5, which focuses on the operation of the GCF.

With respect to other non-State actors, the Committee emphasized the need for the private sector and civil society organizations to play a role in climate resilience and the promotion of gender equality, domestically and transnationally,<sup>205</sup> including through the development of public-private partnerships which may provide much needed financial and technical resources.<sup>206</sup>

As regards the gender dimension of COVID-19 response measures, in April 2021 CEDAW issued a 'Statement' and a 'Guidance Note' highlighting the disproportionate impact of the pandemic on women's health<sup>207</sup> and calling for the provision of sexual and reproductive health as essential services,<sup>208</sup> the protection of women and girls from gender-based violence,<sup>209</sup> the equal participation of women in decision-making<sup>210</sup> and for a range of support measures,<sup>211</sup> among other things.

Some of these areas have been further elaborated in a report from the Working Group on discrimination against women and girls noting that, in the majority of cases, reconstruction programs and recovery plans fail to prioritize sexual and reproductive health.<sup>212</sup> According to the Working Group, during the COVID-19 pandemic, 'delivery of a broad range of essential sexual and reproductive health services and goods has been suspended or postponed' and '[t]reatments for gender dysphoria have also been disrupted, with serious psychological consequences for those concerned.'<sup>213</sup> The Working Group therefore recommended that States recognize the sexual and reproductive health rights of women and girls as essential, fully integrate them in response plans<sup>214</sup> and ensure the adequate representation and effective participation of women and girls in decision-making processes at all levels.<sup>215</sup>

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<sup>204</sup> Ibid., para. 46(g).

<sup>205</sup> Ibid., para. 47.

<sup>206</sup> Ibid.

<sup>207</sup> CEDAW COVID-19 Guidance, recommendation 1.

<sup>208</sup> Ibid., recommendation 2.

<sup>209</sup> Ibid., recommendation 3.

<sup>210</sup> Ibid., recommendation 4.

<sup>211</sup> Ibid., recommendations 5, 6 and 7.

<sup>212</sup> Women's and girls' sexual and reproductive health rights in crisis, Report of the Working Group on discrimination against women and girls, A/HRC/47/38, 28 April 2021, para. 26

<sup>213</sup> Ibid.

<sup>214</sup> Ibid., para. 76 (a).

<sup>215</sup> Ibid., para. 79(a).

The COVID-19 pandemic has exacerbated gender inequalities across the spectrum of development<sup>216</sup> and ‘even though the scale of fiscal responses to the economic downturn has been large, only a fraction of the responses specifically target gender inequalities’.<sup>217</sup> The Special Rapporteur on the right to development has stressed that States should strengthen social protection networks and revise their health financing policies in order to guarantee that the specific needs of women and girls are adequately addressed.<sup>218</sup>

As the work of the CEDAW and the Working Group show, there is significant convergence in the understanding of the implications of the COVID-19 pandemic for gender equality and, more generally, in what a human rights-based approach require: appropriate integration in policies and programs and consideration for the disproportionate effects on women and girls.

### *The right to development*

The right to development<sup>219</sup> has been examined from the perspectives of both climate finance<sup>220</sup> and COVID-19 rescue and recovery policies.<sup>221</sup>

First, the implementation of the right to development involves adherence to principles of ‘non-discrimination and fundamental freedoms, and to internationally agreed frameworks on climate change, financing for development and sustainable development’.<sup>222</sup> In particular, according to the Special Rapporteur on the right to development, governments and international organizations should focus on development financing not only as a means to elicit economic returns but to comply with ‘States’ obligations to promote development using the maximum resources available and seeking or providing international cooperation in that regard’.<sup>223</sup> For this reason, the GCF ‘should be directly accessible to States and community-based stakeholders’ and, more specifically States should ‘review the rules regulating access

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<sup>216</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 30 July 2021, A/76/258, para 5.

<sup>217</sup> Ibid. See IMF, Special Series on COVID-19, “Gender equality and COVID-19: policies and institutions for mitigating the crisis”, 28 July 2021, at <<https://www.imf.org/en/Publications/SPROLLs/covid19-special-notes>>. See also UNDP COVID-19 Global Gender Response Tracker, at <<https://data.undp.org/gendertracker>>.

<sup>218</sup> Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level’, 6 July 2022, A/HRC/51/30, para 86.

<sup>219</sup> See ICCPR, Art. 1(1); ICESCR, Art. 1(1).

<sup>220</sup> Right to development, Report of the Special Rapporteur on the right to development, A/HRC/42/382 July 2019, paras 74-76.

<sup>221</sup> Report of the Special Rapporteur on the right to development, A/HRC/45/15, 8 July 2020, paras 81-82; Report of the Special Rapporteur on the right to development, Saad Alfarargi, A/75/167, 16 July 2020, paras 47-55, 68-71; Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level’, 6 July 2022, A/HRC/51/30; Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the international level’, 25 July 2022, A/77/174.

<sup>222</sup> Right to development, Report of the Special Rapporteur on the right to development, A/HRC/42/382 July 2019, para. 7

<sup>223</sup> Ibid., para 74.

to funds so that they are more inclusive and guarantee projects that are truly geared towards reducing emissions and promoting clean energy solutions’;<sup>224</sup> and, if they have contributed disproportionately to climate change, they ‘should meet their corresponding financial commitments, in accordance with Principle 16 of the Rio Declaration on Environment and Development.’<sup>225</sup>

Second, as regards COVID-19 response measures, in a 2021 report, the Special Rapporteur noted that ‘there has been an inadequate degree of international cooperation between nations.’<sup>226</sup> States are falling back on policies designed to primarily protect their domestic interests<sup>227</sup> and one of the most urgent issues ‘is the question of how to scale up concessional financing for the liquidity needed by developing countries to confront the economic impacts of the pandemic’.<sup>228</sup> In particular, both ‘international and regional cooperation are critical to the response and recovery of African economies’.<sup>229</sup>

For these reasons, the Special Rapporteur on the right to development highlighted central challenges in supporting and protecting the right to development, noting that ‘[i]ncreased financial support and low-cost liquidity will be required to address the immediate health response and economic support needs in developing countries’.<sup>230</sup> Fiscal stimulus, in the form of unconditional grants, by international organizations, including the World Bank and IMF, ‘is necessary to address the urgent health-care needs of developing countries, provide a safety net for the most vulnerable, protect jobs and support economic activity where possible.’<sup>231</sup> The Special Rapporteur also urged States, in the response to the pandemic, ‘to carefully discern the appropriate use of private versus public finance, as private financing may not be appropriate for all financing need’ and its risks require better management.<sup>232</sup>

In 2022, the Special Rapporteur published two distinct reports on response and recovery plans and policies on the COVID-19 pandemic from the perspective of the right to development at the national level and international level.<sup>233</sup> A number of countries provided practical examples of ways in which they have integrated the right to development into

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<sup>224</sup> Ibid., para. 76.

<sup>225</sup> Ibid.

<sup>226</sup> Report of the Special Rapporteur on the right to development, Saad Alfarargi, A/75/167, 16 July 2020, para. 48.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid., para. 52.

<sup>229</sup> Ibid., para. 55.

<sup>230</sup> Ibid., para. 68.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid., para 70.

<sup>233</sup> Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level’, 6 July 2022, A/HRC/51/30; Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the international level’, 25 July 2022, A/77/174.

national COVID-19 response and recovery plans and policies.<sup>234</sup> On this basis, the Special Rapporteur recommended States: (i) to ensure the development and financial support of participatory approaches, reaching all segments of society<sup>235</sup> and introduce ‘equality impact assessments into their public health, economic and social policy measures’;<sup>236</sup> (ii) to reduce the gaps in financing the response and recovery plans, by revising tax policies to increase the fiscal space for low- and middle-income countries through various measures (eliminating tax havens; ending over-reliance on indirect taxes like sales tax and value added tax; and increasing rates of direct taxes on the incomes of high earners and businesses);<sup>237</sup> (iii) to strengthen social protection networks through the adoption of various measures (providing basic universal health care to all; expanding public spending on health; and reviewing health financing policies periodically).<sup>238</sup> In the context of recovery plans, the Special Rapporteur also noted that it is only possible to give effect to the right to development if there are adequate, visible and accessible accountability mechanisms and remedies in cases of human rights violations.<sup>239</sup>

### *The rights of Indigenous Peoples*

The situation of Indigenous Peoples has been addressed in the context of several human rights discussed in the foregoing sections, and some key human rights instruments specifically formulate rights enjoyed by Indigenous Peoples.<sup>240</sup> With respect, specifically, to the implications of climate finance and COVID-19 response measures, the Special Rapporteur on the rights of Indigenous Peoples addressed these issues in several reports.<sup>241</sup>

As regards climate finance, while investments are required in both developed and developing countries to adapt to and mitigate the effects of climate change, developing countries ‘face by far the greatest adaptation challenges’ and Indigenous Peoples ‘are at particularly high

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<sup>234</sup> Submissions available at <<https://www.ohchr.org/en/calls-for-input/calls-input/call-inputs-special-rapporteur-right-development-covid-recovery-plans>>.

<sup>235</sup> Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level’, 6 July 2022, A/HRC/51/30, para 84.

<sup>236</sup> *Ibid.*, para 88.

<sup>237</sup> *Ibid.*, para 85.

<sup>238</sup> *Ibid.*, para 86.

<sup>239</sup> *Ibid.*, para 88.

<sup>240</sup> See ILO Convention No. 169 and the UNDRIP, both referred to above note 141.

<sup>241</sup> Climate finance: Report of the Special Rapporteur on the rights of Indigenous Peoples, 1 November 2017, A/HRC/36/46, paras 84-123; Permanent Forum on Indigenous Issues, Report on the seventeenth session (16–27 April 2018), Economic and Social Council, Official Records, 2018 Supplement No. 23, E/2018/43-E/C.19/2018/11, paras 23, 113; Report of the Special Rapporteur on the rights of Indigenous Peoples, A/HRC/45/34, 18 June 2020, para 45; Indigenous Peoples and climate change, E/C.19/2021/5, 12 January 2021, para 44. On COVID-19 recovery policies, Report of the international expert group meeting on the theme “Indigenous Peoples and pandemics”, E/C.19/2021/7, 29 January 2021, paras 23-54; The rights of Indigenous Peoples in Latin America and the Caribbean in the context of the exceptional measures adopted during the pandemic (Darío José Mejía Montalvo, a member of the Permanent Forum on Indigenous Issues), E/C.19/2021/9, 26 January 2021, paras 40-54; Indigenous Peoples and coronavirus disease (COVID-19) recovery, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/48/54, 6 August 2021, paras 6-85.

risk of being pushed into extreme poverty.’<sup>242</sup> According to the Special Rapporteur, a ‘key concern of developing countries is that climate finance prioritizes financial support for mitigation over adaptation measures’ as they ‘prefer that climate finance be channeled through a global mechanism or fund to ensure that the allocations are more equally distributed between adaptation and mitigation.’<sup>243</sup>

After having examined some examples of climate finance mechanisms and funds that exist, i.e. the Global Environment Facility, Clean Development Mechanism, REDD-plus, Adaptation Fund and Green Climate Fund, the Special Rapporteur concluded that, whereas the safeguards, policies and practices that have been developed for Indigenous Peoples are significant, the extent of their practical application requires continued attention.<sup>244</sup> Indeed, some specific projects funded in the context of climate finance have not respected safeguards and have negatively affected Indigenous Peoples’ rights including their right to meaningful and informed participation through effective consultations to obtain their free, prior and informed consent (FPIC).<sup>245</sup> The Special Rapporteur gives as examples the Barro Blanco hydropower project in Panama, the Water Towers Protection and Climate Change Mitigation and Adaptation Programme in Kenya and the Agua Zarca dam in the Río Blanco region in Intibucá, Honduras.<sup>246</sup> Similar considerations apply to other development finance actors.<sup>247</sup>

Climate finance mechanisms can create adverse impacts which undermine the rights of Indigenous Peoples and some still fail to acknowledge the UNDRIP and human rights standards.<sup>248</sup> For example, renewable energy or forestry conservation projects can lead to the relocation of a group in breach of these rights. For this reason, the Rapporteur concludes that the ‘adoption of a human rights-based approach to all climate finance is crucial’<sup>249</sup> and States should take all necessary domestic measures ‘to effectively engage Indigenous Peoples in climate change adaptation and mitigation measures’;<sup>250</sup> ‘[e]nsure that indigenous peoples are effectively included in national climate change planning and monitoring processes’;<sup>251</sup> [c]omply with the duty to consult and obtain the free, prior and informed consent of indigenous peoples at all stages in the development of climate change initiatives which may affect their rights’<sup>252</sup> and ‘[p]romote participation of indigenous self-governance

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<sup>242</sup> Report of the Special Rapporteur on the rights of Indigenous Peoples, 1 November 2017, A/HRC/36/46, paras 84.

<sup>243</sup> Ibid., para. 88.

<sup>244</sup> Ibid., para. 106.

<sup>245</sup> Ibid., paras. 107-117.

<sup>246</sup> Ibid., paras 107-114.

<sup>247</sup> Indigenous Peoples and climate change, E/C.19/2021/5, 12 January 2021, para 44.

<sup>248</sup> Ibid., 120-121.

<sup>249</sup> Ibid., 121.

<sup>250</sup> Ibid., para. 122 (a).

<sup>251</sup> Ibid., para. 122 (b).

<sup>252</sup> Ibid., para. 122 (c).

structures’.<sup>253</sup> In addition, dedicated funding should be provided to address the specific needs of Indigenous Peoples.<sup>254</sup>

As regards COVID-19 response measures, the report of the international expert group meeting on the theme ‘Indigenous peoples and pandemics’ showed general agreement on the fact that recovery plans ‘should be informed by an approach based on human rights, in particular the right to self-determination and land rights, and that equitable access to quality health care and education was essential.’<sup>255</sup> Similar concerns have also been raised by the Special Rapporteur on the rights of Indigenous Peoples and detailed in a report presented to the Human Rights Council in September 2021.<sup>256</sup> In particular, according to the expert group, Indigenous Peoples should be included in the recovery plans and funds for COVID-19<sup>257</sup> and economic recovery models ‘should aim to improve the quality of life and well-being for all, while ensuring balanced economic, social and environmental growth’<sup>258</sup> as well as ‘protect and promote traditional health systems to provide greater coverage and quality of care’.<sup>259</sup> Thus, it is essential that governments ‘ensure the effective participation of Indigenous Peoples in all recovery efforts, and culturally appropriate health services and education are integral to these recovery plans’ and that ‘recovery efforts take into consideration the impacts of the pandemic on Indigenous women and girls and include actions to address these’.<sup>260</sup>

In a 2021 report, the Special Rapporteur on the rights of Indigenous Peoples further specified that in the short term, States should ‘[c]onsult Indigenous Peoples and obtain their free, prior and informed consent, through their representative organizations before planning and implementing rights-based COVID-19 responses and recovery measures’<sup>261</sup> and ‘[e]nsure that pandemic emergency plans, responses and recovery measures recognize and support indigenous autonomy and inherent jurisdiction.’<sup>262</sup> Moreover, in structural terms, States should ‘[a]dopt measures to eliminate systemic, institutional racial discrimination and implicit bias in public health-care systems and emergency response planning through awareness raising and anti-racism training’<sup>263</sup>; and ‘[e]nsure that COVID-19 recovery

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<sup>253</sup> Ibid., para. 122 (d).

<sup>254</sup> Ibid., para. 123(c).

<sup>255</sup> Report of the international expert group meeting on the theme “Indigenous peoples and pandemics”, E/C.19/2021/7, 29 January 2021, para. 53.

<sup>256</sup> Indigenous Peoples and coronavirus disease (COVID-19) recovery, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/48/54, 6 August 2021, paras 6-85 [2021 Report *Indigenous Peoples and coronavirus disease (COVID-19) recovery*]

<sup>257</sup> Report of the international expert group meeting on the theme “Indigenous Peoples and pandemics”, E/C.19/2021/7, 29 January 2021, paras 26, 29, 36, 46-48.

<sup>258</sup> Ibid., para. 36

<sup>259</sup> Ibid., para. 48.

<sup>260</sup> Ibid., para. 54.

<sup>261</sup> 2021 Report *Indigenous Peoples and coronavirus disease (COVID-19) recovery*, para. 84(b). See also Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level’, 6 July 2022, A/HRC/51/30, paras 78 and 86.

<sup>262</sup> Ibid., para 84 (n).

<sup>263</sup> Ibid., para. 85(a).

measures address the long-term needs and financial impact of the pandemic on indigenous peoples in terms of education, employment, housing, health and other social services'.<sup>264</sup>

### *Rights of migrants*

With respect to the rights of migrants,<sup>265</sup> in the context of COVID-19 response measures, the Special Rapporteur on the human rights of migrants has emphasized that States should ensure that international human rights standards protecting migrants are included in all aspects of national responses to the global health crisis.<sup>266</sup> Similar and further recommendations are detailed in the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants,<sup>267</sup> such as the recommendations to 'integrate migrant workers into national COVID-19 prevention and response plans and policies'<sup>268</sup> and 'include migrants and their families, regardless of their migration status, in economic recovery policies, taking into account the need for the recovery of remittance flows'.<sup>269</sup>

### *Children's rights (including intergenerational equity)*

Children's rights<sup>270</sup> have been examined in the light of both climate finance<sup>271</sup> and COVID-19 rescue and recovery policies.<sup>272</sup>

As regards climate finance, States are urged to 'ensure that considerations of the rights of the child are integrated in their environmental, climate, disaster risk reduction, humanitarian and development activities, monitoring and reporting, and also to ensure policy coherence in these fields in order to establish a coherent approach to sustainable development that benefits all persons, particularly children and future generations'.<sup>273</sup>

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<sup>264</sup> Ibid., para. 85 (c).

<sup>265</sup> See, in addition to general human rights instruments, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, UNGA Resolution 45/158.

<sup>266</sup> Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales Ending immigration detention of children and providing adequate care and reception for them, A/75/183, 20 July 2020, para 86(p).

<sup>267</sup> UN Committee on Migrant Workers and Special Rapporteur on the human rights of migrants, Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants, 26 May 2020.

<sup>268</sup> Ibid, para (2), p. 2.

<sup>269</sup> Ibid., para. (7), p. 2.

<sup>270</sup> See, in addition to general human rights instruments, the Convention on the Rights of the Child, 20 November 1989, UNGA Resolution 44/25 [CRC].

<sup>271</sup> Rights of the child: realizing the rights of the child through a healthy environment, HRC, A/HRC/45/30, 5 October 2020, para 13.

<sup>272</sup> Rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples Study of the Expert Mechanism on the Rights of Indigenous Peoples, 9 August 2021, A/HRC/48/74, para 24; Human rights implications of the COVID-19 pandemic on young people, HRC, A/HRC/48/12, 6 October 2021, paras 3-8; Report of the Special Rapporteur on the right to development, Saad Alfarargi, 'Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level', 6 July 2022, A/HRC/51/30, para 72, 75.

<sup>273</sup> Rights of the child: realizing the rights of the child through a healthy environment, HRC, A/HRC/45/30, 5 October 2020, para. 13.

In the context of COVID-19 response measures, the Expert Mechanism on the Rights of Indigenous Peoples has underlined that ‘recovery plans should include provision for the additional barriers to the enjoyment by indigenous children of their rights, including those related to their physical, mental and spiritual health, education and protection.’<sup>274</sup>

In a similar vein, the Human Rights Council has called upon States ‘to recognize and support young people’s potential to advance the fight against the COVID-19 pandemic’, ‘to conduct their coherent youth-related policies through inclusive and participatory consultations with youth organizations and relevant youth-led and youth-focused stakeholders and social development partners’ and ‘to promote new initiatives for the full, effective, structured and sustainable participation of young people in relevant decision-making processes’.<sup>275</sup>

Thus, like for other human rights, there is a clear and converging emphasis on the need to expressly integrate children’s right in policy- and decision-making.

#### *Persons with disabilities*

The impact of COVID-19 response measures has also been examined with regard to the rights of persons with disabilities.<sup>276</sup> The Special Rapporteur on this topic has stressed that the pandemic has deepened ‘pre-existing inequalities and having a severe impact on the gains made in the past decades on the rights and inclusion of persons with disabilities’.<sup>277</sup> Thus, ‘[a]s the international community reflects on the processes of recovery and building back better, it is necessary to ensure the provision of disability-inclusive investments and policies and to translate them into universally designed systems, inclusive economies and communities that guarantee equal opportunities for all, including persons with disabilities and their families.’<sup>278</sup> For this reason, the Special Rapporteur has made several recommendations to States as well as to international private donors and foundations.

In particular, with the aim of assisting them in ensuring inclusive and accessible international cooperation, he recommended States to ‘[i]ntegrate disability inclusion into the design, implementation, monitoring and evaluation of all mainstream policies and programmes on international cooperation and complement them with disability-specific policies and

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<sup>274</sup> Rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples Study of the Expert Mechanism on the Rights of Indigenous Peoples, 9 August 2021, A/HRC/48/74, para 24.

<sup>275</sup> Human rights implications of the COVID-19 pandemic on young people, HRC, A/HRC/48/12, 6 October 2021, para. 8.

<sup>276</sup> See, in addition to general human rights instruments, the Convention on the Rights of Persons with Disabilities, 24 January 2007, UNGA Resolution 61/106; Report of the Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, 12 July 2020, A/75/186, paras 10-1, 53-74, 80-81; Report of the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, A/76/146, 19 July 2021, para 32; Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level’, 6 July 2022, A/HRC/51/30, para 76, 86, 87.

<sup>277</sup> Report of the Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, 12 July 2020, A/75/186, para. 11.

<sup>278</sup> Ibid. See also United Nations, “Policy brief: a disability-inclusive response to COVID-19”, May 2020.

programmes’;<sup>279</sup> ‘[e]nsure a human rights-based approach to disability in the design, implementation, monitoring and evaluation of all international cooperation efforts and refrain from funding or implementing programmes and projects that are contrary to the rights of persons with disabilities’;<sup>280</sup> and ‘[i]nclude persons with disabilities in all COVID-19-related international cooperation efforts, as both agents and beneficiaries of aid’.<sup>281</sup>

The Special Rapporteur also recommended that international private donors and foundations ‘systematically ensure disability inclusion in all their international cooperation efforts and respect the rights of persons with disabilities in accordance with the Convention.’<sup>282</sup>

Similarly, the Special Rapporteur on the right to development has also clarified that States should ensure access to information with regards to measures and policies to persons with disabilities;<sup>283</sup> review health financing policies periodically to ensure that the specific needs of persons with disabilities are adequately addressed;<sup>284</sup> and design budgets to ensure the systematic involvement of all persons with disabilities through their representative organizations ‘in all decisions that affect their lives, in the context of COVID-19 recovery plans and, more generally, when elaborating preparedness and response plans for future crises.’<sup>285</sup>

#### *The right to a safe, clean, healthy and sustainable environment*

Climate finance<sup>286</sup> as well as COVID-19 response measures<sup>287</sup> have been discussed in connection with the right to a safe, clean, healthy and sustainable environment, as progressively developed in the work of the Special Rapporteur on the issue of human rights

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<sup>279</sup> Ibid., para. 81(a).

<sup>280</sup> Ibid., para. 81 (b).

<sup>281</sup> Ibid., para. 81 (c).

<sup>282</sup> Ibid., para. 83.

<sup>283</sup> Report of the Special Rapporteur on the right to development, Saad Alfarargi, ‘Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level’, 6 July 2022, A/HRC/51/30, para 83.

<sup>284</sup> Ibid., para 86.

<sup>285</sup> Ibid., para 87.

<sup>286</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/31/52, 1 February 2016, paras 61-63; Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 15 July 2019, A/74/161, para 47, 68, 87-89; Right to a healthy environment: good practices, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/43/53, 30 December 2019, paras 70-72; Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, ‘The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals’, 10 August 2022, A/77/284, paras 56, 57 and 80 (g).

<sup>287</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, Human rights depend on a healthy biosphere, A/75/161, 15 July 2020, paras 83-84, 88; Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, ‘The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals’, 10 August 2022, A/77/284, para 80 (g).

obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and, more recently, by a resolution of the Human Rights Council<sup>288</sup> and of the General Assembly.<sup>289</sup>

As regards climate finance, in 2016, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment noted that some climate finance mechanisms, such as the Clean Development Mechanism, failed to provide for adequate stakeholder consultation and supported the view that ‘the safeguards for the various climate funds and other mechanisms used to finance mitigation and adaptation projects should be made uniform and revised to fully account for human rights considerations’.<sup>290</sup> The Rapporteur also specified that, internally, every State must provide for effective remedies for all human rights violations, including those arising from climate-related actions<sup>291</sup> and, at the international level, ‘States should work together to support the establishment and implementation of procedures to provide such remedies, particularly with respect to measures supported by international finance mechanisms.’<sup>292</sup> Then, in 2019, the Special Rapporteur clarified that it would be against basic principles of justice to force poor countries to pay for the costs of responding to climate change when wealthy countries caused the problem and, thus, climate finance to low-income countries should consist of grants, not loans.<sup>293</sup>

The same report also addresses more specific obligations to both States and climate funds. In particular, since ‘[a]daptation has been chronically underfunded compared to mitigation’,<sup>294</sup> ‘[w]ealthy States must fulfil their commitment to mobilize at least \$100 billion annually by 2020 to finance the urgent mitigation and adaptation needs of developing States, with priority given to the least developed countries and small island developing States.’<sup>295</sup> It is noted that ‘[f]unding needs to be ramped up by 2025 to meet the full costs of adaptation, estimated to be \$140 to \$300 billion per year by 2030.’<sup>296</sup> Moreover, ‘States should establish a global carbon tax with a floor price per ton for developing States and a higher floor price for developed States’ - which should gradually increase every year, in order to ‘address fossil fuel subsidies, internalize the health and environmental costs of burning fossil fuels, and implement the polluter pays principle’.<sup>297</sup> Moreover, it is proposed that ‘[t]he incremental

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<sup>288</sup> See above note 138.

<sup>289</sup> See above note 139

<sup>290</sup> See Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/31/52, 1 February 2016, para. 61.

<sup>291</sup> *Ibid.*, para. 62.

<sup>292</sup> *Ibid.*

<sup>293</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 15 July 2019, A/74/161, para. 68.

<sup>294</sup> *Ibid.*, para. 87.

<sup>295</sup> *Ibid.*

<sup>296</sup> *Ibid.*

<sup>297</sup> *Ibid.*, para. 90.

revenue generated by the higher price in developed countries could be used to finance mitigation and adaptation efforts in developing countries.’<sup>298</sup>

Furthermore, climate funds should take steps ‘to strengthen and harmonize social, environmental and human rights safeguards when financing projects’;<sup>299</sup> ‘should require project-specific gender action plans and consistency with the Sustainable Development Goals as prerequisites for project approval’;<sup>300</sup> and ‘need to simplify their procedures and reach out to least developed countries and small island developing States, so that these States are able to access the funds required for mitigation and adaptation’.<sup>301</sup>

As regards instead the process of recovering from the COVID-19 pandemic, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment stressed that ‘[a] rights-based approach must be applied to the investment of trillions of dollars in economic recovery, ensuring that investments advance human rights, prevent future pandemics, alleviate climate change and biodiversity loss, provide a just transition for vulnerable workers and communities and accelerate progress to achieve the Sustainable Development Goals’.<sup>302</sup> Moreover, ‘[e]nvironmental laws and regulations must not be weakened, nor enforcement relaxed’.<sup>303</sup> For this reason, ‘[f]inancial support should be made conditional on businesses committing to protect the rights of indigenous peoples and local communities, prevent deforestation and land conversion and reduce greenhouse gas emissions at a rate consistent with Intergovernmental Panel on Climate Change guidance’ and ‘[s]ectors that damage ecosystems and biodiversity, including fossil fuels, mining and industrial agriculture, should not receive subsidies.’<sup>304</sup> The Rapporteur also advanced the suggestion that the post-2020 global biodiversity framework should ‘[i]nclude a commitment from wealthy States to mobilize at least \$100 billion annually to assist low-income States in conserving, protecting, restoring and ensuring the sustainable use of nature, matching their climate finance commitment’.<sup>305</sup> In 2022, the Special Rapporteur however noted that ‘wealthy States have not yet fulfilled their long-standing promise to mobilize at least \$100 billion in climate finance for those countries, and most of the funding has come in the form of loans, not grants’<sup>306</sup> and recommended States to

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<sup>298</sup> Ibid.

<sup>299</sup> Ibid., para 88.

<sup>300</sup> Ibid.

<sup>301</sup> Ibid., para 89.

<sup>302</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, Human rights depend on a healthy biosphere, A/75/161, 15 July 2020, para. 83.

<sup>303</sup> Ibid., para. 84.

<sup>304</sup> Ibid.

<sup>305</sup> Ibid., para. 88(c).

<sup>306</sup> UNEP, *Adaptation Gap Report 2021* (UNEP, 1 November 2021). For an update on the progress, see OECD, ‘Climate Finance Provided and Mobilised by Developed Countries in 2016-2020’ (OECD, 22 September 2022).

‘[a]lign all economic stimulus provided by COVID-19 recovery efforts with Paris climate objectives and the transition to renewable energy’.<sup>307</sup>

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The analysis conducted in this appendix in relation to specific rights, categories of rights and dimensions suggests that there is significant convergence on the broad components that a human rights-based approach to both climate finance and COVID-19 response measures should include. First and foremost, human rights should be explicitly integrated into such measures, which is rarely the case. Such integration would require fleshing out requirements relating to resource mobilization, international cooperation, social protection, participatory and inclusive processes and cross-cutting dimensions (gender, Indigenous Peoples, other particularly vulnerable groups). It would also have to involve both States and non-State entities.

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<sup>307</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, ‘The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals’, 10 August 2022, A/77/284, para 80 (g).