

REINFORCING THE INDIGENOUS PEOPLES RIGHTS TO HEALTH IN THE WAKE OF COVID-19 PANDEMIC: A PANACEA FOR SUSTAINABLE HUMAN RIGHTS PROTECTION*

Abstract

The rights of indigenous people have over the past three decades become an important issue of international law and policy as a result of movement driven by indigenous peoples, civil society, international mechanisms and States at the domestic, regional and international levels. Indigenous peoples are recognized as being among the world's most vulnerable, disadvantaged and marginalized group of people. This paper analyses the statutory definitions of indigenous peoples, and their rights as provided under the United Nations legal framework and other regional frameworks. It examines the Indigenous Peoples distinctive concepts of health and their vulnerability to Covid-19 Pandemic, their right to health and other human rights issues. However, the paper notes that the United Nations Human Rights System, its mechanism, laws and policies have been at the heart of these developments. It adopts analytical and qualitative approach and builds its argument on existing literatures, which is achieved by a synthesis of ideas. The paper has drawn the conclusion that the rights of indigenous peoples are also increasingly being formally incorporated into domestic legal systems.

Keywords: Covid-19, Health, Indigenous, Pandemic, Peoples Rights.

1.0 Introduction

Generally, indigenous peoples each have a unique and distinctive cultures, languages, legal systems and histories. The notion of Indigenous Peoples rights has been recognized by the United Nations.¹ However, it applies human rights to indigenous peoples and their specific situations, thereby helping to reverse their historical exclusion from the international legal system. Furthermore, it must be emphasized that the indigenous peoples rights which are considered as part of international human rights law are *suigeneris* because of its inclination in the customs and traditions of the people concerned rather than established corpus of positive law.² Also, it is important to understand that international activity on indigenous peoples issues had been expanding also in regional human rights bodies, such as the African and the inter-American human rights systems, and into international law and policy areas as diverse as the environment, including climate change, intellectual property and trade.

In the same vein, it should be noted that the United Nations system has established a number of mechanisms with specific mandates to address the rights of indigenous peoples through an advisory body of the Economic, and Social Council having the mandate to discuss indigenous issues relating to economic and social development, culture, environment, education, health

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¹ See G.A Res 61/295 UN Doc A/Res/61/295 2007.

² *CaI v. Attorney General, Claim Nos. 171 and 172 P. 101, (2007).*

and human rights.³In sum, the purpose of this paper is to examine and analyze the Indigenous Peoples rights to health under international human rights law in the wake of COVID-19 Pandemic widely recognized under the International Covenant on Economic, Social and Cultural Rights.⁴ Lastly, this paper will examine the COVID-19 Pandemic, the attendant World Health Organization regulations and its effect on fundamental rights to health of the indigenous peoples. It may be argued that even when there are no such extraordinary circumstances like COVID-19 Pandemic, indigenous people rights to health are rarely respected globally. These views are justified considering the chequered history of rejection of the rights of indigenous peoples, but this paper will be restricted to the indigenous peoples rights to health under the COVID-19 Pandemic.

This paper will commence by providing an overview of the indigenous peoples rights in order to demonstrate the importance of right to health to the indigenous peoples. Subsequently, a conceptual clarification of key terms pertaining to indigenous people's human right. In addition, this paper will examine COVID-19 Pandemic and Indigenous Peoples right to health. Also, this paper examines the right to health under international human rights law and through other international legal instruments. In this regard, this paper finalizes with conclusion.

2.0 Conceptual Clarification

i) Who are indigenous people?

The term "indigenous peoples" has no singularly authoritative definition under international law and policy, and as well as by the Indigenous Declaration. Ordinarily, indigenous person may be defined as:

One who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group) these preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.⁵

³Article 22, United Nations Permanent Forum on Indigenous Issues General Comment on Economic and Social Council Resolution (2000).

⁴ Article 12, of the International Covenant on Economic, Social and Cultural Rights, (1966)

⁵ A. Erica-Irena, "On the Concept of Indigenous Peoples", E/CN-4/Sub. 2/Ac.4/1996/2, Paras 38/ - 382.

In short, no formal definition has been adopted in international law. However, a strict definition is seen as unnecessary and undesirable. In addition, it is essential to emphasize that articles 9 and 33⁶ state that:

Indigenous peoples and individuals have the right to belong to an Indigenous Community or Nation, in accordance with the traditions and customs of the community or nation concerned, and that they have the right to determine their own identity.

In this issue, in order to better understand the definition of the term indigenous people, Martinez Cobo⁷ provides the most widely cited working definition of indigenous peoples as thus:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them they form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institution and legal system.

In a similar vein, efforts to gain an accurate insight into who indigenous people are led to the International Labour Organization (ILO) convention⁸ defining it as:

descents of populations which inhabited a country or geographical region during its conquest or Colonialization or the establishment of present state boundaries and retain some or all of their own social, economic, cultural and political institutions.

In all contexts, there seemed to be efforts made to understand the concept of “indigenous by the international labour organization convention such as:

- i) Priority in time, with respect to the occupation and use of a specific territory
- ii) The voluntary permutation of cultural distinctiveness, which may include language social organization, religion and spiritual values.
- iii) Self-identification

⁶ Ibid.

⁷E/CN.4/Sub.2/1986/7/Add.4 Para. 379.

⁸ Article 1(1)(b) of the Indigenous and Tribal Peoples Convention, No. 169 (1989).

- iv) Experience of subjugation, marginalization, dispossession, exclusion or discrimination.

The analysis above makes it clear that the term “indigenous peoples” in the Asian context is generally understood to refer to distinct cultural groups, such as “Adivasis”, tribal peoples”, “hill tribes”, or “scheduled tribes”, while on the other hand indigenous peoples in Africa are referred to as “pastoralists” “vulnerable groups” or “hunter-gatherers”, it should be noted that from the analysis presented, the Asian context of the term “indigenous peoples” is attributed the positive element of the indigenous peoples definition, even if it satisfies the criteria of the indigenous peoples definition, while the negative element of the definition of “indigenous peoples is attributed to the African contest of the definition. However, in order to understand and correctly appreciate who an indigenous people are under the international conventions, a modern approach should put less emphasis on the early definitions that focuses on aboriginality and instead focused on: self definition as indigenous and distinctly different from other groups within a state, a special attachment to and use of their traditional land whereby their ancestral land and territory has a fundamental importance for their collective physical and cultural survivals, vis-a-vis an experience of subjugation, marginalization, dispossession, discrimination because of their different cultures, ways of life or modes of production than the dominant model.⁹

The benefits of this integrated approach are clearly evident in the definition of indigenous peoples since there is no-universally agreed definition. Thus, this paper noted that despite the lack of an authoritative definition, there are three criteria that help to define indigenous peoples such as: i) indigenous people are descendants of groups which were in the territory of the country at the time when other groups of different cultures or ethnic origins arrived there, ii) indigenous people are those who are isolated from other segment of the country's population which they have preserved almost intact with the customs and traditions of their ancestors similar to those characterized as indigenous, and iii) are those who have been placed under the State structure which incorporates national, social and cultural characteristics alien to theirs. While this may be desirable in a modern approach, this paper noted that among the three criteria, the criteria of self-identification as the expression of the right to self-determination of indigenous peoples appears widely recognized today.

⁹ See Report of the African Commission's Working Group on Indigenous Populations/Communities, Adopted by the African Commission on Human and Peoples Rights (2005), pp 92-93.

Given this scenario, Article 33 of the Convention¹⁰ states that, “indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions’. Similarly, International Labour Organization Convention No. 169 also asserts that self-identification as indigenous is a “fundamental criterion for determining the groups” which are indigenous.¹¹

ii) What is the Right to Health?

Conceptually, the right to health is an inclusive right¹² that is frequently associated with access to health care and the building of hospitals. This description is somehow correct, but the right to health appears to have gone beyond that. In a similar fashion, the committee on Economic, Social and Cultural Rights, a body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights¹³ refers to the right to health as “an underlying determinants of health”.

Additionally, the question as to what constitute the right to health is dependent on the satisfaction of the following definitional requirements: First, the right to health must be an inclusive one, second, the right to health must contains freedom, third, the right to health must contains entitlements, Fourth, Health services, goods and facilities must be provided to all without any discrimination, and, fifth, all services, goods and facilities must be available, accessible, acceptable and of good quality.

Noteworthy in this paper is that, despite the understanding of the right to health, there are still common misconceptions about the right to health. However, it has been misconceived on the following grounds: firstly, the right to health is not the same as the right to be healthy. A common misconception in this regard is that the state has to guarantee a good health. However, good health is influenced by several factors that are outside the direct control of states, such as an individual biological make-up and Social Economic Conditions. In this context, instead of describing the right to health as the right to the highest attainable standard of physical and mental health, it was rather described as an unconditional right to be healthy. Secondly, the right to health is not only a programmatic goal to be attained in a long term. It must be emphasized that the fact that the right to health should be a tangible programmatic goal does not mean that no immediate obligations on States arise from it. Thirdly, a country’s

¹⁰ Article 33 of the International Labour Organization Convention (1989).

¹¹Article 1(2) of the International Labour Organization Convention (1989).

¹² See General Comment No. 14 on the Right to Health, Adopted by the Committee on Economic, Social and Cultural Rights (1966).

¹³International Covenant on Economic, Social and Cultural Rights (1966).

difficult financial situation does not absolve it from having to take action to realize the right to health.

Furthermore, it is often argued that states that cannot afford it are not obliged to take steps to realize this right or may delay their obligations indefinitely. Nonetheless, no state can justify a failure to respect its obligations because of lack of resources. Keeping in view these three misconceptions, it must be borne in mind that the importance given to the “underlying determinants of health”, that is, the factors and conditions which protect and promote the right to health beyond health services, goods and facilities shows that the right to health is dependent on, and contributes to, the realization of many other human rights. It is relevant to mention that individual’s right to health cannot be realized without realizing their other rights, violations of which are at the root of poverty, such as the rights to work, food, housing and education.

iii) Principle of Non-discrimination and Equality

In order to provide clarity as to the application of the principle of non-discrimination to the right to health, the principle of non-discrimination and equality are fundamental human rights principles and critical components of the right to health. In other words, the international covenant on Economic, Social and Cultural Rights¹⁴ and the Convention on the Rights of the Child¹⁵ identify the following non-exhaustive grounds of discrimination: race, colour, sex, language, religion, social origin, disability, birth or other status such as HIV/AIDS.

In a similar manner, the International Convention on the Elimination of All Forms of Racial Discrimination¹⁶ also stresses that states must prohibit and eliminate racial discrimination and guarantee the right of every one to public health and medical care. It is argued here that there is no justification for the lack of protection of vulnerable members of the society from health-related discrimination, be it in law or in fact. In this regard, it is pertinent to note that even in times of disaster like COVID-19 Pandemic, vulnerable members of the society must be protected.

iv) Indigenous Peoples Rights

Indigenous peoples rights under international law have evolved from existing international law, including human rights treaties to address the specific circumstances facing indigenous

¹⁴ Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (1966).

¹⁵ Article 2(1) of the Convention on the Rights of the Child (1989).

¹⁶ Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

peoples as well as their priorities, such as rights to their lands, territories, resources, and self-determination.

It must be emphasized that despite the evolution of the indigenous peoples rights from the existing international law, today, many indigenous peoples continue to face a wide range of human rights issues. In particular, the implementation of the rights of indigenous peoples has remained far from perfect. Aside, from the Declaration on the Rights of the Indigenous peoples by the United Nations,¹⁷ there has been series of violations of their rights ranging from pressures on their lands, territories and resources as a result of activities associated with development and extraction of resources. Also, their cultures continued to be threatened, and the protection and promotion of their rights resisted. These have remained a human right issue today.

More so, it is important to point out the fact that while the United Nations Declaration is the most comprehensive instrument detailing the rights of indigenous peoples in international law and policy, it would appear that it contains minimum standards for the recognition, protect in and promotion of these rights. However, in terms of the obligation to fulfill the rights of the Indigenous peoples, the question that remains pertinent is why not uniformly or consistently implement these declarations regularly that guides states and indigenous peoples in developing law and policy that will have an impact on indigenous people as well as devising means that will best address their claims?

In the light of the foregoing, it is relevant to mention that the United Nations Declaration on the Rights of Indigenous People contained some of the most important substantive rights and also under International Law and Policy such as:

(a) The Right to Self-Determination, Autonomy, Self-Government and Indigenous Institutions.

Indigenous peoples as people having long traditions of self-government, independent decision-making and institutional self-reliance over the years have exercised what is now described as the right to self-determination as an inherent right derived from their political, Economic, Social structures, as well as their cultures, spiritual traditions, histories and philosophies, throughout their histories.¹⁸

A key point to note is that, the lack of meaningful involvement of indigenous peoples in decision-making processes which has resulted in detrimental impacts, marginalization and a

¹⁷ United Nations Declaration on the Rights of Indigenous Peoples (2007).

¹⁸ See the United Nations Declaration on the Rights of the Indigenous Peoples, Seventh Preambular paragraph.

legacy of Economic, Social, Cultural and Physical challenges has of course, raised the questions on what can indigenous peoples do to promote and exercise their right to self-determination? And why is the right to self-determination important for indigenous peoples?

Similar concerns have already been expressed on what procedures should be used for consultations with indigenous peoples? What does free, prior and informed consent mean? According to Articles 3 and 4 of the Declaration which provides that:

indigenous peoples have the right to self-determination, they have the right to autonomy and self-government in matters relating to their internal and local affairs.

In the same vein, article 3 of the Declaration mirrors common article 1 of the International Covenant on Civil and Political Rights¹⁹ and International Covenant on Economic, Social and Cultural Rights.²⁰ It must be emphasized that the above overview of the Declaration highlights that the indigenous peoples sees self-determination as a central right recognized at the international level. In this context, the implementation of the right to self-determination also complements the implementation of other rights.

Consequently, given the increasing importance of the Indigenous Peoples Right to determine their own economic, social and cultural development and management, it has become necessary to consult with indigenous peoples and obtain their free, prior and informed consent which is a crucial element of the right to self-determination.²¹ It is commonly said that the committees that oversee the implementation of common article 1 of the covenants have confirmed that the right applies to indigenous peoples, among other peoples. This statement does have an essential kernel of truth. In this regard, the committee on Economic, Social and Cultural Rights expressed its concern as follows:

About the precarious situation of indigenous communities in the state, affecting their right to self-determination under article 1 of the covenant, the state parties are to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence.²²

Another important point to note with regard to the right to self-determination is that the right to self-determination is a collective right held by all members of the indigenous community or nation as a group and must be exercised in accordance with the principles of justice,

¹⁹ Articles 3 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

²⁰ Article 1 Of the International Covenant on Civil and Political Rights (1966).

²¹ Article 1 of the International Covenant on Economic, Social and Cultural Rights (1966).

²² See “The Final Report of the Study on Indigenous Peoples and the Rights to Participate in Decision-Making” (A/HRC/EMRIP/2011/2).

democracy, respect for human rights, equality, non-discrimination, good governance and good faith.²³ In a similar fashion, and with regards to all rights in the Declaration, this paper noted that the right to self-determination is universal, inalienable and indivisible. Also, it is interdependent and interrelated with all of the other rights in the Declaration.²⁴ Arguably, while all rights in the Declaration are understood to have equal status, the right to self-determination has been seen as a fundamental right, without which the other human rights of indigenous peoples, both collective and individual, cannot be fully enjoyed.²⁵

According to Article 27 of the covenant,²⁶ it had been generally perceived that individuals' rights would be sufficient to ensure adequate protection and promotion of rights with a collective dimension, such as the right to culture. On the other hand, it should be fairly uncontroversial that the Declaration recognizes the right of indigenous peoples to autonomy or self-government in matters relating to their internal and local affairs,²⁷ as well as the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state.²⁸ Also, the Declaration in view of the emerging development recognizes that indigenous peoples have the right to promote, develop and maintain their institutional structure and their distinction, customs, spirituality, traditions, procedures, practices and of course, in cases where they exist, judicial systems or customs, in accordance with international human rights standards.²⁹

In the light of the above development, and given the significant challenges on the rights to self-determination of the indigenous peoples, it can be argued that indigenous peoples are distinct from, yet joined to, larger units of social and political interaction.³⁰ However, it should be pointed out that the question of self-determination is extremely important to indigenous peoples, especially when it serves as a basis for social interactions and meaningful participation in effective dialogue. Indeed, this paper also argued that there are many approaches to achieving effective implementation of the right to self-determination within the state context and of course, the most effective are those that are developed in cooperation

²³ The Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation, (E/C.12/1/Add. 94). Para.11 and 39.

²⁴ Article 46(3) of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

²⁵ See Inter-Agency Support Group on Indigenous Issues, United Nations Development Group Guidelines on Indigenous Peoples Issues (2009) P-27.

²⁶ Special Rapporteur on the Rights of Indigenous People, "The Situation of Indigenous People in Brazil" (A/HRC/12/34/Add.2, 2009), Para. 22.

²⁷ Article 27 of the International Covenant on Civil and Political Rights, (1966).

²⁸ Article 4 of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

²⁹ Article 5 of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

³⁰ Article 34 of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

with indigenous peoples. Nevertheless, it should be noted that the exercise of the right to self-determination is often expressed through the development of treaties, agreements and constructive arrangements based on the mutual agreement of indigenous peoples and states.³¹

(b) Right to Equality and Non-Discrimination

Interestingly, equality and non-discrimination are significant objectives of, and underpinned both the Declaration and International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples. According to Articles 1 and 2 of the Declaration,³² it is relevant to mention that both articles articulate the right of indigenous peoples as a collective or as individuals, to all human rights.

In the strict sense, it means that the recognition of their rights overall is fully justified from an equality and non-discrimination perspective, taking into cognizance the discrimination they has experienced historically as peoples and individuals. It is necessary to mention here briefly that an equality and non-discrimination approach also supports the recognition of their collective rights to their lands, territories and resources as being equivalent to the rights of non-indigenous individuals to their property, as the inter-American Court of Human Rights³³ has held. The important aspect in this regard is that the United Nations Declaration on the Rights of Indigenous Peoples³⁴ provides that:

Indigenous peoples and individuals are free and equal to all other peoples and that indigenous individuals have the right to be free from any kind of discrimination in the exercise of their rights.

In response to the above development and taking into account the real or actual causes of discrimination and inequality as well as discrimination and social economic conditions of the indigenous peoples, the United Nations through the Declaration has specifically call on states to take measure to combat prejudices and eliminate discrimination, promote good relations between indigenous and non-indigenous people; and provided prevention of, and redress for any form of propaganda designed to promote or incite racial or ethnic discrimination directed against indigenous peoples.³⁵

³¹ J. Anaya, “The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era” in *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (2009) P. 193

³² Article 37 of the United Nations Declarations on the Rights of Indigenous Peoples (2007), and Expert Mechanism on the Rights of Indigenous Peoples Advice No. 2 (2011) on Indigenous Peoples and them to Participate in Decision –Making, Para-34.

³³ Articles 1 and 2 of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

³⁴Case of the *Mayagna (SUMO) Awastingi Community v. Nicaragua*; Case of the *Sawhayamaxa Indigenous Community v. Paraguay, series C, No. 146, Judgement(2006)*.

³⁵Article 2, of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

In view of the above, it is worthwhile to ask whether states are ready to eliminate both formal and substantive or defacto forms of discrimination: and secondly, why is there a need to adopt special measures for indigenous peoples” in its essence, the elimination of formal discrimination may require that a state’s constitution, legislation, regulations or policies do not discriminate against indigenous peoples also, the elimination of defacto discrimination requires states to implement laws and policies that facilitate substantive equality for indigenous peoples in the enjoyment of their rights. The above position is among other things based on belief that the obligation to eliminate discrimination on and provide for equality requires states to regulate the conduct of both public and private actors, as well as implement policies that provide for substantive equality.³⁶

In the context of indigenous peoples, it may be worth bringing attention to the right to equality and non-discrimination when it comes to indigenous peoples rights. However, these two concepts are viewed as offering a dual protection. It would also incidentally mean that on the one hand, it focuses on the conditions inherently requires to maintain indigenous people’s way of life, and on the other, it focuses on attitudes and behavior that exclude or marginalize indigenous peoples from the wider society.³⁷ Indeed, while it is true that some states maintained that the principle of equality prohibits states from treating any group differently from the other, it should be stressed that in order to achieve substantive equality, it is necessary to treat indigenous people as a distinct group experiencing unique circumstances that deserves the right to equality and non-discrimination.³⁸ According to the committee on the Elimination of Racial Discrimination³⁹:

To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the equal treatment of persons whose situations are objectively the same.

In other words, the Committee on Economic, Social and Cultural Rights in its own view held that “where discrimination of a particular group has been pervasive, states should take adequate necessary to eliminate such discrimination that are not governed by the principle of international law”.⁴⁰ Thus, while some of the more specific content of the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural

³⁶ Ibid, Article 15(2).

³⁷ See Committee on Economic, Social and Cultural Rights, General Comment on Non-Discrimination in Economic, Social and Cultural Rights, No. 20 (2009).

³⁸ See E/CN.4/1989/Para. 5.

³⁹ A/HRC/EMRIP/2012/4, Para. 87.

⁴⁰ International Convention on the Elimination of All Forms of Racial Discrimination (1965), General Recommendation No. 32 (2009).

Rights might address the specificities of discrimination, there is a good argument that policies that discriminate against indigenous peoples cannot entirely exempt indigenous women given their gender status.⁴¹ However, since there is disagreement about this position, it is essential that states empower indigenous women and ensure their participation in the design, delivery and monitoring of programmes; that will affect their collective interest. Also, it can be argued that indigenous traditions and customs most times are discriminatory, especially towards women. This view is predicated on the provisions of Article 46(2) of the Declaration,⁴² which states that:

Any limitation must be in accordance with international human rights obligations. It must also be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirement of a democratic society.

(c) Right of Indigenous Peoples to Participate in Decision-Making

According to Article 18 of the Declaration,⁴³ indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making. As the wording of Article 18 of the Declaration makes clear, states are to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect their general well being.⁴⁴ In this context, it is relevant to mention that the institutions of decision-making should be devised to enable indigenous peoples to make decisions related to their internal affairs, as well as to participate collectively in external decision-making processes.

(d) Free, Prior and Informed Consent

It could be argued that free, prior and informed consent is more than consultation, but that the same conclusion is not necessarily valid with respect to the states obligation to obtain the prior consent of the indigenous peoples before adopting any legislation or administrative

⁴¹See General Comment No. 20 (2009) on Non-Discrimination in Economic, Social, and Cultural Rights, Para.12.

⁴²General Recommendation of the Committee on the Elimination of Racial Discrimination, on gender-related dimensions of Racial Discrimination, Para.69.No. 25 (2000).

⁴³Article 18 of the United Nations Declarations on the Right of Indigenous Peoples (2007).

⁴⁴Ibid, Article 19.

policies that affect indigenous people,⁴⁵ undertaking of projects that affect indigenous peoples rights to land, territory and resources including mineral extraction or exploitation of resources,⁴⁶ relocation of indigenous peoples from their lands or territories,⁴⁷ and/or the storage or disposal of hazardous materials on indigenous peoples land or territories.⁴⁸ Here again, argument to the contrary may be made. It is posited that indigenous peoples who have unwillingly lost possession of their lands, when those lands have been confiscated, taken, occupied or damaged without their free, prior and informed consent are entitled to restitution or other appropriate redress that can include lands equal in size and quality or just fair and equitable compensation.⁴⁹

For analytical reasons, an obvious and fundamental, but sometimes overlooked threshold issue in relation to the principle of free, prior and informed consent generally is the practical application of the principle. As the United Nations permanent forum on indigenous issues⁵⁰ has noted in its report that:

Free should imply that there is no coercion, intimidation or manipulation, and prior should imply consent being sought sufficiently in advance of any authorization of commencement of activities and respective requirements of indigenous consultation processes. While informed should imply that information is provided that covers a range of aspects.

It is then necessary to state that in order to achieve the practical application of this principle; the process should include the option of withholding consent.

v) COVID-19 Pandemic

To understand the term “COVID-19” as used in this paper, it is important to understand that the above term is commonly referred to as “Corona virus disease 2019”. In other words, COVID-19 is a new disease, and details of its spread are still under investigation.⁵¹ It must be emphasized that the ongoing Corona Virus Pandemic is caused by severe acute respiratory

⁴⁵Ibid, Article 19.

⁴⁶Ibid, Article 32.

⁴⁷Ibid, Article 10.

⁴⁸Ibid, Article 29.

⁴⁹Ibid, Article 28.

⁵⁰United Nations permanent Forum on Indigenous Issues, “Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent and Indigenous People, New York, United States, Paras.46-49., (2005).

⁵¹World Health Organization, “Coronavirus very likely of animal origin, no sign of lab manipulation” available on Reuters, accessed on 19 May 2020.

syndrome corona virus 2 (SARSCOV.2).⁵² This paper noted that the outbreak of this pandemic was first identified in Wuhan, China, in December 2019.⁵³ The first step taken by the World Health Organization (WHO) in this regard was to declare the outbreak a Public Health Emergency of International concern on 39th January 2020, and a pandemic on 11th March.⁵⁴ However, available research has shown that as at 17 May, 2020. More than 4.66 million case of Covid-19 have been reported in more than 188 countries and territories, resulting in more than 312,000deaths. More than 1 - 7 million people have recovered.⁵⁵

It should be noted that the virus is primarily spread between people during close contact, most often via small droplets produced by coughing, sneezing and talking.⁵⁶ It is most contagious during the first three days after the onset of symptoms, although spread is possible before symptoms appear, and from people who do not show symptoms.⁵⁷ Of course, common symptoms include fever, cough, fatigue, shortness of breath, and loss of smell.⁵⁸ Also, complications may include pneumonia and acute respiratory distress syndrome.⁵⁹ In this context, it is worth noting that the time from exposure to onset of symptoms is typically around five days, but may range from two to fourteen days.⁶⁰ More importantly, there is no known vaccine or specific antiviral treatment. Thus, primary treatment is symptomatic and supportive therapy.⁶¹

As seen above, it is clear that the pandemic has caused severe global economic disruption,⁶² including the largest global recession which has led to the postponement or cancellation of sporting, religious, political and cultural events,⁶³ wide spread shortages

⁵² World Health Organization, “Novel Corona Virus – China” accessed on May, 2020.

⁵³ See “The World Health Organization Director – General’s Opening Remarks at the media Briefing on Covid-19, 11 March, 2020” accessed May 19, 2020.

⁵⁴ See “COVID -19 Dashboard by the Centre for systems science and Engineering at John Hopkins University”, Arcegis John Hopkins University accessed 19 May, 2020.

⁵⁵ See Centres for Disease Central Spreads”, 2 April 2020. Accessed 19 May 2020.

⁵⁶J. Hopkins, “Loss of sense of smell as marker of COVID-19 Infection”. Ear, Nose and Throat Surgery Body of United Kingdom 2020. Accessed 19 may, 2020.

⁵⁷ United States Centre for Disease Control and Prevention, “Corona Virus Disease 2019 (COVID-19) Symptoms” 20 March, 2020, accessed 19 May, 2020.

⁵⁸ See United States Centres for Disease Control and prevention, “Interim Clinical Guidance for Management of patients with Confirmed Coronavirus Disease. (COVID-19)” 4 April 2020 accessed 19 May, 2020.

⁵⁹ United States Centres for Disease Control and Prevention, “Symptoms of Novel Coronavirus (2019-NCOV)” 10 February 2020, accessed 10 May, 2020.

⁶⁰ T.P Valavan and C.G Meyer, “The COVID-19 Epidemic” Tropical Medicine and International Health 25(3) (200) pp.278-280.

⁶¹ International Momentary Fund Report on COVID-19, “The Great Lockdown: Worst Economic Downturn Since the Great Depression” 2020.

⁶² “A List of What’s Been Canceled Because of the Coronavirus” The New York Times acceded 19 May, 2020.

⁶³ S.Jade, “Why there will soon be tons of toilet papers, and what food may be scarce, according to supply chain exports”. 18 March, 2020.

exacerbated by panic buying,⁶⁴ and decreased emissions of pollutants and greenhouse gases.⁶⁵ The further implications of this pandemic was the closure of schools, universities, colleges, and churches either on a nationwide or local basis in 186 countries, affecting approximately 98.5 per cent of the worlds student population.⁶⁶ It is important to emphasized that the general notion about this virus has spread online,⁶⁷ and there have been incidence of xenophobia and discrimination against Chinese people and against those perceived as being from areas with high infection rates.

3.0 COVID-19 Pandemic and Indigenous Peoples Rights to Health

Obviously, indigenous peoples in many regions have a long history of devastation from epidemics brought by Colonizers from the arrival of the first Europeans in the Americas who brought small pox and influenza to a measles outbreak among the Yanonami of Brazil and Southern Venezuela in the 1950s/60s that nearly decimated the tribe.⁶⁸ Recently, the World Health Organization designated the novel corona virus, otherwise known as COVID-19, as a Pandemic. This pandemic has therefore led to the suspension or restriction of some of the otherwise guaranteed fundamental human rights of indigenous peoples. Chiefly among these rights that have been violated is the right to health. The right to health is an inclusive right.⁶⁹ However, it should be noted that prior to this pandemic, the right to health is perhaps the least respected rights by state actors on indigenous people. This perspective is particularly significant for an understanding of the COVID-19 Pandemic which has presented a new threat to the health and survival of indigenous peoples within the global emergency zone as well as in society at large. In this regard, it must be emphasized that indigenous peoples in nearly all countries fall into the most “vulnerable health category”.

At the same time, the COVID-19 Pandemic is disproportionately affecting indigenous peoples, exacerbating underlying structural inequalities and pervasive discrimination. Also they have significant higher rates of communicable and non-communicable diseases that their

⁶⁴J. watts and N. Kommenda, “Coronavirus Pandemic leading to huge drop in Air Pollution” The Guardian Newspaper (London, 23 March, 2020).

⁶⁵ United Nations Educational, Scientific, Cultural Organization (UNESCO), “COVID-19 Educational Disruption and Response” 4 March 2020 accessed 19 May, 2020.

⁶⁶ R. Clamp, “Coronavirus and the Black Death: Spread of Misinformation and Xenophobia shows we haven’t Learned from our past” 5 March, 2020.

⁶⁷ S. Tavenise and R.A Opper, “Spit on, Yelled at, Attacked: Chinese Americans Fear for Their Safety” The New York Times (New York, 23 March 2020) <<http://newyorktimes>

⁶⁸ P. Heather, “How Europeans Brought Sickness to the New World (2015). <https://www.sciencemag.org/news/2015/06/how-europeans-brought-sickness-new-world> accessed 18 July, 2020.

⁶⁹General Comment No. 14 on the Right to Health, Adopted by the Committee on Economic, Social and Cultural Rights (2000).

non-indigenous counterparts, high mortality rates and lower life expectancies contributing factors that increase the potential for high mortality rates caused by COVID-19 in indigenous communities include mal-nutrition, poor access to sanitation, lack of clean water, and inadequate medical services.

Admittedly, indigenous peoples like all individuals are entitled to all human rights. Human rights are interdependent, indivisible and interrelated.⁷⁰ This means that violating the right to health may often impair the enjoyment of other human rights. It should be borne in mind that the importance given to the “underlying determinants of health”, that is the factors and conditions which protect and promote the right to health is dependent on, and contributes to, the realization of many other human rights. It has often been argued that individual’s right to health cannot be realized without realizing their other rights, the violations of which are at the root of poverty, such as the rights to work, food, housing and education, and the principle of non-discrimination. Essentially, specific rights that are of particular relevance to indigenous peoples during this crisis, both individual and collective in nature include the right to self-determination,⁷¹ and the right of indigenous peoples to participate and be consulted on measures that affects them in both general and specific forms,⁷² and ofcourse, the requirement to seek their free, prior and informed consent.⁷³

However, the implementation of the COVID-19 restrictions has left much to be desired as it relates to the right to health of indigenous peoples. The impact of COVID-19 Pandemic has posed a great risk to indigenous peoples living remotely or involuntary isolation, who lacked immunity to many infectious diseases. Indeed, it has been argued that the health rights of indigenous peoples were already at risk prior to the Pandemic, and the vulnerable situation they are in has been exacerbated by the COVID-19 Pandemic, as the underlying challenges have not been addressed by state actors.⁷⁴It is also submitted here that indigenous communities are often located in remote, regions, usually left behind with limited or no access to healthcare and medical support. In this regard, it is also relevant to mention that indigenous elders and those with underlying medical conditions are more likely to require

⁷⁰ See Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights, held in Vienna, (1993).

⁷¹ Articles 3 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

⁷² See the Progress Report on the Study on Indigenous Peoples and the Right to Participate in Decision-Making (A/HRC/15/35) 2010.

⁷³ See Articles 10, 19, 21, 22, 23, 24, 28, 29 and of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

⁷⁴ See the Statement by the United Nations Expert Mechanism on the Rights of Indigenous Peoples, COVID-19 yet Another Challenge for indigenous Peoples” <https://www.ohchr.org/EN/issues//peoples/EMRIP/pages/EMRIP/index.aspx> accessed 19 July 2020.

urgent and intensive respiratory care, and may have difficulty accessing medical care in these areas.

In other words, it is very much open to question whether the principles of non-discrimination apply to the right to health of the indigenous peoples? Firstly, an understanding of the term “Discrimination” is fundamental. In this context, discrimination means any distinction, exclusion or restriction made on the basis of various grounds which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms. Thus, it is linked to the marginalization of specific population groups and is generally at the root of fundamental structural inequalities in society. This, in turn, may make these groups more vulnerable to ill-health.

According to the International Covenant on Economic, Social and Cultural Rights,⁷⁵ and the Convention on the Rights of the Child,⁷⁶ non-discrimination and equality are fundamental human rights principles and critical components of the right to health. Therefore, it is submitted here that Articles 2(2) of the International Covenant on Economic, Social and Cultural Rights, Article 2(1) of the Convention on the Rights of the Child and of course, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination thus have created an inseparable connection between non-discrimination and equality which presupposes that the obligation to ensure non-discrimination requires specific health standards to be applied to particular population groups, such as the indigenous peoples.

This position was endorsed by the Committee on Economic, Social and Cultural Rights that there is no justification for the lack of protection of these vulnerable members of the society from health-related discrimination, be it in law or fact,⁷⁷ but this paper noted that it does not necessarily reflect current practice today. In a similar vein, it is submitted that states failing to comply with their duty to consult with indigenous peoples on matters affecting them is a deeply rooted challenge that has been an area of concern in recent past.⁷⁸ Therefore, it is argued here that the lack of appropriate mechanisms for the consultation and participation of indigenous peoples in designing, implementing and evaluating measures which may affect them often leads to responses that are not culturally appropriate and that may not be in conformity with indigenous peoples rights in international law, which of course, include the requirement to seek their free, prior and informed consent. It must be established that consent

⁷⁵ Ibid, Article 2(2).

⁷⁶ Ibid, Article 2(1).

⁷⁷ The Committee on Economic, Social and Cultural Rights, General Comment No. 14, Para.18.

⁷⁸ Ibid.

in this context, has to be genuine, valid, and explicit in order to guarantee their participation in adopting measures to combat the COVID-19 health crisis that directly affects them.

However, it can also be argued that the consent that counts is that which takes into account indigenous peoples distinctive concepts of health, which are inextricably linked with the realization of other rights, including the rights to self-determination, development, culture, land, language and the natural environment. It can therefore be said that free consent can be given only when both parties possess some measure of independence.

i. Right to Health under International Human Rights Law

In light of what have been discussed above, one may be tempted to ask whether the right to health is an integral part of human rights law. However, it must be emphasized that any right to the highest attainable standard of health is regarded as an integral part of human rights recognized in international human rights law. According to the International Covenant on Economic, Social and Cultural Rights, which is widely considered as the central instrument of protection for the right to health, recognizes that “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.⁷⁹

However, today, there are many United Nations Human Rights Treaties relevant to the right to health of indigenous women and men. These treaties are as follows: International Covenant on Economic, Social and Cultural Rights (ICESCR),⁸⁰ International Convention on the Elimination of All Forms OF Racial Discrimination (ICERD),⁸¹ Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW),⁸² and International Covenant on Civil and Political Rights (ICCPR)⁸³. In addition to core human rights treaties, health rights of indigenous peoples are covered by a number of other international Instruments, Notably International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples.⁸⁴

a. International Covenant on Economic, Social and Cultural Rights

In response to the right to adequate health care of indigenous peoples and taking into account their vulnerability to pandemics, which tend to deepen existing inequalities and

⁷⁹ Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966).

⁸⁰ International Covenant on Economic, Social and Cultural Rights (1966).

⁸¹ International Covenant on the Elimination of All Forms of Racial Discrimination (1979).

⁸² Convention on the Elimination of All Forms Discrimination against Women (1979).

⁸³ International Covenant on Civil and Political Rights (1966).

⁸⁴ International Labour Organization Convention No. 169.

discrimination, the International Covenant on Economic, Social and Cultural Rights has developed the corresponding rights in the Universal Declaration in considerable detail, specifying the steps required for the full realization of the right to health of the indigenous peoples. In light of the above, it can be asserted that the right to health, which the Declaration covers as part of an adequate standard of living, has a separate article in the covenant. Thus, Article 12 of the Covenant⁸⁵ recognizes the right to the highest attainable standard of physical and mental health as well as specific health-related issues such as environmental hygiene and epidemic and occupational disease. Also, it should be noted that this covenant has codified the right to health as a constituent element of the right to an adequate standard of living.

The above analysis of the legal framework on the right to health for indigenous peoples under the covenant also reveals that all the rights in the international Covenant on Economic, Social and Cultural Rights must be exercised in accordance with Article 2(2)⁸⁶ and Article 3⁸⁷ of the covenant. To be specific, this means that indigenous peoples are entitled to enjoy the right to adequate health during this COVID-19 Pandemic without discrimination and equally with the majority population. Similarly, indigenous women are entitled to enjoy the right to health without discrimination and equally with indigenous men and the majority population. In sum, having due regard to the provisions of the covenant which recognizes the right to the highest attainable standard of physical and mental health, it is thus important to note that the actions of the security agents in enforcing the lockdown orders orchestrated by COVID-19 Pandemic can of course lead to the derogation of these rights especially where such persons or group of persons are suffering from infectious or contagious disease, as is presently the case. However, the question that remains pertinent is whether these rights to health can be restricted without necessarily subjecting the indigenous peoples to inhuman and degrading treatment? The obvious answer to the poser is in the affirmative: International convention on the Elimination

b. International Convention on the Elimination of All Forms of Racial Discrimination

By virtue of Article 1 and 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination,⁸⁸ state parties are prohibited racial discrimination and to

⁸⁵Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966).

⁸⁶Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (1966).

⁸⁷Article 3 of the International Covenant on Economic, Social and Cultural Rights (1966).

⁸⁸Article 1 and 5 (e) (iv) of the International Convention on the Elimination of All Forms of Discrimination (1979).

guarantee the right to equality in the enjoyment of economic and social rights, including the right to health.⁸⁹ In other words, the convention has adequate provisions for the protection of indigenous peoples health rights. Also, while there is no explicit guarantee in the convention of equality between men and women within racial groups, the Convention General Recommendation xxv deals with gender-related dimensions of racial discrimination, noting that:

There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men.⁹⁰

It has been argued that while the right to adequate health services to the indigenous peoples has gone beyond a mere humanitarian services in the wake of COVID-19 Pandemics, the convention and that except for reasonable cause, the right to health shall not be denied: Convention on the Elimination of All Forms of Discrimination Against Women.

By the provisions of Article 12 of the Convention,⁹¹ states parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis equality of men and women, access to healthcare services, including those related to family planning. This implies that except for reasonable, the right to health of women shall not be infringed upon. However, it should be noted that several restriction orders across the globe has affected the aforementioned rights of indigenous women. In practice, one will therefore ask is this not a derogation from the convention? The answer must be in the affirmative. It is widely accepted that the language formulation used by the United Nations in the convention is that aimed at protecting women against discrimination and ensuring women's equality in Political, Economic, Social and Cultural realms. However, it must be emphasized that the denial of the right to health or discrimination against women in health care services are done in the guise of COVID-19 Restriction orders.

c. International Covenant on Civil and Political Rights

Pursuant to Article 1 of the Covenant,⁹² all persons have the right of self determination. By virtue of this right they freely determine their political status and freely pursue their Economic, Social and Cultural Development. But conversely, it is arguably that in time of

⁸⁹Ibid.

⁹⁰See The Committee on the Elimination of Racial Discrimination, General Recommendation xxv: Paragraph 1.

⁹¹Article 1 of the International Covenant on Civil and Political Rights (1966).

⁹²International Labour Organization Convention on Indigenous and Tribal Peoples, No. 169, (1989).

public emergency which threatens the life of the nation and the existence of which is officially proclaimed, states parties may take measures derogating from their obligations under the present covenant to the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Ironically, the central theme of the government regulation on COVID-19 is the restriction of freedom of assembly and association, and not restriction or denial of the right to health of the indigenous peoples. One will as well ask if this is not a derogation from the covenant? The answer must be in the affirmative. Beyond the immediate impact this can have on the indigenous peoples, it is evident that the International Covenant on Civil and Political Rights contained five provisions of particular relevance to this paper as follows:

- (a) Article 3 calls for equality between men and women.
- (b) Article 1 recognizes the right of all persons to self-determination, and to freely determine their political status and freely pursue their Economic, Social and Cultural Development,
- (c) Article 26 prohibits any discrimination on a variety of grounds including race, national and social origin, property or birth or other status;
- (d) Article 17 protects everyone from arbitrary or unlawful interference with their privacy, family, or home,
- (e) Article 27 states that ethnic, religious or linguistic minorities should not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

To be fair, one should recognize that, theoretically at least, the above five provisions are particularly relevant to the indigenous peoples, but in an ideal scenario like the COVID-19 Pandemic, there is therefore a clash between the indigenous peoples right to health and the rights of the government at all levels to protect the indigenous peoples against infectious diseases like COVID-19 Pandemic.

d. International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples.

Despite the relatively conservative language used in the text of the convention,⁹³ it is increasingly seen and presented within the United Nations system as the most comprehensive and up-to-date international instruments on the conditions of life and work of indigenous and tribal peoples. However, under Article 25 of the convention,⁹⁴ health services shall be the sole responsibility of the government and should be provided in such a way that they may enjoy the highest attainable standard of physical and mental health. By a perusal of this Article, it becomes clear that the first two clause (1) and (2) of Article 25 refers to government responsibility to ensure that adequate health services are made available to the people concerned so that they may enjoy the highest attainable standard of physical and mental health, and also health services shall to the extent possible, be community-based. These suggests in both clauses that government should assist indigenous peoples to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.⁹⁵

On the other hand, clauses (3) and (4) of Article 25 of the convention provides that health care system shall give preference to training and employment of local community health workers and focus on primary health care services and also such provision of Health services shall be coordinated with other social economic, and cultural measures in the central. From the above provisions, it becomes clear that the convention in its clauses contains a non-discrimination clauses which shall be applied without discrimination to male or female members of these population groups.⁹⁶The convention also emphasizes the right of indigenous and tribal peoples to decide their own priorities for the process of development and to exercise control, to the extent possible, over their own Economic, Social and Cultural Development. However, it remains questionable whether the aforementioned frameworks would really make a difference when medical practitioners sometimes treat indigenous peoples as objects of treatment rather than rights-holders and do not always seek their free and informed consent when it comes to treatments. In these contest, it seems legitimate to argue that such a situation is not only degrading, but a violation of human rights to health under the conventions. This position is also reflected in the current COVID-19 Pandemic which led to the suspension or restriction of some of the otherwise guaranteed fundamental human rights of the indigenous peoples, particularly the right to health.

⁹³Article 25 (1-4) of the International Organization Convention on Indigenous and Tribal Peoples, No. 169, (1989).

⁹⁴Article 2(2) (c) of the International Labour Organization Convention, No. 169.(1989).

⁹⁵Article 3 of the International Labour Organization Convention , No. 169,(1989).

⁹⁶Article 7(1) of the International Labour Organization Convention, No. 169, (1989).

Lastly, it is relevant to mention that aside international instruments as rightly noted above, the right to health is also recognized in several regional instruments, such as the African Charter on Human and Peoples Rights,⁹⁷ the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the protocol of San Salvador,⁹⁸ and the European Social Charter⁹⁹. Also, the American Convention on Human Rights,¹⁰⁰ and the European Convention for the Promotion of Human Rights and Fundamental Freedoms¹⁰¹ contain provisions related to health, such as the right to life, the prohibition on torture and other cruel, inhuman and degrading treatment, and the right to family and private life.

4.0 Conclusion and Recommendations

This paper has largely dealt with the ongoing COVID-19 Pandemic and its corresponding health implication on the indigenous peoples constitutionally guaranteed right to health which is recognized in several international and regional instruments. The phenomenon of COVID-19 is a new infection that perhaps requires strategic interest and protection desired by the indigenous peoples beyond humanitarian paradigm, especially the existing legislations and or the regulatory agencies in place so as to ascertain its functionality in terms of the protection of the indigenous peoples right to health. What this paper has done therefore is to examine whether the existing legal frameworks and policies are tailored towards providing adequate healthcare to the indigenous peoples, rather than passively allowing seemingly neutral laws and policies to benefit mainly the majority groups. This paper has equally examined the concept “indigenous peoples” from different perspectives and of course noted that there are three criteria, the criteria of self-identification, as an expression of the right to self-determination of indigenous peoples appears to be widely recognized today.

Furthermore, it can be concluded that the COVID-19 Pandemic experience of the indigenous peoples highlights that their right to adequate healthcare are more than an abstract code or ideological commitment. The health rights of indigenous peoples were already at risk prior to the COVID-19 pandemic and the vulnerable situation they are in has been exacerbated by the crisis as the underlying challenges have not been addressed.

Despite the significance of the fundamental principles of the non-discrimination and equality applicable to the right to health and its enduring effectiveness as operational tools, it is

⁹⁷African Charter on Human and Peoples Rights (1981).

⁹⁸The Protocol of San Salvador (1988).

⁹⁹The European Social Charter (1961, revised in 1996).

¹⁰⁰American Convention on Human Rights (1969).

¹⁰¹European Convention for the Promotion of Human Rights and Fundamental Freedoms (1950).

surprising to note that indigenous peoples are traditionally discriminated and marginalized, often bears a disproportionate share of health problem. The principles of non-discrimination and equality are fundamental human rights component of the right to health. Questions are sometimes raised as to the impact of covid-19 pandemic on indigenous peoples right to participation and consultation. The lack of appropriate mechanisms for the consultation and participation of indigenous people in designing, implementing and evaluating measures which may affect them often leads to responses that are not culturally appropriate and that may not be in conformity with indigenous peoples right in international law, including with the requirement to seek their free, prior and informed consent.

Ultimately, the paper recommends as follows:

1. That states should adopt measures to combat the covid-19 health crisis that directly affect indigenous people since the pandemic has presented even greater risk for the indigenous people.
2. Government should ensure that there is adequate supply of palliatives in the form of foodstuffs and cash to the indigenous people,
3. Government should introduce special intervention fund in form of credit support facilities for indigenous people,
4. There should be a credit support for the Health care industry which will assist Indigenous people in accessing health care facilities, and
5. There should be an awareness campaigns which will educate indigenous people on the Health implications of the Corona Virus Pandemic.