

OPINIO JURIS

in Comparatione

Studies in Comparative and National Law

Impact of Coronavirus Emergency on Contract Law

Special Issue

The Fallout of Covid-19 on Environmental Law
in the Middle East and North Africa

Zainab Lokhandwala

The Fallout of Covid-19 on Environmental Law in the Middle East and North Africa

Zainab Lokhandwala*

ABSTRACT

This paper analyses the impact of the Covid-19 pandemic on the Middle Eastern and North African (MENA) region against the backdrop of two themes: climate action and human rights. In the climate context, the renewable energy sector will certainly suffer in the immediate aftermath of Covid 19. At the same time, globally, renewables have shown more resilience than fossil fuels during this crisis, which may lead to increased investments in the long-term. Nevertheless, pre-Covid commitments and estimated future gains (if any) in renewables were not enough for combating climate change. The trajectory of regional climate action was slow and inadequate to begin with, and it is likely to suffer even further, owing to economic slowdown and relief measures that will pull resources away from climate action. In the human rights context, the Covid 19 crisis has led to increased authoritarianism and has added a new layer to existing human rights and humanitarian issues. As political stability is a prerequisite for the growth and execution of environmental law, public discontent against governments will only delay and detract the environmental agenda. Overall, these two legs of analysis show how the pandemic has led to a retraction of environmental law. Coming out of the crisis, there are many lessons to be learnt. Interdisciplinary approaches that draw a human-ecological-health nexus may offer solutions in the Middle East as in the world.

* PhD Candidate, Department of Law, SOAS University of London.

The Berlin Principles 2019 are a positive step in this direction which could pave the way for more ecosystemic and holistic environmental legal development.

KEYWORDS

Middle East and North Africa – Covid-19 – Climate Action – Human Rights

Table of contents

1. Covid-19 and the Environmental Legal Perspective
2. Covid-19 and Climate Action
 - 2.1. Covid-19 and Impact on Renewable Energy Sector
 - a) Slide in Demand for Oil
 - b) Supply Chain Disruptions and Renewable Energy Projects
 - 2.2. Broader Impact on the Middle Eastern Climate Strategy
3. Covid-19 and Human Rights
 - 3.1. Human Rights Implications of Covid-19
 - a) Emergency Measures and the Consolidation of Authoritarian Power
 - b) The impact on the Middle East's most vulnerable populations
 - 3.2. Deteriorating Human Rights and Humanitarian Conditions and the Future of Environmental Law
4. Conclusion

1. Covid-19 and the Environmental Legal Perspective¹

Middle Eastern and North African (MENA) countries, much like the rest of the world are in uncharted waters while tackling the Covid-19 pandemic. A lot is uncertain as on the date of this writing, given that different countries and regions within countries stand on different points of the pandemic curve. Recovery from the pandemic may be earlier (not necessarily faster) for some than others, depending on where they stand on this timeline. At this stage however, all MENA countries have imposed lockdowns or restrictions of varying degrees and are desperately trying to prepare for what will follow this crisis.

From an international perspective, many interconnections between the Covid-19 crisis and environmental law are evident: on the one hand, it could be argued that environmental law has failed to adequately articulate ecological-health linkages, so much so that the root

¹ The article has been submitted on May 2020.

causes² behind the spread of viruses such as habitat loss for wildlife and failed biodiversity conservation continue to be ignored by countries in the wake of the pandemic. Despite unprecedented shutdowns and disruptions in ‘business as usual’, conversations on appropriate land use, restoration of buffer zones³ between humans and animals that shield us against pathogens, and strengthening of wildlife protection regimes have not been heard yet in the halls of power. While world leaders are clearly preoccupied with containing the immediate fallout of the crisis, these conversations need to at least start. Only long-term ecological thinking can curb the chances of future repeated outbreaks such as this one. On the other hand, environmental law can learn many lessons coming from this global pandemic.⁴ By looking deeper into the origins and outcomes of the pandemic, responses of governments and societies at large can be predicted and prepared for in the environmental context.

While some international environmental law instruments have tied together the health of all life and the health of the planet, legal systems across the world have seldom taken such a holistic and ecosystemic approach. The Convention on Biological Diversity 1992 urges parties to be ‘conscious ...of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere.’⁵ Furthermore, the Sustainable Development Goals 2015 promotes ‘sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss’⁶. More recently, the Berlin Principles 2019 on One Planet, One Health, One Future, calls for the ‘[Retention of] essential health links between humans, wildlife, domesticated animals and plants, and all nature.’⁷ This One Health concept was articulated in the 2004 Manhattan Principles, which were developed as a response to the severe acute respiratory syndrome (SARS) and H5N1 bird flu outbreaks. As a successor to the Manhattan Principles, the Berlin Principles focus on the animal-human-ecosystems interfaces. Within this context, they call for action towards issues of: (i) emerging and endemic zoonoses, that creates a disproportionate burden of coping with the disease on the global south; (ii) Antimicrobial resistance, as resistance may arise in animals, humans or the environment

² United Nations Environment Programme (UNEP), *UNEP Frontiers 2016 Report: Emerging Issues of Environmental Concern* (UNEP, 2016) 18-27.

³ T. Trzyna, *Urban Protected Areas: Profiles and Best Practice Guidelines* (IUCN Best Practice Protected Area Guidelines, Series No. 22, 2014) 65.

⁴ L.A. Duvic-Paoli, ‘COVID-19 Symposium: The COVID-19 Pandemic and the Limits of International Environmental Law’ (Opinio Juris, 30 March 2020).

⁵ Convention on Biological Diversity 1992 (1760 UNTS 69), Preamble.

⁶ UN General Assembly, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (2015) A/RES/70/1, Goal 15.

⁷ Wildlife Conservation Society, Berlin Principles on One Planet, One Health, One Future’ 2019, <<https://www.wcs.org/one-planet-one-health-one-future>> accessed 30 May 2020.

and can spread from one to the other; and (iii) food safety.⁸ This kind of interdisciplinarity is imperative in analysing the causes and consequences of the Covid-19 crisis.

Coming to the MENA context, this paper churns out the legal fallout of the Covid 19 pandemic on the region by using supporting evidence from other spheres of literature: such as the medical/scientific/healthcare streams, human rights/humanitarian streams and the economic streams. It is the capacity and efficiency of healthcare systems, the ability of countries to regain economic strength and the emerging situation pertaining to human rights in the region that will shape the environmental law in the post-pandemic scenario. Hence, the impacts of Covid-19 on environmental law in the MENA region are found through such an outward-in analysis.

The paper identifies two areas of Covid-19 impacts within the MENA regional context. One, Covid-19's impact on climate action; and two, its human rights impacts. Through an examination of these two themes, the paper concludes by arguing that the development of environmental law will suffer in the region unless more interdisciplinary and health-human rights-ecology integrated approaches are adopted in the future.

2. Covid-19 and Climate Action

The Covid-19 health emergency has pushed the MENA region into an economic shock ensuring that all countries, sectors and enterprises, irrespective of their strength and capacity will bear the brunt of this crisis. The over-dependence on fossil fuels available in the region, weak economies and precarious governments in many countries, ongoing humanitarian conflict in some countries, and an overall dwindling political integration within the Arab world are factors that will exacerbate the effects of this shock. This section analyses the impacts of the pandemic on the growth of the green energy sector, and places this within the region's larger climate action strategy. It argues that while the renewable sector will suffer delays in growth, it may resume its growth trajectory in the longer term. This however will not be enough to combat climate change, because in a pre-pandemic scenario, most countries in the region were anyway not progressing at an adequate pace towards implementing their 2015 Paris Agreement commitments or the Agenda 2030's Sustainable Development Goals.

2.1. Covid-19 and Impact on Renewable Energy Sector

Prior to the pandemic, the region was in the slow process of increasing investments in the energy sector.⁹ An intellectual shift in the direction of "greening the Middle East" has been

⁸ J. Mackenzie and M. Jeggo, 'The One Health Approach: Why Is It So Important?' (2019) 4/2 *Tropical Med Infectious Dis* 88.

⁹ H. Bahrapour, 'Evaluation of Renewable Energies Production Potential in the Middle East: Confronting the World's Energy Crisis' (2020) 14/1 *Frontiers in Energy* 42.

perceptible, even though fossil fuels remain the mainstay of the region.¹⁰ The creation of a space for renewables within the policy discourse was seen as the first step in building a positive momentum around addressing climate change. The Covid-19 crisis has disrupted this stride, and renewables in the region, particularly solar and wind projects now face multi-fold challenges. These challenges are born out of: one, the slide in the demand on oil and its impact on the renewable sector; and two, supply chain disruptions and impacts on renewable energy projects.

a) Slide in Demand for Oil

Historically, low prices for oil have not boded well for the renewables sector, as cheap oil does not promote a switch to renewable energy. However, it is not clear if such a simplistic cause-and-effect logic will hold true in the long term. First, the oil industry was under tremendous pressure before the pandemic. The Russia-OPEC price war meant that OPEC governments, led by Saudi Arabia were diverting their resources towards winning this global race.¹¹ The historic and unsustainable rise in oil production in an oversupplied sector had increased investor scrutiny in oil, making renewables look more conducive and less risky for investment. Second, some oil-rich governments have invested billions of dollars in a move to reduce oil dependency over the next decades. Countries within the Gulf Cooperation Council's (GCC) have funded and set up projects under the aegis of the International Renewable Energy Agency (IRENA) in the past decade. Investments for projects in the pipeline will not be withdrawn, as this will be unaffordable.¹² Third, spread of Covid-19 (January-March) saw a spiralling downturn in global oil prices due to reduced worldwide demand. The prices dipped so dangerously low that it brought two rival oil producers: the Organization of Petroleum Exporting Countries and its allies (OPEC+), and Russia to reach a historic agreement to cut oil production by 10 percent.¹³

Cheaper oil reduces competitiveness for renewables not just in the MENA region but worldwide. Unless oil prices bounce back to pre-pandemic levels, it will be difficult to attract investments into renewables. Governments will be less able to offset the price difference between fossil fuel and renewable energies, owing to cash crunches they will experience in the aftermath of the pandemic. Renewable-centric policymaking therefore will

¹⁰ For example, Qatar aiming to host a 'carbon neutral 2022 FIFA World Cup'; 'Gord to Support Delivery of Qatar's Carbon-Neutral Football World Cup' *FIFA* (4 November 2019) <<https://www.fifa.com/worldcup/news/gord-to-support-delivery-of-qatar-s-carbon-neutral-fifa-world-cuptm>> accessed 30 May 2020. For a more detailed analysis: S.H. Ali, 'Reconciling Islamic Ethics, Fossil Fuel Dependence, and Climate Change in the Middle East' (2016) 50/2 *Review of Middle East Studies* 172.

¹¹ D. Sheppard (Energy Editor), 'Why the Oil Market is Even Weaker than you Think' *Financial Times* (29 April 2020).

¹² Many renewable energy programmes (up to 90GW energy capacity), mainly solar and wind power, have been planned in Egypt, Morocco, Saudi Arabia and UAE over the next 10 to 20 years. Of these, an estimated half are under execution, while the rest are in a tendering phase.

¹³ D. Brower, A. Raval and D. Sheppard, 'Opec Secures Record Global Oil Cuts Deal under US Pressure', *Financial Times* 13 April 2020.

have to wait until oil prices rise again. Therefore, following the Covid-19 crisis, there may be little political will to push for increasing the share of renewable energy within the MENA's energy mix. However, in the longer term, the economic slowdown may reduce global demand for oil,¹⁴ which may in turn force OPEC states to reduce supply. This long-term dip in demand may not severely impact independent power producers, as their profits do not depend solely on the vicissitudes of the energy market. This may leave renewables, such as solar and wind producers unaffected by the crisis in the long term.¹⁵ Furthermore, in response to the Covid crisis, central banks across the world as in the Middle East have cut their interest rates to ultra-low (or even negative) levels in order to sustain their economies.¹⁶ This could possibly reduce the high capital risk in renewables, making installation of small plants much cheaper.¹⁷

b) Supply Chain Disruptions and Renewable Energy Projects

The disruption in supply chains at a global and regional level have jeopardised many industries including the renewable sector. China is one of the most consequential energy consumers and producers of the world and was the first to impose widespread Covid-19 lockdowns. However, despite the overall drop in energy demand, solar and wind energy demand rose by 1-2%.¹⁸ This is a significant rise for a country as large as China, where demand for other energy sectors dropped by 9-10% during the same period. While the Middle Eastern and Chinese energy markets and policies differ drastically, renewables emerging as a resilient sector amid the crisis in China will have an impact on the energy choices of the world. The positive trend of renewables making earnings while other sectors struggle to stay afloat has been seen across other parts of the world.¹⁹ The degree of the transformative effect can only be gauged after the entirety of the Covid story has played itself out.

With regard to projects that are under construction, the disruption and in some cases complete breakdown of supply chains such as Middle Eastern linkages with China, USA, Italy and Spain have significantly slowed down or stopped the supply of the renewable technology. Contracts for solar panels, turbine blades and batteries have been suspended or

¹⁴ R. Khalil (General Manager for Saudi Arabia and Egypt of Worley Renewable Energy), 'Comment' *Middle Eastern Economic Digest* (26 March 2020).

¹⁵ *Ibid.*: "This [fall in demand] is still at a level where new renewables and reverse osmosis [projects] can deliver savings to the system ... so these tenders should proceed, ... but uncertainty has certainly increased as off takers and policymakers take time to re-assess."

¹⁶ 'Central Bank Rates' <<http://www.cbrates.com/>> accessed 30 May 2020.

¹⁷ A. Kordvani and C. Dolphin, 'Covid-19 Pandemic – Can the Renewable Energy Sector Pass the Test?' *Lexology* (9 April 2020).

¹⁸ X. Zhou, 'Renewables Emerge as Winners in During China's Covid 19 Lockdowns' *HIS Markit* (26 March 2020) <<https://ihsmarkit.com/research-analysis/renewables-emerge-as-winner-during-chinas-covid19-lockdown.html>> accessed 30 May 2020.

¹⁹ L. Hook, 'Clean Energy Groups Dodge Coronavirus Crisis' *Financial Times* (29 April 2020).

terminated due to *force majeure*, and this will certainly drive up the cost of these projects. Countries in the region are still grappling with the legal issues that will arise out these contracts.²⁰ The question of who will bear what part of the additional cost, be it manufacturers from source countries, regional/domestic companies responsible for the project, or suppliers and contractors in the middle, will determine the fate of future contracts. Ongoing contracts and projects in the renewable sector will survive mainly because divestment is a more expensive option, however the financing of future renewable energy projects in the MENA region will slump over the next few years. Again, through a long-term lens, the global lack of availability of finance will see a delay, if not a complete quash of new contracts and projects in the region. The most ambitious renewable energy programme in the region, Saudi Arabia's Vision 2030 may be revised and will most certainly be delayed in its launch. However, it is unlikely that it will be fully sacrificed.²¹ One can only hope that at a time when the worst has passed, countries in the region will have learnt the lessons of renewable profitability and resilience and will push for a more aggressive green energy transition than they did a pre-Covid-19 era.

2.2. Broader Impact on the Middle Eastern Climate Strategy

Through the prism of impacts on renewable energy, broader impacts on Middle Eastern climate change mitigation strategy can also be gauged. The MENA region is already under many climatic threats, most prominently: severe heat, intense droughts and water scarcity. Different countries are being affected differently owing to the diversity of climate risks, for instance, Egypt, Tunisia and coastal small Gulf states are threatened by sea-level rise, while Morocco, Turkey and Jordan are at risk due to changes in precipitation that may affect surface water flow.²² Added to this, the vulnerability of large sections of populations in low- and middle-income and conflict-ridden countries complicates mitigation and adaptation roadmaps. The contribution of the Arab world to global greenhouse gas emissions (GHG) is estimated at 4.2%, however the significant share of fossil fuels within national economic profiles shows that a global energy transition towards cleaner energy has to ensure that countries in the region find other alternatives that are practical and profitable.²³

In an era when climate change law and policy are shaped through mainly nationally self-determined commitments, countries in the Middle East have been lagging. As described above, policymaking towards increasing the share of renewables within the energy mix

²⁰ Iraq has declared a *force majeure* on "all contracts and projects". The change in law this declaration brings will influence future investments.

²¹ J. Bahout (Fellow, Middle East Program at the Carnegie Endowment for International Peace) in an interview with D. Gavlak, 'Why Covid-19 is a Double Whammy for Middle East Countries' *VOA News* (15 April 2020).

²² J. Sowers and E. Weinthal, 'Climate Change Adaptation in the Middle East and North Africa: Challenges and Opportunities' (2010) The Dubai Initiative Working Paper 2, Harvard Kennedy School and Dubai School of Government.

²³ For example, 96% of power generation in the Middle East comes from fossil fuels. For a break-up on different countries in the region: *Supra* 8, Bahrapour 2020 at 43.

and national incomes have shown some progress in past few years. These shifts may be significant given the Middle East's particular fossil fuel dependencies, but when viewed against a larger backdrop of reducing global emissions to 2 degrees, these fall short by a fair margin.²⁴ Climate Action Tracker's (CAT)²⁵ 'Effort Sharing' study that looks at the effect of current emissions policies on the global effort towards the Paris Agreement's goals includes only 3 countries from the region – Morocco, UAE and Saudi Arabia.²⁶ The Intended Nationally Determined Contributions (INDCs) of both, the UAE and Saudi Arabia have been ranked as 'inadequate', while Morocco's has been ranked as 'sufficient'. Despite several countries articulating and implementing a climate policy, coupled with non-governmental and corporate efforts, by and large, these efforts are insufficient.

Notable efforts include, Morocco setting for itself the ambition target of achieving 50% renewables share with its energy mix by 2025; Tunisia being the first country in the region to insert climate change goals in its new constitution;²⁷ Jordan developing a national climate change policy in 2015; and Lebanon setting a target to reduce greenhouse gas (GHG) emissions by 15% before 2030. Egypt's National Strategy for Adaptation and its National Strategy for Sustainable Development that includes climate mitigation strategies has been a positive step for a country still reeling through sustained political instability. However, climate approaches are inseparable from the economic and political challenges that Arab countries face.²⁸ For instance, the recent collapse of the Lebanese economy, Algeria's, Sudan's and Egypt's waning political health, and Iran's economic and political isolation had already placed environmental and climate action on the side-lines.

In the advent of the coronavirus, such actions will be further pushed into the background as countries will divert resources towards relief efforts. The Covid-19 impact on the development of climate change law and policy will depend on differentiated capacities of these states. Within the region, countries that do not have fall-back or discretionary resources, substantial sovereign funds and other access points of funding will feel the pain of the Covid-19 crisis to the maximum extent; this includes almost all countries except Saudi Arabia, UAE, Qatar and Kuwait.²⁹ Intra-regional transfers to Lebanon, Jordan, Egypt, Tunisia and Sudan have stopped, as they were anyway on the decline.³⁰ As on the date of this writing, no coun-

²⁴ O. Nematollahi et al, 'Energy Demands and Renewable Energy Resources in the Middle East' (2016) 54 *Renewable and Sustainable Energy Reviews* 1172.

²⁵ CAT is a coalition of four research organizations – Climate Analytics, Ecofys, New Climate Institute and Potsdam Institute for Climate Impact Research.

²⁶ CAT, 'Effort Sharing Assessment' <<https://climateactiontracker.org/countries/>> accessed 30 May 2020.

²⁷ Article 45, Tunisian Constitution 2014.

²⁸ B. Ozcan, 'The Nexus between Carbon Emissions, Energy Consumption and Economic Growth in Middle East Countries: A Panel Data Analysis' (2013) 62 *Energy Policy* 1138.

²⁹ T. Yousef, 'Economic Impact of Covid 19 in the Middle East' *Babel Podcast* (7 April 2020).

³⁰ Evidence: Lebanon's complete economic meltdown in the past few months. It took several weeks for any other country to react. The concern or involvement in Middle Eastern problems has been on a decline, as no one thinks the region

try, rich or poor, in the region has announced an economic relief package, a stimulus plan or any compensation for loss of jobs and salaries, primarily because none of them can afford it. For countries that are conflict-ridden and ergo especially fragile, such as Syria, Yemen, Iraq, Libya and parts of Palestine, the pandemic will exacerbate existing structural weaknesses. While the health crisis has led to novel instances of cooperation and ceasefires,³¹ these are only temporary and short-lived, unless some evidence of a higher degree of political commitment to restore political and economic stability presents itself in the future.

3. Covid-19 and Human Rights

Environmental law has made strides in integrating human rights with the environment. Several international instruments call for the protection and respect of human rights, and such an integrated approach can also be seen in the Sustainable Development Goals. A well-trodden environmental justice route is via human rights adjudication.³² The securing of environmental justice and the consequent evolution of environmental law through progressive interpretations of its principles can only happen through a harmonious relationship between state and citizenry. The Covid 19 timeline will delay the environmental law timeline within legal systems of the region owing to the fractured relationship between governments and people. It is hence imperative to introspect within the human rights implications of the Covid-19 crisis, as the collapse of constitutionalism and democratic values within the region cannot reconcile with environmentalism.

3.1. Human Rights Implications of Covid-19

Countries within the MENA region have not had the best human rights track records, but with special reference to Covid-19 crisis, the two dimensions stand out. One, emergency measures taken to combat the spread of the pandemic have led to the strengthening of authoritarian power in the region. Authoritarian governments have historically been most reluctant in taking environmental and climate change law seriously. The perceptible public anger in the region, especially following the Arab Spring of 2011 will see a further diminishing of public faith and trust in respective governments. Thus, if lockdowns and emergency actions are interpreted as potential manifestations of the preventive or precau-

demands the same geopolitical command, in an integrated manner, as it did in the 80s. Iran's involvement was a problem, but still, the IMF/WB did not bother, even in the late stages of the crisis.

³¹ The pandemic has led to unprecedented cooperation between Israel and Palestine to coordinate health action in both countries. D. Dassa Kaye, 'Covid-19 Impacts on Strategic Dynamics in the Middle East' *The Rand Blog* (22 March 2020) <<https://www.rand.org/blog/2020/03/covid-19-impacts-on-strategic-dynamics-in-the-middle.html>> accessed 30 May 2020.

³² C. Redgwell, 'Access to Environmental Justice', in F. Francioni (ed.), *Access to Justice as a Human Right* (OUP 2007) 153; J. Cameron and R. Mackenzie, 'Access to Environmental Justice and Procedural Rights in International Institutions' in A. Boyle and M. Anderson (eds), *Human Rights Approaches to Environmental Protection* (OUP 1996) 129.

tionary principles, it could be argued that they will create a negative public perception owing to the human rights they end up violating. This may not just delay environmental and climate action but end up creating a legal vacuum for years to come. Second, Covid-19's impact will be the hardest on Middle East's most vulnerable populations; those that are trapped in wars and conflicts. With health systems being disrupted or broken down, one can hardly be hopeful for positive environmental change unless security and the rule of law are restored in these parts.

a) Emergency Measures and the Consolidation of Authoritarian Power

The pandemic has led many countries in the world, as in the region to impose lockdowns, assume emergency powers, mobilise law and order forces and most importantly deploy wide-spread surveillance on its populations.³³ While this is being justified as the 'need of the hour', the sweeping and unchecked power that the current crisis allows governments to exercise raises many questions. In the regional context, debates around governance, corruption, economic crises and the proportionate and accountable use of power have already been ensuing since the 2011 Arab Spring. Widespread protests led by the youth, which in some cases managed to topple governments, while in others forced governments to make some socio-economic assurances, revolved around questioning the legitimacy of authoritarianism in the region.³⁴ The overall malaise of public discontent sparked by the Spring has been palpable since 2011 up till prior the Covid-19 crisis.

In 2011, some governments responded to the Arab Spring optimism with more repressive measures to tramp down the protests. In 2020 during the Covid-19 crisis, these governments have used all means possible in 'the typical authoritarian playbook' to further crack down on any political dissent in the guise of security and public health.³⁵ There are umpteen examples, from army helicopters hovering over Beirut³⁶ and Lebanese officials using social media to track and target protesters³⁷, to arrests in Morocco on the grounds of spreading fake news³⁸; from Egypt revoking press credentials of reporters over coronavi-

³³ For example, "Prime Minister Benjamin Netanyahu of Israel recently authorised the Israel Security Agency to deploy surveillance technology normally reserved for battling terrorists to track coronavirus patients. When the relevant parliamentary subcommittee refused to authorise the measure, Netanyahu rammed it through with an 'emergency decree.'" Y.N. Harari, 'The World after Coronavirus' *Financial Times* (20 March 2020).

³⁴ *Supra* n 30, Kaye 2020.

³⁵ K. Roth, 'How Authoritarians are Exploiting the Covid-19 Crisis to Grab Power' *Huma Rights Watch* (3 April 2020).

³⁶ H. Hamdan, 'Beirut in the Time of Coronavirus Outbreak' *Al-Monitor* (27 March 2020) <<https://www.al-monitor.com/pulse/originals/2020/03/beirut-ghost-city-general-mobilization-empty-road-corona.html>> accessed 30 May 2020.

³⁷ D. Amos, 'Lebanon's Government is Accused of Swarming WhatsApp to Catch Protestors' *NPR* (9 March 2020) <<https://www.npr.org/2020/03/09/809684634/lebanons-government-is-accused-of-swarming-whatsapp-to-catch-protestors>> accessed 30 May 2020.

³⁸ 'Morocco Makes a Dozen Arrests over Coronavirus Fake News' *Reuters* (19 March 2020) <<https://www.reuters.com/article/us-health-coronavirus-morocco/morocco-makes-a-dozen-arrests-over-coronavirus-fake-news-idUSKBN2162DI>> accessed 30 May 2020.

rus coverage³⁹ to Jordan's 1600 arrests on the grounds of lockdown violations⁴⁰; from the Syrian Electronic Army's access to the Covid-19 app to spy on the opposition⁴¹ and geopolitical changes the virus has prompted such as UAE's promise of 'humanitarian solidarity' to Bashar al Assad⁴² to Turkey's draft law aimed at combating the spread of the virus that empowers the state to control, censor and strongarm social media sites.⁴³

The virus has ensured the consolidation of authoritarian power by thwarting political opposition for now and in the future, making "democracy" coronavirus' first and most significant victim in the region.⁴⁴ This entrenchment of authoritarianism is dangerous in a post-2011 context. In the aftermath of the Arab Spring protests, some states had increased public spending and were partly financed by richer states in the region to offer economic packages to assuage the Arab Spring anger.⁴⁵ This 'buying of social peace' will fall apart now that national coffers run dry for all states, rich or poor.⁴⁶ The loss of jobs, lowering of wages and increase in public deficits that lead to the lowering of currencies will further aggravate public discontent up to a boiling point. The mobilisation of this new round of protests hangs in uncertainty during lockdowns and increased surveillance.

b) The impact on the Middle East's most vulnerable populations

The human rights implications for Middle East's most vulnerable populations are going to be catastrophic. The region is home to some of the worst ongoing humanitarian conflicts, such as in Libya, Yemen and Syria. Internally displaced persons and refugees are especially vulnerable to contracting the Covid-19 disease.⁴⁷ The spread of the virus cannot be effectively

³⁹ 'Egypt's Censors Shift into High Gear over Coronavirus Coverage' *Al-Monitor* (18 March 2020) <<https://www.al-monitor.com/pulse/originals/2020/03/egypt-censors-journalists-arrests-coronavirus-coverage.html>> accessed 30 May 2020.

⁴⁰ J. Arraf, 'Jordan Keeps Coronavirus in Check with One of the World's Strictest Lockdowns' *NPR* (25 March 2020) <<https://www.npr.org/sections/coronavirus-live-updates/2020/03/25/821349297/jordan-keeps-coronavirus-in-check-with-one-of-world-s-strictest-lockdowns>> accessed 30 May 2020.

⁴¹ D. Matar, 'Media, Covid 19 and the Arab World' (SIS Insight Series, Briefing 1, 15 May 2020) <<https://www.soas.ac.uk/interdisciplinary-studies/research/SISBriefing1.pdf>> accessed 30 May 2020.

⁴² 'Syria's Assad Receives a Call of Support from Abu Dhabi's MBZ' *Middle East Eye* (27 March 2020) <<https://www.middleeasteye.net/news/coronavirus-syria-uae-bashar-al-assad-support-covid-19>> accessed 30 May 2020.

⁴³ E. Sinclair-Webb, 'Turkey Seeks Power to Control Social Media' *Human Rights Watch* (13 April 2020) <<https://www.hrw.org/news/2020/04/13/turkey-seeks-power-control-social-media>> accessed 30 May 2020.

⁴⁴ L. Saleh, 'The Arab World between a Formidable Virus and a Repressive State' *Open Democracy* (6 April 2020).

⁴⁵ Oil-rich Gulf states financed stimulus packages focused on increasing employment rates, increasing wages, improving and building new infrastructure, and strengthening religious organizations. Such expansionary fiscal policies and intra-regional transfers of such packages succeeded in reducing the intensity of public anger. Egypt's President Abdel-Fattah el-Sisi made a dangerous by increasing the country's deficit at the cost of ramping up mega-infrastructure projects. GCC support in Morocco, Tunisia, Yemen, Iraq and Lebanon has been referred to as "the Middle East's shadow central bank" managed to reduce public anguish during the Arab Spring. *Ibid.*

⁴⁶ J. Alterman, 'Add Coronavirus to Other Crises, and the Middle East Faces a Catastrophe' *The Hill* (22 March 2020).

⁴⁷ M. Yacoubian, 'Coronavirus Prevention Extremely Difficult in Refugee IDP Camps in Middle East' *Al Arabiya* (18 March 2020).

stopped in crowded camps, while regional wars have left the health system in shambles.⁴⁸ Michel Olivier Lacharité, a crisis coordinator for Doctors Without Borders described the gravity of the situation by saying that: “This virus can kill more people in one month here in northern Syria than the regime killed in the last 10 years.”⁴⁹ Along with people in conflict, the poorest sections of all Arab countries, including migrant workers, women, elderly and the disabled face a highly precarious future, given the health crisis itself and the economic hardship that will follow. While international and regional aid has been committed, weaknesses in structural and institutional links will impede the outreach of these aid efforts. Such regions face an increased risk of radicalisation leading to more violence.⁵⁰

3.2. Deteriorating Human Rights and Humanitarian Conditions and the Future of Environmental Law

The disregard, blatant violation and incapacity to fulfil human rights can never bode well for the environmental and ecological advances. At the very outset, regional wars and conflict create a tremendous environmental impact and delay environmental/climate action. While literature has evolved to address the human cost and the economic costs of war and conflict, the environment has remained a silent victim, standing only on the side-lines of impact analysis. The United Nations Environment Programme’s (UNEP) seminal report on ‘Protecting the Environment during Armed Conflict’ analyses twenty post-conflict environmental assessments to conclusively show the devastating effects of war and conflict on the environment.⁵¹ It argued for the need to conceptually link environmental impacts within the humanitarian and human rights frameworks, where it is currently lacking. Furthermore, the journey towards peacebuilding also has massive implications for natural resource use and framing of rights of access and use for the future.⁵²

With respect to the development of environmental law principles in light of the Covid-19 crisis, it is argued that lockdowns and emergency actions can be analogised as manifestations of the preventive or precautionary principles. Principle 15 of the Rio Declaration states that when, ‘[a] threat of serious damage exists, a lack of full scientific knowledge should not delay containment or remedial steps.’⁵³ This principle stands at the bedrock of taking proactive environmental action. In the pandemic context, governments have had *act* by calling for collective action, relying on scientific knowledge, looking to science for solutions out of the

⁴⁸ *Supra* n 30, Kaye 2020.

⁴⁹ E. Hill and Y. Al-Hlou, ‘Wash Our Hands? Some People Can’t Wash Their Kids for a Week’ *New York Times* (19 March 2020) <https://www.nytimes.com/2020/03/19/world/middleeast/syria-coronavirus-idlib-tents.html?fbclid=IwAR1n4DoCWZQTPuzP18GHQ6KthwGzxCOLrY9XYmg8_IJ-MgZY15C9nlwKijs> accessed 30 May 2020.

⁵⁰ J. Burke, ‘Opportunity or Threat? How Islamic Extremists are Reacting to the Coronavirus’ *The Guardian* (16 April 2020).

⁵¹ UNEP, *Report on Protecting the Environment during Armed Conflict: An Inventory and Analysis of International Law* (UNEP 2009).

⁵² UNEP, *Report on From Conflict to Peacebuilding: The Role of Natural Resources and the Environment* (UNEP 2009).

⁵³ UN Commission on Human Rights, ‘Human Rights and the Environment’ (1994) E/CN.4/RES/65.

crisis, with an intention of working towards a collective outcome despite uncertainties. This crisis has also shown the importance of being prepared and acting in advance. In this sense, the Covid-19 pandemic and climate change have much in common.

It is however unlikely that these similarities will be heeded and be translated into policy action in the region. The Covid-19 crisis will not solve socio-economic problems, but only aggravate them leading to further human rights violations. Public mistrust that this will foster will not bode well for the development of bolder and innovative environmental principles, where governments are expected to act sans 'complete' or 'adequate' information. As this crisis has shown, governments have tended to accumulate more power for themselves when discretion or choice of action is afforded. Future governments in the region are most likely going to shy away from taking proactive environmental action owing to the combination of factors described above. Environmental law cannot progress where there is an absolute disconnect between governments and their populations. Reconciling this chasm is an ongoing struggle for the theoretical development of both environmental and human rights law.

Public tensions with governments that wrestle to aggrandise power place ecological concerns as a low priority. This also means that nature protection and conservation is seen as an independent agenda that can be allowed to slide to the bottom of the table of importance. As a result, 'zoonosis falls between the cracks'.⁵⁴ Pandemic preparation needs to be recognized as a part of sustainable development.⁵⁵ Holistic approaches in the future ought to work through a combination of climate change law, biodiversity law, sectoral environmental laws and robust environmental impact assessments. For the Middle Eastern region, the one health approach that reconciles different socio-ecological dimensions may be a possible step forward.⁵⁶ Such interconnections have been drawn in the past, but in specific contexts of pollution/emissions and health.⁵⁷ More broader environmental legal developments need to follow the SDG route. In the MENA region, sustainable development, therefore, ought to prioritise ecological conservation and preparedness of health systems. The UNEP's 2017 Resolution on Environment and Health sums this up aptly:⁵⁸

⁵⁴ N.A. Robinson, *Employing Environmental Laws to Avert the 'Next' Pandemic: A Post-Covid-19 Agenda* (IUCN World Commission on Environmental Law Webinar Series on 'Addressing the Coronavirus (Covid-19): A Legal Perspective, 24 April 2020).

⁵⁵ *Supra* n 6, Berlin Principles 2019.

⁵⁶ W. Karesh and P. Formenty et al, 'Infectious Diseases' in *Connecting Global Priorities: Biodiversity and Human Health: A State of Knowledge Review* (CBD, UNEP, WHO 2015), <<https://www.cbd.int/health/SOK-biodiversity-en.pdf>> accessed 30 May 2020.

⁵⁷ R. Alaa Abbass, Prashant Kumar and Ahmed El-Gendy, 'An Overview of Monitoring and Reduction Strategies for Health and Climate Change related Emissions in the Middle East and North African Region' (2018) 175 *Atmospheric Environment* 33

⁵⁸ UNEP/EA.3/Res 4 (2017).

“Recognizes that biodiversity loss is a health risk multiplier... that human, animal, plant and ecosystem health are interdependent; emphasizes in this regard the value of the “One Health” approach, an integrated approach which fosters cooperation between environmental conservation and the human health, animal health, and plant health sectors; encourages Member States and invites relevant organizations to mainstream the conservation and sustainable use of biodiversity to enhance ecosystem resilience, ... as an important safeguard for current and future health and human well-being.”

4. Conclusion

This paper has tried to analyse the impact of the Covid-19 pandemic on the Middle Eastern and North African region. It first sketches a background of the ecological-human-health nexus using the One Health approach articulated in the Berlin Principles 2019. It argues that environmental law generally needs to be re-thought⁵⁹ in this direction, and the lessons learnt from Covid-19 crisis can act as a catalyst for this change.

Against this backdrop, the impact of the pandemic is gauged for the MENA region. Two themes: one of climate action and the other of human rights are used to further understand how environmental law will be shaped out of the crisis. With respect to the first theme, it is argued that the renewable energy sector will certainly suffer in the immediate aftermath of Covid-19. However, globally renewables have been more resilient than fossil fuels during this crisis, and with a longer-term global dip of demand for oil, renewables attract more investments in the future. The MENA regional climate action strategy will also suffer due to the crisis, given that one, Paris commitments already made are not enough, and two, economic destabilisation will lead to attention being diverted away from climate action.

With respect to the second theme, it has been shown that the Covid-19 crisis has led to increased authoritarianism and increased human rights and humanitarian threats. It has been argued that political stability is a prerequisite for consistent law and policymaking for the environment. A fractured relationship between governments and their people will delay and even obliterate the environmental agenda for years to come.

Stitching these two themes together, one can see how the Covid-19 crisis has only led to the pushing back of environmental laws. Coming out of the crisis, more interdisciplinary approaches are the need of the hour that bridge the distance that currently plagues the human-ecological-health nexus. The Berlin Principles 2019 are a step in that direction, as they urge the world to ‘...ensure the conservation and protection of biodiversity, which interwoven with intact and functional ecosystems provides the critical foundational infra-

⁵⁹ N. Robinson, ‘How Do We Prevent the Next Outbreak?’ *Scientific American* (25 March 2020).

structure of life, health and well-being on our planet'.⁶⁰ There is a need now more than ever to further develop such interdisciplinary collaboration, such that governments; communities; and academic, scientific and business institutions utilise the knowledge of other disciplines and domains to include environmental and ecosystem health, social sciences and land use considerations in their work.

⁶⁰ *Supra* n. 6, Berlin Principles 2019, Principle I.

