

# THE SHADOW PANDEMIC: ASSESSING THE IMPACT OF COVID-19 ON WOMEN'S RIGHTS

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by [DEBORAH RUSSO](#) on Dec 30, 2021 •

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## Women's rights and gender equality during the COVID-19 pandemic

by [ENZAMARIA TRAMONTANA](#) on Dec 30, 2021 •

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## Gender equality in the context of recovery plans after the Covid-19 pandemic

Deborah Russo \*

### 1. Introduction

The Covid-19 outbreak has tragically widened existing inequalities, intersecting multiple forms of discrimination, and retrogressing the protection of the rights of women worldwide. Statistics presented by international institutions and NGOs report that women, who represent the 70 per cent of the health and social care personnel all over the world, have been at the frontline of the fight against the spread of the contagion, thereby facing a higher risk of infection. For different reasons, women have also been disproportionately affected by the economic crisis, the care deficits and the ‘shadow pandemic’<sup>1</sup> of the gender-based violence.<sup>2</sup>

As the world is gradually trying to recover from the Covid-19 emergency, several international documents point to the reconstruction as an opportunity to rebuild the foundations of the contemporary societies in

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<sup>1</sup> The expression ‘shadow pandemic’, coined by the UN women director, is employed in several documents of international organizations and NGOs (P Mlambo-Ngcuka, *Violence against Women and Girls: The Shadow Pandemic* (6 April 2020) <[www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic](http://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic)>).

<sup>2</sup> For a general overview on the impact of the Covid-19 emergency on the rights of women: E Catelani, M D’Amico, *Effetto Covid. Donne: la doppia discriminazione* (Il Mulino 2021). International documents and reference to the gender implication of the Covid-19 emergency are countless. Just to mention few, see: UN Security Council Res 2532 (2020) UN Doc S/RES/2532(2020) para 7; UN General Assembly Res 75/216 UN Doc A/RES/75/2016 para 41; CESCR, ‘Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights’ UN Doc E/C.12/2020/1 (17 April 2020) para 8; World Bank, ‘Gender Dimensions of the Covid-19 pandemic’ Policy Note 16 April 2020; ILO, ‘The Covid-19 response: Getting gender equality right for a better future for women at work’ Policy brief of May 2020.



the light of the principle of equality,<sup>3</sup> with a view to bring an important economic and social gain. In the context of the EU, for example, it is estimated that the cost of the employment loss associated with women's care responsibilities is about 370 billion of euros per year and that of gender-based violence around 259 billion of euros per years.<sup>4</sup> Thus, creating equal opportunities and occupation for women would significantly raise per capita GDP and household income, with positive effects on national economies. Furthermore, investing in gender equality would enrich our society in terms of participation and pluralism of values, sensitivity, interests and ideas, paving the way for a more prosperous, balanced and resilient world.<sup>5</sup>

However, the international obligations guiding States in the post-pandemic reconstruction have not been the object of extensive research. Yet, as this paper argues, as States face the challenge of reconstruction and recovery after the COVID-19 pandemic, they do not move in a legal vacuum. On the contrary, many international provisions apply to post disasters settings and restrict the power of States to freely develop their recovering policies to the extent that this is necessary to respect, *inter alia*, the rights of women.

On the assumption that the consequences of the pandemic on women's rights are due to the combination of States' unpreparedness to the Covid-19 outbreak and preexisting structural gender inequalities, this paper upholds the inadequacy of any sectorial and emergency approach and the need to embrace a more holistic outlook to reconstruction and

<sup>3</sup> See, for example, CEDAW Committee, 'Call for joint action in the times of the Covid-19 pandemic'. Statement adopted on 21 April 2021 that affirmed 'The Committee calls on States to strive for grasping this moment in human history as an opportunity to adopt transformative strategies based on women's empowerment and leadership...'. Council of the European Union, 'Council conclusions on a human rights-based post Covid-19 recovery' 6324/21 (22 February 2021) para 7. See also UN General Assembly, 'Violence against women, its causes and consequence. Note by the Secretary-General', UN Doc A/75/144 (24 July 2020) para 89, affirming that 'The COVID-19 pandemic represents an opportunity to bring about meaningful and lasting change at the national, regional and international level...'.  
<sup>4</sup> E Kaltzer, A Rinaldi, 'Gender Impact Assessment of the European Commission Proposal for the EU Recovery Plan' <[https://alexandrageese.eu/wp-content/uploads/2020/07/Gender-Impact-Assessment-NextGenerationEU\\_Klatzer\\_Rinaldi\\_2020.pdf](https://alexandrageese.eu/wp-content/uploads/2020/07/Gender-Impact-Assessment-NextGenerationEU_Klatzer_Rinaldi_2020.pdf)>.

<sup>5</sup> According to the UN Sustainable Developments Goals 'gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world' <[www.un.org/sustainabledevelopment/gender-equality/](http://www.un.org/sustainabledevelopment/gender-equality/)>.



recovery.<sup>6</sup> Accordingly, it propounds a threefold articulation of priorities: participation, reparation and equality. In particular, section 2 tackles the obligation to fulfil the equal participation of women to the elaboration, monitoring and implementation of the reconstruction plans. Section 3 is devoted to the obligations of States to investigate the impact of the Covid-19 emergency on women's rights in order to assess possible responsibilities during the pandemics and to provide reparations for the victims. Finally, the focus of section 4 is on the principle of equality: in particular section 4.1 deals with the protection of economic and social rights in the labor market and section 4.2 with the right to life and health, with reference to the fight against gender-based violence and the access to sexual and reproductive health services.

## *2. The duty to include women and empower them in the recovery process*

Although women stood in majority at the forefront of the fight against the contagion, they remained almost invisible in the decision-making process related to the management of the Covid-19 emergence. An initiative promoted by the UN Development Programme and UN Women, which has monitored the extent of women's inclusion in the Covid-19 response by 187 States, reveal that gender equality is respected in only 4.4 per cent of the surveyed task forces while the overwhelming majority of task forces (84%) are dominated by men.<sup>7</sup> Overall women make up less than a quarter (24%) of members and are not represented at all in 12 % of all task forces (26 out of 225).<sup>8</sup>

The underrepresentation of women in the decision-making process leading to the post Covid-19 reconstruction conflicts with the obligation to ensure the equal participation of women in all aspects of political and

<sup>6</sup> CoE, Report of the Parliamentary Assembly 'Upholding human rights in times of crisis and pandemics: gender, equality and non-discrimination' doc.15129 (31 august 2020) <[www.pace.coe.int/en/files/28678](http://www.pace.coe.int/en/files/28678)>.

<sup>7</sup> The survey reported the composition of 334 task forces created to manage the pandemic in 187 States. All information and data are available here: <[www.data.undp.org/gendertacker/](http://www.data.undp.org/gendertacker/)>.

<sup>8</sup> The report is published here: <[www.undp.org/sites/g/files/zskgke326/files/2021-06/UNDP-UNWomen-COVID19-Global-Regional-Factsheet-2020-EN.pdf](http://www.undp.org/sites/g/files/zskgke326/files/2021-06/UNDP-UNWomen-COVID19-Global-Regional-Factsheet-2020-EN.pdf)>.



public life<sup>9</sup>. This obligation is grounded in Article 7 of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), which grants women ‘on equal terms with men’ the right ‘to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government’.

As the Committee on the Elimination of Discrimination against Women (CEDAW Committee) emphasized, participation is at the same time a goal and a means of the protection of women. A goal, because the right of women to be fully and equally involved in decision-making at all levels is an essential component of the human dignity of women. A means, because equal participation ensures that the views and interests of women are fully and directly taken into consideration, without filters, at the benefit not only of women’s empowerment but also for the progress of the society as a whole.<sup>10</sup> In particular, the interpretation of the CEDAW Committee has been profoundly inspired by the theory of the ‘critical mass’, according to which, only when women’s participation reaches the threshold of 30 to 35 per cent, there is an impact on the political style and the content of decisions.<sup>11</sup> It is for this reason that Article 4 of the CEDAW requires that States adopt temporary special measures (TSM) to accelerate the goal. TSM include various forms of positive actions, preferential treatments or quota systems that ensure the minimum requirement of 30% of women’s participation and are complemented by

<sup>9</sup> The duty to ensure the equal participation of women in all aspects of political and public life is also provided by all treaties that deal with the protection of civil and political rights (*Mathieu-Mobin and Clerfayt v Belgium*, App no 27129/95 (ECHR, 2 March 1987); UN Human Rights Committee (HRC), ‘CCPR General Comment No 25: Article 25 Participation in Public Affairs and the Right to Vote, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service’ (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7).

<sup>10</sup> CEDAW Committee, ‘General Comment No 23: Political and Public Life’ UN Doc A/52/38 (1997) para 17.

<sup>11</sup> Although some recent researches called into question such automatism, most of them nonetheless agreed that women representatives are more inclined than men to give a higher priority to policies and interests which are of disproportionate concern to women, such as those related to education and family matters and equality issues. For a recognition of the wide debate on this issue see C McGing, ‘Electoral Quotas and Women’s Rights’ in N Reilly (ed), *International Human Rights of Women* (Springer 2019) 180.



adequate measures of compliance, such as sanctions and effective monitoring.<sup>12</sup>

In the more recent international practice on disaster response, the principle of equal participation of women and men to the reconstruction after a disaster has gained special recognition.<sup>13</sup> In particular, the CEDAW Committee increasingly monitors all relevant aspects of equal representation so that, for example, in its 2020 concluding observations concerning Kiribati, while welcoming the wide participation of women in the National Expert Group entrusted of the climate change and disaster risk plan for the period 2014–2023, it regretted their limited engagement with the implementation phase.<sup>14</sup> According to the CEDAW Committee, participation of women to all phases of post-disaster decision-making processes pursues a twofold function. On the one hand, it aims at including women in their position of victims of disasters in the reconstruction settings,<sup>15</sup> while, on the other hand, it reflects the general goal of women's empowerment.<sup>16</sup> Accordingly, in the 2019 'Concluding Observations on Cambodia', the CEDAW emphasized that the right of women to participate in the formulation and implementation of policies and action plans on disaster response applies not only to those women

<sup>12</sup> CEDAW Committee, 'General Comment No 23: Political and Public Life' (n 10) para 26. The CEDAW Committee also specified that States parties should implement art 7 of the CEDAW not only by appointing women to all senior decision-making roles but also by consulting and incorporating the advice of groups which are broadly representative of women's views and interests.

<sup>13</sup> CEDAW Committee, 'General Recommendation No 37 on Gender-related dimensions of disaster risk reduction in the context of climate change' CEDAW/C/GC/37 (7 February 2018) 8; CEDAW, 'Concluding observations on the sixth periodic report of Seychelles' CEDAW/C/SYC/CO/6 (12 November 2019) para 45; CEDAW, 'Concluding observations on the ninth periodic report of Cabo Verde' CEDAW/C/CPV/CO/9 (30 July 2019) para 36-37; CEDAW, 'Concluding observations on the combined eighth and ninth periodic reports of Haiti' CEDAW/C/HTI/CO/8-9 (9 March 2016) paras 39 e 40.

<sup>14</sup> CEDAW Committee, 'Concluding observations on the combined initial, second and third periodic reports of Kiribati' CEDAW/C/KIR/CO/1-3 (11 March 2020) para 45.

<sup>15</sup> Human Rights Council, 'Final research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations' A/HRC/28/76 (10 February 2005) para 69.

<sup>16</sup> *ibid* para 30.



who have been disproportionately affected by the consequences of a disaster (i.e. the victims) but also to all women as ‘agents of change’.<sup>17</sup>

Notably, the increasing importance of the right of equal representation of women in the post disaster reconstruction results from several instruments adopted in the aftermath of the Covid-19 pandemic. In its Resolution n. 2532, the UN Security Council, for example, after acknowledging the critical role played by women in the fight against Covid-19 and the disproportionate negative impact of the pandemic on women, called on States to ensure the ‘full, equal and meaningful’ participation of women in the development and implementation of an adequate and sustainable response to the pandemic’.<sup>18</sup> Analogously, the UN General Assembly encouraged Governments to promote the ‘full, equal and effective’ participation and leadership of women in the design, management, resourcing and implementation of gender-responsive disaster risk reduction plans.<sup>19</sup> In line with these principles, the CEDAW Committee recalled that both public and private actors should ensure women’s equal representation in the formulation of the COVID-19 response, including social and economic recovery plans, and recognize women as significant agents for societal change in the post emergency period.<sup>20</sup>

Against this background, any insufficient representation of women in the bodies appointed by States to plan, monitor and implement the post Covid-19 reconstruction would be at odds with the international legal requirements and may raise issues of State responsibility. Moreover, the adoption of gender-sensitive reforms, if not accompanied by sufficiently inclusive procedures, could be perceived by the public opinion as a sign

<sup>17</sup> CEDAW Committee, ‘Concluding observations on the sixth periodic report of Cambodia’ CEDAW/C/KHM/CO/6 (19 November 2019) para 42.

<sup>18</sup> UN Security Council Res 2532 (2020) UN Doc S/RES/2532(2020) para 7

<sup>19</sup> UN General Assembly Res 75/216 adopted on 21 December 2020, UN Doc A/RES/75/216 para 41.

<sup>20</sup> CEDAW Committee, ‘Guidance Note on CEDAW and Covid 19’ <[www.corteidh.or.cr/tablas/centro-covid/docs/Covid-19/CEDAW-Guidance-note-COVID-19.pdf](http://www.corteidh.or.cr/tablas/centro-covid/docs/Covid-19/CEDAW-Guidance-note-COVID-19.pdf)>; CESCR, ‘Statement on the coronavirus disease (Covid-19) pandemic and economic, social and cultural rights’ UN Doc E/C.12/2020/1 (17 April 2020) para 12 according to which ‘access to justice and to effective legal remedies is not a luxury, but an essential element to protect economic, social and cultural rights, especially those of the most vulnerable’.



of perpetuation of predominant male leadership and as a promise of lasting structural inequalities.<sup>21</sup>

### 3. *The duty to provide remedies without discriminating women*

The duty to provide reparations to women whose rights have been violated during the Covid-19 emergency is an essential precondition for the implementation of women's rights in the post Covid-19 recovery programs.<sup>22</sup>

Recent studies on the role of justice in post-disaster transition processes argue the need of a twofold approach to reparations according to which the right of the victims to access independent and impartial domestic courts should be complemented by collective justice programs aimed, *inter alia*, at prompting socio-economic transition at the benefit of women's rights.<sup>23</sup> Indeed, a comprehensive approach to justice is functional to address the structural roots of many forms of discriminations and violations of women's rights and to overcome obstacles that specific

<sup>21</sup> C O'Rourke, *Women's Rights in Armed Conflict under International Law* (CUP 2020) 145-170.

<sup>22</sup> UN Women, IDLO, UNDP, UNODC, World Bank and The Pathfinders, 'Justice for Women Amidst COVID-19' (2020) <[www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-amidst-covid-19-en.pdf?la=en&vs=5442](http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-amidst-covid-19-en.pdf?la=en&vs=5442)>; CEDAW Committee, 'General recommendation No 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' CEDAW/C/GC/28 (16 December 2010) <[www.refworld.org/docid/4d467ea72.html](http://www.refworld.org/docid/4d467ea72.html)> and 'General recommendation on women's access to justice' CEDAW/C/GC/3323 (23 July 2015) <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_33\\_7767\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf)>.

<sup>23</sup> R Rubio Marin, for example, refers to 'the transformative potential of reparations programs and thus their capacity to help to advance toward more inclusive and egalitarian democracies' (R Rubio Marin, *The Gender of Reparations. Unsettling Sexual Hierarchies While Redressing Human Rights Violations* (CUP 2009) 3). See, also, E Jones, 'Gender and Reparations: Seeking Transformative Justice, According to the CEDAW', in C Ferstman, M Goetz (eds) *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (Brill 2020) 86. The duty to provide remedies for violations of women's rights encompass different forms of reparations, including 'change in relevant laws' (CEDAW Committee, 'General recommendation No 28' (n 22) para 32). See, also, I Nifosi Sutton, 'Contour of Disaster Victims' Rights to a Remedy and Reparation Under International Human Rights Law' in Andrea de Guttry (ed) *International Disaster Response Law* (Asser Press 2012) 415.



groups of victims encounter when seeking justice before domestic courts.<sup>24</sup>

A rapid overview of the recent international practice supports these findings. If States retain a margin of discretion on the form of their reparations' strategy, their duty to provide reparation is established by most human rights treaties.<sup>25</sup> Among them, the CEDAW, in Article 2 (c), requires States parties to 'establish legal protection of the rights of women...and to ensure through competent national tribunals and other public institutions the effective protection for women against any act of discrimination'.<sup>26</sup> In the last decades, the scope of an individual right to reparation for human rights violations have been shaped by human rights institutions and monitoring bodies. In particular, the duty to provide a remedy has been conceptualized by some human rights bodies as a positive procedural obligation following the violation of human rights. In this case, the access to a remedy for the victims is the result of specific procedural obligations requiring States to conduct investigations, to ascertain the responsibilities and to ensure reparation in case of human rights violations, regardless from the attribution of such violations to the State.<sup>27</sup>

According to the case-law of the European Court of Human Rights (ECtHR), for example, the rights protected by the European Convention on Human Rights (ECHR) entail the duty to ensure 'an effective judicial system'.<sup>28</sup> This implies that States set up an independent and impartial official procedure which must conform to minimum standards of effectiveness to investigate on human rights abuses. In principle, if the violations have not been intentionally caused by agents of the States or by any other private subject, this obligation may be fulfilled by ensuring to the victims access to civil, administrative or even disciplinary remedies.<sup>29</sup>

<sup>24</sup> There may be different obstacles to the access to courts such as the lack of sufficient economic resources to bear the costs of justice, the fear of revenge in case of victims of violence and restrictions in accessing factual data which are in possession of national authorities only.

<sup>25</sup> See, for example, art 23 (a) of the International Covenant on Civil and Political Rights (ICCPR) and art 13 of the ECHR.

<sup>26</sup> RJ Cook, 'State Responsibility for Violations of Women's Human Rights' (1994) 7 *Harvard Human Rights J* 127-175.

<sup>27</sup> *Durmaz v Turkey*, App no 3621/07 (ECtHR, 13 November 2014) paras 55-68.

<sup>28</sup> *Budayeva and others v Russia*, App no 15339/02 (ECtHR, 20 March 2008) para 139.

<sup>29</sup> *ibid.*



However, in relation to judicial responses following a disaster, the ECtHR employs the highest standard applicable to the consequences of dangerous activities.<sup>30</sup> In particular, when lives are lost as a result of a failure by national authorities to take preventive measures, States are required to conduct investigations ‘with exemplary diligence and promptness’ in order to ascertain the circumstances in which the disaster took place and the shortcomings in the regulatory system, and to ensure the imposition of criminal sanctions to the extent that this is justified by the results of the investigations.<sup>31</sup>

When gender-based violence is at stake, the obligation to investigate which stems from Articles 2, 3, 5 and 8 of the ECHR has been combined by the ECtHR with the principle of non-discrimination provided by Article 14 of the ECHR.<sup>32</sup> Thus, the failure to conduct effective investigation has been qualified as a discriminatory act of the State where it is the result of a gender-biased approach by public authorities. According to this interpretation, in presence of delays and inactivity of public officials which reflect a general attitude of minimizing the gravity of the case, States may be found not only to breach the procedural obligation to conduct prompt and effective investigations, but even to commit an autonomous act of discrimination against women.<sup>33</sup> This reasoning corresponds to the position taken by the Interamerican Court of Human Rights (ICtHR) that applies a reinforced standard of diligence to the duty to investigate in cases of gender-based violence.<sup>34</sup> In the *Campo Algodonero* case,

<sup>30</sup> *ibid* para 142. See also *Hugh Jordan v the United Kingdom*, App no 24746/94 (ECtHR, 4 May 2001) paras 105-09 and *M. Ozel and others v Turkey*, App No 14350/05 (ECtHR, 17 November 2015) para 189.

<sup>31</sup> *Kolesnichenko v Russia*, App no 19856/04 (ECtHR, 9 April 2009) para 189.

<sup>32</sup> For an overview of the jurisprudence of the ECtHR see the CoE handbook ‘Equal access to justice in the case-law on violence against women before the European Court of Human Rights’ <[www.rm.coe.int/equal-access-to-justice/168073e152](http://www.rm.coe.int/equal-access-to-justice/168073e152)>.

<sup>33</sup> *Bevacqua and S. v Bulgaria*, App no 71127/01 (ECtHR, 12 June 2008). See also *Opuz v Turkey*, App no 33401/02 (ECtHR, 9 June 2009) para 185-19. More recently, the ECtHR has also considered that delays and inefficiencies of public authorities in protecting victims of domestic violence amounts to a violation of art. 14, in consideration of statistics showing the wide diffusion of domestic violence in the legal system of the respondent State (*Talpis v Italy*, App no 41237/14 (ECHR, 2 March 2017) para 145).

<sup>34</sup> *González y otras (‘Campo Algodonero’) v México* IACtHR Serie C No 205 para 258. E Tramontana, ‘Lucha contra la violencia de género. Aportes del Sistema Interamericano de Derechos Humanos’ in A von Bogdandi et al (eds) *La tutela jurisdiccional de los derechos* (Istituto Vasco de Administracion Publica 2012) 47.



for example, the ICtHR applied a gender-based approach to the assessment of the obstacles undermining access to justice for the victims of violence, highlighting the impact of gender stereotypes on the passive and tolerant attitude manifested by the public authorities of the respondent States and qualifying their conduct as an act of discrimination against women.<sup>35</sup>

Human rights courts and monitoring bodies are also increasingly paying attention at the systemic nature of certain violations, including those affecting women's rights. This means that the structural nature of discrimination against women may be taken into consideration in possible future decisions assessing the impact of the Covid-19 emergence on women's rights and the adequacy of the remedies adopted by States. Hence, in case of structural violations, States were condemned not only to pay compensation to the applicants, but also to adopt general measures of reparation, which include the duty to give adequate guarantees of no repetition through the cessation of the systemic defects of their legal system.<sup>36</sup> In other words, in case of claims based on sex-based discrimination that sinks its roots in preexisting structural inequalities, States could be ordered to adopt general measures of reform.

Thus, post-disaster justice programs cannot neglect the collective dimension of reparations and the need to prevent an escalation of individual claims or massive class actions. As the recent practice shows, when the managing of disasters results in violations of human rights (such as the right to life or to property) the victims increasingly resort to collective complaints before domestic courts, invoking individual compensation and general measures.<sup>37</sup> Already, collective claims related to the Covid-

<sup>35</sup> *González y otras ('Campo Algodonero') v México* (n 34) para 400.

<sup>36</sup> A Saccucci, *La responsabilità internazionale per violazioni strutturali dei diritti umani* (Editoriale Scientifica 2018) 263.

<sup>37</sup> See, for example, the collective complaint lodged by the Stop Global Warming Association before the Central Administrative Court of Thailand <<https://soclaimon.wordpress.com/2012/07/27/hundreds-of-victims-sue-premier-govt-officials-over-flood-ordeal/>> and the claims presented by the victims of the Hurricane Katrina in *Robinson et al v USA (In re Katrina Canal Breaches Consolidated Litigation)*, 647 F.Supp.2d 644, 650 (E.D.La. 2009) and the class action *Claire Brou, et al v Federal Emergency Management Agency*.



19 pandemic are spreading all over the world and most likely victims of gender discrimination will make collective recourse to justice.<sup>38</sup>

Hence, States, in the aftermath of the pandemic, must confront with their responsibility to address, in a comprehensive and general way, the question of reparation for the victims. Although they enjoy a wide margin of discretion in designing their policy of reparation, they are required to adopt a strategy capable of addressing the collective dimension of violations and of reversing preexisting and systemic forms of disadvantage.

#### 4. *The duty to ensure gender equality in the field of economic and social rights*

##### 4.1. *The equality between men and women in the labor market*

Women have paid the highest economic cost from the pandemic. All over the world, the measures adopted by most States to contrast the contagion have predominantly affected those job sectors with a greater presence of women and have led to worse consequences for the workers with less guaranteed contracts, the majority of which are women.<sup>39</sup> Thus, the question arises of what guidance international law offers to the recovering States. In order to remedy to the negative the impact of the Covid-19 emergence on women's economic and social rights, States are called to draft and implement their recovery plans in compliance with specific international obligations. Although equality between women and men is protected by a many different international rules, this section focuses on three key provisions that deal more comprehensively with this goal, namely Articles 3 of the UN International Covenant for the protection of economic, social and cultural rights (ICESCR), 11 of the CEDAW and 20 of the CoE European Social Charter (ESC).

<sup>38</sup> See, for example, the class action against the Italian Government and the Region of Lombardia <[www.repubblica.it/cronaca/2020/12/23/news/pronta\\_la\\_class\\_action\\_dei\\_parenti\\_delle\\_vittime\\_del\\_covid\\_vogliamo\\_che\\_il\\_governo\\_e\\_la\\_regione\\_lombardia\\_paghino\\_279566035/](http://www.repubblica.it/cronaca/2020/12/23/news/pronta_la_class_action_dei_parenti_delle_vittime_del_covid_vogliamo_che_il_governo_e_la_regione_lombardia_paghino_279566035/)>; <[www.supremecourt.vic.gov.au/court-decisions/case-list/covid-19-state-government-business-losses-group-proceeding-class-action](http://www.supremecourt.vic.gov.au/court-decisions/case-list/covid-19-state-government-business-losses-group-proceeding-class-action)>.

<sup>39</sup> European Committee of Social Rights 'Statement on Covid-19 and social rights' (24 March 2021) <[www.rm.coe.int/statement-of-the-ecsr-on-covid-19-and-social-rights/1680a230ca](http://www.rm.coe.int/statement-of-the-ecsr-on-covid-19-and-social-rights/1680a230ca)> 6.

Under Article 3 of the ICESCR States Parties are required ‘to ensure the equal right of men and women to the enjoyment of all the economic, social and cultural rights set forth in the present Covenant’, including the right to work protected by Article 6 of the ICESCR and the other rights concerning the employment relationship.<sup>40</sup> As the Committee on Economic, Social and Cultural Rights (CESCR) has emphasized, this provision prohibits both direct (or *de jure*) discrimination, which is manifested by a disparity of treatment explicitly grounded on sex, as well as indirect (or *de facto*) discrimination, which results from national measures that, although framed in neutral terms, produce disproportionate effects on women.<sup>41</sup> The provision also embodies a principle of substantive equality, which requires that States adopt special positive measures where necessary to attenuate or suppress structural conditions that perpetuate sex discrimination in the labor market.<sup>42</sup> This conceptualization of the principle of equality corresponds to the interpretation adopted by the ECtHR<sup>43</sup> in the *Thlimmenos* case, when it affirmed that Article 14 is violated not only when States treat differently persons in analogous situations without providing an objective and reasonable justification but also when they fail to treat differently persons whose situations are significantly different’.<sup>44</sup> In other words, recovering from the structural inequalities of

<sup>40</sup> Among the rights enshrined in the ICESCR there are the right to work, including the opportunity to gain a living by work which is freely chosen (art 6); the right to just and favorable conditions of work, including fair wages and equal remuneration for work of equal value, remuneration that provides a decent living, safe and healthy working conditions, equal opportunity in promotion, and rest, leisure, and periodic paid holidays (art 7); the right to form and join trade unions (art 8); the right to social security (art 9); the right to an adequate standard of living, including adequate food, clothing, and housing (art 11).

<sup>41</sup> Cf CESCR, ‘General Comment No 20. Non-discrimination in economic, social and cultural rights (art 2, para 2, of the International Covenant on Economic, Social and Cultural Rights)’ UN Doc E/C.12/GC/20 (2 July 2009) para 10. The same interpretation has been followed by other human rights institutions such as the ECtHR which held: ‘a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group’ (*D.H. and Others v Czech Republic*, App no 57325/00 (ECtHR, 13 November 2007) para 184).

<sup>42</sup> *ibid* para 6 and 7.

<sup>43</sup> S Fredman, ‘Gender equality and the European Convention of Human Rights’, in N Reilly (ed) *International Human Rights of Women* (Springer 2019) 121.

<sup>44</sup> *Thlimmenos v Greece*, App no 34369/97 (ECtHR, 6 April 2020) para 44.



the labor market implies the need of a differential approach that goes beyond the recognition of equal opportunities.

Notwithstanding Article 2 of the ICESCR establishes a rule of progressive implementation – according to which States take steps toward the fulfillment of the ICESCR rights ‘to the maximum of available resources’ – the obligation to equality produces immediate effects and therefore is directly enforceable by judicial and other organs,<sup>45</sup> even in times of resource constraints.<sup>46</sup> In fact, the principle of progressive realization of economic rights implies ‘an obligation to move as expeditiously and effectively as possible toward that goal’ so that any retrogressive measure adopted to overcome a crisis would need to be fully justified by reference to the totality of the Convention rights.<sup>47</sup> More importantly, the Committee on Economic, Social and Cultural Rights (CESCR) specified that in time of severe resource constraints of whatever origin the States must assess any possible discriminatory effect of their laws and policies and adopt special measures of protection of the vulnerable members of society.<sup>48</sup> In this regard, it is a responsibility of each State to identify the

<sup>45</sup> E Nohle, G Giacca, ‘Economic and social rights in times of disaster: obligations of immediate effect and progressive realization’, in F Zorzi Giustiniani, E Sommaro, F Casolari, G Bartolini (eds) *Routledge Handbook of Human Right and Disasters* (Routledge 2020) 247.

<sup>46</sup> See, on this point, CESCR ‘General Comment No 3: The Nature of States Parties’ Obligations (Art 2, para 1 of the Covenant)’ UN doc E/1991/23 (14 December 1990) para 11. Art 2 of the ICESCR states: ‘Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant’.

<sup>47</sup> *ibid* para 12. CESCR, ‘Concluding observations on the third periodic report of Japan, adopted by the Committee at its fiftieth session (29 April-17 May 2013)’ UN Doc E/C.12/JPN/CO/3 para 24.

<sup>48</sup> The relevance of positive measures to tackle the needs of the more vulnerable in times of disasters has been recognized by art 6 of the 2016 Draft articles on the protection of persons in the event of disasters (DAPPED), as well as in the case-law of the ECtHR and of the IACtHR. In particular, art 6 of the DAPPED establishes that the response to disasters must be based on the principle of non-discrimination and must take into account the needs of those particularly vulnerable (‘Draft articles on the protection of persons in the event of disasters, with commentaries’ (2016) para 7-9). In its commentary, the International Law Commission (ILC) adopted a wide concept of vulnerability. By taking stock of the principles elaborated by recent policy instruments in the field of disasters, such as the 2015 Sendai Framework for Disaster Risk Reduction, 2015-2030, the ILC included among the vulnerable not only groups that are usually associated to the concept

vulnerable groups within their labor market, including disadvantaged women – such as disabled, migrants, workers with less guaranteed contracts, women with dependent children – and to provide special measures of protection tailored to their needs.

These principles are fully confirmed and complemented by Article 20 of the ESC, which binds States to take appropriate measures to eliminate any form of direct and indirect discrimination between men and women, and to ensure and promote substantive equality in the fields of access to employment, protection against dismissal, occupation reintegration, training, terms of employment including remuneration and career development. According to the interpretation of the European Committee of Social Rights (ECSR), States cannot limit themselves to provide the right to equality in their Constitutions. They are also required to enact a sufficiently detailed legislation and practical measures, including preferential treatments, to cover all aspects of non-discrimination and equality in the field of occupation, to repeal or amend contrary provisions and to provide for effective remedies and compensation in case of discrimination.<sup>49</sup> In responding to the Covid-19 emergency, States parties are not exempted by the implementation of Article 20. On the contrary, the ECSR stressed that States must adopt additional measures to ensure the compliance to the Charter obligations in the face of the challenges posed by the COVID-19 crisis and specified that in designing and implementing

but also other individuals that are particularly affected or potentially affected in the wake of a disasters, such as women and stressed the need of a gender-based approach to disaster risk management, including the recovery from crisis. UN General Assembly Res 69/135 UN Doc A/RES/69/135 (12 December 2014) para 32, which requested ‘Member States, relevant humanitarian organizations of the United Nation system and other relevant humanitarian actors to ensure that all aspects of humanitarian response, including disaster preparedness and needs assessment, takes into account the specific humanitarian needs and vulnerabilities of all components of the affected population, in particular ... women’. A similar interpretation has been followed by other international institutions and human rights bodies while dealing with the States’ response to disaster and the post disaster management. See also the 2008 report of the Interamerican Commission on Human Rights on the situation of Haiti where the Commission emphasized ‘the impact of such conditions on vulnerable groups, especially women’ (IACHR, Annual Report 2008, para 248) and the CESCR, ‘Concluding observations on the third periodic report of Japan’ (n 47) para 24.

<sup>49</sup> ECSR, ‘Digest of the case-law of the European Committee of social rights (2018), <[www.coe.int/en/web/european-social-charter/-/new-version-of-the-digest-of-the-case-law-of-the-european-committee-of-social-rights](http://www.coe.int/en/web/european-social-charter/-/new-version-of-the-digest-of-the-case-law-of-the-european-committee-of-social-rights)> 190-194.





such additional measures they must accord priority to the most socially vulnerable groups and individuals.<sup>50</sup>

At this point, the question arises of how these principles influence the activity of States in the recovery phase. Their relevance is wide and must be fully considered. First of all, by prohibiting any form of indirect discrimination against women, these obligations forbid the adoption of any recovery measure and policy, that – albeit apparently neutral and aimed at other deserving public policy goals (for example, digitalization or green transition) – produces an indirect discriminatory effect, for example converging a disproportionate amount of resources to male-dominated sectors. This, of course, does not mean that different public policy goals are radically incompatible with gender equality but that States are required to found their recovery plans on a comprehensive gender sensitive approach capable of effectively mainstreaming gender equality by preventing and correcting any collateral discriminatory effect. To this aim, States should be able and ready to collect sex-disaggregated data in order to monitor the impact on the labor market of each policy measure, which is not specifically targeted to gender equality. They should also develop and apply appropriate indicators and benchmarks in order to assess the gender related implication of each recovery measure, before its adoption and at the different stages of implementation and should be prepared to apply correctives and remedies in order to harmonize all their public policy maneuver with the goal of gender equality.<sup>51</sup>

Secondly, the concept of substantive equality implies that States should include in their reconstruction plans a set of measures which are targeted to overcome the pre-existing structural forms of disadvantage and to achieve the goal of effective equality in the labor market as soon as possible, resorting, if necessary, to preferential treatment and quota systems. In addition, as already noted, special consideration should be paid to the identification of vulnerable categories of workers (for example disabled, migrants, workers with less guaranteed contracts, women with dependent children) and to the elaboration of special measures of protection at their benefit. Regarding the specific measures that States

<sup>50</sup> ECSR, ‘Statement on Covid-19 and social rights’ (n 39).

<sup>51</sup> For a better understanding of what is a gender impact assessment see: <<https://eige.europa.eu/gender-mainstreaming/toolkits/gender-impact-assessment/what-gender-impact-assessment>>.



should resort to fulfill substantive equality, useful indications derive from Article 11 of the CEDAW that bind States to take all appropriate measures to eliminate discrimination against women in the field of employment. The provision requires States to realize formal as well as substantive equality, including the duty to enact temporary special measures under Article 4 of the CEDAW, with the aim to accelerate women's *de facto* equality and to eliminate structural discrimination in employment and occupation.<sup>52</sup> In particular, the duty to fulfill equality embodies a prism of different States' actions including the providing of vocational training, retraining and recurrent training and the fighting against the (horizontal and vertical) segregation of women in (often low-paid) occupational sectors and the interruptions of career prospects due to family burdens. Other essential interventions concern the delivering of high-quality social services to support women's occupation and the shaping of policies that contrast gender stereotyping, including the provision of the obligatory paternity leave of a duration comparable to that provided to women and other incentives to a greater sharing of domestic loads.

According to the CEDAW Committee, the fulfilment of such measures acquires an added value in times of reconstruction from emergencies since after crisis States are called to make special efforts 'to sustain and expand social investment and social protection and to employ a gender-sensitive approach'.<sup>53</sup>

Finally, it is important to recall that although States retain the power to choose the most appropriate recovering measures, they are nonetheless accountable for their choice in front of the national and international monitoring bodies that are entitled to safeguard the relevant international standards. In particular, international bodies maintain the ultimate power to assess the adequacy of the resources allocated to the fulfillment of women's rights, taking into consideration various factors such as the country's level of development, the respect of the minimum core content of the right in question, the request of cooperation and assistance from

<sup>52</sup> F Raday, 'Article 11', in MA Freeman, C Chinkin, B Rudolf (eds) *The UN Convention on the Elimination of all Forms of Discrimination Against Women. A Commentary* (OUP 2013) 281.

<sup>53</sup> CEDAW Committee, 'Concluding observations on the seventh periodic report of Greece adopted by the Committee at its fifty fourth session (11 February – 1 March 2013)' CEDAW/C/GRC/CO/7 para 6.



the international community and the protection of the vulnerable individuals and groups.<sup>54</sup>

#### 4.2. *The protection of the life and health of women*

The outbreak of the pandemic affected heavily the life and health of women, affecting their fundamental rights even beyond the field of labor market. On the one side, statistics show an extraordinary increase in the reports of violence against women due to the tensions and strains accentuated by lockdowns, quarantine and other restrictive measures applied by States to contrast the contagion.<sup>55</sup> On the other side, laws and measures adopted in response to the emergency diverted a large amount of financial and human resources from gender-specific reproductive health services – qualified as ‘non-essential’ services – to the Covid-19 intensive care units, thereby restricting the access to services essential to protect the health of women.<sup>56</sup>

As a matter of fact, the impact of emergency laws on the life and health of women was aggravated by pre-existing shortcomings and by the non-compliance of most States with the relevant international obligations. The situation worsened because of the gender-blind policies adopted during the emergency. While the pandemic has not modified the content of the relevant international obligations in this field, the recovery funding offers an unmissable opportunity not only to fix the different forms of social and political externalities of the health crisis but also to invest all-round in gender equality. In fact, the fight to ensure equality

<sup>54</sup> E Nohle, G Giacca, ‘Economic and social rights in times of disaster’ (n 45) 251. On the role of the human rights monitoring bodies in reviewing the measures to realize the economic and social rights see also the ‘Report of the United Nations High Commissioner for Human Rights’ UN Doc E/2007/82 (25 June 2007).

<sup>55</sup> UN, ‘Covid-19 and human rights: we are all in this together’ (April 2020); UNICEF, ‘Responding to the shadow pandemic: Taking stock of gender-based violence risks and responses during COVID-19’ (20 August 2020); School of Law and Social Justice, University of Liverpool, ‘Working Paper No 1. Domestic Abuse: Responding to the Shadow Pandemic Project’ <[www.liverpool.ac.uk/law-and-social-justice/research/coronavirus-research/the-shadow-pandemic/working-papers](http://www.liverpool.ac.uk/law-and-social-justice/research/coronavirus-research/the-shadow-pandemic/working-papers)>.

<sup>56</sup> Report of the Special Rapporteur (n 61) para 29. S De Vido, ‘Gender Inequalities and Violence against Women’s Health during the COVID-19 Pandemic: An International Law Perspective’ (2020) *Biolaw J* 77.



between man and women in the field of labor market would be incomplete without the provision of measures that safeguard the life, health and human dignity of women against any form of gender-based violence and of restriction to their health care. The different rights descending from the principle of substantive equality are indeed closely interrelated and mutually dependent.

For this reason, it is important to recall the essential obligations binding States to protect the life and health of women in their policy of reconstruction.

As far as the fight against gender-based violence is concerned, the main point of reference is the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Taking stock from the evolutive interpretation of the human rights judicial and monitoring bodies, this Convention recognizes that any act of violence violates the fundamental human rights of women and, as such, even when committed by private individuals in the domestic sphere, it may entail the international responsibility of the States, if national authorities failed to adopt adequate protective measures.<sup>57</sup> As the lack of a derogation clause indicates, the Istanbul Convention is fully applicable during and after the COVID-19 pandemic as well as in possible future health crisis.<sup>58</sup> In particular, Article 5, para. 2, binds States to adopt the

<sup>57</sup> While the text of most human rights treaties does not expressly address violence against women, the human rights judicial and monitoring bodies over time have drawn from the provisions prohibiting discrimination between women and men the positive obligation to take action to eradicate violence against women and have gradually developed the theory according to which gender-based violence is a form of discrimination that inhibits the enjoyment of women's rights (C Bunch, 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights' (1990) 12 *Human Rights Quarterly* 486 and K Anderson, 'Violence Against Women: State Responsibilities in International Human Rights Law to Address Harmful "Masculinities"' (2008) 26 *Netherlands Quarterly of Human Rights* 173). Other treaties dealing with violence against women are the 1995 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (also known as 'Convention of Belém do Pará') and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (also known as 'Maputo Protocol').

<sup>58</sup> Coe, 'Declaration of the Committee of the Parties to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) on the Implementation of the Convention during the Covid-19 Pandemic' (20 April 2020) <<https://rm.coe.int/declaration-committee-of-the-parties-to-ic-covid-/16809e33c6>>.



necessary due diligence standard to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-States actors. The provision codifies the interpretation reflected in a number of other international instruments and judgements, which have drawn from the protection of the right to life and of the prohibition of torture and degrading treatments the obligation of States to take preventive measures to protect an individual whose life is at risk from the criminal acts of another individual.<sup>59</sup> This obligation embodies a standard of conduct, which is satisfied when the protective measures adopted by the State are adequate and proportionate to the level of risk faced by the victims in the circumstance of the case.<sup>60</sup> So, the highest is the risk according to the circumstances of each case, the highest is the standard of diligence required to protect the victims. In times of forced home confinement due to a health crisis, for example, it is foreseeable that the risk of domestic violence improves. Thus, in such circumstances States are required to adopt additional protective measures.<sup>61</sup>

According to these criteria, each State should carefully scrutinize the adequacy of the operational measures of protection in force in their national legal systems, even applying the impact assessment data collected during and after the pandemic.<sup>62</sup> Taking stock of such assessment, the recovery plans should allocate adequate funding to strengthen the anti-violence services ordinarily available (such as shelters; telephone and online helpline; advertising of the existing reporting systems) to the extent that this is necessary to effectively prevent any form of gender-based violence. They should also ensure that a reinforced standard of due diligence applies in the event of future emergencies, by ensuring the availability of additional protective measures and the prioritizing of cases of gender violence in law enforcement and judicial procedures.<sup>63</sup>

<sup>59</sup> CoE, 'Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence' para 58 <[www.rm.coe.int/16800d383a](http://www.rm.coe.int/16800d383a)>.

<sup>60</sup> ECtHR, *Talpis v Italy* (n 33) para 101.

<sup>61</sup> E Tramontana, 'Women's Rights and Gender Equality During the Covid-19 Pandemic' (2021) 87 QIL-Questions Intl L 5.

<sup>62</sup> CoE, 'Explanatory Report' (n 59).

<sup>63</sup> CEDAW Committee, 'General Recommendation No 37 on Gender-related dimensions of disaster risk reduction in the context of climate change' CEDAW/C/GC/37 (7 February 2018) para 31; CEDAW Committee, 'Concluding

Finally, the full realization of gender equality in modern societies presupposes the power to make free and responsible decisions and choices on matters concerning the body and the sexual and reproductive health of women.<sup>64</sup> In fact, even before the pandemic in most States this principle was far to be implemented. As statistics show, more than 810 maternal deaths occur each day globally and 25 million unsafe abortions take place annually, resulting in approximately 47000 deaths every year.<sup>65</sup> However, in many States the situation worsened as a result of restrictive emergency laws which qualified the abortion and other reproductive and maternal health services as ‘non-essential’ and banned the access to them, fueling unsafe health treatments.<sup>66</sup> As the UN Special Rapporteur on the right to health emphasized, these restrictions amount to sex discrimination and cannot be justified under any circumstance, including health emergencies.<sup>67</sup>

The existence of a core right of access to sexual and reproductive services is provided by Article 12 of the CESC, which recognizes the right to the enjoyment of the highest attainable standard of physical and mental health, and by Article 12 of the CEDAW, which ensures the right to equal access to health services and family planning.<sup>68</sup> Both provisions bind States to ensure the unhindered access to a whole range of services, including, *inter alia*, pregnancy and post-natal related services, family

comments of the Committee on the Elimination of Discrimination against Women: Indonesia’ CEDAW/C/IDN/CO/5 (10 August 2007) para 39.

<sup>64</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, ‘Sexual and reproductive health rights: challenges and opportunities during the COVID-19 pandemic’ UN Doc A/76/172 (16 July 2021).

<sup>65</sup> WHO, ‘Maternal mortality, evidence brief 2019’ <<https://apps.who.int/iris/handle/10665/329886>>.

<sup>66</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (n 64). S De Vido, ‘Gender inequalities and violence against women’s health’ (n 56); C Moreau, M Shankar, A Glasier, S Cameron, K Gemzell-Danielsson, ‘Abortion regulation in Europe in the era of Covid-19: a spectrum of policy responses’ <<https://srh.bmj.com/content/familyplanning/47/4/e14.full.pdf>>.

<sup>67</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (n 64) para 22.

<sup>68</sup> CEDAW Committee, ‘General recommendation no 28’ (n 22); CESC, ‘General comment No 14: The right to the highest attainable standard of health (Art 12)’ (11 August 2000) and ‘General Comment No 22 on the right to sexual and reproductive health (Art 12 of the ICESCR)’ UN Doc E/C.12/GC/22 (2 May 2016).



planning, access to safe abortion and prevention, diagnosis and treatment of reproductive cancers and sexually transmitted infections.<sup>69</sup> To a certain extent, women's reproductive rights are also protected under Articles 8 and 3 of the ECHR and Article 17 of the ICCPR.<sup>70</sup>

Some reconstruction and recovery plans will invest a significant amount of financial resources in the national health systems, which may represent a unique opportunity to move forward gender equality in the protection of health. To this aim, States should not only adopt recovery measures that revert the limitations adopted during the Covid-19 emergency, but they should also allocate additional resources to improve the availability and accessibility of sexual and reproductive health services. This implies, first, that States should prohibit any form of limitation to the access to sexual and reproductive health services targeted to women, even imposing sanctions to the public and private hospitals which hinder (intentionally or for mere negligence) the access to such services. Secondly, they should organize their health services in a way to ensure that public health infrastructures provide for sexual and reproductive services of good quality, that doctors and other medical staff are sufficient and properly trained, and that the exercise of the freedom of conscience of health personnel do not prevent women from accessing to these services.<sup>71</sup> Furthermore, advancing substantive equality in this field requires

<sup>69</sup> In particular, under art 12 CESCR, States must ensure that the provision of the health services conforms to the standards of availability, accessibility, affordability, quality and non-discrimination and to a set of core obligations which include the implementation of a national strategy and action plan, with adequate budget allocation, on sexual and reproductive health. Three levels of obligations bind States: the obligation to respect which requires States to refrain from interfering with the women's freedom in this field including through reforming laws that impede the right to sexual and reproductive health; the obligation to protect, which binds States to prevent third parties from imposing obstacles to the enjoyment of these rights and the obligation to fulfil, which requires the adoption of measures that aim at the full realization of the sexual and reproductive rights. See CESCR, 'General comment No 14' and 'General Comment No 22 (n 68).

<sup>70</sup> For an overview of the relevant case law of the ECtHR: <[www.echr.coe.int/documents/fs\\_reproductive\\_eng.pdf](http://www.echr.coe.int/documents/fs_reproductive_eng.pdf)>. See also HRC, *Mellet v Ireland*, Comm No 2324/2013 (17 November 2016).

<sup>71</sup> ECtHR, *R.R. v Poland*, App no 27617/04 (ECtHR, 26 May 2011); European Committee of Social Rights, *Confederazione generale italiana del lavoro (CGIL) v Italy*, Complaint No 91/2013 (12 October 2015).



the provision of adequate information for women as well as the development of widely targeted anti-stereotyping and awareness-raising programs.<sup>72</sup>

### 5. *Concluding remarks*

The impact of the pandemic on the rights of women has been the effect not only of gender-blind emergency legislations but also of pre-existent discriminations between women and men in most national legal systems.

Therefore, it is not surprising that the international standards prohibiting discrimination and promoting equality, in spite of covering multi-form manifestations of discrimination ranging from domestic violence to inequal conditions of employment, share a comprehensive, mainstreaming and structural conceptualization of ‘gender-based reconstruction’. This means that a reconstruction policy can be defined as ‘gender-based’ or ‘gender-sensitive’ if at least all the following conditions are satisfied. First, if it covers all the three dimensions of participation, reparation and equality that have been dealt with in the sections 2, 3 and 4. Second, if it mainstreams the goals of non-discrimination (including indirect discrimination) and substantive equality in all aspects of the recovery plans, including those policies that are not directly related to gender equality. Third, if it encompasses initiatives, which specifically target gender equality, with the aim to overcome any structural discrimination and to promote social innovation.

In conclusion, an effective gender-based reconstruction requires a profound cultural and systemic change at the benefit not only of women but also – due to the important interactions between gender equality and all the other social, political and economic issues – of the society as a whole.

<sup>72</sup> ECtHR, *P. and S. v Poland*, App no 57375/08 (ECtHR, 30 October 2012).

