

# ARTICLES

## DISCRIMINATION AGAINST WOMEN: UNDER THE MAGNIFYING GLASS OF COVID

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### ABSTRACT

*The current pandemic has resulted in an exacerbation of negative inequalities faced by women at more alarming rates than men. As resources become strained, women have witnessed deepened difficulties in basic access to health-care. Moreover, there has been a rise in gender-based violence across the international community. In October 2021, United Nations High Commissioner for Human Rights Michelle Bachelet issued a press statement that COVID has led to a widening of the gap of inequalities. She called for a “New Social Contract,” one that would ensure basic human rights during and after this crisis, including the fulfilment of the right of healthcare and the right to be free from non-discrimination. These deep-rooted disparities are not a new occurrence and have existed well before COVID but have come to light given recent State policies used to combat the disease.*

*This article seeks to consider the potential international law violations under the various international law conventions concerning three gendered impacts: caused by the disease outbreak: (1) unequal access to healthcare, (2) workplace and education inequality, and (3) gender-based violence. In considering these gendered impacts, this article will discuss some of the ways to incorporate a gender analysis into state policies to improve response efforts and bridge the gap of inequality among men and women during current and future disease outbreaks and other emergencies.*

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## INTRODUCTION

Recent state policies implemented as a result of COVID have led to inadvertent discrimination against women, even though the disease itself does not discriminate.<sup>1</sup> Eleventh-grade Cambodian student Lina, whose name has been changed, had dreamt of studying accounting.<sup>2</sup> When COVID hit, however, her parents expected her to leave school to work and help pay off the family debts. When families cannot afford school costs, they are more likely to send boys to school, leaving girls like Lina at a disadvantage.<sup>3</sup>

Lina’s story is not unique. The current pandemic has exacerbated inequalities faced by women at more alarming rates than those faced by men.<sup>4</sup> Eleven million girls have been forced out of school due to COVID, leading to economic and health disparities.<sup>5</sup> Lack of funds and other resources has resulted in reallocating medical services to COVID patients. This, in turn, directly and negatively affects both pregnant women and women who are victims of domestic violence.<sup>6</sup>

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1. *7 Possible Actions – Women’s Rights and COVID-19*, U.N. Docs. Off. of High Comm’r for Hum. Rts. [OHCHR] (2020), available at [https://www.ohchr.org/Documents/Events/COVID-19\\_and\\_Women\\_Rights\\_7\\_Possible\\_Actions.pdf](https://www.ohchr.org/Documents/Events/COVID-19_and_Women_Rights_7_Possible_Actions.pdf).

2. Randy Thanthong-Knight, *Girls Are Quitting School to Work in Virus-Battered Rural Asia*, BLOOMBERG (Sept. 19, 2020), <https://www.bloomberg.com/news/articles/2020-09-19/girls-are-quitting-school-to-work-in-virus-battered-rural-asia>.

3. *Id.*

4. See Madison Levine et al., *How COVID-19 Is Making Gender Inequality Worse in Low-Income Countries – and What to Do About It*, YALE INSIGHTS (Mar. 8, 2021), <https://insights.som.yale.edu/insights/how-covid-19-is-making-gender-inequality-worse-in-low-income-countries-and-what-to-do>.

5. *A Proclamation on International Day of the Girl, 2021*, WHITE HOUSE (Oct. 8, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/08/a-proclamation-on-international-day-of-the-girl-2021/>.

6. U.N., *Gender-Based Violence and COVID-19 – UN Chief Video Message*, YOUTUBE (Apr. 5, 2020), [https://www.youtube.com/watch?v=SXxnZKom6sg&ab\\_channel=UnitedNations](https://www.youtube.com/watch?v=SXxnZKom6sg&ab_channel=UnitedNations).

In October 2021, United Nations High Commissioner for Human Rights Michelle Bachelet issued a press statement that COVID has widened social inequalities.<sup>7</sup> She called for a “New Social Contract,” one that would ensure basic human rights during and after this crisis, including the right of healthcare and the right to be free from discrimination.<sup>8</sup> As of the time of this Article, women have faced disproportionate challenges due to the pandemic. These gender inequities and harms are a concern to all.

Deep-rooted disparities are not a new occurrence. While they existed well before COVID, recent state policies used to combat the disease have granted the disparities greater visibility. Previous disease outbreaks, such as Ebola, have also put states on alert that gender disparities are likely to proliferate during urgent times.<sup>9</sup> Yet under international human rights law, states are obligated to guarantee, at all times, the right to equality and non-discrimination on the basis of, *inter alia*, sex.

In order to ensure effective policies that do not either directly or inadvertently perpetuate gender and health inequalities in contravention of international law, gender differences in tackling disease outbreaks must be considered and analyzed.<sup>10</sup> Accordingly, after a brief overview of the international law legal standards, this Article will consider three gendered impacts caused by COVID: (1) unequal access to healthcare, (2) workplace and education inequality, and (3) gender-based violence. In considering these gendered impacts, the final section of this Article will discuss ways to incorporate gender analysis in state policies to improve response efforts and bridge the gap of inequality among men and women during current and future disease outbreaks and other emergencies.

## I. BACKGROUND ON INTERNATIONAL LAW LEGAL STANDARDS

Key sources of international law consist of international conventions, customary international law, and general principles of law.<sup>11</sup> International conventions, or treaties, are agreements between states, containing obligations and protections, to which states must become parties for the treaty to be binding on them. For purposes of discrimination against women, the following treaties, *inter alia*, are relevant and will be discussed throughout this Article: The International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

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7. U.N. High Commissioner for Human Rights Michelle Bachelet, *Human Rights in Times of Challenge: A New Social Contract*, U.N. OHCHR (Oct. 7, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27621&LangID=E>.

8. *Id.*

9. Levine et al., *supra* note 4.

10. Clare Wenham et al., *COVID-19: The Gendered Impacts of the Outbreak*, 395 LANCET 846, 846 (2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30526-2/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30526-2/fulltext).

11. Statute of the International Court of Justice art. 38(1) [hereinafter ICJ Statute].

It is noteworthy to mention the relevance of the Universal Declaration of Human Rights (“UDHR”), which states: “Everyone is entitled to all the rights and freedoms set forth in [the] Declaration, without distinction of any kind, such as . . . sex . . . .”<sup>12</sup> Although the UDHR is not binding, the ICESCR and the ICCPR, which are modeled after the UDHR and are binding for states parties as treaties under international law, both contain similar provisions of non-discrimination and equality of the sexes before the law.<sup>13</sup> Moreover, the CEDAW specifically addresses and targets discrimination against women.<sup>14</sup> These treaties thus prohibit states that have entered into one of these binding treaties from engaging in discrimination against women.

Like treaties, customary law is also a binding source of international law.<sup>15</sup> Whereas a treaty can only bind states that are parties to that treaty, customary international law binds all states. Customary international law is unwritten law that arises from how states act toward one another. To prove the existence of customary international law, two elements are required: (1) that there be widespread and consistent state practice, and (2) that the practice is supported by *opinio juris*, that is, that the obligation is one of legal duty. States that are considered persistent objectors may object to the application of a rule of custom. In order to qualify under this exception, the state must object consistently and frequently before the rule of custom is established as such. Thus, the exception does not apply to any already-existing rules of customary international law. Moreover, the principle of non-discrimination generally is considered one of *jus cogens*, a peremptory norm deemed fundamental to the international community as a whole such that no state may derogate from it and no state may object to its application.

Accordingly, the principle of non-discrimination is one of customary international law to which there cannot be any persistent objectors.<sup>16</sup> Thus, discrimination against women is prohibited—mainly by treaty and by custom—by international law. Accordingly, the following sections will discuss specific rights that the pandemic has disproportionately affected, beginning with unequal access to healthcare.

## II. UNEQUAL ACCESS TO HEALTHCARE DURING COVID

Women’s healthcare has been directly impacted by the various state policies undertaken to tackle the pandemic. Yet, the right to health is an international law

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12. G.A. Res. 217 (II) A, Universal Declaration of Human Rights (Dec. 10, 1948), art. 2 [hereinafter UDHR].

13. See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, arts. 2, 3 [hereinafter ICESCR]; see also International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, arts. 3 and 26 [hereinafter ICCPR].

14. G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 18, 1979), 1249 U.N.T.S. 13 [hereinafter CEDAW].

15. U.N. Charter art. 38, ¶ 1.

16. See David Keane, *Discrimination*, OXFORD BIBLIOGRAPHIES (July 30, 2014), <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0103.xml>.

right, one that must be respected in formulating policies to address COVID. This section discusses women's right to healthcare in the context of COVID.

#### A. THE LEGAL STANDARDS

The right to health is recognized in at least 115 state constitutions.<sup>17</sup> It is also protected through various regional instruments.<sup>18</sup> In addition to national law, international law also protects the right to health. The preamble to the Constitution of the World Health Organization states: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being . . . ."<sup>19</sup> This sentiment is echoed as a binding obligation in the ICESCR, which most comprehensively guarantees "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."<sup>20</sup> To guarantee the full realization of this right, the United Nations Committee on Economic, Social, and Cultural Rights (ESCR Committee) requires state parties to ensure certain minimum rights, including access to health services.<sup>21</sup> The ESCR Committee also specifically states that this right is closely intertwined with and is dependent on the fulfilment of other rights, including the rights of non-discrimination and equality.<sup>22</sup> With respect to gender inequality, the Committee has urged state parties to develop comprehensive national strategies that consider gender perspectives in health-related policies, stating: "The realization of women's right to health requires the removal of all barriers interfering with access to health services . . . ."<sup>23</sup> In fact, in its General Comment, the Committee has suggested that failure to consider gender-sensitive approaches in healthcare policies can result in a state violating its obligations under the Convention.<sup>24</sup> The ICESCR also provides for special protection of women during and shortly after pregnancy.<sup>25</sup>

Other specialized international law treaties also address women's right to equal healthcare access. Article 12(1) of CEDAW, which is ratified by 189 states parties,<sup>26</sup> ensures equal access for men and women to healthcare services.<sup>27</sup>

17. Carol Castleberry, *A Human Right to Health: Is There One And, If So, What Does It Mean*, 10 INTERCULTURAL HUM. RTS. L. REV. 189, 203 (2015).

18. See, e.g., Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, July 11, 2003, art. 14, OHCHR, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf>.

19. Constitution of the World Health Organization, July 22, 1946, 14 U.N.T.S. 185, preamble.

20. ICESCR, *supra* note 13, at art. 12(1).

21. CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), U.N. Doc. E/C.12/2000/4 (2000), ¶ 3.

22. *Id.*

23. *Id.* at ¶ 20–21.

24. *Id.* at ¶ 52.

25. ICESCR, *supra* note 13, at art. 10(2).

26. *Status of Convention on the Elimination of All Forms of Discrimination against Women*, U. N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en) (last visited Apr. 28, 2022).

27. CEDAW, *supra* note 14, at art. 12(1).

Moreover, notwithstanding Article 12(1) of CEDAW, Article 12(2) of the same convention, as well as Article 24(2)(d) of the Convention on the Rights of the Child (CRC), ratified by 196 States Parties,<sup>28</sup> acknowledges special obligations owed to women for appropriate healthcare services during and shortly after pregnancy, similar to the ICESCR.<sup>29</sup>

Even for states that are not parties to the aforementioned treaties, the right to healthcare is now firmly established as a norm under customary international law.<sup>30</sup> Moreover, the rights of equality and non-discrimination are equally considered to form part of customary international law.<sup>31</sup> Thus, while treaty obligations cannot bind non-parties, it could be argued that all states are nevertheless bound to eliminate discrimination and to ensure equal access to healthcare under customary law obligations, keeping in mind that the right of non-discrimination is non-derogable and must therefore be respected at all times, even during public health crises.<sup>32</sup>

#### B. COVID'S EXACERBATION OF WOMEN'S ACCESS TO HEALTHCARE

In its *Guidance Note on CEDAW and COVID-19*, the Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) expressed its concern that COVID has resulted in increased inequalities and discrimination faced by women.<sup>33</sup> In particular, the pandemic has resulted in a worsening of existing gender inequalities because of bias in the allocation of health resources and funds.<sup>34</sup> With limited resources, healthcare policies have been directed at reducing COVID rates of infection. Many states have deemed sexual and reproductive health services as elective and thus non-essential due to shift in resources, thus preventing individuals from being able to access such services.<sup>35</sup> In order to combat the spread of COVID, several states prevented the performance of “nonessential” medical services, which limited access to sexual and reproductive healthcare services as well as non-essential

28. *Status of Convention on the Rights of the Child*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en) (last visited Apr. 28, 2022).

29. CEDAW, *supra* note 14, at art. 12(2); ICESCR, *supra* note 13, at art. 10(2); Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 24(2)(d) [hereinafter CRC].

30. Ashley Goren, *Treating Health Care Under the Right to Health: Why the Public Option is the Only Way to Prevent Inequitable Access to Medications from Becoming Terminal*, 4(2) HEALTH L. & POL'Y BRIEF 41, 41 (2014); Castleberry, *supra* note 17, at 190.

31. Warwick McKean, *Equality and Discrimination Under International Law*, 82(4) MICH. L. REV. 908, 912 (1984).

32. INT'L COMM'N OF JURISTS, *LIVING LIKE PEOPLE WHO DIE SLOWLY: THE NEED FOR RIGHT TO HEALTH COMPLIANT COVID-19 RESPONSES* 57-58 (2020).

33. Comm. on the Elimination of Discrimination Against Women, *Guidance Note on CEDAW and COVID-19*, UN OHCHR, <https://www.corteidh.or.cr/tablas/centro-covid/docs/Covid-19/CEDAW-Guidance-note-COVID-19.pdf> (last visited Oct. 13, 2021).

34. *Id.*

35. See *id.* INT'L COMM'N OF JURISTS, *supra* note 32, at 59; Bethany Bruno et al., *Ethical challenges for women's healthcare highlighted by the COVID-19 pandemic*, 47 J. MED. ETHICS 69 (2021).

surgeries, standing in direct contradiction with World Health Organization (“WHO”) recommendations.<sup>36</sup>

Special Rapporteur on the Rights of Women in Africa Lucy Asuagbor stated that COVID has disrupted sexual and reproductive services in African countries, giving rise to inequalities faced by women during this period.<sup>37</sup> Similarly, some states in the United States, including Texas, Louisiana, and Tennessee, have used COVID emergency orders as a justification to suspend “unnecessary” procedures concerning sexual and reproductive health.<sup>38</sup> The United Nations Working Group on Discrimination against Women and Girls issued a statement criticizing such states for “manipulating the crisis to severely restrict women’s reproductive rights.”<sup>39</sup> Such blatantly violative restrictions force women to travel to places with more lax restrictions, thus putting women at an increased risk of contracting COVID.<sup>40</sup> This creates a further divide between those women who can afford to travel to seek care and those who cannot.

To ensure compliance with international law obligations, states must ensure full access to sexual and reproductive services, and deem those services essential. Doing so would help bridge the gap between men and women and to ensure equal access to healthcare services, as required by various international law instruments and customary law obligations.

### III. WORKPLACE AND EDUCATION INEQUALITY

Healthcare is not the only right that has been impacted by the pandemic. COVID has also resulted in gendered workplace and education inequality. Like the right to health, both the right to education and the right to work are foundational human rights, and are each crucial for gender equality. Education furthers gender equality by enabling everyone to participate equally in society and defeating gender norms at an earlier age, while the right to work continues to foster this gender equality. Each right, along with how it has been affected by the COVID pandemic, is considered below in turn.

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36. Erinn C. Cameron et al., *COVID-19 and Women: Key components of SDG-5 and the estimated prevalence of modern slavery*, 10(3) INT’L PERSP. PSYCH.: RSCH., PRAC., CONSULTATION 138 (2021).

37. Special Rapporteur on the Rights of Women in Africa Honorable Comm’r Lucy Asuagbor, *Press Release of the Special Rapporteur on the Rights of Women in Africa on violation of women’s rights during the COVID-19 Pandemic*, AFRICAN COMM’N ON HUM. & PEOPLES’ RTS. (May 6, 2020), <https://www.achpr.org/pressrelease/detail?id=495Press>.

38. *United States: Authorities manipulating COVID-19 crisis to restrict access to abortion, say UN experts*, UN HUM. RTS. COUNCIL 2 (May 27, 2020), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25907&LangID=E>; cf. *Italy: Covid-19 Exacerbates Obstacles to Legal Abortion*, HUM. RTS. WATCH 2 (July 30, 2020), <https://www.hrw.org/news/2020/07/30/italy-covid-19-exacerbates-obstacles-legal-abortion>.

39. See *United States: Authorities manipulating COVID-19 crisis to restrict access to abortion*, *supra* note 38, at 2.

40. *Id.*

### A. THE LEGAL STANDARDS

Education is considered a critical path to gender equality and an empowered workforce.<sup>41</sup> Accordingly, education is a human right, one that is protected by various international conventions. Article 10 of CEDAW obliges States Parties to: “take appropriate measures to eliminate discrimination against women . . . in the field of education.”<sup>42</sup> CEDAW also includes a woman’s right to work, which encompasses “the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.”<sup>43</sup>

The CRC also recognizes the right of children to receive an education, with a view of ensuring equal access to education for all.<sup>44</sup> In 2015, the United Nations adopted 17 goals, known as the Sustainable Development Goals (“SDGs”), to be achieved by 2030.<sup>45</sup> SDG 4 relates to the achievement of quality education for all people, with the goal of eliminating any gender disparities that hinder the achievement of this goal.<sup>46</sup>

### B. COVID’S EXACERBATION OF WORKPLACE AND EDUCATION INEQUALITY

The pandemic has worsened workplace and education barriers. Lina’s story is but one example.<sup>47</sup> Before COVID, about 260 million children, or one-fifth of all children worldwide, were out of school.<sup>48</sup> Today, that number has grown to almost 1.6 billion, or 89 percent.<sup>49</sup> That is, 89 percent of children are not in school, whether in person or through remote learning. Women and girls in particular, who make up nearly 743 million of the 1.6 billion children that have been forced out of school, have experienced disparate impact.<sup>50</sup> That is mostly due to prevailing gender roles in many states, where women are primarily responsible for caregiving and household work. Thus, many girls dropped out during the pandemic due to an increasing need for them to assume domestic and caring responsibilities.<sup>51</sup> Moreover, school closures have led to an increase in transactional sex and child marriages as families struggled to maintain basic needs.<sup>52</sup> Statistics have shown that child marriage increased exponentially due to COVID. The

41. CEDAW General Recommendation No. 36 U.N. Doc. CEDAW/C/GC/36, at 1 (Nov. 16, 2017).

42. CEDAW, *supra* note 14, at art. 10.

43. CEDAW, *supra* note 14, at art. 11.

44. CRC, *supra* note 29, at art. 28(1).

45. *The SDGs in Action*, UNDP, <https://www.undp.org/sustainable-development-goals> (last visited Oct. 13, 2021).

46. #Envision2030 Goal 4: Quality Education, UNITED NATIONS, <https://www.un.org/development/desa/disabilities/envision2030-goal4.html> (last visited Oct. 13, 2021).

47. *Girls Are Quitting School to Work in Virus-Battered Rural Asia*, *supra* note 2.

48. *Out-of-School Children and Youth*, UNESCO, <http://uis.unesco.org/en/topic/out-school-children-and-youth> (last visited Oct. 13, 2021).

49. Stefania Giannini, *Covid-19 school closures around the world will hit girls hardest*, UNESCO (Mar. 31, 2020), <https://en.unesco.org/news/covid-19-school-closures-around-world-will-hit-girls-hardest>.

50. *Id.*

51. *Id.*

52. *Id.*



United Nations predicts that the pandemic will potentially result in an additional 13 million child marriages taking place between 2020 and 2030.<sup>53</sup> This sits in direct contrast with SDG 5, which advocates for the elimination of all child, early, or forced marriages, by 2030 as one component toward the goal of ending gender inequality.<sup>54</sup>

#### IV. GENDER-BASED VIOLENCE DURING COVID

Gender-based violence, one of the most serious international law violations, has proliferated due to COVID. The right to be free of gender-based violence is part of customary international law, and, thus, all states are obligated to eliminate violence against women. COVID provides no exception to this obligation.

##### A. THE LEGAL STANDARDS

The Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979, predating serious global conversations on violence against women.<sup>55</sup> Accordingly, the text of CEDAW does not address violence against women. However, two General Recommendations by the CEDAW Committee (General Recommendation No. 19 in 1992 and an updated General Recommendation No. 35 in 2017) expressly refer to violence against women as falling under the obligations of the treaty.<sup>56</sup> States parties to CEDAW are urged to adhere to these recommendations given that they interpret the provisions in the treaty and therefore offer clarification on the language and implementation of the treaty.<sup>57</sup>

In General Recommendation No. 19, the CEDAW Committee held that “[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on the basis of equality with men.”<sup>58</sup> The Committee stated that “discrimination against women” as defined in Article 1 of the Convention included gender-based violence, defined as directing violence against a woman because she is a woman.<sup>59</sup> Because the Committee held that gender-based violence falls under the Convention, such obligations may be breached even if the Convention does not mention violence.<sup>60</sup> Wrongful acts

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53. Dr. Julitta Onabanjo & Mr. Mohamed M. Malick Fall, *Urgent action needed to meet SDG to end child marriage by 2030*, UNICEF (Mar. 9, 2021), <https://www.unicef.org/esa/stories/urgent-action-needed-meet-sdg-end-child-marriage-2030>.

54. *The SDGs in Action*, *supra* note 45.

55. Marsha A. Freeman, *Addressing Gender-Based Violence: CEDAW and Political Will*, GENDER POL’Y REP. (Nov. 28, 2018), <https://genderpolicyreport.umn.edu/addressing-gender-based-violence-cedaw-and-political-will/>.

56. *Id.*; CEDAW General Recommendation No. 19: Violence against women, U.N. Doc. CEDAW/GEC/3731 (1992), ¶ 1; CEDAW General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, U.N. Doc. CEDAW/C/GC/35 (2017).

57. Freeman, *supra* note 55.

58. CEDAW General Recommendation No. 19, *supra* note 56 at ¶ 1.

59. *Id.* at ¶ 6.

60. *Id.*

under international law may arise from failure to act when a state is under a duty to act.<sup>61</sup> States would be under an obligation to ensure that women do not fall victim to gender-based violence. Thus, the Committee stated that the CEDAW requires states parties to “take positive measures to eliminate all forms of violence against women.”<sup>62</sup> These positive measures reflect the state’s duty to act and omissions would result in breach of a State’s international law obligations.

The Committee in General Recommendation No. 19 expressly states that certain rights under CEDAW may be indivisible from and interdependent with the right of women to be free from gender-based violence, including the right to the highest standard attainable of physical and mental health.<sup>63</sup> That is because gender-based violence puts women at higher risk of needing healthcare services.<sup>64</sup> Lack of appropriate fertility services imposes coercion on the part of the woman to seek unsafe methods. This constitutes a double breach of not only healthcare rights but also the right of women to be free from violence.<sup>65</sup> The CEDAW Committee expressly recognizes that such coercion should be addressed by states parties through measures that ensure proper access to medical services.<sup>66</sup> The realization of the right to health as described earlier in this Article may only be fully realized when states also ensure the elimination of violence against women.

Violence against women is a violation of CEDAW.<sup>67</sup> Thus, states parties are obligated to impose effective legal measures for combatting gender-based violence and ensuring adequate protection of women.<sup>68</sup>

The updated General Recommendation No. 35 on gender-based violence against women further establishes the binding obligation of states to prohibit gender-based violence, holding that such prohibition has now developed into customary international law.<sup>69</sup> Thus, all states are now bound by this prohibition. The Committee requires States to repeal or modify all gender-neutral laws that perpetuate existing inequalities.<sup>70</sup>

61. See Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, at art. 2, U.N. GAOR, 56th Sess., U.N. Doc. A/RES/56/83 (Dec. 12, 2001).

62. CEDAW General Recommendation No. 19, *supra* note 56, at ¶ 4.

63. CEDAW General Recommendation No. 19, *supra* note 56, at ¶ 7.

64. CEDAW General Recommendation No. 19, *supra* note 56, at ¶ 19. “In addition to the immediate trauma caused by abuse, domestic violence contributes to a number of chronic health problems, including depression, alcohol and substance abuse, sexually transmitted diseases such as HIV/AIDS, and often limits the ability of women to manage other chronic illnesses such as diabetes and hypertension.” Family Violence Prevention Fund, *The Facts on Health Care and Domestic Violence*, <https://police.ucsf.edu/system/files/domesticviolencehealthcare.pdf>. Thus, women who have experienced violence not only need immediate medical treatment but will also need medical treatment to address underlying issues resulting from the violence as well. *Id.*

65. See Maria Clark, *How COVID-19 complicated an already complex abortion access issue in the South*, USA TODAY (May 15, 2020), <https://www.usatoday.com/story/news/nation/2020/05/15/coronavirus-abortion-bans-complicated-access-texas-louisiana-alabama-tennessee/5201372002/>.

66. CEDAW General Recommendation No. 19, *supra* note 56, at ¶ 24.

67. CEDAW General Recommendation No. 19, *supra* note 56, at ¶ 24.

68. CEDAW General Recommendation No. 19, *supra* note 56, at ¶ 24.

69. CEDAW General Recommendation No. 35, *supra* note 56, at ¶ 2.

70. CEDAW General Recommendation No. 35, *supra* note 56, at ¶ 32.

## B. COVID'S EXACERBATION OF VIOLENCE AGAINST WOMEN

The negative effects of the pandemic on women has resulted in what the United Nations has dubbed a “shadow pandemic” of gender inequality.<sup>71</sup> During COVID, countries such as France, Cyprus, Singapore and Argentina witnessed a 25 to 30 percent increase in domestic violence cases.<sup>72</sup> Rates of domestic violence increased at a time when healthcare services were being compromised. School closures and lack of access to healthcare services have contributed to the violence that women have faced.<sup>73</sup> For example, one study found that because young girls have had to spend more time at home due to school closures and having to leave school, leading to added stress on parents, violence at home has increased.<sup>74</sup> This puts girls like Lina at a heightened risk for violence.

Other state policies implemented to tackle the current pandemic, including lockdown and quarantine orders, have also resulted in increased violence against women. Gender-based violence has increased due to women being forced to remain with abusive partners because of measures imposed to restrict movement, such as quarantine and lockdown orders, and access to urgent services needed to support victims having been put to a halt or severely restricted.<sup>75</sup> Disparities in healthcare policies have the potential to lead to increasing rates of domestic violence.<sup>76</sup> As resources are diverted to address COVID, care for mental and emotional well-being is minimized if not eliminated.<sup>77</sup>

With lockdown restrictions still in effect in many states, women are forced to quarantine or self-isolate with violent partners.<sup>78</sup> Providing technology-based measures to report such violations and informing women how to report during quarantine, or adopting measures that would allow women to quarantine away from violent partners, is therefore critical during this period.<sup>79</sup> The next section

71. *Ending Female Genital Mutilation by 2030*, UNITED NATIONS, <https://www.un.org/en/observances/female-genital-mutilation-day> (last visited Oct. 13, 2020).

72. U.N. WOMEN, COVID-19 AND ENDING VIOLENCE AGAINST WOMEN AND GIRLS 1 (2020), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Issue-brief-COVID-19-and-ending-violence-against-women-and-girls-en.pdf>.

73. ANANDITA PHILIPSE & MONA AIKA, UNICEF, CHILD MARRIAGE IN COVID-19 CONTEXTS: DISRUPTIONS, ALTERNATIVE APPROACHES AND BUILDING PROGRAMME RESILIENCE 2 (2020), <https://www.unicef.org/esa/media/7651/file/Child-Marriage-in-COVID-19-contexts.pdf>.

74. Francisco Cabrera-Hernández & María Padilla-Romo, *Hidden Violence: How COVID-19 School Closures Reduced the Reporting of Child Maltreatment*, IZA INSTITUTE OF LABOR ECONOMICS (July 2020), [https://conference.iza.org/conference\\_files/COVID\\_Youth/padilla-romo\\_m22310.pdf](https://conference.iza.org/conference_files/COVID_Youth/padilla-romo_m22310.pdf).

75. UNITED NATIONS, POLICY BRIEF: THE IMPACT OF COVID-19 ON WOMEN 2 (2020), <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/report/policy-brief-the-impact-of-covid-19-on-women/policy-brief-the-impact-of-covid-19-on-women-en-1.pdf>.

76. Bethany Bruno et al., *supra* note 35.

77. *See Emerging data on violence against women confirm a shadow pandemic*, U.N. WOMEN (July 1, 2021), <https://data.unwomen.org/features/emerging-data-violence-against-women-confirm-shadow-pandemic>; Ramprakash Kaswa, *The Impact of the COVID-19 Pandemic on Healthcare Service Access for the Victims of Sexual Assault*, 63 S. AFR. FAM. PRACT. J. 5367, 5367 (2021).

78. *7 Possible Actions – Women's Rights and COVID-19*, *supra* note 1.

79. *Id.*; *Human Rights Dimensions of COVID-19 Responses*, HUM. RTS. WATCH (Mar. 19, 2020), [https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#\\_Toc35446584](https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#_Toc35446584).

will delve into technology-based legal solutions and other recommendations that can be utilized to counter these inequalities that have been caused by COVID.

Another area of violence that has also troubled the international community for generations is the practice of female genital mutilation (“FGM”), colloquially known as female circumcision, which has been expected to increase due to COVID.<sup>80</sup> Being in school helps to shield girls from this heinous practice.<sup>81</sup> With school closures and families looking to gain financial security, the number of girls undergoing FGM has increased.<sup>82</sup> According to the United Nations: “FGM comprises all procedures that involve altering or injuring the female genitalia for non-medical reasons.”<sup>83</sup> It is often practiced as a precondition to marriage or to control female sexuality.<sup>84</sup> FGM is practiced mainly in 30 States in the Middle East and Africa, but it is of global concern as the practice is present in every region of the world.<sup>85</sup> The practice is carried out mainly on girls between infancy and the age of 15 and has the potential to cause serious adverse side effects, impacting physical as well as psychological health.<sup>86</sup> To date, an estimated 140 million women have undergone the practice, which means about 8,000 girls a day face risk of FGM.<sup>87</sup> It is estimated that 2 million more girls are expected to be at risk of undergoing FGM by 2030, due to COVID.<sup>88</sup> For example, with law-enforcement resources being diverted to COVID-related measures, overburdened law enforcement means less protection to women who are at risk of FGM.<sup>89</sup> This is alarming given that the practice of FGM has been deemed a violation of human rights, standing in contrast to the rights of health and integrity.<sup>90</sup> Today, it is easily one of the most pervasive forms of violence a girl or woman may face.

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80. *Ending Female Genital Mutilation by 2030*, *supra* note 71.

81. Kate Hodal, *Why Coronavirus Has Placed Millions More Girls at Risk of FGM*, *GUARDIAN* (June 16, 2020), <https://www.theguardian.com/global-development/2020/jun/16/coronavirus-millions-more-girls-risk-fgm>.

82. *Id.*

83. *Ending Female Genital Mutilation by 2030*, *supra* note 71.

84. CEDAW and CRC, Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices, ¶ 19, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (Nov. 14, 2014), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?SymbolNo=CEDAW/C/GC/31/CRC/C/GC/18](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?SymbolNo=CEDAW/C/GC/31/CRC/C/GC/18).

85. *Ending Female Genital Mutilation by 2030*, *supra* note 71; *see also* CEDAW and CRC Joint General Recommendation, *supra* note 84.

86. *Female Genital Mutilation*, WORLD HEALTH ORG. (January 21, 2022), <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>; *see generally* *Ending Female Genital Mutilation by 2030*, *supra* note 71.

87. *Female Genital Mutilation: Over 3 Million Women and Girls Are at Risk*, UN OHCHR (Sept. 2, 2012), <https://www.ohchr.org/en/newsevents/pages/femalegenitalmutilation.aspx>; *see generally* *Ending Female Genital Mutilation by 2030*, *supra* note 71.

88. *Ending Female Genital Mutilation by 2030*, *supra* note 71.

89. UNICEF, *COVID-19 Disrupting SDG 5.3: Eliminating Female Genital Mutilation 2* (Apr. 2020), <https://www.unicef.org/media/68786/file/External-Technical-Note-on-COVID-19-and-FGM.pdf>.

90. World Health Organization, *Eliminating Female Genital Mutilation: An Interagency Statement*, (2008), [https://www.un.org/womenwatch/daw/csw/csw52/statements\\_missions/Interagency\\_Statement\\_on\\_Eliminating\\_FGM.pdf](https://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf).

The CEDAW Committee in 1990 interpreted Article 12 of CEDAW so as to include prohibition of female circumcision in ensuring gender equality in health-care. SDG 5 of the United Nations is dedicated to achieving gender equality and thereby ending all discrimination faced by women.<sup>91</sup> COVID has hindered the achievement of this goal by intensifying the violence that women have faced during the pandemic.<sup>92</sup> The achievement of SDG 5, which hopes to eradicate all harmful practices, including FGM, has been disrupted.

## V. REDESIGNING POLICIES TO TACKLE GENDER INEQUITIES

COVID-related state policies (or lack thereof in certain circumstances) have affected women in all areas, from increased gender-based violence to hindering women's right to access vital health services.<sup>93</sup> Considering gender in state policies has therefore become of utmost concern in the context of the pandemic. Accordingly, state policies can: increase investment in essential online services, eliminate gender bias in resource allocation and fund diversion, ensure the safety of women, prioritize continuous education, and call for collective action to defeat gender inequality.

### A. INCREASING INVESTMENT IN ESSENTIAL ONLINE SERVICES

One of the most vital steps that states parties must take is to increase investment in essential online services, like the ability to receive academic-professional led education remotely. Because education has moved online, states parties must ensure that all children, including the most vulnerable, have access to online education. International cooperation is required to provide the means for all children to be able to continue their education during urgent times. When COVID first hit, a university in the United Arab Emirates launched a free online program to teach academic staff how to "Be an Online Tutor in 24 Hours."<sup>94</sup> That program has been made available in five different languages.<sup>95</sup> Such cooperation is necessary in order to account for discrepancies in teaching online in developed and developing countries.

Because education contributes to the realization of all other rights under international law, states must ensure equal education for all. This means not only providing the resources to access schooling remotely but also making education available for children who do not have the means to do so. According to the CEDAW Guidance Note: "States parties have an obligation to provide inclusive

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91. *The SDGs in Action*, *supra* note 45.

92. United Nations, *Goal 5: Achieve gender equality and empower all women and girls*, <https://sdgs.un.org/goals/goal5> (last visited Mar. 26, 2022).

93. *Ending Female Genital Mutilation by 2030*, *supra* note 71.

94. UNESCO, *Launching the Crash Course on Online Tutoring for Teachers*, Inst. For Info. Tech. Educ. (Apr. 3, 2020), <https://iite.unesco.org/news/launching-the-crash-course-on-online-tutoring-for-teachers/>; Albader & Al-Raqom, *The Right to Online Education in Kuwait, Revisited in Light of COVID-19*, 27 ILSA J. INT'L & COMP. L. 1, 10 (2020).

95. *Id.*

alternative educational tools free of charge, including in rural or remote areas where internet access is limited.<sup>96</sup> Only then will the realization of SDG 4, which documents the goal of providing quality education for all, be attainable.

Moreover, sexual and reproductive health providers must also continue to provide services, even if remotely. It is essential that such services be declared essential and do not stop in the wake of the pandemic. Many Planned Parenthood health centers in the United States began to provide services, like STD testing and hormone therapy, remotely in order to ensure continued care.<sup>97</sup> Similarly, sexual health centers in Canada began to operate remotely as well.<sup>98</sup>

Finally, declaring domestic violence shelters and helplines as essential services would lower the risk of domestic violence. Providing such services remotely would also help to ensure effective outreach to all women. A teenager in Poland launched a fake online cosmetic shop to offer help for victims of domestic violence who were stuck in their homes with their abusers due to COVID restrictions.<sup>99</sup> The victim would hide requests for help by pretending to shop online, and if the victim inputs her address an alert would be sent to the authorities to ensure a visit to her home.<sup>100</sup> Developing such creative methods to help victims of domestic violence are urgent, given that domestic violence has increased due to the pandemic.<sup>101</sup> The French government, for example, has implemented an initiative where women can walk into a pharmacy and ask for a special mask using the codeword “Mask 19,” which leads to the pharmacist alerting the authorities of potential cases of domestic violence.<sup>102</sup>

With COVID forcing most activities and organizations to shift online, services that are necessary for the fulfillment of gender equality across all facets must continue to be provided to women through technological means. The CEDAW Guidance on COVID-19 specifically urges states to provide such essential services remotely to continue to uphold women’s rights in the current pandemic.<sup>103</sup>

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96. See Committee on the Elimination of Discrimination Against Women, *Guidance Note on CEDAW and COVID-19*, *supra* note 33.

97. Planned Parenthood, *How do I get sexual health services during the COVID-19 pandemic?*, <https://www.plannedparenthood.org/learn/health-and-wellness/covid-19-new-coronavirus/how-do-i-get-sexual-health-services-during-covid-19-pandemic> (last visited Feb. 15, 2022).

98. Mark Gilbert et al., *Accessing Needed Sexual Health Services During the COVID-19 Pandemic in British Columbia, Canada: A Survey of Sexual Health Services Clients*, *SEXUALLY TRANSMITTED INFECTIONS* J. 1, 1 (2021).

99. Adam Easton, *Why This Teen Set Up a Prize-Winning Fake Cosmetics Shop*, BBC (Mar. 1, 2021), <https://www.bbc.com/news/world-europe-56172456>.

100. *Id.*

101. See Ivana Kottasova & Valentina Di Donato, *Women Are Using Code Words at Pharmacies to Escape Domestic Violence During Lockdown*, CNN (Apr. 6, 2020), <https://edition.cnn.com/2020/04/02/europe/domestic-violence-coronavirus-lockdown-intl/index.html>.

102. *Id.*

103. See Comm. on the Elimination of Discrimination Against Women, *Guidance Note on CEDAW and COVID-19*, *supra* note 33.

### B. ELIMINATING GENDER BIAS IN RESOURCE ALLOCATION AND FUND DIVERSION

Related to increasing investment in online services, state healthcare policies must address the potential disproportionate impacts that women might face due to gender bias in resource allocation and fund diversion. Funds and other resources are being diverted to COVID patients. States must not forget their obligations to ensure that all policies implemented take into consideration and eliminate any prevailing gender biases. The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) reported that since the pandemic first began, 60 percent of women in Asia and the Pacific reported increased barriers to accessing healthcare services.<sup>104</sup> In Europe and Central Asia, women have experienced difficulty in accessing family planning services.<sup>105</sup> UN Women has estimated that decrease in such services has led to an additional 56,700 maternal deaths, whereas before COVID that number was estimated to be around 810.<sup>106</sup> Despite the shift in resources, gender health services must be placed at the forefront to ensure prioritization during and after the pandemic.

### C. ENSURING SAFETY OF WOMEN

In addition to investment and resources, states must also continue to tackle gender-based violence, including harmful practices such as FGM and child marriages, as well as domestic violence. In order to comply with their due diligence obligations, states must continue to investigate and prosecute cases of violence against women and to make such services accessible to all women. States must prioritize the safety and wellbeing of women by providing adequate services, such as proper security measures so that women are not forced to remain in the same household as their abusers. Examples of security measures could include the establishment of additional domestic violence shelters and hotlines that victims can contact in case of urgency. A lesson can be learned from the teenager in Poland who launched a fake online shop to ensure that victims of domestic violence can contact help while pretending to shop online.<sup>107</sup> Whether masked or not, shelters and hotlines must be made available, and States must prioritize commitments to fight all forms of gender-based violence.

### D. CALLING FOR COLLECTIVE ACTION

Perhaps most importantly, states must come together to defeat gender inequality during this time of urgency. The escalating gender inequality caused by responses to COVID requires global effort. Thus, in compliance with the United Nations Charter, states must cooperate with one another in solving international

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104. Ginette Azcona et al., *From Insights to Action: Gender and Equality in the Wake of COVID-19*, UN Women (2020), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Gender-equality-in-the-wake-of-COVID-19-en.pdf>.

105. *Id.* at 2.

106. *Id.* at 3–4.

107. Easton, *supra* note 99.

problems, like gender inequality, to ensure human rights and dignity for all.<sup>108</sup> Through information-sharing and capacity building programs, states can exchange knowledge and ensure that all countries – developed and developing – have the ability to implement mechanisms to defeat gender inequality both during and after COVID. Such cooperation is the cornerstone to overcoming current and future emergencies.

#### CONCLUSION

Before the pandemic, women faced a 99-year wait before they achieved full equality with men. COVID-19 extended that waiting period by an additional 37 years, to 136 years.<sup>109</sup> The ongoing pandemic has resulted in a worsening of inequalities faced by women. Given that the pursuit of the SDGs was expected to be achieved by 2030, these statistics are not promising. Unless states work together to address the main issues faced by women across all sectors – including healthcare, household, and education/employment – the pursuit of the SDGs will not be possible.

The pandemic has widened the equality gap, and states must now cooperate in solving these issues in compliance with international law. This Article has discussed some of the violations that have persisted throughout the last year, as well as some of the ways to address such violations. The strategies discussed, however, are in no way exhaustive, and states should implement whatever methods they deem necessary to close the gap of gender equality caused by the pandemic. Only then will realization of the SDGs and state compliance with international law obligations be possible.

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108. See U.N. Charter art. 1 ¶ 3.

109. *COVID-19 threatens four 'lost decades' for gender equality*, UNCTAD (Oct. 1, 2021), <https://unctad.org/news/covid-19-threatens-four-lost-decades-gender-equality>.