

Impact of COVID-19 on women's access to justice:

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Methodology

Comprehensive desk review on **gender equality & women's access to justice** in the context of the pandemic, focusing on the European region:

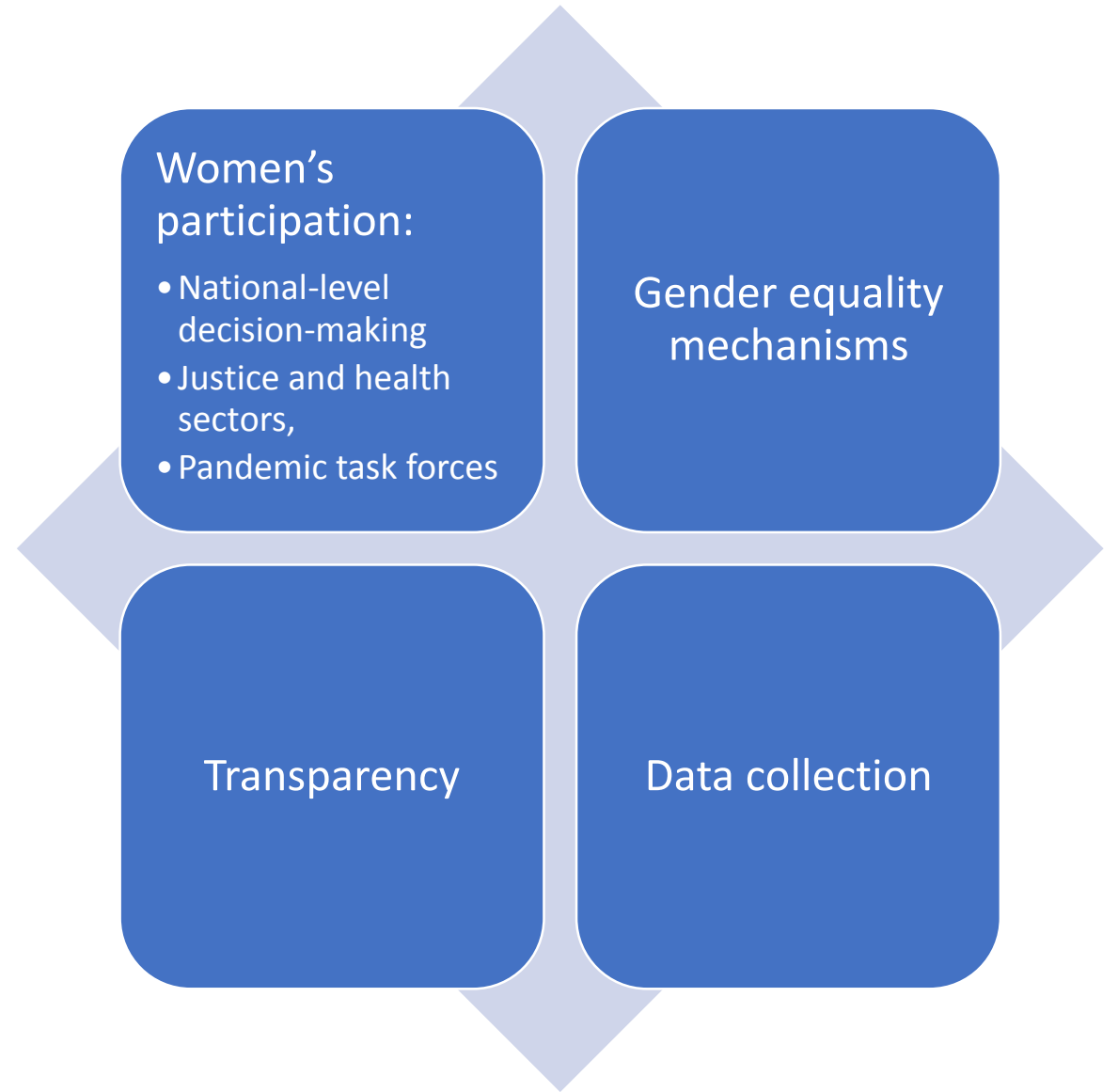
Global and regional reports by inter- and non-governmental organisations

Brief questionnaire to Council of Europe member States through the **Gender Equality Committee**: 30 member States and Morocco: 31

Research questionnaire for national researchers in Eastern Partnership:

Ukraine, Republic of Moldova, Azerbaijan, Georgia

Governance concerns



Key finding

Pre-existing inequalities: **barriers to access to justice**, deficits in women's political and labour force participation, economic empowerment, **disproportional unpaid care and domestic work burdens**, gender and other forms of **discrimination** in employment and lack of sex-disaggregated justice statistics....

exacerbated due to pandemic-related restrictions on rights

Women's access to justice

Cross-cutting: persistent gender stereotypes

Civil law

- Systematic inability to enforce alimony and child maintenance orders
- Forced mediation in divorce/GBV cases
- Lack of robust anti-discrimination law

Protection

Ineffective EBO and PO systems; no monitoring

Risk assessments not systematic

No separate risk assessment for children

Perpetrators not removed from the home

Terms are short, judges shorten them

Women's access to justice: VAW

Gender-neutral criminal codes /practice

- Prosecuting single incidents of violence (history of violence)
- Focus on physical violence /extent of injury (nature of DV)
- All forms of violence not criminalised:
 - economic & psychological violence
 - stalking
 - harmful practices

SV not defined in terms of consent in most CoE member States

No specific criminal provisions on ICT-facilitated violence

No rules on prior sexual conduct evidence

Forensic evidence

Women's access to justice: Right to a remedy

- Compensation rarely accessed
 - Via separate civil claims,
 - Burden on the victim
 - not always covered by legal aid
 - Some DV laws do not foresee compensation
 - No victims' compensation funds
- **Re-victimization**
 - Woman required to demonstrate sexual positions of rape in court for case involving sexual exploitation of a minor.
 - Judicial requalification of gang rape by members of security forces during *Sanfermines* as sexual abuse and described as "revelry and glee".
 - Victim of gang rape's report to police results in 6h interrogation and charges of "false allegations," prosecution and conviction, including on appeal, in Cyprus court. Evidence of the rape was barred.

Pandemic restrictions

- Lockdowns: 40%-277% rise in VAW incidence
- Measures to address GBV were not originally included
- Quick response where gender equality mechanisms / CSOs strong

Some countries never addressed barriers:

- EBOs/POs not implemented
- Court closures –no judicial protection
- Lack of information
- Limited/virtual legal services
- GBV services closed, limited
- Shelters closed, limited
- Perpetrators not removed
- Funding diverted
- Government administration

Innovation in facilitating reporting
Mascarilla-19 for reporting in pharmacies
Reporting in supermarkets and hospitals

Women's access to justice: Women in conflict with the law

- Victim-offender dichotomy
- Temporal requirements
- TiP non-punishment provisions limited / not implemented
- Sex worker/TiP conflation
- Many female perpetrators are victims of contemporary or prior crimes that went/go unpunished
- Low-hanging fruit
- Low-risk offenders
- economic-related challenges,
- coercive relationships with men (drug mules, trafficking);
- self-defence/victim resistance violence

Data collection

½ CoE member
States do not
disaggregated
by sex,

- age, disability, location,
**relationship to
perpetrator**

Not
harmonised
across the
justice chain

Almost no data
on women in
corrections
(early release)

Legality of pandemic restrictions

Article 4 ICCPR, Siracusa Framework

proscribed by law

pursue a legitimate aim

strictly necessary and proportionate

non-discriminatory (sex)

limited duration

subject to judicial review.

- Application of non-discrimination criteria was not applied
- Limited or no judicial review of human rights restrictions/derogations
 - Freedom of movement, expression, assembly...
 - U.K. – Sara Everard case “fact-specific proportionality assessment”

Review of marches to protest government responses, women’s rights (GBV, SRHR) in multiple countries

Criminal justice response to health crisis

New criminal offences

Heavy sanctions
(unsurmountable debt)

Expanded police powers

Heavy-handed policing

Disproportionately
affects marginalised
persons and those in
heavily-police
communities

Roma, poor WHRDs,
LGBTI, sex workers,
migrants, homeless

Imprisonment / detention

- Increase of pre-trial detention
- Migrant detention
- Changes to prison regimes failed to consider women's needs
- Women overlooked in exceptional release schemes (no data)
- DV perpetrators released in ¼ jurisdictions
- Lack of transparency on early release measures

Access to court and a fair trial

Non-derogable
Justice should be considered
“essential” service

Pandemic restrictions on
access to court:

- Prioritisation of cases
- Remote hearings

Prioritising “urgent cases”

- Inclusion of DV cases/protection orders
- Family law (alimony, child support, custody)

No prioritisation of cases or

Judicial discretion

Remote hearings

Expansion + institutionalization

Convenient, time-saving, cost-effective, work-life balance

Confidential
attorney-client
communication

Digital divides

Connectivity
challenges

Barriers to non-
verbal
communication

Right to
interpretation and
use of
intermediaries

Right to privacy
(recordings, 3rd
parties)

- Pressured witness testimony
- Security concerns for victims of GBV
- Persons with disabilities
 - Reduced ability to identify impairments (not screened)
 - Need fundamental accessibility features

Women in decision-making:

Centralised pandemic task-forces

- Only 7 CoE member States had women's representation at 30% or higher
- 2/3 of CoE member States' responses provided no data
- Four had none at the outset

Other decision-making posts

29% of national parliaments

30% of ministers in only 14 countries

30% of health ministers

63% 1st instance courts, 36% supreme courts

- 50% in only 5; 0% in two countries

- 53% physicians, 84% nurses

Gender in pandemic policymaking

- Narrow epidemiological approach
- Some included social considerations
- Limited or no gender expertise
 - women's higher levels of income loss
 - increased unpaid family care responsibilities and the consequent impact on gendered poverty rates
 - women's increased exposure to DV
 - access to essential, maternal and reproductive health services

Tools:

- Gender equality machinery
 - Gender impact assessments
- OSCE: "gender-sensitive and multi-dimensional vulnerability analysis"
- Gender-responsive budgeting

Socio-economic impacts

Socio-economic barriers to access to justice exacerbated

- Lack of access to financial resources – costs of claims and legal representation
- Increased unpaid care and domestic work obligations

Economic response packages lack gender sensitivity

- EP countries 6% of 209 programmes
- Based on formal employment, uninterrupted work history or average salary – discriminatory
- Do not recognize diverse working arrangements – domestic workers, informal workers, migrant workers, sex workers not benefiting