

2

Civil liability in the context of disaster law: a sustainable recovery based on gender equality in Latin America and the Caribbean

DEILTON RIBEIRO BRASIL

Pós-doutor em Direito pela *Università degli Studi di Messina* (Itália) e em Direito Constitucional no *Ius Gentium Conimbrigae* (IGC-CDH) pela Faculdade de Direito da Universidade de Coimbra (Portugal). Doutor em Direito (UGF). Mestre em Direito Empresarial (FDMC). Professor do Programa de Pós-Graduação (UIT).

DANIELA COSTA SOARES MATTAR

Doutoranda em Direito (UIT). Mestre em Direito (UNIFRAM). Professora de Direito Civil (UNIMINAS).

Artigo recebido em 30/6/2021 e aprovado em 9/1/2022.

CONTENTS: *1 Introduction • 2 A re-reading of civil liability in face of disaster rights from the perspective of the risk society • 3 COVID-19 ecological disaster and its financial reflections on Latin America and the Caribbean • 4 The resetting women's labor market participation and sustainable reconstruction with gender equality in Latin America and the Caribbean facing the world pandemic • 5 The new model for development and recovery in Latin America and the Caribbean post-COVID-19 under the UN'S view • 6 Conclusion • 7 References.*

ABSTRACT: This paper aims to analyze civil liability in the light of disaster law, within the paradigm of risk society, based on a sustainable recovery found on gender equality in Latin America and the Caribbean. The proposed theme is justified providing the situation of vulnerability in which humanity is, especially Latin America and the Caribbean, due to the COVID-19 pandemic. Regarding the research results, it is clear that by approaching a sustainable recovery based on gender equality, it is proposed to rebuild a new post-pandemic development model of COVID-19, in compliance with the 2030 Agenda for sustainable development. Importantly, the Sustainable Development Goals (SDGs) are at the heart of the 2030 Agenda and show an open, indivisible perspective and renewed international collaboration. In this research, among the 17 SDGs, we will address SDG 5 – Gender Equality as the basis for the reconstruction of Latin America and the Caribbean post-pandemic COVID-19. As for the methodology, the deductive method is used, through a bibliographical and documental research as a source of formation of the defended postulates.

KEYWORDS: Civil Liability • Disaster Law • Risk Society • Sustainability • COVID-19 Pandemic • Gender Equality.

Responsabilidade civil no contexto do direito dos desastres: uma recuperação sustentável baseada na igualdade de gênero na América Latina e no Caribe

SUMÁRIO: 1 Introdução • 2 Uma releitura da responsabilidade civil em face do direito dos desastres sob a perspectiva da sociedade de risco • 3 O desastre ecológico da covid-19 e os seus reflexos na América Latina e no Caribe • 4 A redefinição da participação da mulher no mercado de trabalho e a reconstrução sustentável com igualdade de gênero na América Latina e no Caribe • 5 O novo modelo de desenvolvimento e de recuperação na América Latina e no Caribe pós-covid-19 sob o viés das Nações Unidas • 6 Conclusão • 7 Referências.

RESUMO: O presente artigo tem como objetivo analisar a responsabilidade civil à luz do direito dos desastres, no paradigma da sociedade de risco, pautado em uma recuperação sustentável baseada na igualdade de gênero na América Latina e no Caribe. O tema proposto justifica-se, tendo em vista a situação de vulnerabilidade em que a humanidade se encontra, em especial a América Latina e o Caribe, em face da pandemia da covid-19. Com relação aos resultados da pesquisa, percebe-se que, sob o enfoque de uma recuperação sustentável baseada na igualdade de gênero, propõe-se reconstruir um novo modelo de desenvolvimento pós-pandemia da covid-19, em conformidade com a Agenda 2030 para o desenvolvimento sustentável. Importante salientar que os Objetivos de Desenvolvimento Sustentável – ODS são o coração da Agenda 2030, os quais mostram uma perspectiva abrangente, indivisível e uma colaboração internacional renovada. Nesta pesquisa, entre as 17 ODS, iremos abordar a ODS 5 – igualdade de gênero – como a base para a reconstrução da América Latina e do Caribe pós-pandemia da covid-19. Quanto à metodologia, utilizou-se o método dedutivo, por meio de uma pesquisa bibliográfica e documental como fonte de formação dos postulados defendidos.

PALAVRAS-CHAVE: Responsabilidade Civil • Direito dos Desastres • Sociedade de Risco • Sustentabilidade • Pandemia de Covid-19 • Igualdade de Gênero.

La responsabilidad civil en el contexto del derecho de desastres: una recuperación sostenible basada en la igualdad de género en América Latina y el Caribe

CONTENIDO: *1 Introducción • 2 Una reinterpretación de la responsabilidad civil frente al derecho de desastres desde la perspectiva de la sociedad del riesgo • 3 El desastre ecológico del covid-19 y sus consecuencias en América Latina y el Caribe • 4 La redefinición de la participación de las mujeres en el mercado de trabajo y reconstrucción sostenible con igualdad de género en América Latina y el Caribe • 5 El nuevo modelo de desarrollo y recuperación en América Latina y el Caribe post-covid-19 bajo el sesgo de las Naciones Unidas • 6 Conclusión • 7 Referencias.*

RESUMEN: Este artículo tiene como objetivo analizar la responsabilidad civil a la luz del derecho de desastres, en el paradigma de una sociedad del riesgo, a partir de una recuperación sostenible basada en la igualdad de género en América Latina y el Caribe. El tema propuesto se justifica, ante la situación de vulnerabilidad en que se encuentra la humanidad, en especial América Latina y el Caribe, frente a la pandemia del covid-19. En cuanto a los resultados de la investigación, se nota que, bajo el enfoque de una recuperación sostenible basada en la igualdad de género, se propone reconstruir un nuevo modelo de desarrollo pospandemia de la covid-19, en concordancia con la Agenda 2030 para el desarrollo sostenible. Es importante señalar que los Objetivos de Desarrollo Sostenible - ODS son el corazón de la Agenda 2030, que muestran una perspectiva integral, indivisible y una colaboración internacional renovada. En esta investigación, entre los 17 ODS, abordaremos el ODS 5 – igualdad de género– como base para la reconstrucción de América Latina y el Caribe tras la pandemia del covid-19. En cuanto a la metodología, se utilizó el método deductivo, a través de una investigación bibliográfica y documental como fuente de formación de los postulados defendidos.

PALABRAS CLAVE: Responsabilidad Civil • Ley de Desastres. Sociedad del Riesgo • Sustentabilidad • Pandemia de Covid-19 • Igualdad de Género.

1 Introduction

Civil liability is now recognized as a legal and social phenomenon and it is important to analyze it in the context in which it is inserted. More than an instrument of reparation, this institute has advanced its bases towards becoming the means by which it allows itself to reflect on prudence and the best way to act in each conduct. Thus, today's society is characterized not only by being a complex organization, but also by being an environment in which the activities developed in the search for an improvement in the quality of life, paradoxically, often generate damage as a result of its practice, configuring the so-called risk society.

From this perspective, the concept of risk society was used to establish how the contemporary order behaves in a situation of recklessness. The term was first raised by the German sociologist Ulrich Beck (1998) in his book *Risikogesellschaft* (1986), which became one of the most influential books in the 20th century social analysis and a reference on the topic concerning global risk. Ulrich Beck describes a scenario of risks and dangers inaugurated by technological evolution and consolidated in global consequences, creating the need for sharing (co)responsible behavior.

According to Délton Winter de Carvalho (2021, p. 101), “the demands imposed by the emergence of a society characterized by the production of global and invisible risks, exposes the structures of Law to a necessary communication about risk”.

It is clear, therefore, that having a risk culture involves the necessary knowledge so that it is possible not only to prevent risky situations, but also to protect oneself in cases of effective danger. It so happens that these damages are often not even fully known, which makes it difficult to seek effective reparation in this scenario of uncertainties (BALBINO, 2017, p. 261-279).

Once the theme is presented, we move on to the issue that permeates the work, which is the main contours of civil liability in light of the law of disasters, in the paradigm society, given the situation of vulnerability in Latin America and the Caribbean in face of the COVID-19 pandemic.

Structurally, this study is divided into four thematic sections, in addition to this introduction and final considerations. In the first section, entitled “A re-reading of civil liability in the face of disaster rights from the perspective of the risk society”, an analysis is made from the perspective of civil liability in the context of disaster law in the direction of moving from an industrial society to a risk society; emphasizing applicable theories, as well as the principles applied to civil liability in the context of disaster law, the principles of prevention, precaution, polluter pays, and solidarity.

In the next section, “The ecological disaster of COVID-19 and its financial consequences in Latin America and the Caribbean” demonstrates that the pandemic causes an increase in indebtedness levels, causing systemic social destabilization, according to the Economic Commission for Latin America and the Caribbean - ECLAC.

In the third section, “The setback in women’s labor market participation and sustainable reconstruction with gender equality in Latin America and the Caribbean in the face of the global pandemic”, we analyze the negative impact of COVID-19 on occupations and conditions of work for women, making it necessary for Latin America and the Caribbean to move forward with a new model that promotes gender equality and ensures women’s participation in economic sectors in decent working conditions.

In the last thematic section, entitled “The new model of development and recovery of post-COVID-19 Latin America and the Caribbean under the eyes of the UN”, the proposal for a new model of recovery based on the protection of rights and the rule of law, in line with the 2030 agenda for sustainable development.

It is imperative to mention that through the 17 SDG’s, with their 169 goals and 231 indicators, the state member of the United Nations firmly expressed that the Agenda 2030 is universal and profoundly transformative. With this agenda, old paradigms are left behind, where some countries donate while others receive conditional aid. This agenda also seeks to express the principle of common but differentiated responsibilities and build a true partnership for development in which all countries participate; and from this perspective, this research will analyze SDG 5 – gender equality – as a basis for the reconstruction of Latin America and the Caribbean after the COVID-19 pandemic.

Therefore, the methodology used for the development of the research was based on the deductive method, which allowed the approach, analysis and conceptualization of the categories considered fundamental for the development of themes related to civil liability in the context of disaster law, to the risk society and, more specifically, on sustainable recovery based on gender equality in Latin America and the Caribbean. A conceptual examination of aspects related to the theme was carried out. The bibliographical survey provided the theoretical and doctrinal bases from seminal authors, both national and international, necessary for the adequate elaboration of the work, in addition to the concepts of dogmatic order that were used.

2 A re-reading of civil liability in face of disaster rights under the perspective of the risk society

With the increase in development and consumption boosted by the post-industrial society, there were numerous consequences, including ones that highlight the increase in damage that emerged from these technological and scientific behaviors. Not only the risks of natural catastrophes that permeate the field of the imponderable, but also other risks that raise a doubt about what exactly are the dangers that could arise from each activity developed (BALBINO, 2017, p. 261-279).

The transition from an industrial society to a risk society triggers a new social structure demarcated by the production of invisible, abstract, global risks and whose potentially offensive conditions is even greater; imposing on social systems the formation of conditions structures for decision-making in risky situations allowing only assessments about their probability or improbability.

The risks and uncertainties of contemporary society, arising from technical-scientific development and globalization, have brought in negative side effects that stem from nuclear energy, nanotechnology, biotechnology, improved information systems, emergency, as well as the proliferation of the chemical industry, atomic generation and genetic manipulation provide countless examples of the destructive potential of risks marked by the globality and unpredictability of their consequences, thus generating uncertainty and prompting a new reinterpretation of civil liability in the context of disaster law from the perspective of society of risk, since the environmental demands of today's society have contributed to the development of new social, economic and political structures.

For Enrique Leff (2011), there was the emergence of a new environmental rationality under a sustainable guideline, currently being discussed in terms of State of Environmental Law or Sustainable State.

Milaré (2020, p. 76) points out that for a society to develop and distribute the necessary wealth to meet the basic and fundamental needs of its population, economic development is considered the necessary engine. There is no room for those who deny the need for economic growth. But this growth cannot be at any price, it requires planning and environmental awareness.

It is known, however, that as much as one wants to predict and avoid them, zero risk is impossible and inherent in this risk society, which produces uncertainties in the most varied forms. This time, by expanding the activities in the most different

segments, a risk culture was developed as an inherent aspect of this process, described as a risk society (BECK, 1998). Beck's definitions allow us to conclude that a risk society is a regulated society by the possibility of its own destruction due to the negative and undesirable consequences of natural events and human activity.

In accordance with Slavoj Žižek (2008, p. 435), "nature is no longer natural, the reliable dense background of our lives; it now appears as a fragile mechanism which, at any point, can explode in a catastrophic manner." He also writes: "The predominant version of ecology is the ecology of fear, fear of a catastrophe-human-made or natural-that may deeply perturb, destroy even, human civilization" (ŽIŽEK, 2008, p. 438).

Žižek (2008) still points out a scenario in which capitalism presents itself as the only possible horizon in which citizenship and economic liberalism are pillars taken as necessary alternatives of common sense and responsibility, being necessary to take a step back to win the future, opening up to new political, economic and democratic paths.

It should be noted that the concept of development risks is not peaceful in doctrine, but can be highlighted below in accordance with the teachings of Calixto:

For us, development risks are those risks not knowable by the most advanced state of science and technique at the time of the product's introduction into the consumer market and which are only discovered after a period of use of the product, as a result of the advancement of scientific studies. (CALIXTO, 2004, p. 175).

Therefore, it should be noted that the risks have always existed, and what is highlighted here are the so-called new risks, which may result in serious and immeasurable consequences to people and the environment as a result of activities driving progress, in search of a cure for the disease, greater comfort, greater technology or even convenience, embracing a self-destructive potential.

From this perspective, there is the formation of different structural conditions for assimilation and legalization; since in some cases these risks are likely to be known and specified and, in many others, they remain under difficult and imprecise delimitation.

Thus, if not even the risks are known similarly, the repair mechanisms end up not showing up on the same level as the damage that arises, being necessary to apply the precautionary principle as an instrument to impose caution as a value for decision-making in face of situations in which there is not enough certainty or

scientific knowledge for a safe diagnosis about the probabilities, consequences and severity of environmental risks (CARVALHO, 2021, p. 101).

In view of such consideration, if it is not possible to define exactly what the risks are, how to establish the triad characterizing responsibility? How to delimit the fact that caused the damage when the damage itself remains uncertain? How, finally, to establish a causal link between fact and damage? From this perspective, several institutes ended up being challenged, including civil liability, precisely because of the ability to offer response to problems that arise in face of these damages. Due to this context, the new contours of civil liability are revealed, which is awakened to respond for the impacts caused by the risks of development, demanding a reparation to face the damages developed.

In this context, it is not only the State that has the legal duty and function to preserve the environment. It is a shared responsibility of individual and collective entities, public and private. The companies are responsible for fulfilling their social function, exercising social and environmental responsibility, promoting actions to preserve the environment, according to Milaré (2020, p. 76).

Still in this line, Carvalho deals with the limitations suffered by the institute of civil responsibility. Let's see:

Civil responsibility always plays an important role in stimulating certain social behaviors, stimulating or inhibiting certain behavioral patterns. However, at the same time that it highlights its relevance, there is no way to deny the limitations presented by the civil liability system either in its function of prevention and even specifically for compensation in catastrophic damage. These difficulties arise from the fact that the effects of catastrophic damage are generally dispersed over a large number of people making it difficult for victims to file claims individually. The collection of evidence regarding the constituent bundles of the causal link is also a limiting aspect. Finally, the probability of conviction may be small given the difficulties of finding and convicting the person responsible due to necessity demo of constitutive elements of civil liability. (CARVALHO, 2015, p. 131).

From this perspective, it is clear that precisely with the obstacles that had already been mentioned when dealing with civil liability, there is also the fact that it will not always be possible to determine who are the direct and indirect victims of damages and, likewise, also determine who is responsible for causing such damage, emphasizing that the proof of the triad that characterizes civil liability in many cases will remain, thus, absolutely impaired (BALBINO, 2017, 261-279).

The dogmatic understanding that has emerged in the doctrine and jurisprudence about civil liability is demonstrated as a resonance of the right to ecological risks produced by the risk society. Let's see Carvalho:

With the construction of decisions based on notions of probability or improbability, civil liability has implemented preventive measures for dangerous and risky activities endowed with a high probability of future environmental damage. The evaluation of probability of future occurrence of damage, its severity and irreversibility can only be justified in an interaction between environmental legal institutes and the creation of plurisy descriptions (transdisciplinary expertise). (CARVALHO, 2021, p. 98).

Furthermore, it is important to highlight Milaré's notes about the risk society and sustainability:

Sustainability becomes the watchword, without which, in addition to the scarcity of resources, there are serious threats to the vital balance that currently exists. From a political point of view, sustainability can be understood as the capacity that society has to organize and sustain itself. Being a requirement for the development, according to the dictates of the social function, of the urban society. Without sustainability it is not possible to create and produce any food without affecting the environment in question. The relationship between man and the environment is very complex and it is necessary that man is willing to act in accordance with environmental protection in order to have a balance in this relationship. The measures to be taken to enable the balance between man, his production and the environment must be continuous and permanent, as it is, above all, about a change in mentality, in the way of acting and interacting. Therefore, in order to relate the environment with development, it must be observed whether the continuous planning takes into account the needs of environmental preservation and considers the particularities and diversity of the sociocultural, political, economic or ecological environment. (MILARÉ, 2020, p. 76).

The Brazilian Civil Code of 2002 contemplated civil liability in the context of disaster law in an objective way based on the principle of sociability, since the object of protection of environmental law affects several subjects, transcending locations and also generations, having as its main structural characteristic the possibility of assigning the obligation to repair or indemnify the damages without the need for proof of fault in the conduct that caused the injury.

Thus explains Steigleder:

[...] the adoption of the general clause of strict liability by the new civil code was a result of the principle he called sociability, according to which the triggering of a “social structure” that, by its nature, is capable of jeopardizing the interests and rights of others implies strict liability. (STEIGLEDER, 2011, p. 163).

Furthermore, it is important to mention that the objective application of civil liability in the event of environmental damage is not limited, however, to activities potentially involving risky activities, focusing on any activity that, directly or indirectly, cause degradations to the environment according to the normative prediction expressed in article 14, paragraph one of Law no. 6.938 of August 31st of 1981.

In this sense, this objectivity contemplates two important functions of civil liability in the context of disaster law, one refers to repairing the damage and the other to preventing, given the occurrence of irreversible damage. With a greater emphasis, the preventive function is treated as contributing to the maintenance of a balanced environment as a right for all. Thus, the main issues related to civil liability in the context of disaster law is understood as an effective way of promoting human dignity through an ecologically balanced environment, envisioning the present and the future.

Among so many points, what causes the greatest discussion is what is based on the theories of integral responsibility. It is certain that the responsibility for environmental damages is objectively given, without guilt and intent, it is also undisputed that the liability must be substantiated in its entirety, as verified pursuant to article 14, first paragraph of Law no. 6.938 of August 31st of 1981.

In the words of Cavalieri Filho (2021, p. 70) “damage is undoubtedly the great villain of civil liability; there would be no need to talk about indemnity, or compensation, if there was no damage. There can be responsibility without guilt, but there can be no responsibility without damage”.

On the basis of what was said above, Cavalieri Filho (2021, p. 146-147) adds that “in the last few decades, a movement towards the socialization of risks has been increasingly accentuated”. The author then continues by saying that “damage, due to this new approach, is no longer just against the victim but against the collectivity itself, becoming a problem for the entire collectivity.”

And in this bias, to find parameters for objectification, around the central idea of risk, several sub-theories or modalities emerged to legitimize objective civil liability, among which the theories of profit risk, created risk and risk integral.

According to the theory of profit risk, accountability would take place with the assessment of an economic benefit for the cause of the damage. Therefore, for this theory, responsible party would be the one who took advantage of the harmful activity, according to the teachings of Farias, Braga Netto and Rosenvald (FARIAS; BRAGA NETTO; ROSENVALD, 2014, p. 525).

The theory of created risk presents greater elasticity, admitting the application of exclusions, as provided for in the article 927, sole paragraph of the Brazilian Civil Code of 2002 (BRASIL, 2002), which describes the strict liability clause in the Brazilian law. Based on this modality, the agent who performs potentially dangerous activity must be held liable for the resulting damages, being it irrelevant whether they acted at fault or the activity developed by him brings him some profit.

As a corollary, it is seen that objective civil liability, based on the theories of profit risk and the risk created, is basically built under the aegis of three assumptions: damage, action or omission, attributable to the defendant and the causal link between the first two.

As Figueroa understands (2001, p. 41) the theory of risk "is based on the generation of risks for a given activity, therefore, whoever generates the risk must pay for the disastrous consequences that occur here".

According to Cavalieri Filho, the doctrine of risk can then be summarized as follows:

All damage must be attributed to the author and repaired by the person who caused it, regardless of whether or not they acted with guilt. The problem is solved in the causal relationship, no value judgment on the responsible person's fault, which is the one who materially caused the damage, is dispensed with. (CAVALIERI FILHO, 2021, p. 128).

However, the difficulty proving the causal link as a result of the risks presented in the post-industrial society or risk society, is what makes it, nowadays, one of the stormiest matters in the field of civil liability. And so, at this time of gloomy, where certainties are commonly replaced by uncertainties, where local and concrete risks are replaced by non-dimensional and abstract risks, a theory of integral risk emerges and, consequently, a relativization of the causal link (SANTOS, 2018, p. 122).

For Pereira (2018, p. 76) “the causal link is the most delicate elements of civil liability and the most difficult to be determined”. It is necessary to demonstrate that without the occurrence of the fact, the damage would not have occurred, it is not enough just the transgression of certain norms”, according to Stoco (1999, p. 151).

There is also in the doctrine the emergence of a new theory, called the aggravated strict liability theory according to Farias, Braga Netto and Rosenvald. Let's see:

In aggravated strict liability, the damage is not unrelated to the risk created by the activity of the person responsible (there is a connection between the damage and the activity performed). We can even speak, in these cases, of disregarding the causal link. But for this it is essential that there is a strict relationship between the damage and the activity performed by the offender (aggravated strict liability). Only then would it be fair and juridical to impute something so serious – duty to indemnify without a causal link – to someone. Aggravated strict liability can only be applied when the offender performs business activities whose risks show potential harm. (FARIAS; BRAGA NETTO; ROSENVALD, 2015, p. 909).

In this sense, it is estimated that, due to the complexity of environmental damage, the theory that would best safeguard the interests of present and future generations, in the context of disaster law under the sustainability plan, would be the theory of integral risk, in favor of solidarity intergenerational, since, on the one hand, new rights are recognized; on the other, new fields of law emerge.

In this context, a new field of research has emerged and is under development, focused on “a broad and interdisciplinary body of research that seeks to inform and improve decision-making related to disaster” (FARBER, 2012). Disaster Law, by definition, the object of study in this area of law, is “a complex web of obligations, duties and interests related to the prevention and assistance to catastrophic events”, in order to manage the “devastation of disasters” (CARVALHO, 2013, p. 67).

That said, it is clear that civil liability, in the context of disaster law, is now considered a duty of States that, autonomously or in collaboration with other internal or international entities, must be carried out not only for ecological reasons, but also for economics and strategies.

2.1 Principles applied to civil liability in the context of disaster law

The principles are consistent with the other rules of the legal system and exist to safeguard lives, as they have a binding character. However, they are not located in

the all-or-nothing plan, in some cases a principle prevails, which will not mean that the principle will cease to exist and be valid.

In this sense, principles are sources of law and have the function of guiding decisions supported by them. In the field of civil liability in the context of disaster law, they have great relevance for guiding the proposed issues, especially because they play a prominent role, since they are linked to the idea of preservation and intergenerational care (SOARES, 2017, p. 74). An extremely important aspect when it comes to risks is to analyze the principles of prevention, precaution, polluter pays, and solidarity.

This time the principle of prevention is used when the risk of damage is effective and real, that is, predictability is possible from the existing scientific knowledge, from the concrete risk. It is, in short, the known risk, the one which it is possible to be aware of in advance. Its purpose is to function as a means of anticipating the occurrence of damage, preventing them.

The precautionary principle is applied to cases of possible or hypothetical risks, where it takes place in face of abstract risks, that is, in situations where there is not enough certainty or scientific knowledge for a safe diagnosis about the probabilities, consequences and severity of abstract risks. In this bias, it is important to mention that the indicators of risk come from statistics, expertise, among other means to detect the possibility of danger.

On the application of the precautionary principle in the Brazilian jurisdiction, Antunes draws attention to the absence of regulatory security in the application of the principle, as seen:

Lack of express legal or administrative guidelines that discipline the application of the precautionary principle as an instrument for managing related risks to scientific uncertainty in Brazil. This situation makes the application of the PP become random and even “pamphletary”, given that there has been a hypertrophy in the use of principles in Brazilian law, with the establishment of a very insecure and, therefore, unpredictable regulatory environment. (ANTUNES, 2016, p. 85).

This is because civil liability has shown the emergence of new events that cause the incidence of civil liability without the need for effective proof of property damage, concrete and current.

Therefore, such principles are sometimes confused or compared, however, one has the fulcrum of anticipating the damage, while the other of avoiding it. Let's see the teachings of Rios and Irigaray:

These principles are not confused, although they have the same origin, since both are powerful instruments to prevent and avoid damage to the environment, and the main difference between them is in scientific uncertainty or in the degree of risk assessment of certain activities or substances. (RIOS; IRIGARAY, 2005, p. 95).

From this perspective, it is observed that both principles end up becoming an important element within the civil liability institute, as they guide a more conscious action towards avoiding damages.

Allied to these two principles already seen, it should also be highlighted, according to Antunes that:

The polluter-pays principle starts from the observation that environmental resources are scarce and that their use in production and consumption lead to reduction and degradation. Well, if the cost of reducing natural resources is not considered in the pricing system, the market will not be able to reflect scarcity. Therefore, public policies capable of eliminating market failure are needed to ensure that product prices reflect environmental costs. (ANTUNES, 2015).

Such prediction implies that the polluter must bear the environmental costs, that is, whoever contaminates must bear the costs of decontamination.

The polluter pays principle, also known as the liability principle, it is not a payment that results in an authorization to pollute, but rather a preventive search, in the sense of avoiding the occurrence of damages. The principle of polluter-pays thus represents the basis for attributing damage and internalizing costs related to pollution (SOUZA, 2021, p. 299). In other words, it determines the polluter's obligation to bear the environmental costs arising from their activity. Bergkamp (2009, p. 5) points out that the "polluter pays principles, which in turn are derived from a policy promoting sustainable development".

Furthermore, this principle is provided for in article 14, paragraph one, of Law no. 6.938 of August 31st of 1981 and establishes the responsibility of the polluter regardless of fault.

In this perspective, Bergkamp teaches:

As a result, strict liability tends to be restricted to specific situations and subject to limitations that do not apply to fault liability. Justifications proffered over time for specific liability rules include based on increased risk and risk-spreading. Recent strict liability focus so-called “cost internalization” which requires that the social cost of an activity (the externalities) are charged to that activity (internalized), so that the private costs of conducting that activity reflect the cost imposed on society currently “externalized” environmental costs caused by activities are imposed on those activities. Liability rules are one of several ways in which costs can be internalizes. Cost internalization is mandated by the grand principles driving modern environmental legislation, such as the polluter pays principle, which in turn are derived from a policy promoting sustainable development. (BERGKAMP, 2009, p. 5).

The principle of solidarity with the future also known as intergenerational solidarity relates to collective responsibility for an ecologically balanced environment for present and future generations. The very notion of combined solidarity and at the same time established under article 225 of the Brazilian Constitution of 1988 (BRASIL, 1988) moves towards effective accountability between the various social actors, such as civil society, the individual, the State, which implies the marriage effected between the branches of public and private law, according to Rezende and Silva (2016, p. 206).

Although one does not want to go to the other extreme, one cannot forget, however, that the risks faced today are not the same as the ones faced before, given the increase in their size and the high potential for harm intensify them when compared to previous moments, which demonstrates the importance of precautionary and preventive measures in the spheres in which these risks can be generated.

In this perspective, all principles turn out to be an important element within the institute of civil liability in the context of disaster law, in the risk society paradigm, as they inform the fundamental conditions for the construction of a sustainable society, capable of guaranteeing quality of life, providing a safe indicator for the performance of governments, productive sectors, society as a whole, as well as the international community in the formulation and construction of the new order based on sustainability.

That said, it is important to emphasize that the most relevant thing in any analysis is to realize that, more than an instrument of reparation, civil responsibility is a means of achieving social justice.

3 COVID-19 ecological disaster and its financial reflections on Latin America and the Caribbean

Despite such conceptual difficulties due to didactic purposes, for Carvalho (2021), disasters are constantly described and classified according to their causes, such as natural, mixed or anthropogenic. Natural disasters are those resulting immediately from natural phenomena, attributable to the outside of the social system, and are often classified into categories of geophysical, meteorological, hydrological, climatological, and biological disasters. Examples of biological disasters include epidemics and insect infestations.

The UNDRR (United Nations Office for Disaster Risk Reduction), responsible for concept standardization at the international level, describes disaster as

[...] a serious disturbance in the functioning of a community or society on any scale due to dangerous events that interact with conditions of exposure and capacity, leading to one or more of the following items: human, material, economic and environmental losses and impacts. (UNDRR, 2014).

It is important to highlight that the sense of disaster does not refer to an individual plan, but concerns events that act in the plan of society (societal disasters), generally understood as events of great loss to a substantial number of people and goods (SUGARMAN, 2007, p. 1).

For CRED (Center for Research on the Epidemiology of Disasters), disaster is the situation or event that exceeds local capacity, necessitating a request for assistance extreme at the national or international level, as well as an unforeseen and often sudden event that causes great damage, destruction and human suffering (VOS; RODRIGUEZ; BELOW; GUHA-SAPIR, 2010, p. 13).

The number of COVID-19 cases are able to demonstrate, without further analysis, that this fit as a disaster, also from the analysis of its intensity, surpassing not only the number of deaths, but the number of affected, as well as the declaration of State of Emergency. If all these attributes were not enough, the present pandemic has a very serious economic side effect. It should be noted, therefore, that we consider the pandemic caused by the new coronavirus as a real

disaster, which triggered a systemic social destabilization, resulting in widespread decrees at the international, national, state and even municipal levels of emergency and state of calamity (CARVALHO, 2020).

In view of this, the enormous scale and long-term effects caused by the coronavirus added to the possible repercussions of other risks and recent events, threaten to damage or destroy essential infrastructure and systems that sustain the lives of an important part of society. Therefore, it is urgent to move forward in adopting a systemic approach to disaster risk, especially in the Caribbean, a region highly vulnerable to the effects of climate change, with an economy dependent on foreign tourism and with high levels of indebtedness.

Furthermore, the report "the COVID-19 pandemic: an opportunity to apply a systemic approach to disaster risk in the Caribbean" highlights that disaster risk is systemic and generates complex interactions between human, social, political and economic systems, on the one hand, and natural systems on the other, demonstrating that the pandemic has the potential to unleash a succession of events that undermine life-sustaining systems in societies and economies around the world.

The region of Latin America and the Caribbean is the most indebted in the developing world. In 2020, the general government debt reached 79.3% of GDP and the external debt service represented 57% of exports of goods and services. Unlike what happens in developed economies, the economies of Latin America and the Caribbean, as well as other developing economies, face a major obstacle to creating a policy space that allows them to substantially increase their debt levels without threatening their credit ratings, exchange rate stability or the position of their international reserves.

According to the annual report Social Panorama of Latin America 2020, the pandemic has caused an unprecedented increase in poverty levels in recent decades and has had a strong impact on inequality. The report indicates that the pandemic triggers a complex economic, social and political scenario: low growth, increasing poverty and growing social tensions. Furthermore, it exposes the structural inequalities that characterize Latin American societies and the high levels of informality and lack of social protection, as well as the unfair gender division of labor and the social organization of care, which compromise the full exercise of women's rights and autonomy. It is clear, therefore, that the report shows that the adverse effect of the pandemic on people's income mainly affects the low- and lower-middle-income strata. It is estimated that, in 2020, around 491

million Latin Americans lived on incomes up to three times the poverty line. About 59 million people who in 2019 belonged to the middle strata underwent a process of downward economic mobility.

According to new projections by ECLAC (Economic Commission for Latin America and the Caribbean), as a result of the strong economic recession in the region, which will record a -7.7% drop in GDP, it is estimated that in 2020 the extreme poverty rate stood at 12.5% and the poverty rate reached 33.7% of the population. This means that the total number of poor people reached 209 million at the end of 2020, 22 million people more than in the previous year. Of this total, 78 million people were in extreme poverty, 8 million more than in 2019.

Foreign direct investment in Latin America and the Caribbean fell by 7.8% in 2019 and a collapse of about 50% is expected in 2020. In its Preliminary Balance of the Economies of the region, ECLAC forecasts an average contraction of -7.7% for 2020 – the largest in 120 years – and a recovery of 3.7% in 2021. Furthermore, America's foreign trade Latin America and the Caribbean shows its worst performance since the global financial crisis, due to the pandemic. In a new annual report, ECLAC estimates the value of the regional exports dropped -13% in 2020 and calls for deepening regional integration to boost recovery as well as reduce gender inequalities in trade.

Furthermore, the report also indicates that the global financing needs of developing countries are reaching 2,5 trillion, which exceeds the lending capacity of the International Monetary Fund (IMF), and the IMF made available to 21 countries in Latin America and the Caribbean most of its emergency loans related to COVID-19. In January 2021, this institution earmarked about 66.5 billion dollars for Latin America and the Caribbean, which represents 63% of the total disbursement (US\$ 106 billion) it earmarked for 85 developing economies. However, available data from Latin American and Caribbean countries indicate that the financing that the IFM has offered under their Rapid Financing Instrument and Rapid Credit Service programs, only covered 32.3% and 23.1% on average, respectively, of internal and external financing needs that the countries had in 2020. This was equivalent to 0.8% and 2.1% of GDP, and 6.5% and 8.0% of international reserves, respectively.

It is important to mention that, according to the report, in the current pandemic scenario, the Financing for Development Agenda presents two interlinked challenges. In the short term, the expansion of public spending should be favored and special attention paid to vulnerable groups, particularly low-income segments and the

elderly. Furthermore, short-term development finance policies are also needed to offset the detrimental effects that containment policies, based on physical distance and voluntary isolation, have on economic activity, the factory and structure of production, and the job. This means sustaining the consumption of individuals and households, for which it is necessary to adopt exceptional transitory income maintenance measures as a temporary basic income guaranteed by the State.

In the medium and long term, as the priority of policies start building a better future, instead of dealing with the urgency, the development financing program for the development should promote a countercyclical policy orientation aimed to increase employment and maintain adequate growth. In this context, the expansion of the public capital expenditures and disbursements aimed at productive transformation and the greening of the economy are fundamental to boosting the recovery work.

Furthermore, the strategy to urgently address the COVID-19 pandemic must be based on four pillars: financing, prevention, response, and data collection. In this sense, the document indicates that gaps between population groups persist: poverty is greater in rural areas, among children and adolescents, indigenous and Afro-descendants and in the population with lower levels of education. It adds that the increase in poverty and extreme poverty levels would be even greater without the measures implemented by governments to transfer emergency income.

In order to guarantee universal social protection as a central pillar of the welfare state, the region's governments implemented 263 emergency social protection measures in 2020. These reached 49.4% of the population, approximately 84 million households or 326 million people. Without these measures, the incidence of extreme poverty would have reached 15.8% and poverty 37.2% of the population.

Furthermore, the report *Latin American and Caribbean Priorities in the Global Policy Agenda on Financing for Development* proposes five policy measures to address the challenges posed by the COVID-19 pandemic. A first policy measure is the expansion and redistribution of liquidity from developed countries to developing countries through the massive issuance of Special Drawing Rights (SDRs) by the International Monetary Fund (IMF). A second policy measure focuses on strengthening regional cooperation, increasing the lending capacity of regional, subregional and national financial institutions, and strengthening their links with multilateral development banks. A third policy measure consists of access to greater financing, which must be complemented by an institutional reform of the multilateral debt architecture, including the creation of an international sovereign

debt restructuring mechanism and a multilateral credit rating agency. A fourth policy measure is to provide countries with a set of innovative instruments aimed at increasing the debt repayment capacity and avoiding excessive indebtedness. And as a fifth policy measure, it proposes to integrate liquidity and debt reduction measures into a development financing strategy aimed at building a better future, based on a sustainable and equitable reconstruction process.

4 The resetting women's labor market participation and sustainable reconstruction with gender equality in Latin America and the Caribbean facing the world pandemic

Poverty and extreme poverty reached levels in 2020 in Latin America that were not observed in the last 12 and 20 years, respectively, as well as a worsening of inequality in the region and in the rates of employment and participation in the labor market, due to the COVID-19 pandemic.

In this sense, in a context of deep inequalities, high levels of informal work and fragmented health services, the most vulnerable ones are, once again, the most affected. Women, the elderly, people with disabilities, indigenous people, Afro-descendants, as well as migrants and refugees also suffer disproportionately due to the multiplication of their vulnerabilities.

Complements Farber:

The disproportionate suffering of women demonstrates another disturbing pattern in big disasters. As noted by disaster researchers, women are more likely to be the front-line caregivers, thus performing more of emotional work involved in disaster recovery. Some researchers maintain that through urban displacement and migration, environmental degradation, migration, poverty and other limits to choice. The NRC recognizes that being female is a risk factor for experiencing post disaster psychological trauma. There are also reports that disaster exacerbates the difficulties of domestic violence. (FARBER, 2007, p. 305-306).

Thus, the COVID-19 pandemic negatively impacted women's occupations and working conditions, generating a setback of more than a decade in women's labor market participation levels in the region, according to the COVID-19 special report no. 9: Women's Economic Empowerment in Sustainable Recovery and Equality.

The report warns that the regional unemployment rate stood at 10.7% at the end of 2020, which represents an increase of 2.6 percentage points compared to the value registered in 2019 (8.15). It adds that the general fall in employment and

the exit of the labor force has more intensely affected women, informal workers, young people, and migrants.

According to the document, the participation rate in the labor market of women was 46% in 2020, while that of men was 69% (in 2019 it was 52% and 73.6%, respectively). It was also calculated that the unemployment rate of women reached 12% in 2020, a percentage that rises to 22% if the same rate of participation in the labor market for women is assumed in 2019. In 2020, as the study explains, there was a resounding withdrawal of women from the labor force, who, having to meet the demands of care in their homes, did not return to search for a job. The fall in regional gross domestic product (GDP) (-7.7% in 2020) and the impact of the crisis on employment are negatively affecting household income. The United Nations Regional Commission estimates that around 118 million Latin American women would be in poverty, 23 million more than in 2019.

The report also highlights that paid domestic work, which is characterized by high precariousness and the impossibility of being carried out at a distance, has been one of the most affected sectors by the crisis. In 2019, before the pandemic, around 13 million people were engaged in paid domestic work (of which 91.5% were women). In total, this sector employed 11.1% of the employed women in the region. However, in the second quarter of 2020 employment levels in paid domestic work dropped -24.7% in Brazil; -46.3% in Chile; -44.4% in Colombia; -45.5% in Costa Rica; -33.2% in Mexico; and - 15.5% in Paraguay.

Furthermore, the Economic Commission for Latin America and the Caribbean is concerned about the persistence of gender-based violence against women and girls in the region due to the high rates of femicide, according to the latest official data reported to the Gender Equality Observatory of America. In 24 countries of Latin America and the Caribbean 4,640 cases of 55 femicide were registered, 18 of which were Latin American and 6 Caribbean. The situation of women worsened during isolation, which limited their access to support networks and care services, according to a document published in the framework of the International Day for the Elimination of Violence against Women.

According to these documents from 6 countries in the region, between 60% and 76% of women, about 2 in every 3, were victims of violence for reasons of gender in different areas of their lives. Furthermore, on average 1 in 3 women was victim or experienced physical, psychological or sexual violence by a perpetrator who was or is their partner, which leads to femicide. Importantly, that governments

in the region have informed the ECLAC observatory of more than 90 measures to address violence against women in this tragic period.

It emphasizes that, in order to overcome gender-based violence against women and girls, policies that address inequality are needed, such as discriminatory and violent patriarchal cultural patterns. And it is from this perspective that authorities from the mechanisms for the advancement of women in Latin America and the Caribbean defended the incorporation of the perspective of gender in the pandemic response policies to overcome the multiple forms of violence and inequality affecting women, and reaffirmed their commitment to take all necessary measures to accelerate the effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Declaration and Platform for Action, and the Regional Gender Agenda to Contribute to a Transformative, Sustainable and Gender-Equality Recovery.

The authorities, through their declaration, also proposed to redouble efforts and commitment so that gender parity is a State policy and to ensure women's access under equal conditions to decision-making positions in all branches and State spheres, including the judiciary, and in all national, subnational and local governments, through legislative and electoral initiatives and measures that guarantee the equal representation of women in all spheres and levels of political power.

That said, it is essential for Latin America and the Caribbean to move forward with a new fiscal pact that promotes gender equality, that guarantees women participation in sectors of the economy under decent work conditions; dodging the deepening of poverty levels, the burden of unpaid work and reduced funding for equality policies; avoiding setbacks and facing gender inequalities. In this sense, it is essential to implement public policies that contribute to a sustainable recovery with gender equality in Latin America and the Caribbean.

5 The new model for development and recovery in Latin America and the Caribbean post-COVID-19 under the UN's view

Latin America and the Caribbean have become the center of the pandemic as COVID-19 spreads around the world. Rebuilding better requires a transformation of the development model in Latin America and the Caribbean, in a region where inequality has become unsustainable; this means developing comprehensive social protection systems accessible to all. It means creating a fair tax system, promoting

decent work, strengthening environmental sustainability, and social protection mechanisms. It means regional economic integration and that women participate fully and safely in public and economic life.

Furthermore, Farber (2007) stresses that the relationship between disasters and social disadvantages deserves special attention, as sparse current research clearly indicates that factors such as race and poverty, in addition to age and gender, make a significant difference when it comes to the social consequences of a disaster. In this sense, the author asserts that "those who already suffer from the societal disadvantage are more likely to be in harm's way, and they are less likely to be able to take defensive action or to reconstruct their lives after a disaster" (FARBER, 2007, p. 302).

Still, Farber (2007) teaches that the environmental crisis is a crisis of knowledge. It is necessary to assess the intergenerational effects, which is one of the greatest challenges of environmental regulation towards sustainable development. Thus, it will only be possible to balance the obligations to future generations and the sacrifices to be made by today's society if there is a change in rationality.

In this sense, the coronavirus pandemic crisis is an opportunity to advance towards a major push towards sustainability that allows for a new model of the development based on the 2030 Agenda for Sustainable Development as a way out of the current crisis.

In this perspective, Enrique Leff points out that:

The construction of a sustainable future, without a doubt, requires an open dialogue, capable of accepting visions and negotiating antagonistic interests in the appropriation of nature; but it will not produce consensus based on homogeneous visions, nor will it limit itself to negotiating emerging conflicts. (...) From the perspective of sustainability, the idea of the future – of a sustainable future – reappears in the field of history, of a process of social transformation guided by a time of transgenerational solidarity. (LEFF, 2003, p. 14-28).

In view of this, the 2030 Agenda represents a historic opportunity for Latin America and the Caribbean, as it includes topics of high priority for the region, such as the eradication of extreme poverty, the reduction of inequality in all its dimensions, an inclusive economic growth with decent work for all, sustainable cities and climate change.

Furthermore, the 2030 Agenda is the result of the broadest and most participatory consultation process in the history of the United Nations and represents the emerging

multilateral consensus between governments and diverse actors, such as civil society, the private sector and academia. Likewise, the normative bases for this multilateral agenda depart from the 1945 United Nations letter to the more than 40 references to UN conferences and conventions approved so far, enabling the reconstruction of Latin America and the Caribbean based on the transforming model of sustainability.

Thus, Farber points out about rebuilding:

Rebuilding does not just involve physical infrastructure, but also the creation of new social and legal infrastructure to increase resilience. It offers the opportunity for improved urban design and for relocation away from high-risk areas, an issue not yet covered by international law. It also provides an incentive to improve disaster response mechanisms through improved training and organizational reforms. Rebuilding should create an opportunity to think about mitigation: changes in land use and infrastructure in order to reduce the expected harm from disasters. With it, the cycle begins again. (FARBER, 2013, p. 48).

Thus, in search of the reconstruction of Latin America and the Caribbean, representatives of the government of 33 countries of Latin America and the Caribbean, 20 agencies, funds and programs of the United Nations, intergovernmental organizations, financial institutions from the region, academic and private sectors participated in and endorsed the commitment to implement the 2030 Agenda for Sustainable Development and move towards a better future.

In this follow-up, it can be seen that the 2030 Agenda is a civilizing agenda, which places people's dignity and equality at the center and calls for a change in our development style. It is a universal commitment acquired by developed and developing countries, within the framework of a strengthened global alliance, which takes into account the means of implementation to effect changes and prevent disasters arising from extreme natural events, as well as mitigation and adaptation to climate change.

Thus, in facing the crisis, proposals that include the provision of an emergency basic income equivalent to a poverty line for six months for the entire population in poverty; increase the fiscal space in the short-term to design mechanisms that protect income, employment and companies, especially small and medium-sized ones; formulate responses in the medium-term for a post-COVID-19 world that will require changes in the structure of production, with greater equality and sustainability; promote a welfare state that includes universal access to rights, a universal income and a care system; and promoting regional and sub-regional

integration are strategies for a major push towards sustainability in a new style of development, at the heart of which are equality and sustainability.

From this perspective, it is necessary to prepare for the reconstruction of the post-COVID-19 pandemic not only in Latin America and the Caribbean, but as well as of all mankind, and thus, one should observe the challenges proposed by Farber (2012): a) finding techniques for planning in face of uncertainty; b) rethinking property rights and land use planning; c) confronting issues of social justice in climate adaptation and disaster preparation; d) creating coherent international laws governing emergency transnational emergency responses; e) creating new forms of risk spreading.

Thus, the great impetus for sustainability is an approach based on policy coordination to mobilize and accelerate sustainable investments that drive a new virtuous cycle of economic growth, with job and income generation; as well as reducing inequalities and structural gaps, maintaining and regenerating the natural resource base on which development depends.

Therefore, according to the report, rebuilding better implies rebuilding with equality and resilience, among other things applied to active fiscal policies that take into account existing inequalities and allowing to mitigate the disproportionate effects of the COVID-19 pandemic, for example, on women, establishing at all levels political pacts based on feminist principles of redistribution of power, time, work, and resources. In this sense, the objective is to promote a development model that prioritizes equality and environmental sustainability.

In this context, Farber points out that:

The relationship between disasters and societal disadvantage deserves further study from social scientists. Current research on the subject is sparse, but what we know at this point is enough to clearly indicate that race and poverty, along with age and gender, make a significant difference. Those who already suffer from the societal disadvantage are more likely to be in harm's way, and they are less likely to be able to take defensive action or to reconstruct their lives after a disaster. (FARBER, 2007, p. 302).

Furthermore, the report concludes that the complexity of these situations requires an approach that transcends traditional and compartmentalized methods of disaster risk reduction. In order for efforts to be effective, it is essential to abandon the simplistic model that ignores the systemic characteristics of extreme phenomena. This holds true for institutional risk management arrangements, community organizations, research initiatives and policy formulation. Thus, planning

for development can play a key role in helping to incorporate a systemic approach to risk management.

To advance towards a transformative recovery in line with the 2030 Agenda for sustainable development requires the need to close the current financial, climate and health asymmetries present in the world, ensure financing for development and create global public goods and, among them, an equitable vaccination against COVID-19, according to the fourth meeting of the Forum of Latin American and Caribbean Countries on sustainable development (ECLAC, 2021).

However, it is necessary to observe that 17 SDGs – Sustainable Development Goals' with their 169 targets and 231 indicators, especially SDG no. 5 – Gender Equality - foreseen in the 2030 Agenda planning and monitoring tools for countries, both at the national and local levels, which will allow each country to seek its path towards sustainable, inclusive development in harmony with the environment, through public policies and planning, budgeting, monitoring and evaluation instruments.

In this way, the SDGs are civilizers, contemplating a world of universal respect for equality and not for discrimination between and within countries, including with regard to equality, by confirming the responsibility of all States: "Respect, protect and promote human rights, without distinction of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or any other condition". And yet transformative, offering a paradigm shift in relation to the traditional development model towards sustainable development that integrates economic, social and environmental dimensions.

Therefore, under the special view of the United Nations, rebuilding better requires the strengthening of democratic governance, the protection of human rights and the rule of law, in compliance with the 2030 Agenda for Sustainable Development; it is certain that the causes of inequality, instability policy and the displacement of people have to be revised, with a greater participation of minority groups in decisions that affect disasters, since their participation has been limited or even non-existent, as Farber (2007, p. 308) points out: "participation by members of minority groups in decisions affecting disaster planning has been limited in the same way as their participation in environmental decisions". As common social disadvantages create their own long-term, low-visibility forms of disaster.

Furthermore, Agenda 2030 thus represents a multilateral consensus between governments and various actors, capable of reconciling national policies in favor

of employment with rights and development with the expansion of international trade and the prevention of conflicts. Represents commitments that recognize people, peace, shared prosperity, the planet and alliances as the main shared and universal leaders, on which a new battery of global, regional and national strategies and policies must be based, whose main objective is to move together towards a more egalitarian society, that is, the 2030 Agenda offers a transformative vision for sustainable development centered on people and the world, on the basis of human rights and the dignity of people.

That said, there is a clear need to adhere to international cooperation, multilateralism and solidarity in the global response to the current COVID-19 pandemic and its consequences, with the objective of recovering and rebuilding a more egalitarian, resilient and sustainable world and in the pursuit of promoting sustainable development, including inclusive economic growth, protecting the environment, social inclusion, fighting inequalities within and between countries, as well as respecting and promoting all human rights and fundamental freedoms for all.

6 Conclusion

Civil liability in the context of disaster law is embodied in a different modality from other forms of civil liability, given the breadth and uniqueness of the property it protects. For this reason, it is not only necessary to use civil liability as an instrument for repairing damages, as a corrective function, as it occurs in its classical sense, but also as a legal element of abstract risk management, having incidence prior to the occurrence and execution of the damages, imposing the fulfillment of preventive measures on the agent.

Among the peculiarities of the application of civil liability in the context of disasters, the use of the modalities of risk theories divide the opinions of authentic interpreters, and decisions that apply the theory of integral risk are verified in the Brazilian courts.

Principles constitute a sure path to the search for effectiveness, they assume an important role in the sense of reaffirming the need for prevention and precaution against environmental damage, its normative structure further emphasizes its reach and urgency of its use.

In view of the ecological disaster of the COVID-19, the United Nations, and in particular ECLAC, bold and innovative proposals were put on the table, as a form of a new model of development and recovery in Latin America and the Caribbean,

based on a sustainable reconstruction grounded in gender equality. In this sense, it proposes an emergency basic income for the most vulnerable ones, tax exemptions and grace periods for small and medium companies, a digital basic basket, a new political and fiscal pact to guarantee universal social protection and a green energy transition in the region, among others.

These actions include: building coherent policies and institutional capacities; access to finance (critical for global recovery and economic growth); the need for international financial institutions to adopt new approaches to risk and reduce the pro-cyclical nature of financial flows to countries; and building credible development partnerships with the support of the United Nations Development System.

Furthermore, they emphasize that the orientation of the policies of the countries of Latin America and the Caribbean is also fundamental for the construction of a better future, based on a social and political consensus that allows the implementation of ambitious reforms in order to undertake a process of sustainable reconstruction and egalitarian, in search of just, sustainable societies that face inequality and guarantee citizenship and rights.

That said, from four scenarios it was proven through the research results that it is necessary to rebuild a new post-COVID-19 pandemic development model in Latin America and the Caribbean based both on sustainable recovery and gender equality, accordingly with the 2030 Agenda for Sustainable Development, in the light of the "Sustainable Development Goals" – *SDGs*, especially *SDG* no. 5, in search of a transformative recovery, having as source the application of human rights.

It remains to be mentioned that the 17 *SDGs* show a comprehensive, indivisible vision and a renewed international collaboration expressing the principle of common and differentiated responsibility, building, in this sense, a true partnership for the development of all countries that participate in the 2030 Agenda, being certain that the *SDG* no. 5 proposes to achieve gender equality and empower all women and girls, with women playing a vital role in full and equal participation in leadership in all areas of sustainable development.

7 References

ANTUNES, Paulo de Bessa. Precautionary Principle on Brazilian Environmental Law. **Revista Veredas do Direito**, Belo Horizonte, v. 13, n. 27, Sept./Dec. 2016, p. 85. Available at: <http://revista.domhelder.edu.br/index.php/veredas/article/view/877>. <https://doi.org/10.18623/rvd.v13i27.877>. Accessed on: 21 Sept. 2021.

ANTUNES, Paulo de Bessa. **Environmental damage**: a conceptual approach. 2. ed. São Paulo: Atlas, 2015.

BALBINO, Tamara Estéfane Martins; BRASIL, Deilton Ribeiro. Responsabilidade civil e sociedade de risco: uma releitura no contexto do direito dos desastres. **Revista de direito UFMS**, Campo Grande/MS, v. 3, n. 2, jul./dez. 2017, p. 261-279. Available at: <http://periodicos.ufms.br/index.php/revdir/article/view/4168/4145>. DOI: <http://dx.doi.org/10.21671/rdufms.v3i2.4168>. Accessed on: 19 May 2021.

BECK, Ulrich. **La sociedad del riesgo**: hacia una nueva modernidad. Translation by Daniel Jimenez. Buenos Aires: Editorial Paidós, 1998.

BERGKAMP, Lucas. **Liability and Environment Private and Public Law Aspects of Civil**: liability for environmental harm in an international context. Available at: <http://academic.oup.com/jel/article-abstract/15/3/427/388489?redirectedFrom=fulltext>. DOI: <http://doi.org/10.1093/jel/15.3.427>. Accessed on: 19 May 2021.

BRASIL. Constituição (1988). **Constituição da República Federativa do Brasil**. Brasília. Senado Federal, 1988. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm. Accessed on: 19 May 2021.

BRASIL. Lei nº 10.406, de 10 de Janeiro de 2002. Institui o Código Civil. **Diário Oficial da União**. Brasília, jan. 2002. Available at: http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm. Accessed on: 19 May 2021.

BRASIL. **Lei nº 6.938, de 31 de Agosto de 1981**. Dispõe sobre a Política Nacional do Meio Ambiente, seus fins e mecanismos de formulação e aplicação, e dá outras providências. Brasília, 31 Ago. 1981. Available at: http://www.planalto.gov.br/ccivil_03/leis/16938.htm. Accessed on: 19 May 2021.

CALIXTO, Marcelo Junqueira. **A responsabilidade civil do fornecedor de produtos pelos riscos de desenvolvimento**. Rio de Janeiro: Renew, 2004. ISBN: 8571474516.

CARVALHO, Délton Winter de. Future environmental damage: civil liability for environmental risk. **Revista de direito ambiental**, ano 12, n. 45, p. 62-91, jan./mar. 2007.

CARVALHO, Délton Winter de. **Teoria do dano ambiental futuro**: civil liability for environmental risks. Law and Environment, Lisbon, n. 1, p. 71-105, 2008. Available at: <http://revistas.lis.ulusiada.pt/index.php/lda/article/view/2108/2228>. Accessed on: 19 May 2021.

CARVALHO, Délton Winter de. **Desastres ambientais e sua regulação jurídica**: deveres de prevenção, resposta e compensação ambiental. *Revista dos Tribunais*, 2015.

CARVALHO, Délton Winter de. **A natureza jurídica da pandemia COVID-19 como um desastre biológico**. Available at: <https://www.conjur.com.br/2020-abr-21/direito-pos-graduacao-natureza-juridica-pandemia-COVID-19-desastre-biologico>. Accessed on: 19 May 2021.

CARVALHO, Délton Winter de; DAMACENA, Fernanda Dalla Libera. **Direito dos desastres**. Porto Alegre: Livraria do Advogado, 2013. p. 67.

CAVALIERI FILHO, Sérgio. **Programa de Responsabilidade Civil**. 15. ed. São Paulo: Atlas, 2021.

ECLAC. **Economic commission for Latin America and the Caribbean**. Available at: <http://www.cepal.org/es>. Accessed on: 19 May 2021.

CRED. **Center for research on the epidemiology of disasters**. Available at: <http://www.cred.be>. Accessed on: 19 May 2021.

FARBER, Daniel. Disaster law and emerging issues in Brazil. **Revista de estudos constitucionais, hermenêutica e teoria do direito (RECHTD)**, v. 4, n. 1, 2012. Available at: <http://www.revistas.unisinos.br/index.php/RECHTD/article/view/rechtd.2012.41.01/932>. Accessed on: 19 May 2021.

FARBER, Daniel A. Disaster Law and Inequality. **Revista HeinOnline**, v. 25, p. 297-322, 2007. Available at: <http://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1122&context=lawineq>. Accessed on: 19 May 2021.

FARBER, Daniel A. Catastrophic risk, climate change and disaster law. **Asia Pacific Journal of Environmental Law**, v. 16, p. 37-54. Available at: <http://lawcat.berkeley.edu/record/1125796/files/fulltext.pdf>. Accessed on: 19 May 2021.

FARIAS, Cristiano Chaves; BRAGA NETTO, Felipe Peixoto; ROSENVALD, Nelson. **Novo tratado de responsabilidade civil**. São Paulo: Atlas, 2015. p. 909.

FARIAS, Cristiano Chaves; BRAGA NETTO, Felipe Peixoto; ROSENVALD, Nelson. **Curso de direito civil**. Salvador: Jus Podivm, 2014. v. 3.

FIGUEROA, Dante. Notes on civil liability for environmental damage. **Revista de Derecho, Criminología y Ciencias Penales**, n. 3, p. 39-63, 2001. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1457950. Accessed on: 19 May 2021.

HERNÁNDEZ, Fante Figueroa. Notas sobre la responsabilidad civil por daño ambiental. **Revista de derecho, criminología y ciencias penales**, n. 3, 2001.

LEFF, Enrique. Sustainability and environmental rationality: towards 'another' environmental sociology program. **Revista Mexicana de Sociología**, v. 73, n. 1, 2011.

LEFF, Enrique. Environmental rationality and knowledge dialogue: meanings and paths for a sustainable future. **Desenvolvimento e Meio ambiente**, n. 7, jan./jul. 2003, p. 13-40. Available at: <https://revistas.ufpr.br/made/article/view/3042/2433>. Accessed on: 19 May 2021.

MILARÉ, Édis. **Environmental Law**: doctrine, jurisprudence, glossary. 12. ed. São Paulo: Revista dos Tribunais, 2020.

ORGANIZATION OF THE UNITED NATIONS. **Countries approve ECLAC proposal to transform development in Latin America and the Caribbean after COVID-19**. Available at: <http://brasil.un.org/pt-br/98243-paises-aprovam-proposta-da-cepal-para-transformar-desenvolvimento-da-america-latina-e-do>. Accessed on: 19 May 2021.

PEREIRA, Caio Mario da Silva. **Civil liability**. 12. ed. Rio de Janeiro: Forense, 2018.

REZENDE, Elcio Nacur; SILVA, Larissa Gabrielle Braga. Environmental civil liability in Bolivia. **RVMD**, Brasília, v. 10, n. 2, jul./dez. 2016, p. 196-220, Available at: <http://www.fcr.edu.br/ojs/index.php/saberesamazonia/article/view/138>. DOI: <http://doi.org/10.31517/rsa.v2i5.138>. Accessed on: 19 May 2021.

RIOS, Aurélio Virgílio Veiga; IRIGARAY, Carlos Teodoro Huguene (org.). **O direito e o desenvolvimento sustentável**: curso de direito ambiental. São Paulo: Peirópolis, 2005.

SANTOS, Renato Augusto; BRASIL, Deilton Ribeiro. Environmental civil liability: reflections on sustainability, compensation and prevention. **Revista de direito público**, Londrina, v. 13, n. 3, p. 111-129, dez. 2018. Available at: <http://www.tce.rj.gov.br/biblioteca/scripts/bnweb/bnmapi.exe?router=upload/34574>. DOI: <http://doi.org/10.5433/24157-1081104-1>. Accessed on: 19 May 2021.

SOARES, Denise Maria; BRASIL, Deilton Ribeiro. Environmental civil liability: for the realization of everyone's right to an ecologically balanced environment. **Revista Saberes da Amazônia**, Porto Velho, v. 2, n. 5, p. 72-73, 2017. Available at: <http://www.fcr.edu.br/ojs/index.php/saberesamazonia/article/view/138/232>. DOI: <http://doi.org/10.31517/rsa.v2i5.138>. Accessed on: 19 May 2021.

SOUZA, Paulo Roberto Pereira de. The principles of environmental law as instruments. **Revista Veredas do Direito**, v. 13, n. 26, maio/ago. 2016, p. 289-317. Available at: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/705>. DOI: <http://doi.org/10.18623/rvd.v13i26.705>. Accessed on: 19 May 2021.

STEIGLEDER, Annelise Monteiro. **Environmental civil liability**: the dimensions of environmental damage in Brazilian law. 2. ed. Porto Alegre: Livraria do Advogado, 2011.

STOCO, Rui. **Civil liability and its jurisprudential interpretation**: doctrine and jurisprudence. 4. ed. São Paulo: Revista dos Tribunais, 1999.

SUGARMAN, Stephen D. **Roles of Government in Compensating Disaster Victims**. Berkeley: UC Berkeley Electronic Press, 2007. p. 1. Available at: http://www.law.berkeley.edu/sugarman/Disaster_losses_ils_final.pdf. Accessed on: 19 May 2021.

UNDDRR. **United Nations office for disaster risk reduction**. Available at: <http://www.preventionweb.net/organizations/1171>. Accessed on: 19 May 2021.

UN-SPIDER. **United Nations office for outer space affairs**. Available at: <http://www.un-spider.org/node/7661>. Accessed on: 19 May 2021.

VOS, Femke; RODRIGUEZ, Jose; BELOW, Regina; GUHA-SAPIR, D. **Annual disaster statistical review 2009**: the numbers and trends. Brussels: Cred, 2010.

ŽIŽEK, Slavoj. **In defense of lost causes**. Available at: http://edisciplinas.usp.br/pluginfile.php/4115415/mod_resource/content/1/Em%20defesa%20das%20causas%20perdidas%20-%20Slavoj%20Zizek.tif. Accessed on: 19 May 2021.