

# Ensuring Access to Justice in the Context of COVID-19

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## Introduction<sup>2</sup>

Addressing COVID-19 is foremost a public health concern. However, the impact of the crisis and the legal and policy responses developed by states to counter the spread of COVID-19 have much wider ramifications that will affect a broad range of human rights, including the ability of people to access justice in a timely, fair and effective manner. The crisis also presents specific justice ‘needs’, such as addressing the rise in gender-based violence and making additional institutional reforms to strengthen the effectiveness of the justice chain in a radically shifted social context.

A key concern is that the economic fallout of the crisis will put many groups in society further behind, including children, women, older persons, persons with disabilities, indigenous peoples, LGBTI persons, displaced populations, stateless people, day labourers, and people living at or below the poverty line. The pandemic is highlighting and exacerbating inequalities such as acute disparities in wealth, access to health, employment and livelihood, and in the ability to adopt preventive and isolation measures (e.g. space, access to water and sanitation, etc.). Prevalent inequalities will be further exacerbated, and people will need to access mechanisms for resolving disputes, redressing rights violations or countering discrimination – whether related to housing, employment, legal/residency status, access to health benefits or other social protection mechanisms. Access to legal services and legal information will be critical to empower people and communities to address these issues.

As states around the world adopt emergency measures to address the crisis, they must continue to uphold the rule of law, protect and respect international standards and basic principles of legality, and the rights to access justice and due process. Emergency powers must be in line with constitutional (where applicable) and national legal frameworks, as well as international human rights obligations. Limitations on human rights and fundamental freedoms should be proportionate, non-discriminatory, time bound, strictly related to the containment of the contagion, and subject to review. Legal safeguards and oversight mechanisms must be in place to ensure that any derogation or restrictions/limitations of rights does not continue indefinitely, and that states protect and ensure human dignity and the rights of all people. The role of the judiciary, as a check on executive actions and as an upholder of the rule of law, is crucial at this time. Judicial oversight of the implementation of emergency measures by law enforcement and other authorities is necessary to avoid the excessive use of emergency powers, for example, to suppress dissenters, or to target vulnerable or marginalised groups such as street vendors and street children, or members of social, ethnic or religious minority groups. Further, individuals disproportionately impacted by derogations of certain rights should have access to remedies. For example, the recent *UN Secretary-General’s Policy Brief on the Impact of COVID-19 on Women* shows a dramatic increase in domestic violence and child abuse and lack of protection for women and children due to measures requiring people to remain confined to their homes. It is vital that these women and children have access to justice and other necessary social services. Furthermore, there are risks for prolonged detention of pretrial detainees

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<sup>2</sup> This note provides initial guidance on key access to justice concerns related to COVID-19 and responses to them. For specific guidance on decongestion of prisons and detention centers which are necessary as part of urgent COVID-19 responses, see additional resources section below, including the UN DPO paper on *Prison Decongestion Measures*, UN DPO-UNITAR *Operational Toolbox for COVID-19 Preparedness and Response in Places of Detention*, and UNODC guidance on *COVID-19 preparedness and responses in prisons*.

and for persons deprived of their liberty exercising their right to have access to a court to challenge deprivation of liberty and the right to be promptly brought before a judge.

The pandemic and states' responses to it are having an unprecedented impact on the effective functioning of justice systems globally. Courts are closing, reducing or adjusting their operations, which can negatively impact the provision of timely and fair hearings, contribute to increased case backlogs, and lead to increased length of judicial and administrative proceedings. Certain groups, including women and children at risk of violence, or undocumented migrants, refugees and asylum seekers and those in migrant detention centres may be at particular risk. Reduced court operations may result in the prolonged detention of pretrial detainees or of prisoners eligible for early release, for example if bail or parole hearings are postponed. Juvenile detainees are particularly vulnerable. Finally, without functioning judicial oversight, persons detained during the time of emergency measures may not be brought before a judge in a timely manner. This can reduce the impact of an important safeguard for monitoring and preventing torture and other ill-treatment in detention facilities. Emergency measures must therefore include guarantees of due process of law in order to prevent that processes carried out during the crisis can be contested on that basis and therefore have a negative impact on victims.

In some cases, access to justice services can be critical for lifesaving and preservation of physical integrity, such as in cases of grave sexual violence, domestic violence or torture cases, or where release of detainees may help avoid the spread of the virus in prisons and detention centres. Given its criticality, states should categorize justice services as an "essential service" and take necessary measures to mitigate the suspension or postponement of these services. Exceptions should be made only where continuation is not practically feasible (for example for lack of access to Internet or to secure technology), not legally possible, or not in the interests of justice (for example it will hamper fair trial rights). Support to the justice sector, including ensuring health and sanitation measures and facilitating online functioning, should be prioritized.

In conflict and crisis contexts, justice and security-related concerns will be even more acute. While specific guidance exists to address protection issues in humanitarian contexts, there is a need to also review how justice and security institutions are functioning across the humanitarian-development nexus. Already weakened state institutions will likely be unable to respond effectively, further compounding mistrust in the state. The unchecked spread of misinformation can further exacerbate conflict. Different parties may exploit the situation, stoking xenophobia and employing hate speech to harden divisions and increase tensions between populations. In contexts where unrest and social movements have been calling for governments to address inequality, injustice and corruption, the crisis may serve to reinforce disparities and magnify tensions. Ensuring the role of law enforcement in protecting the population, and strengthening access to restorative justice, including mediation and alternative dispute resolution, will be important for safeguarding the political and security gains in these situations.

The pandemic will significantly affect the global agenda on achieving the SDGs by 2030. Instead of spurring acceleration and a sprint in the last 10 years towards reaching these globally agreed goals, countries will need to work to hold the line – and ensure that what little progress has been made is not lost. Yet it also presents an opportunity to rethink and invest in innovations in the justice system so that they are more responsive and accessible to all. A renewed effort on SDG 16 to achieve more peaceful, just and inclusive societies will be needed. Justice sector actors – from judges to police to legal aid providers (such as pro bono lawyers, community paralegals, legal aid NGOs and others) and corrections services – will need to work together taking on a holistic and people-centred approach to resolve the justice problems. Particular attention to empowering people and enhancing their capacities to seek out redress for grievances will also

be critical to achieving access to justice for all. From reducing rates of pretrial detention, to ensuring access to fair and effective dispute resolution mechanisms, to putting in place measures to ensure better representation in the judiciary – evidence-based strategies to ensure more equitable access to justice are crucial, if recovery plans are to truly reach, and secure the rights, of those who are furthest behind.

This note provides preliminary guidance for practitioners and policy makers on key issues to consider in ensuring access to justice in the context of the COVID-19 crisis. It is divided into three sections, Preparation, Response and Recovery. While this note is not exhaustive and there may be chronological overlap across the different phases outlined below as countries face differing dimensions of the crisis – including adjusting existing or introducing new measures when second or third wave outbreaks may occur – it aims to highlight some of the critical elements to consider related to enabling the justice sector to respond effectively to address the short, medium and long-term impact of the crisis.

- **Preparation** – in contexts where preventive measures responding to COVID-19 are being considered or taken that have implications for access to justice.
  - Supporting the development of a holistic and inclusive strategy to ensure the functioning of the justice system and equal access to fair, timely and effective justice services.
  - Enabling justice systems to develop business continuity plans, including prioritization of cases and remote case management systems.

#### **The Justice Sector and “Leave No One Behind”**

The justice system and its actors play a key role in oversight and accountability, but also in securing the rights of those “left behind” during this crisis. Tailored approaches could include:

- Strengthening of independent internal and external oversight and accountability mechanisms;
- Use of strategic litigation to address discrimination in access to services;
- Ensuring access to free legal aid for those who are being disproportionately impacted by emergency regulations or practices;
- Legal representation, advice and assistance for prisoners and detainees, including those in administrative detention, to secure release or use of non-custodial measures and alternatives to imprisonment.

Along with the prosecution and the judiciary, legal aid providers, including legal aid authorities, bar associations, pro bono lawyers, assistance from other actors such as CSOs and community-based paralegals, as well as National Human Rights Institutions and Ombudsman Offices, have a critical role to play in this regard.

- Establishing criteria for prioritization of cases in contexts where courts will need to scale down functioning.
  - Access to personal protective equipment (PPE) for justice sector actors
  - Providing equipment and training to enable court systems to function virtually, where appropriate.
  - Analysis of the gendered impact on women and men, boys and girls, as well as particular risks for specific populations and adoption of mitigation measures.
  - Enhancing law enforcement accountability, integrity and oversight.
  - Increasing the use of alternatives to pretrial detention and imprisonment to support decongestion of detention facilities.
  - Ensuring continued remote access to legal education.
  - Supporting access to legal information and rights awareness.
  - Facilitating access to restorative justice services, such as online mediation and alternative dispute resolution, as well as access to administrative legal services and legal documentation.
  - Supporting community-based dispute resolution.
  - Cooperation with bar associations and other governing bodies of lawyers and partnership with civil society.
  - Application of good practices among justice actors on handling of cases in the context of COVID-19 in line with international standards.
- **Response** – in contexts where COVID-19 response strategies are being implemented, such as states of emergency, and where there are immediate concerns related to access to justice.
    - Equal access to fair, timely and effective justice services.
    - Adoption of strategies for reducing risks of COVID-19 in prisons and detention centres:
      - Alternatives to imprisonment and alternative sentencing.
      - Management of prisons and places of detention.
      - Identification of criteria for release for persons deprived of liberty.
      - Reintegration plans for newly released prisoners/detainees.
    - Judicial oversight and safeguards over the abuse of powers.
    - Provision of legal aid and assistance to access to basic services and social protection.
    - Access to justice and effective remedies for victims and survivors of violence, including sexual and gender-based violence.
    - Protection of migrants, asylum seekers, IDPs and refugees.
    - Prosecution of crimes motivated by stigma and discrimination.
    - Remote access to legal information, advice and restorative justice services.
    - Access to comprehensive services including social, psycho-social, economic and legal services.
    - Access to legal and civic documentation.
  - **Recovery** – in contexts where the immediate public health crisis may be subsiding and emergency measures are being lifted, and the broader impact of the crisis and inclusive recovery will need to be addressed, including ensuring access to justice.

- Lifting of all restrictive measures and ensuring access to independent and impartial control mechanisms of emergency measures.
- Addressing civil justice concerns as part of the socio-economic impact of the crisis.
- Access to inheritance and property rights and support on family law for women and children.
- Addressing the backlog of cases.
- Understanding the need for people-centred justice to address the long-term impact of increased inequalities.
- Assessing and sharing of lessons learned and retaining of good practices.



## I. Preparation

Few countries, if any, have been prepared to handle the full consequences of the COVID-19 crisis. Understandably, governments have focused on the health response, taking measures such as requiring non-essential workers to work from home to reduce the risk of spread of the virus. Due to the nature of judicial processes, such as in-person participation in proceedings, the formal justice system may not be equipped to effectively function in the context of a 'shut down'. However, opportunities to innovate and to identify new processes and procedures to modernize justice systems are also increasingly being identified.

Furthermore, preventive measures can disproportionately impact the rights of specific populations. In addition to women and children trapped at home with their abuser, other groups are facing heightened risks to accessing justice. For example, migrant workers who are confined to overcrowded spaces, or who are undocumented and cannot access health or social services, or victims of human trafficking who are at increased risk of exploitation by criminal groups. This section explores several of these issues and some entry points to mitigate some of these risks.

- **Supporting the development of a holistic and inclusive strategy for ensuring the functioning of the justice system and equal access to fair, timely and effective justice services.** There is a need to ensure a speedy response by the justice system to assess which measures should be prioritized in the context of limited capacities and abilities to function in situations of full or partial 'shut down' orders. Temporary adjustments to the functioning of the justice sector should be part of a comprehensive national plan/strategy to address the COVID-19 crisis, including budgeting for unforeseen or extraordinary costs. This strategy should consider that courts do not act in isolation but are part of an inter-connected justice chain that includes a broad range of justice sector and social service actors. In the preparation phase, therefore, there needs to be an inclusive process of consultation with all the key actors to develop a response plan including the judiciary, the prosecution, law enforcement and corrections officials, defence lawyers, bar associations, civil society groups, and relevant social support services (e.g. social welfare officers and psychologists). The involvement of women's organizations and other civil society organizations in this process is crucial to consider the particular obstacles in accessing justice faced by specific groups. The strategy should take into consideration historical and structural inequalities facing different groups in accessing justice, and how these may be exacerbated because of the current crisis. The process should aim to avoid unintended consequences of emergency measures. For example, if police have the power to arrest people for a breach of curfew and they apply this power rigorously, this could overwhelm the courts and increase risks of spread of the virus within detention facilities. If the courts can do online hearings to fast track bail hearings, for example, but prisons or police stations do not have the equipment to enable detainees/accused persons and their lawyers to participate in such hearings in a manner that respects the defendant's rights including presumption of innocence, then people who might be eligible for release may be deprived of their liberty for longer than necessary and be exposed to higher risk of contracting COVID-19. Efforts to encourage and support these inclusive consultations should be initiated at an early stage to ensure a proactive approach by national authorities.

- **Enabling justice systems to develop business continuity plans, including prioritization of cases and remote case management systems.** Support is required to develop strategies to strengthen policies, regulations and capacities of the justice sector to continue to provide essential services during the crisis, while ensuring that business continuity does not come at the expense of the most marginalized members of society. The COVID-19 context provides an opportunity for the justice sector to examine ways in which the justice system can become more efficient and agile, with long-term effects that last beyond the crisis period. This could include for example, strengthening ICT infrastructures and supporting the digitalization of case management or prison population management systems, to better identify and manage priority caseloads in the short and long-term. National authorities should be supported to be able to prioritize, manage and track cases and establish functioning systems and to operate them remotely where possible.
- **Establishing criteria for prioritization of cases in contexts where courts will need to scale down functioning.** Developing a strategy for prioritization of critical cases should be part of the of COVID-19 response plan. For example, priority should be given to cases involving child offenders (and detention of children should be a last resort for the shortest time); cases involving crimes against children; cases involving violence against women and children; accountability for serious crimes, or cases where the statute of limitation may apply. States remain legally bound to provide effective remedies to victims of human rights violations even in the context of states of emergencies, including for victims of unnecessary, disproportionate, or discriminatory application of limitations or emergency measures. Policies and procedures should be developed to facilitate cases that concern non-derogable rights and to avoid postponing of cases that would infringe upon due process and fair trial rights. The determination of which matters are ‘urgent’ and should proceed during an emergency should be free from undue external influence. Additionally, judges should consider procedural guarantees, and interim injunctions or restraining orders or other forms of immediate relief, based on summary procedures. A review should be undertaken of the types of cases that could be dealt with remotely (via teleconferencing for example) without compromising due process rights and victims’ participation, including the right to consult and be represented by a lawyer.
- **Access to personal protective equipment (PPE) for justice sector actors.** Justice sector actors include police and prison officials, prosecutors, lawyers, legal aid providers and social welfare workers. In many contexts, community-based paralegals, CSOs, and bar associations provide essential services by providing information and advice as well as advocating for the rights of their clients. PPE should be provided to all justice sector actors, as well as defendants and accused, who attend court hearings or when they meet in closed settings (such as prisons or detention centres).
- **Providing equipment and training to enable court systems to function virtually, where appropriate.** This can include the provision of ICT equipment and software with adequate privacy protections and in line with international human rights norms and standards. A rapid assessment of ICT capacities will be necessary to determine gaps and areas of potential support, including to put in place safeguards to ensure rights of defendants are secured. Policies and procedures must be established for remote hearings, including processes to determine priority cases, and must take into account victim’s rights and due process and fair trial rights, including facilitating access to representation by a lawyer. Any



remote criminal justice proceeding must be accompanied by similar arrangements between the defendant and their lawyer made before, during and after the proceeding in a way that ensures attorney-client privilege. This includes specialized policies and procedures that are accessible, gender-sensitive, and child-friendly including for claimants, defendants, and witnesses. Sensitization and counselling should be made available for parties who may have little or no previous contact with relevant technologies, and for parties required to give accounts of traumatic experiences. Training should be provided to judges, prosecutors and court staff on issues including identifying vulnerabilities of witnesses and victims during online hearings, as well as ICT training. See also guidance on *Remote Court Hearings and Other Judicial Processes in Response to COVID-19* in the Additional Resources section below.

- **Analysis of the gendered impact on women and men, boys and girls, as well as particular risks for specific populations and adoption of mitigation measures.** During the pandemic, women and children not only face a particular risk of violence during home confinement but also more limited access to justice due to the impact on the justice system outlined above. Other at-risk groups include victims of human trafficking, marginalized populations, such as day laborers, migrants, asylum seekers, refugees and IDPs, LGBTI persons, persons with disabilities and older persons. Many may suffer loss of employment and livelihoods, limited access to health services, access to housing, as well as increased risk of facing penalties imposed by the state for breaking emergency regulations. A comprehensive analysis, including gender analysis, of the multi-dimensional risks and obstacles faced by specific populations in accessing justice is necessary in order to develop and implement appropriate mitigation measures as part of broader response plans for the justice system. In this context and bearing in mind that, in accordance with international law, detention of children should be used as measure of last resort only and for the shortest period of time, states must not use emergency measures in a manner to unlawfully restrict or suppress children's rights, recognizing that certain rights are non-derogable. In addition, the particular situation of female justice sector actors will need to be considered, as they are – for social or economic reasons – likely to face the brunt of the burden of care as they may be confined within their homes to care for children, older persons and sick persons while possibly being expected to work remotely.
- **Enhancing law enforcement accountability, integrity and oversight.** Law enforcement agencies are an important part of the justice chain and play a significant role in the COVID-19 response. Joint planning by all security sector actors charged with implementing emergency regulations is a key factor in ensuring the safe and appropriate implementation of these regulations. The judiciary and other state and nonstate accountability and oversight mechanisms should ensure that law enforcement and security actors are enforcing their responsibilities within the scope of the emergency regulations and are held accountable for any abuse of authority. Protocols and training are required for police and security personnel, including border authorities, to ensure the respect for dignity and rights of people in the context of implementing emergency regulations and quarantine rules, including adopting a gender sensitive and child-friendly approach. This will be particularly relevant in the treatment of marginalized groups that may be constrained in their ability to follow quarantine rules (such as day labourers, migrant workers, street vendors, sex workers, or homeless persons, among others).

- **Increasing the use of alternatives to pretrial detention and imprisonment to support decongestion of detention facilities.** People in detention are particularly vulnerable to the pandemic. All efforts should be made to decongest detention facilities, including prisons, police stations and immigration detention centres. Particular attention is needed for gender and child sensitivity in the development of protocols and guidelines for women and children deprived of liberty during the pandemic, including in cases where women are imprisoned with their children. Additionally, support can also include development of plans to support reintegration of newly released prisoners into the community, including providing comprehensive services. Effective decongestion of prisons requires the participation and coordination of many stakeholders including corrections authorities, judiciary, police, prosecutors, defence lawyers, communities and civil society, human rights institutions, the legislature and health professionals.
- **Ensuring continued remote access to legal education.** As universities providing legal education and law clinics, shut down, access to online courses and resources should be made available where possible. Training on use of online services, where available and accessible, as well as tailored courses on responding to the specific issues that may arise due to the crisis can be developed including on working with community-based legal aid providers.
- **Supporting access to legal information and rights awareness.** In addition, justice sector actors play a critical role in disseminating information on rights, access to justice services and access to benefits pertaining to COVID-19 response. Actions include advocacy and information campaigns through regular and social media to target populations at risk and in need of protection in accessible languages and formats. Rights education could be expanded to reach school-age children in a child-friendly communication. Any measures taken should be communicated promptly, clearly, accurately and through accessible modes, means and formats to the general public, to defendants, witnesses, victims and civil parties as well as to lawyers. Such communication should include the nature of the measures, the legal basis for the measures, the time frame, and set out competencies for recourse and review.
- **Facilitating access to restorative justice services, such as online mediation and alternative dispute resolution as well as access to administrative legal services and legal documentation.** Access to online dispute resolution mechanisms should ensure that they do not deprive victims of justice and truth and function in accordance with international human rights law, where all concerned parties have equal and safe access to online facilities and resources. In addition, support for enhancing remote access to legal services such as administrative forms or notary services, as well as access to legal documentation should also be further supported. For example, developing protocols for the preparation of wills, contracts, affidavits in the context of physical distancing will be necessary.
- **Supporting community-based dispute resolution.** Engaging traditional, religious and community leaders in resolving disputes and tensions that may be exacerbated due to COVID-19 can be a useful complement to formal justice mechanisms. This includes options for leveraging existing community-based early warning and dispute resolution mechanisms and broadening their applicability to the COVID-19 situation. These actions should align with human rights standards and ensure safeguards

are in place if dealing with women and children victims of violence. Information on the remote functioning of referral systems should also be disseminated to community leaders.

- **Cooperation with bar associations and other governing bodies of lawyers and partnership with civil society.** Bar associations and other similar bodies should be involved in the development of the justice sector response to COVID-19 to ensure measures reflect and respond to lawyers' and their clients' needs. Where law enforcement officers, judges and prosecutors are excepted from movement restrictions to participate in hearings or other proceedings, lawyers should be given the same status so they can represent their clients. Efforts should also be made to enhance the provision of pro bono and legal aid services, including by telephone and internet, by private lawyers and legal aid CSOs. The crisis has also financially affected the legal profession and support to lawyers' associations as well as CSOs supporting access to justice should be explored. Partnerships between government and CSOs to continue the delivery of justice services, including through provision of emergency/on-going financial support to such CSOs, should be encouraged.
- **Application of good practices among justice actors on handling of cases in the context of COVID-19 in line with international standards.** Good practices should be identified and used to inform the development of new protocols and procedures related to the effective functioning of the justice system during COVID-19. This can include, the use of technology, such as the use of online procedures to file cases, the legal recognition of electronic evidence or evidence presented by electronic means, and the establishment of electronic case file systems and evidence management, as well as the use of emergency regulations. It can also involve sharing of lessons between justice sector actors, including civil society, on enhancing people's access to information on their rights and how to access redress in the context of emergency regulations, facilitating remote participation of victims and witnesses in judicial proceedings, and enabling oversight and accountability in the context of emergency regulations.

## II. Response

This section identifies some key considerations in contexts where COVID-19 response strategies are being implemented, such as states of emergency, and where there are immediate concerns related to access to justice. In such contexts, States must continue to uphold the rule of law, protect and respect international standards and basic principles of legality, and the rights to access justice and due process. Emergency powers must be in line with legal frameworks and international human rights obligations and apply safeguards and oversight mechanisms. Specific groups, particularly those that face heightened risks due to the COVID-19 crisis and its mitigation measures, require specialized attention with tailored services and protection guarantees.

- **Equal access to fair, timely and effective justice services.** Due process and fair trial rights upheld by international conventions, such as the International Covenant on Civil and Political Rights (ICCPR), need particular attention during the crisis, including to ensure that such derogations in states of emergencies do not exceed those strictly required by the exigencies of the actual situation. This includes the right to equality before the law, the right to an independent and impartial judge, the right to access legal advice, and the right to appeal decisions in a timely manner to reduce risks of arbitrary detention. Those guarantees are applicable both to victims of crime and alleged offenders. The right to have access to a court to challenge deprivation of liberty and the right of persons deprived of liberty to be promptly brought before a judge should also be safeguarded. Only a court of law may try and convict a person for a criminal offence and the presumption of innocence must be respected. Further, the right to be tried by a competent, independent and impartial tribunal is an absolute right that is not subject to any exception. Law enforcement and courts must ensure timely access to a lawyer and interpreter where required, to safeguard the right to a fair trial of suspects, accused and sentenced persons. Access to legal information including rights awareness as well as understanding of court procedures to realise those rights is necessary. Such persons need to be able to understand the charges against them and be able to prepare their defence and apply for appropriate measures. Similar rights should be ensured for people detained in immigration detention, who should be made aware of the reasons behind their detention and have the opportunity to challenge these before a court and be given access to legal counsel. The requirement of unhindered access to clients at all stages of proceedings, access to case files and adequate time and facilities to prepare their defence, as well as confidentiality of communication is vital to ensure that individuals can receive adequate legal support. Lawyers and their clients need to be enabled to use technology, including video conferencing facilities, and communicate via telephone or messenger apps to adhere to physical distancing measures and procedural accommodation should continue to be made, for example, for persons with disabilities. Particular effort must be made to ensure that remote hearings do not interfere with due process and fair trial rights and that due consideration is given to data security. In certain contexts, sensitization and training on the utilization of such facilities may be needed and additional associated costs should be budgeted for as part of an overall comprehensive response to COVID-19.

- **Adoption of strategies for reducing risks of COVID-19 in prisons and detention centres**
  - ***Alternatives to imprisonment and alternative sentencing.*** Measures to reduce the risk of the spread of COVID-19 in detention facilities may include, for example, reducing the number of new detentions (i.e. no detentions for minor, non-violent offences). This should be agreed in consultation and coordination with all justice actors, including the police. Priority use of non-custodial measures in appropriate cases should be increased. This includes measures at all stages, including pretrial discharge, diversion and other alternatives to pretrial detention (e.g. release on bail or personal recognizance/surety bond), use of alternative sentencing laws or conversion of prison sentences to non-custodial sentences, as well as early release, temporary release, parole, pardons or furlough for sentenced prisoners. Monetary bail or fines, if used, must not disadvantage those living in poverty. The monitoring of non-custodial measures should be carried out by relevant means (such as telephone or in person with the required distance) and do not necessarily require, for example, the use of electronic monitoring bracelets which can be expensive and technologically burdensome. In some cases, this can include engaging respected members of the community to provide assurances of good behaviour can also be effective. In the case of children, the use of diversion from the formal justice system and alternatives to detention should be prioritized, upholding the best interests of the child as a primary consideration. Immigration detention should be avoided, and non-custodial alternatives explored. These may include, for example, community-based accommodation, placement in open shelters or hotels accompanied by appropriate additional restrictions, where relevant and necessary, such as registration of residence, surrender of documents or regular reporting by phone.
  - ***Management of prisons and places of detention.*** For those that remain in prison or detention centres, a comprehensive emergency plan should be developed which specifies provisions related to medical isolation and quarantine, referral and care plans for persons deprived of liberty and detention staff, as well as health and safety measures to mitigate the spread of COVID-19 and prevent outbreaks. Issues relating to visitation (by families and lawyers) and security arrangements should be given due consideration. Mitigation measures to ensure the continued oversight of detention facilities and treatment of prisoners when access is restricted for lawyers, NGOs and oversight bodies (e.g. national preventive mechanisms) should be considered. More detailed guidance on COVID-19 responses in prisons and places of detention can be found below in the 'Additional Resources' section.
  - ***Identification of criteria for release for persons deprived of liberty.*** Due to the exceptional vulnerability to COVID-19 in places of detention, many countries are currently implementing emergency release measures for detainees and prisoners. Criteria for determining the eligibility for such emergency release measures must be based on a careful balancing of vulnerability of individual detainees against public safety and be accompanied by appropriate safeguards to the safety and the rights of witnesses and victims. In many cases, juveniles, pregnant and breast-feeding women, those with caretaking responsibilities, older persons, those with underlying health issues, are being considered for release. In addition, people who are considered to pose no or a very low risk to the public, such as those who have been detained or imprisoned for minor or non-violent offenses, those whose sentences are almost complete, or who are facing relatively short sentences, are also being released to reduce the population of overcrowded prisons, which heightens vulnerability to COVID-19. In addition to vulnerability, the release of people awaiting

trial who have not been convicted of a crime is even more pressing, especially if the risk of flight or another sort of interference with the course of justice is low during lockdown measures. Authorities are also strongly encouraged to release people in immigration detention, in particular where that detention is arbitrary or does not comply with international standards. This includes people in pre-removal detention where deportations have been suspended due to the COVID-19 situation, as in many of these cases, the grounds for their continued deprivation of liberty no longer exist. Lawyers and legal aid providers can assist authorities to identify potentially eligible persons, ensure their clients are included in these alternative measures, as well as to ensure that those that remain in prison or immigration detention centres receive adequate protection (i.e. sanitation and hygiene), and access to health care. Those convicted and imprisoned for domestic violence, sexual crimes and other violent crimes should not be eligible for emergency non-custodial measures.

- ***Reintegration plans for newly released prisoners/detainees.*** Reintegration measures should be part of decongestion plans. Facilitating cross-sectoral support for newly released prisoners to reintegrate into communities in the context of physical distancing measures is essential. Many released detainees will not have access to safe places or suitable homes for self-isolating or means to support themselves and may not have access to social services or community support. Children will necessarily require particular post-release support and reintegration back into their families or communities, for example educational support in a context where schools are closed in many countries. Support to national authorities to develop reintegration plans that provide comprehensive services, which can involve legal aid providers, health services and other service providers, is needed to manage the release of detainees in a manner that is consistent with their human dignity and well-being, as well as the public interest. The development of communications strategies to ensure communities are sensitized to the release of detainees is also important to support reintegration steps and avoid stigma and discrimination against detainees.
- **Judicial oversight and safeguards over the abuse of powers.** Emergency measures that have been put in place around the world have dramatically increased limitations to freedom of movement and civil liberties. Justice sector actors have a particular role to play in such contexts to prevent human rights violations committed in the name of an emergency and to ensure accountability and oversight over abuse of emergency powers. Judges, prosecutors and lawyers are critical in upholding that the principle of legality, the rule of law and fundamental human rights are effectively guaranteed during emergencies. Courts must remain independent and capable to evaluate, and if necessary, nullify, any unlawful imposition or unjustified extension of emergency measures. They should remain competent to hear allegations of violations and abuses associated with the state of emergency perpetrated by state and non-state actors. For example, judges can play an oversight role when there is executive overreach; lawyers and legal aid providers can take up cases where emergency powers are being enforced in a discriminatory manner or there is disproportionate or illegal use of force; national human rights institutions and civil society can monitor human rights violations including discrimination in the provision of COVID-19 aid. Support to legal aid providers to use strategic litigation to address repressive state of emergency legislation can also be explored and as can strengthening legal networks to work collectively to monitor and advocate for accountability in cases

of abuse of authority. See also *UN Secretary-General's Policy Brief: COVID-19 and Human Rights – We are all in this together* that highlights many of these concerns.

- **Provision of legal aid and assistance to access basic services and social protection.** Legal aid providers can represent different groups of people when they are unable to secure access to essential services, such as access to health care or social protection measures that have been put in place as part of the COVID-19 response. Community based paralegals, for example, can support legal empowerment efforts including providing access to information on rights and how to access benefits and support to fill out forms, particularly for those who are illiterate, do not speak or read the official language of the country, or cannot access online services. Civil documentation is often a prerequisite for access to basic services and social protection but certain groups, including refugees, migrants and stateless persons, often face challenges in obtaining this documentation. Legal aid providers can assist individuals in addressing these challenges. Strategic litigation can be pursued where there is access to benefits is denied to specific persons or groups of people.
- **Access to justice and effective remedies for victims and survivors of violence, including sexual and gender-based violence.** Gender-based violence and all forms of violence against children are increasing exponentially as responses to the pandemic deepen economic and social stresses and restrict movement. Many people are being forced to 'lockdown' at home with their abusers, including victims of trafficking and their traffickers, at the same time that services to support survivors are being disrupted or made inaccessible. Measures must be taken to ensure continued access to essential support services when movement is restricted, including for example the continued operation and scaled up functioning of the national child protection authority. Protection measures to ensure that survivors can remain at home and protected from further violence should be prioritized. In some contexts, laws are being passed to require the abuser to leave the home rather than the survivor. Ensuring access to shelters is also critical. Exemptions to movement restrictions should be allowed for survivors seeking safety. Support to increase capacity of shelters is also needed. Very few shelters offer quarantine spaces, and, in some countries, shelters are requiring self-quarantine before accepting admissions. Others are not accepting new admissions at all. In some countries however, access to alternative shelters is provided such as rooms in private hotels. States should prioritize resources and efforts to ensure continuity and access to essential services to address violence against women and children, including to prepare for an increase in demand for emergency hotlines, shelters and other essential housing options, legal aid and other essential police and justice services. National COVID-19 response plans should ensure that the judiciary and law enforcement authorities remain able to identify, protect and provide remedies to victim-survivors who are at risk and that necessary emergency funding be allocated towards these efforts, for example prioritising the continuation of court hearings for restraining and protection orders. Legal aid providers can be supported to ensure the provision of continued and safe access to legal services, including through hotlines and online services. Hotline staff should be equipped with up-to-date information on the solutions and protection measures available to victims or those at risk while emergency measures are in place.

- **Protection of migrants, asylum seekers, IDPs and refugees.** The COVID-19 crisis has further highlighted the precarious situation of legal and undocumented migrants, asylum seekers, refugees and IDPs. In some countries, emergency measures, including border closures, and the subsequent economic shutdowns have led to mass movements of people both internally as well as across borders to return to their place of origin. Others have been left in limbo, stranded without income, and often confined to overcrowded spaces and unsafe quarantine conditions, including workers dormitories and migrant detention facilities. Movement restrictions must not discriminate, nor have the effect of denying people the right to seek asylum or requiring return to a place where they might be at risk of persecution (the principle of non-refoulement). It is necessary that protocols be established for border authorities to handle migrants, asylum seekers and refugees in a safe, sanitary way that respects their dignity and rights, including for those returning to places of origin. Particular attention must be given to ensuring the protection of unaccompanied minors and separated children. Legal aid providers have an important role in monitoring potential and actual rights violations. Local authorities, IDPs and refugees, and host communities should be supported and consulted in the design and enforcement of COVID-19 measures in line with human rights standards. Legal aid providers will need to continue to support displaced populations, including refugees and undocumented migrants, in securing legal documentation and to ensure that they are not denied access to essential services.
- **Prosecution of crimes motivated by stigma and discrimination.** As borders close and restrictions on movement increase, fear of the pandemic can result in an increase of xenophobia and hate crimes targeting ‘outsiders’ who are perceived as bringing the virus into communities. In some cases, this has involved individuals and groups targeting particular ethnic groups or foreigners (including migrants or refugees) or specifically targeting minority populations, including ethnic and religious minorities. In other cases, specific populations such as LGBTI persons or other groups are at risk of excessive use of force by police and security providers. Government responses can also fuel community divisions, such as when measures target a specific population groups for quarantine measures. Penalties for hate crimes and discrimination against minorities and marginalized communities should be clearly outlined. Legal aid providers can contribute to ensure that justice systems address such crimes swiftly and thoroughly.
- **Remote access to legal information, advice and restorative justice services.** Movement restrictions have accelerated the use of online and virtual legal services in certain countries. This include access to information online or by telephone. Information should be accessible, in terms of language for example, and also in formats that are suitable for different groups such as persons with disabilities and the illiterate, are child-friendly, easy to understand and available for those with limited knowledge of and access to virtual services. In many developing countries and crisis contexts, access to the internet may be low, and there is often a clear gap in digital access between men and women and across socioeconomic statuses. Innovation on access to justice in such environments especially for poor and marginalized populations will require legal aid and assistance providers not just to make the services available virtually, but actively work with populations to ensure that they understand how to use the online services and that these services meet their needs. This includes consulting with local groups, such as women’s groups, children and youth groups and others to create alliances and partnerships to better enable access for the most marginalized. It can include supporting community-



based paralegals and civil society organizations to explain what and how to use online services, to share information and develop referral mechanisms, while keeping a safe distance and follow procedures to minimize spreading of the virus. It may also include providing the needed equipment to local communities so that they are able to access these services (including personal protective equipment (PPE) where relevant), or reaching out through social media, television and radio.

- **Access to comprehensive services including social, psycho-social, economic and legal services.** COVID-19 response strategies can include a comprehensive package of services available for people seeking out help to resolve their legal problems. For example, this can include access to legal services accompanied with psycho-social and health support, advice on access to social protection benefits including housing and employment concerns, access to legal documentation, as well as support to access economic/livelihood opportunities. In addition, for newly released detainees, including those released from immigration detention, support to transition back to communities in the context of COVID-19 regulations in place need to be provided.
- **Access to legal and civic documentation.** Many states have closed or restricted the operation of ‘non-essential’ public services. This can include departments responsible for the registration of births, deaths, marriage and divorce. Legal documentation is a pre-requisite for access to many rights and services. Lack of legal documentation often has further consequences on legal identities, inheritance and property rights, but also documentation in terms of long-term residency, citizenship and voting rights. For example, lack of documentation impedes access to national health systems and other protective services and birth registration in particular is critical to preventing statelessness. The UN Legal Identity Task Force notes that, “civil registration should be considered an ‘essential service’ mandated to continue operations during a pandemic. Although some physical offices may need to be closed, or opening hours limited or staggered, operations should be maintained as far as possible, whether in-person, or virtual, during the crisis. Depending on the capacity, certain registration processes (such as legitimations) may be put on hold, but registration of births, deaths, foetal deaths and recording of causes of death, should continue as a priority.”

### III. Recovery

In contexts where the immediate public health crisis may be subsiding, and emergency measures are being lifted, the broader impact of the crisis and inclusive recovery will need to be addressed. Following the immediate health crisis, emphasis should be put on the prompt re-establishment of citizens' full access to justice. Any fundamental rights that may have been reasonably restricted due to the emergency measures taken during the crisis should be restored to their full extent without delay.

- **Lifting of all restrictive measures and ensuring access to independent and impartial control mechanisms of emergency measures.** Emergency measures should be lifted as soon as the immediate risk of the pandemic to public safety has ended. All measures restricting fundamental rights and liberties, including access to justice, must be lifted. No restrictions to access to justice should be maintained as a result of the crisis. Further, all emergency measures taken during the crisis should be subject to review by independent, accessible and impartial control mechanisms. Legal aid providers should be supported to ensure individual claims against violations of fundamental rights during the crisis can be taken.
- **Addressing civil justice concerns as part of the socio-economic impact of the crisis.** The impact of COVID-19 will be felt long after the public health emergency recedes. There is neither clarity on how long this period will take, nor whether there will be recurrent waves. Systems will need to be put in place to provide legal advice and services specifically dedicated to address concerns emerging out of the crisis including:
  - Unemployment or social security benefits.
  - Labour disputes with the increase in job losses and unemployment.
  - Housing disputes from evictions and inability to pay rent.
  - Bankruptcies and insolvency.
  - Health and safety risks faced by workers, including unsafe exposure to COVID-19.

#### **Legal empowerment strategies to address the impact of the pandemic**

The COVID-19 crisis has revealed and exacerbated inequalities and injustices around the globe. It has given rise to justice challenges faced by different marginalized populations. Issues range from how to access crucially needed health and social benefits to obtaining redress for rights violations caused by government measures to stop the spread of the virus. Legal empowerment strategies help people to understand and use the law to realise their rights. It is also a critical element of efforts towards achieving the SDG 16 target of access to justice for all. Legal empowerment initiatives led by civil society actors, such as community-based organizations, legal aid providers, and community paralegals, support vulnerable and marginalised groups to realise their rights through:

- Provision of access to legal information and rights awareness
- Legal assistance to challenge injustices and realise rights, including strategic litigation against systematic discrimination
- Strengthened networks and capacities to advocate for and claim rights
- Participation in decision-making related on COVID-19 policies and recovery plans
- Support to access social and economic benefits

Partnerships with local civil society organisations working on these issues and who can identify the most marginalized and facilitate consultations around effective recovery mechanisms (so they are locally driven, not top-down imposed) could also be supported. In addition, investment should be made on collecting data related to civil justice concerns to make evidence-based policy decision, including as part of the newly adopted SDG 16.3.3 indicator measuring access to dispute resolution mechanisms for civil justice matters.

- **Access to inheritance and property rights and support on family law for women and children.** There is evidence that emergency measures taken during the crisis can lead to an increase in divorce rates. The provision of legal support for women to ensure the protection of their rights during divorce or custody proceedings as well as to access their property rights should be strengthened. In addition, with COVID-19 resulting in high mortality rates, access to legal services to deal with inheritance and property rights will be necessary especially for women, children and marginalized populations to avoid risks of exploitation and abuse. Engaging informal justice mechanisms, religious courts and other traditional dispute resolution mechanisms, that may predominantly deal with family matters, may be further explored to ensure that they align with international human rights standards.
- **Addressing the backlog of cases.** Many countries are struggling to handle case backlog in criminal, administrative and civil proceedings. With many cases put on hold because of the crisis, the backlog will be even greater. The justice sector will need surge capacities to be able to handle this backlog in an effective, fair and timely manner. This can also include building on some of the ICT gains that may have been achieved and continuing with remote court hearings and other judicial proceedings as a strategy to support the progressive resumption of judicial activities.
- **Understanding the need for people-centred justice to address the long-term impact of increased inequalities.** Once the immediate threat of the pandemic passes, the socio-economic impact of the responses to the virus will be a primary concern for many people. It has laid bare glaring socio-economic inequalities, and in some countries even before the pandemic, social movements were underway demanding that governments address long-standing issues of corruption, inequality and exclusion. The pandemic is testing the social contract and people's trust in state institutions as many governments struggle to respond effectively to the crisis. It is not only the poor, the day labourers and the minorities who are suffering. Small business owners, freelancers, members of the lower working class are also experiencing the negative impacts of government responses. Post-COVID-19, the demand for broad social change will likely be even stronger across the globe. This may lead to social unrest and instability. Additionally, there may be increased risks of criminality and violence due to unresolved conflict. A recovery plan will need to consider reinforcing capacities of justice sector actors to respond to the situation in a way that renews trust in institutions, invests in more inclusive and responsive governance structures, at local and national levels, and focuses on a way to deliver more people-centred justice services including through long-term crime prevention mechanisms. Engaging with communities and civil society organizations to identify priority areas for support will be critical to ensure that the recovery plans are locally owned and respond to the demands emerging from communities.

- **Assessing and sharing lessons and retaining good practices.** Reflection on the response and measures taken to protect and promote people's access to justice in the context of the pandemic is necessary once the immediate crisis has passed. The process of reflection should also help to identify and share good practices among justice sector actors, including private sector and civil society. Successful innovative strategies adopted during the crisis should be built upon. Distilling good practices and advocating for their continued use could help to overcome some of the systemic barriers people face in accessing justice. For example, the use of remote technology for legal proceedings, the adoption of prison decongestion strategies, measures to reduce the use of pretrial detention, support for online dispute resolution, virtual access to legal aid providers, among others, can be continued during the recovery phase and beyond.

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## **Additional United Nations Resources**

- **General**

- OHCHR – [COVID-19 Guidance](#) , including on access to health care, emergency measures, stigmatization, xenophobia and racism
- UN Department of Peace Operations – Remote Court Hearings and Other Judicial Processes in Response to COVID-19 in Mission and Other Fragile Settings (forthcoming)
- UN – [UN Secretary-General’s Policy Brief: COVID-19 and Human Rights – We are all in this together](#)
- UNDP – COVID-19, Emergency Powers and the Protection of Human Rights and the Rule of Law (forthcoming)
- UNDP – [Human Rights Due Diligence and COVID-19: Rapid Self-Assessment for Business](#)
- United Nations Legal Identity Agenda Task Force – [Maintaining Civil Registration and Vital Statistics during the COVID-19 pandemic](#)

- **Police, Prisons and Detention facilities**

- Inter-Agency Standing Committee – [Interim Guidance COVID-19: Focus on Persons Deprived of their Liberty](#)
- UN Department of Peace Operations - UNDP – Operational Guidance and Police Planning Guidance on COVID-19 Response
- UN Department of Peace Operations - UNITAR – [Operational Toolbox for COVID-19 Preparedness and Response in Places of Detention](#)
- UN Department of Peace Operations – Prison Decongestion Measures: Information for National Criminal Justice Authorities to Combat the Spread of COVID-19 for Use in Mission and other Fragile Settings
- UNODC – [COVID-19 preparedness and responses in prisons](#)
- UNODC – [Protecting Children Deprived of Liberty During the COVID-19 Outbreak](#)
- WHO – [Interim Guidance on Preparedness, prevention and control of COVID-19 in prisons and other places of detention](#)

- **Access to Justice for Women and Children**

- OHCHR – [COVID-19 and Women’s Human Rights](#)
- UN – [UN Secretary-General’s Policy Brief: The Impact of COVID-19 on Women](#)
- UNICEF – [Five Ways Governments are Responding to Violence against Women and Children](#)
- UNODC – [Thematic Brief on gender-based violence against women and girls](#)
- UN Women – [Issue Brief on COVID-19 and Ending Violence against Women and Girls](#)
- UN Women – Achieving justice for women amidst the COVID crisis (forthcoming)