



# Access to justice and the COVID-19 pandemic

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This policy brief, co-authored by the OECD and the Law & Justice Foundation of New South Wales, focuses on the immediate and medium-term consequences of the COVID-19 crisis for justice systems and their users, and proposes steps that can be taken during this period to ensure access to justice for all. It draws nine key lessons that justice systems can take away from the crisis to develop stronger people-centred practices and contribute to an inclusive economic recovery. Its associated Compendium of Country Practices gathers good practice examples from across the globe that have aimed to support justice systems in maintaining service provisions even during lockdowns, protecting those in the most vulnerable positions and undertaking remarkable innovations as a result of the crisis.

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## Introduction<sup>1</sup>

The coronavirus (COVID-19) pandemic has unleashed the worst health, economic and social crisis since the Second World War. By the beginning of September 2020 the pandemic has already taken over 890,000 lives (Johns Hopkins University & Medicine, 2020<sup>[1]</sup>). Meanwhile, lockdown and social distancing measures to reduce its spread have thrown economies across the globe into a downward curve. The latest OECD Economic Outlook projects global GDP to fall by 6% in 2020 and OECD unemployment to climb to 9.2% (from 5.4% in 2019) – if there was no second wave of infections. Five years of income growth will be lost across the economy by 2021 (OECD, 2020<sup>[2]</sup>). According to the 2020 Economic Policy Survey published by Business at OECD (BIAC) in May, while in 2019 only 16% of business federations perceived the business climate as weak or very weak, this share now skyrocketed to a staggering 95%, with 3 out of 4 respondents foreseeing effects worse than the financial crisis of 2007-08 (Business at OECD, 2020<sup>[3]</sup>). The disruptions caused by the pandemic can push people in already precarious situations, and without appropriate policy responses, the COVID-19 pandemic will likely contribute to worsen existing inequalities, as well as the unequal access to key services and participation across many countries.

The world we live in is a ‘law thick’ world (Hadfield, 2010<sup>[4]</sup>), with all aspects of daily life impacted by laws, regulations, rights and responsibilities. From the moment we are born (citizenship), through education, housing, employment, transport, health, and to ultimately end of life issues, the law impacts the day-to-day lives and economic and social well-being of all people. As such, genuine equal access to justice for all – to ensure fair opportunities and outcomes for all – is fundamental to overcoming inequality and contributing to the overall health and well-being of the global community. In this context, access to justice has been identified as an important dimension of inclusive growth and a core pillar of the UN 2030 Agenda for Sustainable Development, through which all countries agreed to “promote the rule of law at the national and international levels, and ensure equal access to justice for all” under the SDG 16. Access to justice concerns the ability of people to obtain just resolution of justiciable problems and enforce their rights, in compliance with human rights standards; if necessary, through impartial formal or informal institutions and with appropriate legal support. In order to measure it, the indicator “*proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism*” has been adopted in the tenth meeting of the Inter-agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs) held from 21 to 24 October 2019 in Addis Ababa, with co-custodianship of the OECD, UNDP and UNODC.

Over the last two decades, people-centred legal needs research across many countries has consistently found that legal problems and legal needs are not equally distributed across society, across gender and across racial and ethnic lines. Socio-economically disadvantaged people are generally more vulnerable to experiencing legal problems (often markedly so), and are also generally less able to access appropriate services and to resolve their legal problems.<sup>2</sup> (OECD, 2019<sup>[5]</sup>)

<sup>1</sup> This policy brief has been co-authored by the OECD and the Law & Justice Foundation of New South Wales. The contribution of Zaza Namoradze from the Open Society Justice Initiative is gratefully acknowledged. Drafting of the Brief commenced between April and May of 2020, and has been updated since then with the ongoing developments of the global health crisis, country measures adopted to counter the outbreak’s stages, and social movements calling for racial equality, among others.

<sup>2</sup> Pleasence, Balmer and Sandefur’s (2013) global review of national legal needs surveys identified that elements of disadvantage, such as ill-health/disability, single parenthood and unemployment are routinely found to be associated with the experience of legal problems. For more background information about the link between legal needs, increased barriers to access the legal system and the stronger incidence for disadvantaged groups, please see the OECD Report *Equal Access to Justice for Inclusive Growth: Putting People at the Centre* (2019) and the *OECD White Paper on Building the Case for Access to Justice*. See also the Justice for All by The Task Force on Justice report (New York: Center on International Cooperation, 2019), available at <https://www.justice.sdg16.plus/>.



The burden of the COVID-19 pandemic has fallen disproportionately on the vulnerable and marginalised, risking deepening inequalities across the board (OECD, 2020<sup>[6]</sup>). Indeed emerging evidence suggests that the crisis is exacerbating the vulnerabilities of individuals that were already at higher risk, including the elderly, women, children, detainees, ethnical and racial minorities, indigenous communities, those living in remote locations and other marginalised people (OECD, 2020<sup>[6]</sup>). These people are more likely to lose their jobs, lack adequate online capabilities or skills, be dependent upon community and social services which may be harder to reach or even not available at all, and therefore will likely be at a disadvantage in bearing not only the initial shock and impact of the crisis, but also the ongoing and inevitable economic contraction that will follow, almost certainly for several years (OECD, 2020<sup>[6]</sup>). In legal need and access to justice terms, this means that these disadvantaged groups are likely to experience increased legal needs just at a time when services are harder to reach and when significant funding pressures are likely to bear upon those services that are available to assist them (OECD, 2020<sup>[7]</sup>).

Continued efforts to understand what works for people and business in providing access to justice for all will be critical as governments focus on managing the crisis, finding sustainable recovery pathways and prioritising the investment of scarce resources. Now and ever, effective and transparent management of justice service delivery and ensuring service accessibility are essential to maintaining trust in justice and in democracy. This is particularly important as trust in justice also matters for trust in government, “by providing citizens with recourse mechanisms to protect their rights and access to other public services” (OECD, 2017<sup>[8]</sup>).

In this context, this OECD-Law & Justice Foundation of NSW Brief and its linked Compendium of Country Innovations in the domain of justice aims to support countries’ efforts by:

- Discussing specific arguments and examples highlighting the importance of access to justice and a people-centric approach to justice during and after the pandemic, which has also coincided with a significant social movement calling for a halt to racial discrimination in the criminal justice context,
- Highlighting the opportunities (potential, under development, or already implemented) to advance a people-centred justice agenda in the new context, and
- Identifying policy options to promote a people-focused and accessible (for all) justice system.

## Impact of COVID-19 on people-centred access to justice

The need for people-centred access to justice services has been increasingly recognised in recent years (See **Box 1**).

### Box 1. What we know about legal needs – a brief summary

Growing empirical research<sup>3</sup> provides an overview of the nature and distribution of legal need, and the capability of different people to manage their legal issues. In summary, the research indicates that:

<sup>3</sup> Results in over 26 large-scale national surveys of the public’s experience of legal problems conducted over a 20 year period across the globe, and further surveys conducted on a regional level, drawing from (Pleasence et al., 2014<sup>[10]</sup>). The OECD White Paper on Building the Business Case for Access to Justice also found that legal capabilities are unevenly distributed between income groups, with lower legal capabilities concentrated among lower-income groups (OECD, 2019<sup>[20]</sup>).



- **There is concentration in the experience of legal problems** - For example, in Australia, the Legal Australia Wide (LAW) legal needs survey (Coumarelos et al., 2012<sup>[9]</sup>) found 9% of respondents accounted for 65% of legal problems.
- **Inequity links to social disadvantage** - Research<sup>4</sup> has consistently identified that legal problems are particularly prevalent among people with chronic ill-health/disability, single parents, the unemployed and people in disadvantaged housing. Thus, the concentration reflects inequality in the experience of legal problems.
- **Social disadvantage is linked to lower capability to deal with legal problems** - The evidence further indicates that those most vulnerable to legal problems tend to have less knowledge, resources and self-help skills to deal with legal problems, tend and towards delayed and crisis-driven help-seeking<sup>5</sup>.
- **Legal problems don't exist in isolation** - They occur in defined 'clusters', often coexisting with 'everyday life' problems<sup>6</sup>.

Source: (Pleasence et al., 2014<sup>[10]</sup>).

The COVID-19 pandemic has substantially increased the importance and magnitude of this need (Pathfinders for Peaceful, Just and Inclusive Societies, 2020<sup>[11]</sup>) (see **Box 2**). Participants in the April 2020 [OECD Global Virtual Roundtable](#) anticipated an increase in the level of vulnerability of those facing legal needs as the pandemic evolved, and expected this to further increase as a longer-term recession unfolded. Particular risks were considered likely at the intersection of legal issues and benefits, employment and housing, family, health and debt, which could increase the complexity of the needs experienced by citizens, and thus the complexity of cases confronting justice systems. Similarly, for business, increased concerns are likely to relate to tax, regulation, employment, debt, payment of invoices, enterprise restructuring and bankruptcy procedures (Pathfinders for Peaceful, Just and Inclusive Societies, 2020<sup>[11]</sup>). Along similar lines, a survey by the Hague Institute for Innovation of Law of 270 justice leaders in 20 countries has revealed significant awareness of the likely justice impacts of the economic crisis (HiIL, 2020<sup>[12]</sup>). In addition, many different rights and obligations have been established through a range of emergency measures approved by governments. Many of these may be temporary (such as rent deferrals, and eviction moratoriums), and citizens, businesses and governments will be faced with managing these once the emergency provisions end.

Yet, as 2020 OECD Global Virtual Roundtable highlighted, the crisis has also drastically affected the justice pathways and the availability of resources to meet those needs (see below).

## Box 2. COVID-19 crisis and legal needs

<sup>4</sup> The main report of findings from the LAW Survey (Coumarelos et al., 2012<sup>[9]</sup>) indicated that overall problem prevalence was notably higher for people with a long-term illness or disability, people who had lived in disadvantaged housing, single parents and people who had been unemployed. In fact, people with a disability were found to have been significantly more likely than others to have experienced legal problems in all 12 categories examined, with the same being true of eight categories for single parents and people who had been unemployed, and seven categories for people who had lived in disadvantaged housing.

<sup>5</sup> See for example (Allison F. et al., 2012<sup>[74]</sup>) (Balmer, NJ & Pleasence, P., 2012<sup>[75]</sup>); (Buck, Tam, & Fisher, 2007<sup>[76]</sup>); (Casebourne, J, Regan, J, Neathey, F & Tuohy, S 2006., 2006<sup>[77]</sup>); (Day, Collard & Hay, 2008<sup>[78]</sup>)

<sup>6</sup> The mean number of legal problems reported by LAW Survey respondents increased along with the number of indicators of disadvantage. Respondents with six or more indicators of disadvantage reported six times as many problems as those with none, both overall and in respect of only substantial problems (Coumarelos et al., 2012<sup>[9]</sup>).



The ILO's global estimates indicate that working hours will decline by 6.7% in the second quarter of 2020, which is equivalent to 195 million full-time workers, and that jobs of 1.25 billion workers (38% of the global workforce) may be at risk (International Labour Organisation, 2020<sup>[13]</sup>). This will particularly affect individuals who already had the most low-paid, insecure jobs (OECD, 2020<sup>[5]</sup>). Social distancing measures have affected the retail, transport, restaurants, hotel and other service industries in particular, which often employ many insecure and temporary workers, who in turn are less likely to have savings to fall back on and less likely to be able to work from home. The *OECD White Paper on Building the Business Case for Access to Justice* (OECD, 2019<sup>[8]</sup>) showed that the **unemployed** were much more likely to experience justiciable problems than the rest of the population in a majority of countries (Figure 1). In the context of the crisis, these groups will likely face amplified legal needs in dealing with employment issues and to obtain unemployment benefits and other social security protections from the State whenever the unemployment agencies cannot deal with the justice system themselves or when there is a conflict about concession of benefits, but also with related hardships including evictions and debt payments. In addition, the most vulnerable workers are bearing the immediate brunt of this crisis (OECD, 2020<sup>[14]</sup>).

On the **health** side, over 13 million people have already (as of 16 July 2020) tested positive with the COVID-19 virus. The elderly and those with weaker health have been most severely stricken by the COVID-19 disease, with over 95% of COVID-19 deaths having affected those older than 60 years. Women, on the other hand, represent almost 70% of the health care workforce and carry out up to ten times more care work than men<sup>7</sup>. Therefore, they are exposed to a greater risk of infection (OECD, 2020<sup>[15]</sup>). All people who have become sick from the virus may experience an increased need of support for medical-legal queries, for instance related to accessing the health system or solving conflicts with their insurer, which could have a severe impact in their ability to access healthcare and save their lives. As observed, the groups most strongly affected by the disease were already in a position of vulnerability. This is not limited to COVID-19 cases, the evidence showed that people affected by the opioid use disorder and their families frequently faced many legal problems related to kinship care, custody, domestic violence, health care, housing, insurance, and employment, as well as obtaining or maintaining access to treatment (Legal Services Corporation Opioid Taskforce, 2019<sup>[16]</sup>). In countries which were already facing the opioid epidemics, the interaction with COVID-19 can impact and worsen each other through creating a resurgence in cases due to the emotional and economic difficulties faced by potential addicts, on the one hand (McGreal, C., 2020<sup>[17]</sup>), and to barriers to access and shortage of treatments, on the other (Kennan, 2020<sup>[18]</sup>).

**Women** will also face heightened legal issues related to employment since they are at a higher risk of job and income loss (OECD, 2020<sup>[15]</sup>). Times of crisis and quarantine have also been related to increases in gender-based violence (Burns, 2020<sup>[19]</sup>), exploitation, abuse or harassment due to increased time spent at the home and a rise in tensions in the household (OECD, 2020<sup>[15]</sup>). A similar case holds for **children**, who are more exposed to domestic violence and neglect at the home.

In addition, across many countries, various **social benefits** programmes are being devised to mitigate the negative effects of the COVID-19 pandemic on citizens and SMEs, and prevent extreme hardship and promote individual and family well-being (OECD, 2020<sup>[6]</sup>). Access to social benefits globally remains an important safety net for millions of people across OECD and partner countries. Importantly, previous research shows that disputes relating to the provision of social benefits (including social security, unemployment, disability, child support and tax benefits) also represent a significant legal need, which is thus likely to increase (OECD, 2019<sup>[20]</sup>).

<sup>7</sup> According to the OECD Social Institutions and Gender Index 2019 results (OECD, 2019<sup>[56]</sup>)





While the **financial insecurity** was widespread, even before the current crisis, the pandemic is giving rise to new and increased vulnerabilities. Indeed, a large number of households are likely to fall into poverty as a result of declining income and limited financial buffers (OECD, 2020<sup>[6]</sup>). These groups are more likely to experience legal problems, which often cluster together—one problem leads to another. Common problems include consumer disputes, employment issues, challenges accessing health and social benefits, land and property problems, family disputes, complications with neighbours, and debt.

In parallel, the pandemic is already giving rise to **consumer** disputes, primarily related to passenger transport, accommodation services, and package holidays, but which are likely to expand into many other business sectors. For example, the European Consumer centres, in March 2020 answered 15,000 consumer queries (many in relation to the pandemic's impact on a service or a good they purchased), which is around 5,000 more queries than the same month in 2019. This upward trend has continued since mid-February until May, with 43% of claims relating to disputes on air travel affected by COVID-19 (European Commission, 2020<sup>[21]</sup>).

On the **business** side, there is likely to be a significant rise in litigation related to contract breaches, employment issues, bankruptcy filings and tax payments (Pathfinders for Peaceful, Just and Inclusive Societies, 2020<sup>[11]</sup>). This will be especially significant for Small to Medium Enterprises (SMEs), which are being hit the hardest by the crisis. The OECD analysis shows that many of them do not have a financial safety net to weather the shutdown measures affecting many countries today (OECD, 2020<sup>[22]</sup>). SMEs have also been shown to be more sensitive to social distancing measures, and not all of their employees are prepared to telework, making them much less resilient than large enterprises to the current crisis (OECD, 2020<sup>[22]</sup>). They will also likely to have legal needs to interpret the rapidly-evolving emergency regulations on business conduct (such as occupational health and safety), and to ensure that they benefit from the numerous different schemes set out by governments to protect SMEs.

## Avoiding the additional costs of not accessing justice

How much does justice cost? Governments usually have a reasonable understanding of the direct costs related to running formal justice institutions, but this understanding often does not account for the broader justice costs, both to individuals and to economies, of providing appropriate and culturally relevant access to justice, and of not providing appropriate access to justice for all.

The recent *OECD White Paper on Building a Business Case for Access to Justice* provided a first estimate of the costs generated by legal problems in a large group of countries. Focusing only on the direct expenditures related to legal problems (lawyer and court fees, transport, etc.) and the cost of adverse consequences on people's health, income and employment situation, as reported by survey respondents, it provided a conservative estimate on the annual average costs of legal problems in a range going **from 0.5% to 3% of the GDP** in most countries (OECD, 2019<sup>[20]</sup>). It is anticipated that in the aftermath of the COVID-19 crisis, these figures are likely to significantly increase due to an expected rise in legal cases related to the crisis.

The *White Paper* also shows that the cost of unmet legal needs can have significant impacts on persons and families, and that a complex and bi-directional relationship exists between unequal access to justice and broader socio-economic inequalities. While a disadvantaged socio-economic situation often results in deficient access to justice, the reverse is also true: access to justice has a direct effect in further deepening inequalities. For business, an inability to address legal problems can also have a wide range of implications, including additional financial and reputational costs. In some cases these can result in businesses ceasing trading.



However, the economic benefits of the provision of appropriate, people-centred access to justice, particularly through the provision of legal assistance, can be seen at multiple levels, including in direct benefits and savings for individuals, families and companies, and those that are indirect, such as improved court efficiency, increased economic investment within local communities, increased employment and associated tax revenue (Abel and Vignola, 2010<sup>[23]</sup>). Therefore, any pathway for recovery must integrate accessible and people-centred justice systems as a core pillar, as legal and justice services play a major role in restoring economies, social cohesion and confidence in institutions (also see the forthcoming OECD Brief on “*People-centred and effective justice system for sound recovery: strengthening the business case*”).

## The impact of the pandemic (so far) on the justice systems

Justice systems, like all other parts of the economic and social life across countries, have been affected by the COVID-19 crisis in many ways, both directly and indirectly.

Justice institutions, including courts and tribunals and the individuals that work in and use them, have been required to comply with relevant social-distancing regulations. This has led to significant changes to court and tribunal procedures, and, in some cases, the temporary closures of courts and tribunals (see Compendium for further information). This will likely produce a backlog, particularly of certain types of cases (such as large jury trials), which could be compounded by additional cases flowing from those affected by the potential downturn.

A key issue needed to be addressed by justice services in the upcoming months will be how to deal with the disproportional caseload that justice actors will face following progressive reopening of courts and regular business activity. Trials that had been suspended will need to be carried out in parallel to increasing business, employment and other legal disputes and insolvency proceedings. This will test the capacity of the formal justice system, and may take a toll on mental health of professionals as well as on accessibility of justice more generally due to extraordinary delays or lack of enough time to deal with each case effectively. As put forward by the UK during the 2020 OECD Global Virtual Roundtable, this increasing backlog will intersect with the reduced legal assistance that court users are able to access during this time.

Legal assistance services, which provide legal aid to disadvantaged people, are also affected by the direct impacts of the pandemic and the requirements for social distancing. The April 2020 OECD Virtual Roundtable on equal access to justice has highlighted that the first impact included the reduced capacity and accessibility of services. It was discussed that - while significant access barriers still persisted - before the crisis many citizen users of the court system would arrive with a certain level of advice and preparation that enabled them to navigate their way through the court system effectively. These services were subsequently disrupted under the general ‘lock-down’ requirements. Many of the providers of that advice and information for citizens were impacted significantly financially and through a lack of sophisticated technology and infrastructure to operate virtually.

However, legal assistance services often feel the added burden of secondary impacts. Not only must they find new ways to reach and engage with disadvantaged people with legal needs, who are also experiencing social distancing, they must also further adapt their existing and new processes to enable them to ‘fit in’ with the new court, tribunal and other justice system procedures. Indeed, it is likely to be these secondary or indirect impacts that would drive and maintain many of the changed justice system processes perhaps well after the virus is contained.



Of course justice systems need to be reactive to the changing circumstances around them. For example, legal services provided to disadvantaged communities in remote areas have often relied to some extent upon outreach by lawyers, judges and other staff who travel out to remote locations to deliver legal services. Significant travel restrictions imposed during the lockdown, followed by limited travel options maintained for some time after the restrictions had been lifted, made such options difficult if not impossible. Legal services, including courts, legal aid, and others, need to adapt to this very different reality.

Indeed, there is a need for rapid and decisive action by governments in order to ensure that the most vulnerable people and economic agents have the necessary legal support and access to channels to address their legal problems. This highlights the importance of a broad and co-ordinated policy response that includes a holistic approach to addressing the legal needs of citizens, strengthening provision of basic legal services to ensure those needs are met in an appropriate and sustainable manner for disadvantaged people, improving the co-ordination with other social and human services (protection, health care, housing support, etc.), and supporting appropriate business support strategies (e.g. employment support strategies, advice on bankruptcies, labour issues or salary-related services). Failing to do so risks deepening inequalities and poverty, possibly creating new divides and undermining the resilience of societies.

### How can a people-centred justice agenda be implemented in the new context?

Countries around the world have taken steps to find alternative means to provide access to justice and facilitate resolution of legal problems in the face of the COVID-19 pandemic.

These actions range from law professors conducting their law lessons through online platforms to lawyers meeting clients and finalising agreements via electronic means, and to full trials being conducted over Skype and evaluated, as has been done in the **United Kingdom** among many others. In **Portugal**, the Council of Ministers approved an experimental regime for authenticating documents and signature acknowledgments through the Internet (Ministry of Justice, Portugal, 2020<sup>[24]</sup>). In **Chile**, during the crisis, the Civil Status and Identification Service has promoted the online platform and the use of a unique password called “Clave Única” that allows citizens, in a remote way, to make requests related to various public institutions.

Alternative resolution methods (ADRs), such as mediation and arbitration, have also been benefiting from online service provision. For example, **Canadian** and **Mexican** mediators are carrying out employment and civil mediations through Zoom and are also considering expanding to mediate small court claims (Office of the Prosecutor General of the Republic of Mexico, 2020<sup>[25]</sup>) (Rose, 2020<sup>[26]</sup>). In some places, countries are introducing simplified processes, including the introduction of digital signatures, remote document verification and remote identity verification (for a comprehensive overview of technological adaptations in the justice sphere, see the Compendium).

### *Moving forward with a people-centred agenda*

This section aims to identify lessons and strategies that may serve as useful guides for country specific action in guiding both the immediate and the longer-term responses by the justice system.

Thus far, at least nine broad lessons could be documented by justice systems as they manage the current crisis and prepare for post-COVID transformation:





### *Lesson one: we must not miss the opportunity*

The former Canadian Chief Justice and current chair of the Action Committee on Access to Justice in Civil and Family Matters, Beverley McLachlin, argued in March 2020 for a swift and massive transformation of the legal sector to address ‘long necessary change’ that has always struggled in the face of a lack of willingness to reform (Beverly McLachlin, 2020<sup>[27]</sup>). A long-term supporter of reform to achieve a more people-centred justice system in Canada, she has recognised the opportunity that the rapid transformation brought on by COVID-19 has provided to enable provision of justice through different channels and simplified procedures that are able to better cater for citizen’s needs while reducing the backlog that is foreseen to take place following court lockdowns.

In almost all countries justice system reform is difficult to achieve, and where it is achieved, it generally takes significant amount of time. That reality, at least for a short period, seems to have dramatically changed. Many new justice system processes and procedures have been created. During the 2020 OECD Global Virtual Roundtable on Access to Justice, it was observed that justice systems “have leapfrogged from the 19th century into the 21st century, completely bypassing the 20th”. It is too soon to evaluate their impacts with confidence, but rapid and substantial change *has* occurred. As illustrated in the Compendium of Country Innovations, changes range from an unprecedented use of digital tools for trials and legal counselling, to simplification of processes and increased use of ADRs. There is an opportunity now to harness this openness, potential new flexibility and ability to change to ensure needed transformation can be pursued in earnest.

This is also a unique chance to adopt a people-centred and inclusive approach to guide justice system transformation – to build a system which is accessible to all and leaves no one behind, and at the same time which provides effective assurance to economic actors with regard to the protection of their rights and ability to deal with their legal problems as they seek to recover from the global health crisis. It will take leadership and political commitment but the experience of the past months certainly has demonstrated that this can be done.

### *Lesson two: The purpose of justice systems*

If countries are going to take the opportunity to pursue justice system transformation, an important question is: ‘what direction should it follow?’ Given the rapid rate of change, justice systems, justice departments, legal assistance services, and individual practitioners have done a remarkable job of transforming sometimes centuries-old processes in a matter of days and weeks. In places where the requirements of social isolation continue for lengthy periods, these may even become the new norm. At some point for all countries, however, decisions will need to be made in relation to these processes and procedures: ‘should the new processes be retained or should they return to the original one, or should they adapt to something different again?’ How should these questions be answered?

- The risk could be that such decisions are made by justice institutions without sufficient input from people and businesses. There may be a natural tendency for these decisions to be influenced by cost, convenience (for the justice institutions), traditions and other factors. Yet, the current crisis has presented the justice system with an opportunity to reflect upon its purpose and the services provided within it. If justice systems are to provide people-centred access to justice going forward, then meeting legal needs of citizens and communities in a people-centred way could serve as their **overarching purpose**. In line with the [OECD criteria for people-centred legal and justice services](#), instilling a people-centred purpose would allow governments and legal institutions to reflect accordingly upon the justice system processes to guide decisions about the present and future transformation.



### *Lesson three: evaluation to learn ‘what works’*

If the purpose of justice systems could be seen as meeting the legal needs of the community and business in a people-centred manner, this should allow for appropriate monitoring, review and evaluation of the new remote and online processes to determine what strategies and processes work best, in what circumstances, for which people, and at what cost. As justice systems undertake the needed process of reflection on the suitability and people-responsiveness of its existing and new processes, there is scope to systematically introduce a people-centred lens to impact assessments of justice system processes, and to create a more rigorous evaluation culture to apply to justice and legal initiatives. Such people-centred impact assessment and evaluation could support the understanding of ‘what works’ and for whom, and hence improve the responsiveness of justice systems to the needs of citizens. This has been found to be directly correlated to the level of people’s trust in justice. As such, to emerge from the pandemic while continuing to provide and improve people-centred access to justice for all, appropriate review and evaluation is needed to ensure decisions in relation to reform are informed by sound evidence.

### *Lesson four: the need for more and better data*

While legal issues are rarely as sudden, contagious or as deadly as a pandemic, the lesson from the medical management of the COVID-19 crisis also applies to justice systems: the allocation of limited resources in the most efficient way requires good data.

Limited resources at a time of economic hardship and significant public debt will have to be distributed by governments in the most effective way possible. As highlighted by the discussions during the 2020 OECD Global Virtual Roundtable, the situation will be exacerbated by the high caseload facing courts as well as the changing nature of the legal needs arising. In the short, medium and longer-term, it would be essential to invest in new and old legal needs research to understand what people’s needs are from their perspective, and to collect administrative, official (census data, etc.) and open data (going beyond the judiciary and including legal assistance, ADRs, other sectors) to better understand legal and justice problems and how justice systems and justice service delivery can most effectively and efficiently address them.

Better access to justice data can assist governments and justice systems in recognising new patterns and anticipating new vulnerabilities. It could also help develop anticipation and foresight capabilities for justice and broader public institutions over time. In this context, deepening the understanding of the urgent and ongoing legal need (e.g. Box 2) – possibly through investments in new legal need research in particular – will be important to ensure that limited resources are most effectively targeted. The **United Kingdom**, for example, has commissioned several data gathering and evaluation expeditions due to COVID-19, including a Civil Justice Council (CJC) review of COVID-19 impacts on the Civil Justice System, a comparison of Legal Needs before and after the COVID-19 crisis, and different projects through its UK Research and Innovation (UKRI) Coronavirus Hub; while **Statistics Canada** has carried out several real-time surveys about how COVID-19 is affecting citizens (Statistics Canada, 2020<sup>[28]</sup>), following an already established practice of measuring evolution of Canada’s Justice Development goals (Action Committee on Access to Justice in Civil and Family Matters, 2019<sup>[29]</sup>).

Legal sectors globally trail many other sectors, especially health, in access to good quality data. There is a discipline in health – epidemiology – which uses data to study the distribution and determinants of health and disease conditions. In other words, healthcare has systems in place to help with this decision-making. Legal and justice systems would strongly benefit from similar approaches. Collecting and utilising more and better data to support the most effective and affordable delivery of justice to the community would be essential for governments to meet the needs and make progress against their global commitments,



including implementation of the SDG 16 “to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, its target 16.3 and the overarching principle of the 2030 Agenda for Sustainable Development to leave no one behind. This will likely involve increased emphasis on:

- Identification of variables needed to answer the key justice questions,
- The more consistent measurement and reporting of these variables, and
- The use of appropriate people-centred justice-system indicators to provide governments, justice systems and civil society to monitor and evaluate justice system effectiveness, and to facilitate ongoing improvement.

The 2020 OECD Global Virtual Roundtable also highlighted that sound and transparent governance of the data will be important to guide access to and sharing of data across justice institutions and across different policy areas in order to prevent, anticipate and effectively respond to legal problems faced by people and businesses, while preserving privacy. It will also enhance efficiency and resilience of the justice sector in the face of future crises. Lessons from managing the current health crisis underlined the crucial importance of data preparedness (e.g. how the different levels of digital maturity contributed to a better policy response); specific and purposeful data initiatives (e.g. data dashboards, etc.), and of data infrastructure (e.g. data identification and sharing across different actors and jurisdictions were critical for informing effective responses). As such, reflecting on the suitability, coherence and integration of the current digital government and data strategies across the justice sector (and related sectors) to provide needed information to support effective and people-centred justice transformation will be crucial in moving forward in shaping the “new normal”.

#### *Lesson five: Need for a whole-of-government approach*

Some countries (e.g. **Portugal, Ireland**) established cross-functional response teams comprising senior officials from across the relevant departments, in order to allow all agencies to work together to find solutions. The recently established **Canada’s Access to Justice Secretariat** (hosted by the Department of Justice Canada) also facilitates the interaction with other departments to identify ways to anticipate and address legal needs across different sectors. At the federal level, **Australia** created a new ‘National Cabinet’ early in the pandemic, comprising the Prime Minister and the Premiers and First Ministers of all states and territories, which has now become a permanent feature of Australian governance (Prime Minister of Australia (Press Conference Transcript), 2020<sup>[30]</sup>)

These initiatives point to another lesson: the importance of whole-of-state co-ordination and institutional mechanisms to facilitate the exchange of information and the co-ordination of strategies. There is scope to consider formalising various governance arrangements promoting whole-of-state co-ordination strategy, policy and service design to ensure no one is left behind in accessing justice. And as the Australian example has demonstrated, like in other federal countries, it is crucial to improve co-ordination across different levels of government, especially when the responsibility for legal and justice service provision is decentralised. This promotes synergies and encourages coherent responses across national, regional and local justice service providers and policies to better align with and contribute to effective recovery and transformation process.

Such co-ordination can also facilitate the provision of integrated and co-ordinated services, which in turn can help anticipate and prevent legal problems from escalating, and thus achieve more positive outcomes for clients. Examples of such integrated service delivery are abound. For instance, medical-legal partnerships have shown to reduce stress, decrease dependency on services overall and lead to greater



participation in employment and education (Retkin, R., Brandfield, J., and Bacich, C., 2007<sup>[31]</sup>). Integrated legal aid and labour market programmes can help employees secure benefits, ensure workplace safety or address discriminatory treatment, and support vulnerable groups in their job searches when legal issues are involved (White House Legal Aid Interagency Roundtable, 2016<sup>[32]</sup>).

Some countries are also integrating legal assistance components in their programmes to support victims of crime (including crimes of domestic violence). For example, **Spain** and **Ireland** became particularly relevant during the pandemic outbreak (World Health Organisation, Europe Regional Office, 2020<sup>[33]</sup>). These approaches have been found to improve their health and social and employment outcomes, especially when the victims belong to vulnerable segments of the population (White House Legal Aid Interagency Roundtable, 2016<sup>[32]</sup>). In **Ireland**, a type of collaboration established to target vulnerable families has been successful for the Department of Employment Affairs and Social Protection to locate social welfare recipients who are no longer receiving maintenance from the other parent for their child because they have lost their job due to COVID-19. In those cases, the Department unemployment has agreed to revise their payments upwards for a 12-week period. Such system required coordination and data cross-checking across the unemployment and welfare benefit datasets (Department of Justice and Equality of Ireland, 2020<sup>[34]</sup>). For more examples of integrated services delivery during the crisis, see the Compendium.

Finally, while stakeholder engagement often proves difficult during the crisis management period, their active participation in designing and delivering “the new normal” in the justice sector will be essential to ensure service responsiveness and quality, as well as to target scarce resources where the need is the greatest. Stakeholder engagement, including specific efforts to reach out to marginalised and vulnerable groups, will be a critical ingredient to ensure inclusive design and implementation of justice transformation and recovery strategies, as well as an opportunity to understand their needs.

### *Lesson six: Need to engage a whole of justice chain*

No part of a justice system stands alone. A change at one point impacts a host of other parts in a very interconnected system. However, it is not uncommon that legal reforms and initiatives focus on formal institutions or at least on a narrow conception of the elements of the justice system that need to be supported. Legal assistance services are often forgotten or neglected in these cases.

In developing a response to the crisis, some countries, however, have engaged relevant actors across the entire justice chain (courts, alternative and online dispute resolution mechanisms, legal assistance and legal aid services, community services, etc.) in order to provide adequate support to people’s and business legal needs. The **US**, **UK** and **Australia** have provided additional funding the legal assistance sector, while **Italy**, for example, has engaged its judiciary and court secretaries in specialised COVID-19 cases training. In the short and medium-term, training provides a strong impetus and the basis for the development of a people-centred justice ecosystem. This in turn could see all actors working together to reorient service delivery towards more user-centred, integrated, appropriate and preventative approaches, in line with the OECD criteria. If the justice sector takes the opportunity to reflect on the purpose of the justice system as meeting the needs of people and economic stakeholders, it is important to work towards the development of a joint strategic long-term vision adopted by various justice stakeholders across the justice chain and branches of power.



### *Lesson seven: Empowerment, openness and communication*

Clear communication and transparency are critical in managing justice services during and after the lockdown to guide actions in accessing justice by people and businesses. By shedding light on the options available, and helping the community to understand the reasoning behind specific actions, such as how cases are triaged or managed, open communication can build public trust in justice institutions and facilitate legal empowerment (OECD, 2017<sup>[8]</sup>).

In particular engaging proactively with communities, especially vulnerable and marginalised groups such as racial minorities, the elderly, youth, and children, people with disabilities, indigenous people, refugees and migrants will be essential to ensure that they are aware of the support available to them and that they have the means to make use of this support. This may require specific communication and outreach strategies, as previous research has shown that disadvantaged people often have limited legal and digital capabilities, and may lack access to appropriate technologies (The Regional Risk Communication and Community Engagement (RCCE) Working Group, 2020<sup>[35]</sup>). To tackle this issue, for example, **Israel** has used traditional media outlets such as television and newspapers to share the availability of new and existing services provided specifically for the elderly population and holocaust survivors (Ministry of Justice, Israel, 2020<sup>[36]</sup>); and **Chile** has launched several public awareness campaigns for women to learn about their options if facing a situation of violence (e.g. through hashtags #ContigoMujer (with you woman) and “*En esta comunidad no entra la violencia*”) (Ministry for Women and Gender Equality, Chile, 2020<sup>[37]</sup>). For more discussion on gender-related measures in response to the pandemic, please see the Compendium.

In order to be effective and to foster public trust in justice and in government, communication activities should be guided by open government and justice principles, including those defined in the OECD Recommendation of the Council on Open Government (OECD, 2017<sup>[38]</sup>). Transparency can also enable greater accountability and effective implementation of various measures aiming to facilitate access to justice (OECD, 2017<sup>[8]</sup>).

### *Lesson eight: Technology must serve all people*

The 2020 OECD Global Virtual Roundtable highlighted that it is difficult to overstate the role technology has played in ensuring continuity of essential justice services throughout the pandemic. Technology also has shown a massive potential to reduce costs of justice for individuals and states, and to increase efficiency by cutting duration and complexity of processes. Innovations using technology have ranged from creation of virtual courtrooms and civil registries, for instance in **Portugal, Greece, Latvia, Slovenia** <sup>([39])</sup>, **Italy** <sup>([40])</sup>, **Israel** <sup>([36])</sup>, **Switzerland** <sup>([41])</sup>, **Romania** <sup>([42])</sup>, **Spain** <sup>([43])</sup>, **Peru** <sup>([44])</sup>, **Brazil** <sup>([45])</sup>, **UAE** <sup>([46])</sup>, **Poland** <sup>([47])</sup>, **China** <sup>([48])</sup>, **United Kingdom** <sup>([49])</sup> and the **US** <sup>([50])</sup> among many others, to development of completely dematerialised ADRs in **Portugal, Chile** and **Canada**, and to WhatsApp helplines for abuse victims in **Spain** and **Chile** (for more examples, see the Compendium of country practices). Therefore, an emerging lesson is clearly as follows: technology can effectively service people’s needs in the field of access to justice, when put to the task.

However, it has also emerged that technology must not be applied as a one-size-fits-all solution, because this would risk allowing the most vulnerable to slip through the cracks. As highlighted in the accompanying Compendium of country practices, evidence suggests that people who do not have access to Internet connection and lack digital skills are often individuals which were already in more vulnerable economic and social positions to begin with. In addition, some evidence illustrates that participants in a remote trial might be more disengaged or emotionally distressed, are less likely to be represented by counsel, and share less information with their lawyers than in person. It has also been suggested that judges may





adjudicate more severely in virtual hearings (The Bail Observation Project, 2013<sup>[51]</sup>). These circumstances, when combined with connectivity glitches and limitations to case presentation online, could pose significant challenges to the right to a fair trial. Concerns have also been raised about the technical difficulty to make virtual hearings available to the public.

Taking these possible areas of concern into account, a balance must be struck using data to ensure that technology's benefit to people is maximised while protecting fundamental human rights and most vulnerable groups. A multi-channel approach to justice that offers different possibilities to cater to the needs of each collective is preferable. If a co-ordinated approach is taken towards digital transformation, while keeping a people-centred purpose for the justice system in mind, this could improve the provision of access to justice generally and also improve justice systems' resilience and adaptability for future crises.

### ***Lesson nine – Innovation and procedural simplification are possible and should play a big role***

The experience of the lockdown provided numerous examples of adaptations and innovations in legal and justice service delivery, including through procedural simplification, in order to make services more user-friendly and accessible. For example in **Lithuania**, participation of a notary has been eliminated in approving simpler mandates and enabling electronic registration of mandates for which a notarial form is not required (Ministry of Justice, Lithuania, 2020<sup>[52]</sup>); and in **Ireland**, suspension of civil trials has been enabled through agreements by the parties through e-mail, which was unprecedented (Department of Justice and Equality of Ireland, 2020<sup>[34]</sup>). In addition, several countries have promoted the use of written procedure whenever possible, which expedites judgments (for more examples, see the Compendium). It has shown that procedural simplifications and innovative approaches, such as effective triage of cases to be treated by courts (versus those recommended for mediation or other channels) are possible.

Indeed, the OECD work on administrative simplification shows that the government responses to pandemic should not be hampered by regulatory obstacles that can result in precious time being lost or potentially life-saving services (e.g. for victims of violence) not made available. This is a typical case where application of well-known good regulatory principles (risk proportionality, using the lightest possible process/procedure for the desired result, using information regulation rather than product approval when no major risk is present, etc.) can be particularly useful. Finally, streamlining approval procedures so that no additional steps are necessary beyond what is strictly needed to ensure safety (e.g. removing formal validation by the competent authority which is based on third-party certification, and requiring only said third-party certification to be present) is also a change that can help respond to the crisis immediately, in a risk-based way.

In parallel, there is an opportunity to reflect on the legal and procedural frameworks guiding legal and justice services, including legal assistance and dispute resolution (aligning regulatory and legal frameworks for dispute resolution, alignment with other policy and service frameworks for meeting needs of different groups of people), at the same time, putting in place measures to monitor the impact of the various adaptations (whether legal, regulatory or financial). Importantly, once the crisis is over, it would be critical to ensure careful post-implementation review of various measures that have been adopted through the fast-track procedure.

Finding the right balance between these opportunities and challenges for a more people-centred justice, in line with the OECD criteria for people-centred legal and justice services, in the current context leads to the following policy recommendations:



## Policy options

### Providing access in the post-pandemic environment

- Establishing appropriate policy frameworks (including procedural, legal and regulatory frameworks) that make online and remote legal support, dispute resolution and related modalities feasible, while ensuring the protection of fundamental rights and access to justice for the most vulnerable and those who will be facing the starkest effects of the economic crisis
- Identifying resources for those legal services assisting disadvantaged people to cope with the added burden and addressing new vulnerabilities
- Taking into account the legal needs and capabilities of justice system users, and especially ordinary citizens and SMEs, as new remote processes and pathways within the justice system are being reviewed and implemented
- Identifying ways to advance procedural simplification, in particular facilitating the rethinking of processes and procedures with a view to reducing the administrative burden on people and businesses, and addressing the (likely) forthcoming backlogs of cases (especially for vulnerable groups and economic cases)
- Establishing effective triage systems to better identify the types of justice services to respond to the specific legal needs and enhancing the use of alternative resolution methods (ADRs) and seamless dispute resolution procedures (involving the whole of justice chain). Developing clear guidance for accessing specific legal and justice services, including rules and options to transferring the disputes across the dispute resolution channels. Ensuring that these are clearly and effectively communicated to the (potential) users of the system.
- Ensuring that service delivery for victims of violence (e.g. children, women) is integrated across relevant spheres – such as health, social services, education, employment, and justice – through a whole-of-government approach and deepening people-centric approaches in enabling access to justice.
- Ensuring effective and accessible communication, active outreach to and engagement of a wide range of communities, including vulnerable and marginalised groups (e.g. racial minorities, children, the elderly, migrants, indigenous groups). Strategies to facilitate legal empowerment of people and communities will be critical to ensure that they have a voice in the process of justice transformation.

### Ensuring appropriate and co-ordinated solutions

- Placing priority on strengthening the co-ordination and integration of services in the new environment (e.g. through medical-legal partnerships) through a whole-of-government approach to ensure that those in need do not “fall through the cracks”, and in particular that legal problems can be identified as early as possible, and that legal problems can be addressed through integrated legal and non-legal holistic support – through a holistic people-centred justice ecosystem.
- Placing an emphasis on ensuring fair access to a new technology to ensure that no groups are disadvantaged, in view of increasing adoption and adaptation of technologies by the justice system. Ensuring a multichannel approach to legal and justice service delivery to reach out to vulnerable groups.



### Working towards an evidence based and people-centred future justice system

- Reviewing the purpose of the justice systems and the introduction of various justice and related initiatives with the people-centred lens (e.g. through access to justice impact assessment), including to ensure a people-centred access to justice and to meet the legal needs of citizens.
- Making investment in establishing data systems, governance and infrastructure across the justice system (and across relevant sectors) that enable decision-makers to be supported by robust, complete and comparable data on legal needs, the efficiency and effectiveness of strategies to prevent, anticipate and resolve those needs, and other data to enable efficient resource allocation.
- Establishing and resourcing robust and systematic evaluation and monitoring mechanisms to evaluate the effectiveness and appropriateness of new (and existing) processes.

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# Compendium of Country Practices

## Access to Justice and the COVID-19 crisis

Changes are ensuing in justice systems at an unprecedented speed in order to adapt to the new reality of the unfolding crisis, often with short time for reflection on the broader implications underpinning each policy. In facing the path to recovery and to aid governments in shaping “the new normal” through learning from peer countries, this note represents a Compendium of country practices collected through a targeted OECD [Call for Evidence](#) to gather justice innovations from government policies and civil society projects.<sup>8</sup> It also includes country practices discussed during the OECD’s [Global Virtual Roundtable on Access to Justice: the Impact of COVID-19](#), held on April 28, 2020. The Compendium is an integral part of the OECD’s Policy Brief on the Impact of COVID-19 on Access to Justice, which presents the key Lessons drawn from the good practices examples contained in this Compendium. The identified country practices have been analysed through the lens of the [OECD’s criteria for people-centred legal and justice services](#)<sup>9</sup> in a forward-looking manner, to explore their implications for future use and their potential for justice systems. While meaningful evidence on the impact of the measures, in particular on what works and for whom, still needs to be collected, these practices and examples may prove useful across many different systems. They also demonstrate a capacity of the justice systems to adapt to change and adopt innovative approaches with a people-centred lens.

Importantly, in positioning the justice systems to support the crisis recovery process, the highlighted practices have a potential to lower, if not eliminate, the usual barriers to accessing justice (e.g., financial cost, time and the complexity of justice systems to geographical distance, lack of legal capability and language skills), which have been heightened in the current context (due to lockdown measures and decreased economic means, among the other exacerbated vulnerabilities – see *Brief*). At the same time, the Compendium also highlights some of the risks, barriers and challenges when considering current justice innovations through a people-centred approach. Risks have been identified to ensure accessibility of the new measures to vulnerable and marginalised groups, who may be affected by lack of connectivity, skills or worsening economic situations; and to ensure due process rights such as a fair and public trial.

### *Ensuring availability and accessibility of justice*

#### Continuity of basic legal services

The most pressing need that justice systems have been facing during the crisis thus far has been to ensure the availability of justice services despite the constraining social distancing, or even complete lockdown, measures. Across most systems, non-urgent trials have been postponed to later dates, in many cases also suspending procedural and enforcement action deadlines. In the case of some systems, for example in

<sup>8</sup> The note serves as an integral part of the Brief on the Impact of COVID-19 on Access to Justice, prepared jointly by the OECD and the Law and Justice Foundation of New South Wales. The call for evidence took place under the umbrella of the OECD [Observatory for Public Sector Innovation](#).

<sup>9</sup> Criteria as described in the Equal Access to Justice for Inclusive Growth- Putting People at the Centre (OECD, 2019) Report. They are the following: availability, accessibility, prevention, proactivity and timeliness, appropriateness and responsiveness, empowerment, equality and inclusion, outcome focus and fairness, collaboration and integration, effectiveness and evidence-based planning.



**Belgium** and **Lithuania**, processes have been transferred when possible into a written procedure. In **Chile**, a new law has established a judicial *regime of exception* for judicial processes and terms and use of legal tools, taking into account the impact of COVID-19. Prevalent suspensions and exceptions will entail a significant caseload in the future, for which countries will have to be prepared in the medium to long term to avoid a collapse of the courts.

The immediate challenge being faced by justice system therefore revolved around **ensuring availability of justice adjudication** for those cases that are urgent and cannot be suspended. To tackle this need, **technological means** have been crucial to sustain legal work, in particular through the creation of “online courts” (See **Box 1**).

### Box 1. The move towards virtual justice

#### **Establishment of online courts**

At an unparalleled speed, many courts around the world have started transitioning into online hearings, many of them for the first time. The home page of Remote Courts Worldwide (HMCTS, Society for Computers and Law, the UK LawTech Delivery Panel, 2020<sup>[97]</sup>), a joint project of several institutions led by the UK court system and Professor Richard Susskind, illustrates that such quick change in how courts deliver services is occurring on a truly worldwide scale. It is the case of **Portugal, Greece, Latvia, Slovenia** <sup>([76])</sup>, **Italy** <sup>([77])</sup>, **Israel** <sup>([23])</sup>, **Switzerland** <sup>([78])</sup>, **Romania** <sup>([79])</sup>, **Spain** <sup>([101])</sup>, **Peru** <sup>([102])</sup>, **Brazil** <sup>([80])</sup>, **UAE** <sup>([81])</sup>, **Poland** <sup>([3])</sup>, **China** <sup>([82])</sup>, **United Kingdom** <sup>([108])</sup> and the **US** <sup>([83])</sup> among others. In **Ireland**, participants could join a Pexip video conferencing session from other video streaming services including Skype, Zoom, Cisco and Teams, without the requirement that all parties use either the same app or a managed integration tool to connect <sup>([84])</sup>. In **Argentina**, using the Webex platform enabled judges to conduct hearings without participants having to download any software while remaining secure. Some countries, including **Chile** and **Malaysia** have been able to facilitate a live broadcast of online trials to ensure public access to hearings <sup>([85])</sup>. In **Mexico**, the Supreme Court of Justice started using technological tools to provide justice to Constitutional issues, for example allowing remote distance voting of matters pertaining the capacities of the Tribunal, as well the so-called Judicial Television Network through which the Supreme Court is celebrating sessions of major interest by remote access with a list of matters which are analysed and voted on a weekly basis <sup>([114])</sup>. In **Ireland**, online means are now being used not only for urgent, but for regular trials when suitable, and they have enabled video-link appearances from prisons for all people currently in custody <sup>([31])</sup>.

#### **What is not done virtually**

Some countries have limited the matters that can be treated remotely, for security reasons or due to human rights considerations. In **Portugal**, urgent acts and procedures in which fundamental rights are at stake are still being carried out in person (urgent protection of children, procedural acts and trial of imprisoned defendants) <sup>([5])</sup>. In **South Korea**, the new reform bill for Civil Procedural Rules for video conferencing legally supports the use of scope of video conferencing to the pre-trial conference and pre-trial hearing, only after both parties’ consents for pre-trial hearing, but for security and integrity reasons, it is not allowed for the trial itself <sup>([115])</sup>. In **Mexico**, in-person trials have not been suspended for: i) family issues; ii) violence; iii) legal protection for minors, children and women; iv) any irreparable damage, amongst other legal issues considered as urgent, including several “amparo” (constitutional rights) requests <sup>([114])</sup>. In **Israel**, important personal testimonies cannot be given virtually (Ministry of Justice, Israel, 2020<sup>[23]</sup>).





Something that will need to be decided in the future if remote trials are mainstreamed is whether use of technological means are to be decided by agreement of the parties, by one party, or by the adjudicating judge. In **Israel**, while at the moment agreement of the parties is required, there is a new proposed law that will allow judges to decide if the hearing (as long as it does not include a testimony) should be done via technological means, without the requirement of the parties' consent, although such measure will only stay valid while required by the COVID-19 circumstances.

#### ***Development of recommendations and best practices***

Several systems are already developing guidelines on how to conduct online trials effectively. **Lithuania's Judicial Council** has issued recommendations to the Chairpersons of the Courts regarding the organisation of work in their respective courts (Lithuanian Courts Judicial Council, 2020<sup>[99]</sup>). **Ontario's Court System** and the **UK government** have released best practices and guidelines for remote hearings (Superior Court of Justice of Ontario, 2020<sup>[100]</sup>) (HMCTS, 2020<sup>[107]</sup>).

According to Hon. Judge Casas from the **Criminal Court n. 10 of Buenos Aires (Argentina)**, in order to conduct an effective and responsive remote hearing you need:

- 1) A video system with acceptable safeguards to protect personal data of the parties involved in each case. Enable the participants to join via their web browser and without the need to pay for or install any software.
- 2) Contact parties and people involved in advance to make sure they have the necessary elements in place.
- 3) Design and provide a simple guide on how to connect in order to avoid unnecessary delays.

In parallel to the move towards **virtual courtrooms**, some countries have been taking steps to adopt effective **electronic storage systems** to file information about cases, in order to reduce paper dependence and waste (hence, good for the environment), but also to ensure timely presentation of and access to documents related to a case. For example **Qatar** has encouraged increased use of eCourt, its electronic case management system which allows access to case parties as well as the judicial staff (The Peninsula, 2020<sup>[1]</sup>). Similarly, the **United Arab Emirates** has been able to extend use of their long-existing electronic case management system and online courts, noting that the cost they have endured for implementing the system has lowered considerably over the years. In **Mexico**, all rulings are being duly notified via electronic platforms, and the Office of the Prosecutor General of the Republic has enabled remote investigations, using email and telephone to obtain useful information for investigations, as well as VPN to enter the institutional system remotely (Office of the Prosecutor General of the Republic of Mexico, 2020<sup>[2]</sup>). **Poland** is increasing use of its electronic platform ePUAP (Ministry of Justice, Poland, 2020<sup>[3]</sup>). It will be relevant in this case to invest in cybersecurity measures to ensure that sensitive personal data is protected.

To support **accessibility of digital services**, in **Canada**, an innovation has been developed to tackle this issue focused on **self-represented individuals** who are unfamiliar or uncomfortable with technology. They assist those who are involved in a justice related matter and require to use Skype, Zoom or other video-conferencing tools, to receive a telephone call from an intermediary who is responsible for assisting to familiarise the individual with technology by walking them carefully through the steps required to access and use the technology. Another pilot project Canada is exploring is to involve community librarians in providing basic guidance into legal procedures and legal technology, drawing on the relationship of trust built between citizens and themselves (Ministry of Justice, Canada, 2020<sup>[4]</sup>). **Portugal** is also ramping up



the use of regular, as opposed to smart, telephones, as well as mobile vans that take advisors through to remote and impoverished rural areas in the interior of the country, to reach citizens who do not otherwise have access to remote technology (Ministry of Justice, Portugal, 2020<sup>[5]</sup>).

However, the need for availability does not stop at delivery of formal court services, but should also consider a **full range of legal services** to fulfill citizen needs. Innovative ways to enhance legal service provision through technology could be to ensure the effectiveness of online identity verification, validity of electronic signature of legal documents for all parties<sup>10</sup>, and the mainstreaming of online or telephone public services which would usually be done in person, such as civil registry procedures for deaths, as has been implemented in the **United Kingdom**<sup>11</sup>. Also in the UK, the Office of the Public Guardian has published specific guidance for people to obtain Lasting Power and Attorney (LPA) and Executive Power of Attorney (EPA) during the pandemic (United Kingdom Government, 2020<sup>[6]</sup>). In **Portugal**, the Council of Ministers approved an experimental regime for the realisation of authentic acts, terms of authentication of private documents and signature acknowledgments through the Internet. This experimental regime will allow record-keepers and registry officers, notaries, lawyers and solicitors to carry out these acts via videoconference (Ministry of Justice, Portugal, 2020<sup>[5]</sup>). In **Chile**, the Civil Status and Identification Service, a public institution part of the Ministry of Justice and Human Rights, has promoted the use of a unique password called “Clave Única”, an API (Application Programming Interface) that allows citizens, in a remote way, to make 348 requests related to 158 institutions completely online. Finally in **Poland**, the Ministry of Justice runs a website called Stop Urowadzeniem Dzieci (Stop Child Abduction), through which electronic applications when a child goes missing (which significantly speeds up the proceedings) can be submitted (Ministry of Justice, Poland, 2020<sup>[3]</sup>).

**Alternative resolution methods (ADRs)**, such as mediation, have also been benefiting from online service provision. For example, **Canadian** and **Mexican** mediators are carrying out employment and civil mediations through Zoom and are considering expanding into small court claims (Office of the Prosecutor General of the Republic of Mexico, 2020<sup>[2]</sup>) (Rose, 2020<sup>[7]</sup>). In **Portugal**, new dematerialised channels for the ADR have been created to deliver their service to citizens and enterprises (Ministry of Justice, Portugal, 2020<sup>[5]</sup>). The use of video-call, video-conference, email and telephone is now possible for all participants. Similarly in **Colombia**, Conciliation (for family issues) and Arbitration Centres have stayed open remotely to keep working during confinement periods and support vulnerable groups, SMEs and entrepreneurs (Ministry of Justice and Law, Colombia, 2020<sup>[8]</sup>). In **Poland**, from January 1<sup>st</sup> 2020 citizens can use free mediation in free legal aid points, and the government is now working on providing this service remotely (Ministry of Justice, Poland, 2020<sup>[3]</sup>). Online ADR methods have been increasingly used as a tool to solve disputes in the midst of the lockdown measures without the need to wait until they are lessened. In building the medium term scenario for justice services, promoting a continued use of ADR could lower the backlog and duration of cases courts will face when they are back in full operation, providing more effective access to justice to both the parties of those disputes and the ones in need for court resolutions. In Chile, a free mediation service for contract breaches related to COVID-19 has been established by Santiago’s chamber of commerce (see **Box 2**).

### Box 2. Pro bono online mediations established in Chile for contractual disagreements

<sup>10</sup> For a recent review of where electronic signatures are currently considered valid around the world, see this [guide](#) by Clifford Chance (Clifford Chance, 2020<sup>[98]</sup>)

<sup>11</sup> Civil Registries across the UK are dealt with individually by each constituency. For example see Plymouth, where death registrations are being carried out over the phone (<https://www.plymouth.gov.uk/birthsmarriagesanddeaths/coronaviruscovid19informationonbirthsdeathsandmarriages>) or in Sutton ([https://www.sutton.gov.uk/info/200469/sutton\\_register\\_office/1294/more\\_about\\_the\\_register\\_office/10](https://www.sutton.gov.uk/info/200469/sutton_register_office/1294/more_about_the_register_office/10)).



The Ministry of Economy in **Chile** identified that the current health crisis would lead to a failure of contractual parties to comply with their obligations under multiple service contracts. To avoid an avalanche of lawsuits between parties in the short term, the Santiago Chamber of Commerce together with the Ministry of Economy have launched a programme that makes 1,000 pro bono mediations available to the community<sup>1</sup>.

1. The Arbitration and Mediation Centre of the Santiago Chamber of Commerce will be the entity that administers the pro bono mediation service, for conflicts whose amount does not exceed 3,000 Chilean Unit of Account (equivalent to about 109,027.97 USD), for 1,000 requests on a first-come, first-served basis via mail. To provide this service, an agreement will be signed with the Chilean Association of Mediators, so that the mediators on their payroll can collaborate in this initiative.
2. The request for mediation must be sent to the identified e-mail addresses; the contract must be accompanied by the individuals' data, telephone and e-mail of the party requesting the mediation and the party requested.
3. The Center will assign the mediation and will supervise the process, according to its quality standards and code of ethics of the mediator.
4. The mediation will be carried out online, by duly trained mediators, giving priority to video conferencing.

Moving some processes towards the online sphere when shaping the 'new normal' of justice systems in the medium term could improve accessibility of justice, in particular for vulnerable groups. Accessibility is closely related to the principle of equality and inclusion in that people-centred legal and justice services should be designed to overcome the range of barriers to access that apply in each country. One way to do so will be through the adoption of technological means as a more regular procedure in some instances. However, due attention should be given to the fact that disadvantaged groups may not have access to the necessary technical means or knowledge, in order to create the relevant safeguards (see below).

OECD had identified in previous research that information and communications technology (ICT) was increasingly seen as a key enabler to overcome a range of barriers and make legal and justice services more accessible (OECD, 2019<sup>[9]</sup>). There had been, even before COVID-19 related lockdowns, mounting evidence that people-centred strategies employing telephone and audio-visual technology, the Internet and software applications help to overcome some barriers to accessing justice and have the potential to create justice system efficiencies (Smith, 2014<sup>[10]</sup>) (Staudt, 2009<sup>[11]</sup>). Use of technology to resolve legal issues involves lower costs for litigants, especially those who are vulnerable and have little to no means and would otherwise be deterred from seeking legal adjudication; **removes geographical barriers; and avoids excessive presence in intimidating court settings, particularly of children.** Yet, careful evaluation and impact assessments are necessary to ensure that move to online justice does not impede the access to the vulnerable and develops safeguards to ensure procedural rights (see *Brief* and the discussion below).



## Risks and considerations

- Ensuring effective access and the right to a fair trial** - The majority of international human rights treaties and national constitutions enshrine the right to a fair trial as a fundamental right. Article 10 of the Universal Declaration of Human Rights defines it as the right to “*a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him*” (UN General Assembly, 1948<sup>[12]</sup>). From the standpoint of the OECD criteria for people-centred legal and justice services, people-centred lens require the design of such hearing with a focus on the outcomes, not only in the process. These include two types of outcomes to keep in mind: procedural outcomes, which include factors such as the person’s level of satisfaction with the process and the level of stress experienced; and substantive outcomes, which can also be measured from the perspective of the individual’s satisfaction, but also against an objective standard or societal goal.
- The first ramification of this right to a fair trial is **to have the opportunity to make one’s case effectively**. Potential considerations in claiming this right are summarised in **Box 3**. A second essential part of the right to a fair trial is for it to **be a public hearing**. Concerns have been raised about how online trials will be made public and accessible to those who wish to be present (The Transparency Project, 2020<sup>[13]</sup>). In this regard, some countries are moving to ensure that all trial sessions are recorded, stored in a central location for future reference, and accessible for download by the public, except in those cases where other interests prevail according to the applicable law. In **Lithuania**, for instance, in case the court hearing is conducted with the exclusion of public, there is a legal obligation to make an audio recording of the hearing which should be made accessible as soon as possible after the hearing. As highlighted above, several countries, such as **Chile** and **Malaysia**, have also been able to broadcast trials live.
- Removal of face-to-face presence** - The removal of a co-presence element to court hearings might have a negative impact in the outcome of the trial for some groups due to several reasons. Firstly, research conducted on the effects of introducing videoconferencing trials suggests that conducting hearings through such tools can generate disengagement of participants and that they are less likely to seek legal advice (Eagly, 2015<sup>[14]</sup>), (Terry, 2010<sup>[15]</sup>). This effect might be exacerbated in cases involving children, who may not fully understand the seriousness of a trial proceeding if they conduct it through a video conference (Standing Committee for Youth Justice, 2018<sup>[16]</sup>). Second, some evidence suggests that participants involved in video conference proceedings face increased isolation and emotional distress (Kitzinger, 2020<sup>[17]</sup>). In order to ensure a people-centred approach, focusing on these possible outcomes for individuals is essential. A possible solution would be to start implementing a survey for users and implement improvements to remote hearings based on layperson experience (Sela, 2016<sup>[18]</sup>).

### Box 3. Challenges to ensure the right to a fair trial in the digital environment

**Digital divide.** A barrier posed by the current situation is that not everyone has access to Internet connection, to adequate hardware devices to take effective part in a trial, or sufficient IT knowledge on how to use these tools (UNCTAD, 2020<sup>[86]</sup>). Moreover, evidence suggests that people who do not have access to Internet connection are often individuals which were already in more vulnerable economic and social positions<sup>1</sup>. In this vein, a people-centred agenda requires making tools and mechanisms available to proactively detect parties who may be considered vulnerable and ensuring that reasonable



adjustments are made to enable them to participate fully in proceedings. For example, VCT procedures could be substituted by telephone hearings in case the participant has a phone but not a computer, and they should be dialed out instead of asked to join with a number to ensure that they have enough call credit. Judges should have wide discretion to adjourn cases if a party to proceedings complains that they cannot follow proceedings (The Legal Education Foundation, 2020<sup>[92]</sup>). These measures will ensure a higher satisfaction from the standpoint of procedural outcomes discussed above.

**Capacity of justice institutions.** In addition, courts and dispute resolution centres may also face technological barriers to enable justice services to be provided digitally. For instance in Colombia, out of 165 Arbitration and Conciliation centres, 108 had the capacity to provide justice services through the use of digital tools, but 57 could not work this way, so they decided to suspend deadlines in their procedures (Ministry of Justice and Law, Colombia, 2020<sup>[109]</sup>). Growing capacity of the justice sector to carry out online procedures with the adequate safeguards will be a challenge going forward.

**Quality of representation.** Long-distance proceedings may also make difficult effective relationships and preparation meetings between a participant in trial and his or her lawyers (Gibbs, 2017<sup>[20]</sup>). Evidence suggests that clients share less information with their attorneys during online meetings (Burton, 2018<sup>[93]</sup>). Access to legal advice is crucial in obtaining effective remedies to legal problems, and therefore legal aid adapted to people's personal situation should be ensured as an essential service throughout lockdown measures and beyond. Carrying out trials through solely electronic means may also hinder the ability to present some means of proof, and hence, solutions for this shortcoming should be devised whenever possible. As highlighted by the United Kingdom during the OECD Global Virtual Roundtable on the impact of COVID-19 on Access to Justice, vulnerable users could be disadvantaged by online-only processes, for example, in the context of medical assessments and personal injury cases.

Finally, initial evidence from online trials suggests that technical glitches may affect the fluidity and quality of defense of even the most talented oral advocates, due to image-audio time lags, losses of connection by some of the participants and overall audio or sound conditions that are worse than they would be in a physical trial (Federal Court of Australia, 2020<sup>[94]</sup>)<sup>1</sup>. The absence of body language may also downplay the strength of one's case. All of these may affect procedural outcomes since the individual will not feel as well prepared and / or as fairly treated by the legal system, but also substantial ones, since as described below, these hurdles may also affect the substantial outcomes of trials.

The effects of these barriers should not be taken lightly. While there has not yet been a systematic data gathering effort in this regard, some evidence points out that justice outcomes can be influenced by remote, as compared with face-to-face, hearings: the Bailout Project found that 50% of applicants heard via video link were refused bail, compared to 22% of those heard in person (The Bail Observation Project, 2013<sup>[95]</sup>).

- **Addressing informality** - Traditional court rituals are modified by the introduction of VCT trials, which instill an element of informality. This often materialises in a more relaxed dress-code, domestic backdrops, and some background noises or interruptions (Rowden and Wallace, 2017<sup>[19]</sup>). Making court settings less formal could be an effective means to tackle the barrier posed by intimidation in court, which maybe experienced especially by vulnerable groups. In certain cases however, it is important to keep in mind that this informality should not downplay the sense of importance given to a case (Kitzinger, 2020<sup>[17]</sup>), since some victims or claimants of online trials have expressed the feeling that their case deserved a more attentive and solemn atmosphere





(Gibbs, 2017<sup>[20]</sup>). Tackling these sensations will improve client satisfaction and feeling of fairness in relation to the process.

Before the crisis, it was observed across the board that adoption of ICT tools for justice systems was sporadic and their use far from widespread, and that it was linked to significant investments required for their implementation (OECD, 2019<sup>[9]</sup>). In this regard, as highlighted in the Brief, leveraging this opportunity where implementation of ICT tools has been almost forcibly carried out could have significant benefits in terms of accessibility. Yet, it would be important to carefully design a service delivery that includes a multi-channel approach. Implementing a **variety of means** to access justice services (face-to-face when possible, telephone, web portal, e-mail, social media, etc.) could account for the identified barriers by avoiding isolation of those without access to the Internet or digital skills, while still reaping the benefits of digitalisation (OECD Digital Transformation Studies, 2018<sup>[21]</sup>). For example in **Mexico**, the Office of the Prosecutor General of the Republic has accepted complaints both through regular post mail and through its website throughout the confinement period (Office of the Prosecutor General of the Republic of Mexico, 2020<sup>[22]</sup>). Similarly, implementing face-to-face trials for topics that are sensitive to the negative effects of remoteness, such as physical injury or serious family law cases, could address downsides of the digital transformation and allow increases in efficiency at the same time by undertaking appropriate trials remotely.

#### Legal advice provision and legal aid

The need to address people's legal problems has driven a range of initiatives during the crisis, which can offer relevant innovations going forward in facilitating the people-centred transformation. Accessibility of justice may also be expanded through **remote working for lawyers** and exploration of innovative ways of providing legal counselling. In **Lithuania**, for example, it has been strongly advised to organise the provision of state-guaranteed legal aid using remote working tools, i.e. send all requests by e-mail, provide consultations by phone, online or use other means of telecommunication (Ministry of Justice, Lithuania, 2020<sup>[22]</sup>). In **Israel**, official legal aid is provided by the Ministry of Justice through the use of technological means and telephones, and they have recorded an increase in the number of calls to the call centre to receive legal assistance during this time (while the call centre is absorbing previously physical visits, a significant increase in domestic violence cases has also been registered) (Ministry of Justice, Israel, 2020<sup>[23]</sup>). Other means could include **broadening the scope of legal aid** services to include more people in its scope; aid to participate in ADR proceedings; and to cover civil cases, since they will face an increase but with reduced means for litigants (in particular, for SMEs, entrepreneurs and self-employed workers). Spanish law firm Milcontratos has offered free access to over a thousand legal document templates reviewed by lawyers to ensure acceptable legal documentation reached customers during the pandemic (Milcontratos, 2020<sup>[24]</sup>).

Another critical dimension is the **availability of financing** for legal and justice services to ensure legal aid reaches those most in need. Financial support to the non-profit sector (NGOs and civil society organisations) has been strongly disrupted by the economic crisis and by social distancing requirements. In the **United Kingdom**, a £750 million package of funding has been allocated for charity and legal advice organisations to ensure continuity of their operations. Some of this funding will go towards enabling providers to adapt their delivery models to online provision and social distancing measures (United Kingdom Government, 2020<sup>[25]</sup>). In particular for the legal aid sector in the UK, the Community Justice Fund (Community Justice Fund, 2020<sup>[26]</sup>) has emerged as a joint initiative gathering independent funders working in partnership with key representative umbrella bodies<sup>12</sup> to help specialist social welfare legal advice organisations with the immediate and medium term impact of the COVID-19 pandemic.

<sup>12</sup> The Fund is made up of contributions from a range of sources, including the UK government. It is a joint initiative between Advice UK, Law Centres Network and Citizens Advice and a group of independent funders (the AB Charitable Trust, Access to Justice Foundation, Indigo Trust, Paul Hamlyn Foundation, The Legal Education Foundation and Therium Access). It is hosted by the Access to Justice Foundation.



Australia has strengthened financial support for the legal assistance sector to support the recovery (see **Box 4**). In the **United States**, an extra USD 50 million of emergency funding were awarded to the Legal Services Corporation (the largest legal aid funder in the country) through the “Coronavirus Aid, Relief, and Economic Security Act” ([CARES Act](#)) to address the increased legal needs of low-income Americans caused or made worse by the COVID-19 pandemic. In **France**, the government has also provided additional support for lawyers who may be suffering a loss of income due to the crisis.

#### **Box 4. Australia’s support to the legal assistance sector**

In May 2020, the Australian Government announced an additional AUD 63.3 million in funding to be provided for the legal assistance sector in order to ensure access to legal support for those Australians who need it during the COVID-19 crisis. The Government indicated that this additional funding was to ensure frontline legal service providers have the resources they need to meet any increased demand caused by the pandemic (Attorney General for Australia, 2020<sup>[118]</sup>).

The additional AUD 63.3 million would be used as follows:

- AUD 49.8 million for additional frontline legal services, such as legal advice or representation, with
  - AUD 20 million to be used for matters involving domestic and family violence; and
  - AUD 29.8 million will help fund other COVID-19 issues, such as tenancy disputes, insurance, credit and debt related problems, and work-related claims.
- AUD 13.5 million for IT costs to support the legal assistance sector’s transition to delivering assistance virtually and online (in particular allowing the legal assistance sector to purchase much needed equipment such as new laptops, upgrading internet connectivity, personal protective equipment, and remote access facilities)

The additional funding aims to support the legal assistance sector in responding to increased demand due to COVID-19 with providers being given flexibility to allocate funding to individual programmes based on need and the best delivery mechanism available to them. The Commonwealth Government (the national government in the federation) also invited all Australian state and territory governments to consider matching this funding contribution.

In addition, the National Cabinet highlighted the importance of finalising the agreement between the governments of the Commonwealth and the states for the establishment of a new five-year National Legal Assistance Partnership through which the Australian Government will provide more than AUD 2 billion to fund front line legal assistance services to help Australians address legal issues.

Accessibility of justice can also be promoted through **trainings**, both to raise legal literacy of the public and for judicial staff to be able to better help the users and be able to adapt to their particular personal, social or cultural circumstances. For example in **Italy**, online trainings for judges and court staff about risk management in the COVID-19 context are being implemented online. **Easy to use tools and off-the-shelf understandable briefs** to make regulations and legal advice reach the most vulnerable, such as the development of legal apps or live chats to submit legal queries of low complexity, could also provide help for a majority of cases including those related to tax filings, benefits, employment or rent / debt repayments.



For example in **Israel**, in order to provide information about specific challenges and issues being dealt with by vulnerable groups, the Ministry of Justice has published videos that simplify different legal subjects and rights, in matters such as: public housing, mental institutionalisation, personal status, debt management and labor law (Ministry of Justice, Israel, 2020<sup>[23]</sup>). In **Ukraine**, the initiative from the Ukrainian Legal Aid Foundation *Just Rights* (accessible for users through the website [www.prostoprav.in.ua](http://www.prostoprav.in.ua)) is a platform that allows anyone to create a simple application, and lawyers registered on the website decide to help or not and how much they would charge (although, very often lawyers help for free). Legal Aid Ukraine explained through their contribution to the Call for Evidence that because people are not afraid to ask and there is no compromise on either side, they actively use the resource. Solutions like the American Bar Association's "Free Legal Answers" easy to use legal questionnaire (American Bar Association, 2020<sup>[27]</sup>) or the Canadian's repository of eviction regulations per province (Canada Mortgage and Housing Corporation, 2020<sup>[28]</sup>) could also bring the law closer to those in need. The Legal Design Lab at Stanford Law School is using SMS technology to improve legal aid hotlines, and is exploring a possible collaboration with search engines to improve how legal information is shown when people look online for help (Martinez Layuno, 2020<sup>[29]</sup>). Also in **Ukraine**, the Ukrainian Access to Justice School of Practice has developed four COVID-19 specific programmes to enhance access to justice during the pandemic across the country (see **Box 5**). Through these programmes, the whole of the justice chain actors can be involved in the provision of more accessible justice (see *Brief*).

### Box 5. Ukrainian Access to Justice School of Practice programmes in response to COVID-19

The Ukrainian Access to Justice School of Practice is an educational platform co-founded by the Ministry of Justice, Legal Aid Ukraine, Association of Legal Clinics of Ukraine, Legal Development Network, and Ukrainian Legal Aid Foundation. The School has now adjusted its work to the current crisis. Several programmes of the School took action, in particular:

1) To address the vulnerability of marginalised groups during the pandemic, one of the School Programmes -- **Laboratory of initiatives to strengthen A2J for groups vulnerable to HIV** -- started to research the pandemic-related legal issues of groups vulnerable to HIV. Of the 75 surveyed respondents, 61% said to be facing pandemic-related legal problems, which included difficulties to access the health system. Based on the results, the Programme developed both an immediate and longer term strategy of action, which is planned to include:

- a course and practical guidance for lawyers on 'How to protect people vulnerable to HIV (based on the most urgent problems)';
- trainings for Legal Aid Ukraine centres' specialists on protecting the right to medical care for people vulnerable to HIV and take action against discrimination;
- advocacy efforts, as well as the creation of educational videos/leaflets to share in social media; and
- development of guidelines on how to access legal aid guaranteed by the law through online tools.

2) The second Programme, **Pro Bono Lab**, was transformed to help NGOs in the crisis. At the beginning of lockdown measures, a survey was conducted on NGO legal needs. The identified problems mostly concerned tax, rent issues, problems with online management, setting up the remote work with clients, security in the web. In line with the results, the Programme developed webinars and short videos to be posted in social media and help NGOs cope with the crisis.

3) **Legal IT HUB** usually works on innovative technological solutions in the area of access to justice and community management. Faced with the quick transition of a large part of legal and social life to the web (and related problems, such as cyberbullying, new forms of discrimination, cybercrime, etc.), the Programme team worked on the urgent response to these challenges by sharing practical tips for



remote work, overviews of remote management tools, overviews on cybersecurity and overviews of online training tools.

4) The **Legal empowerment of communities Programme** and the **Paralegal educational Programme**, which train community activists to conduct research on legal needs in their communities, switched to online trainings.

Contribution of Mrs. Kateryna Khilchevska, director of the Ukrainian Access to Justice School of Practice

### *Enhancing access to justice through collaboration and integration of services*

**Providing legal aid together with other state socio-economic benefits** associated with the crisis could also be a means of detecting vulnerable populations who may be subject to legal problems and their associated clustering effects early on. This might keep a family in its home, or help someone keep a single financial problem from becoming a crisis (Namoradze and Chapman, 2017<sup>[30]</sup>). Legal support could be a part of economic benefit packages designed for SMEs, self-employed individuals or those who lose their income as a result of the crisis, including through the online portals providing services businesses and people. Institutional approaches, such as the newly established **Canada Access to Justice Secretariat**, can help strengthen partnerships and help establish referral pathways across agencies working on issues of labor, veterans, and health (see *Brief*). This service could also be co-ordinated through National Bar Associations<sup>13</sup>. In **Ireland**, a type of collaboration established to target vulnerable families has been identifying social welfare recipients who are no longer receiving child maintenance from the other parent because of job loss due to COVID-19. In those cases, the Department of Employment Affairs and Social Protection has agreed to revise their payments upwards for a 12-week period (Department of Justice and Equality of Ireland, 2020<sup>[31]</sup>).

The creation of **medical-legal partnerships** to address health related legal needs, including for example legal health checks in hospitals, could also be explored (National Center for Medical-Legal Partnership, 2020<sup>[32]</sup>). Access to healthcare, and resolution of health insurance or similar disputes, is likely to be an essential need for many patients suffering from COVID-19 and their families. Ensuring access to health-related justice may enable the system to detect, address and prevent health-harming social conditions that have their roots in legal problems, and to help secure healthcare coverage by avoiding or resolving erroneous administrative denials of benefit. Various programmes demonstrate that integrating legal and health services lowers health care costs and improves well-being (OECD, 2019<sup>[9]</sup>). Improvements are seen in the general population as well as among specific marginalised groups, such as USA Native Americans (National Center for Medical-Legal Partnership, 2014<sup>[33]</sup>).

Another example of people-centred practice has been implemented by the **US Legal Services Corporation**, which reported that when someone comes to the office and it is closed, that person can reach somebody in a legal aid office remotely by video through ringing the doorbell. This allows the person to receive information on how they could still ask for support online or call a hotline to receive legal aid services (Legal Services Corporation, 2020<sup>[34]</sup>). Implementation of these **“No Wrong Door” service delivery models** is even more important during the pandemic, because justice pathways and usual contact

<sup>13</sup> For instance, the American Bar Association’s Young Lawyers Division has created a [national hotline](#) to connect with those needing legal services during the COVID-19 pandemic through its Disaster Legal Services Program. The Madrid Bar Association has also put together a list of over 300 qualified lawyer volunteers to help SMEs in employment law matters related to COVID-19.



spots for vulnerable users are likely to have radically changed. Successfully developing this type of service provision would require a whole-of-government approach, with likely implication and co-ordination among several departments and agencies throughout the justice journey (see *Brief*).

Co-ordinating a legal aid response from **different community actors**, such as *pro bono* volunteer teams in large law firms and in-house teams with high levels of technical expertise, NGOs, student legal clinics and academics could provide an increased support that the state alone may not be able to absorb. Many of these have already started springing spontaneously. The Volunteers of Legal Services have launched an Unemployed Workers project and a Frontline and Healthcare Workers project to target legal aid to those most in need, on top of their regular support to the elderly and children (Volunteers of Legal Service, 2020<sup>[35]</sup>). Indeed, there is emerging evidence that flexible forms of legal assistance can result in potential benefits and cost savings (OECD, 2019<sup>[36]</sup>). In New York City, an estimate commissioned by the New York City Bar Association found that the city could potentially save USD 320 million—*annually*—in shelter savings and affordable housing services by offering legal support to tenants (Stout Risius Ross, Inc. for NY Bar, 2016<sup>[37]</sup>). In **Australia**, the government stresses flexible legal assistance as “early intervention” to prevent legal problems from escalating (Pleasence et al., 2014<sup>[38]</sup>).

### ***Empowering communities to deal with their legal problems***

The pandemic has brought to the forefront the importance of **legal empowerment approaches**, which are essential to enable ordinary people to use the law to have the voice in the system as a whole and find concrete solutions to their pressing justice problems.

Indeed, in a number of countries, community-based justice services play an essential role to help people address their legal problems. Some are publicly funded (Ontario, Canada and New South Wales, Australia), others are administered by the governments (e.g., access to justice centres in Argentina or houses of justice in France). Many of these are currently closed to the public but operating remotely (Rouxel, 2020<sup>[39]</sup>). These services use a combination of tools – ranging from legal literacy and advice to community mobilisation and advocacy – to resolve individual or community problems while simultaneously advancing systemic reform in the interest of the poor and marginalised communities.

These methods could be crucial in the post-COVID-19 context to avoid the collapse of the court system due to rising caseloads.

### ***Promoting equality and inclusion through the justice system***

Equality and social inclusion are the normative core of access to justice. Promoting equality and inclusion as guiding principles require legal service providers to pay attention to the specific needs and experiences of vulnerable and marginalised groups in their service design.

#### **Tackling domestic violence**

A critical function of justice and law enforcement systems in the context of strict lockdown has been to provide a **survivor-centred justice pathway**, which could empower survivors to denounce their abuser safely from home. This could be achieved, among others, through provision of a helpline number or website established for this purpose. These resources should be complemented by adequate and language-appropriate information about the victim’s rights, and regarding when and how to seek help. Importantly, continued and in fact enhanced provision of legal services to victims of domestic violence, especially in times of crisis when the incidences of violence have heightened, can reduce its prevalence and the





associated cost to governments. Exploring this further, a victim's capacity to successfully obtain a restraining order against an abusing party is important in preventing future incidents of violence and associated emotional, social and financial costs. Some justice systems, such as the State of Connecticut Family Courts, are starting to extend restraining orders remotely (State of Connecticut Judicial Branch, 2020<sup>[40]</sup>). Through forms published in the judicial website, applicants will be able to complete and file an application by fax or email, without the need for a notary public and without having to go to the court clerk's office. Online protection orders are also being expedited in Mexico throughout confinement periods (Office of the Prosecutor General of the Republic of Mexico, 2020<sup>[2]</sup>) It could be relevant to explore the applicability of these approaches in the post-crisis environment.

Providing *specialised legal aid services to victims of violence* (not only in criminal but also family, administrative and civil cases), both during and after the crisis, can provide significant savings (OECD, 2019<sup>[36]</sup>) (e.g., a study in the US showed savings of USD 3 630 per family (accounting for emergency medical care, shelter, counselling and education) (Abel and Vignola, 2010<sup>[41]</sup>). Some country-specific approaches can be found in **Box 6**.

### Box 6. Country measures taken to address domestic violence during the pandemic

The surge in domestic violence cases caused by the pandemic and its associated measures have led several countries to adopt comprehensive action plans to tackle protection of women and children victims effectively. Without being exhaustive, some examples include:

In **Ireland**, the Department of Justice and Equality has developed an inter-agency plan to address the heightened threat of domestic abuse at this time, which includes:

- Additional funding of over €196,000 has been provided to community and voluntary groups in the sector.
- An Garda Síochána (the Irish Police) has established a proactive targeted policing initiative for domestic abuse victims. This means the police is visiting the homes of citizens who had come to their attention the last two to three years and knocking on the door to remind the occupants that the guards are there and that they are available to help. This measure highly resonates with the proactivity and timeliness criteria in that it “puts assistance” in people's paths.
- The Courts Service and Legal Aid Board are giving priority to domestic abuse and childcare cases and a Helpline has also been established.
- The Minister for Justice and Equality, Charlie Flanagan and Minister of State David Stanton have also launched a public awareness campaign (Department of Justice and Equality of Ireland, 2020<sup>[31]</sup>).

In **Portugal**, the Law for Domestic Violence has been revised to give women with children a swifter solution in a situation of abuse, allowing protective measures to take place faster these women and their children. Suspension of the eviction of tenants and enforcement of mortgages that fall on private housing (Ministry of Justice, Portugal, 2020<sup>[5]</sup>).

In **Spain**, a comprehensive COVID-19 response programme for gender violence victims has been launched, where on top of the existing 24/7 attention number and e-mail address, several WhatsApp numbers have been introduced to ease making claims and to provide psychological support. An App called ALERTCOPS has been developed through which victims can alert the police and send their address without having to make a call. In addition, all victims have the right to free legal advice in 52 languages through the helpline number.



In **Egypt, Slovak Republic, Tunisia, Lithuania, Chile, United Kingdom** and **France** among others, special free helpline numbers have been established for domestic victims in immediate danger. These are also serviced through e-mail in **Denmark** and SMS in **France**. In addition, some countries (e.g., **Chile, Spain** and **France**), are using the code word “Facemask 19” is used in pharmacies to identify the women seeking assistance.

**Colombia** reported putting in place guarantees for victims and survivors of domestic violence to have full access to family commissioners, cash transfers and service supports during the COVID-19 crisis (Ministry of Justice and Law, Colombia, 2020<sup>[8]</sup>).

**Chile’s Ministry of Women and Gender Equality** has announced significant preventive and containment measures such as continued operations centres for women and 100% operative shelters, campaigns to encourage reporting, and online prevention courses. Some of these have included: #ContigoMujer (with you woman), #PasaElDato (pass it on) and “En esta comunidad no entra la violencia”, all of them campaigns directed at raising public awareness for the issue of violence or to strengthen communities of women; and a campaign to promote healthy sharing of domestic tasks and dialogue in couples to avoid escalation of disagreements into violence (Ministry of Justice, Chile, 2020<sup>[119]</sup>).

As highlighted during the OECD’s conference *[Taking Public Action to End Violence at Home](#)* (February 2020, hereinafter the VAW Conference), access to justice is one of the critical dimensions that can reduce domestic violence against women. However, to be most effective, it was underscored that **integrated service delivery** should be made available for survivors through a whole-of-government response, due to the benefits of this approach as highlighted in the Brief. The whole-of-government response, in turn, would be most strongly supported by a national plan with cross-party support to address violence against women.

The heightened levels of domestic violence that have been registered throughout the pandemic also affect children, who are at increased risk of abuse and neglect (OECD, 2020<sup>[42]</sup>). Measures related to the pandemic like at-home schooling and confinement have increased the amount of hours spent online by children, prompting several governments to create specific response programmes in the context of COVID-19 (for instance see the US Ministry of Justice dedicated [website](#), the Australian Government’s safety Commissioner’s [advice booklet](#) to keep children safe online, or the Canadian Centre for Child Protection [resources](#) for parents, teachers and children).

Collecting sufficient data in this area will play a critical role in the production of evidence-based policy and development of a risk-based and survivor-centred approach to tackling these critical issues.

### Ensuring access to justice for ethnic minority groups

The COVID-19 pandemic is having a major disproportionate impact on racial and ethnic minorities (U.S. Department of Health and Human Services, 2020<sup>[43]</sup>) (Millet GA, Jones AT, Benkeser D et al, 2020<sup>[44]</sup>). For instance, in Brazil’s Sao Paulo city, people of colour are 62% more likely to die from COVID-19 than white people (Lilly Caldwell K., De Araújo E., 2020<sup>[45]</sup>) UN High Commissioner for Human Rights Michelle Bachelet recently found that the crisis has thus exposed “alarming inequalities” within our societies that go beyond health inequality (OHCHR, 2020<sup>[46]</sup>). Increasing evidence suggests that this is often due to the disparities in access to healthcare, high rates of poverty, wage gap, cramped living conditions, lack of access to essential services, sanitation, and stigma faced when accessing services (International Organization for Migration, 2020<sup>[47]</sup>). In parallel, across the United States and the globe, the COVID-19



outbreak has been accompanied by growing protests calling for racial justice and equality, with a particular focus in the legal and law enforcement treatment of African Americans (Black Lives Matter<sup>[48]</sup>).

One such underlying inequality for racial and ethnic minorities, already identified and documented widely before the pandemic, is uneven access to the justice system. For instance, the Justice Project in Australia found that Aboriginal and Torres Strait Islander people were more likely than non-Indigenous people to experience multiple, intersecting legal problems, including increased legal needs in crime, government, child protection, tenancy, discrimination, social security, consumer issues and family law; and that they were 12.5 times more likely than non-Aboriginal Australians to be imprisoned (The Justice Project, Law Council of Australia, 2018<sup>[49]</sup>). Specific measures should be undertaken by countries to ensure that unequal access to legal remedies during and in the aftermath of the pandemic do not further entrench pre-existing inequalities, and to address discrimination of minorities more broadly.

A key solution proposed by IOM has been to ensure that all necessary information is available in local languages, and that individuals are able to express their questions in their language (International Organization for Migration, 2020<sup>[47]</sup>). **Canada's** Health Ministry has adopted this advice by translating its key information on COVID-19 into [ten indigenous languages](#) and has committed about \$1.7 billion in specific support to Indigenous and northern communities and organizations. Translation into local languages would also be a good practice to inform minorities of their legal rights and avenues to execute them. In the **United Kingdom**, several initiatives have been undertaken to protect BAME (Black, Asian and minority ethnic) communities from the virus' impact, and they have been identified as vulnerable workers due to growing incidence of the virus in their communities (GMCVO, 2020<sup>[50]</sup>). **Italy** has monitored cases of discrimination related to the COVID-19 emergency, finding up to 30 cases of physical or verbal aggression until now (OHCHR, 2020<sup>[51]</sup>). More good country practices to address minority issues during the pandemic can be found in OHCHR's [Covid-19 And Minority Rights: Overview And Promising Practices](#).

### Promoting inclusiveness of refugees and migrants through access to justice

A World Health Organisation (WHO) comment published in The Lancet highlighted the effects of the COVID-19 pandemic on refugees and migrants and the ***need to include them in outbreak response and readiness*** (WHO and Kluge et al, March 2020<sup>[52]</sup>). Refugees and migrants are vulnerable groups at increased risk of contracting COVID-19, because they typically live in overcrowded conditions without the means to self-isolate or follow basic public health measures. They are also over-represented among the homeless population in most countries, face obstacles in accessing sanitation facilities, and are particularly affected in cases of income loss. Many of these difficulties are linked to the uncertainty in their legal status (WHO and Kluge et al, March 2020<sup>[52]</sup>).

Therefore, accessing legal and justice services is essential to refugees and many migrants, since their legal status (and with it, their access to social services and employment) often hinge on an administrative or judicial decision. However, institution closures and slowdown of case processing are in many cases halting the procedures, further entrenching their marginalisation (Vera Institute of Justice, 2020<sup>[53]</sup>). This is coupled with great regulatory haste concerning immigration and border movements, with many emergency measures being adopted that restrict the possibility to apply for asylum and employment visas. Moreover, unlike in criminal court, in most countries immigrants facing deportation do not have the right to a lawyer when they can not afford one, leaving most without access to legal representation (Berberich and Siulc, 2018<sup>[54]</sup>).

To tackle these vulnerabilities effectively, open communication and proactive outreach to migrant and refugee communities are important to raise awareness of the resources available to them, which could be coupled with additional protective measures to lighten the burden from uncertainty in status and lack of



access to healthcare. For example, **Portugal** temporarily granted full rights of citizenship to non-citizens during the pandemic, so that they had access to the same services as citizens do (Ministry of Justice, Portugal, 2020<sup>[5]</sup>). **Chicago** Mayor Lori Lightfoot issued an executive order ensuring that all residents, regardless of immigration status, can access city services and benefits, including the city's new COVID-19 Housing Assistance Grant programme. In addition to direct relief measures, Mayor Lightfoot also committed to continuing support for the city's Legal Protection Fund (Chicago Office of the Mayor, 2020<sup>[55]</sup>).

### Ensuring justice reaches the elderly and children

Some of the most vulnerable groups in terms of effective access to justice are those who, by reason of their age, are either not allowed or find it difficult to reach justice services and understand the rights or procedures applicable to them. The elderly, whose health has been the most impacted by the COVID-19 virus, often face specific barriers to access justice such as lack of knowledge about obligations, rights and procedures, concern of costs and long-standing ill health (Japan Federation of Bar Associations, 2016-2017<sup>[56]</sup>). For those living in care homes that are being mistreated by the staff, their abuser(s) may be their only link to outside world, or they might have limited means to be transported outside of the homes to access legal services (Seniors First British Columbia, 2020<sup>[57]</sup>). In the context of COVID-19 and its aftermath, increased digitalisation may risk leaving the elderly behind, since they might not have the user skills necessary to access justice through digital means. To tackle this issue, the Israeli Ministry of Justice has used traditional media outlets such as television and newspapers to share the availability of new and existing services provided specifically for the elderly population and holocaust survivors (Ministry of Justice, Israel, 2020<sup>[23]</sup>).

When addressing the aftermath of the crisis and reshaping the legal landscape, specific consideration must be given to the digital divide that separates the elderly from younger generations. One option is to provide **assisted digital service delivery**, which is a means to enable otherwise excluded group to access public services with the help of a professional. That has been one of the recommendations of the National Center on Law & Elder Rights (USA), which has proposed guidelines on how organisations can offer support to seniors remotely that include walking clients through self-help forms by phone (National Center on Law & Elder Rights, 2020<sup>[58]</sup>). Several elderly legal aid branches from governments have kept on working remotely. The Elder Abuse Service of Legal Aid New South Wales is offering assistance through a telephone hotline (Legal Aid New South Wales, 2020<sup>[59]</sup>), similarly to the Pennsylvania Senior Law Centre (Senior Law Center, 2020<sup>[60]</sup>) and the Centre for Elder Law & Justice of New York (Center for Elder Law & Justice, 2020<sup>[61]</sup>). Collaboration across government institutions and throughout the justice chain, as highlighted in the Brief, might be of particular importance when addressing barriers for the elderly. Medical-legal partnerships and integrated service delivery that will help the elderly be aware of their rights and how to enforce them while accessing their social benefits, pension payments, or while visiting their doctor, might be extremely useful.

In a similar vein, barriers for children to access justice had previously been identified in the complexity and length of proceedings, unawareness of their rights by them or their families, and in cases of maltreatment, due to the fact that their abusers are often their caretakers and link with the outside world (Davidson et al., 2019<sup>[62]</sup>). Such obstacles are likely aggravated by the current crisis, as identified in the [OECD's Policy Brief \*Combating COVID-19's effect on children\*](#) (see domestic violence section above). Child-specific needs must be taken into account more broadly by future justice reforms, not only to tackle violence cases, but to leverage this opportunity to reduce some of the barriers they are facing.

One way could be to carry out trials for children (when the subject matter is appropriate) remotely, since evidence has shown that court settings can be intimidating for children (Council of Europe, 2010<sup>[63]</sup>) and they may feel safer at home (although care is needed in case an abuser is at home). Online civil registration



may also facilitate giving all children a legal identity, as called for by the Call to Action: Leave No Child Behind (Davidson et al., 2019<sup>[62]</sup>). The opportunity that children now spend more time online can also be leveraged to create **online resources adapted for them specifically** on their rights and options, using **child-friendly language and visuals**. One example has been the materials created in the context of COVID-19 by the Children and Family Court Advisory and Support Service in the UK (see their [Booklet](#) for children and their youth-centred [videos](#)). Finally, insofar as these reforms concern children, they should be done allowing participation of children as well (Davidson et al., 2019<sup>[62]</sup>)

In the context of the likely economic recession, with SMEs and self-employed workers most strongly affected, several countries have taken measures to relieve pressure. Some of these measures have included temporary suspension of enforcement measures against companies (for example, in Belgium); nine-month deferral of loans, health, social and old-age insurance payments for SMEs and entrepreneurs-natural persons, as has been done in Slovakia (Ministry of Justice of the Slovak Republic, 2020<sup>[64]</sup>); the postponement of the obligation to file tax declarations, or self-employment quotas; and suspension of mortgage payments and evictions for tenants (as has been done in Portugal). In **Israel**, different units and departments within the Israeli Ministry of Justice have created new relief regulations in order to assist companies and individuals that have been greatly affected by this virus, making efforts to allow online services and postpone deadlines. Finally, significant measures have been taken in the area of insolvency (see **Box 7**).

### Box 7. Adaptations of insolvency regimes

Due to the sudden halt to economic activity imposed by lockdown measures and social distancing, many companies are currently facing severe losses and balances that set them within the limits of mandatory bankruptcy declarations. To avoid massive company closures due to COVID-19, in particular SMEs', many countries are extending and relaxing insolvency limits to allow companies more margin to recuperate, on the one hand, and to relieve them from immediate debt payments in some cases, on the other. Some examples are the following:

In the **Slovak Republic** the time-limit to file for bankruptcy was extended to 60 days per article 4 of their COVID Act in April 2020. Profound changes to insolvency proceedings were also introduced:

- Slovak entrepreneurs whose business is under threat as a result of COVID measures can ask for a court decision which has similar effects to a temporary moratorium in restructuring proceedings (detailed list of effects is below).
- Entrepreneurs (natural or legal persons with residence or seat in Slovakia) who are not insolvent, fraudulent or against whom there was no enforcement procedure as to March 12, 2020, can ask for a temporary moratorium using a form (an obligatory electronic filing is required from companies, not individuals).

In **Lithuania**, the Ministry of Finance is preparing a draft law on suspension of the duty to file for insolvency by 1 September 2020. This draft law includes a suspension of the creditor's right to file for insolvency as well but only for the quarantine period. This suspension will apply only to undertakings whose activities have been closed down or restricted as a result of COVID-19 quarantine.

Civil society has also taken the initiative to help small businesses and entrepreneurs face their legal problems. The *COVID Small Business Remote Legal Clinic* launched by the Lawyers for Good Government Foundation (2020<sup>[65]</sup>) or 400 Partners launched in France have already gathered numerous law firms to assist SMEs and non-profits suffering the consequences of the crisis *pro bono* (Agence de Developpement Territorial du Val d'Oise, 2020<sup>[66]</sup>). Similarly, in the US state of Massachusetts, law firms





have rallied in a *COVID Relief Coalition* to offer free remote legal help to small business owners (Covid Relief Coalition, 2020<sup>[67]</sup>).

In addition, **procedural and administrative simplification** initiatives have a potential to reduce costs associated with administrative burden on business, hence helping to reinvigorate the economies and making the domestic business environment more competitive and attractive for economic activity (OECD, 2018<sup>[68]</sup>). Conversely, lengthy proceedings and cumbersome and complex processes can stall economic growth (OECD, 2015<sup>[69]</sup>). As such, in the growing context of resource scarcity and in anticipation of the collapse that may affect courts after lockdown measures are lifted, any legal processes that are redundant or not essential may benefit from being cut in terms of time, formality or even cease to exist, always keeping in mind the necessary procedural guarantees. Careful design of simplification measures could be a driver of inclusive recovery out of the economic crisis that is ensuing, and even more so in the context of the rising number of business disputes and insolvencies due to the effects of the crisis.

A number of countries are already taking steps to simplify selected procedures in order to enhance their responsiveness to the user's needs. For example in some **Canadian provinces** the rules on in-person verification of identity for commissioning affidavits have been shifted to allow for remote verification (McLachlin, 2020<sup>[70]</sup>). **Portugal** has long been incorporating procedural simplification in its justice modernisation efforts (e.g., payment of court fees or simplification of court notifications) (OECD, 2020<sup>[71]</sup>). In **Lithuania**, participation of a notary has been eliminated in approving some simpler mandates and enabling electronic registration of mandates for which a notarial form is not required (Ministry of Justice, Lithuania, 2020<sup>[22]</sup>); and in **Chile**, the expiration date of identity documents has been extended. In Ireland, suspension of civil trials has been enabled through agreements by the parties through e-mail, which was unprecedented. In addition, several countries have promoted the use of written procedure whenever possible, which expedites judgments (Department of Justice and Equality of Ireland, 2020<sup>[31]</sup>).

Finally, as highlighted in the Brief, deepening the **understanding of legal needs of businesses**, with an emphasis on SMEs, will be essential to design the justice process effectively in the aftermath of the crisis and be able to measure the effects of each policy against a useful framework. The shift towards user centricity should serve as the guiding principle to design the policy agenda and evaluate legal and justice service content (OECD, 2018<sup>[72]</sup>).

### ***Increasing effectiveness through evidence-based planning***

As of June 2020, real time data on how the COVID-19 crisis is affecting in particular lay people who need to access, or are in contact with, justice systems, is extremely scarce. In addition, every justice system worldwide is facing an unprecedented situation in nature and scale, and as observed above each country is developing ways to continue provision of access to justice. As reflected in the Brief, data collection, sharing and analysis are crucial in this context. They enable evaluation of the effects of the measures that are being rapidly adopted to ensure that they are effective in meeting legal needs; monitoring legal needs of people in real time; to develop useful solutions, and to allocate scarce resources in the most efficient way possible.

**Knowledge sharing platforms and websites, open call for inputs and legal surveys** will all be essential elements to respond effectively to the crisis. Some examples include the surveys carried out by Statistics Canada (**Canada's** official statistical body), which have included surveying citizens about the precautions they are taking, the perceived negative effects that COVID-19 will have on their financial or employment situation (Statistics Canada, 2020<sup>[73]</sup>), and their mental health (Statistics Canada, 2020<sup>[74]</sup>). The United Kingdom has also developed several initiatives in this regard (see **Box 8**).



## Box 8. United Kingdom evidence and research initiatives

The United Kingdom has shined a strong light on the importance of gathering real-time evidence and carrying out research on the ongoing pandemic and its related measures as it evolves. This has led to the adoption of several initiatives:

### 1. Civil Justice Council (CJC) review of COVID-19 impacts on the Civil Justice System

The CJC has commissioned an independent review led by Dr Natalie Byrom, Director of Research at The Legal Education Foundation, with the support of a wider virtual working group to gather feedback on the impact of COVID measures on the civil justice system. This review ran for two weeks from Friday 1 May 2020 to Friday 15 May 2020 in order to report by the end of May 2020. The aim of the review is to provide an overview of the operation of current measures and offer practical recommendations to inform the ongoing response to COVID-19. It concentrated on the experience and reaction of court users. It also aimed to provide useful groundwork for any future wider review of the use of remote hearings, identifying areas where further evidence may be needed (Courts and Tribunals Judiciary, 2020<sup>[103]</sup>).

### 2. Research on impacts of remote hearings by the Nuffield Family Justice Observatory

The pandemic has required the justice system in England and Wales to pivot rapidly to remote working. In the family justice system this has translated into the widespread expansion of hearings conducted by telephone and video link. The Nuffield Family Justice Observatory (established by the Nuffield Foundation, an independent charitable trust that funds research that informs social policy) has conducted two pieces of work:

- *What we know about the impact of remote hearings on access to justice: a rapid evidence review*, which explores whether any practical lessons can be drawn from existing research on the impact of remote hearings, with particular reference to the experience of vulnerable groups. The review was undertaken during April 2020 by Dr Natalie Byrom, Director of Research and Learning, Legal Education Foundation (Byrom, 2020<sup>[104]</sup>).
- *Remote hearings in the family justice system: a rapid consultation*. The President of the Family Division asked Nuffield FJO to undertake this consultation, which sought feedback from parents and carers and all professionals in the family justice system including judges, magistrates, barristers, solicitors, Children and Family Court Advisory and Support Service (Cafcass) advisers, court staff and social workers. Those who had had experience of a remote hearing (a hearing conducted by telephone, Skype or other remote platform) and/or those with expertise or other relevant experience were invited provide feedback about the process and their experience (Ryan, Harker and Rothera, 2020<sup>[105]</sup>).

### 3. ESRC Research and Innovation funding

The Economic and Social Research Council (ESRC) is a major research funding institution and intends to fund new projects as part of the UK Research and Innovation response to the current COVID-19 pandemic. Proposals are invited for short to medium-term economic and social research activity aimed at addressing and mitigating the impacts of the COVID-19 outbreak on this [link](#). **4. UK Research and Innovation (UKRI) Coronavirus Hub**

The UKRI Coronavirus Hub (UK Research and Innovation, 2020<sup>[106]</sup>) provides the latest information on the work of UKRI and its community in response to the crisis, what grants and awards have made, and their continuing call to fund ideas to limit the outbreak. UKRI will support proposals up to 18 months duration which meet at least one of the following:

- new research or innovation with a clear impact pathway that has the potential (within the period of the grant); to deliver a significant contribution to the understanding of, and response to, the COVID-19 pandemic and its impacts;
- supports the manufacture and/or wide scale adoption of an intervention with significant potential;
- gathers critical data and resources quickly for future research use.



A list of current funded projects is also available on their website which includes research about a variety of social and economic impacts related to employment, income, health, family, education, civic engagement, etc. which might affect legal needs of the population and their ability to resolve the problems they experience.

#### **5. Comparison of Legal Needs before and after the COVID-19 crisis**

Building on the results of the 2019 Legal Needs Survey (YouGov, the Legal Services Board & the Law Society, 2019<sup>[116]</sup>) carried out based on the 2019 Guide developed by the OECD and Open Society Justice Initiative (OECD and Open Society Foundations, 2019<sup>[117]</sup>), the UK is gathering real time data on similar parameters (however, it is not envisioned as a full-blown survey at least for the moment) to be able to compare the current legal needs people register with the results prior to the pandemic and draw conclusions.

Portugal has envisioned to perform a study to understand the new paradigm of telework in justice, its boundaries and significances for the future; and to put up a monitoring mechanism for the adaptations and innovation measures taken during the pandemic to perform an evaluation and understand the requirements for their sustainability after the pandemic period. Broadly speaking, these initiatives highlight the relevance of the data as an essential element to drive people-centricity of justice transformation (see *Brief*).

Internal **communication channels, crisis management and co-ordination committees amongst justice systems and within the government** could also help promote the development of evidence-driven responses. For instance, **Ireland** established a cross-functional COVID-19 response team comprising senior officials from within the Justice Ministry and from key agencies to work together on solutions, which allowed the Ministry to work closely with all relevant criminal and civil justice and public health agencies to adopt measures that were appropriate and in line with public policy and the evolving situation (Department of Justice and Equality of Ireland, 2020<sup>[31]</sup>). The **UK** has established a Jury Trials Working group to consider ways to re-start some jury trials once it is safe to do so. The working group reports to the Lord Chief Justice through its chair and includes representatives from the Law Society, Bar Council, Criminal Bar Association, Her Majesty's Courts and Tribunals Service, Crown Prosecution Service, Prisoner Escort and Custody Service, , Ministry of Justice, Her Majesty's Prison and Probation Services, National Probation Service, National Police Chiefs' Council, and Legal Aid Agency (Courts and Tribunals, Judiciary, 2020<sup>[75]</sup>). In **Poland**, the Ministry of Justice submits to courts updated summaries on the functioning of criminal justice using a specially dedicated e-mail box (Ministry of Justice, Poland, 2020<sup>[3]</sup>).



## Looking ahead

As highlighted during the 2020 OECD Global Virtual Roundtable, while justice system reform is often difficult and slow to achieve, the reality of the COVID-19 crisis has shown that it can be done. The examples highlighted in this compendium show different ways in which legal and justice services can incorporate a people-centred lens. Many countries are already taking measures that enhance access to justice by their populations in this adverse context, and that a focus on vulnerable collectives has been maintained in several jurisdictions. As such, as underlined in the Brief, justice systems are presented with a chance to gear themselves towards the better in order to leave no one behind.

Yet, as outlined, a move towards technological means to deliver justice can pose a risk to accessibility for those who have difficulty to use those means, and can potentially endanger the right to a fair trial in certain cases. Such risks are likely to be exacerbated in the case of vulnerable groups. These challenges would also need to be addressed from a people-centred viewpoint, possibly through incorporating the lessons contained in the Brief. A whole-of-justice chain involvement enabling effective case triage and multi-channel service delivery, coupled with solid data gathering and analysis, should be among the first steps to find the right balance among the opportunity presented by this crisis, and the relevant concerns it brings.

There is scope to further embed a people-centred approach to justice - while shaping the *new normal* of justice institutions - by incorporating users' concerns at every stage of the service design and delivery process, making people's needs the organising principle around which justice delivery is planned, as underlined in the *OECD criteria for people-centred legal and justice services*. Let us not miss the opportunity.



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