

Guidance Note

Ensuring Access to Justice in the Context of COVID-19



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PREFACE

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

- **Preparation:** In contexts where preventive measures responding to COVID-19 are being considered or taken that have implications for access to justice. This includes, adopting a holistic and inclusive strategy for ensuring the continued functioning of the justice system and equal access to fair, timely, and effective justice services.
- **Response:** In contexts where COVID-19 response strategies are being implemented, such as states of emergency, and where there are immediate concerns related to access to justice. Critical issues related to reducing risks of COVID-19 in prisons and detention centres as well as issues to consider in ensuring access to justice for specific population groups, from access to legal aid and information, to comprehensive services for victims and survivors of violence, to protection of migrants and displaced populations.
- **Recovery:** In contexts where the immediate public health crisis is subsiding and emergency measures are being lifted, and the broader impact of the crisis and inclusive recovery needs to be addressed, including ensuring access to justice to address civil justice concerns as part of the socio-economic impact of the crisis.



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INTRODUCTION

The pandemic and states' responses to it are having an unprecedented effect on the functioning of justice systems globally.

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

A key concern is that the economic fallout of the crisis will put many groups in society further behind, including children, women, older persons, persons with disabilities, indigenous peoples, lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons, displaced populations, stateless people, migrants, asylum seekers, victims of human trafficking, day labourers, and people living at or below the poverty line. The pandemic is making inequalities more visible, such as acute disparities in wealth, access to health, employment and livelihood, and in the ability to adopt

preventive and isolation measures (e.g. space, access to water and sanitation, etc.). These inequalities are being further exacerbated by the crisis as well as the need for accessible mechanisms to resolve disputes, redress rights violations, and/or counter discrimination – whether related to housing, employment, legal/residency status, access to health benefits, or other social protection mechanisms. Access to legal services and legal information is critical for empowering people and communities to address these issues.

As states around the world adopt emergency measures to address the crisis, they must continue to uphold the rule of law, protect and respect international human rights standards and basic principles of legality, and the rights to access justice and due process. Emergency powers must be in line with constitutional (where applicable) and national legal frameworks as well as international human rights obligations. Limitations on human rights and fundamental freedoms should be proportionate, non-discriminatory, time bound, strictly related to the containment of the contagion, and subject to review. Legal

safeguards and oversight mechanisms must be in place to ensure that any derogation or restrictions/limitations of rights does not continue indefinitely, and that states protect and ensure human dignity and the rights of all people. The role of the judiciary, as a check on executive actions and as an upholder of the rule of law, is crucial at this time. Judicial oversight of the implementation of emergency measures by law enforcement and other authorities is necessary to avoid the excessive use of emergency powers, for example, to suppress dissenters, or to target vulnerable or marginalised groups such as street vendors and street children, or members of social, ethnic, or religious minority groups. Further, individuals disproportionately impacted by

and children have access to justice and other necessary social services.

The pandemic and states' responses to it are having an unprecedented effect on the functioning of justice systems globally. Courts are closing, reducing, or adjusting their operations, which can negatively impact the provision of timely and fair hearings, contribute to increased case backlogs, and lead to increased length of judicial and administrative proceedings. Certain groups, including women and children at risk of violence, undocumented migrants, refugees, and asylum seekers, and those in migrant detention centres are acutely affected by these changes. Reduced court operations may also result in the prolonged detention of pretrial detainees or of prisoners eligible for early release for

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