



BRIEFING ONE

JUSTICE FOR ALL AND THE

PUBLIC HEALTH EMERGENCY



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Justice in a Pandemic – Briefing One

Justice for All and the Public Health Emergency

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Foreword

The COVID-19 pandemic is an unprecedented global emergency. It is not only a health crisis but also a human rights crisis. Justice actors face daunting responsibilities as they design, implement, and enforce new measures to prevent the spread of infection. Measures that heighten the risk of human rights abuses can undermine trust, at a time when the justice system most needs to maintain the public's confidence.

For better or for worse, justice systems and justice workers are on the frontline of this pandemic. If we get our response right, societies will be better able to confront the pandemic effectively and fairly. That will build the foundations for reset and recovery. If we get it wrong, it is no exaggeration to say that people will die unnecessarily.

In the *Justice for All* report released last year, the Task Force on Justice noted that 1.5 billion people had a justice problem that they could not resolve. Now as well as before the pandemic, marginalized communities – already poorly served by justice systems – face the highest risks, as do vulnerable groups. The pandemic is widening the justice gap, with a sharp increase in the problems that many people face and the ability of justice actors to respond declining.

This briefing – *Justice for All and the Public Health Emergency* – discusses the most pressing priorities that the public health emergency poses for justice leaders and proposes seven areas for urgent action as the tide of infections continues to rise. It will soon be followed by a second briefing to cover the role justice plays in the economic crisis and recovery, and in building cohesion and hope for a better world.

In the health sector we are seeing a massive global effort, with people coming together in response to the pandemic. This includes unprecedented international cooperation, a global drive to find treatment and a vaccine, and intensive international sharing and learning among health professionals as they battle the pandemic.

This briefing too has been a collective effort, but it is only the beginning. It is also a call to action for the justice community to rally to help countries under extraordinary pressure to get it right.

We call on everyone working for justice – globally, nationally, locally; in government, civil society, community organizations or the private sector – to pull together to resolve the justice problems the pandemic is creating, to prevent injustices from occurring, and to use justice as a platform for people to play the fullest possible role in their economies and societies.

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Key Messages

The COVID-19 pandemic has created a global emergency with multiple dimensions:

- The **public health** crisis has triggered a wave of sickness and death in every country.
- An **economic, employment, and financial crisis** is hurting billions of people, especially those who are already vulnerable or disadvantaged.
- A **political, social, and cultural dislocation** will transform societies and could exacerbate violence and insecurity, with impacts in both fragile and conflict-affected countries as well as in stable countries.

Justice systems are vital to responding to the COVID-19 pandemic and mitigating its worst effects, but they face many challenges if they are to operate effectively.

The justice challenge

Emergency orders, laws, regulations and directives are being enacted in haste. Lockdowns create heightened risks of insecurity, crime, and gender-based and domestic violence and human rights are at stake. Governments may use the new restrictions to tighten their grip on power. The public is at risk of abuses by justice actors who have little time to prepare for implementation.

The economic impacts of the pandemic will increase the burden on justice systems. Job losses and company closures translate into declines in physical and psychological wellbeing, increases in evictions and debt, and loss of healthcare or other services.

Migrants, detainees, women, children, and marginalized groups and communities already faced the greatest risk of injustice. The pandemic makes them more vulnerable. States may become unstable as their health, justice, and other institutions are overwhelmed and their economies collapse. This threatens to thwart progress towards the vision of justice for all in the 2030 Agenda for Sustainable Development.¹

An effective justice response is hampered by the impact of the pandemic. Justice workers are on the frontline of the response and they are vulnerable to infection. Many justice institutions are already struggling to function as growing numbers of people are forced to take time off work.

But, as the UN Secretary-General has reminded us, the seriousness of the threats the world faces should not prevent us from seizing this “watershed moment for investment in critical public services and global public goods.”²

An effective justice response

People-centered justice approaches are needed more than ever and will help societies manage the institutional, social, and economic fallout from the pandemic.

A renewed commitment to justice for all will prevent further exclusion of marginalized groups. It can strengthen our commitment to human rights, including the right to health, and our ability to provide all people with equitable access to economic opportunities, social protection, and public services.

Urgent action from justice leaders is needed to:

- **Enforce emergency measures fairly**, by independently scrutinizing new measures and holding political leaders to account, introducing safeguards for at-risk communities, and encouraging and supporting justice actors to work in partnership with communities and respect human rights.
- **Protect people from violence**, by targeting hotspots where insecurity is growing, investing in legal aid and proactive outreach to victims of abuse, and creating safe spaces for people at risk of gender-based and domestic violence.
- **Make people your partners**, through institutions that listen to people's justice problems and hold political leaders to account, and by working with community leaders and grassroots actors to tackle injustices and limit the pandemic's impact on daily life.
- **Reduce demand on justice systems**, by stripping down services to essentials, releasing prisoners wherever possible, ceasing to arrest people for minor offences, preventing evictions, and postponing non-urgent civil cases.
- **Increase innovation and smart working**, by solving cases online or over the phone instead of in court, and by supporting grassroots and other justice providers to provide their services virtually.
- **Protect the justice workforce**, helping them stay healthy, making them a priority for testing programs, providing them with counselling and support, protecting them from violence, and making sure they are being paid and their labor rights are respected.
- **Prepare for future disease containment phases**, by ensuring new surveillance and testing strategies are in line with human rights standards, monitoring their implementation, and strengthening the institutional capacity to identify and respond to emerging justice problems.

- 1 Enforce emergency measures fairly
- 2 Protect people from violence
- 3 Make people your partners
- 4 Reduce demand on justice systems
- 5 Increase innovation and smart working
- 6 Protect the justice workforce
- 7 Prepare for future disease containment phases



UN Photo/Marco Castro

This crisis is moving at lightning speed. To be effective, justice leaders need timely access to relevant data and evidence on the justice impacts of COVID-19 and responses to it, as well as evidence on the best ways to address those impacts. They must increase flexibility and remove obstacles to innovation, align financing to new realities, and harness the diversity of actors in the justice system.

Global partners can support national and local action through conducting research on emerging challenges, disseminating models for providing justice services and legal aid online, developing a network on strategies to address people's justice problems in the context of the pandemic, investing in under-resourced justice systems, offering strategic advice and programming support, and building a virtual forum where justice leaders can share experiences and learning.³

While the pandemic is already a source of growing injustice, our response to it can provide a platform for building more just societies. A renewed commitment to people-centered justice will enable societies to strengthen the foundations on which they can rebuild and recover.

Introduction

In the *Justice for All report*, the Pathfinders' Task Force on Justice set out a vision for a transformation of ambition and a sustained effort to provide billions more people with access to justice.⁴

It called for a people-centered approach to justice that resolves justice problems, prevents injustices from occurring, and uses formal and informal justice systems to create opportunities for people to participate fully in their economies and societies.

In a world gripped by a deadly and fast-moving pandemic, governments are rapidly putting in place unprecedented restrictions on everyday life. They are looking to their justice systems to make and enforce new rules and to act as a platform for resolving disputes and conflicts triggered by these rules.

As a result, justice actors and systems are being asked to take on unprecedented responsibilities. How they interpret and implement these responsibilities will have a decisive impact on the legitimacy, sustainability, and fairness of each society's response to the epidemic:

- Before COVID-19 began to spread, 1.5 billion people had a criminal, civil, or administrative justice problem that they could not resolve.⁵
- The pandemic is deepening this justice deficit, with civil, administrative, and criminal justice problems increasing with loss of employment and restrictions on movement.
- At the same time, the pandemic is eroding the capacity of justice systems to respond to people's needs. A focus on *prevention* of injustice is therefore urgently needed.

- ✓ Resolve justice problems
- ✓ Prevent justice problems
- ✓ Create opportunities

In the coming months, societies will continue to face growing and unpredictable stresses. If they allow injustice to increase, then pressures will build, feeding further injustice.

But a people-centered approach to justice can guide the fair and proportionate implementation of public health restrictions, while building foundations for "recovery and reset" strategies that will help get communities and economies back on their feet as infections subside.

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The COVID-19 emergency has three interlocking layers.⁶

The **public health crisis** will end fully only with widespread vaccination.⁷ In the meantime, improved treatments – combined with mass testing and tracing – could more quickly reduce pressure on health systems. Even in the best case, however, some form of emergency measures can be expected to be in place for up to two years.⁸ All countries face challenges, but in those already reeling from conflict or other crises, the short- and long-term impacts of the epidemic could be especially damaging.⁹

The pandemic has already sparked an **economic, employment, and financial crisis** whose full effects are unlikely to be known for five or more years. Following an unprecedented shutdown in economic activity, the risks are high of mass unemployment and recession, and it is not clear that emergency measures to mitigate the economic impacts will be easy to unwind in the short- or medium-term. The costs of protecting lives and caring for millions of ill people will be high. They will lead to greatly increased debt in every nation, and the prospect of a protracted period of readjustment. The OECD has described the risk to the global economy as the greatest since the 2008 financial crisis.¹⁰ A more pessimistic view is that we face a global depression as severe as that of the 1930s.¹¹

The public health and economic crises are, in turn, triggering a **political, social, and cultural dislocation** that will transform societies and the international order over a generation. This dislocation will have impacts that range from the benign (more virtual working, a better understanding of which workers provide essential services, increased international cooperation, and a wave of online innovation) to the dangerous (increased surveillance, the reduction of civil liberties, a collapse in trust in governments and institutions, and in the worst cases, new or renewed conflicts and state failure). Geopolitical competition and tensions¹² could put additional pressure on the multilateral system and may impede the necessary interactions, cooperation, collective norm-setting and cross-border assistance.

The future will look very different from the present – or from the future that was predicted just a few months ago. At a time of flux, we have an imperative to push for a fairer, more resilient and more sustainable world, with a guiding vision to leave no one behind. An alternative scenario could lead to an alarming erosion of the capacity for collective action at all levels from the local to the global.

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Justice systems and actors face unprecedented challenges related to each of these layers. While the public health crisis is most urgent, global partners and national actors must maintain a simultaneous focus on the building blocks for sustainable recovery.¹³

The economic crisis will create a surge in demand for justice across the areas that the Justice for All report identified as people’s most common justice problems. The international community must act early to protect justice systems, recognizing that they form part of every country’s critical national infrastructure.

1-2 years

Public health crisis

5-10 years

Economic, employment, and financial crisis

A generation or longer

Political, social, and cultural dislocation



UN Photo/Evan Schneider

Justice and fairness will be among the criteria by which people will evaluate the effects of public health measures and other government responses. People-centered justice must play a central role in rebuilding trust and cohesion, and in mitigating the intergenerational impacts of the pandemic.

It is more critical than ever that we transform justice systems, support the independence of justice institutions, bring justice services closer to the people who need them most, encourage constructive engagement between the formal system and local alternatives and tackle the root causes of injustice that have left people and societies vulnerable to the broader impacts of the pandemic.

People and communities across the world were crying out for justice before the pandemic hit. A public health emergency, and subsequent economic crisis, are certain to amplify these voices many times over.

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This briefing – Justice for All and the Public Health Emergency – discusses the most pressing priorities that the public health emergency poses for justice leaders. It summarizes the key aspects of the challenge and outlines areas for urgent action as the world rallies to get the pandemic under control.

A second briefing will discuss how people-centered justice can help address the economic and social dimensions of the crisis.

The Justice Challenge

From our conversations with policymakers and justice providers, we have learned that the COVID-19 pandemic challenges justice systems in four ways.

Justice actors face daunting responsibilities as they design, implement, and enforce new measures to prevent the spread of infection.

Governments have had to assume unprecedented powers in response to the public health emergency,¹⁴ and new policies are becoming necessary at dizzying speed. Policymakers face challenging balancing acts, where they must choose between prioritizing health, the economy or freedom – sometimes in the face of constitutional constraints that privilege such rights as the right to freedom of association and movement.

The police have found themselves enforcing a partial suspension of fundamental rights and freedoms that are taken for granted in many societies. Lockdowns have created new risks and sources of injustice, whether for people in abusive relationships, for those who lack legal documentation to establish residency and access emergency services, or for people who are homeless or have been forced to flee their countries.

During normal times, political decisions are translated into a set of rules, and the people charged with enforcing these rules are trained in how to implement them and how to respond in different scenarios. But during the pandemic, new containment measures are announced almost daily, from ever-tightening restrictions on individuals' freedom of movement, to closures of shops, public transport, and other public spaces, to fines for spreading deliberately misleading information.

In Italy, where citizens face fines of up to €3,000 or five years in prison for “crimes against public health”,¹⁵ more than two million people had their papers checked by the police in the first two weeks of restrictions. More than 100,000 face a criminal sanction.¹⁶ India, China, Spain, New Zealand, South Africa, and the UK are other countries that have implemented strict lockdown measures, which include fines and imprisonment for those who transgress.¹⁷ There are concerns that enforcement of quarantine and social distancing measures will disproportionately impact individuals who are least able to weather the shutdown.

Enforcing and monitoring these measures add to what is already a heavy workload for justice actors. The measures demand speed and flexibility of thought and action in situations of great stress, and at a time when social distancing is forcing courts to function at reduced capacity.

Draconian – and hastily-enacted measures – heighten the risk of abuse and can undermine trust.

In an environment where everybody is improvising and directives are being interpreted on the fly, the potential is high for increased abuse of civil liberties and human rights in the short-term,¹⁸ and for emergency powers to be used further to close civic space and curtail human rights in the long-term.¹⁹



Marginalized communities – already poorly served by justice systems – face the highest risks. These include homeless and landless people,²⁰ those with mental health problems,²¹ people without legal identity or who are living in informal settlements or slums,²² economic migrants, children in detention, people living in or being forced to flee conflict zones towards borders that are now closed,²³ those living near or below the poverty line for whom social distancing can increase health and other risks,²⁴ and those such as people with addiction problems or sex workers who are already in conflict with the law.²⁵ These populations are also the most likely to experience injustice when trying to access healthcare.

Some governments are deploying new surveillance techniques, including the use of drones, ankle bracelets, helicopters, and new data-mining technologies that use mobile phone networks to track public movement.²⁶ Some are using the military for enforcement, while a number have placed limits on or suspended the right to information during the crisis.²⁷ Some governments, such as Hungary's, have suspended democratic processes and assumed sweeping powers – and constitutional courts will be critical to ensuring that normal service is resumed in the pandemic's wake. In a number of countries, transitional justice processes are being suspended, which may have implications down the line if they facilitate attempts to derail them more permanently.²⁸

Abusive behavior is more visible during the pandemic, as more people who are confined to their homes share content on social media.²⁹ One man in India appears to have been beaten to death by police when leaving his home to buy milk during the lockdown.³⁰ Police in Kenya, Rwanda, and the Philippines have also been accused of dealing excessively harshly with those they believe have flouted the new rules.³¹ Abuse of women by security forces has also been documented in a number of settings.

Abuses by those enforcing new COVID-19 containment measures will undermine the legitimacy of the justice system at a time when it most needs to maintain the public's confidence. To prevent them, courts will have to assist in monitoring implementation and prosecute those security sector actors who go too far.

Existing prevention mechanisms can be activated and reinforced to identify abuses, as well as the unintended effects and consequences of public health measures. National human rights commissions, ombuds-institutes, and other complaints mechanisms can create phone lines or online forms where individual issues can be reported. Smart and fast analysis of issues reported by citizens can provide critical information to help the executive shape measures and course-correct.

COVID-19 poses significant risks for people in or entering the justice system and will reduce the capacity of the system to function.

Police and other frontline justice actors face risks of infection when performing their duties and may need to take additional precautions.³² In countries with advanced epidemics, the number of staff who are sick or self-isolating is already eroding justice systems' capacity. On April 3, for example, one in six New York City police officers was in quarantine or off sick.³³

The pandemic is revealing weaknesses in the function of a bricks-and-mortar justice approach. Social distancing measures mean that courts are unable to operate normally, limiting their ability effectively to resolve serious disputes and try criminal cases. Lawyers are unable to meet with their clients or visit them in prison, legal clinics have closed, and paralegals and social workers are unable to make home visits.

Justice leaders must rapidly decide which parts of their systems are essential services and must remain operational. For courts, for example, this means deciding which buildings need to stay open, which cases will be heard as a priority, and what protections will be put in place for judges, staff, lawyers, and parties to a case, especially vulnerable parties. In countries where courts are physically closed but operating virtually, the adoption of new rules allowing electronic filing of pleas and electronic reception of evidence may make it more difficult for people who do not have access to the internet to access the justice system.

The risk of infection is especially high for prisoners and prison staff and a humanitarian crisis is already underway in prisons, detentions centers, and similar places. WHO has warned that "the global effort to tackle the spread of disease may fail

To thin out the prison population, New York State has released hundreds of inmates who violated parole, but will now be returned to supervised release.³⁴ In Philadelphia, police officers have been instructed not to make arrests for non-violent crimes, but to issue arrest warrants to be implemented as the crisis subsides.³⁵



without proper attentions to infection control measures within prisons.”³⁶ In countries with high-levels of incarceration there are reports of conditions which fall short of human rights standards, for example the United States,³⁷ Myanmar, and Cameroon, with a heightened risk of infected prison populations and prison officers with inadequate healthcare.³⁸

As the epidemic worsens, some countries could lose control of their prisons. At least six countries have already experienced prison riots since the onset of the virus, leading to loss of life and serious injuries.³⁹ If courts are unable to operate, prisoners due for release may be stuck behind bars. In the worst cases, serious human rights violations may occur in prisons, detention centers, and refugee camps while the attention of law enforcement authorities is elsewhere.⁴⁰ For those in remand, awaiting trial, the failure of the system to provide justice may put their very lives at risk.

The pandemic, and responses to it, increase the risk of violence and crime.

COVID-19 hits countries across a diversity of social and political systems and the compliance and consent of populations have been critical to response efforts.

The pandemic is now also reaching countries with weaker institutions, deteriorating rule of law,⁴² low levels of trust, and high levels of exclusion.⁴³ These countries face daunting barriers to mounting an effective response, including a large proportion of the urban population living in informal settlements, and state institutions that are not trusted, lack capacity to mount a response, or both.⁴⁴

As people are banned from moving freely in their communities, some will fear that they are ceding the streets to criminal

AI for Good developed rAIrbow, an online robot which helps women understand and confidentially discuss domestic violence issues. The site includes interactive quizzes, real-life stories, and a signposting service for those who need to talk to a human.⁴¹

elements.⁴⁵ In Rio's favelas, for example, it is gangs – rather than the government – that are imposing curfews. “Whoever is in the street screwing around or going for a walk will receive a corrective and serve as an example,” residents were warned in one slum.⁴⁶

Some cities, such as London, Toronto, and New York, experienced an initial fall in most types of crime as people spend more time at home. But crime has quickly adapted, with an uptake in cybercrime taking advantage of increased use of internet. Multiple agencies have begun to issue warnings, including for scams targeting frontline workers with fake sales of medical supplies.⁴⁷

Nor is home a safe place for everyone. People spending more time at home creates increased risk of domestic violence and of the emotional, physical, and sexual abuse of children.⁴⁸ As abusive partners experience a loss of power and control, levels of abuse may spike, with increases in domestic violence reported already in some settings.⁴⁹ Many children are out of school and have no opportunity to escape violent situations. As children spend more time on the internet, moreover, there are increased risks of online bullying and abuse.⁵⁰

The French government will pay for 20,000 hotel nights for victims of domestic abuse and will create pop-up counselling centers at stores in order for women to seek help while they run errands.⁵¹

The Justice Response

To meet these challenges and mitigate risks, there are a number of things that those that are part of our global justice movement can do together.

1 Enforce emergency measures fairly

Many countries are in an initial phase of the response to the pandemic, where they impose blanket restrictions on freedom of movement. Transparency and accountability become all the more critical during the temporary suspension of human rights, and these measures can only be sustained with public support.

To reassure the public, justice leaders should help shape and scrutinize the design of new measures so that they are least likely to lead to abuse and selective enforcement. A priority is for constitutional and other higher-level courts to be able to work virtually – and without political interference or restraint – so that they can rule on legal questions that arise as part of the state of emergency. Feedback loops from communities to justice systems will help ensure that rulings are evidence-based, and making the courts' deliberations and decisions available online or through radio or television will increase citizens' trust in their justice systems and in the legality of the measures being imposed on them.

Enforcement must be visible and fair. To promote compliance and rapidly establish new social norms, a strong police presence may be needed, but the use of the military should be kept to a minimum. Sanctions for infringements should be used with restraint, with the police trained to de-escalate disputes and to use peaceful crowd control methods in the event of protests.⁵³

The police are providing a vital service to the community and this too needs to be communicated internally and externally. Spanish police, for example, received worldwide plaudits when videos circulated on social media of them singing and dancing in the streets to entertain children newly confined to their homes.⁵⁴ Italian police have offered to deliver pension payments to pensioners aged 75 and over.⁵⁵

Portugal has temporarily granted full citizenship rights to all migrants and asylum seekers, reducing the risk to public health and protecting these vulnerable groups from abuse and neglect.⁵²

Citizens should be regarded as partners in fighting the spread of infection, and instructions should encourage courteous and friendly behavior by justice actors. An overriding priority should be to reduce harassment of vulnerable communities and groups, especially those unable to seek shelter or who do not have the paperwork needed to move freely. It should be remembered that harassment of a fruit seller for not having a permit was the spark that ignited the Arab Spring.⁵⁶

Justice actors should also bear in mind that for the one billion people who live in the world's informal settlements, social distancing can be extremely difficult, while for those without savings withdrawing from their place of work can heighten the risk of malnutrition, and consequently of infection with diseases that are much deadlier than COVID-19.⁵⁷

2 Protect people from violence

The pandemic has placed communities under considerable stress. People are frightened of the virus and fearful of its economic consequences, but they also naturally worry what is happening on the streets when they are locked in their homes. The risk of civil disobedience and violence will increase if government efforts begin to lose public support. Justice workers such as the police and providers of grassroots justice services may become more vulnerable to violence.

Monitoring of violence, crime, and other signs of social stress such as strikes or protests, will help identify actual and potential hotspots for disorder. In many places, community or street violence has continued unabated in the midst of the pandemic, while in other locations community violence levels have reduced significantly. Precision data analysis on incidents of crime and violence can help police and justice actors focus on the specific individuals who are continuing to drive violence, without overwhelming the broader system. Data can facilitate focused deterrence and in partnership with communities, justice actors can target the highest-risk places, people, and behaviors.⁵⁹

With physical visits to police stations rendered difficult by social distancing measures, the public must be able to report serious crime and other abuses online or by telephone. Hotspot policing will help re-establish public safety and reassure communities. Community groups are shifting to remote outreach, a relatively straightforward practice that can help reinforce positive messages during a time of increased anxiety.⁶⁰

Social media apps can be used to tackle and prevent injustice. HarassMap alerts users of sexual harassment in public spaces in Cairo.⁵⁸

Violence within the home is a growing threat, and some countries have reported increases in domestic violence since the crisis began. To deal with this, justice services for victims of such violence should be included among the “essential services” that must stay open during lockdowns – a measure that has already been adopted in Quebec and Ontario in Canada.⁶¹

These services should also be expanded during lockdowns – there is a need for more helplines and other specialized justice and protection services aimed at women and children, as well as members of the LGBTQ+ community, and for more safe spaces for adults and children who need to escape their homes. Courts can issue generic extensions on protection orders due to expire.⁶² In some instances, it should be possible to issue restraining orders – in person, or ideally online or by phone – to relocate abusive family members to temporary accommodation.

This is also an area where justice systems can usefully link to other systems. Lessons learned from previous epidemics emphasize the need for governments to accommodate increased child protection needs when devising and implementing their response plans, including through multi-sectoral partnerships between justice systems, social services, and education.⁶³

Networks of teachers and other professionals, for example, can help identify and keep in contact with vulnerable children.

Criminal activity online is also likely to increase, resulting in the potential for real-world violence in the short- and medium-term, including trafficking in persons, criminal pornography, and radicalization. Social media and technology firms must remain vigilant in tracking and halting incendiary behavior online in partnership with justice actors.⁶⁴

3 Make people your partners

Justice actors charged with enforcing lockdowns can benefit from enlisting the support of community leaders. In the world’s urban and rural informal settlements, in particular, and in countries where the state does not have a full justice and security presence, it is unlikely that containment will work without strong partnerships with respected community figures.⁶⁵

Grassroots justice actors such as civil society justice defenders, community paralegals, community public-interest lawyers, human rights activists, and other community leaders who are involved in providing justice must also be supported. They are well placed to share health and other information with

Police in Bengaluru, India, have distributed free food and hand sanitizers to the city’s poorest people.⁶⁶

communities, including with vulnerable populations, to help communities to monitor, report on, and influence the delivery of public services, to help ensure those most in need receive treatment, to identify and respond to abuses by the security services, and to help those with employment, family, housing, and other problems that are exacerbated by the pandemic and the response to it.⁶⁷

Some governments may use the pandemic further to close civic space. This is a risky strategy when citizens badly need an outlet for peaceful protest,⁶⁸ and where the grievances of those who are already feeling restricted by new measures may boil over if even their voice is silenced.⁶⁹ In Brazil, for example, pot-banging protests have allowed communities to register their dissatisfaction with the government's response.⁷⁰ Virtual protests provide opportunities for citizens to influence government policies and may provide vital information on where containment is not working, and why.

Independent accountability mechanisms have an important role to play to hear how measures impact people's lives and channel this information to decision makers. Ombuds-institutes, national human rights institutions, and parliamentary committees can be empowered to scrutinize new policies and hold political leaders to account for their effectiveness and their fair implementation. Independent media also plays a critical accountability function, conveying timely and accurate information to the public and helping policymakers, political leaders, and justice actors identify emerging hot spots and critical needs. New forms of institutional oversight – including community mechanisms such as score cards that verify whether allocated funds have reached their targets – should be supported to monitor the unprecedented health and stimulus spending that is being deployed to respond to the crisis.

Direct consultation with citizens should also be part of justice actors' playbook during this crisis. Ministries of Justice, city authorities, or police forces could establish citizens' panels to advise governments on the feasibility and acceptability of new restrictions and to gather direct feedback on existing measures.

4 Reduce demand on justice systems

With the closure of courtrooms, restrictions on movement, and a reduction of productivity, Ministries of Justice would be wise to immediately undertake a rapid triage of their justice systems, with the aim of determining what is critical, what is urgent, and what is not a priority during a time of emergency.

The UK's Citizens Advice service reported that the week after the country's lockdown began was the busiest in its eighty year history. Its website had 2.2 million page views in a seven day period.⁷¹

Many countries are releasing low-risk prisoners who are held in administrative or pre-trial detention, while some have used amnesties to help ensure that correctional facilities do not become virus hotspots.⁷² These measures can help avert a humanitarian crisis and serious abuses of human rights. It is important to consider where released prisoners will live, and how risks can be minimized that are associated with their reintegration into families and communities. This is a further area where justice systems would benefit from linking up with other systems, such as municipal housing and social services.

Children should only be kept in custody where there is no other plausible alternative. Where possible, children should be diverted away from legal processes towards non-custodial and community-based measures. Those who can safely be released from detention in prisons or immigration facilities should be returned to their families. The conditions of release should allow for specialized support to enable children's safe reintegration into their family and community environments.⁷³

For those children who remain in custody, it will be important to ensure that their rights are protected while policymakers' and the public's attention is diverted elsewhere. Access to healthcare must be prioritized, and adequate staffing levels maintained, if necessary through partnerships with civil society and community organizations. Efforts should also be made to limit the number of children in detention facilities to reduce their risk of infection.⁷⁴

Governments can also reduce demand on the system by declining to arrest or prosecute people for minor offenses. This is not the time to wage a war on low-level drug offenders, for example, even when they evade lockdown measures due to dependency. Where trials go ahead, non-custodial sentences should be used wherever possible.

Triage is also necessary for civil cases. It may be possible, for example, to delay a divorce or custody decision, or a dispute that is purely economic, but a protection order in the case of domestic violence is always urgent. In civil cases that cannot be dealt with in the short term, parties could be directed towards online mediation services and helplines, with greater use made of alternative dispute resolution mechanisms.⁷⁶ In the longer term, the additional capacity provided by online courts will help reduce the backlog after the pandemic subsides.

Argentina has reduced demand on its justice system by temporarily prohibiting utility companies from cutting off customers who have not paid their bills.⁷⁵

5 Increase innovation and smart working

Justice systems must improvise in the face of the pandemic. Many strategies for more flexible and effective means to resolve and prevent people's justice problems have been piloted around the world, and now is the time to scale them up. There is an opportunity to rethink the predominant lawyer and court-based responses to basic justice problems, and to devote more attention and resources to alternative dispute resolution mechanisms.

Before any civil court case is allowed to begin, for example, mediation online or by telephone, or other justice processes that are less confrontational than traditional courts can be used to determine whether a matter can be resolved out of court. This can increase efficiency as well as safety. Experience in the Netherlands and the United States has shown that direct contact with the parties in a dispute can dramatically decrease the number of formal procedures needed, with large savings in both time and money.⁷⁸

Face-to-face contact can also be limited by finding alternatives for court sessions, lawyers' consultations, and the operation of paralegals and community justice workers. Communication by phone or online is both quicker and safer than face-to-face meetings. Telephone and internet-based helpline services are already reporting record demand.⁸⁰ In the criminal context, these alternatives must be deployed with caution so as to preserve a criminal defendant's right to consult with his or her lawyer in private. Moreover, such measures should be viewed only as short-term fixes, to ensure that expediency does not replace due process after the health crisis abates.

In countries with limited capacity, modest amounts of funding will allow grassroots legal empowerment activists to switch services online. Governments, international donors, and philanthropists should fund intermediaries who are able to provide grants to grassroots justice actors or fund them directly. They can support the development and dissemination of open source apps and platforms that can be rapidly deployed by civil society actors, while also investing in public sector broadcasting on justice challenges. Partnerships with mobile phone companies and other private sector actors can increase accessibility to helplines and ensure privacy rights are safeguarded. Among communities where internet usage is not widespread, shifting services online will be more effective if simultaneous efforts are made to bridge the digital divide.

In South Africa, a new Legal Hotline has been set up for those who need legal help and advice during the country's lockdown.⁷⁷

Courts in Kenya are allowing cases to be filed electronically and hearings to be conducted via Zoom or Skype.⁷⁹

Baobab Connect is a platform where law firms, community advice centers, and other justice providers can electronically track referrals and cases and manage remote teams.⁸¹

Remote Courts Worldwide enables justice systems in different countries to share their experiences of remote court innovations.⁸²

Across a large number of development settings, customary and informal justice systems already provide services viewed as trustworthy by local communities at a fraction of the cost of statutory systems. Grants should also be directed toward these informal systems where they are compliant with human rights standards so that, with some bottom-up innovation, they can ensure continuity of dispute resolution and other services in the midst of the crisis. It is particularly important to keep such systems engaged with COVID-19 responses, since they may otherwise disrupt a coordinated public strategy for containment.

6 Protect the justice workforce

The justice system needs its frontline workers – the police, those working in prisons and those resolving people’s justice issues in communities and courts – to stay healthy. Visible standards should be established for their protection.

After health workers, justice workers should be a priority for testing programs, especially when they are working in confined environments such as prisons. If serological tests become available it will be important to identify workers who have antibodies indicating probable immunity, since they will be able to work with reduced risk of further infection. Guidelines should be developed to address specific sources of vulnerability, such as protocols for police when making arrests.⁸⁴ Honest communication about the increased risk that the justice workforce faces is also critical.⁸⁵

Such measures are practical but also have a psychological dimension. Justice workers need to know that they are being valued and cared for at a time when they are under intensifying pressure. They are also being asked to respond to a rapidly changing environment – those charged with implementing containment policies must develop new, rapid methods of internal communication and new ways to enact rules, sometimes within hours of them being announced.

Development and humanitarian actors and international financial institutions should urgently assess the increased demand on justice systems in fragile states. Where necessary and without delay, they should provide emergency support to protect and finance the justice system and those working in it.⁸⁸

Citizen.is has created a platform for crowdsourcing policy ideas, including justice policies.⁸³

Court hearings in Singapore are now permitted to be held by teleconference or videoconference.⁸⁶ In Peru, Google Hangouts is being used for meetings among judiciary personnel.⁸⁷

When countries face a sovereign debt crisis or are unable to collect taxation, international support may be needed to ensure justice systems can keep functioning and salaries continue to get paid. To reach the many citizens of fragile states who remain untouched by formal systems, justice leaders should be encouraged to engage with, support, and protect community leaders who deliver justice informally.

7 Prepare for future disease containment phases

Planners are already warning that draconian restrictions can only be sustained for a limited time without causing devastating damage to economies and societies.⁸⁹ The risks are especially high in middle and low-income countries where people have few reserves to survive in their houses without income or access to public services.

Frontline justice workers can provide information to governments about what is happening in local communities and should be critical partners in the response. Their feedback should be collected and used alongside epidemiological, behavioral, and economic models to design future containment strategies. In low-income countries, especially those with fragile institutions, the police and other security actors may soon be asked to implement less restrictive lockdown models. In such settings, where state capacity is often limited, it will be crucial to engage with communities, including customary leadership, to mobilize them to assist in implementing these models.

Countries with sophisticated bureaucracies may attempt to replicate second-phase containment models developed in the Republic of Korea and other Asian countries. These models have three main features. First, mass testing of the population, preferably including serological tests to detect past infections and (probable) future immunity. Second, targeted tracking of affected people's movements through an app on their mobile phone and other sources of data such as credit card payments. And third, individual quarantine measures, tracing, and testing of people who have been in contact with a newly detected infection over the past 14 days, and the identification of clusters and hotspots.



UN Photo/Tobin Jones

Just as the lockdowns have seen unprecedented restrictions on freedom of movement, so could phase two involve unprecedented increases in surveillance. There are fundamental trade-offs to be considered and there will be little time to do so.

Justice systems will need to scrutinize these measures while they are being designed, to protect rights to privacy and prevent misuse of data, and to ensure that there is a clear pathway to ratchet emergency measures back down after the health threat has subsided.

Oversight and complaints mechanisms should be established in advance of implementation. Effective independent oversight will provide the public with reassurance that policymakers are accountable and that measures are only temporary. Complaints mechanisms will give people a place to turn if the impact of measures becomes unbearable and will provide authorities with rapid feedback on the effects of measures on people's daily lives.

Actions for Justice Leaders

Justice leaders are central players in the campaign to bring the COVID-19 pandemic under control. During this crisis, a people-centered approach to justice must be grounded in an understanding of rapidly-changing justice needs, driven by a willingness to develop and implement solutions in a fast-evolving environment, and delivered by an open, inclusive, fair, and accountable justice system that works closely with health and other sectors.

Our survey of the core challenges facing justice systems also highlights potential solutions. The challenges are shared by many. Now, more than ever, is the time for leaders of justice systems to reach out to each other across borders to share experiences, good practices and capacity, and to collaborate on innovation.

In this concluding section, we first discuss four actions that will assist national justice leaders as they develop and implement plans.⁹⁰ Then we highlight key considerations for those working on justice internationally.

To be effective, national actors will need to ensure timely access to relevant data and evidence, encourage innovation, realign their financing strategies, and think creatively about how to harness the power of the diversity of actors in the justice system.⁹¹

Collect people-centered data and evidence, tailored for decision making

- Gather and act on information from the justice frontline, especially on interactions between police and people, people's experiences in accessing social benefits and coping with new COVID-19 containment measures, and conditions in prisons and other high-risk environments.
- Survey public experiences and perceptions, watching for early signals of a decline in the legitimacy of the justice system, worsening perceptions of social or economic injustice or inequitable provision of services, or weakening trust in public health information.
- Survey frontline justice workers to track their morale and the challenges they face, as well as to receive an early warning if sickness and other factors render them unable to work.

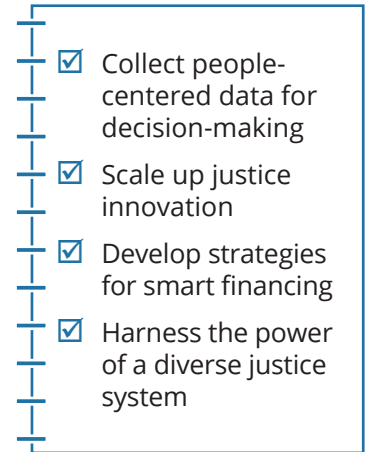
FIDA, the Uganda Association of Women Lawyers, has developed a free app which provides legal advice to women on issues such as gender-based violence, trafficking in persons, property rights, family rights, inheritance, maintenance, divorce, and criminal and civil court processes.⁹²

Haqdarshak is an online platform that empowers people in India to access the social welfare schemes for which they are eligible. It has so far helped more than 140,000 people to access benefits.⁹³

- Mine existing data sources, especially legal needs surveys, to understand the justice problems faced by people in normal times, and to identify those that are likely to be exacerbated by COVID-19.

Scale up justice innovation

- Create mechanisms for rapidly funding innovations that provide justice services remotely.
- Suspend regulations that limit smart working, flexible responses and non-lawyer legal assistance and find new ways to scale up existing pilots of methods that are proven to work.
- Challenge monopolies that block the entry of paralegals, low-cost mediators, and digital legal services.
- Share effective models with other countries and draw on the experience of the private sector and of existing alternative and community-based dispute resolution mechanisms.



Develop strategies for smart financing

- Ensure that frontline justice workers continue to receive their salaries, with international financing and support where necessary.
- Rapidly redirect the funding of services towards online delivery, such as public information campaigns, helplines, and online mediation of disputes.
- Include people-centered justice in stimulus packages, protect the justice system when indebted countries seek an international bailout, and maintain justice's share of overseas development assistance.
- Enlist the *pro bono* capacity of law firms and provide legal empowerment and voluntary networks with the funding they need to be effective.

Harness the power of a diverse justice system

- Establish a cross-sectoral pandemic task force under the leadership of the Ministry of Justice, with representation from all levels of government, to assess justice system needs and prioritize responses.

- Convene representatives of the legal profession, the private sector (in particular, technology companies), paralegals and others that provide justice services in communities, as well as stakeholders from outside the justice system including social workers, unions, community elders, and religious leaders to provide input and coordinate effective responses to the crisis by justice actors.
- Work with other sectors to ensure that new public health restrictions and policies in areas such as housing, employment, and migration help prevent injustice rather than imposing an unnecessary burden on the justice sector.

International support for the justice response

Action at the international level is also important in tackling a global threat such as the coronavirus. The health sector has demonstrated the importance of global cooperation during this crisis, as international organizations, major global partnerships and alliances, researchers, private sector and civil society networks, the media, and foundations rally to support accelerated action by national governments.

The justice sector should learn from and replicate this model by:

- ☑ Supporting global research teams that provide research and analysis to national decision makers, with rapid assessments undertaken to respond to emerging needs.
- ☑ Bringing together innovation models for providing legal aid and virtual justice services, especially those on open-source platforms.
- ☑ Developing a network to explore the implications of the COVID-19 pandemic for people's justice problems and legal needs and strategies to address them.
- ☑ Providing the most under-resourced justice systems with financial support that is not hamstrung by excess bureaucracy or detailed reporting processes.
- ☑ Funding experts to provide quick-fire strategic policy advice and programming support to justice actors in countries that need it.
- ☑ Building a virtual forum for justice leaders to consult with and learn from each other.

Conclusion

Justice Leadership in a Pandemic

Within living memory, no emergency has affected so many countries at once or moved as quickly as the coronavirus pandemic. “We are at war with a virus,” the UN Secretary-General has warned, “and we are not winning it.”⁹⁴ He has launched a COVID-19 plan that aims to prevent infections, minimize social and economic impacts, and mount a sustainable, inclusive, and equitable recovery that is guided by the 2030 Agenda.⁹⁵

This pandemic will profoundly impact our ability to meet the Sustainable Development Goals by 2030. Health outcomes will be worse, education is impacted across the board, and poverty numbers will go up during the expected global recession. There will be fewer public resources available, and the capacity of governments to deliver on the 2030 Agenda is likely to come under pressure.

Governments should set aside funds to maintain resilient and responsive institutions capable of ensuring access to justice, including as part of stimulus packages. Such investment is critical to reducing the damage to economic and social rights caused by COVID-19.

As the UN Secretary-General wrote to the G20, the pandemic “also provides a watershed moment for investment in critical public services and global public goods.”⁹⁶ He reminded us of our common responsibility to “recover better, with more inclusive and sustainable models of development.”

While the pandemic is already a source of growing injustice, our response to it can provide a platform for building more just societies.

A renewed commitment to people-centered justice will enable societies to strengthen the foundations on which they can rebuild and recover.

It will improve societies’ capacity to respond to the wave of challenges that will result from the tough economic times ahead, as people struggle to find work, keep their families together, and stay in their homes and on their land.

It will make countries more resilient to spikes in crime and violence, and better able to respond to grievances before they trigger political unrest or conflict.

And it will help them provide redress to victims of exclusion, discrimination, and human rights abuses, thereby living up to their commitment to leave no one behind.

In our second report, we will return to these themes, exploring the role justice systems can play in the economic recovery, and in rebuilding trust, hope, and social cohesion for the world that lies beyond the COVID-19 pandemic.

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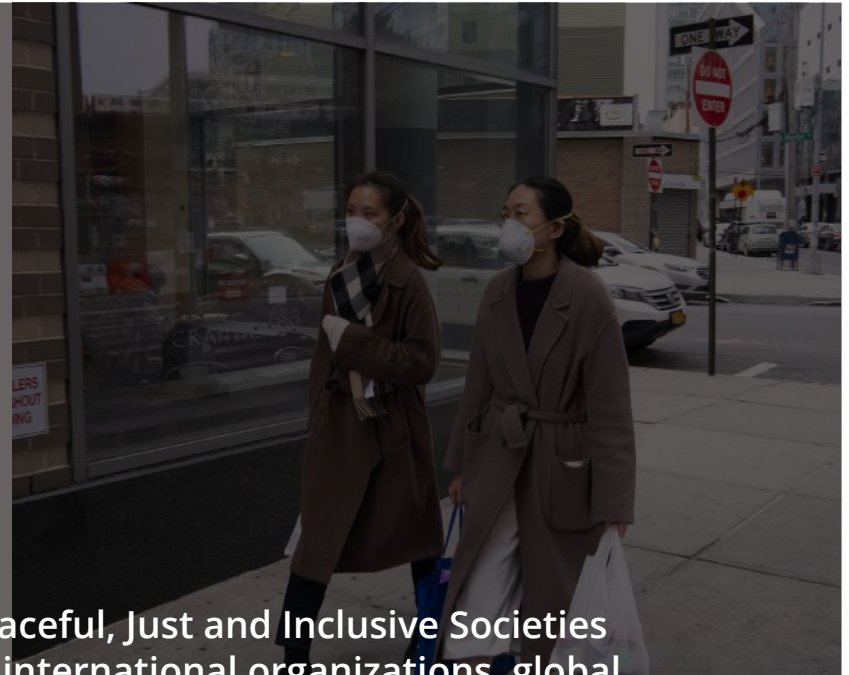
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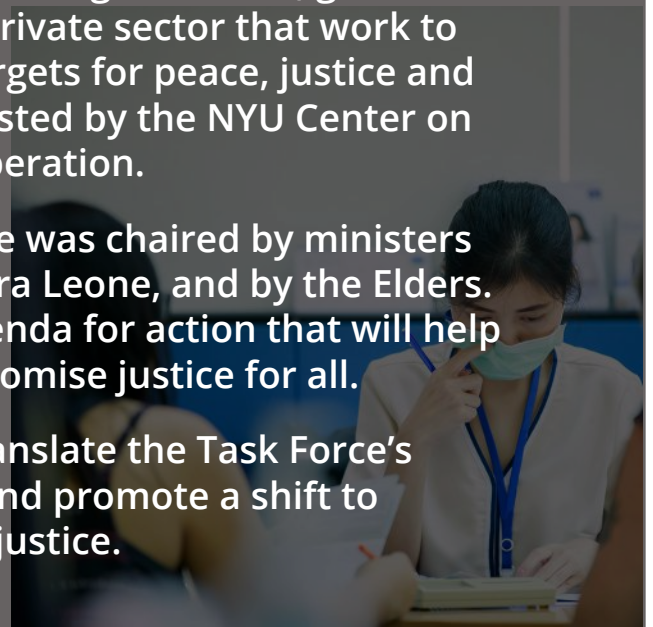
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The Pathfinders for Peaceful, Just and Inclusive Societies is a group of countries, international organizations, global partnerships, civil society, and the private sector that work to accelerate the delivery of the SDG targets for peace, justice and inclusion (SDG16+). Pathfinders is hosted by the NYU Center on International Cooperation.



The Pathfinders' Task Force on Justice was chaired by ministers from Argentina, the Netherlands, Sierra Leone, and by the Elders. Its Justice for All report sets out an agenda for action that will help deliver the SDG targets that promise justice for all.

The Pathfinders for Justice will translate the Task Force's recommendations into action and promote a shift to people-centered justice.

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