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**Promotion and protection of all human,
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including the right to development**

The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice

**Report of the Special Rapporteur on the independence of judges and
lawyers, Diego García-Sayán**

Summary

The coronavirus disease (COVID-19) pandemic has severely undermined the functioning of judicial systems, increasing the risk that States will be left without a functioning, accessible and independent system of justice. Its impact has been uneven, differing from country to country, but has tended to be disproportionately severe for vulnerable groups. In the present report, the Special Rapporteur on the independence of judges and lawyers examines the effects of this new situation and the main challenges that it raises for the administration of justice.

In the report, submitted pursuant to Human Rights Council resolution 44/8, the Special Rapporteur on the independence of judges and lawyers focuses on the impact of the COVID-19 pandemic on judicial systems and their independence and on access to justice, and makes a number of recommendations intended to help State authorities to guarantee access to justice and a functioning and independent system that is open to the people.



I. Introduction

1. Ever since the World Health Organization announced, on 11 March 2020, that COVID-19 could be characterized as a global pandemic,¹ the Special Rapporteur has been aware of the imperative need for a report examining the manner in which the pandemic is affecting judicial systems, their independence and access to justice.
2. The Special Rapporteur on the independence of judges and lawyers has a broad mandate that encompasses, among other issues, access to justice and the independence, impartiality and proper functioning of justice systems. This includes the protection of judges, lawyers, prosecutors and court officials, as well as the right to a fair trial and due process. All these aspects are essential to the exercise of human rights and the consolidation of the rule of law.
3. The Special Rapporteur has an ineluctable duty to examine the impact of the pandemic on the administration of justice. It would be foolish to downplay either the seriousness of this threat or the long-term impact that the pandemic will have on judicial systems. At the time of this report's publication, the pandemic continues, and its impact on justice is, and will remain, severe.
4. The pandemic has severely undermined the functioning of judicial systems, increasing the risk that States will be left without a functioning, accessible and independent system of justice. Its impact has been uneven, differing from country to country, but has tended to be disproportionately severe for vulnerable groups. In the present report, the Special Rapporteur on the independence of judges and lawyers examines the effects of this new situation and the main challenges that it raises for the administration of justice.
5. While some of the effects of the pandemic on access to justice, the functioning of justice systems and judicial independence are temporary, others will engender lasting changes. How these challenges may affect human rights and judicial independence is a matter of particular concern for the Special Rapporteur.
6. To obtain input for this report, a questionnaire calling for contributions was sent to States, international and regional human rights bodies, professional associations of judges and lawyers, and civil society organizations. A total of 73 responses were received.² This was an unprecedented undertaking that underscores the importance of addressing this issue in a report to the Human Rights Council. The Special Rapporteur wishes to convey his sincerest gratitude to the States, organizations and non-State actors that contributed to the preparation of the report.³
7. The Special Rapporteur also wishes to recognize the efforts that judicial institutions and public prosecutors' offices made in order to continue operating in the adverse conditions caused by the pandemic, which has brought to the fore, and in many cases exacerbated, long-standing structural problems.
8. In order to learn about additional tools for addressing the challenges raised by the pandemic, the Special Rapporteur consulted various studies published by United Nations and non-United Nations entities, including, for example, by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Development Programme (UNDP), and by the Council of Europe.⁴

¹ See www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-March-2020.

² Responses received: States (49), judicial associations (11), civil society organizations (9) and international organizations (4).

³ A list of respondents is included in the annex to this report. The questionnaire and the contributions can be consulted on the website of the Office of the United Nations High Commissioner for Human Rights.

⁴ See <https://en.unesco.org/artificial-intelligence/mooc-judges>, www.latinamerica.undp.org/content/rblac/en/home/library/democratic_governance/america-latina-y-el-caribe--gobernanza-efectiva--mas-alla-de-la-.html and www.coe.int/en/web/congress/covid-19-toolkits.

9. The Special Rapporteur wishes to recognize the contribution of the Cyrus R. Vance Center for International Justice and its network of 52 law firms, which submitted responses to the questionnaire circulated to support the drafting of this report. The Special Rapporteur also wishes to thank the Human Rights Clinic of the Human Rights Research and Education Centre at the University of Ottawa for the considerable support it provided for the preparation of the present report.

II. The pandemic and the impact of states of emergency on the judiciary

10. One of the first measures used by a number of States to respond to the pandemic was the declaration of a state of emergency. The judicial system is crucial during a state of emergency, as it must ensure that use of the measure is limited to responding to emergency situations legally recognized as such,⁵ in accordance with the International Covenant on Civil and Political Rights.

11. The protection of fundamental rights by an independent judiciary acquires particular importance in this context. On 16 March 2020, the Special Rapporteur, along with other special rapporteurs, publicly warned of the dangers that declarations of states of emergency in response to the COVID-19 pandemic could pose for human rights.⁶ Some States and regions took steps to ensure that their courts continued to function. In some cases,⁷ the legislature established rules; in others,⁸ the executive or the judiciary itself adopted provisions.

12. In April 2020 the Special Rapporteur issued a statement entitled “Coronavirus emergency: challenges for the justice system”, in which he identified seven issues and corresponding responses that were crucial to overcoming obstacles within systems of justice and guaranteeing a functioning and independent judiciary.⁹

13. With regard to the involvement of judicial systems in the implementation of emergency measures, some countries¹⁰ reported that the judiciary was consulted prior to the measures’ adoption. Complications arose when measures were taken to guarantee access to justice without prior consultation with judicial bodies. In Spain, the Government closed the courts and only urgent cases were processed. Because of the difficulties that arose, the measures had to be adjusted, this time after due consultation.

14. In this context, judicial systems did not generally operate in a regular manner, the services they normally provide being either interrupted or suspended or at least affected. The various measures adopted included:¹¹ the suspension of time limits; partial suspension of the provision of certain judicial services, leaving a minimum service only; rescheduling of hearings; use of virtual hearings; prioritization of certain cases; and suspension of proceedings that required those involved to be physically present in court.

15. In most countries that responded to the questionnaire, the courts remained open during the initial phase of the pandemic, albeit operating at reduced capacity. The severity of the measures has been, generally speaking, directly proportionate to the impact of the pandemic. The emergency plans developed by the authorities determined which cases should be postponed and which should proceed.

⁵ See general comment No. 29 (2001) of the Human Rights Committee.

⁶ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E.

⁷ Latvia, Republic of Moldova, Singapore, Slovenia, South Africa, Turkey, United Kingdom of Great Britain and Northern Ireland and Macao, China.

⁸ Bolivia (Plurinational State of), Croatia, Ecuador, Georgia and Sweden.

⁹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25810&LangID=E.

¹⁰ Albania, Chile, Georgia, Hungary, Maldives, Mozambique, Nigeria, Republic of Moldova, Romania, Saudi Arabia and United Kingdom.

¹¹ European Commission, Directorate-General for Justice and Consumers, “Comparative table on COVID-19 impact on civil proceedings”. See also the information obtained from the questionnaires submitted to the Special Rapporteur by States (a list of those that responded is annexed to this report).

16. To address the challenges raised, a considerable number of countries that responded to the questionnaire decided that the courts should adjudicate only urgent cases during the initial phase of the pandemic. The cases considered urgent and the authority responsible for deciding which should be classified as such differed from one country to another. The distinction between “urgent” and “non-urgent” varied between jurisdictions.

17. In some countries, such as Bosnia and Herzegovina, the courts remained open for the entire period; in Brazil, Fiji and Finland, on the other hand, they dealt with urgent cases only. Ecuador and Malta decided to close all national courts and tribunals completely, partially reopening in May 2020 and June 2020, respectively.

18. In most countries, cases involving pretrial detention, domestic violence, gender-based violence and sexual violence were treated as urgent. Ireland, Honduras and Kazakhstan adopted specific guidelines and policies to address domestic violence during the initial phase of the pandemic. Some countries left the decision as to the urgency of the case in the hands of the judicial authorities, while in others, such as Honduras, such decisions were left to the discretion of the Public Prosecutor’s Office.

19. National laws generally allow for emergency measures to be challenged in court. In a suit brought by the Brazilian Bar Association, the highest court upheld the right of access to public information in the light of the government restrictions imposed by Provisional Measure No. 928 issued by the President in March 2020, signalling that the judiciary can rule against measures decided by the Government if they do not have an adequate basis in international norms.¹² In some countries, including Australia, Ecuador, Ireland and Malta, the measures were subject to judicial review. In Ecuador and Malta, the courts declared certain measures to be unconstitutional.

20. In Central Asia, justice-related regulations adopted during the pandemic have not been specific enough, and have been found to contain inconsistencies and unclear guidance. The lack of guidelines for safeguarding the rights of parties during online public hearings and for upholding the right to equality of arms and legal representation is one example. Restrictions on the administration of justice imposed by the authorities throughout the region have had a direct impact on access to justice and effective remedies for victims of human rights violations and persons in situations of vulnerability.¹³

21. With regard to the Americas, although the same can be said for other regions, judicial systems “have responded to a limited degree to the need to make organizational changes and innovations that allow for specific responses to provide for the additional exigencies of vulnerable groups (for example, extending opening hours and days of service, establishing duty rosters, expanding health teams and personnel, and recruiting new staff), in much the same way as health systems have done”.¹⁴

22. In Israel, the Government closed the courts and the parliament, on the basis that this would prevent the spread of the coronavirus. The regulations adopted by the executive in July 2020 pursuant to the so-called “Great Coronavirus Law” apparently may not be consistent with international standards pertaining to declarations of states of emergency. This law reduces the Knesset’s power to exercise oversight of the executive branch and neuters its Coronavirus Committee, which had previously reversed a series of cabinet-ordered lockdown restrictions.¹⁵

¹² Brazil, Supreme Federal Court, Referendo na medida cautelar na ação direta de inconstitucionalidade, ADI 6351, 30 April 2020.

¹³ See International Commission of Jurists, “Central Asia: ICJ calls on Central Asian States to ensure access to justice during the COVID-19 pandemic”, 30 July 2020.

¹⁴ Asociación Civil por la Igualdad y la Justicia (ACIJ) et al., “Acceso a la justicia en Latinoamérica”, November 2020, p. 66.

¹⁵ See International Commission of Jurists, “Israel: ICJ urges repeal or amendment of new emergency powers legislation”, 24 July 2020.

A. Actions of political powers that have affected judges and prosecutors

23. The Special Rapporteur has noted that, during the pandemic, judicial operators examining or overseeing cases of particular public interest and social relevance have been subjected to attacks, threats and harassment, as well as stigmatization and smear campaigns, on the part of the public authorities.¹⁶ Some of the decisions taken have had repercussions for the exercise of rights, imposing limitations, conditions and even barriers on aspects and modalities of their exercise.¹⁷

24. In El Salvador, for example, the President accused the members of the Constitutional Chamber of the Supreme Court of being “assassins”, blaming them for the effects of the pandemic because of the Court’s decision to annul certain presidential decrees¹⁸ and urging other authorities not to comply with its rulings.¹⁹

25. The deployment of unregulated State surveillance powers may carry a risk of violations of privacy and freedom of movement, expression, information and association in a context where the powers of the judiciary are neutered. In the Philippines, the pandemic was used to step up measures and policies that undermine rights and the independence of the judiciary.²⁰

26. Almost all countries either suspended or severely limited the functions of the judicial system. For a number of months, people have lacked adequate channels of conflict resolution, and this has affected the accessibility, affordability and availability of justice services, as has been documented in a number of important reports.²¹

27. The process of selecting, appointing and dismissing high-level judicial authorities during the pandemic cannot be exempted from the obligation to comply with the principles of openness and transparency, or the requirement that appointments be based on merit and capability. In Georgia, the President of the High Council of Justice was appointed during the state of emergency in a process that has been challenged on the grounds of a lack of transparency that prevented any public hearing to discuss the suitability of the candidate from being held.²² In Ecuador, the process used to select and appoint 16 judges to the National Court of Justice during the pandemic has been questioned owing to a lack of transparency, technical shortcomings and delays.²³

28. In October 2020, the President of the Council of Europe Group of States against Corruption warned Spain that the reforms planned by the Government as part of a restructuring of the General Council of the Judiciary in the context of the pandemic might violate anti-corruption standards,²⁴ and consequently advised that the restructuring should be carried out in a more concerted manner in which judicial associations were more closely involved.

¹⁶ See www.fundacionjusticia.org/wp-content/uploads/2020/11/INFORME-DE-AUDIENCIA-Funcionamiento-de-los-SJ-durante-pandemia-COVID19-VFF-1.pdf. See also, *inter alia*, the reports received by the Special Rapporteur from civil society organizations.

¹⁷ See UNESCO, “COVID-19: The role of judicial operators in the protection and promotion of the right to freedom of expression: guidelines”, 2020.

¹⁸ See Due Process of Law Foundation, “Pandemia y justicia constitucional: la respuesta de Sala de lo Constitucional de la Corte Suprema de Justicia de El Salvador”, February 2021.

¹⁹ See Human Rights Watch, “El Salvador: President Defies Supreme Court”, 17 April 2020.

²⁰ See International Association of Democratic Lawyers, “IADL resolution on human rights in the Philippines and attacks on people’s lawyers”, 25 October 2020.

²¹ ACIJ et al., “Acceso a la justicia en Latinoamérica”, p. 6. The countries examined in this report are: Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay and Venezuela (Bolivarian Republic of).

²² See Coalition for an Independent and Transparent Judiciary, “The Coalition’s Statement on Nominating Nino Kadagidze as the Chair”, 13 March 2020.

²³ See Observatorio Derechos y Justicia, “Informe de veeduría al concurso público de oposición y méritos, impugnación y control para la selección y designación de las y los jueces de la Corte Nacional de Justicia”, 2020.

²⁴ See <https://rm.coe.int/letter-to-spain-14-10-2020/1680a010c8>.

B. Measures adopted during the pandemic that affect the work of lawyers

29. Lawyers have a key role in ensuring that States act lawfully and do not adopt measures that restrict the free exercise of their profession. States must ensure that lawyers are able to practice their profession freely and independently.

30. In some countries, the work of lawyers and the courts was not defined as an essential service, thereby impeding the provision of certain legal services. In Zimbabwe, civil society organizations have documented assaults, torture and other inhuman and degrading treatment and/or punishment and unlawful arrests and detention of opposition activists without their being permitted access to lawyers.²⁵

31. In March 2020, the Federal Penitentiary Service of the Russian Federation introduced restrictions on visits to detention facilities by lawyers. It has been reported that the telephones used to speak with them have been tapped by prison staff, preventing lawyers from freely exercising their profession.²⁶

32. In Egypt, lawyers have been detained without warrants for long periods of time before being brought before a court, despite the huge risk of COVID-19 infection in Egyptian detention centres.²⁷

33. In Turkey, international lawyers' associations have reported that harassment of the legal profession has become government policy.²⁸ In conjunction with the holders of other thematic mandates of the Human Rights Council, the Special Rapporteur transmitted a communication to the Government of Turkey expressing concern about the arrest, in September 2020, in Ankara, the city with the highest number of COVID-19 infections in the country, of 48 lawyers, 7 legal practitioners, 4 dismissed judges and 1 law graduate.²⁹

34. In the Philippines, the Government has been repeatedly criticized for its policy of human rights violations. Defamation and harassment of lawyers have increased during the pandemic, as has impunity, with dozens of lawyers having been killed. Most of these attacks have apparently been perpetrated by members of the President's counter-insurgency task force, or else by national security agencies and State security forces.³⁰ This situation was examined by the United Nations High Commissioner for Human Rights in a report on the human rights situation in the Philippines presented to the Human Rights Council in June 2020.³¹

35. In 2020, a number of Zimbabwean lawyers were arrested and harassed because of their professional and human rights activities in the context of the pandemic.³² This situation led to public calls for the Zimbabwean authorities to guarantee that lawyers are able to exercise their legitimate professional rights and duties.³³

36. In the Islamic Republic of Iran, the authorities ordered the return to prison of human rights defender and lawyer Nasrin Sotoudeh despite her positive COVID-19 test and contrary

²⁵ See Lawyers for Lawyers, "COVID-19 Series: The impact of the crisis in Zimbabwe", 18 November 2020.

²⁶ International Commission of Jurists, "The Impact of Anti-COVID-19 Pandemic Measures on Access to Justice in Azerbaijan, Kazakhstan, Kyrgyzstan, Russia, Ukraine and Uzbekistan" para. 21.

²⁷ International Commission of Jurists and Tahrir Institute for Middle East Policy, "Targeting the last line of defense: Egypt's attacks against lawyers", September 2020, p. 5.

²⁸ See the statement of the International Association of Democratic Lawyers, European Democratic Lawyers and the European Association of Lawyers for Democracy and World Human Rights "Another lawyer from Turkey has been arrested! Free Seda Saraldi", 31 October 2020.

²⁹ See AL TUR 18/2020, 14 October 2020.

³⁰ See International Association of Democratic Lawyers, "IADL resolution on human rights in the Philippines and attacks on people's lawyers", 25 October 2020.

³¹ See A/HRC/44/22.

³² See Law Society of Zimbabwe, "Law Society of Zimbabwe Statement on deteriorating human rights situation in Zimbabwe", 16 August 2020.

³³ See Lawyers for Lawyers, "Concerns about the recent arrests of lawyers in Zimbabwe", 11 June 2020.

to the opinion of medical professionals. In December 2020, the Special Rapporteur condemned the Government's action and demanded her release.³⁴

37. In Libya, in November 2020, lawyer and women's rights activist Hanan al-Barassi was murdered. She was shot dead after having spoken out against increased and widespread corruption in the context of the pandemic.³⁵

C. The pandemic, offences and special reference to gender-based violence

38. The pandemic has brought an increase in health-related offences and crimes of an economic and financial nature owing to corruption associated with the use of extraordinary public funds earmarked for the emergency.³⁶ Quarantine and lockdown measures have, in turn, led to a significant increase in cases of domestic, gender-based and sexual violence facilitated by confinement. The escalation of violence against women in the course of 2020³⁷ is explained by the fact that women and children have been trapped inside with their abusers, leading to increased tensions in the home.³⁸ Some countries have offered limited services or prioritized urgent cases only, including gender-based violence, while others have resorted to using digital systems.

39. Gender-based violence is a serious issue that is of particular concern to the Special Rapporteur. Measures put in place to mitigate the spread of COVID-19 have led to a 40 per cent increase in offences reported in certain countries.³⁹ In the United States of America, the number of complaints has risen by 8.1 per cent since the quarantine measures were introduced.⁴⁰

40. Botswana, Bulgaria, Poland and Turkey kept their courts open for cases involving domestic violence and family matters. Bangladesh and the Dominican Republic started holding virtual hearings. Malaysia introduced a computerized procedure for obtaining protection orders and access to shelters and legal assistance. In Peru and the Commonwealth of Puerto Rico, it is possible to request a protection order via WhatsApp or email. Some judicial systems, such as those of Argentina and the State of São Paulo, Brazil, automatically extended the validity of protection orders that were due to expire during the quarantine period.⁴¹

41. In view of the seriousness of the situation, the Secretary-General of the United Nations appealed for peace in homes.⁴² As a result of this initiative, 146 Member States made a statement of commitment to protect women from the social and economic impacts of the pandemic.⁴³

³⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26582&LangID=E.

³⁵ See United Nations Support Mission in Libya, "UNSMIL statement on the killing of lawyer Hanan al-Barassi", 10 November 2020.

³⁶ Council of Europe, Advisory Council of European Prosecutors, Opinion No. 15 (2020): The role of prosecutors in emergency situations, in particular when facing a pandemic (CCPE (2020)2), para. 41.

³⁷ United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "COVID-19 and ending violence against women and girls", April 2020; and "The Shadow Pandemic: Violence against women during COVID-19".

³⁸ See European Parliament, "COVID-19: Measures against domestic violence during confinement", 7 April 2020; and Organization of American States/Inter-American Commission of Women, *COVID-19 in Women's Lives: Reasons to Recognize the Differential Impacts*, 2020, p. 10.

³⁹ See UN-Women, "As COVID-19 exposes the fault lines of gender equality, a strong focus on violence against women at the UN General Assembly", 29 September 2020.

⁴⁰ See Council on Criminal Justice, "Domestic Violence during COVID-19: Evidence from a Systematic Review and Meta-Analysis", February 2021.

⁴¹ See UN-Women, "As COVID-19 exposes the fault lines of gender equality, a strong focus on violence against women at the UN General Assembly", 29 September 2020.

⁴² United Nations, "Statement of the Secretary-General on Gender-Based Violence and COVID-19", 5 April 2020.

⁴³ See UN-Women, "COVID-19: Only one in eight countries worldwide has measures in place to protect women against social and economic impacts, new data shows", 28 September 2020. In response to violence against women, in recent months 135 countries have expanded action plans and

42. Justice systems must address these situations through effective actions and measures that make it possible to respond to the needs of victims.⁴⁴ As of September 2020, 48 countries had incorporated measures to prevent and respond to violence against women and girls into their COVID-19 response plans, and 121 countries had taken steps to strengthen services for women survivors of violence during the pandemic.⁴⁵

III. Elements necessary for the proper functioning of justice systems during and after the pandemic

43. The pandemic and quarantine measures have severely affected the operations of judicial systems and jeopardized the right of societies to a functioning and independent judiciary. During this period, the implementation and extension of certain decisions have affected, to a greater or lesser degree, the normal functioning of the powers of the State, thereby exacerbating pre-existing structural issues in a number of spheres.

A. Access to justice

44. In most of the countries evaluated, access to justice has faced a series of structural obstacles.⁴⁶ Noteworthy among these are the outdated organization of judicial systems; a lack of financial, technological, material and human resources; insufficient or uncoordinated geographical coverage; logistical problems; limited access to information and a lack of transparency; and legal and procedural obstacles.⁴⁷ In this regard, the pandemic has merely highlighted a number of long-standing problems that have been brought to the fore by the emergence of COVID-19.

45. In Albania, according to the information received, scheduled court hearings in administrative, civil and criminal cases have been postponed until the end of the pandemic. In addition, the deadlines for filing claims, complaints and appeals and for completing procedural steps have been suspended.⁴⁸

46. Some countries reduced court capacity in line with epidemiological developments.⁴⁹ In Romania, petitions could be submitted only by post or email. However, it is reported that court servers and email addresses soon became unavailable owing to limited capacity.⁵⁰ Meanwhile, countries such as Austria and Ireland have developed a “traffic light” system to reduce the number of hearings held in person.

47. Vulnerable groups, such as persons without legal identification documents or good-quality Internet access, have been particularly affected with regard to their access to the judicial system. Around the world, a lack of access to information technology and the Internet means that many people, including members of the legal profession, have been left particularly exposed to legal difficulties in defending or upholding rights.⁵¹

resources for addressing violence against women, as part of their COVID-19 response, with more robust essential services.

⁴⁴ Organisation for Economic Co-operation and Development, “COVID-19 in Latin America and the Caribbean: An overview of government responses to the crisis”, 2020, p. 14.

⁴⁵ See UN-Women and UNDP, “COVID-19 Global Gender Response Tracker”, 2020.

⁴⁶ ACIJ et al., “Acceso a la justicia en Latinoamérica”, p. 21.

⁴⁷ Requirements for excessive procedural formalities; rigid rules on reporting, time limits, standing and admissibility, submission of evidence and burden of proof; and a lack of specialized tribunals and integrated alternative mechanisms.

⁴⁸ Normative Act No. 9, Adoption of Special Measures in the area of judicial proceedings during the period of epidemic situation caused by COVID-19, Official Gazette No. 49, 25 March 2020, art. 3.

⁴⁹ Austria, Croatia, Greece and Ireland.

⁵⁰ See https://fra.europa.eu/sites/default/files/fra_uploads/romania-report-covid-19-april-2020_en.pdf.

⁵¹ See World Justice Project, “The COVID-19 Pandemic and the Global Justice Gap”, October 2020, pp. 4–6.

48. In some Central Asian countries, restrictive measures have had a negative impact on the right of access to justice and the right to remedies for victims of human rights violations.⁵²

B. Right to a fair trial and to due process

49. The pandemic has led to substantial limitations on the right to a public hearing, impacting transparency and the ability of civil society to monitor trials.⁵³ Around the world, difficulties in gaining access to justice have been exacerbated by the pandemic.

50. Due process is a fundamental right, irrespective of the degree of emergency in a particular country. Although experience in recent months has shown that digital communication tools are very useful when dealing with quarantine and social distancing rules, some can be imprecise or even counterproductive in terms of access to justice, due process and judicial guarantees.⁵⁴ The right to a defence has also been affected.

51. The technical limitations of certain digital tools used for online meetings in the context of judicial proceedings or tax investigations can sometimes make it difficult to maintain confidentiality during consultations between legal representatives and their clients. Testimonies or expert statements given online are more likely to be given under pressure and persons giving testimony or statements online may even receive instructions unnoticed. In addition, viewing on a screen can make it difficult to recognize objects and individuals,⁵⁵ which may have implications for the right to examine evidence.⁵⁶ Privacy for meetings between clients and their lawyers must be strictly guaranteed, which is not the case with the digital tools currently in widespread use.⁵⁷

52. The criminal law of certain countries requires defendants to be physically present at trial. In such countries, it could be problematic to hold trials online, unless the law provides for such a possibility,⁵⁸ especially since article 14 of the International Covenant on Civil and Political Rights provides that all persons charged with a criminal offence have the right to be present at their trial.

53. Restrictions imposed on prison visits in order to contain the spread of the virus have seriously affected and interfered with the right of access to legal assistance. In certain Central Asian countries, the regulations adopted have had serious implications for defendants' right to a fair trial. In many court buildings, no adjustments were made to social distancing requirements in order to uphold the right to a public hearing.⁵⁹

54. Closures of courts, extensions of pretrial detention, the non-execution of court orders⁶⁰ and the suspension of trials have a direct impact on the right to be tried within a reasonable time.⁶¹ In Egypt, during the pandemic, anti-terrorism judges at Cairo Criminal Court decided

⁵² See International Commission of Jurists, "Central Asia: ICJ calls on Central Asian States to ensure access to justice during the COVID-19 pandemic", 30 July 2020.

⁵³ Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, Warsaw, 2020, p. 121.

⁵⁴ International Legal Aid Consortium, "Justice in the Time of COVID-19. Challenges to the Judiciary in Latin America and the Caribbean", December 2020, p. 19.

⁵⁵ *Ibid.*, p. 38.

⁵⁶ Form submitted by the Cyrus R. Vance Center for International Justice.

⁵⁷ Several excellent studies have been published on Latin America and the interplay between COVID-19 and justice. See, for example, ACIJ et al., "Acceso a la justicia en Latinoamérica"; México Evalúa, "Guide to good practices in the use of new technologies to impart justice", 2020; and, most recently, International Legal Aid Consortium, "Justice in the Time of COVID-19. Challenges to the Judiciary in Latin America and the Caribbean", December 2020.

⁵⁸ Cyrus R. Vance Center for International Justice.

⁵⁹ See International Commission of Jurists, "Central Asia: ICJ calls on Central Asian States to ensure access to justice during the COVID-19 pandemic", 30 July 2020.

⁶⁰ See European Court of Human Rights, *Hornsby v. Greece*, 19 March 1997, Reports 1997-II.

⁶¹ International Legal Aid Consortium, "Justice in the Time of COVID-19. Challenges to the Judiciary in Latin America and the Caribbean", December 2020, p. 18.

to extend the pretrial detention of more than 1,600 detainees without respecting basic due process guarantees.⁶²

55. Access to justice and due process cannot be protected if the courts are not given the guarantees, combined with adequate funding and resources, needed to meet the new challenges.⁶³

56. Argentina and Mexico increased budgets or reallocated budget lines to the justice sector.⁶⁴ In Germany, some states allocated additional resources, while others worked within the designated budget.

57. In Bosnia and Herzegovina, Chile, Ecuador, Greece, South Africa and Sweden, the judicial system continued to rely on budgetary resources allocated prior to the pandemic, without any additional funds being approved.

58. In Brazil, court costs were reduced through the introduction of online hearings, while in Uganda, the budget for the judicial system decreased during the pandemic.⁶⁵

C. Legal assistance

59. To be able to perform their work, lawyers have had to obtain ad hoc authorizations. In countries such as France and Spain, a formal self-declaration by lawyers was sufficient to be able to travel, while in other places the authorities were responsible for issuing travel permits, which constituted de facto authorization to work.⁶⁶ Difficulty in gaining access to legal assistance has been noted in particular in countries such as Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.⁶⁷

60. The majority of the States that responded to the questionnaire asserted that the pandemic had not had any adverse impact on the ability of lawyers to perform their functions. They claimed to have made available suitable means and infrastructure for the holding of private meetings between lawyers and their clients, either through videoconferencing or in person. However, information received by the Special Rapporteur indicates that, in many cases, the pandemic served as a pretext for introducing severe restrictions on the proper exercise of the legal profession. For example, Serbia reported certain difficulties in ensuring such meetings could take place.

61. Although they are not the only groups affected, victims of domestic violence and persons who are ill or who have disabilities have seen their access to legal assistance restricted. Access to justice for vulnerable groups, such as victims of human trafficking, reportedly fell by 66 per cent during the pandemic.⁶⁸ Reports received indicate that the pandemic has affected the rights of suspects and defendants, and in particular the rights of the most vulnerable social groups, as well as those of political prisoners.

62. The International Commission of Jurists has identified cases in which defence lawyers were not allowed to meet with clients who had been charged with serious offences.⁶⁹ In

⁶² See Amnesty International, "Egypt: Court arbitrarily extends the pretrial detention of over 1,600 defendants", 7 May 2020.

⁶³ See Council of Europe, Consultative Council of European Judges, Opinion No. 2 (2001) on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights (CCJE (2001) OP No. 2), para. 3; and International Commission of Jurists, "Central Asia: ICJ calls on Central Asian States to ensure access to justice during the COVID-19 pandemic", 30 July 2020.

⁶⁴ ACIJ et al., "Acceso a la justicia en Latinoamérica", p. 50.

⁶⁵ Form submitted by the Cyrus R. Vance Center for International Justice.

⁶⁶ OSCE/ODIHR, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, Warsaw, 2020, p. 76.

⁶⁷ See International Commission of Jurists, "Central Asia: ICJ calls on Central Asian States to ensure access to justice during the COVID-19 pandemic", 30 July 2020.

⁶⁸ OSCE/ODIHR and UN-Women, *Guidance. Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic*, p. 62.

⁶⁹ See International Commission of Jurists, "Central Asia: ICJ calls on Central Asian States to ensure access to justice during the COVID-19 pandemic", 30 July 2020.

Kazakhstan, civil society organizations reported problems faced by lawyers in defending their clients, including difficulties filing procedural motions. As a result, lawyers have not been able to adequately perform their functions of representing and assisting their clients and, on occasion, have even been forcibly excluded from online proceedings, thus undermining their independence and professional guarantees.⁷⁰

63. In almost all countries, the suspension of judicial services affected free legal aid services for administrative and judicial proceedings, despite the introduction of online or telephone services to replace in-person assistance. In 10 Latin American countries, the measures implemented with respect to free legal aid were found to have been distributed unevenly across the different jurisdictions within countries.⁷¹

64. In India, access to justice and legal assistance was limited as a result of court closures and the restrictions imposed on the free exercise of the legal profession. In some states in the country, lawyers were not allowed to open their offices for more than two months. Detainees and their families were thus deprived of legal assistance. The fact that it was not possible to visit lawyers' offices or police stations to file complaints or secure the release of relatives led to an increase in arbitrary arrests and searches during which the relevant legal procedures were not followed.⁷²

65. In Egypt, during the partial curfew imposed by the Government, lawyers were not exempted from the obligation to remain at home, meaning that anyone arrested during the curfew was unable to obtain legal assistance. Once court proceedings regarding pretrial detention resumed in early May 2020, lawyers were denied access to the courts, preventing them from representing their detained clients and requesting their release.⁷³

66. It is worth highlighting some initiatives designed to address the problems described above. The Macedonian Young Lawyers Association and the Free Legal Aid Centre of the Kosovo Law Institute⁷⁴ provided legal assistance during lockdown by establishing dedicated telephone lines for detainees and asylum seekers. Through awareness-raising campaigns on television and social media and the use of toll-free numbers, the organizations provided people with information about their rights and means of obtaining legal support during COVID-19 lockdowns.⁷⁵

D. Backlogs and measures to address them

67. The pandemic has caused a significant backlog of cases that is impossible to quantify. Delays have increased in almost all areas, especially in criminal, family, civil, labour, bankruptcy and insolvency proceedings.⁷⁶ As a result, the workload for the legal profession in the judicial system has increased exponentially due to the forced closures.⁷⁷

68. Faced with this situation, most countries resorted to online hearings during the pandemic. However, some countries such as Fiji, the Republic of Moldova and Romania kept courts open on weekends and holidays to limit delays. In Malta, the Government considered appointing additional judges. In North Macedonia, a standing committee was established to deal with urgent cases coming before the Supreme Court.

⁷⁰ International Commission of Jurists, "The Impact of Anti-COVID-19 Pandemic Measures on Access to Justice in Azerbaijan, Kazakhstan, Kyrgyzstan, Russia, Ukraine and Uzbekistan" para. 41.

⁷¹ ACIJ et al., "Acceso a la justicia en Latinoamérica", p. 9.

⁷² See Lawyers for Lawyers, "COVID-19 Series: The impact of the crisis on lawyers in India", 15 July 2020; available at <https://lawyersforlawyers.org/en/covid-19-series-the-impact-of-the-crisis-on-lawyers-in-india-2>.

⁷³ International Commission of Jurists and Tahrir Institute for Middle East Policy, "Targeting the last line of defense: Egypt's attacks against lawyers", September 2020, p. 5.

⁷⁴ References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

⁷⁵ OSCE, "The functioning of courts in the Covid-19 pandemic", October 2020, p. 19.

⁷⁶ Cyrus R. Vance Center for International Justice.

⁷⁷ See Council of Bars and Law Societies of Europe, "CCBE concerns and propositions regarding the current phase of reactivation of the justice system in the light of the COVID-19 crisis", 6 June 2020.

69. According to information provided on several countries by the Cyrus R. Vance Center for International Justice, the shift to online court hearings and electronic filing of documents has led to a delay in the processing of cases owing to the need to train judicial personnel in such ways of working. In Hong Kong, China, it is estimated that approximately 18 per cent of the annual caseload of courts at all levels has been affected since the beginning of the General Adjourned Period in January 2020.⁷⁸

70. These delays create significant challenges for the courts, with the risk that, after the pandemic ends, cases may not be prioritized on the basis of independent criteria and the protection of people's rights may be undermined.

IV. Issues arising as a result of COVID-19

A. Health in the workplace

71. Most countries have implemented health-related measures to enable court workers to continue their daily work, while at the same time ensuring that all actors in the judicial system are protected. Some of the most common initiatives adopted in the judicial sphere were the obligatory use of masks, the provision of disinfectant gel, social distancing rules, temperature checks and frequent disinfection of infrastructure. Judges, magistrates, prosecutors and support staff must be in a position to effectively perform their functions during the pandemic.

72. The failure of some countries to recognize the justice system as an essential public service has resulted in a lack of appropriate prevention and protection measures.⁷⁹ This includes a lack of easy access to face masks and regular screening tests, as well as the absence of adjustments to workplace infrastructure for legal professionals and court users, including parties, witnesses and lawyers.

B. Accountability and corruption related to extraordinary measures taken due to COVID-19

73. The impact of corruption during the response to the pandemic and the alarming reports of so-called COVID millionaires cannot be ignored. Studies have shown that corruption in the health sector causes annual losses of US\$ 455 billion and, according to estimates by the Organisation for Economic Co-operation and Development, of up to US\$ 2 trillion in procurement costs.⁸⁰ In Peru, to combat these problems, special courts have been established to handle offences involving organized crime and corruption of public officials.⁸¹

74. There is concern that some public contracts entered into by States as part of their response to COVID-19 have, by necessity, circumvented the usual public bidding process, thereby facilitating acts of corruption that have often gone uninvestigated and unpunished by the justice system. In the United Kingdom of Great Britain and Northern Ireland, Transparency International UK, together with the Fraud Advisory Panel and Spotlight on Corruption, has publicly urged the Treasury to publish the names of 830,000 small businesses that received loans to help them address the impact of COVID-19, to ensure that taxpayers' money is not being used fraudulently.⁸²

75. In South Africa, the Parliament's Standing Committee on Public Accounts has expressed concern over allegations of corruption relating to the procurement of equipment to tackle the COVID-19 pandemic. Khusela Diko, an individual with political connections, has been questioned over her role in selling COVID-19 personal protective equipment to the

⁷⁸ Cyrus R. Vance Center for International Justice.

⁷⁹ See ACIJ et al., "Acceso a la justicia en Latinoamérica".

⁸⁰ David Clarke et al., "Promoting accountability and transparency during COVID-19", UNDP, 9 June 2020.

⁸¹ See Alberto Pascual García, "Inteligencia artificial y Justicia: ¿condenados a entenderse?", UNIR, 26 June 2020.

⁸² Cyrus R. Vance Center for International Justice.

Government at a profit of 800 per cent. In countries such as Uzbekistan, State officials at the regional level have been accused of accepting bribes while distributing COVID-19 support funds.⁸³

76. In Hong Kong, China, the Independent Commission Against Corruption announced in February 2021 that the number of corruption complaints had fallen to a 40-year low in 2020. That said, there has been an increase in cases of fraud and money-laundering related to COVID-19, particularly those involving the sale of non-existent or substandard medical supplies.⁸⁴

C. Impact on the prison population

77. In most countries, prisoners live in overcrowded conditions, leaving them particularly vulnerable. As the Special Rapporteur noted in his public statement of April 2020,⁸⁵ there is an urgent need to increase the use of alternative measures to deprivation of liberty during the crisis, setting the tone for future public policies in this area.

78. Any form of lockdown, isolation or quarantine should be imposed only as a last resort and on the basis of independent medical assessments. The imposition of such measures should be assessed in the light of real and legitimate risks with regard to COVID-19. Effective means of infection prevention should also be put in place, including the reduction of the prison population, less restrictive prison regimes, the provision of equipment, testing and medical care, education for detainees and training for staff.⁸⁶ The State assumes legal responsibility for persons deprived of their liberty and is therefore obliged to take measures to protect their rights to life and health.

79. Hundreds of detainees have contracted COVID-19 in various countries, including Argentina, Azerbaijan, Ecuador, France, Mexico, Morocco, Peru, South Africa and the United Kingdom. The largest number of cases documented by the Special Rapporteur is in the United States, where, as of February 2021, 381,462 prisoners had tested positive for coronavirus, of whom at least 2,419 had died.⁸⁷ In this context, the mortality rate in prisons in the United States is 61.8 deaths per 100,000 persons in prison, double the usual rate.⁸⁸

V. Challenges relating to judicial independence and accessibility for the protection of human rights

80. The suspension of court services in order to comply with social distancing measures had a serious impact on the administration of justice and widened the global justice gap for the more than 1.5 billion people without access to an established justice system.⁸⁹

81. The nature and purpose of the justice system, as set out in human rights standards, and its relationship with technology involves much more than IT know-how and available budgetary resources. It is pointless to mechanically introduce certain technological tools that were not necessarily designed for judicial proceedings and to assume that they will in and of themselves boost the efficiency of the justice system.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25816&LangID=E.

⁸⁶ See Penal Reform International, "Coronavirus: Preventing harm and human rights violations in criminal justice systems", 14 July 2020.

⁸⁷ See www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons.

⁸⁸ See https://assets.foleon.com/eu-west-2/uploads-7e3kk3/41697/final_report_-_designed.83f2289da58b.pdf.

⁸⁹ See <https://theelders.org/news/time-close-shaming-justice-gap>.

82. The judiciary has expressed some concerns regarding the potential impact of using technical means of communication to transmit images and sound, in criminal and civil proceedings, on the rule of law and fundamental rights.⁹⁰

A. Digital divide

83. The digital divide is a crucial issue, as it objectively hampers the widespread use of virtual means in the administration of justice. Significant, sustained efforts are indispensable to avoid generating an even greater degree of exclusion in terms of access to justice. In most countries, there are social discrepancies in access to computer networks, and people of scarce resources are generally excluded from them. Insufficient geographical coverage and access to technology and the lack of training for operators and users gravely undermines access to justice. The State must guarantee access to justice by developing appropriate policies to close these technological gaps so that they do not lead to unlawful outcomes or result in inefficiencies.

84. Access to the Internet in a global context with varying degrees of technological capacity raises several issues. While the use of technology in providing judicial services is not bad in itself, there have been negative impacts on access to justice for large swathes of the population as a consequence of the digital divide. The use of technology in the judicial sphere requires the ability to access electronic means and technological know-how.

85. The Republic of Moldova has indicated that, owing to a lack of financial resources, it has not provided the necessary equipment or adequate Internet coverage to the most disadvantaged groups. In other countries, such as Guatemala, Guyana and Rwanda, computers were placed in a number of public spaces to ensure that persons belonging to disadvantaged groups had access to electronic means during the pandemic. In Ecuador, campaigns were run to inform the public of ways to gain access to justice online.

86. In Latin America, only seven countries adopted a differential approach to narrow the digital divide in favour of the most vulnerable groups in their experience with judicial services.⁹¹ It is important, in the interests of preventing the widening of the digital divide between groups, countries and regions, to ensure broad access to new technology. There is thus an obligation to develop national, regional and global initiatives aimed at bringing the appropriate technology to the places and groups that need it, and to train people in how to use it.

B. Judicial proceedings and online spaces

87. Since the beginning of the pandemic, various States have taken technological initiatives to keep the justice system running. In the United States, in-person oral argument was suspended and replaced by remote argument, using video calls and other electronic means. In many countries, guidelines were issued so as to limit court hearings to only the most urgent cases and the use of technology was encouraged. During the pandemic, Canada and Norway expanded online mediation sessions.⁹²

88. The majority of countries already had digital platforms to hold court hearings remotely. Some countries indicated that they had held training on the use of online platforms for judges and court officials.⁹³ In Brazil, specific electronic platforms were developed for conducting court hearings remotely. At the time of writing, countries such as Mozambique were still using digital means to hold hearings.

⁹⁰ See www.ccbe.eu/fileadmin/speciality_distribution/public/documents/covid-19/2020-06-18-Replies-to-the-questionnaire-on-the-implications-of-COVID-19_urgent-issues.pdf.

⁹¹ ACIJ et al., “Acceso a la justicia en Latinoamérica”, p. 9.

⁹² Anna Nylund, “Civil Procedure in Norway and Covid-19: Some Observations”, in *Civil Justice and Covid-19*, *Septentrio Reports*, No. 5 (2020), pp. 39–42.

⁹³ Guatemala, Guyana, Honduras, Latvia and North Macedonia.

89. In Latin America, technology upgrades have not successfully translated into more accessible or affordable judicial services. This is obvious from the suspension of all or almost all services provided in person.⁹⁴

90. In China, the Supreme Court issued a notice in February 2020 aimed at strengthening and regulating online proceedings during the COVID-19 pandemic. According to the notice, courts at all levels must actively promote online tools for conducting proceedings and provide guidance to the parties on how to participate in such proceedings.⁹⁵

91. Although the use of differing technologies may not, per se, be important, what is critical is that all technologies used should be equally capable of delivering a fair trial.⁹⁶ In various jurisdictions, only the parties and their lawyers have access to the virtual courtroom. The fact that the public and the media are not permitted to attend the trial calls into question the transparency of the proceedings.⁹⁷

92. In Estonia, private, separate virtual chambers were set up in order to facilitate private meetings and discussions between lawyers and their clients. In Finland, the consent of the parties to the proceedings is required in order to hold a hearing. In Austria, the judiciary was granted discretionary power to decide how to ensure a fair trial using technological means. Other countries, such as North Macedonia, applied the standards of the Council of Europe or the provisions established by the Convention for the Protection of Human Rights and Fundamental Freedoms.

93. Insofar as many of the tools used by judicial systems are here to stay, as suggested by the Special Rapporteur at the start of the pandemic, it is important to clarify their purpose and requirements so that they do not affect due process or judicial safeguards.⁹⁸

94. States in which online systems were not used on a regular basis prior to the COVID-19 pandemic appear to be facing significant problems in switching to online platforms on a larger scale, without the necessary planning or access guarantees. The pandemic has demonstrated the need for States to allocate resources to provide courts with the necessary equipment for this transition, so that the parties' rights are fully upheld.⁹⁹

95. Generally speaking, the modernization of States and the use of information and communications technology have accelerated and expanded, owing to the pandemic, although these processes have not been accompanied by the development of protocols for digital security or privacy protection. The systems' vulnerabilities in this area may jeopardize the judiciary's independence.

96. In Latin America, a large number of judicial systems¹⁰⁰ changed their policies on information and communications technology, but these updated policies were not applied evenly throughout each country's jurisdictions. Only two countries adopted measures on digital information security and/or protocols on the secure use of information and communications technology.¹⁰¹ In addition, judicial information auxiliary systems and access to anonymized digital case law were set up and progress was made in restricting the use of sensitive data.

97. Judicial systems must guarantee security and privacy while avoiding the imposition of procedures that are excessively rigid or formalistic or unnecessarily restrictive in terms of

⁹⁴ See ACIJ et al., "Acceso a la justicia en Latinoamérica"; and México Evalúa, "Guide to good practices in the use of new technologies to impart justice", 2020.

⁹⁵ Cyrus R. Vance Center for International Justice.

⁹⁶ See Council of Bars and Law Societies of Europe, "CCBE concerns and propositions regarding the current phase of reactivation of the justice system in the light of the COVID-19 crisis", 6 June 2020.

⁹⁷ Human Rights Committee, general comment No. 32 (2007), para. 28

⁹⁸ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25816&LangID=E.

⁹⁹ International Commission of Jurists, "The Impact of Anti-COVID-19 Pandemic Measures on Access to Justice in Azerbaijan, Kazakhstan, Kyrgyzstan, Russia, Ukraine and Uzbekistan" para. 40.

¹⁰⁰ Honduras and Nicaragua were not among these.

¹⁰¹ ACIJ et al., "Acceso a la justicia en Latinoamérica", p. 9.

the technology required. Such procedures would create obstacles for and have discriminatory effects on the most vulnerable and isolated sectors of the population.¹⁰²

VI. Conclusions

98. Many courageous individuals working in justice systems or in relation to them have endeavoured, sometimes paying with their own lives, to continue performing their duties with dedication during the pandemic. The Special Rapporteur pays a respectful and heartfelt tribute to each and every one of these people and extends to them and their loved ones his feelings of solidarity and respect.

99. The impact of the pandemic on institutions and societies is unprecedented. The very functioning of the justice system has been affected, through restrictions on access to justice and, on occasion, through threats or attacks on its operations and on the role of lawyers.

100. Effective institutions are an essential part of the response to a pandemic. The development of institutional capacity and the existence of measures and systems to prevent corruption and institutionalize transparency and accountability will help to achieve better health outcomes that will benefit society as a whole. Therefore, in order to emerge stronger from this crisis, it is of particular importance to address the risks and threats of corruption, both in the short-term response and in the recovery phase, with a special focus on the functioning and operation of the administration of justice.¹⁰³

101. Lockdowns and isolation and social distancing measures have affected the work of the courts and have led, *inter alia*, to delays in proceedings and the suspension of procedural deadlines and the provision of legal assistance. The administration of justice was rarely considered, within these restrictive conditions, as an essential public service. Most legal systems were not prepared for these situations and have not received the necessary extrabudgetary resources.

102. During emergencies, international human rights law remains in force. People must have access to legal advice and fair and effective judicial procedures, including the ability to challenge the legality of measures taken as a result of declarations of exceptional situations. Closures of courts, the prolongation of pretrial detention, the non-execution of court orders and the suspension of trials have had a negative impact on fundamental rights.

103. The undermining of institutions in general, and of justice systems in particular, has led to various forms of denial of justice. Gender-based violence has been a particular concern, as an exponential increase in domestic violence against women and children has been observed when quarantine, confinement and other restrictive measures are taken. While some countries have designed and implemented special procedures and remedies for women and children who feel threatened or affected, these have been insufficient.

104. Prison overcrowding affects human rights in all circumstances, but it is particularly serious in the context of the pandemic, as it exponentially increases the risk of contagion among prisoners and prison staff.

105. In a number of countries, a high proportion of persons deprived of liberty are being held in pretrial detention, contributing unnecessarily to prison overcrowding and seriously impacting the health conditions of detainees in prisons.

106. Innovation and teleworking have become permanent features of the working environment in judicial systems. The use of virtual means for various types of legal proceedings has provided a positive response to widespread and prolonged judicial paralysis.

107. There are questions about guarantees of access to justice, due process and judicial guarantees in relation to the use of digital communication tools. The design of such technology for virtual meetings may, on occasion, undermine the confidentiality of meetings

¹⁰² See UNESCO, “COVID-19: The role of judicial operators in the protection and promotion of the right to freedom of expression: guidelines”, 2020.

¹⁰³ See A/HRC/44/47 and A/67/305. In this regard, the Special Rapporteur’s reports regarding corruption in the judiciary are of particular relevance.

between legal counsel and clients, or may influence testimonies or expert statements given virtually.

108. The digital divide, difficulties in accessing the Internet and some forms of information technology make it challenging to ensure equitable access to judicial systems. As a result, many people, including members of the legal profession, have been left particularly exposed to difficulties in defending or upholding rights.

VII. Recommendations

109. **The State is responsible for guaranteeing access to justice and a functioning, independent judiciary that is accessible to the people. Additional budgetary resources are required for this.**

110. **Administration of justice should be considered an essential public service and its personnel should be considered as essential personnel during pandemics, including in the context of vaccination.**

111. **The suspension of judicial services must be subject to strict scrutiny because it is a fundamental pillar of human rights protection. Any restrictions on judicial activity must abide by the principles of legality and proportionality and be necessary for the common good in a democratic society.**

112. **States should take the necessary steps to prioritize criminal situations that have increased exponentially during the pandemic. Special emphasis should be placed on gender-based violence, domestic violence and corruption. The Special Rapporteur calls on States to strengthen means of prevention and care for victims of domestic violence and gender-based violence.**

113. **Plans for reducing backlogs, as part of the streamlining of judicial services, must be transparent and comply with standards for safeguarding judicial independence and human rights.**

114. **Restrictions on access to justice must be decisively addressed to prevent the marginalization of the most disadvantaged social groups and the “elitization” of justice systems.**

115. **Countries must take prompt and sustained action to close the digital divide that affects access to justice and generates exclusion. They must explore measures to ensure more flexible access to the use of intellectual property of technology and to examine the design of policies that foster accelerated investment in this area.**

116. **States should promote appropriate policies to achieve universal access to the Internet and information technologies that bridge the digital divide and ensure real and effective access to justice by guaranteeing connectivity and the availability of the necessary software and equipment, as well as adequate training. Consideration should be given to developing accessible and differentiated information materials for vulnerable groups.**

117. **The technology used in providing judicial services should ensure respect for the privacy, confidentiality and security of the information transmitted. It is especially important to protect the rights to a defence, to legal assistance and to adversary procedure, and the right not to suffer undue delays. The privacy of attorney-client interactions must be strictly enforced.**

118. **States must take effective measures to ensure that pretrial detention is applied only on an extraordinary and ad hoc basis for very serious crimes or for pre-established reasons. The relevant institutions should review the situation of persons imprisoned for political reasons or for minor offences or who have served a substantial portion of their sentences.**

119. **As justice systems resume full operations, they will need to adapt and plan their activity to take into account not only the accumulated backlog, but also the new workload arising from the changing pattern of some of the illicit behaviours that**

emerged during the pandemic. It is imperative that the courts have sufficient resources to ensure the proper administration of justice.

120. States must consider the situation caused by COVID-19 as a serious problem, but also as an opportunity to adopt public policies that ensure the independence and effective functioning of justice systems and that facilitate people's access to justice with a gender perspective and with respect for human rights. In developing such policies, States should be guided by the international human rights treaties, the Basic Principles on the Independence of the Judiciary (1985), the Guidelines on the Role of Prosecutors (1990) and the Basic Principles on the Role of Lawyers (1990).

Annex

List of responses (as of 18 March 2021)

1. Albania
2. Algeria
3. Andorra
4. Argentina
5. Armenia
6. Austria
7. Bolivia (Plurinational State of)
8. Bosnia and Herzegovina
9. Brazil
10. Brunei Darussalam
11. Chile
12. Croatia
13. Ecuador
14. Estonia
15. Fiji
16. Finland
17. Georgia
18. Greece
19. Guatemala
20. Guyana
21. Honduras
22. Hungary
23. Ireland
24. Italy
25. Kazakhstan
26. Kyrgyzstan
27. Latvia
28. Lebanon
29. Macao, China
30. Malaysia
31. Maldives
32. Malta
33. Morocco
34. Mozambique
35. North Macedonia
36. Qatar

37. Republic of Moldova
38. Romania
39. Russian Federation
40. Rwanda
41. Saudi Arabia
42. Singapore
43. Slovenia
44. South Africa
45. Sweden
46. Syrian Arab Republic
47. Turkey
48. United Kingdom of Great Britain and Northern Ireland
49. United States of America

Associations of judges and magistrates

50. Association of Brazilian Magistrates
51. Association of European Administrative Judges (Austria, Croatia, Germany, Italy, Luxembourg, Portugal, Slovenia and the United Kingdom)
52. Association of judges in Finland/Association of Finnish lawyers
53. Association of judges of the Republic of Armenia
54. Cyprus Judges Association
55. German judges' association
56. Judges' association of Serbia
57. Latvian association of judges
58. Asociación Profesional de la Magistratura (Spain)
59. Swedish judges association
60. Union of judges of the Republic of Kazakhstan

Civil society organizations

61. Comisión de Derechos Humanos de la Ciudad de México
62. International Bar Association, Human Rights Institute
63. International Commission of Jurists
64. Maat Foundation for Peace, Development and Human Rights (Middle East)
65. Network of Chinese Human Rights Defenders
66. Partners for Transparency (Turkey)
67. Women's Link Worldwide
68. Cyrus R. Vance Center for International Justice
69. Castan Center for Human Rights Law

Intergovernmental organizations

70. Eastern Caribbean Supreme Court
71. Office for Democratic Institutions and Human Rights

72. United Nations Office on Drugs and Crime
 73. European Commission for Democracy through Law (Venice Commission)
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