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***Perspectives from Australia on the impact of the
COVID-19 pandemic on the administration of
justice***

*Submission to the Special Rapporteur on the
Independence of Judges and Lawyers*

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QUESTIONNAIRE RESPONSE

QUESTION I - MEASURES ADOPTED

1. Please describe the measures that have been adopted in your country/region to guarantee the proper functioning of the justice system during the COVID-19 pandemic:

a. To what extent, if at all, have these measures had an adverse impact on the separation of powers, the independence of the judiciary and the free exercise of the legal profession or had the effect of limiting access to justice for victims of human rights violations?

b. Has the legality or the constitutionality of these measures been subject to judicial review?

c. Have these measures adopted on the basis of emergency legislation? Have the judiciary and the legal profession been consulted prior to their adoption through their representative organisations? If so, to what extent have their contributions been taken into account by the Government?

1.1 Introduction

The Castan Centre for Human Rights Law¹ welcomes the opportunity to reply to the Special Rapporteur's questionnaire concerning the impact of the COVID-19 pandemic on access to justice. Castan Centre Director, Professor Kevin Bell, was a Justice of the Supreme Court of Victoria from 2005-2020 and President of the Victorian Civil and Administrative Tribunal from 2008-2020. In these capacities, he wrote leading judgments on the rule of law, access to justice and human rights, including judgments on the interpretation and application of the human rights in the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

Courts and tribunals in Australia have made significant changes to the way in which they operate in response to the COVID-19 pandemic. Notable changes include, for example, the temporary closure of some courts and the digitalisation of registry services, the postponement of 'non-urgent' hearings, the making of procedural decisions 'on the papers', the extensive use of digital technology to facilitate online document submission and remote hearings, as well as the mandating of masks and social distancing in court and tribunal buildings.² Many courts have also recognised the increased risk of COVID-19 spreading in closed environments such as prisons and have incorporated consideration of the pandemic into decision-making on bail matters.³

While detailed analysis of all the changes to the courts and tribunal processes that have taken place is beyond the scope of this submission, a summary of notable changes

¹ 'Castan Centre for Human Rights Law', Monash University (Web page, 2021) <<https://www.monash.edu/law/research/centres/castancentre>>.

² Justice Connect, 'Accessing Australian Courts and Tribunals during COVID-19', Justice Connect (Web Page, 10 August 2020) <<https://justiceconnect.org.au/resources/accessing-courts-during-covid-19/>> ('Accessing Courts and Tribunals during COVID-19').

³ See Brendan Murphy and Tahlia Ferrari, 'Bail in the Time of COVID-19' (2020) 44 *Criminal Law Journal* 247 - 263.

throughout Australia has been prepared by the Judicial College of Victoria and can be found [here](#).⁴

This submission focuses on the administration of justice in the federal and Victorian jurisdictions. The latter in particular has undergone extensive changes due to the severity of the second wave of COVID-19, which impacted Victoria the hardest out of any state or territory in Australia. Victoria has only recently begun to ease COVID-19 restrictions as community transmissions of the virus are minimal at the time of writing.

1.2 Adverse impacts of COVID-19 measures

The rapid transition to remote justice, necessitated by the exigencies of the pandemic and public health directives has not been without certain ‘teething’ problems.⁵ These include absence of adequate and appropriate technologies, and a lack of technical knowledge and skills among members of the legal community and the general public (see Q4).

Fortunately, none of the issues identified to-date appear to have posed insurmountable challenges to the continued and proper function of the justice system.⁶ Further, in some respects it appears that the changes may serve to *improve* access to justice by simplifying court processes and encouraging flexibility from traditionally conservative institutions.⁷

Notwithstanding, as courts go on to hear more diverse cases in the ‘new’ format, and as researchers and observers further scrutinise the operation of remote justice, it is likely that issues of access to justice for victims of human rights violations will become apparent. In particular, we recognise that telephone and online alternatives to in-person attendance at court are not appropriate for all, in particular vulnerable persons. We also recognise that sometimes remote hearings cannot equally convey the seriousness of legal proceedings, which in turn has the potential to impact on legal outcomes in certain circumstances.⁸

1.3 Legal challenges against COVID-19 measures

As of yet, there have been limited constitutional and legal challenges pertaining specifically to the COVID-19 measures operating in courts and tribunals. There have,

⁴ ‘Coronavirus and the Courts’, *Judicial College of Victoria* (Web Page, 2021) <<https://www.judicialcollege.vic.edu.au/resources/coronavirus-and-courts#Victoria>> (‘Coronavirus and the Courts’).

⁵ ‘When You Can’t Meet in Court: Pros and Cons of Online Dispute Resolution’, *LexisNexis* (Blog, 6 April 2020) <<https://www.lexisnexis.com.au/en/COVID19/blogs-and-articles/when-you-cant-meet-in-court-online-alternative-dispute-resolution-during-coronavirus-covid19>>; See also Jennifer Robinson, Matthew Lewis, ‘Open Justice in Australia: A Silver Lining to the COVID-19 Cloud?’, *Doughty Street Chambers* (Blog, 29 May 2020) <<https://insights.doughtystreet.co.uk/post/102g8dq/open-justice-in-australia-a-silver-lining-to-the-covid-19-cloud>> (‘A Silver Lining to the COVID-19 Cloud?’).

⁶ *Ibid*; Michael Legg, ‘The COVID-19 Pandemic, The Courts and Online Hearings: Maintaining Open Justice, Procedural Fairness and Impartiality’ (2021) 49 *Federal Law Review* (forthcoming) 1, 3 - 5 (‘COVID-19, the Courts and Online Hearings’).

⁷ See i.e. Joe McIntyre, Anna Olijnyk and Kieran Pender, ‘Courts and COVID-19: Challenges and Opportunities in Australia’, *AusPubLaw* (Blog, 04 May 2020) <<https://auspublaw.org/2020/05/courts-and-covid-19-challenges-and-opportunities-in-australia/>> (‘Courts and COVID-19: Challenges and Opportunities in Australia’).

⁸ *Ibid*.

however, been challenges with regard to other COVID-19 measures, such as lockdowns and curfews.

For example, in October 2020, the High Court of Australia heard a constitutional challenge regarding the imposition of a lockdown in the case of *Gerner & Anor v The State of Victoria*.⁹ The plaintiffs claimed that the lockdown in Victoria wrongfully infringed upon the ‘guarantee of freedom of movement’, which they posited was implicit in the *Australian Constitution* (the Constitution).¹⁰ The State of Victoria disagreed, arguing that no such implicit freedom exists in the Constitution.¹¹

The High Court ruled against the plaintiffs, finding that no right to freedom of movement could be implied from the text and structure of the Constitution, nor the existence of a system of representative and responsible government or implied freedom of political communication.¹² This case underscores the need for Australia to have a Bill of Rights, preferably at the constitutional level, which our rights-protection framework presently lacks and has been the subject of frequent criticism from United Nations treaty and Charter bodies and mandates.

Another legal claim was brought in Victoria in the case of *Loiello v Associate Professor Giles*.¹³ The plaintiff challenged the imposition of a curfew on the grounds that such a directive was unlawfully made, and violated several fundamental rights protected under the *Victorian Charter of Human Rights and Responsibilities* (the Charter).¹⁴ The defendant argued that the authorisation of the curfew had been lawful, and that the limitation of human rights resulting from the curfew was necessary and proportionate to protect public health.¹⁵

The Supreme Court of Victoria found that such a measure was authorised under emergency legislation and carried out in accordance with the law. As regards the claim of a violation of human rights, Justice Ginnane stated that ‘[h]uman rights are not suspended during states of emergency or disaster’.¹⁶ He went on to note however that ‘[t]he Charter recognises that human rights are not absolute and may be limited’ where the limitation is ‘demonstrably justified’ and proportionate.¹⁷ Justice Ginnane concluded that given the existence of a state of emergency, and the absence of other reasonably available means to reduce infections, that the curfew in question was necessary and proportionate to the aim of protecting public health and did not violate the Charter.¹⁸

1.4 Emergency legislation and consultation

⁹ *Gerner v Victoria* [2020] HCA 48.

¹⁰ *Ibid* [4].

¹¹ *Ibid*.

¹² *Ibid* [6] - [9].

¹³ *Loiello v Associate Professor Giles* [2020] VSC 722.

¹⁴ *Ibid* [1] - [10], [23] - [29]; *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 7(2), 12, 21, 37, 38; Note: these sections pertained to the freedom of movement, liberty, security, the right not to be detained arbitrarily and the right not to be deprived of liberty.

¹⁵ *Ibid*.

¹⁶ *Ibid* [244] (Ginnane J).

¹⁷ *Ibid* [245] (Ginnane J).

¹⁸ *Ibid* [19] - [22], [253] (Ginnane J).

The measures adopted by the federal and Victorian courts and tribunals have been adopted on the basis of emergency legislation. For example, in Victoria, measures were imposed by the *COVID-19 Omnibus (Emergency Measures) Act 2020 Act (Vic)*¹⁹ and the *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020 (Vic)*.²⁰ Statements of compatibility with human rights were also provided for both Acts.²¹

Some courts have indicated that consultation with members of the legal profession has, or will, take place to guide decision-making on the operation of the justice system during the pandemic.²² There is however limited information as to the nature or extent of such consultation currently publicly available.

¹⁹ *COVID-19 Omnibus (Emergency Measures) Act 2020 Act (Vic)* <<https://content.legislation.vic.gov.au/sites/default/files/2020-04/20-011aa%20authorised.pdf>>.

²⁰ *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020 (Vic)* <<https://www.legislation.vic.gov.au/as-made/acts/covid-19-omnibus-emergency-measures-and-other-acts-amendment-act-2020>>.

²¹ Parliament of Victoria, 'Statement of Compatibility', *Parliamentary Debates*, Legislative Council, 23 April 2020, 1130 (Jaala Pulford)

²² See i.e. Magistrates' Court and Children's Court in Victoria: 'Information & Advice from the Courts', *Law Institute of Victoria* (Web Page, 2021) <<https://www.liv.asn.au/Professional-Practice/Supporting-You/COVID-19-Hub/Information-from-Courts>>.

QUESTION 2 - ADEQUACY OF MEASURES ADOPTED

2. Do you consider that the measures adopted in your country/region to ensure access to courts and tribunals during the COVID-19 pandemic have been sufficient:

- (a) to ensure the proper functioning of the justice system?
- (b) to protect the health and safety of all the actors in the justice system (e.g. judges, prosecutors, lawyers, court officials, law enforcement officials)?
- (c) to enable judges, prosecutors and lawyers to carry out their professional duties in a timely and effective manner?

Based on the information presently available, the response of justice systems in the federal and Victorian jurisdictions has been *generally* commendable. It is likely, however, that a significant number of unintended *individual* instances of injustice and violations of human rights have occurred due to the lack of sensitivity of various anti-COVID-19 measures introduced across the board.

Courts and tribunals have rightly sought to minimise the danger to public health, and to the health and safety of actors in the justice system by reducing as far as possible the need for in-person administration of justice.

They have also taken considerable steps to ensure that the proper functioning of courts and tribunals, and delivery of justice continues notwithstanding the pandemic, in particular by way of integrating digital technology in their own processes and procedures to facilitate 'remote justice'.

Further, courts and tribunals have supported the transition to the digital legal environment through accessible public materials to guide practitioners, parties and other judicial stakeholders. Finally, judges appear to have taken the existence of COVID-19 into consideration when making decisions around bail and other matters.

QUESTION 3 - BUDGET AND BACKLOGS

3. Please provide information on the measures adopted in your country/region to manage the backlog caused by the COVID-19 pandemic. Which criteria have been developed and used to identify urgent cases (e.g. cases on the legality of pre-trial detention or domestic violence)? Have additional budgetary resources been allocated to the court system to tackle the challenges posed by the COVID-19 pandemic? If so, do you consider that these additional resources have been used in an effective and transparent way?

3.1 Backlogs and identification of urgent cases

(a) Federal Courts

In March 2020, the High Court transitioned to an online registry, an e-lodgement system and in-person hearings were suspended.²³ Where possible, hearings have not been adjourned but have been decided ‘on the papers’, by telephone or video conferencing depending on the subject matter of the case.²⁴ Short listings, such as directions hearings, have tended to be addressed ‘on the papers’ or by telephone, whereas longer listings were prioritised using a ‘triage’ system and may be assigned for a hearing using video conferencing technology.²⁵

Matters before the Federal Court, Family Court and Federal Circuit Court have similarly continued during the pandemic using a mix of ‘on the papers’, telephone and videoconferencing hearings.²⁶ If remote alternative arrangements are not possible, matters may be adjourned or vacated.²⁷ Unfortunately, delays are still unavoidable as operations have had to be reduced.²⁸

Different approaches have been taken by the Federal Courts to prioritise and identify urgent matters. Before the Federal Court, a matter that ‘specifically concerns the Court’s response to COVID-19’ should be brought to the attention of the National Operations Registry to be prioritised as an urgent matter.²⁹

The Family Court and Federal Circuit Court similarly established a new priority list specifically for family law matters arising as a ‘direct result’ of COVID-19 (or indirectly with a ‘significant connection to’ COVID-19) and deemed to require urgent or priority

²³ ‘About the Registry’, *High Court of Australia* (Web Page, 2021)

<<https://www.hcourt.gov.au/registry/about-the-registry>>; *Judicial College of Victoria, Coronavirus and the Courts* (n 4).

²⁴ *Judicial College of Victoria, Coronavirus and the Courts* (n 4).

²⁵ *Ibid.*

²⁶ See e.g., Federal Court of Australia, ‘Special Measures in response to COVID-19 (SMIN-1)’ (Information Note, 31 March 2020)

<https://www.fedcourt.gov.au/__data/assets/pdf_file/0004/62374/SMIN-1-31-March-2020.pdf> (‘Special Measures’); *Judicial College of Victoria, Coronavirus and the Courts* (n 4).

²⁷ *Ibid.*

²⁸ See i.e. Federal Court of Australia, *Special Measures* (n 26) 2, which notes that allocations of matters are made ‘with a view of moving the Court to operating at about 50-60% of normal capacity’.

²⁹ *Ibid* 5.

resolution.³⁰ This list allows for such cases to be referred to National Registrars, under the overall management of the Chief Justice/Judge of the respective Court, to assess urgency and priority. An urgent matter may be heard (electronically) before a Judge or Registrar within 3 working days and a non-urgent priority case within 7 working days.³¹ Matters which are deemed to present ‘significant risk to the parties and/or children’ will be directly sent to a Judge or National Registrar.³² Due to the online nature of the list, matters may be heard by a Judge or Registrar from any Registry around the country.³³ It should be noted that only the COVID-19 aspect will be considered under this List, as well as any urgencies for which interim measures will be put in place.³⁴

The innovative measures taken by the Federal Courts in response to the pandemic have been commended by the Law Council of Australia which is working with the Federal Courts to address the backlogs and delays noted above generated by, or as a result of, the pandemic.³⁵ As the Law Council rightly notes, ‘it is highly likely that [delays and backlogs] have been, and will continue to be, exacerbated by the health crisis’.³⁶

The Law Council has identified areas for continued improvement, including the extension of the COVID-19 List for parenting disputes to other disputes which may require urgent attention (i.e. domestic violence cases which have increased as a result of the pandemic).³⁷ In addition, the Law Council has called for more judicial appointments to address the backlog of migration matters, which existed even before the pandemic, and have been exacerbated since.³⁸

(b) Victoria

Victoria, as the most hard-hit state during the second wave of COVID-19 in Australia, experienced significant changes to its administration of justice. For example, the Supreme Court of Victoria suspended all new jury trials from Monday 16 March 2020.³⁹ Instead, judge-only trials (available upon request with consent from the accused) were introduced as a way to reduce backlog with videoconferencing to be used where required and available, except in certain priority matters ‘including those involving life and liberty on a case-by-case basis’.⁴⁰ Times for cases were staggered for necessary in-

³⁰ Family Court of Australia and Federal Circuit Court of Australia, ‘Joint Practice Direction 1 of 2021 - The COVID-19 List’ (Practice Direction, 15 January 2021) (*Joint Practice Direction 1*); Law Council of Australia, *A successful recovery: addressing the backlog of cases in the Federal Courts as a result of the COVID-19 pandemic* (Publication, July 2020) 3 (*A Successful Recovery*).

³¹ Family Court of Australia and Federal Circuit Court of Australia, *Joint Practice Direction 1* (n 30) 2.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.* 2.

³⁶ *Ibid.* 3.

³⁷ Law Council of Australia, *A Successful Recovery* (n 30) 3.

³⁸ *Ibid.*

³⁹ ‘New Jury Trials Suspended from Monday 16 March’, *Supreme Court of Victoria* (Media release, 15 March 2020) <[supremecourt.vic.gov.au/news/new-jury-trials-suspended-from-monday-16-march](https://www.supremecourt.vic.gov.au/news/new-jury-trials-suspended-from-monday-16-march)>.

⁴⁰ ‘Supreme Court Changes in Response to COVID-19’, *Supreme Court of Victoria* (Media release, 20 March 2020) <<https://www.supremecourt.vic.gov.au/news/supreme-court-changes-in-response-to-covid-19>> (*Supreme Court Changes in Response to COVID-19*); ‘Updates to Regional Court work and Circuit Sittings due to Coronavirus’, *Supreme Court of Victoria* (Media Release, 6 April 2020) <<https://www.supremecourt.vic.gov.au/news/updates-to-regional-court-work-and-circuit-sittings-due-to-coronavirus>>; Judicial College of Victoria, *Coronavirus and the Courts* (n 4).

person appearances. All civil and criminal appeals were conducted online using videoconferencing.⁴¹

The suspension of jury trials had a particular impact on the County Court which hears most of these matters, with around 750 cases estimated to be affected.⁴² While a potential way to reduce backlogs resulting from the pandemic, as of 19 August 2020, there had only been one judge-only trial.⁴³ However, Chief Justice Kidd of the County Court has observed that the number of applications for judge-only trials has increased, and has discussed various safeguards that form part of judge-only trials, including the need for consent from the accused and the consideration of the relevant court as to whether or not it is 'in the interests of justice' to make an order for such trial.⁴⁴ Nonetheless, the swift passing of a law which allows for judge-only trials has generated valid concerns regarding fair trial rights.

Another notable measure is the 'fast-tracking' of homicide matters to the Supreme Court.⁴⁵ This allows, where parties agree, certain eligible murder or manslaughter matters to bypass the committal process⁴⁶ in the Magistrates' or Children's Court to be heard directly in the Supreme Court.⁴⁷ While there may be a public interest for such serious matters to proceed and not be put on hold, there are also valid concerns regarding fair trial rights which must be carefully considered in respect of this type of emergency matter.

On 20 October 2020, the Supreme Court announced that a limited number of criminal jury trials in Melbourne would resume as of 16 November 2020.⁴⁸ The Court advised that it would continue to use technology for some hearings to limit the number of people physically attending court.

The restrictions that were in place for the majority of 2020 affected hundreds of cases as noted above and have created significant backlogs, particularly in criminal matters. While increased use of existing and new technology to conduct matters have meant that the administration of justice has been able to continue in most instances, such tools have

⁴¹ Supreme Court of Victoria, *Supreme Court Changes in Response to COVID-19* (n 40).

⁴² Adam Cooper, 'Courts ready to handle post-lockdown case backlog, top judges say', *The Age* (News Article, 7 June 2020) <<https://www.theage.com.au/national/victoria/courts-ready-to-handle-post-lockdown-case-backlog-top-judges-say-20200604-p54zfi.html>> ('Courts ready to handle post-lockdown case backlog').

⁴³ Karin Derkley, 'Judge-alone trials help reduce backlog: Chief Judge Kidd', *Law Institute Journal, Law Institute of Victoria* (Publication, 19 August 2020) <<https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/August-2020/Judge-alone-trials-help-reduce-backlog--Chief-Judge>>.

⁴⁴ *Ibid.*

⁴⁵ 'Fast-tracking homicide matter to the Supreme Court', *Supreme Court of Victoria* (Media release, August 2020) <<https://www.supremecourt.vic.gov.au/law-and-practice/areas-of-the-court/criminal-division/fast-tracking-homicide-matters-to-the-supreme>>.

⁴⁶ Committal process: The prosecution discloses material to the defence and there is opportunity to test the evidence prior to the Magistrate's decision whether or not to commit the accused to stand trial.

⁴⁷ 'Fast-tracking homicide matter to the Supreme Court', *Supreme Court of Victoria* (Media release, August 2020) <<https://www.supremecourt.vic.gov.au/law-and-practice/areas-of-the-court/criminal-division/fast-tracking-homicide-matters-to-the-supreme>>.

⁴⁸ 'Resumption of Criminal Jury Trials', *Supreme Court of Victoria* (Media release, 20 October 2020) <<https://www.supremecourt.vic.gov.au/news/resumption-of-criminal-jury-trials>>.

also added new challenges that may contribute to delays and complications, such as connectivity and privacy issues (discussed further below).⁴⁹

3.2 Budget allocations

(a) Federal Government

The Federal Government has included funding to support the operation of the justice system during COVID-19 in the latest budget.⁵⁰ This includes (in Australian dollars) \$87.3 million to support family law services to resolve matters remotely; \$35.7 million to support Federal Circuit Court judges to hear migration and family law cases; \$5.1 million to the Fair Work Commission to facilitate meeting increased demand from workplace disputes impacted by COVID-19; and \$2.5 million to the Family Courts to hear urgent matters through the specialist 'COVID-19 List' noted in section 3.1 above.⁵¹

(b) Victorian Government

The Victorian Government has also included funding to support the administration of justice as part of its 20/21 Budget.⁵² A media release from the Premier's Office notes that the budget aims to deliver 'major investments in new courts and court systems' to allow for a 'cutting-edge justice system' that can allow for remote hearings which are safe.⁵³ A total of \$47.3 million (Australian dollars) is dedicated to enhance audio and video conferencing technology to ensure timely hearings and reduce the delays which have arisen as a result of the pandemic.⁵⁴ The budget also includes approximately \$300 million for new and upgraded courts which includes hundreds of new jobs. For specific groups, including young and disadvantaged persons and Indigenous parties, the budget also provides support (\$28.5 million and \$20.2 million respectively) to support access to justice and community services.⁵⁵

In commenting on the budget, Victorian Attorney-General Jill Hennessy observed that it is designed to deliver 'stronger, faster and more flexible justice' both during the pandemic and after.⁵⁶

⁴⁹ Adam Cooper, *Courts ready to handle post-lockdown case backlog* (n 42).

⁵⁰ Attorney General for Australia and Minister for Industrial Relations, 'Supporting the justice system during the COVID-19 pandemic', *Australian Government* (Media Release, 6 October 2020) <<https://www.attorneygeneral.gov.au/media/media-releases/supporting-justice-system-during-covid-19-pandemic>>.

⁵¹ *Ibid.*

⁵² The Hon Jill Hennessy, Attorney General, 'Massive Boost for Court Capacity', *Premier of Victoria The Hon Daniel Andrews* (Media Release, 24 November 2020) <<https://www.premier.vic.gov.au/massive-boost-court-capacity>>.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

QUESTION 4 - TECHNOLOGY

4. Please provide information on the **technological means** that have been used to ensure the functioning of the court system during the COVID-19 pandemic:
- (a) To what extent, if at all, have judicial stakeholders (e.g. judges, court staff, prosecutors) had access to adequate technological means and appropriate training on new procedures (e.g. use of electronic platforms to access documents, electronic case management and videoconferencing options)?
- (b) Which safeguards have been put in place to ensure that the use of technological means does not adversely affect fair trial and due process standards (e.g. public hearings, adequate time and facilities to communicate with one's own lawyer, access to interpretation...)?
- (c) What measures have been developed to facilitate access to justice for disadvantaged groups and individuals who may not own a computer, not have access to internet, or not be tech-savvy enough to participate in online hearings?

4.1 Access to technological means and training

Australian jurisdictions have relied heavily on the use of technology to facilitate the ongoing operation of the justice system during the COVID-19 pandemic. In order to limit physical contact, participants in the legal system have been required to use electronic platforms to manage, hear and even decide matters. Courts have mandated the use of technology such as electronic filing systems for submission of documents, electronic court books for scheduling matters, electronic case management, as well as telephone and videoconferencing for remote and virtual hearings.

Courts in the Federal and Victorian jurisdictions have provided guidance for practitioners and others relating to the use of electronic platforms and tools in legal proceedings. These include factsheets on how to utilise e-filing, online court books, and videoconferencing.⁵⁷ There is limited indication however that courts have gone so far as to provide training for practitioners, participants or others beyond this.

Notably, the integration of technology into court processes signifies a considerable shift for the Australian court system, and indeed legal community, which has been slowly incorporating technology into legal proceedings, but has demonstrated a reluctance to fully integrate technology into the justice system, as has been the case in overseas jurisdictions.⁵⁸

⁵⁷ See i.e. 'National Practitioners/Litigants Guide to Online Hearings and Microsoft Teams', *Federal Court of Australia* (Web Document, 26 May 2020)

<https://www.fedcourt.gov.au/_data/assets/pdf_file/0019/62416/National-Practitioners-and-Litigants-Guide-V5.pdf>; See i.e. 'Virtual Hearings', *Supreme Court of Victoria* (Media release, April 2020)

<<https://www.supremecourt.vic.gov.au/law-and-practice/virtual-hearings>>; See i.e. 'Guidance for Civil Proceedings Affected by Coronavirus', *Supreme Court of Victoria* (Media Release, 7 May 2020)

<<https://www.supremecourt.vic.gov.au/news/guidance-for-civil-proceedings-affected-by-coronavirus>>.

⁵⁸ Michael Legg, *COVID-19, the Courts and Online Hearings*, (n 6) 3 - 5; Jennifer Robinson, Matthew Lewis, *A Silver Lining to the COVID-19 Cloud?* (n 5); See also Joe McIntyre, Anna Olijnyk and Kieran Pender, *Courts and COVID-19: Challenges and Opportunities in Australia* (n 7).

4.2 Safeguards

(a) Public Access and Open Justice

The Law Council of Australia has identified ‘open justice’ as one of the ‘primary attributes of a fair trial’.⁵⁹ As further explained by academic Michael Legg, ‘open justice entails that the courtroom and the evidence tendered are accessible to the public and can be further disseminated by the media’.⁶⁰ Academics and legal commentators have, however, highlighted that ‘COVID-19 has endangered open justice in Australia, with the rapid shift to online courts posing challenges to the ability of the public, and particularly the media, to access judicial hearings’.⁶¹

Australian courts have indicated that efforts will be made to ensure that online hearings are made publicly available. For example, the Federal Court has said that it would be:

*‘...considering streaming and other methods of ensuring the requisite degree of public access to hearings conformable with the open justice and open court principles’.*⁶²

Similarly, the Supreme Court of Victoria has stated that:

*‘Principles of open justice have been an important part of the Court’s planning of its response to the coronavirus (COVID-19) pandemic. The means of achieving this will be considered on a case-by-case basis’.*⁶³

The Federal Court has enacted a number of measures to achieve open justice, including having hearings screened in a physical courtroom open to the public (with physical distancing measures in place), providing individuals the option to dial into the hearing by telephone, advertising the hearings in public court lists, and facilitating invitations to ‘attend’ hearings via Microsoft Teams video conferencing software.⁶⁴ Transcripts of proceedings have been recorded, and back-ups have been recorded by court staff.⁶⁵ Judges who made decisions ‘on the papers’ have further published written reasons for those decisions.⁶⁶

Similarly, the Supreme Court of Victoria has issued a practice directive that permits all virtual hearings to be recorded and facilitate public access to transcripts. It is also reported that other jurisdictions such as New South Wales have permitted live

⁵⁹ Law Council of Australia, *A Successful Recovery: Reporting of Online Hearings of the Federal Courts* (Report, July 2020) 1 <<https://www.lawcouncil.asn.au/publicassets/06b4eb3b-e8c0-ea11-9434-005056be13b5/Principles%20on%20a%20successful%20recovery%20reporting%20of%20online%20hearings%20of%20the%20Federal%20Courts.pdf>> (‘Report of Online Hearings’)

⁶⁰ Michael Legg, *COVID-19, the Courts and Online Hearings* (n 6) 6.

⁶¹ Joe McIntyre, Anna Olijnyk and Kieran Pender, *Courts and COVID-19: Challenges and Opportunities in Australia* (n 7).

⁶² Supreme Court of Victoria, *Supreme Court Changes in Response to COVID-19* (n 40).

⁶³ Federal Court of Australia, *Special Measures* (n 26).

⁶⁴ *Ibid* [9.3].

⁶⁵ Michael Legg, *COVID-19, the Courts and Online Hearings* (n 6) 7.

⁶⁶ *Ibid*.

streaming of proceedings through online video platform YouTube in order to ensure open justice.⁶⁷

Importantly however, there have been concerns that technology appropriate for use in online hearings is not available in all cases. For example, while telephone dial-ins may facilitate access for some, they generally have a lower level of access to alternatives such as livestreaming videos. In contrast, streaming services such as YouTube can accommodate a greater number of viewers, however there are technological and security concerns surrounding open-access live streaming.⁶⁸ In addition, there have been concerns that there is insufficient technical support, and a general lack of expertise on the part of the judiciary as to how to utilise online tools.⁶⁹

(b) Adequate time for preparation

Following the outbreak of COVID-19 in Australia, many Australian courts made the decision to temporarily postpone non-urgent matters where possible and appropriate.⁷⁰ Such action was seen in the High Court,⁷¹ the Family Court,⁷² and in Victoria the Coroners Court, Victorian Civil and Administrative Tribunal and others.⁷³ These delays sought to allow courts, practitioners and other judicial stakeholders time to respond to health directives issued by governments around Australia, and to adapt their systems and processes to more greatly incorporate 'remote' access technologies.

4.3 Access to Justice for Disadvantaged Groups

Broadly, the courts in both Federal and Victorian jurisdictions appear to have made concerted efforts to ensure access to justice for groups that are disadvantaged due to their technical skills, or are from vulnerable groups within the community.

(a) Those lacking access/skills with technology

At both a Federal and Victorian level, courts have sought to shift most of their functions online, with the exception of 'urgent' cases. As a result, those involved in legal proceedings have needed to quickly adapt to a suite of online platforms and systems to facilitate 'remote' provision of justice. Courts have done well to support those with limited knowledge and skills utilising technology by way of online factsheets and guidance

⁶⁷ Ibid; See also Graeme Johnson, Leon Chung, Alison Stead, Will Hanna, Winsome Hall and Winnie Liu, 'COVID-19 Governance: The Wheels of Justice Continue to Turn, Despite the Global Pandemic (Australia)', *Herbert Smith Freehills* (Blog, 23 April 2020) <<https://www.herbertsmithfreehills.com/latest-thinking/covid-19-governance-the-wheels-of-justice-continue-to-turn-despite-the-global>>.

⁶⁸ Michael Legg, *COVID-19, the Courts and Online Hearings* (n 6) 8; Joe McIntyre, Anna Olijnyk and Kieran Pender, *Courts and COVID-19: Challenges and Opportunities in Australia* (n 7); Victoria Hospodaryk, Katie Jones and Jin Yoo, 'The Future of Justice: Australia's Transition to Online Courts', *Sydney University Law Society* (Blog, 25 September 2020) <<https://www.suls.org.au/citations-blog/2020/9/25/the-future-of-justice-australias-transition-to-online-courts>>.

⁶⁹ Michael Legg, *COVID-19, the Courts and Online Hearings* (n 6) 8.

⁷⁰ Justice Connect, *Accessing Courts and Tribunals during COVID-19* (n 2).

⁷¹ Steven Trask and Karen Sweeney, 'High Court Halts Hearings until August', *The Canberra Times* (online, 17 March 2020) <<https://www.canberratimes.com.au/story/6681872/high-court-halts-hearings-until-august/?cs=14231>> ('High Court Halts Hearings Until August').

⁷² 'COVID-19 Update: Information for Parents', *Family Court of Australia* (Media Release, 25 March 2020) <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/covid-info-parents>>.

⁷³ Steven Trask and Karen Sweeney, *High Court Halts Hearings Until August* (n 71).

materials for practitioners and other participants, as well as by providing access to technological support teams. In addition, some courts have indicated that participation in hearings can occur via telephone.⁷⁴ This may have provided a workable alternative to those lacking computers or internet access. There is also telephone support available from the court registries for individuals seeking assistance with their matters. Courts have advised persons without reliable internet connection to inform the Judge (through chambers and registries) as well as the other parties involved in the case.⁷⁵

Some recent jurisprudence has touched on the above concerns. For example, in the Federal Court case of *Capic v Ford Motor Company of Australia Limited (Adjournment)* [2020] FCA 486 (*'Capic'*), Justice Perram considered the issues of lack of access to a computer, or adequate knowledge on how to operate on, the unreliability of internet connection, as well as other technological issues relating to accessing hardware and software.⁷⁶

Justice Perram held that 'technology hiccoughs are likely to be encountered along the way'.⁷⁷ Nevertheless, he emphasised:

*'the Court must do all they can to facilitate the continuation of the economy and essential services of government, including the administration of justice'. Whilst I think this is a poor situation in which to have to run a trial, I do not think that it means the trial will be unfair or unjust.*⁷⁸

Therefore, issues such as unreliability of the internet do not preclude proceedings by virtual trial.⁷⁹

Justice Perram did, however, recognise that some participants in proceedings, such as witnesses may not have a computer or know how to operate a computer. 'In those cases, there would be a real problem' he stated, but went on to conclude that the approach to that issue would be to 'face it when it arrives in a tangible form'.⁸⁰

Notably, however, Justice Peram has conceded that:

'there will be many cases for which such a mode of trial will not be feasible. For example, I doubt that a fair trial can be had where an applicant does not speak in English and is in immigration detention' (emphasis added).⁸¹

⁷⁴ See i.e. Judicial College of Victoria, *Coronavirus and the Courts* (n 4); See also i.e. 'Your Questions Answered During COVID-19', *Magistrates Court of Victoria* (Web Page, 7 October 2020)

<<https://www.mcv.vic.gov.au/news-and-resources/news/your-questions-answered-during-covid-19>>; Supreme Court of Victoria, *Supreme Court Changes in Response to COVID-19* (n 40).

⁷⁵ Justice Connect, *Accessing Courts and Tribunals during COVID-19* (n 2); See i.e. 'General Information', *Supreme Court of Victoria* (Web Page, 18 January 2021)

<<https://www.supremecourt.vic.gov.au/news/coronavirus-information>>.

⁷⁶ *Capic v Ford Motor Company of Australia Limited (Adjournment)* [2020] FCA 486 (*'Capic v FMC'*); See also *Australian Securities and Investments Commission v GetSwift Ltd* [2020] FCA 504, [40] (Lee J).

⁷⁷ *Capic v FMC* (n 76) [12]; See also, 'Claiming delay due to COVID-19? Think again', *Dundas Lawyers* (Blog, 29 April 2020) <<https://www.dundaslawyers.com.au/claiming-delay-due-to-covid-19-think-again/>>.

⁷⁸ *Ibid* [5], [13].

⁷⁹ *Capic v FMC* (n 76) [5].

⁸⁰ *Ibid* [17].

⁸¹ *Ibid* [7].

The above indicates generally that technological barriers do not presently prevent proceedings being conducted remotely except in exceptional circumstances. It is not clear, however, how courts would resolve such issues should they arise. Based on the available information, it appears that where virtual trials are inappropriate or impossible, matters will either be considered 'urgent' and physical attendance permitted, or matters will be adjourned until an appropriate solution can be reached.⁸² There is an urgent need for further research on how the use of technology has affected access to justice, especially by vulnerable groups.

(b) Aboriginal and Torres Strait Islanders

Indigenous Australians were also at risk of experiencing disadvantage in the shift to online justice. Notably, Aboriginal and Torres Strait Islander peoples face a heightened risk of infection and serious illness from COVID-19.

Some courts sought to adapt their processes to ensure the safety of Indigenous participants and others involved in court proceedings. One such example can be drawn from the Victorian experience with the Koori Courts. By way of background, Indigenous Australians can elect to have certain matters heard in the Koori Court, which has been specifically 'developed to reflect cultural issues and operate in a more informal way'.⁸³ Koori Courts usually involve participation from Aboriginal Elders or respected persons, as well as others.⁸⁴

During COVID-19, the Koori Court division of the Magistrates' Court in Victoria continued to operate,⁸⁵ while the Koori Court within the County Court of Victoria was temporarily suspended on 27 March 2020, 'to preserve safety and wellbeing while maintaining access to justice'.⁸⁶ In July 2020, a pilot model for the resumption of the Koori Court division of the County Court was approved which allowed for remote video conference appearance by Elders and Respected Persons, Prosecutions and other Koori Court participants.⁸⁷ Only the Judge, accused, their counsel, Koori Court Officers, and limited others approved by the Judge were to appear in-person at Court, with the

⁸² See i.e. 'VCAT hearings during coronavirus restrictions', *Victorian Civil and Administrative Tribunal Web Page*, 2021) <<https://www.vcat.vic.gov.au/news/vcat-hearings-during-coronavirus-restrictions>>.

⁸³ See 'Koori Court', *Magistrates' Court of Victoria* (Web Page, 2021) <<https://www.mcv.vic.gov.au/about/koori-court>>.

⁸⁴ Ibid.

⁸⁵ 'COVID-19 Pandemic Response: Koori Court Proceedings in the Magistrates' Court of Victoria', *Magistrates Court of Victoria* (Practice Direction No. 7 of 2020) <https://www.mcv.vic.gov.au/sites/default/files/2020-04/Practice%20Direction%20No.%207%20of%202020%20-%20Koori%20Court%20Proceedings%20in%20the%20Magistrates%27%20Court%20of%20Victoria_5.pdf>.

⁸⁶ Email from Justice Peter Kidd, Chief Judge County Court of Victoria, to the public, 27 March 2020 <<https://www.liv.asn.au/PDF/Professional-Practice/COVID19/2020-03-27-Koori-Court-Stakeholders-re-Suspension-.aspx>>.

⁸⁷ 'Status of the County Koori Court', *Law Institute of Victoria* (Statement, 22 July 2020) <<https://www.liv.asn.au/getattachment/Professional-Practice/Supporting-You/COVID-19-Hub/Information-from-Courts/Status-of-the-County-Koori-Court.pdf.aspx>>.

County Court hosting only two Koori Court hearings per week.⁸⁸ The process was set to be truncated to 'minimise time spent face-to-face in Court.'⁸⁹

To provide additional support to participants not familiar with the use of the technology, the Court has provided detailed guides and factsheets for the use of video conferencing with images to assist understanding.⁹⁰ Where participants experience difficulties with technology, they are advised to contact the Judge directly by email or phone as soon as possible, with an IT support team also accessible to assist with technical issues.⁹¹

⁸⁸ Ibid.

⁸⁹ 'County Koori Court - Alert - Resumption of the County Koori Court', *County Court of Victoria* (Statement, 25 August 2020) 1-3 <<https://www.countycourt.vic.gov.au/files/documents/2020-08/alert-resumption-county-koori-court.docx>> ('Resumption of County Koori Court').

⁹⁰ See i.e. 'Criminal Division Hearings - WebEx Information Guide, December 2020 (Version 3)', *County Court of Victoria* (Information Guide, December 2020) <<https://www.liv.asn.au/getattachment/Professional-Practice/Supporting-You/COVID-19-Hub/Information-from-Courts/Criminal-Division---Webex-Information-Guide---v-3.pdf.aspx>>.

⁹¹ County Court, *Resumption of County Koori Court* (n 89) 3.

QUESTION 5 - CHALLENGES FOR LAWYERS

5. With regard to the free and independent exercise of the legal profession, please provide information on:

(a) the obstacles, restrictions or impediments that lawyers faced during the COVID-19 pandemic with regard to access to clients, particularly those under arrest or detention, and in relation to their participation in courtroom activities;

(b) the measures adopted in your country/region to enable lawyers to carry out their professional activities during the COVID-19 pandemic. Do you think that these measures have been sufficient to enable lawyers to exercise their professional activities without any obstacle or improper interference?

(c) With particular regard to criminal proceedings, to what extent have these measures been adequate to enable lawyers to adequately represent their clients on an equal basis with the prosecution?

(a) Obstacles, Restrictions and Impediments to Accessing Clients

Broadly, practitioners have had some form of access to their clients since the outbreak of the COVID-19 pandemic, albeit not always in the traditional sense. Even following the decision of the National Cabinet to temporarily suspend all in person visits to adult prisons in March 2020, lawyers were still able to physically visit their clients in all jurisdictions.⁹²

This changed in Victoria with the enactment of the *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic) on 24 April 2020 which saw the restriction of visits by lawyers and assistants.⁹³ Legal representatives were only permitted to visit a prisoner where expressly permitted by the Governor, and subject to social distancing and other safety measures.⁹⁴ The Act also mandated that all new prisoners test for the virus and be quarantined in prison for 14 days, during which they are not permitted physical contact with visitors but can receive phone calls and video conferencing-based visits.⁹⁵ Several prisons in Victoria also went into formal 'lockdown' following the identification of cases of COVID-19 in inmates and workers between May and November 2020.⁹⁶

Since 23 January 2021, however, all in-person visits have resumed, and prisoners are entitled to meet with their lawyers and other professionals through non-contact 'box'

⁹² Tammy Mills and Adam Cooper, 'Personal Prison Visits Banned as Courts Face 'Greatest Crisis'', *The Age* (online, 20 March 2020) <<https://www.smh.com.au/national/personal-prison-visits-banned-as-courts-face-greatest-crisis-20200320-p54ccf.html>>.

⁹³ Our Response to Coronavirus (COVID-19)', *Victorian Department of Corrections, Prisons and Parole* (Web Page, 2021) <https://www.corrections.vic.gov.au/covid19#previous_updates> ('Our Response to Coronavirus')

⁹⁴ *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic) 51, s 112I.

⁹⁵ Victorian Department of Corrections, Prisons and Parole, *Our Response to Coronavirus* (n 93).

⁹⁶ *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic) 52, Pt 3.4, Div 3 ss 112J - 112N; See also Victorian Department of Corrections, Prisons and Parole, *Our Response to Coronavirus* (n 93); See also ACT Inspector of Correctional Services, *Australian Responses to COVID-19 in Prisons* (Report, 7 August 2020) <https://www.ics.act.gov.au/_data/assets/pdf_file/0008/1611836/Australian-responses_web-version10.pdf>.

visits, by phone and through video conferencing.⁹⁷ Notably, mandatory quarantine for new prisoners continues, despite garnering criticism from human rights lawyers and advocates for being overly restrictive, particularly given the low rates of transmission of the virus in Victoria in recent times.⁹⁸

The measures to address COVID-19 which have restricted face-to-face contact between lawyers and their clients have resulted in significant challenges for the legal profession. Indeed, as explained by the Law Council of Australia, 'face-to-face relationships between lawyers and [in particular] marginalised and vulnerable communities are often crucial in building trust and respect, both of which are important in secure positive justice outcomes'.⁹⁹ The Council emphasises that this is especially the case for clients who have experienced significant trauma such as Aboriginal and Torres Strait Islanders and asylum-seekers.¹⁰⁰

As relates to courtroom activities, practitioners have also voiced concerns. For example, the Criminal Bar Association of Victoria have reported problems accessing internet links to virtual hearings, have complained that insufficient time allocations are applied to video conferencing, and have highlighted that barriers exist to free communication with their colleagues and clients through online tools.¹⁰¹ In addition, Victoria Legal Aid has expressed concerns that the pivot to online operation of the courts has been particularly difficult for vulnerable clients, such as those with disabilities or requiring interpreters.¹⁰² At a Federal level, the Law Council of Australia has called for courts to improve their 'technological infrastructure with 'a view to ensuring courtrooms, remote and self-represented litigants and practitioners have access to quality telephone and internet connections'.¹⁰³

(b) *Measures to Facilitate Professional Activities and Equal Representation*

As examined above, Victorian courts have adapted their processes to facilitate appearances, hearings and decisions by electronic and digital means. This included limiting physical access to court rooms and utilising technical tools to enable matters to

⁹⁷ 'Professional Phone and Video Calls to Prisoners', *Victorian Department of Corrections, Prisons and Parole* (Web Page, 24 November 2021) <<https://www.corrections.vic.gov.au/prisons/professional-phone-and-video-calls-to-prisoners>>.

⁹⁸ 'Corrections in the COVID-19 Recovery', *Victorian Equal Opportunity and Human Rights Commission* (Policy Statement, 2021) <<https://www.humanrights.vic.gov.au/legal-and-policy/covid-19-and-human-rights/centring-human-rights-in-the-covid-19-recovery/corrections-in-the-covid-19-recovery/>>; Steven Caruana, 'COVID1: prisons and Human Rights in the Time of COVID-19', *University of Western Australia* (Blog, 14 May 2020) <<https://www.news.uwa.edu.au/archive/2020051412082/uwa-public-policy-institute/covid-19-prisons-and-human-rights-time-covid-19/>>; See also Tammy Mills, 'Lawyers call for an end to mandatory quarantine for new prisoners', *The Age* (online, 14 December 2020) <<https://www.theage.com.au/national/victoria/lawyers-call-for-an-end-to-mandatory-quarantine-for-new-prisoners-20201209-p56m15.html>>.

⁹⁹ Law Council of Australia, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (Report, 15 June 2020) 29 [113].

¹⁰⁰ *Ibid.*

¹⁰¹ Karen Percy, 'Justice hasn't changed, just the mode of delivery': How Victorian Courts are adapting to coronavirus', *ABC News* (online, 20 May 2020) <<https://www.abc.net.au/news/2020-05-20/coronavirus-pandemic-for-victorian-courts-judges-justice-system/12258858>>; Note: the outbreak of COVID-19 prompted prisons to ban in-person visits, resulting in legal representatives being heavily reliant on telephone and video conferencing to communicate with their clients.

¹⁰² *Ibid.*

¹⁰³ Law Council of Australia, *A Successful Recovery* (n 30) 1.

be heard by audio and video conferencing means. They have also provided support materials to facilitate the continued professional activities of the legal community.

Safeguards have also been put in place to ensure that lawyers in criminal proceedings are able to represent their clients on an equal basis with the prosecution. These include requirements for the consent of the accused in judge-only and fast-tracker trials, and publicly information for all parties on how to navigate the new remote justice system.

CONCLUDING OBSERVATIONS: THE URGENT NEED FOR RESEARCH

The COVID-19 pandemic has created significant challenges for access to justice, the rule of law and human rights internationally, including in Australia. To protect the life and health of all participants in the legal system it has frequently been found necessary, by way of emergency legislation and administrative and operational measures, to impose limitations on person-to-person contact in virtually all aspects of its operation, civil and criminal.

There is reason to think that these limitations have operated in some instances or areas so as to unjustifiably restrict access to justice for some persons and especially vulnerable persons, such as women experiencing family violence. There is also reason to think that in some instances or areas, governments have failed to ensure that the principle of equal access to justice is maintained in practice despite COVID-19. While it is important to identify the scope and extent of these restrictions and failures, it is difficult to do so at this stage because the full facts are not available, and the pandemic is ongoing.

Research into the impact of COVID-19 emergency measures on the legal system, and government responses to the pandemic, is needed in all jurisdictions at the appropriate time. We congratulate the Special Rapporteur on starting this process at an early stage. The report produced as a result of the call for submissions and the questionnaire will be a significant international source of information on this subject and will make a significant contribution to understanding how COVID-19 emergency measures have impacted upon access to justice, the rule of law and human rights. If the Special Rapporteur considers that the information obtained supports a recommendation in favour of more detailed research into the subject, we would strongly support such a recommendation and stress the importance of this research being carried out. We suggest that the Special Rapporteur could perform a facilitating role in relation to such research by holding seminars and conferences, establishing an academic network or advisory group and similar means.

While the negative impact of COVID-19 emergency measures should be the subject of research, an important lesson to be learned from the COVID-19 experience is that the legal system can use new technology and other innovative means to maintain the rule of law, to deliver access to justice and to respect, protect and fulfil human rights to an extent that has not previously been appreciated. If people in communities, including remote communities, can access police, courts, tribunals and other justice institutions by audio and audio-visual technologies during a pandemic, this can be done in a non-emergency when this positively contributes to realising the rule of law, access to justice and human rights. The same may be said of other mechanisms for making decisions on the papers, taking evidence remotely or in writing, conducting interviews remotely, having informal application processes and many other means of taking complaints, commencing proceedings, conducting hearings and determining cases that have been adopted to keep the system of justice going as much as possible during the pandemic.

Therefore, as well as identifying and learning from what has not worked in the administration of justice during the pandemic, it is important to identify and learn from what has worked. As regards the rule of law, access to justice and human rights, the COVID-19 experience has, in effect, constituted a unique laboratory in which many measures have been used experimentally. In a great many cases, as this submission

shows, the experience has been positive, which points to how the administration of justice might better realise human rights in the future, particularly as regards vulnerable people in all countries and all people in least-developed countries. If the Special Rapporteur considers that the information obtained supports a recommendation in favour of more detailed research into the subject from this positive point of view, we would strongly support such a recommendation and stress the importance of this research being carried out. The Special Rapporteur could perform the same facilitating role in relation to such research.

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