

# RULE OF LAW AND COVID-19 POLICY BRIEF

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Creating a Culture  
of Justice

International Development  
Law Organization

# CONTENTS

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<b>EXECUTIVE SUMMARY</b>	<b>3</b>		
<b>INTRODUCTION</b>	<b>4</b>		
Why the rule of law is so important to address COVID-19	5	Prioritize and triage cases and promote alternatives to ensure essential justice services	14
		Expand digital justice innovation, while addressing the digital divide	17
<b>STRENGTHEN THE LEGAL AND POLICY FRAMEWORK FOR MANAGING COVID-19 AND ITS AFTERMATH</b>	<b>8</b>	<b>INVEST IN A CULTURE OF JUSTICE AND EQUALITY</b>	<b>20</b>
Ensure that restrictive measures during public health emergencies are rule of law-based	8	Ensure comprehensive governance responses based on the rule of law	20
Prepare for the next public health emergency and promote fair legal frameworks for aftermath and recovery	10	Promote legal aid and pro bono services to address inequalities and empower people	20
		Prevent and respond to gender-based violence	22
<b>MITIGATE THE IMPACT OF THE CRISIS ON JUSTICE SYSTEMS AND JUSTICE SEEKERS TO LEAVE NO ONE BEHIND</b>	<b>14</b>	Finance access to justice	23
		<b>RULE OF LAW ACTIONS</b>	<b>24</b>
		<b>READ MORE</b>	<b>26</b>
		<b>ENDNOTES</b>	<b>27</b>

# EXECUTIVE SUMMARY

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The COVID-19 pandemic has affected every part of the world. The effectiveness of government measures to contain the virus and *Build Back Better* depends upon the capacity of public institutions and their leadership to provide transparent, effective, and accountable actions, in adherence with the rule of law.

With its emphasis on rule of law as an enabler of peace, justice and inclusion, Sustainable Development Goal 16 of the 2030 Agenda for Sustainable Development can help promote stronger institutions, more successful government action and reduced inequalities for preventing and mitigating disease outbreaks such as COVID-19. The values and principles enshrined in SDG 16 and Agenda 2030 remain highly relevant to overcome the ongoing crisis and ensure a just, equitable and sustainable recovery for all.

In this *Policy Brief*, IDLO highlights three key elements that are central to a rule of law-based response to the pandemic:

- Strengthening the legal and policy frameworks for managing COVID-19 response and recovery and preparing for future global health emergencies;
- Mitigating the impact of the crisis on justice systems and justice seekers with a specific focus on those most vulnerable,

women, girls, and marginalized groups, ensuring that no one is left behind; and

- Supporting and investing in a culture of justice to protect the rights and dignity of people everywhere.

The following rule of law actions can help support an effective response to the pandemic, while furthering development goals, sustainable recovery and long-term responsiveness, resilience and modernization of the justice sector:

1. **Foster participation, involve and empower individuals in decision-making processes**
2. **Ensure that emergency restrictions are anchored in the rule of law**
3. **Promote fair laws and policies for recovery**
4. **Invest in justice services and expand legal aid**
5. **Foster equitable justice innovation**
6. **Engage with alternative dispute resolution and customary and informal justice in line with international standards**
7. **Enhance justice for women and girls**
8. **Promote a renewed spirit of multilateralism in alignment with the SDGs**

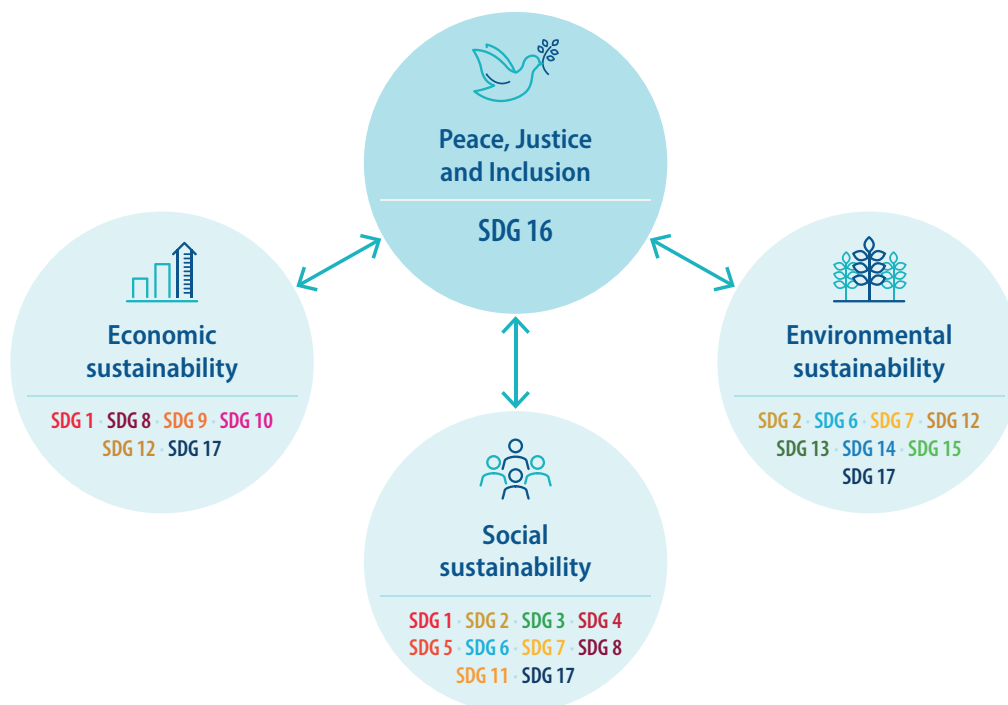
# INTRODUCTION

The COVID-19 pandemic has affected every part of the world. The ability of governments to contain the virus, flatten the curve of infections, diminish the rate of mortality, and provide economic stimulus and social protection to mitigate its impact are inextricably linked to the capacity of public institutions and their leadership to provide transparent, effective, and accountable action that adheres to the rule of law.

The 2030 Agenda for Sustainable Development – particularly Sustainable

Development Goal (SDG) 16 and its emphasis on rule of law as an enabler of peace, justice, and inclusion – can help promote stronger institutions, more successful government action and reduced inequalities for preventing and mitigating disease outbreaks such as COVID-19. The values and principles enshrined in SDG 16 and Agenda 2030 remain highly relevant to overcome the ongoing crisis and ensure a just, equitable and sustainable recovery for all (Figure 1).

**FIGURE 1: Enabling sustainable development (The Global Alliance)**



**SDG 16:** Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

**Target 16.3:** Promote the rule of law at the national and international levels and ensure equal access to justice for all.

As the only global intergovernmental organization exclusively devoted to promoting the rule of law and advancing its contribution to peacebuilding and sustainable development, IDLO is working to ensure that justice and the rule of law serve as concrete pathways for an effective and equitable response to the pandemic and lead the way to a sustainable and inclusive recovery.

This *Policy Brief* highlights three key elements central to a rule of law-based response to the pandemic:

- Strengthening the legal and policy framework for managing COVID-19 responses and recovery;
- Mitigating the impact of the crisis on justice systems and justice seekers with a specific focus on those most vulnerable, women, girls and marginalized groups, leaving no one behind; and
- Supporting and investing in a culture of justice to protect the rights and dignity of people everywhere.

In so doing, the *Brief* also spotlights efforts IDLO and other justice actors are undertaking in each of these areas, and details eight forward-looking actions to help policymakers at national, regional and global levels formulate rule of law responses to the pandemic, supporting pathways to *Build Back Better*.

## Why the rule of law is so important to address COVID-19

Focusing on the needs of people and the institutions and norms regulating relations between States and individuals, the rule of law enables good governance and is a precondition for security, justice,

and equality. It constrains the arbitrary exercise of power and safeguards legitimate justice processes and outcomes, including through fair laws and policies, effective, accessible, and accountable institutions, and by ensuring people and groups are empowered to realize their rights.<sup>1</sup> The rule of law safeguards human rights standards and an independent judiciary, and it protects procedural rights by guaranteeing legal certainty, due process and predictability, for the benefit of all.

The socio-economic and human rights crises spawned by the pandemic have exacerbated inequalities, undermining development gains, public trust and confidence in institutions, as well as overall progress towards the achievement of the SDGs. Noting the continuing threats to progress towards Agenda 2030 and, in particular, SDG 16 brought about by “[c]onflict, insecurity, weak institutions and limited access to justice” the United Nations 2020 Report on the SDGs highlights how “[t]he COVID-19 pandemic threatens to amplify and exploit fragilities across the globe.”<sup>2</sup>



## Peace, Justice, Equality and Inclusion

Fair laws and policies



Effective, accessible, and accountable institutions



Empowered people and groups realize their rights



## Defining the rule of law

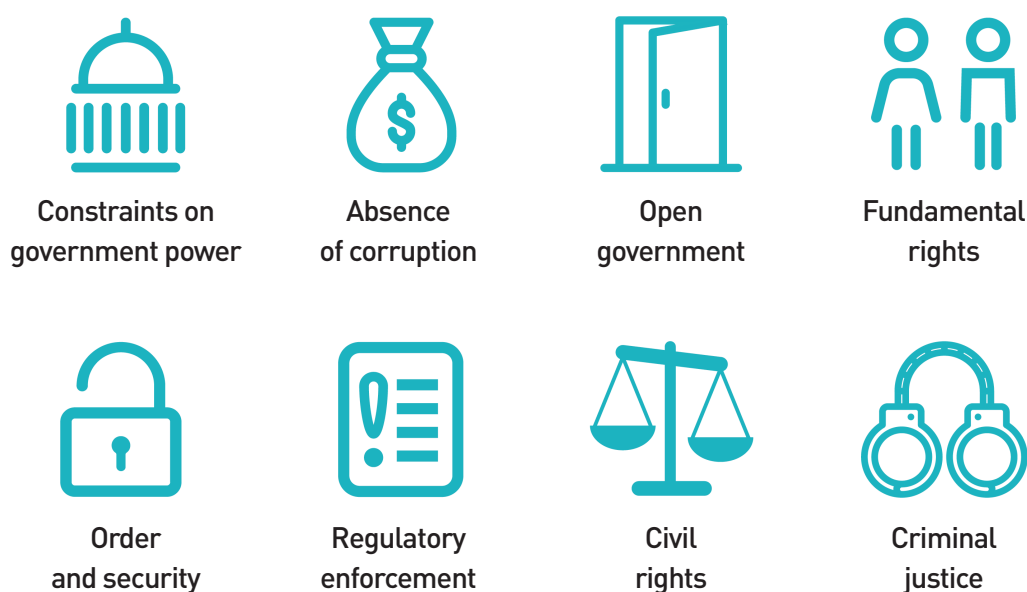
The “rule of law” (...) refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

Source: United Nations, Report of the Secretary-General, [The rule of law and transitional justice in conflict and post-conflict societies](#) [2004]

The 2020 Rule of Law Index recorded an overall deterioration and stagnation across eight key categories (Figure 2).<sup>3</sup> This has been the trend for the past three years, indicating a persistent decline in the rule of law globally, even prior to the pandemic. The Index finds that fundamental rights, constraints on government powers, and absence of corruption are among the most pronounced categories of decline globally. The outbreak of the COVID-19 pandemic

and resulting emergency measures further heighten the risk of autocratization,<sup>4</sup> risking descent from rule of law to rule by law. Examples of backsliding include attacks on the independence of the judiciary, lawyers and court officials, as well as democratic society.<sup>5</sup> Reversing these worrisome trends and finding paths for just and equitable responses to the pandemic is imperative and a necessary condition for a sustainable recovery.

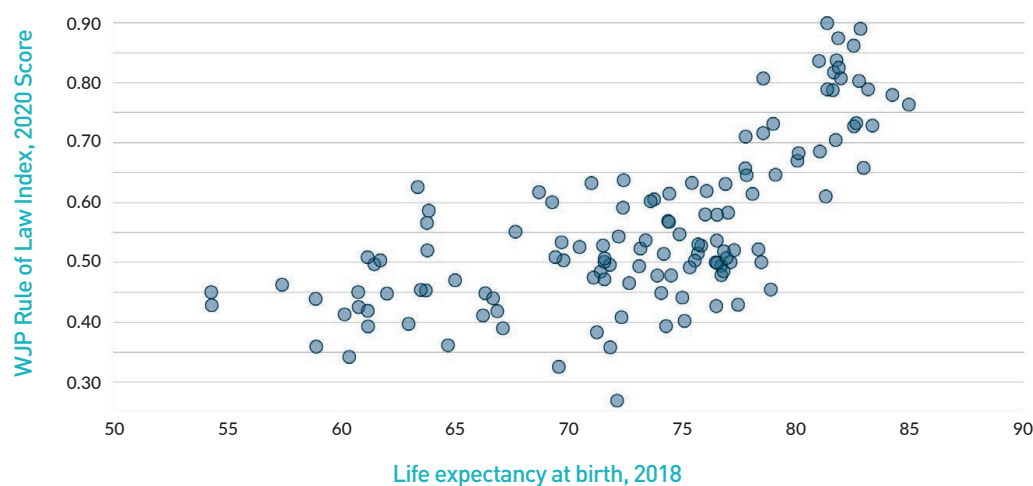
**FIGURE 2: Rule of Law Index categories (World Justice Project)**



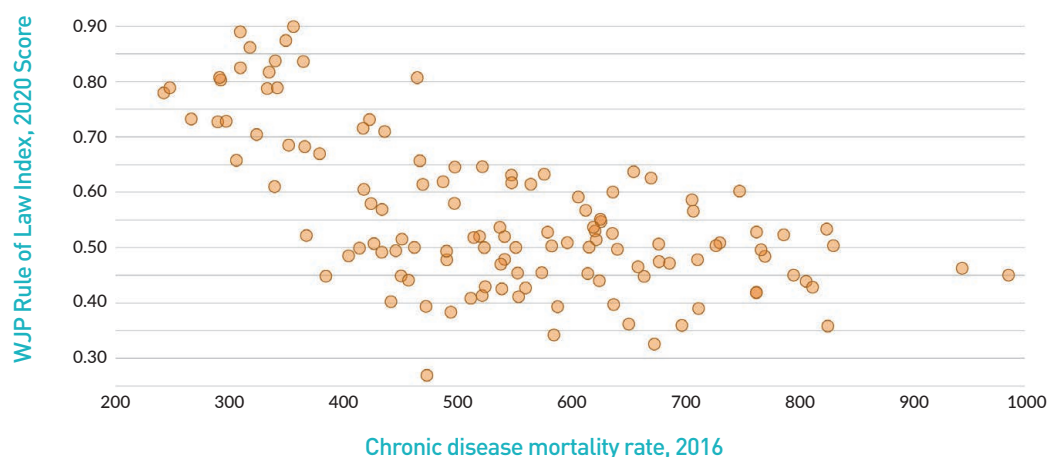
Strengthened rule of law can have broad catalytic effects on the progress towards peace and sustainable development. Research has quantified the positive correlation between stronger rule of law and longer life expectancy (Figure 3) and lower

incidence of chronic disease (Figure 4).<sup>6</sup> States with strong justice systems perform better economically, garner investment and competition<sup>7</sup> and have higher levels of equity and social justice.<sup>8</sup>

**FIGURE 3: Correlation between rule of law and life expectancy (World Justice Project)**



**FIGURE 4: Correlation between rule of law and chronic diseases (World Justice Project)**



Addressing the COVID-19 crisis effectively requires responses founded on inclusiveness and ensuring that no one is left behind. The principles of inclusion and the rule of law, embodied in Agenda 2030, remain essential elements to reduce

inequalities and injustices that the crisis has exacerbated. This *Brief* outlines rule of law measures towards equitable and sustainable recovery to respond to the pandemic and *Build Back Better*.

# STRENGTHEN THE LEGAL AND POLICY FRAMEWORK FOR MANAGING COVID-19 AND ITS AFTERMATH

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## Ensure that restrictive measures during public health emergencies are rule of law-based

Rule of law-based legal frameworks allow for carefully balanced health emergency measures consistent with the *International Health Regulations* (2005)<sup>9</sup> as well as with human rights standards as articulated in key instruments, including the *Universal Declaration of Human Rights*, and the International Covenants on *Civil and Political Rights* (ICCPR) and *Economic, Social, and Cultural Rights* (ICESCR).

In the context of COVID-19, States have introduced broad and sometimes draconian measures curbing freedoms of movement, speech and assembly in the name of public health. Adherence to the rule of law requires that restrictions be clearly defined in national law without ambiguity or misinterpretation by officials, preventing the arbitrary or excessive use of power. Where rights violations do occur, adherence to the rule of law ensures individuals can challenge violations and receive redress through an independent judiciary.

While limitations on rights are permissible at times,<sup>10</sup> the United Nations *Siracusa Principles* specifically recognize that to prevent disease or injury or provide care for the sick and injured, “[p]ublic health

may be invoked as a ground for limiting certain rights in order to allow a State to take measures dealing with a serious threat to the health of the population or individual members of the population.”<sup>11</sup>

The *Siracusa Principles* identify standards for the justification of limitations and detail requirements for laws that directly restrict individual freedoms during a public health emergency.

Specifically, emergency laws placing restrictions on human rights must respond to a pressing public or social need, pursue a legitimate aim and be proportionate to that aim. They must use no more restrictive measures than required for the achievement of the purpose of the limitation and should not be extended indefinitely.<sup>12</sup>



## Independence of the Judiciary

- Legal guarantee at highest level
- Transparent selection and appointment procedures
- Sufficient budget and adequate resources
- Freedom of association and expression
- Transparent and objective assignment of cases
- Internal independence
- Availability of disciplinary proceedings



The law must also provide for adequate safeguards and remedy against illegal or abusive use of limitations on human rights.<sup>13</sup> The enforcement of emergency measures must be subject to oversight by an independent judiciary<sup>14</sup> even in a time of public emergency.<sup>15</sup> Ordinary courts should maintain their jurisdiction to adjudicate complaints relating to a violation of a non-derogable right.<sup>16</sup>

In designing COVID-19 responses, it is not enough for measures to be proportional, necessary and non-discriminatory. Public health measures must be understood and supported, and this is best assured by having individuals participate in decisions

related to their health at local, national and international levels.

It is important that the perspectives and voices of women and marginalized groups are present in government and incorporated in the COVID-19 response. A majority of health care workers are women and many lack adequate protective personal equipment while working on the frontlines of the pandemic. Yet in a recent rapid survey of 30 countries, the majority of national-level committees established to respond to COVID-19 do not have equal female-male representation, with women making up only 24 per cent of the committees on average.<sup>17</sup>

#### SPOTLIGHT 1: Ensure participation, involve and empower individuals



**Target 16.7:** Ensure responsive, inclusive, participatory and representative decision-making at all levels

**Indicator 16.7.1:** Proportion of positions in public institutions compared to national distributions

**Target 16.b:** Promote and enforce non-discriminatory laws and policies for sustainable development

IDLO supports women's professional participation in decision-making bodies as a human right and crucial component of good governance, particularly in the justice sector.<sup>18</sup> IDLO also employs multifaceted approaches designed to empower individuals through enhanced legal literacy and knowledge of rights, including through [innovative legal empowerment and social accountability strategies](#) and has supported national legal responses to HIV/AIDS since 2009, including community participation. Many of the lessons from the HIV response are relevant to the COVID-19 pandemic and other infectious diseases. These include the importance of clear legal frameworks to authorize government action and prevent discrimination, limitations on the inappropriate use of criminal law, and legal empowerment for affected communities to drive sustainable action.

IDLO's publication [Equal Rights, Equal Treatment, Ending AIDS: Strengthening and expanding HIV-related legal services and rights](#) reviews innovative ways IDLO and partners delivered legal services and promoted legal empowerment and provides examples from different countries. The [Toolkit: Scaling Up HIV-related Legal Services](#) is a practical resource to help improve the quality and impact of HIV-related services and expand their availability, with lessons for ensuring civil and political rights.

## Prepare for the next public health emergency and promote fair legal frameworks for aftermath and recovery

The COVID-19 crisis is not unexpected. World Health Assemblies have consistently warned that “[t]he world is ill-prepared to respond to a severe influenza pandemic or to any similarly global, sustained and

threatening public-health emergency”.<sup>19</sup> COVID-19 has revealed how countries must be better prepared for public health emergencies of international concern and has reinforced the importance of international cooperation and multilateralism,<sup>20</sup> fostering exchange of information and good practices on how best to control and defeat the pandemic,<sup>21</sup> while looking to a sustainable future.

### SPOTLIGHT 2: Support legal preparedness for the next global health emergency



**SDG 3:** Ensure healthy lives and promote well-being for all at all ages

**Target 3.d:** Strengthen the capacity of all countries, in particular developing countries, for early warning, risk reduction and management of national and global health risks

**Indicator 3.d.1:** *International Health Regulations* capacity and health emergency preparedness

In consultation with partners, including the World Health Organization, IDLO is contributing to enhanced national preparedness and response systems for the next global health emergency through:

- Improved understanding and compliance with the *International Health Regulations*;
- Strengthened capacity of governments to enact legal and fiscal measures to comply with the *International Health Regulations*;
- Improved understanding of emergency restrictions and executive measures; and
- Strengthened capacity to ensure emergency restrictions and executive measures are appropriate, proportional, evidence-based, and adhere to international law and human rights.

IDLO’s publication [\*The Vital Role of Law in The COVID-19 Response: Key Lessons from Advancing the Right to Health\*](#), details lessons for managing, coordinating, and expanding the key building blocks of a well-functioning health system. The law is a powerful tool for advancing the right to health and addressing public health emergencies. Lessons can support States as they respond to the COVID-19 pandemic and advance SDGs 3 and 16.

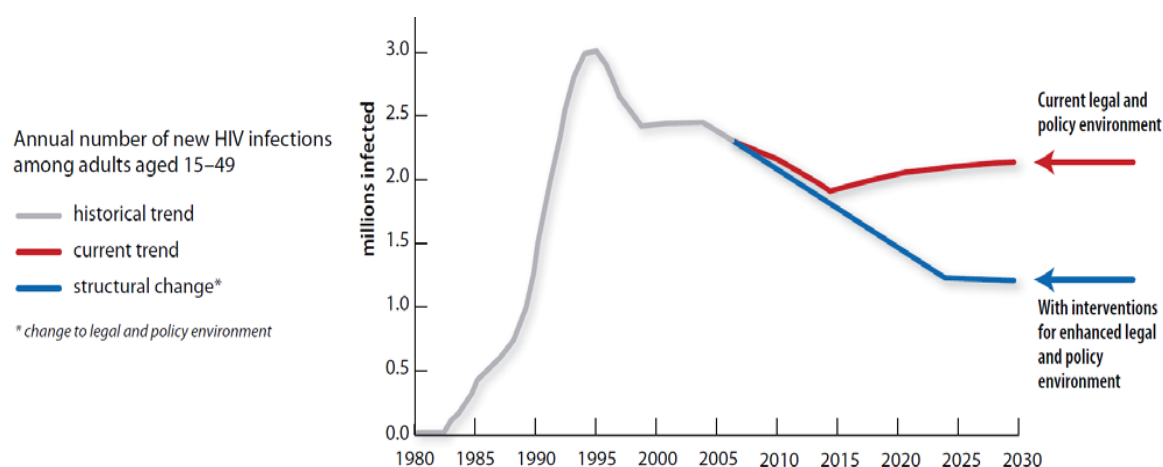
As recovery efforts advance, the rule of law provides concrete pathways to address emergency aftershocks and pursue social and economic recovery, while building resilience. The rule of law promotes effective

legislative measures in line with state obligations to progress economic, social and cultural rights, such as essential primary health care, adequate food and nutrition, and basic shelter and housing.<sup>22</sup>

The right to available, accessible, acceptable and affordable health care, particularly to vaccines and medicines, must be enshrined in law and must be provided to vulnerable groups including persons with disabilities, youth, migrants and ageing populations, without discrimination.

In the context of the HIV epidemic, the Global Commission on HIV and the Law noted that repeal of punitive laws and enactment of protective laws to promote public health and human rights could prevent up to 900,000 new HIV infections by 2030 (Figure 5).<sup>23</sup>

**FIGURE 5: Why the law matters (Results for Development Institute)**



Source: Results for Development Institute, *Costs & Choices: Financing the Long-Term Fight Against AIDS, An aids2031 Project*, 2010.

While fair laws help prevent rights violations, they also promote realization of rights. For example, effective laws can address the right to adequate food and nutrition, currently under severe stress due to the pandemic. Prior to COVID-19, more than 820 million people were suffering from chronic hunger of which 135 million were facing acute food insecurity.<sup>24</sup> During the crisis, vulnerable groups including low-income households have faced loss of income, decreasing their access to food. It is estimated that the pandemic, compounded with pre-existing factors adversely affecting food security and access to food, will develop into a food security crisis affecting 265 million people.<sup>25</sup> Laws and regulations should ensure access

to food through expanded social protection and food assistance coverage.

States must pay close attention to how emergency measures impact food security and establish or improve social protection interventions particularly for the most left behind. In the context of food insecurity, this may include the elderly, people with disabilities, pregnant and breastfeeding women, infants, school children and prisoners.<sup>26</sup> To mitigate the impact of potential food shortages, government stimulus packages must take into account the disproportionate impact of COVID-19 on vulnerable groups, and women in particular.

### SPOTLIGHT 3: Develop fair laws to address key development issues



**SDG 2:** End hunger, achieve food security and improved nutrition and promote sustainable agriculture

**Target 2.1:** End hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round

In collaboration with the Food and Agriculture Organization of the United Nations, IDLO is contributing to the critical issue of enhanced food security and access to food for vulnerable populations, women and girls during emergency contexts by:

- Assessing and improving understanding of the impact of emergency laws and regulations on access to food for vulnerable groups, women and girls; and
- Identifying legal and policy solutions to enhance food security during emergency response and recovery.

This work builds on IDLO research and programming in support of the aims of the Committee on Food Security, including publications [Realizing the Right to Food: Legal Strategies and Approaches](#) and [Women, Food, Land: Exploring Rule of Law Linkages](#). These reports canvass the legal basis of the right to food, identifying procedures for bringing claims, how courts have adjudicated the right and remedies awarded as well as the key challenges that affect women's food security and land rights, with recommendations to help realize the right to food for everyone. Key findings can support States as they respond to the COVID-19 pandemic and advance SDGs 2 and 16.

National laws and policies must also further international legal obligations to progressively realize other economic, social and cultural rights. As governments rely on individuals to stay home to prevent the spread of COVID-19, States must consider programs to ensure adequate housing. Good practices can include the prohibition of eviction due to rental arrears as well as rental and mortgage payment deferrals for those affected by COVID-19.<sup>27</sup>

Similarly, as individuals continue essential work, States must legislate and help businesses ensure that measures are in place to protect all workers from the risk of

acquiring COVID-19.<sup>28</sup> Until such measures are in place, workers cannot be required to return to work and should be protected from disciplinary measures for refusing to return to work.<sup>29</sup> Special attention must also be paid to day laborers, non-contract workers, temporary employees, and those without social protection coverage but working in supply chains, many of whom are women or belong to vulnerable groups.<sup>30</sup>

Rule of law-based legal and policy responses that promote human rights accelerate pathways to recovery<sup>31</sup> and enable States to better examine which groups are being left behind<sup>32</sup> and what special or

targeted measures need to be adopted to protect vulnerable and marginalized groups. This may include focused attention to issues such as social security, education, labor and livelihoods, taxation and economic activity, or protection for consumers against unreasonable pricing, artificial scarcity, and misleading advertisements.

Importantly, a rule of law-based response also provides access to remedy for people who suffer from socio-economic impacts of the COVID-19 crisis and for those whose rights have been violated. When individuals

do not have access to justice and redress mechanisms, other aspects of their lives are adversely affected. Unresolved legal problems can result in further legal, social and health-related costs, whereby people fall into poverty and thus stunt inclusive growth and resilience. Additionally, long-term injustices drive grievances and disrupt social cohesion and peace. As illustrated in Figure 6, justice institutions are essential for a rule of law-based response as well as sustainable development, helping individuals and businesses share prosperity and reduce poverty.<sup>33</sup>

**FIGURE 6: Why justice institutions matter (World Bank)**



# MITIGATE THE IMPACT OF THE CRISIS ON JUSTICE SYSTEMS AND JUSTICE SEEKERS TO LEAVE NO ONE BEHIND

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Rule of law and access to justice cannot be put on hold during health emergencies. Justice systems must not cease being accessible even during a pandemic, as the absence of rule of law and access to justice can threaten peace and security at all levels, local and global. The negative effects of COVID-19 on justice systems and justice seekers must be mitigated, yet access to justice challenges are great. Pre-pandemic, an estimated 1.5 billion people had a criminal, civil, or administrative justice problem that they could not solve. Another 253 million people lived in extreme conditions of injustice, without meaningful legal protection, high levels of insecurity, and the absence of rule of law.<sup>34</sup>

Justice institutions play crucial roles – before, during, and after the COVID-19 crisis. They serve as a check and balance to ensure that emergency powers are exercised within the rule of law and not used to rule by law or target marginalized groups.<sup>35</sup> They also address corruption and provide access to remedies for those most vulnerable, as well as women and marginalized groups. In the context of the HIV epidemic, people living with or vulnerable to HIV were given access to vital medicines when courts reviewed and ruled on government decisions not to roll out certain drugs or to decline providing treatment to foreigners.<sup>36</sup>

## **Prioritize and triage cases and promote alternatives to ensure essential justice services**

As courts and justice systems scale down functions to comply with physical distancing and other necessary public health measures, justice services have slowed despite innovative solutions including open-air hearings and installation of handwashing stations. Decisions must be made rapidly on which cases will be prioritized based on established criteria.<sup>37</sup> Transparency, information sharing and approaches tailored to local contexts are fundamental. The Council of Europe has compiled judicial responses and some States have elaborated overarching principles to guide decisions.<sup>38</sup>

As a matter of urgency, cases involving non-derogable rights must be prioritized. Rule of law requires that non-derogable rights such as the right to life<sup>39</sup> and the right of the accused to a fair trial<sup>40</sup>—including the right to challenge detention and the right of detained persons to be promptly brought before a judge—be respected.<sup>41</sup> A review of the types of cases with proceedings that can be carried out remotely or virtually should be undertaken in a non-discriminatory manner, bearing in mind the right to a trial within a reasonable time, rights to due process, and the right to participate during a hearing.<sup>42</sup>

In addition to examining which rights are involved when prioritizing cases, justice stakeholders must also consider the intersecting vulnerabilities of the individuals involved and then assess whether there may be increased risks, including due to confinement measures. For instance, there may be increased risk of violence if protection orders are not granted.

Courts must prioritize court hearings for protection measures to ensure that survivors of intimate partner violence can stay at home and be protected from further violence. Some States have passed laws to require an abuser to leave the home, instead of the survivor. COVID-19 response plans “should ensure that the judiciary and law enforcement authorities remain able to identify, protect, and provide remedies to survivors who are at risk and that necessary emergency funding be allocated towards these efforts”.<sup>43</sup>

Additionally, cases where a statute of limitations may apply should be prioritized or consideration given to legislated temporary suspension of limitation periods.<sup>44</sup> Generally, for cases that do

not require urgent hearings, judges may consider deferral or granting interim injunctions, restraining orders or other forms of immediate relief until a full hearing can be held.<sup>45</sup>

To help focus on essential services and not overburden justice systems during the COVID-19 crisis and beyond, a variety of approaches specific to criminal matters have been identified. The prosecution or arrest of people involved in minor, civil or economic cases may be delayed if it would not cause any detrimental impact on parties, witnesses and evidence.<sup>46</sup> In instances where criminal proceedings are not postponed, non-custodial sentences can be used when possible,<sup>47</sup> especially for children where alternatives to detention should be considered first. Steps can also be taken in detention centers and prisons for the release of detainees and prisoners, particularly those in administrative or pre-trial detention, those imprisoned for political reasons and minor offenses, and those finishing their conviction terms soon.<sup>48</sup> In certain contexts, amnesties and pardons may also be used to ensure that jails and prisons do not become virus hotspots.<sup>49</sup>

#### **SPOTLIGHT 4: Facilitate international cooperation and technical assistance on critical matters**



**Target 16.a:** Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

To support national justice partners, in Afghanistan and Honduras IDLO has provided technical assistance to protect and promote the rights of detainees and prisoners while ensuring public safety. This has included reviewing procedural safeguards, gathering information from existing databases, monitoring visits, guaranteeing adequate legal and psychological assistance to individuals deprived of liberty, and facilitating court petitions – specifically, a *habeas corpus* [petition](#) to determine whether the imprisonment of certain categories of persons is lawful, and a petition to ensure rights are being upheld in accordance with constitutional provisions.



For matters that are minor and cannot be dealt with by courts in the short term, individuals may also consider and be directed to alternatives, such as helplines and online mediation services when available. While this can help minimize case backlog,<sup>50</sup> COVID-19 also prompts justice stakeholders to evaluate possibilities to enhance justice service delivery into the future.

To ensure access to justice for all, justice systems must innovate and meet people's justice needs in appropriate ways. Alternative dispute resolution or informal justice services focus on resolving legal conflict or disputes through means other than litigation or a full-scale formal court process, often through a form of mediation or arbitration. Many customary and informal

justice mechanisms complement formal justice institutions and support local dispute resolution. A recent COVID-19 survey of 271 justice stakeholders from 20 countries found that over 60 per cent show interest in prioritizing community-led justice services, especially in low to lower-middle income countries, while support for courts with adversarial procedures increases with income level.<sup>51</sup>

Justice innovations highlight the importance of ensuring that all justice services and decisions comply with human rights standards and do not reinforce existing discrimination and power relations, to the detriment of children, women, and minorities. In particular, safeguards must be in place to uphold the rights of marginalized individuals and victims of violence.<sup>52</sup>

#### SPOTLIGHT 5: Strengthen alternative justice services



**Target 16.3:** Promote the rule of law at the national and international levels and ensure equal access to justice for all

**Indicator 16.3.3:** Proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism

To advance progress towards SDG 16, in 2019, IDLO conducted global consultations on customary and informal justice to advance policy dialogue and distill lessons from programming and research to help make justice accessible for all. The consultations were backed by a series of publications, [Navigating Complex Pathways to Justice](#), which provide practical entry points and lessons for improving justice outcomes, especially for women, the poor, minority groups and marginalized communities. Two thirds of participants in IDLO's global survey identified accessibility, cultural relevance and emphasis on reconciliation as advantages, yet, 72 per cent highlighted the lack of procedural safeguards as the greatest challenge for customary and informal justice systems.

IDLO continues to work in this important area, most recently through a Regional [Forum](#) in Africa bringing together government ministers, jurists and elders, experts, and legal scholars to deepen and diversify conversations around alternative justice services. The Forum highlighted IDLO programming in Kenya, Somalia, and Uganda to strengthen the availability of justice services through court-annexed mediation, arbitration, and other alternate justice services, including customary justice mechanisms.



Findings from IDLO research on Alternative Dispute Resolution Centers in Somalia were also presented, highlighting that 93 per cent of surveyed respondents using the Centers felt justice had improved in their community with the opening of the Center and 77 per cent were satisfied with their justice outcome. It remains crucial to engage with and strengthen the variety of justice actors and services needed and used by businesses and individuals, particularly for those who are marginalized, to resolve their disputes through cost-effective, context-specific and inclusive and innovative ways.

## **Expand digital justice innovation, while addressing the digital divide**

COVID-19 opens up possibilities to re-orient existing justice systems to make them more efficient and effective. Because of physical distancing and other restrictions on movement, ensuring access to justice during the pandemic requires justice stakeholders to utilize remote alternatives. While teleconferencing has been used for many years to facilitate access to justice in remote areas, in the recent COVID-19 survey of 271 justice stakeholders, video-conferencing is not expected to work in lower-income countries and a notable digital divide persists.<sup>53</sup> Importantly, still less than one in five individuals use the internet in Least Developed Countries.<sup>54</sup>

The value that technology can offer both during the height of the crisis and through recovery and future planning is clear. In the COVID-19 survey, 62 per cent of justice stakeholders identify the need to “increase innovation and smart working” as the most immediate priority for the justice sector to be able to deal with the COVID-19 pandemic.<sup>55</sup>

Digital innovation contributes to the safety of the justice workforce and ensures that measures are in place to protect against the risk of acquiring COVID-19.



### **OECD Principles to support the development and implementation of digital strategies**

- Openness, transparency and inclusiveness
- Engagement and participation
- Creation of a data-driven culture
- Protecting privacy and ensuring security
- Leadership and political commitment
- Coherent use of digital technology across policy areas
- Effective organization and governance frameworks to coordinate
- Strengthen international cooperation
- Develop clear business cases
- Reinforce ICT project management capabilities
- Procurement of digital technologies
- Legal and regulatory framework

Digital innovation uses information, communications and digital technology to improve access to justice and justice administration. Where feasible, remote technologies may be used to conduct hearings or other judicial proceedings. Even when restrictions on movement and assembly are no longer in place, technology can help streamline justice processes through, for example, the digitalization of case management or prison population management systems, thereby improving the efficiency, timeliness, and transparency of justice. The systematic and timely publication of laws and decisions and of information on court procedures online can increase public legal awareness and help avoid unfair outcomes and poor-quality decisions.

To ensure the effective use of digital innovation, justice actors will need to be

trained on the use of new technologies and sensitized to special circumstances and needs, such as ensuring that the vulnerabilities of victims and/or witnesses are taken into account during remote hearings. Involving users from the justice sector as well as the public in both the design of digital innovation tools and in capacity building activities is essential.<sup>56</sup>

Sufficient resources and multi-sectorial expertise also need to be allocated to ensure reforms align with appropriate policy and regulatory frameworks, including on data privacy and security. As digitalization advances and new technologies become available, new ethical challenges arise that need to be tackled to ensure fair and equitable access to justice and mitigation of the digital divide that risks leaving the most vulnerable groups behind.<sup>57</sup>

#### SPOTLIGHT 6: Harness and expand the capabilities of digital justice innovation



**Target 16.6:** Develop effective, accountable and transparent institutions at all levels

**Target 16.10:** Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

**Target 17.6:** Enhance [...] cooperation on and access to science, technology and innovation and enhance knowledge sharing on mutually agreed terms, including through improved coordination [...]



IDLO has been actively promoting programming to modernize justice sector operations through digital innovation, facilitating online services, remote working and business continuity. IDLO is also continuing to work with national partners to progress digital innovation

efforts as well as scale technology use for strengthened public administration and transparent, accountable and user-friendly government and justice services. As an example, in Kenya, IDLO is supporting justice partners to increase use of information and communication technologies, allowing e-filing and enabling judges and magistrates to effectively handle cases and release e-judgements. Additionally, video conference remand hearings for prisoners in custody and delivery of court judgements through video conferencing are allowing essential justice services to remain operational.

IDLO's publication [\*E-nabling Sustainable Development: Lessons from E-Justice Programming\*](#) draws from experience in Kyrgyzstan, identifying key considerations to achieve transformative digital innovation solutions and the necessary supportive enabling environment:

- Analyze and amend existing legal frameworks;
- Identify justice sector needs and incentives;
- Encourage local ownership;
- Adopt a flexible and iterative approach to adapt to new information and challenges; and
- Cultivate a supportive environment for digital innovation.

IDLO's approach is principled, focusing on people and participatory, context-specific, and holistic solutions that are sustainable and fight corruption.

# INVEST IN A CULTURE OF JUSTICE AND EQUALITY

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## Ensure comprehensive governance responses based on the rule of law

Effective COVID-19 recovery plans must integrate comprehensive governance responses that extend beyond public health needs to respect, protect, and fulfill human rights and sustain and advance hard won development gains. Coordinated, all-of-government efforts across different levels and sectors is critical. The United Nations highlights the following aspects: include those who are excluded; develop resilience to shocks and crises; and remove or avoid structural drivers that perpetuate exclusion, inequalities, and discrimination.<sup>58</sup> Rule of law ensures that such principles are put into practice and that proper accountability and good governance measures are put in place so that rights are realized and response and recovery efforts benefit those most in need.<sup>59</sup>



### Attributes of good governance

- Transparency
- Responsibility
- Accountability
- Participation
- Responsiveness to the needs of people

## Promote legal aid and pro bono services to address inequalities and empower people

Legal aid and pro bono services offer important contributions to protect the rights of vulnerable and marginalized groups and empower their actions, helping to leave no one behind and achieve a culture of justice.



### Types of legal aid services

- Advice
- Assistance
- Information
- Representation
- Education
- Drafting
- Advocacy

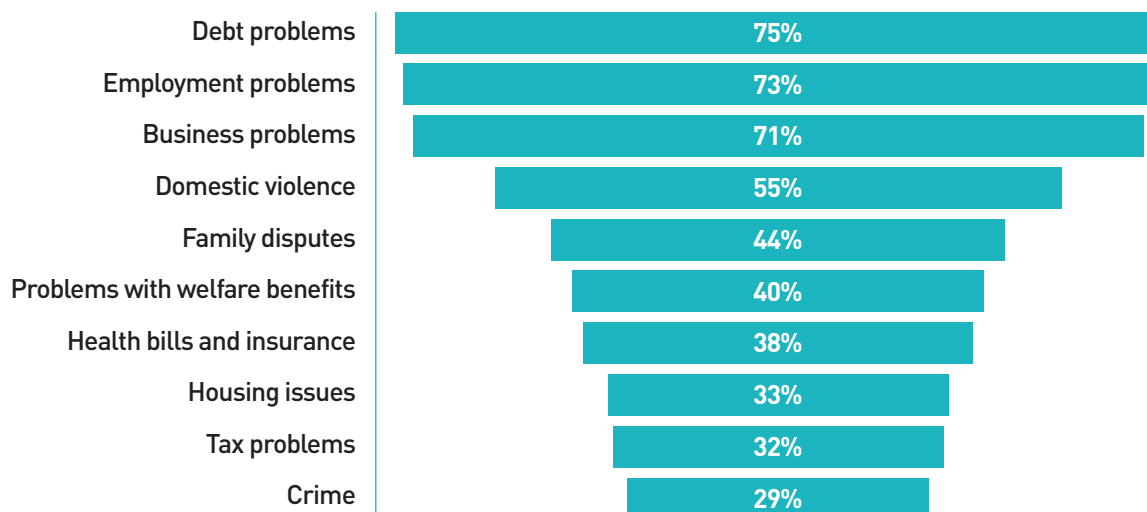
States should ensure that those disproportionately impacted by the crisis have access to free legal aid,<sup>60</sup> offering help so that legal issues do not become larger problems.

Legal aid services should be prioritized for the most vulnerable, with consideration for legal issues anticipated to rise as a result of the pandemic and ensuing socio-economic

challenges. Legal problems anticipated to increase greatly as a result of COVID-19 are shown in Figure 7.<sup>61</sup> Financial issues are

expected to rise as are family pressures and disputes resulting from the economic crisis and public health measures.

**FIGURE 7: Conflicts and disputes expected to increase greatly as a result of COVID-19 (HiIL)**



To help address increased legal needs, community-based paralegals and pro bono legal counsel<sup>62</sup> can support delivery of legal aid services. In many States, lawyers and paralegals are taking legal action on strategic and systemic issues and providing free legal services to marginalized individuals, ensuring they are not excluded. These efforts focus on removing barriers

to access to justice through information, assistance and advocacy, helping reach those most in need to reduce individual and systemic inequalities while empowering people through legal education and advice. Importantly, legal aid services consistently demonstrate a net positive value with high benefit relative to cost.<sup>63</sup>

#### SPOTLIGHT 7: Address individual and systemic inequalities



**SDG 10:** Reduce inequality within and among countries

**Target 10.3:** Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard

**SDG 17:** Revitalize the global partnership for sustainable development

**Target 17.5:** Adopt and implement investment promotion regimes for least developed countries

**Target 17.17:** Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships



IDLO is advancing multiple initiatives with partners to address individual and systemic inequalities. In cooperation with the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, IDLO's [Investment Support Programme for Least Developed Countries](#) provides on-demand legal and professional assistance to Least Developed Country [governments](#) and eligible entities for investment-related negotiations and dispute settlement. Addressing systemic inequalities, the Programme also supports training and capacity building, capitalizing on pro bono services of lawyers and other professionals who contribute their expertise to the sustainable development of the Least Developed Countries.

IDLO has also partnered with UN Women to help countries fast-track elimination of discriminatory laws to support equality in law for women and girls. IDLO's co-authored report, [Justice for Women Amidst COVID-19](#) documents major challenges for women's access to justice in light of the COVID-19 pandemic and details recommendations to accelerate action and address threats to progress on gender equality. It builds on the 2019 [Justice for Women](#) report, jointly produced by the High-level Group on Justice for Women, which was co-convened by UN Women, IDLO, the World Bank, and the Pathfinders.

## Prevent and respond to gender-based violence

The COVID-19 pandemic presents significant threats to marginalized populations and especially to women's rights to health and to life. There are continued reports of increasing domestic violence due to the added strains of confinement and quarantine, and financial distress, among others. Past epidemics have led to increases in gender-based violence and prevention and response are vital, yet in a recent rapid assessment of 30 countries, 54 per cent have taken no action on gender-based violence.<sup>64</sup>

COVID-19 response strategies must provide comprehensive access to social, psycho-social, economic, as well as legal services to survivors of gender-based violence. Survivors are often unable to seek redress against perpetrators due to mobility restrictions and court closures and justice systems are suffering from a diminished capacity to support the needs of women and other marginalized populations. Concrete guidance on prevention and response to gender-based violence includes remote support, digital justice solutions and innovative social media interventions as well as direct legal aid services, all of which have an important role to play in addressing gender-based violence and helping to achieve justice for women.

## SPOTLIGHT 8: Ensure access to justice for women and girl survivors of gender-based violence



**SDG 5:** Achieve gender equality and empower all women and girls

**Target 5.2:** Eliminate all forms of violence against all women and girls in the public and private spheres [...]

**Target 16.1:** Significantly reduce all forms of violence and related death rates everywhere



Preventing and combatting gender-based violence against women constitutes the largest component of IDLO's programmatic work on enhancing access to justice for women and girls. The COVID-19 pandemic has exacerbated the risks of gender-based violence and IDLO has launched an initiative to address gender-based violence in the context of COVID-19, helping to strengthen the capacity of legal systems to respond effectively.

In Kenya, IDLO is providing training to the police and supporting standard operating procedures on handling increased numbers of sexual and gender-based violence calls. In Mongolia, IDLO is conducting digital outreach for women seeking legal assistance, providing support to a network of civil society legal aid providers, and supporting the continued operation of shelters. In Myanmar, IDLO is providing targeted responses to COVID-19 by developing and disseminating video content through Rule of Law Centres on priority issues including sexual and gender-based violence, children's rights, and non-discrimination. In Tunisia, IDLO has supported the establishment of virtual legal aid for women facing violence, operating closely with institutions, the national bar association and women's organizations to supplement support from hotlines.

## Finance access to justice

To achieve SDG 16's promise of equal access to justice for all, existing justice gaps cannot be ignored and must be addressed through investment. To close justice gaps, revenue from justice services needs to increase at least by two or four times.<sup>65</sup> A recent study estimates that it would cost US\$20 per person a year to provide universal basic justice

in a typical low-income country, US\$64 in a typical middle-income country and US\$230 in a typical member country of the Organization for Economic Co-operation and Development.<sup>66</sup> Development assistance for justice currently only covers one per cent of the costs in low-income countries.<sup>67</sup> Donor support for justice systems is disproportionately low and has fallen by 40 per cent globally in recent years.<sup>68</sup>

# RULE OF LAW ACTIONS

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As the world adjusts to the COVID-19 pandemic, substantial justice gaps and declining commitment to the rule of law are anticipated to continue, resulting in democratic backsliding, reduced trust in government, worsening multilateral cooperation, stagnating economic development, increased fragility and conflict as well as polarization and rights violations, and poorer public health outcomes. Commitment to the rule of law and investments in justice systems and

participatory policymaking will be required to help communities unite and maintain social cohesion, in the face of social and economic stresses resulting from the pandemic.

The following rule of law actions can help support an effective response to the COVID-19 pandemic, while furthering development goals, sustainable recovery and long-term responsiveness, resilience and modernization of the justice sector:

## **1 Foster participation, involve and empower individuals in decision-making processes**

Public health measures and recovery efforts must be understood and supported to be successful and this requires participation by individuals in decisions related to their lives and health at local, national and international levels. It is especially important that the perspectives and voices of women and marginalized groups are present in government and incorporated in the COVID-19 response.

## **2 Ensure that emergency restrictions are anchored in the rule of law**

Emergency measures must be clearly defined in national law and in line with international human rights standards, without ambiguity or misinterpretation by officials enforcing the law, thus preventing the arbitrary or excessive use of power.

## **3 Promote fair laws and policies for recovery**

The adoption of just and equitable legislative measures in line with state obligations to progress economic, social and cultural rights such as essential primary health care, is an essential step to support recovery and help build resiliency for the next global health emergency.

## **4 Invest in justice services and expand legal aid**

Where rights violations occur, individuals must be able to access remedies and receive redress through an independent judiciary or other justice mechanism. Expanded legal aid helps protect the rights of vulnerable and marginalized groups, empowering their actions while achieving high benefit relative to cost. It is important to support justice institutions and services with adequate and sustained financial investment.



## **5 Foster equitable justice innovation**

The value that technology and innovation can offer is clear, streamlining justice sector operations and improving the efficiency, timeliness, and transparency of justice. Ethical challenges must be addressed however, to ensure fair and equitable access to technology and mitigate the digital divide that risks leaving the most vulnerable groups behind.

## **6 Engage with alternative dispute resolution and customary and informal justice in line with international standards**

Justice stakeholders must evaluate possibilities to enhance service delivery for justice seekers, whether individuals or businesses. To ensure access to justice for all, justice systems must meet justice needs in appropriate ways, including through alternate justice services, provided safeguards are in place to uphold basic rights.

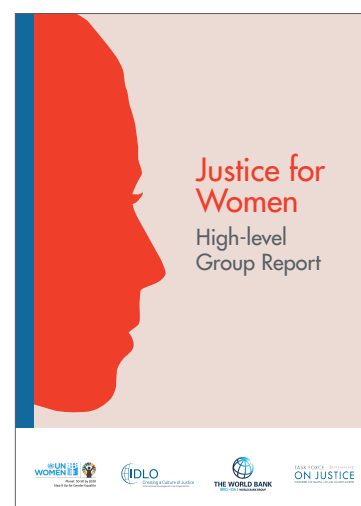
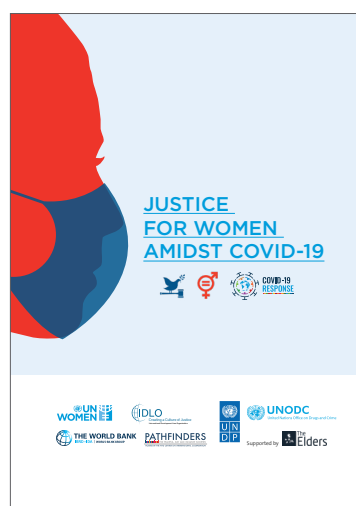
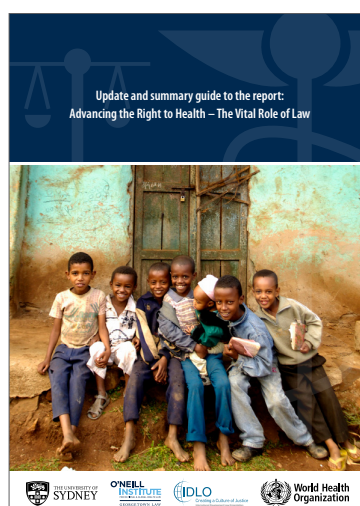
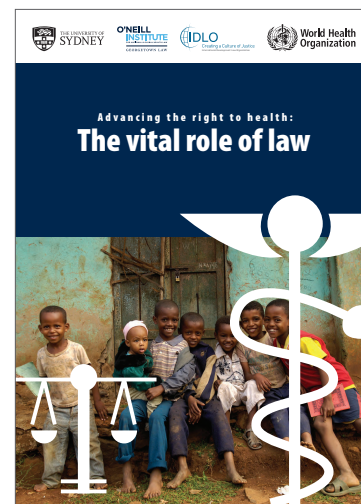
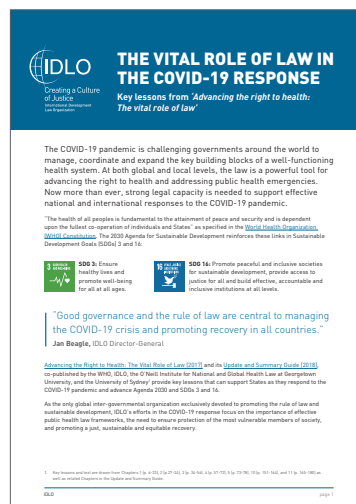
## **7 Enhance justice for women and girls**

Exacerbated risks of gender-based violence, including domestic violence and intimate partner violence, require effective prevention and response. Discriminatory laws must be repealed and response strategies must provide access to survivor-centered social, psycho-social, economic, as well as legal services.

## **8 Promote a renewed spirit of multilateralism in alignment with the SDGs**

Effectively addressing pressing global challenges requires international cooperation, support and solidarity. The SDGs incorporate a strong emphasis on the rule of law and human rights and provide a universally accepted framework to foster global collaboration, including technical assistance and exchanges of information and good practices. Agenda 2030 can help promote renewed multilateralism and a framework for the international community to work collectively to tackle shared challenges, build resilience to common threats, and achieve global goals towards peace and development.

# READ MORE



[Statement](#) by the Director-General of IDLO, Jan Beagle: A Rule of Law Based Response to the COVID-19 Pandemic.

[Key Lessons](#) from [Advancing the right to health: The vital role of law](#) (2017) and [Update and Summary Guide](#) (2018), co-published by the World Health Organization, IDLO, the O'Neill Institute for National and Global Health Law at Georgetown University, and the University of Sydney.

[Justice for Women Amidst COVID-19](#) documents the major challenges to women's access to justice in light of the COVID-19 pandemic and details recommendations to accelerate action and address threats to progress. It builds on the 2019 [Justice for Women](#) report, jointly produced by the High-level Group on Justice for Women, which was co-convened by UN Women, IDLO, the World Bank, and the Pathfinders.

# ENDNOTES

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<sup>6</sup> World Justice Project, 'The Twin Crises of Public Health and the Rule of Law', 2020, available: [https://worldjusticeproject.org/sites/default/files/documents/Covid%20Introduction%20WJP%20Final\\_v2.pdf](https://worldjusticeproject.org/sites/default/files/documents/Covid%20Introduction%20WJP%20Final_v2.pdf).

<sup>7</sup> OECD, 'Access to Justice', available: <http://www.oecd.org/gov/access-to-justice.htm>. See also: OECD, 'Equal Access to Justice for Inclusive Growth: Putting People at the Centre', 2019, available: <http://www.oecd.org/gov/equal-access-to-justice-for-inclusive-growth-597f5b7f-en.htm>.

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<sup>10</sup> Article 4 of the ICCPR contains a derogation clause affirming that States may take measures to restrict rights to the extent necessary, while ensuring that these measures are non-discriminatory. Similarly, Article 4 of the ICESCR provides that limitations to economic, social and cultural rights must be determined by law, compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

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<sup>12</sup> Siracusa Principles, para. 10.

<sup>13</sup> Siracusa Principles, para. 18.

<sup>14</sup> Siracusa Principles, para. 24; UN Special Rapporteur on the independence of judges and lawyers, 'Independence of judges and lawyers', 12 August 2008, available: <https://undocs.org/A/63/271>, paras. 16-19. See also: UN Special Rapporteur on the independence of judges and lawyers, 'Independence of judges and lawyers', 11 August 2014, available: <https://undocs.org/A/69/294>, paras. 80-81 for principles of independence.

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female leaders have suffered six times fewer COVID-19 related deaths and are expected to recover sooner from economic decline. See: Fioramonti, Lorenzo, et al., "Women In Power: countries with female leaders suffer six times fewer Covid deaths and will recover sooner from recession" openDemocracy, 26 May 2020, available: <https://www.opendemocracy.net/en/can-europe-make-it/women-power-countries-female-leaders-suffer-six-times-fewer-covid-deaths-and-will-recover-sooner-recession/>.

<sup>18</sup> An IDLO report examines the pathways that have facilitated women's rise in the justice sector, detailing lessons and good practices as well as recommendations to facilitate equality. See: IDLO. 'Women Delivering Justice: Contributions, Barriers, Pathways', 2018, available: <https://www.idlo.int/publications/women-delivering-justice-contributions-barriers-pathways>.

<sup>19</sup> World Health Assembly, 64. (2011). Implementation of the International Health Regulations (2005): Report of the Review Committee on the Functioning of the International Health Regulations (2005) in relation to Pandemic (H1N1) 2009: Report by the Director-General. World Health Organization, page 20, available: <https://apps.who.int/iris/handle/10665/3350>.

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<sup>21</sup> UN General Assembly, 'Global solidarity to fight the corona virus disease 2019 (COVID-19)', A/RES/74/270, 3 April 2020, available: [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/A\\_RES\\_74\\_270.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/A_RES_74_270.pdf).

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<sup>30</sup> Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 'COVID-19 and its impact on businesses and workers', available: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25843&LangID=E>.

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- <sup>38</sup> Council of Europe, European Commission for the Efficiency of Justice, 'Management of the judiciary – compilation of comments', available: <https://www.coe.int/en/web/cepej/compilation-comments>. See also: Department of Justice, Canada, 'Action Committee on Court Operations in Response to COVID-19', available: <https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/ac-ca/cpp-pfp.html>. The approach includes adoption of public health principles such as science and evidence-based decision-making; coordination, collaboration and communication; accountability and transparency; and flexibility and proportionality as well as support for fundamental principles of the justice system such as open courts; access to justice and the rule of law; judicial independence; and nexus to the community.
- <sup>39</sup> Article 4, ICCPR; Siracusa Principles, para. 58. States cannot derogate from guarantees of the right to life, the right to be free from torture and the right to be free from retroactive application of criminal laws, among other non-derogable rights.
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## LIST OF FIGURES AND SPOTLIGHTS

<b>FIGURE 1:</b> Enabling sustainable development (The Global Alliance)	4
<b>FIGURE 2:</b> Rule of Law Index categories (World Justice Project)	6
<b>FIGURE 3:</b> Correlation between rule of law and life expectancy (World Justice Project)	7
<b>FIGURE 4:</b> Correlation between rule of law and chronic diseases (World Justice Project)	7
<b>FIGURE 5:</b> Why the law matters (Results for Development Institute)	11
<b>FIGURE 6:</b> Why justice institutions matter (World Bank)	13
<b>FIGURE 7:</b> Conflicts and disputes expected to increase greatly as a result of COVID-19 (HiiL)	21
<b>SPOTLIGHT 1:</b> Ensure participation, involve and empower individuals	9
<b>SPOTLIGHT 2:</b> Support legal preparedness for the next global health emergency	10
<b>SPOTLIGHT 3:</b> Develop fair laws to address key development issues	12
<b>SPOTLIGHT 4:</b> Facilitate international cooperation and technical assistance on critical matters	15
<b>SPOTLIGHT 5:</b> Strengthen alternative justice services	16
<b>SPOTLIGHT 6:</b> Harness and expand the capabilities of digital justice innovation	18
<b>SPOTLIGHT 7:</b> Address individual and systemic inequalities	21
<b>SPOTLIGHT 8:</b> Ensure access to justice for women and girl survivors of gender-based violence	23



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