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## Consequences of the COVID-19 Pandemic on Child Justice Systems

**ABSTRACT:** The COVID-19 pandemic, declared a global health emergency in 2020, presented unique challenges for child justice systems worldwide. Children in detention facilities faced increased health risks, prompting efforts to expedite their release and protect their well-being. The pandemic disrupted normal legal proceedings, making it difficult for legal professionals, judges, and authorities to maintain contact with children in the justice system. In response, some countries introduced safety measures during court hearings, such as physical barriers, to protect children from the virus. Others turned to digital technology, conducting remote hearings to reduce the risk of viral transmission. While digitalization offers efficiency and cost-effectiveness, questions regarding fair access to justice and data security have arisen. This article explores the potential long-term impact of digital justice on child justice systems beyond the pandemic. The pandemic's effects on children in detention, their rights in crisis situations, the roles of child justice professionals, and the adoption of virtual courts are discussed, highlighting the evolving landscape of child justice post-pandemic.

**KEYWORDS:** Covid19, Child justice, justice systems, digital justice, children rights.

### 1. Introduction

On March 11, 2020, the outbreak of the novel coronavirus was declared a pandemic by the World Health Organization. Two months later, with 5.5 million confirmed cases and over 350,000 deaths recorded, the COVID-19 pandemic became a global emergency, posing profound social, economic, and political challenges for all countries and sectors.

In the justice system, places where individuals were deprived of liberty in potentially crowded and unsanitary conditions, were immediately flagged as high-risk settings where the virus could easily spread with potentially disastrous results for detainees. Health experts warned that individuals in poor health were more affected by COVID-19, and research suggested that children deprived of liberty were likely to carry a higher burden of ill health than those in the community. Accordingly, during the pandemic's peak, rapid action<sup>1</sup> was taken to encourage authorities to accelerate the release of children from custodial settings to protect them from the virus.<sup>2</sup>

Children's special needs and sensitivities place those held in detention at an increased risk of physical and emotional harm, even under the best circumstances. The COVID-19 pandemic presented extreme risks to detained children and the institutions responsible for ensuring their safety and well-being.

The pandemic has greatly affected the child justice system. During the first wave of the pandemic, legal professionals, judges, magistrates, lawyers, and other authorities could not contact children. Courts in many countries, as in other public areas, were closed to prevent the spread of the virus, and court hearings were not allowed. In addition, strains were placed in

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<sup>1</sup> See Global Initiative on Justice with Children, 2020.

<sup>2</sup> France 24, 2020.

other institutions, such as places of detention where the children were held. Such institutions may also experience limited resources and staff shortages.<sup>3</sup>

The pandemic forced child justice systems to adapt quickly. It challenged states to find the best workable solutions for continuing proceedings, especially if child-friendly justice methods and children's rights were respected.

Most countries worldwide have invested in health safety measures in response to this pandemic. The measures generally included applying physical distancing rules, regular use of hand sanitizers and handwashing, and mandatory wearing of face masks in public spaces.<sup>4</sup>

During legal proceedings, some countries decided to provide additional protection against the virus for children; otherwise, proceedings were conducted similarly. For instance, in the Netherlands, children accused or suspected of crime were summoned to court to safeguard the right to a fair trial. In contrast, physical protection, such as transparent plastic walls between the child and professionals, was set up to prevent the possible transmission of the virus. Thus, some countries have interpreted a child's right to a fair trial by ensuring the child's presence during court hearings while maintaining physical protection against the virus.

Other countries have used digital technology to keep the wheels of child justice turning.<sup>5</sup> Instead of organizing hearings in the presence of a child in person, it was decided to digitalize the judicial proceedings using technological tools such as a video conferencing platform, a virtual meeting, and a telephone. Digital technology allows judges to communicate remotely with children in conflict or in contact with the law. Bangladesh, the United Kingdom, and Mexico were among the countries that allowed remote hearings<sup>6</sup> instead of in-person court hearings in the early stage of the pandemic. Thus, since then, some countries have decided to opt for digital reform of their justice systems, while others prefer to guarantee a child's right to a fair trial by preserving traditional ways.

Digitalization of the justice system, in particular remote hearing, may be cost-effective and possibly efficient, but several fundamental questions have to be considered in terms of fair access to justice. For example, what is lost by not having face-to-face physical proceedings, and is data securely protected? The pandemic has forced justice systems to become resilient and to adapt to the adverse context. The question is whether digital justice might become a new normal in child justice systems even after the pandemic, whether this would be desirable, and what the new child safeguards in a changed digital justice system should be?

## **2. The COVID-19 pandemic brought extreme risk to children in detention and the institutions responsible for ensuring their safety and well-being**

Almost three years after the pandemic's beginning, it appears clear that the direct and indirect impacts of the global COVID-19 pandemic are not borne equally, hitting the most marginalized and vulnerable the hardest. As an infectious disease that affects people in close proximity and without access to high-quality sanitation, COVID-19 inevitably affects prison populations. The consequences of long and repeated lockdowns and the lack of general communication with the outside world directly affected the detainees' mental health. In the early stages of the health crisis, if the impact of COVID-19 on prison populations garnered some international attention, this attention mainly focused on adults. Children in detention have been overlooked despite being disproportionately vulnerable to health risks from the conditions in which so many are held.

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<sup>3</sup> World Health Organization Regional Office for Europe, 2020.

<sup>4</sup> See World Health Organization Regional Office for Europe, 2020.

<sup>5</sup> See Mockevicute, 2020.

<sup>6</sup> See Foussard, Vigil and Perez, 2023.

As underlined by the Global Study on Children Deprived of Liberty,<sup>7</sup> detained children are likely to suffer health problems, making them even more susceptible to severe COVID-related illnesses. While adult prisoners were released to reduce possible outbreaks,<sup>8</sup> despite the efforts of some countries, children in detention centers around the world largely remained in overcrowded facilities at the beginning of the pandemic. These children are often in facilities without access to good-quality water and sanitation infrastructure, with limited access to basic resources such as soap, all compounded by overcrowding, making social distancing impossible. Indeed, the Pandemic presented extreme risks to children in detention and the institutions responsible for ensuring their safety and well-being. Indeed, COVID-19 affected detention center employees and detained children, furthering the strain on any remaining staff to maintain operations while increasing the standard of care required to attend to unwell children.

If COVID entered the detention center via any one of the many support staff or visitors, steps taken to mitigate the spread of infection severely restrict children's movement and activities, leading to prolonged periods of isolation – with potentially severe consequences for children's mental health and wellbeing, children who in many cases are already likely to suffer from mental health issues. Nevertheless, during times of stress and crisis, children seek more attachment and emotional support and would need more contact with the outside world rather than being held in a kind of “double confinement.” This stress was felt even more acutely by children in detention, who were already at risk of psychosocial and developmental problems and suffered from high rates of mental health issues. Indeed, COVID-19 containment measures, such as restrictions on visitors to detention facilities, have exacerbated children's feelings of powerlessness and isolation. Such trauma and distress directly impact developing children's metabolic and immune systems, placing them at an even greater risk of contracting a disease during the pandemic and later in life.

### **3. Rights of children in conflict with the law in times of health crises**

International child rights standards, outlined in the UN Convention on the Rights of the Child (hereinafter referred to as: CRC), establish that children up to the age of 18 years are entitled to certain fundamental human rights, including the right to be free from unreasonable deprivation of liberty, and mandate that child justice systems must act in the best interests of children. Deprivation of liberty must only ever be used as a last resort and only in the least restrictive manner to protect the child and community. No evidence suggests that children's best interests in detention were paramount during this global COVID-19 pandemic.

Indeed, the CRC in its Article 3.3 stipulates that States ‘shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards ..., particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.’ Additionally, the International Covenant on Economic, Social, and Cultural Rights (hereinafter referred to as: ICESCR) Article 12(2)(c) provides that ‘State parties shall take the steps necessary treatment and control of epidemic, endemic, occupational and other diseases.’ Rule 13 of the Standard Minimum Rules for the Protection of Prisoners (hereinafter referred to as: SMR) states that ‘facilities shall meet all requirements of health.’ Finally, The Universal Declaration of Human Rights (hereinafter referred to as: UDHR), in Article 25(1) requires that ‘Everyone has the right to a standard of living adequate for the health and well-being of himself.’

Likewise, intergovernmental organizations have been attentive to the situation of children in conflict with the law, such as the Council of Europe, through its Guidelines on child-friendly justice that should be applied without limitation due to the restrictive context. The guidelines

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<sup>7</sup> See Nowak, 2019.

<sup>8</sup> See Elinson and Paul, 2020.

set out nine principles according to which child justice should be ‘accessible, age appropriate, speedy, diligent, adapted and focused on the needs of the child, should respect the right to due process, should respect the right to participate in and to understand the proceedings, respects the right to private and family life and the right to integrity and dignity.’<sup>9</sup>

Child justice systems are bound to respect the key principles set by international standards and norms, which include the principles of non-discrimination,<sup>10</sup> best interests of all children under 18 years of age, proportionality, the primacy of diversionary measures to judicial proceedings, participation of the child, proceedings without delay, presumption of innocence, and detention as a measure of last resort. These principles must be respected under all circumstances, even in health emergencies and the consequent restrictions.<sup>11</sup>

Article 35 of the EU Charter of Fundamental Rights provides that ‘everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices’ and that a ‘high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.’ National laws and practices have suggested numerous hygiene practices that people should adopt to avoid exposure to COVID-19.

Nevertheless, as stated earlier, children in detention facilities do not have access to gloves, masks, hand soaps, sanitizers, and other basic supplies to protect themselves.<sup>12</sup> Children were kept at risk in confined conditions with an inadequate supply and had no opportunity to avoid exposure. On both global and regional levels, there is agreement that children need special protection during times of crisis, such as during a pandemic.

At the court level, the need to keep the wheels of child justice turning forced courts to find creative ways to remain open and, in some cases, to re-open after shutdowns in many parts of the world after the first wave of COVID hit the world. For many courts, this meant conducting proceedings and trials through virtual platforms so that parents, children, court workers, judges, lawyers, and anyone involved in the system could participate in court proceedings to ensure the safety of their own spaces without traveling to a live courtroom. Although these virtual proceedings took varying forms and degrees, they all relied on virtual communications in one way or another. Studies have shown that the opportunity to appear in court in person significantly impacts children’s rights, particularly their participation rights. Even when children attend hearings in person, they encounter significant difficulties in understanding the proceedings and the seriousness of their situation. Virtual hearings have created new challenges to implementing fair access to justice for children. The unusual circumstances due to the pandemic required certain adjustments to criminal proceedings; nevertheless, those adjustments should be made in the child’s best interest and have a child-centered and child-rights approach.

#### **4. The role of child justice professionals during COVID-19**

Professionals interacting with children in conflict with the law have the unique ability and responsibility to exercise good judgment and adapt, to the extent possible, the current processes and behaviors in their specific spheres of work that could help children in conflict with the law in every challenging context, including during the pandemic. The Global Initiative on Justice with Children developed a set of Operational Guidelines for Professionals Interacting with

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<sup>9</sup> See Council of Europe, 2010.

<sup>10</sup> See UNICEF, no date.

<sup>11</sup> See also European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2020.

<sup>12</sup> See Justice with Children, 2020b.

Children in Conflict During COVID-19,<sup>13</sup> which are divided into three chapters addressing the following three broad categories of professionals who interact with children in conflict with the law: Social Workforce, Security Forces and Legal Professionals.

#### ***4.1 Role of security forces during COVID-19 health emergency***

According to the Operational Guidelines for Security Forces: ‘Access to Justice for Children and Youth in Times of COVID-19: Diverting Children from Judicial Proceedings and Facilitating Reintegration,’<sup>14</sup> security forces should limit direct contact with children and use such contact only if the child presents a risk to their security or the security of others. Handcuffs should never be used with children, and the use of force is only a last resort. Child-friendly language and well-adapted communication techniques were essential to all proceedings. During the pandemic, it was vital to ensure that all protection and hygiene rules (washing hands regularly, maintaining a distance of at least two arm lengths with children, and wearing a non-medical mask or face covering) remained applicable in all facilities. If supplies are available, children should be tested for COVID-19 before detention.

Regarding the role of security forces and their interaction with other professionals, the Justice with Children’s Operational Guidelines recommended that during legal proceedings for children, security forces work with other professionals, especially justice professionals, health personnel, and social workers. It is certain that during and after the pandemic, the interaction mechanisms may have been impacted or changed. Thus, security forces ‘should be proactive to maintain, activate or enhance these areas for collaboration and coordination, while having the best interests of the child in mind. Professionals should consider and use various alternative forms of communication with youth and with each other (e.g., phone calls, text messages, and emails).’<sup>15</sup>

#### ***4.2 The role of social workforces during COVID-19 health emergency: key adaptations to child’s case management***

The key objectives of the social workforce interacting with children in conflict with the law during the COVID-19 pandemic were to continue ensuring the well-being of the child by using appropriate safeguards to prevent or diminish the risk of exposure to COVID-19 and applying the best interests of the child throughout the process by maximizing the chances of reintegration, having a positive impact on the child during the pandemic.<sup>16</sup>

Their role was to fully accompany the child, manage all case information and progress, maintain continuous communication, and provide legal counselling to the child and his or her family. Their role was also extended to ensure tailor-made reintegration plans, provide social reports to justice actors regarding judicial review, undertake an important advocacy role to expedite the release of children from remand or detention and sustain this measure in the aftermath of the pandemic.

Two key adaptations to the case management approach to be considered by social workforce professionals were to mainstream the reintegration approach concerning all the different steps of the case management process, as well as to maintain (or establish), to the extent possible, alternative pathways and services for case management responses for children in conflict with the law.<sup>17</sup>

During the COVID-19 pandemic, social workforce personnel were called upon to identify appropriate and available means of communication and regular support for children and their

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<sup>13</sup> See Global Initiative on Justice with Children, 2020.

<sup>14</sup> See Justice with Children, 2020a.

<sup>15</sup> See Justice with Children, 2020a.

<sup>16</sup> Justice with Children, 2020c.

<sup>17</sup> See Council of Europe, 2020b.

families. They had to create a space (in-person or remotely) to follow up with their children and identify signs of stress and means of self-care. Regarding remote meetings, they had to apply child safeguarding standards and measures.

#### ***4.3 The role of legal professionals during the COVID-19 health emergency: towards the generalization of remote hearing?***

According to the Global Initiative on Justice with Children's Operational Guidelines for Legal Professionals, there were five essential principles of action for legal professionals during the COVID-19 health emergency that are still applicable for the after covid era: (1) the child's right to participate, (2) ensuring communication with the child, (3) the child's right to confidentiality, (4) prioritize access to justice in person or consider digitized court processes, and "streaming" access for cases involving children, and (5) advocate for the release of all children in all circumstances as detention should only be used as a last resort.

As specified by the Operational Guidelines, there are some general considerations for legal professionals preparing to handle a case involving a child in detention during the lockdown. Some of these considerations advocate the expansive use of technology to keep cases moving while preserving due processes. Moreover, where necessary, a child should have someone to advocate orally or in writing/digitally. In addition, during the most serious phase of the pandemic, legal professionals should have created a collaborative plan to advocate swiftly reducing the number of children in detention centers at all stages of the proceeding.

At the diversion stage: prioritizing diversion at all stages of the system was especially important during the pandemic and lockdown. Diversion programs were offered using digital means. Alternatively, diversion programs were deferred until after the immediate crisis, when they could be resumed with the required health and safety measures in place.

At the pre-trial stage: legal professionals were encouraged to advocate for children to be prioritized for any executive order for the release of detainees. The argument for the pretrial release of children during the pandemic was especially strong, based on the conditions under which children are detained, clothed, fed, have access to hygiene and health care, and have the opportunity to interact with their families, visitors, and other children.

At the post-trial stage: Focus on the child's rights for any "failure" to protect confined youth from a likely COVID-19 outbreak. Children should be provided with a physical environment and accommodation conducive to the reintegration aim of residential placement.

### **5. European justice systems and institutional reactions to children in detention during the COVID-19 pandemic**

The European Commission (hereinafter referred to as: EC) coordinated a common response<sup>18</sup> to the COVID-19 pandemic. On May 6, 2020, the EC Coordinator on the Rights of the Child shared a few actions put in place at the operational level in response to COVID-19, including the exercise of procedural rights of suspects and accused persons in Europe.

As direct communication with lawyers, interpreters, or third parties (while suspects or accused persons were deprived of liberty) became more difficult, the use of audio and video conferencing or other remote tools was encouraged. In addition, the EC recommended adopting safety measures, such as glass protection at police stations or in detention facilities, to enable exercising the right of a lawyer and interpreter.

For European institutions, it was clear that despite the outbreak, the procedural rights of suspects and accused persons needed to be respected to ensure fair proceedings. Limited derogations provided by the directives in the case of imperative requirements had to be

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<sup>18</sup> See European Commission, 2021.

interpreted restrictively by the competent authorities and, in any case, never employed on a large scale.<sup>19</sup>

As a result of the COVID-19 outbreak, national prison administrations were under pressure to limit the impact of the virus on closed and vulnerable prison environments. Measures to avoid spreading the virus included temporarily suspending all family visits and activities with outside persons, such as sports, professional, or vocational training. Prisoners suffered from a lack of activities and visits, which made it challenging to keep the staff motivated and prevent riots.<sup>20</sup> In particular, Member States that faced high rates of prison overcrowding were compelled to make difficult decisions regarding a possible early release.<sup>21</sup>

The European Parliament Intergroup on Children's Rights released a statement on the impact of COVID-19 on children on 15 May 2020, calling the EC and Member States to take several actions, including putting in place specific measures to tackle increasing domestic violence against children, as well as the impact of violence that children experience in the household as witnesses, such as campaigns to end violence against children; reinforce cooperation and information sharing through ad hoc funding of EU agencies, including by setting up special emergency numbers; and ensuring that children in institutions and detained children are assisted in community-based facilities by the trained professionals and that alternative measures such as hosting families are facilitated during the COVID-19 outbreak with reduced staff.<sup>22</sup>

## **6. After the COVID-19 pandemic: are virtual courts becoming the new normal?**

The COVID-19 pandemic has brought so much tragedy worldwide, but as with so much necessity, it has become the mother of invention. The COVID-19 pandemic forced justice systems to evolve in several ways. COVID-19 created an extraordinary context in the world and justice systems, as it has brought about several specific constraints and challenges in interactions, the use of physical space, and judicial procedures. The notion of virtual trials or other court proceedings came to life during the pandemic to help the courts continue to function. In addition, judicial systems face a crisis of funding, shortage of personnel, urgency to invest in technological devices, and licensing of video platforms to keep the processes running. Virtual court proceedings and trials have become the norm in this context. As the world grapples with this health crisis, different courts have adopted different paths. To guarantee the child's right to justice during and as the pandemic aims to sunset, some jurisdictions have held hearings in person while maintaining physical protection from viruses, while others have decided to digitize court proceedings using technological tools.

Child justice systems are bound to respect key principles set forth by international law, standards, and norms, including non-discrimination, the best interests of the child, proportionality, primacy of alternative measures to judicial proceedings, participation, proceedings without delay, the presumption of innocence, and detention as a measure of last resort.<sup>23</sup> These principles must be respected in all circumstances and may not be subject to any exceptions or derogations, including during times of crisis or change or when adopting new modalities or using technology.

While recognizing that general principles for child justice must apply in remote hearing proceedings and virtual courts is certain, some legitimate questions arise: First, does replacing certain in-person proceedings with remote hearings impact substantive outcomes in child justice

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<sup>19</sup> See Requejo Isidro, 2020.

<sup>20</sup> See Illinois Department of Corrections, 2020.

<sup>21</sup> Council of Europe, 2020b.

<sup>22</sup> See Child Rights Intergroup, 2020.

<sup>23</sup> See United Nations, 1989.

proceedings? Second, what is the impact of technology use on factors that affect substantive outcomes? Justice systems have adopted the potentially misguided idea of techno-solutionism, believing that the problem of delayed hearings could be solved by switching to online hearings without considering special protections for children in these proceedings.

Certainly, there are advantages to using remote hearings in criminal proceedings involving children. However, from whom do they benefit? One obvious advantage is linked to health concerns during a pandemic. Research has revealed other advantages, including that video proceedings have enabled legal aid organizations to serve previously underserved geographical areas and have opened up greater opportunities for pro bono representation.<sup>24</sup> In certain cases, children may find online proceedings can reduce anxiety normally associated with attending court in person. There may be positive effects of using video links to reduce the risk of revictimization by avoiding direct contact with the offender for child victims and witnesses.<sup>25</sup>

While these positive elements are encouraging, the concerns and risks of remote hearings must be considered seriously. Research suggests that remote hearings have exacerbated issues related to children's effective participation in the justice process. They can make lawyer-client relations more difficult, undermining communication and the relationship of trust between the lawyer and the child, as well as the lawyer's capacity to provide adequate support and assistance. The digital divide that causes inequality in access to services and rights during remote hearings has also been highlighted as a challenge, further disadvantaging underserved communities and children.<sup>26</sup> Finally, children expressed frustration and anxiety regarding a lack of understanding, privacy, and access to lawyers and support persons associated with video proceedings.<sup>27</sup>

Three main areas concerning the use of video platforms were considered. The first is access to education and family visits during liberty deprivation. The second relates to monitoring, inspection, and access to complaint mechanisms, and the third refers to access to the judicial system and fair trials.

Suppose video platforms can certainly be used partially to maintain the systems working in case of an emergency or to follow up actions or programs delivered in persons. In that case, the current interpretation of children's rights and international standards should advocate that in-person court proceedings should be the norm, while a hybrid system using remote technologies could be used only as support.

## **7. Conclusion**

It is indisputable that the processes required to identify, understand, and uphold children's best interests are multifaceted and complex, and these processes are undoubtedly further complicated by the constraints imposed by the pandemic.

Inevitably, the protocols and ethics underpinning the work of child justice professionals may not always align and may even be in conflict. In addition to caring for their children, they must protect their children's fundamental human rights.<sup>28</sup> International human rights law may require a sole, unencumbered focus on the child's right to a fair trial, which implies considering how justice professionals use new technologies, such as remote hearing, in times of crisis and afterward. This raises essential questions about how systems and advocates are committed to children's best interests during crises and, consequently, how court proceedings evolve.

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<sup>24</sup> See Brennan Center for Justice, 2020.

<sup>25</sup> See Lynch and Kilkelly, 2021.

<sup>26</sup> See National Juvenile Defender Center, 2021.

<sup>27</sup> See Juvenile Justice Initiative, 2021.

<sup>28</sup> Council of Europe, 2020a.

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