

Human Rights-Based and Technology-Enabled Approaches to Enhancing Access to Legal Aid: Insights from UNODC Technical Assistance Programming¹

A. Introduction

Legal aid is a key component of access to justice, and an essential measure for ensuring access to justice for the poor, the marginalized, and the disadvantaged. Provided at no cost, and without discrimination of any kind, legal aid protects those who do not have the means to defend and enforce their rights in the criminal justice system: the detained, arrested or imprisoned; those suspected, accused of, or charged with a criminal offence; as well as victims and witnesses. Legal aid supports individuals in navigating the justice system, which can be complicated and overwhelming, especially for those who are poor or face multiple and intersecting forms of discrimination. It has a positive impact on families and communities as it helps reduce the length of time suspects are held in detention, the number of wrongful convictions, the incidence of justice mismanagement, and rates of reoffending and revictimization. Legal aid is also at the heart of the overarching objective of the 2030 Agenda: to leave no one behind. Its crucial role was recognized by the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* adopted by the United Nations General Assembly in 2012,² stating that “States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process” and that it “should also be provided, regardless of the person’s means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.”³ Legal aid therefore provides a means by which the playing field can be levelled, allowing those who lack the financial means and knowledge of the criminal justice system to defend themselves and have their voices heard in the system. It also provides victims and witnesses with much needed support during a traumatic time in their lives.

In practice, legal aid reforms can follow various angles and be implemented according to varying political, fiscal, or legislative priorities. One aspect is the same for any type of reform in this context, though: for criminal justice reforms to have an impact towards achieving equal access to legal aid for all

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² A/Res/67/187, annex, 20 December 2012.

³ Principle 3. Legal aid for persons suspected of or charged with a criminal offence.

demands that they are evidence-based, well-planned, and alert to potential challenges and unintended consequences arising from the planning, implementation, and evaluation of activities.

While not being the first or unfortunately the last crisis that would have an impact on the functioning of the justice system, the COVID-19 pandemic prompted a re-thinking of how well-equipped criminal justice systems – legal frameworks, institutions and actors – are to be able to react to crises and ensure the continued delivery of timely and quality services. Since early 2020, technology has been relied upon strongly to ensure continuity of criminal justice functions. But this process of criminal justice systems exploring new means for increasing the efficiency, effectiveness, and inclusivity of procedures by employing technology started long before 2020, including as regards the delivery of legal aid services. Now, more than three years in to the ‘new normal’, this paper considers how systems can deal with unforeseen crises that have an impact on how legal aid is organized and delivered, including through a stronger reliance on technology, and whether, and how, technology-mediated justice improves or impedes access to legal aid and to access to justice overall.

The paper is divided in two parts. The first part briefly explores the notion of access to legal aid as a foundation for the realization of other fundamental rights and draws upon UNODC’s technical assistance expertise, especially in the context of the barriers that crises pose in terms of access to legal aid, and to justice as a whole. The second part considers the contemporary use of technology for the delivery of legal aid services, and the opportunities and challenges posed by the use of technology in this field.

B. Access to Legal Aid as a Means to Enhance Access to Justice

Last year marked the tenth anniversary of the adoption of the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (henceforth referred to as “UN Principles and Guidelines”) by the United Nations General Assembly in December 2012; developed under the auspices of the Commission on Crime Prevention and Criminal Justice. UNODC, as the guardian of the UN standards and norms in crime prevention and criminal justice, which includes the UN Principles and Guidelines, plays a critical role in promoting their implementation, in compliance with international human rights law. UNODC supports Member States in their efforts to implement and uphold their obligations in this area, through the provision of technical assistance, some examples of which will be elaborated later in the paper.

The UN Principles and Guidelines call on Member States to put in place accessible, effective, sustainable, and credible legal aid systems, with specialized services, including those for women and for children. For the past decade, this instrument has been an important source of guidance for States. From developing legislation, to establishing institutions, building practitioners’ capacity, and putting in place mechanisms to ensure early access during investigation and pre-trial detention, as well as advocacy and legal empowerment, the UN Principles and Guidelines have proven to be a useful and practical tool for reform. Ten years after their adoption, they remain highly relevant as a safeguard of essential human rights – including when applied to changing realities as justice systems embrace the use of new

technology. The UN Principles and Guidelines therefore are a foundation, and remain relevant, for any discussions on the use of technology in the delivery of legal aid services and equal access to justice for all.

I. Adjusting Reform Measures to Address Unforeseen Circumstances and Crisis – Lessons Learned

It is broadly recognized that the pandemic has borne a range of adverse effects for individuals, families, organizations, and public institutions alike. The pandemic posed serious challenges for the continuous provision of essential criminal justice services, due in part to the fact that “many criminal justice interactions – from law enforcement to court proceedings to incarceration – involve close physical interaction and little room for delay”.⁴ Lockdowns and social distancing measures meant that services that have conventionally been delivered in person, such as those within the criminal justice system, had to be reimagined. In the context of the pandemic, justice systems have had to adjust to unforeseen circumstances, including the need to ensure the health and safety of criminal justice personnel, as well as those in contact with the criminal justice system, while also continuing to deliver essential justice services in a manner that ensures respect for human rights and due process standards.

Noting the depth of these challenges, and the broad range of measures and initiatives implemented by the judiciary in response to the pandemic, in 2021 the Inter-American Commission on Human Rights (IACHR) and the United Nations Special Rapporteur on the Independence of Judges and Lawyers issued a joint declaration calling on States of the region “to guarantee the widest access to justice as a fundamental means of protecting and promoting human rights and fundamental freedoms”.⁵ With this joint statement, the IACHR and the UN Special Rapporteur clarify the importance of ensuring the quality and timely delivery of essential justice services, even in times of crisis, specifying that in cases where technology is used for this purpose, human rights and due process rights must be upheld, and particular care should be taken to ensure that technology ensures access to justice for all - without discrimination, and mindful of existing gaps in digital access and skill.

With respect to the use of technology, in particular, the IACHR and the UN Special Rapporteur note that technology “in the provision of justice services has sometimes had a negative impact on access to justice for some sectors of the population as a result of the existing digital gap, since the use of these means presupposes access to electronic means and technological knowledge in order to access justice

⁴ Legal Aid Interagency Roundtable, Access to Justice in the Age of COVID-19. p.14. Available at: <https://www.justice.gov/ag/page/file/1445356/download>

⁵ IACHR & OHCHR, 2021. “Joint declaration on access to justice in the context of the COVID-19 pandemic”. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/015.asp

services”.⁶ Additional concerns relate to the need to ensure that “the use of technological means for the provision of justice services cannot undermine due process rights of the parties and participants in the virtual hearings, especially the right of defence in criminal matters, to legal assistance, to adversarial proceedings, and the right to be tried without delay; the confidentiality and security of the information transmitted using this type of mechanism being guaranteed at all times.”⁷ By identifying both the potential for technology in the field of criminal justice, as well as the need for safeguards to uphold human rights and due process rights, the joint statement of IACHR and the UN Special Rapporteur provides important guidance in the context of the catalytic effect that COVID-19 has had, globally, on the use of technology in the delivery of essential criminal justice services.

In the field of legal aid, technology has the potential to support and enhance professional networks, for exchange of knowledge and skill development, timely and effective referral, and ensuring the comprehensiveness of service provision through hotlines, online legal information, and online consultations and advisory services. The section that follows details the implications that the pandemic had for the implementation of a United Nations project on the delivery of legal aid. The regional technical assistance project on “Improving Access to Legal Aid for Women in Western Africa” was jointly implemented by UNODC and the United Nations Entity for Gender Equality and Empowerment of Women (UN Women) in Liberia, Sierra Leone and Senegal from 2018-2021, in collaboration with the Office of the High Commissioner for Human Rights (OHCHR). The outbreak of the pandemic, mid-term, necessitated a course correction to ensure that service providers in the respective countries were adequately supported to deliver access to justice for all under the changed conditions of the health crisis. As a case study, this project highlights, among other findings, the potential for technology to ensure the continuation, and expansion, of the delivery of critical legal aid services in times of crisis.

II. Background to the Project

Legal aid services in Liberia, Sierra Leone, and Senegal have long been underfunded, resulting in gaps in service provision that impart particularly acute challenges for women. The independent evaluation of the project noted a number of reasons for this “relating to extreme poverty, discrimination, patriarchal hierarchies, early marriage, gender-based and sexual violence, female genital mutilation and domestic violence.”⁸ These challenges are exacerbated by the small number of legal aid providers who support women in contact with the law and the fact that they are often self-funded and do not have access to long-term institutional support. Another challenge identified during early stages of the project was that two of

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Independent Evaluation Section (UNODC), 2021. *Final Independent Project Evaluation, “Improving Access to Legal Aid for Women in Western Africa,”* p.1. [Evaluation Report \(English\); \(French\); Evaluation Brief \(2-pager\) \(English\); \(French\)](#).

the project countries lacked comprehensive legal aid legislation and policies. Despite these challenges, a strong basis of knowledge and expertise exists among national providers, and criminal justice actors in general are cooperative, connected, and very dedicated to carry out their mandate.

The project was implemented through partnerships with local legal aid providers working exclusively with women in contact with the law, as well as women victims of crime. The project aimed to help these providers improve the capacity of their services to support more women, such as those in remote areas or vulnerable situations, with the following outcomes:

1. Development of gender-responsive legal aid normative frameworks and corresponding targeted national budgets;
2. Enhancing the capacity of legal aid providers in the three countries; and,
3. Empowering women in contact with the law to know their rights and how to access services.

III. Findings

Until late 2019, the project had carried out comprehensive assessments of the legal aid systems in the project countries, identified common and individual national priorities in the scope of the project, initiated awareness raising sessions among women beneficiaries and justice actors, developed a tool for training of trainers on how to service women clients, and conducted a first training of trainers-event in each country to pilot the tool and gain insights as to whether it was ready for publication or required adjustments based on feedback from the practitioners. For 2020, activities were intended to focus on events, on the one hand, those during which the trained trainers would have led skill development among their peers, so that their original training would have had a multiplier effect, as well as regional meetings to enable more South-South-assistance among practitioners. Furthermore, additional awareness raising and advocacy activities were planned across all three countries. COVID-19 bore a sudden and heavy impact on implementation. Project components that had previously been envisaged as distinct were merged, with the advocacy and outreach components mostly blended during project implementation. The formal evaluation of the project found: “advocacy mostly took place through legal aid providers within their institutional development; outreach initiatives, which confronted legal aid delivery and their partner duty bearers with immediate needs, led to intake and referral of clients on the spot. The component on support to legal aid providers thus became the driver and centrepiece of all project outcomes. It deepened the relationship between the legal aid providers and the duty bearers, particularly in prisons and police stations. It channelled legal education and information on legal aid in remote regions. It established partnerships with some traditional and community leaders. It became the vehicle to advocate for policy and legislative changes.”⁹

⁹ *Ibid.*, p. 7.

Overall, the evaluation found that the project was effective and displayed excellent flexibility in adjusting to the conditions imposed by the pandemic. Despite its modest budget, the project achieved its main goals and provided valuable lessons learned. Key lessons included the importance of timely consultation to identify whether the technical assistance needs expressed before the crisis, such as skill development and capacity building remained a priority, or whether other activities would be more impactful. Further considerations included a feasibility assessment and contingency planning, to determine whether activities could realistically be implemented during lockdowns and beyond. Prompt reprogramming was enabled by the efficient communication and responsiveness of the project network, which comprised stakeholders from government, bar associations, and civil society organizations. New activities included research on the impact that the pandemic had wrought on the experiences of women in pre-trial detention, as well as on victims of gender-based and domestic violence, and the utilization of this research to inform planning for follow-up action. The demand for legal aid increased during the course of the project, as evidenced, for instance, by a 30 to 40% increase in calls to a legal helpline for women in 2020. In recognition of this growing demand, the project increased the budget to strengthen providers' capacity to operate telephone hotlines and other virtual services to ensure the continuity of service provision. Digital connectivity was also leveraged to convene online meetings at national and regional level to share experiences and brainstorm solutions.

The evaluation findings include three interesting lessons learned, which could be transferable to a variety of reform efforts in other settings, including projects that are implemented by national authorities:

1. The value of investing in **partnerships**, particularly with providers including local civil society organizations. Despite the crisis, civil society organizations provided essential services to those residing in rural and remote areas – even increasing on pre-pandemic service delivery rates. The importance of partnerships was particularly obvious when stakeholders came together online to discuss local needs, their actual and intended responses to those needs, and their plans in moving forward. Cooperation and coordination with other justice actors ensured that legal aid was included in emergency response plans, and that beneficiaries were informed about how to access services. As the evaluation report states, “effective legal aid depends on strong networks and communication between those involved in a range of roles - the police, the judiciary, court officials, social workers and counsellors. The trainings and outreach actions brought these actors together, leading to better working relationships. The training also bridged the interpersonal and information gap between the legal aid providers and the courts including judges and registry staff. They reportedly sensitized the members of the judiciary to the plight of women victims and helped legitimize the work of the providers as indispensable for their support.”¹⁰ Connected to this is the finding that by blending women's empowerment into legal aid delivery, the project enabled providers to expand their outreach. As an example from Sierra Leone shows, when legal aid experts presented legal information not only to community members but also to law enforcement and judicial officials in remote regions, they were able to raise crucial awareness

¹⁰ *Ibid.*, p. 11.

among these officials. The Sexual Offences Law had been passed, but very few people were aware of it, including officials. As a soft copy of the law could not be secured, a legal aid expert obtained a hard copy, and retyped the entire document, which was then used in prison education and distributed to judges, prosecutors, police, and community leaders as part of information sessions.

2. The successful implementation of timely and evidence-based course corrections was due to the excellent **cooperation** between the implementing partners (UNODC and UN Women in field offices and headquarters). This cooperation meant that whoever was on the ground, or had updated information, or means at hand (e.g., to develop an eLearning tool that could replace in-person trainings during lockdowns) could react, share information and expertise, and thus ensure the continuity of capacity building and services. This excellent flexibility in adjusting to the pandemic through needs-based reprogramming, that was swiftly and easily approved by the donor, ensured that providers could discharge their functions through helplines, and individual phone and internet-based consultations with legal aid users. These swift changes to practice ensured the continuity and the continued relevance of services. As the evaluation states, “the extra time and costs invested in response to the pandemic were therefore good value for money.”¹¹
3. An additional finding related to the importance of **leveraging synergies** between different areas of mandate and expertise, in particular by linking legal aid for those left behind to broader police, judicial and prison reform interventions to make them more sustainable and more gender responsive. The evaluation recommends that “programmes on legal aid and programmes addressing the justice chain (law enforcement, justice, penitentiary), should jointly advocate for standard-based and well budgeted legal aid frameworks.”¹²

Before the start of the pandemic, the project was on track to achieve the following:

- an enhanced normative framework on legal aid for women (in Liberia);
- increased delivery of legal aid services for women overall;
- a sensitization and stronger networks among duty bearers and communities;
- increased legitimacy of legal aid providers within countries; and
- enhanced advocacy for women’s rights in the criminal justice system.

As a result of reprogramming, and the increased utilization of technology due to the pandemic, additional specific project achievements included:

- An overall increase in the number of women using legal aid, with the project enabling the maintenance and expansion of new phone-based consultations, as well as visits and virtual legal service provision in remote regions.

¹¹ *Ibid.*, p. 22.

¹² *Ibid.*, p. 40.

- Human rights violations were prevented and remedied, for example in Liberia, where 718 women were released from prison after interventions by legal aid providers supported through the project.

The evaluation found that the project increased the resilience and adaptation of legal aid services across the board, enabling local providers to build on their own lessons learned from past crisis periods. This sentiment is illustrated by a legal aid provider’s statement: “During the Ebola virus epidemic, we were completely taken by surprise, we stopped our operations. This time, we were prepared, and we had support. We expected that the demand would grow, with an increase in the number of domestic violence cases and improper application of COVID rules by the law enforcement. So, instead of reducing, we increased our services.”¹³ Providers used their standing in the communities to work with authorities in prioritizing and making decisions about which emergency measures should be implemented. In Sierra Leone, for instance, the legal aid providers obtained that the Chief Justice re-opened certain courts for serious and urgent cases, thus contributing to limit the COVID-19-induced backlog of cases and denial of access to justice for women in the most pressing criminal matters.

Through agile project management, excellent partnerships and, critically, by leveraging technology to ensure connectivity and continued access to service, the project supported legal aid service providers to remain connected, and to continue (and indeed increase) the provision of legal aid services during the pandemic. Complementing the findings of this project, about the value of technology in ensuring the reach, and continuity of legal aid services, the next part of the paper examines both the potential, and the potential risks, of the increasing use of technology in criminal justice processes.

C. Technology and Access to Justice

The use of digital technologies in the administration of criminal justice is, of course, a facet of the general global trend towards the increasing digitalization of various aspects of life, including e-government, and the management and delivery of essential services in the spheres of health, social protection and education. Rapidly-evolving digital technologies such as artificial intelligence (AI), blockchain, big data and analytics, are increasingly being used in the public sector, to transform the way governments operate and deliver services.¹⁴ While there is, already, a significant body of literature that examines both the potential,¹⁵ and the potential risks,¹⁶ of this increasing digitalization and automation of

¹³ *Ibid.*, p. 16.

¹⁴ United Nations Department of Economic and Social Affairs, 2018. *United Nations E-Government Survey 2018: Gearing E-Government to Support Transformation Towards Sustainable and Resilient Societies*. (Chapter 8: Fast-evolving technologies in e-government: Government Platforms, Artificial Intelligence and People). New York: United Nations, pp.177-193.

¹⁵ Cerrillo, A. M., and Fabra, P. A., 2009. *E-Justice: Information and Communication Technologies in the Court System*, p. xii-xiv; Funican, L., Barroso Sierra, E., and Rajesh, N., 2018. *Smart Courts: Roadmap for Digital Transformations of Courts in Africa*. Access Partnership; Cordella, A., and Contini, F., 2020. *Digital Technologies*

public services, including justice services, in this paper, we reflect on the specific role of technology in the criminal justice sector, with a particular focus on the delivery of legal aid and access to justice in criminal justice systems.

The policy architecture at the international level, related to the digital commons, provides an important context for our consideration of the access to justice implications of the increasing use of technologies in the administration and delivery of justice. The United Nations Secretary-General's *Roadmap for Digital Cooperation* outlines a range of strategies for harnessing the positive developments of new and advanced technologies.¹⁷ These areas include digital capacity building, digital public goods, universal connectivity, digital inclusion, digital trust and security, digital human rights and digital cooperation.

In emphasising the importance of strengthening the positive potential of digital inclusion, and digital public goods, the Secretary-General also notes that the expansive application of technologies introduces risks. “Our data is being bought and sold to influence our behaviour – while spyware and surveillance are out of control – all, with no regard for privacy; artificial intelligence can compromise the integrity of information systems, the media, and indeed democracy itself”. The Secretary-General concludes that “we don't have the beginnings of a global architecture to deal with any of this.”¹⁸ This same need to assess both the positives and potential risks of technology has been identified by the United Nations High Commissioner for Human Rights, who calls for a human rights-based approach to technology “to help societies to identify ways to prevent and limit harm while maximizing the benefits of technological progress”.¹⁹

Efforts to harness the significant potential of technology while safeguarding human rights are also the subject of international attention in the field of crime prevention and criminal justice. Noting the potential for technology to make criminal justice systems “more effective, accountable, transparent, inclusive and responsive through promoting digitalization”, the Kyoto Declaration also cautions against improper use of such technologies, with the undertaking that “law enforcement, criminal justice and other relevant institutions will effectively and appropriately employ new and advanced technologies as tools

for Better Justice. Toolkit for Action; The European Commission, 2008. *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - Towards a European e-Justice Strategy*. COM/2008/0329final.

¹⁶ See, for example, Eubanks, V., 2018. *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*. New York: St. Martin's Press; Lageson, S, E., 2020. *Digital Punishment: Privacy, Stigma, and the Harms of Data-Driven Criminal Justice*. Oxford: Oxford University Press; Susi, M., 2019. *Human Rights, Digital Society and the Law: A Research Companion*. London: Taylor and Francis Ltd.

¹⁷ Secretary-General's *Roadmap for Digital Cooperation*: implementation of the recommendations of the High-level Panel on Digital Cooperation. 74th Session of the UN General Assembly 29 May 2020 (A/Res/74/821).

¹⁸ Secretary-General remarks at the Opening of the General Debate of the 77th Session of the UN General Assembly, 22 September 2022.

¹⁹ A/HRC/48/31, para. 37.

against crime with adequate and effective safeguards to prevent the misuse and abuse of these technologies in this regard.”²⁰

I. UNODC Research on Technology, Human Rights, and Access to Justice

In 2022 UNODC undertook a pilot research project to explore the experiential knowledge of criminal justice practitioners regarding the role of technology in facilitating access to justice. Criminal justice practitioners from 31 countries shared their insights about technology-facilitated access to justice, by completing a written survey, and/or an online interview with UNODC research staff. This project was designed to better understand the ways in which technology can potentially play a role in enhancing access to justice for all, by overcoming barriers of geography, discrimination, and porous service provision and, to also explore whether criminal justice practitioners identified any potential, or proven, ways in which the use of technology deepened existing lines of discrimination, in accessing justice, and/or opened new lines of discrimination.

Respondents identified that the application of technology, in criminal justice processes, incorporates a broad range of modalities, including: AI-related tools (including assisted decisions tools for recidivism prediction and risk assessment, caselaw search engines, document and schedule management, facial recognition, etc.), case management systems, chat platforms, court/registries digitalization, e-filing and documents transfers, electronic signature (simple and advanced), e-mailing, interoperable platforms, online payment services, remote hearings and videoconference, telephone-based communication tools, translation technologies, and Internet-based legal information and service provision. In this study, criminal justice practitioners were also invited to reflect on what they identified to be the drivers for the use of technology in criminal justice processes. Respondents identified cost effectiveness and improved system performance as key drivers, as well as the aim of ensuring enhanced access to legal information, and the increased transparency of criminal justice processes. While the use of technology was increased and, in some cases introduced, to ensure the continuity of criminal justice services during the COVID-19 pandemic, respondents recognized that the role of technology in justice processes was likely to endure.

These findings broadly indicate that, in policy-making settings, and in criminal justice institutions, the introduction of technology in criminal justice processes is seen as an enabler for access to justice – overcoming existing barriers associated with cost, case overload, barriers to accessing information, and the opacity and/or bureaucracy of existing criminal justice procedures. Respondents did share concerns that the haste with which these technologies have been introduced, or scaled-up, as well as the restrictions imposed by commercial patenting protection, prevented an assessment of impact on the rights to due process and access to justice, for accused persons, witnesses, victims, detainees.

²⁰ Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development (A/Res/76/181), paras 13; 16.

Respondents also noted that impact assessments would be particularly important as a means of identifying whether there are specific implications for individuals or groups already facing disadvantage, discrimination, or increased barriers in accessing justice in criminal justice settings.

Respondents noted concerns regarding the application of certain technologies. Chief among these is the potential for criminogenic and discriminatory outcomes arising from the use of artificial intelligence for predictive purposes in both legal and law enforcement settings. The research identified that predictive technologies are afforded considerable weight, by criminal justice actors, and that this is not sufficiently balanced, or not balanced at all, by mechanisms for transparency, oversight or accountability regarding the operation of these technologies. Further concerns related to the risk that a reliance on technology to create efficiencies (in clearing court backlogs, for example) may divert attention from addressing root causes for an over-burdened criminal justice system. The research identified the importance of mechanisms to assess potential risks, as relates, for example, to discrimination, fair trial rights, the right to privacy, etc. Key actions to overcome these challenges include rigorous and continuous evaluation of the use of technologies in criminal justice settings, to identify and mitigate potential risks, including where these technologies impact disproportionately on individuals already facing discrimination.

Technological development far outpaces efforts to carefully study the effects of applied technology. Taking stock of current developments, and establishing an evidence base on “what works” is important to ensure a comprehensive understanding about how, why, for whom, and in what circumstances, certain technological applications can be of benefit. Upholding human rights in the administration of justice requires that any move towards digitally-mediated justice is informed by rigorous, inclusive, and inter-disciplinary research to determine what forms of digitized justice enable access to justice for all and, of equal importance, to determine what forms of technology bear risks, or introduce or exacerbate barriers to accessing justice. In the context of continuously evolving technologies, it is clear that ongoing research will be needed to ensure effectiveness, to monitor for unintended consequences, and to safeguard against any possible adverse human rights implications. Consistent with a human rights-based approach, it is vital that these research and monitoring processes are inclusive, transparent, and designed to safeguard privacy and human dignity.

The Human Rights Council has established that human rights apply equally online and offline.²¹ There is no sense in which a lower standard of human rights protection could be permissible in contexts where justice processes involve technology. It is important to note, however, that this normative claim is not automatically, and in all contexts, complemented by the practical mechanisms, of regulation, evaluation, monitoring, oversight, and accountability that are needed to recognize and redress instances human rights infringements that occur in the online world or through the application of digital technologies.²² The opacity, and often invisibility of the experiences of individuals in contact with the

²¹ A/HRC/RES/32/13, para. 1.

²² See, for example, Susi, M., 2019. “Human Rights in the Digital Domain – the Idea of Non-Coherence Theory”. In: Susi, M., (ed). 2019, *Human Rights, Digital Society and the Law: A Research Companion*. London: Taylor and Francis Ltd.

criminal justice system are compounded when these experiences are also facilitated or shaped by technology – due in part to the lack of knowledge, both inside and outside the criminal justice system, about the precise workings and effects of new and advanced technologies.

There are additional human rights considerations associated with the use of digital technology in the administration of justice, including those that relate to the collection, storage, use, monetization and sharing of personal data (including the sharing and possible re-purposing of data). The involvement of private business interests in the development and promotion of justice technologies is another area in which human rights monitoring and compliance is particularly important. This includes attention to the likelihood that the increased involvement of corporate actors, including technology companies, will lead to further increases in the privatization of essential services within the field of crime prevention and criminal justice. Furthermore, it is important to remain alert to the role of broader economic considerations (at the national and international levels) in driving the deployment of technology in the justice sector. While the replacement or augmentation of the existing physical/human justice architecture with digital solutions may seem economically, operationally, and administratively expedient, these efficiency gains must not be at the expense of human rights.

The section that follows presents two case studies, based on UNODC technical assistance projects, to explore the potential for technology in enhancing access to justice.

II. Case Studies – The Role of Technology in Enhancing Access to Justice

1. Leveraging Technology to Ensure Continuity of Service During the COVID-19 Pandemic

The independent evaluation of the abovementioned regional UNODC-UN Women project in West Africa found that harnessing technology was essential to ensuring that service providers were able to adapt to the crisis. “They could fund and adopt new tools for remote support to their users and scale up their operations to respond to increased demand in times of lockdown or severe application of prevention measures.” Technology played a significant role, through the utilization of online and telephone support for clients and the creation of mobile and data access services to ensure continuity of service; and capacity-building trainings through video conferencing tools.

The challenges of COVID-19 led legal aid providers “to seek new ways of increasing knowledge safely through technology. These included writing and delivering radio and television programs in which the new laws and other legal issues were discussed, social media interaction, telephone consultations, sms-callback programs in which poor clients would send a message and a legal aid provider representative would call them, hotlines providing immediate feedback. By supporting the core activities

of legal aid providers, the project contributed to these dynamic changes that would have otherwise been impossible.”²³

In addition, the technical aspects of the trainings, including through video calls and electronic sharing of resources by the project team also had a capacity building effect in terms of increasing the knowledge of participants on how to conduct similar sessions as required by COVID-19 prevention, and communicate with other justice actors through videoconferencing tools. As the evaluation report states, “most importantly, there was a general feeling that capacity building activities increased the effectiveness of service provision by expanding and strengthening linkages between stakeholders.”²⁴

2. Technology-facilitated access to justice for victims of gender-based violence.

In 2021 UNODC undertook a global review of the evidence on the impact of the COVID-19 pandemic on victims of gender-based violence against women and girls (GBVAW). Among the findings of this review, were that technology had the potential to facilitate access to justice, for victim-survivors, in the following ways:

- Reporting of GBVAW through remote channels;
- Virtual hearings for barring, restraining and other urgent protection orders;
- Victim/survivor and witness statements through videoconference;
- Remote access to criminal records;
- Online or electronic case management systems;
- Examination of expert witnesses through videoconference;
- Virtual trials;
- Virtual training for judges, prosecutors, forensic experts, police, legal aid providers and other criminal justice professionals.²⁵

While the study identified that technology has the potential to facilitate these important protection and justice mechanisms for victim-survivors, emphasis was also placed on the importance of ensuring that the “implementation of remote or technology-facilitated procedures in relation to GBVAW cases must be carried out in full respect for the rights of victim/survivors and perpetrators”.²⁶ UNODC has produced guidelines for the use of technology in GBVAW cases to ensure that any use of technology in GBVAW justice proceedings safeguards the rights and the dignity of the individuals involved. These guidelines

²³ Independent Evaluation Report (footnote 5 above), p. 25.

²⁴ *Ibid.*, p. 11.

²⁵ UNODC, 2021, The Impact of COVID-19 on Criminal Justice Responses to Gender-based Violence Against Women: A Global Review of Emerging Evidence, p. 49. Available at: [A Global Review of Emerging Evidence \(unodc.org\)](https://www.unodc.org/publications/2021/04/global-review-of-emerging-evidence)

²⁶ *Ibid.*

include specific provisions relevant to legal aid, including the recommendation that access to legal aid is assured, including in circumstances where a victim-survivors agree to participate in a remote hearing.²⁷

D. Conclusion

To ensure the continued relevance of legal aid reform measures and activities, even in times of crisis, it is vital that activities can be adjusted in the face of unforeseen challenges. Depending on the mandate, the source of funding, and the applicable rules and regulations for any project, it is important that course corrections can be made, without overly lengthy approval procedures, to ensure that programming centres the needs of beneficiaries, and remains attuned to practitioners' needs and resources.

The increase in the use of technology in the criminal justice system is matched by an increasing proliferation and diversification of the ways in which such technologies are used. Digital justice encompasses the provision of legal information online, and the provision of legal aid hotlines, as well as the use of remote hearings, AI analytics, and predictive tools that shape justice policies and outcomes. It is important to note the complexity and diversity of these technological applications in the field of criminal justice, and the concomitant variance in human rights implications.

While digital justice shows some promise in enhancing participation, in instances where access to online legal information assists in overcoming geographic barriers or providing access to services for victim-survivors of gender-based violence, for example, it is also the case that digital justice has the potential to compromise access to information, including about the exercise of core human rights principles in criminal justice processes. This can occur in instances where the application of technology further obscures criminal justice processes or renders these so complex that they cannot be understood by the public, by oversight bodies, or even by criminal justice actors. This complexity and lack of transparency complicates efforts to monitor the possible impact that technology has on human rights.

The longstanding principles of open justice, and principles of oversight and accountability for justice sector institutions and actors are key to promoting trust in public institutions and upholding human rights in the administration of justice. Human rights-based approaches to the use of technology in the administration of justice require an adherence to the core human rights principles of equality, non-discrimination, participation, and accountability - and the use of technology must be assessed to ensure its legality, legitimacy, necessity and proportionality.

To ensure that technology plays an enabling role in facilitating access to justice for all, it is important to strengthen the global evidence base to determine the circumstances in which technologies are

²⁷ *Ibid.*

demonstrably beneficial in criminal justice settings, and in full alignment with human rights. The findings of UNODC’s empirical research with criminal justice practitioners highlights concerns about the enthusiasm with which institutions adopt technological “solutions” to justice problems, in lieu of addressing the root causes for staggering dockets and the broad range of challenges that prevent individuals from gaining timely and effective access to justice. In this regard, our research points to the importance of ensuring that the use of any technologies to “augment” or “facilitate” justice processes is preceded by a rigorous human rights assessment, and subjected to continuous and stringent monitoring and evaluation, to ensure that in practice, as well as in principle, digitally-mediated justice does indeed ensure access to justice for all.