



TRIAL
International

Justice in the time of coronavirus

**How a global pandemic affects victims
of the gravest crimes**

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This document seeks to show the various, sometimes indirect consequences of the coronavirus pandemic on TRIAL International's beneficiaries worldwide. The analyzed countries are Bosnia and Herzegovina, Nepal, Mexico, The Gambia, Burundi and the eastern regions of the Democratic Republic of the Congo (DRC). "Beneficiaries" here include victims, but also trainees and partner NGOs in the field.

While other documents explain how the pandemic has affected TRIAL International's activities specifically, it seemed relevant to also analyze its repercussions on the quest for justice as a whole.

This document is organized in two parts: the first is a rapid overview of the countries' sanitary and socioeconomic situation in face of the coronavirus¹. The second part looks at three key aspects² of international justice affected by the pandemic: the increased threat of human rights violations; crimes reporting and investigations; and the conduct of legal proceedings. The document concludes with considerations on civil society networks during and after the crisis.

¹ A deliberate choice was made to exclude quantitative data from these overviews, as their evolution would make them outdated within days. Even qualitative information are highly volatile and, while every effort was made to provide accuracy, may be outdated or no longer applicable at the time of reading.

² TRIAL International fully acknowledges that all elements of the quest for justice are intertwined and interdependent. This division was chosen nevertheless for the sake of clarity.

FOREWORD: JUSTICE HAS A UNIQUE AND VITAL ROLE TO PLAY DURING THE PANDEMIC

In the clamor surrounding the coronavirus pandemic, there seems to be nothing but emergencies: sanitary emergency, economic emergency, social emergency and so on. All are undeniably crucial, but none can be addressed without being ground in the most basic need of all: human rights.

Many actors have emphasized the necessity to protect fundamental freedoms even - or particularly - while so many other issues capture our attention. The United Nations High Commissioner for Human Rights, Michelle Bachelet, has called for “*human dignity and rights (...) to be front and centre in (our) effort, not an afterthought*”³.

Already we see the context is conducive to abuse: authoritative States cut corners on their citizens’ rights, using force disproportionately and passing repressive laws; non-State actors commit grave crimes in the hope that, amidst the chaos, they will get away with it.

The pandemic has highlighted how dramatically unfair our societies are. Justice should be the one rampart against inequality, a fundamental aspiration guaranteeing that all other rights can be upheld. But for this, justice needs to be accessible, fair, efficient, transparent: it is for all those things that TRIAL International fights daily.

Unfortunately, justice systems around the world are themselves directly challenged by the extraordinary situation we are in⁴. The odds that the gravest crimes will be reported and punished, and that exposed populations will obtain justice, are arguably at an all-time low. How could we let our guard down now?

The fight against impunity cannot wait until after the crisis. Justice has a unique, vital role to play right now, for the protection of all, and especially the most vulnerable. No crisis, no emergency can be solved without this most fundamental requirement. Defeating the virus cannot give way to another pandemic: that of injustice.

Philip Grant,
Executive Director



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³ From the informal briefing of the United Nations High Commissioner for Human Rights on 9 April 2020 - [Read the full statement](#)

⁴ The United Nations Office of the High Commissioner for Human rights noted: “*This extraordinary situation poses special threats and challenges to the justice systems as a whole around the world – including judges, prosecutors and lawyers – and to its effectiveness and independence. (...) In this context, the lack of access to an independent justice opens doors to abusive behaviors and to a context favorable to impunity.*” [Read full declaration](#)

COUNTRIES OVERVIEW

Bosnia and Herzegovina

- The country was locked down from mid-March and movement was highly restricted until early May. Rural regions are particularly isolated in the absence of public transports.
- Hospitals have shifted all their capacity on the pandemic, deprioritizing all non-urgent care, including psychological care.
- The already fragile economy has been hit hard and tens of thousands have already lost their job.

[More on Bosnia and Herzegovina](#)

Nepal

- A lockdown has been imposed since mid-March, but is unevenly enforced.
- High urban density in Kathmandu and large households - with several generations living under the same roof - also favor contamination.
- Many daily-wage workers are unable to work. A large part of the population therefore relies on governmental food parcels, which are widely feared to be insufficient.

[More on Nepal](#)

Burundi

- No anti-contamination measures have been taken and mass public gatherings are still taking place. The campaign for presidential elections on 20 May 2020 went on unchanged.
- Few international observers are allowed in the country and workers from the World Health Organization were expelled mid-May, making the spread of the pandemic very difficult to assess. The absence of anti-contamination measures has been widely criticized.
- Healthcare is widely perceived to be insufficient and remains unaffordable for most of the population.

[More on Burundi](#)

Democratic Republic of the Congo (North and South Kivu)

- The country is in partial lockdown, inter-provincial and inter-city travels are strictly limited. However, citizens are still able to circulate within cities, including in crowded areas such as markets.
- DRC has officially closed its borders with neighboring states, but *de facto* the circulation of goods and people, especially with Rwanda, continues.
- The price of food has skyrocketed and the national currency, CFA francs, has been drastically devaluated.

[More on DRC](#)

The Gambia

- The country is locked down since mid-March and all non-essential services are suspended.
- Healthcare is not subsidized and remains too expensive for most of the population.
- Already in recession since 2019, the Gambian economy is heavily reliant on tourism. The pandemic has hit towards as the peak season was coming to an end, forcing infrastructures to shut down several weeks earlier.

[More on The Gambia](#)

Mexico

- The authorities denied coronavirus cases in the country for the first weeks. The first lockdown was ordered end March, much later than neighboring countries.
- Informal trade forms a large part of the economy and has been directly affected by the lockdown. The country was already in recession prior to the pandemic.
- Vulnerable populations including indigenous groups, people with disability and the elderly have been impacted disproportionately.

[More on Mexico](#)

IMPACT OF THE PANDEMIC ON THE ACCESS TO JUSTICE

1. Consequences of the pandemic on human rights violations

Shifting priorities of law enforcement

Focused on curbing the spread of the coronavirus, authorities have often de-prioritized other areas of law enforcement. For instance, Bosnia and Herzegovina (BiH) and Nepal have mobilized local police forces to implement lockdown measures. But in areas where the rule of law was already weak, such as in Eastern DRC where entire remote areas are, *de facto*, ruled by local militia, this results in a window of opportunity for criminals. Strong and consistent law enforcement is known to have a dissuasive effect, so when it is not the case atrocities are both easier to commit and less likely to be reported.

On a smaller scale, more pernicious expressions of violence have also been deprioritized by authorities, offering fertile grounds for renewed abuse: gender and structural inequality and the marginalization of certain groups and minorities have been amply denounced as side-effects of the crisis. The same logics apply to the stigmatization of victims of the gravest crimes. Examples include the stigmatization of sexual violence victims and the re-victimization of survivors suffering from post-traumatic mental disorders. Setbacks in these areas are feared to outlive the pandemic by years.

Repressive laws and divisive discourses

Human rights abuse is not committed solely by individuals and non-State actors. States can also be responsible of widespread violations, especially in the present context where swift action is required. The line between efficiency and repression is a thin one, as manifested by the excessive use of force reported in Eastern DRC and Nepal to enforce the lockdown and the compulsory use of masks.



Police forces in DRC have used force disproportionately © UN photo/Sylvain Liechti

The crisis has also provoked an outbreak of arbitrary arrests and unlawful detentions, with State agents cutting corners for the sake of “efficiency”. In the worst scenarios, the fight against the pandemic could be a mere excuse to silence dissidence with arrests and detentions - allegations thereof have already emerged in Nepal. Less dramatically, the Federation of BiH sought to ban all movement of people for under-18 and over-65 - a measure deemed unacceptable by the Constitutional Court and rapidly overturned.

Divisive discourses have also been numerous in the political sphere: the Burundian and Mexican government both invoked an international conspiracy to minimize the impact of the coronavirus on their territories. As a result, Mexico imposed the lockdown weeks after its Latin American neighbors. Burundi has not, to this date, taken any anti-contamination measures. Finally, the anxiety-ridden context could be prone to old “us against them” rhetoric. This is especially true in contexts where peace is fragile and lasting economic hardship looming, such as in BiH.

2. Consequences of the pandemic on crimes reporting and investigations

Victims unlikely to report abuses

As mentioned above, human rights violations are more difficult than ever to report, and not only because police forces are directed elsewhere. Movement restrictions mean it is quasi-impossible to go and file a complaint physically. The only country where TRIAL International is active that has no confinement measures is Burundi. Unfortunately, its record of effectively collecting complaints and acting upon them is poor to say the least.

Traditional whistleblowers, such as activists and NGOs, have also had to reduce their activities to comply with local directives and protect their staff. Nowhere is it truer than in Mexico, where civil society has often acted as a crucial link between victims - especially non-Mexican nationals - and the authorities. Online complaints, when they are available, are no real substitute: many regions of The Gambia, the African Great Lakes or Nepal have little to no access to Internet. Even in BiH, which has better coverage, rural or elderly populations are unlikely to have sufficient tech proficiency.

But beyond technical aspects, the real impediment could be internal to survivors: seeking justice requires incredible courage, and victims in a state of isolation - physically, socially and mentally - would be hard-pressed to report the unimaginable crimes they have suffered. Human contact, expert guidance and supportive structures are essential to making access to justice a reality, and all are in shortage in this period.

Investigations halted or slowed down

The documentation of crimes has also been severely impacted by the pandemic. When atrocities are committed in remote regions, access to the crime scene is difficult at the best of times - in Eastern DRC, for instance, the journey can take days and be extremely dangerous. The current situation makes them all but impossible. This is dramatic because evidence may be time-sensitive and disappear or be irrevocably damaged. Medical elements need to be collected within days of the crime; the accuracy and sharpness of testimonies decreases with every passing hour. All these difficulties could mean that the crisis is not only conducive to impunity now, but could have lasting after-effects.

Domestic endeavors to unearth the truth are also facing obstacles on the long run. Local human rights defenders and the relatives of victims are often the driving forces in the investigations, either by pressuring the State into action or even by contributing personally. In Mexico, for instance, families and local NGOs have been exhuming themselves bodies from mass graves.⁵ But this type of forensic activity requires protective equipment, including face masks and gloves. With the current shortage due to the pandemic, it is unclear when they will have access to this material again. In the meantime, many families will remain in harrowing uncertainty regarding their disappeared relatives.



While forensic research stalls, families are left with harrowing uncertainty © ZiyahGafic

International travel bans also slow down investigations carried out abroad, based on the principle of universal jurisdiction. For instance, a case relating to The Gambia is ongoing in Switzerland, offering hope for survivors whose sufferings could have remained unheard. But international investigations require regular travels to meet victims and witnesses, collect evidence, retrace events, etc. Even once the lockdown eases in The Gambia and/or Switzerland, it may be months before prosecuting authorities and civil society organizations can travel transcontinentally again. And with authorities already reluctant to invest in these resource-consuming investigations, the pandemic could be the final nail in the coffin for several stalling cases.

3. Consequences of the pandemic on legal proceedings

Reduced access to jurisdictions

Many domestic courts and tribunals have reduced their activities in the face of the pandemic. In Nepal, courts are not taking on new cases. At the heart of the lockdown, in BiH, only cases marked as “priority” are investigated and prosecuted - and these did not include wartime crimes and compensation applications, however crucial to the victims. Courts in North and South Kivu (DRC) too have come to an almost-complete halt. The Gambia’s transitional justice body, the Truth, Reconciliation and Reparations Commission, has suspended its hearings until June.

⁵ TRIAL International reports a *de facto* situation and does not encourage or discourage these practices. Certain search mechanisms and judicial authorities have expressed concern as to the damage caused to forensic evidence within such *ad hoc* exhumation processes.

Beyond these temporary measures, the problem lies in the willingness to prosecute and punish international crimes in the first place. Prior to the pandemic, seeking justice was already a long and arduous process for survivors. Among the hurdles were slacking institutions such as in Nepal, political indifference like in BiH or even complacency, for instance in Mexico. As lockdowns are prolonged and judicial backlog accumulates, victims risk seeing their cases further relegated and postponed.

Out of sight, out of mind

When States fail to provide victims with prompt and effective justice, international standards and treaties are useful to remind them of this obligation. The vigilant eye of the international community has prompted domestic action in the past and produced fruitful cooperation. For instance, the United Nations (UN) in DRC are key partners to help local authorities prosecute international crimes. Unfortunately, international organizations from the United Nations to regional bodies, are all focused on fighting the coronavirus. Advocacy and mobilization are dramatically slowed down. Openly defiant States - such as Burundi which even refuses access to UN observers on its territory - will likely be let off the hook of international scrutiny amidst the global crisis. The sanitary repatriation of many deployed workers - both from international organizations and NGOs - also means that the monitoring of at-risk regions is comparatively low.

This “out of sight, out of mind” phenomenon is observed at domestic level too. In the present context, local advocacy groups have a hard time raising awareness and support for the cause of victims. But a loss in visibility not only undermines the success of their campaigns, it can also exacerbate violence against them. As prime targets for human rights abuse, they sometimes rely directly on their visibility for protection. With the release of international pressure, there are fears that whistleblowers will be more exposed than ever.

CONCLUDING REMARKS: WILL CIVIL SOCIETY BE A COLLATERAL VICTIM OF THE CORONAVIRUS?

Worldwide, local and international civil society networks have always played a crucial role to support victims in their quest for justice. Stepping in when the authorities were failing, brave NGOs and individuals have reported and documented crimes, helped survivors throughout lengthy proceedings, pushed and pressured governments into action, etc.

The current crisis is deeply affecting these grassroot networks: due to confinement measures they are unable to reach out to survivors and conduct their activities normally. But another threat is looming on the longer run. Economic recovery, likely to be long and slow, will be high in the priorities of States. Where will this leave NGOs, often reliant on subsidies and public generosity?

Whether victims of international crimes can effectively access justice will depend heavily on the ability of civil society to support them. Now is an ideal time to build a more collaborative model, to acknowledge the essential role played by NGOs in complement to the States' and to truly join forces to offer victims the best chance of justice.



Local and international civil society play a crucial role to support victims in their quest for justice © UN photo /John Isaac



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