

# The Rule of Law and COVID-19: *Notable Resources*

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The ongoing COVID-19 pandemic is having profound global health, societal and economic impacts. In addition, it is also affecting the rule of law around the world. Countries are suddenly wrestling with unexpected policy concerns, such as: How do governments and societies balance the need to protect the health of their populations while protecting individual private rights? How do democracies continue to respect due process rights, including rights to a speedy trial, a public hearing, and to confront one's accuser, in the face of a pandemic? How do systems protect the health and welfare of detainees for whom they are responsible? At the same time individual courts, from the Supreme Court of the United States to municipal courts in rural locations, are seeking solutions to basic operational questions, such as: To what extent can they use technology, if it is available, to work remotely? How do judges protect their court staff if protective clothing and procedures are not in place? Where will funds come from to purchase newly necessary IT equipment and protective gear? Finally, many courts may find themselves confronted with novel cases in which litigants challenge being quarantined or seek to obtain medical treatments that they are being denied.

Any one of these questions, and a myriad more, present complicated issues that are not susceptible to easy answers. In an effort to share ideas, approaches, and issues with our counterparts and colleagues around the world, the East-West Management Institute, Inc. (EWMI), a not-for-profit organization based in New York with a mission to strengthen civil society and promote the rule of law, has compiled the following collection of articles, webpages, and resources that provide guidance and information on how various aspects of justice systems in the United States and in other countries are responding to the pandemic. The materials, which by no means are intended to be exhaustive (and are mostly only in English) cover how the pandemic is affecting courts, prisons, and access to justice, among other issues. Some of the trends we are seeing are of concern, including delays in trials due to court closures, which can be expected to contribute to backlogs well into the future, not to mention the immediate negative impact on individual parties and litigants; the spread of COVID-19 into prisons, with potentially devastating consequences for prison populations; and the lack of sufficient resources to address the crisis. Another trend, unsurprisingly, is the importance of information technology in addressing many of the emerging needs, although some localities and countries have inadequate access to such technology or the infrastructure to support its usage.

We hope that you find this information useful. Our goal is post periodic updates for as long as the information is helpful and relevant. If you are aware of additional articles, materials or training opportunities that you would like to see added to this resource, please submit them to Remi Vespi, Senior Program Manager – Legal Programs at [rvespi@ewmi.org](mailto:rvespi@ewmi.org).

Thank you,

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## THE RULE OF LAW AND COVID-19: NOTABLE RESOURCES

This document contains a collection of articles, webpages, and resources providing guidance, updates, and information on how various aspects of justice systems in the United States and around the world are responding to the current coronavirus pandemic, as well as ideas for adapting to the current circumstances and preparing for future disruptions with similar impacts.

### COURTS

#### National Center for State Courts Pandemic Response

<https://www.ncsc.org/pandemic>

- Daily updates on how state courts are responding to the pandemic

#### National Center for State Courts Pandemic Response – Data Visualizations

<https://public.tableau.com/profile/ncscviz#!/vizhome/StateCourtResponsestoCOVID-19/Story1>

- Interactive map showing actions taken by state and local courts in response to the pandemic

#### Coronavirus: The Latest EU Court Closures and Restrictions

<https://www.law360.com/articles/1253873/coronavirus-the-latest-eu-court-closures-and-restrictions>

- Interactive map showing EU court closures, as well as list of court closure-related updates by country with brief descriptions

#### Response to COVID-19 by Criminal Justice Systems

<http://www.jmijustice.org/covid-19/>

- Justice Management Institute page providing information on the response to COVID-19 by criminal justice systems, including information about responses and guidance by practice area

#### Coronavirus: No jury trials longer than three days in England and Wales

<https://www.bbc.com/news/uk-51935320>

- No new Crown Court trials will take place in England and Wales if they are expected to last longer than three days, following concerns from lawyers amid the coronavirus crisis.
- A statement from the Judicial Office said: ‘In all jurisdictions steps are being taken to enable as many hearings as possible to be conducted with some or all of the participants attending by telephone, video-link or online.’
- “All cases estimated to last longer than three days listed to start before the end of April 2020 will be adjourned. These cases will be kept under review and the position regarding short trials will be revisited as circumstances develop and in any event next week. As events unfold decisions will be taken in respect of all cases awaiting trial in the Crown Court.”
- Emergency legislation is being drafted which is likely to contain clauses that expand the powers in criminal courts to use technology in a wider range of hearings.
- On Tuesday, the Scottish government announced: “No new criminal jury trials will be commenced or new juries empaneled until further notice. “Where jury trials have already commenced, these will run to conclusion of the trial, if practical to do so.”

- In Northern Ireland, there will likewise be no new jury trials for the foreseeable future after an announcement by the Lord Chief Justice, Sir Declan Morgan.

### **'More challenging than 9/11': Pandemic tests American criminal justice**

<https://www.cnn.com/2020/03/17/politics/pandemic-tests-american-criminal-justice>

- The strain came into focus this week. The judge overseeing the trial of a man charged in a New York sex trafficking ring postponed the proceeding midway through testimony after defense attorneys raised concerns that the jury will rush to judgment to avoid traveling to the courthouse as the coronavirus pandemic was multiplying in the city.
- Prosecutors opposed the request maintaining that a delay “will deprive the public of a speedy resolution” and “create substantial uncertainty” for the victim. After a hearing on Monday, the judge postponed the trial for at least two weeks just as city and state officials closed schools and movie theaters, limited bars and restaurants to only takeout and delivery, and pleaded with residents to remain inside their homes.
- If federal courts are shut down for weeks or months, with no grand juries or jury trials taking place, the Justice Department may have to seek congressional legislation to extend the time prosecutors and judges have to deal with cases affected, the official said. Officials are grappling with that uncertainty now.
- Defense lawyers have suggested tough decisions will need to be made, whether that's cutting some investigations short and making plea bargains.
- Jurors worries about being in tight quarters have already begun to impact trials. A New York federal judge on Monday morning took the unusual step of allowing a juror in a criminal trial to deliberate by video conference in a US sanctions violations case, after two jurors said they felt ill and asked to stay home.
- Over the objection of prosecutors, who voiced concerns that the juror participating by videoconference might research aspects of the case while staying home, US District Court Judge Alison Nathan allowed the arrangement for one juror. “I will say that we are under extraordinary circumstances,” she said. She dismissed the other juror.

### **In brave new world of China's digital courts, judges are AI and verdicts come via chat app**

<https://www.japantimes.co.jp/news/2019/12/07/asia-pacific/crime-legal-asia-pacific/ai-judges-verdicts-via-chat-app-brave-new-world-chinas-digital-courts/#.XnuCky2ZNSN>

- China is encouraging digitization to streamline case-handling within its sprawling court system using cyberspace and technologies like blockchain and cloud computing, the country's Supreme People's Court said in a new policy paper.
- The efforts include a “mobile court” offered on popular social media platform WeChat that has already handled more than 3 million legal cases or other judicial procedures since its launch in March, according to the Supreme People's Court.
- The paper was released this past week as judicial authorities gave journalists a glimpse inside a “cybercourt” — the country's first — established in 2017 in the eastern city of Hangzhou to deal with legal disputes that have a digital aspect.
- Cases that are handled at the Hangzhou court include online trade disputes, copyright cases and e-commerce product liability claims.
- Litigants can register their civil complaints online and later log on for their court hearing.

## **Coronavirus, Giustizia ferma fino al 31 maggio. Bonafede: “Saranno potenziate le videoconferenze”**

[https://www.repubblica.it/politica/2020/03/07/news/coronavirus\\_giustizia\\_ferma\\_fino\\_31\\_maggio\\_bonafede\\_saranno\\_potenziate\\_le\\_videoconferenze\\_-250494372/?refresh\\_ce](https://www.repubblica.it/politica/2020/03/07/news/coronavirus_giustizia_ferma_fino_31_maggio_bonafede_saranno_potenziate_le_videoconferenze_-250494372/?refresh_ce)

- The government has approved a decree stating that the courts will be suspended for 15 days to allow courts and prosecutors to adapt to new measures to contain the coronavirus. Judicial offices will be closed until May 31 unless otherwise stipulated.
- The head of the judicial office will have the right to suspend activities (and therefore hearings for non-serious crimes) until May 31. The suspension, reads the decree, occurs in cases of “certified epidemiological emergencies.” The suspension does not apply to hearings related to adoption declarations, unaccompanied foreign minors, minors removed from the family, or certain types of hearings to validate arrest or detention. The decree also allows for the postponement of non-urgent hearings.
- From March 23, it will be possible for the heads of judicial offices to postpone non-urgent hearings. Videoconferences for hearings are also possible. The minister then stressed that the measures are valid until May 31 but if there is a slowing of contagions it will slowly return to normal.

## **Preparing for a Pandemic: An Emergency Response Benchbook and Operational Guidebook for State Court Judges and Administrators**

<https://ncsc.contentdm.oclc.org/digital/collection/facilities/id/194/>

- Provides guidance for state court judges and administrators on how to prepare for and respond to a pandemic

## **HARDEST HIT US JURISDICTIONS**

### **New York State Courts**

<https://www.nycourts.gov/>

<https://www.nycourts.gov/whatsnew/pdf/covid-memo-031920.pdf>

- Provides information on the status and response of courts in New York

### **California Courts**

<https://newsroom.courts.ca.gov/coronavirus-updates>

- Provides up-to-date information on the status of courts in California

### **Washington**

<https://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.COVID19>

- Provides updated information on the COVID-19 response of Washington courts

## **PRISONS**

### **Tracking Prisons’ Response to Coronavirus**

<https://www.themarshallproject.org/2020/03/17/tracking-prisons-response-to-coronavirus>

- This is a map of the U.S. tracking the response of state prisons

### **Australia's overcrowded prisons could struggle to control coronavirus, expert says**

<https://www.theguardian.com/australia-news/2020/mar/19/australias-overcrowded-prisons-could-struggle-to-control-coronavirus-expert-says>

- The South Australian government has conducted emergency scenario planning on how to manage a potential outbreak in its prisons. Queensland and Western Australia have announced special task forces to manage the threat.
- New South Wales temporarily suspended all prison visits until Sunday and is handing out 600 tablet computers, originally purchased for staff, to prisoners to allow them to do video calls in place of in-person visits.
- The NSW corrective services commissioner, Peter Severin, said prison authorities were also building 20 temporary video conferencing studios to ensure court hearings and meetings with lawyers can be done remotely.

### **Fears over coronavirus risk in prisons as first UK inmate case confirmed**

<https://www.theguardian.com/world/2020/mar/18/first-uk-prisoner-with-covid-19-confirmed-at-strangeways-manchester>

- The UK government issued guidance stating that if there was a significant outbreak of Covid-19, “cohorting” should be used to put all those infected together behind locked doors in prisons, detention centers, young offender institutions and secure units.
- Current guidance advises that restrictions to inmate movements may apply in prisons where the disease is detected. As yet there are no overarching plans to stop the movement of inmates between prisons in the UK.

## **ACCESS TO JUSTICE**

### **Federal Bureau of Prisons COVID-19 Action Plan**

[https://www.bop.gov/resources/news/20200313\\_covid-19.jsp](https://www.bop.gov/resources/news/20200313_covid-19.jsp)

- Access to legal counsel remains a paramount requirement in the BOP but like social visiting, the BOP is mitigating the risk of exposure created by external visitors. As such, while in general, legal visits will be suspended for 30 days, case-by-case accommodation will be accomplished at the local level and confidential legal calls will be allowed in order to ensure inmates maintain access to counsel. Attorneys seeking an in-person visit with their client or a confidential call should contact the institution Executive Assistant (see email address on the relevant facility bop.gov page) or contact the appropriate Consolidated Legal Center for the BOP institution (see page 54 of the Legal Resource Guide). If approved for an in-person visit, the attorney will need to undergo screening using the same procedures as staff.

### **Coronavirus leaves defense attorneys torn between visiting their jailed clients and spreading the illness**

<https://theappeal.org/coronavirus-leaves-defense-attorneys-torn-between-visiting-their-jailed-clients-and-spreading-the-illness/>

- Zeigler, who does post-conviction work, said he is opting out of nonessential visits that he typically goes on every few weeks to build relationships with his clients. He acknowledges that this inhibits the quality of the service he's able to provide, but said he worries he will unknowingly bring in the virus himself. For his clients who have upcoming hearings, visitation is vital for preparation and is the only option right now, he said.

### **Justices: Even during coronavirus outbreak, closing Michigan courts isn't an option**

<https://www.freep.com/story/opinion/contributors/2020/03/21/coronavirus-outbreak-michigan-courts/2885058001/>

- When restaurants close, the public is urged to pick up takeout. But there is no such thing as take-out justice. While courts can postpone routine matters (like traffic tickets), judges and court staff must continue to provide essential services and protect public safety.
- The Michigan Supreme Court has ordered extraordinary measures to mitigate the spread of the coronavirus in our court buildings. Courthouse spaces can have no more than 10 people in them at any time and we have required social distancing. Judges are holding hearings remotely via videoconferencing whenever possible. And they are—for the next few weeks, at least—only hearing essential matters.
- There are some who would prefer we shut our doors altogether and stop going to work. That is not an option. Like the police officers on the front lines of the criminal justice system, our judges must continue to protect the public during this crisis. They must be available to arraign criminal defendants and hear bond motions, to grant personal protection orders, or appoint a guardian when someone's health or safety is in jeopardy, to protect children who are being abused, to incarcerate those who threaten public safety, and to issue emergency orders to address this public health crisis. Courts must continue to solve these problems and to protect the public, even (or especially) in an emergency. We cannot wait until the state of emergency is over to address them.

## **IMMIGRATION/ASYLUM**

### **UN to suspend refugee resettlement abroad due to coronavirus travel restrictions**

<https://www.france24.com/en/20200317-un-to-suspend-refugee-resettlement-abroad-due-to-coronavirus-travel-restrictions>

- The UN refugee agency (UNHCR) and International Organization for Migration will temporarily suspend sending refugees on to resettle in new permanent homes abroad because of travel disruptions caused by the coronavirus, the agency said Tuesday.

### **Anger builds over virus dangers in immigration courts**

<https://www.politico.com/news/2020/03/17/anger-virus-dangers-immigration-courts-134709>

- As state and federal courts around the country scale back sharply due to the pandemic, most immigration courts pressed on Monday and Tuesday with only minor adjustments, prompting growing outrage from immigration judges, lawyers for immigrants facing deportation and even the attorneys who serve as prosecutors.
- Court observers said proceedings continued with vulnerable immigrants being called in for hearings and some being funneled into crowded holding rooms. And even as places like California moved to a near-lockdown status, the immigration courts pressed on largely as usual, triggering bitter complaints and dire warnings.
- Some of the most pointed complaints came from lawyers involved in hearings stemming from Trump's remain-in-Mexico policy instituted last year, which requires most asylum seekers who enter from Mexico to return to that country to await a chance to appear before a U.S. immigration judge.

## OTHER

### Trending CLE: COVID-19 Collections

[https://www.americanbar.org/groups/departments\\_offices/abacle/trending-cle/](https://www.americanbar.org/groups/departments_offices/abacle/trending-cle/)

- CLE webinars and on-demand products from the American Bar Association addressing the legal implications of the coronavirus pandemic and providing answers to some questions on the effects of the outbreak.

### Global Empowerment Network Community Discussions: COVID-19

<https://community.namati.org/c/covid19/>

- Provides a space for community discussions among grassroots justice groups to ask questions, share advice, or explore ideas about adapting and responding to the ongoing pandemic

### Coronavirus: Rule of law under attack in southeast Europe

<https://www.dw.com/en/coronavirus-rule-of-law-under-attack-in-southeast-europe/a-52905150>

- Discussion of countries in central and southeastern Europe that are using the COVID-19 crisis to undermine the principles and institutions upholding the rule of law

### COVID-19 and Defences in the Law of State Responsibility: Part I

<https://www.ejiltalk.org/covid-19-and-defences-in-the-law-of-state-responsibility-part-i/>

- Talks about defense of force majeure

### COVID-19 and Defences in the Law of State Responsibility: Part II

<https://www.ejiltalk.org/covid-19-and-defences-in-the-law-of-state-responsibility-part-ii/>

- Talks about defense of necessity/distress

### Human Rights Dimensions of COVID-19 Response

[https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#\\_Toc35446580](https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#_Toc35446580)

- A piece by Human Rights Watch going over the applicable human rights law and discussing some of the concerns, such as protection of freedom of expression and access to critical information, the right to education, protecting people in custody, and ensuring quarantines/lockdowns/travel bans comply with relevant norms.

### Anticipation, preparation, resilience: Key lessons for organizations responding to COVID-19

<https://hub.jhu.edu/2020/03/20/sutcliffe-covid-19-q-and-a/>

- An interview with an organizational theory expert discussing how the private and public sector can/should respond, such as “resilience-in-action.”