

# REMOTE HEARING TOOLKIT



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## Background

The COVID-19 outbreak that began in late 2019 evolved rapidly and globally. The pandemic, and subsequent policy and security measures taken in response, impacted the administration of justice in every legal system around the globe. One of the greatest impacts is that lockdown measures and social distancing rendered in-person hearings challenging or impossible. The disruption to conducting hearings and other judicial proceedings has the potential to significantly undermine access to justice, due process, and civil and human rights.

In response, the Justice and Corrections Service of the Office of Rule of Law and Security Institutions (OROLSI/JCS), in partnership with the Division for Peace of the United Nations for Training and Research (UNITAR), created this Toolkit on Remote Hearing Decision-Making.

The Toolkit will help determine whether and how to use audio, videoconferencing, and other technologies to conduct remote hearings when in-person hearings are not feasible.

Given the wide variation in settings where hearings are conducted, it is not possible to provide uniform or prescriptive advice about using remote hearings. It is a decision for the courts to make, governed by local needs, conditions, and capacities. Instead, this Toolkit provides a decision-making framework and resources so that stakeholders can arrive at appropriate solutions for their particular contexts.

The Toolkit may be used by all varieties of legal stakeholders – ministry officials, judges, prosecutors, lawyers, court officials, and others – responsible for the administration of justice in challenging environments.

It should be considered not only as an immediate response to COVID-19 but also for longer-term planning. The establishment of remote alternatives to court hearings and other legal proceedings may help improve access to justice in contexts where insecurity, limited transport, logistical and other obstacles will continue to severely hamper the delivery of justice services.



## **Defining remote hearings**

As a result of the COVID-19 outbreak, courts around the world are rapidly introducing remote hearings in various forms, including audio hearings (largely by telephone), video hearings (by videoconference platform), and paper hearings (decisions delivered on the basis of paper submissions).<sup>1</sup> There are many synonymous terms for remote hearings, including but not limited to: virtual hearings, tele-hearings, electronic or e-hearings, teleconference hearings, etc. For the purposes of this Toolkit, we use the term remote hearings to refer to any hearing or other judicial proceeding, which is not conducted entirely in person.

Remote hearings are not a new invention. Many jurisdictions, such as international arbitration centers, have used remote hearings – or a hybrid of in-person and remote elements – to increase access and efficiency since long before COVID-19. But the global geographic scope and unprecedented impact of COVID-19 means that remote hearings now have the potential to be a strategic, if not necessary, option in nearly all jurisdictions.

Before adopting the use of remote hearings, however, courts and other judicial and arbitral bodies must carefully consider and plan. The use of remote hearings has many legal, technical, organizational, and rights-related implications that present both opportunities and challenges. This Toolkit will assist stakeholders to conduct a thorough decision-making and planning process.



## **Contextual considerations**

This Toolkit specifically focuses on whether and how to use remote hearings in lower-resourced contexts, such as United Nations Missions and other fragile non-mission settings. Circumstances in such settings create additional considerations above and beyond those previewed above that all legal stakeholders must consider.

Lack of funding, legal constraints, limited access or exposure to technology, limited or no access to electricity, and low levels of literacy will inevitably create barriers to implementing remote hearings in a way that ensures quality and due process.

The Toolkit will assist stakeholders to assess whether and how such challenges can be overcome or mitigated. Examples include incremental implementation, support from field missions, Country Teams and international actors, and innovative approaches based on local practices. The final section of the Toolkit includes examples of available support, as well as links to relevant resources.

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**POSSIBLY**



**NO**

**YES**

**YES**

**PERMITTED  
UNDER SPECIFIC  
CIRCUMSTANCES**

**NO**

**BRANCH 1**  
**LEGAL**  
**PERMISSIBILITY**



The threshold question when considering implementing remote hearings in place of in-person hearings is whether governing law permits their use. This involves assessing general permissibility based on statutes and rules and, where prohibitions or barriers exist, determining whether the relevant laws can be amended or suspended. It also requires considering permissibility in the context of decisions made on behalf of the legal sector, e.g. if the government is rolling out a national initiative, individual courts should follow those directives as opposed to implementing ad hoc solutions.

The questions below pertain to legal permissibility.

They provide guidance when permissibility of conducting remote hearings is uncertain or subject to any legal barriers.

## General and case-specific legal permissibility

Click on the answer that applies.



### 1. Is using phone and/or video technology to conduct remote hearings and legal proceedings permissible under current national legislation?

- In Civil Law jurisdictions, look first to the national Constitution and law(s) of procedure. <sup>2</sup>
- In Common Law jurisdictions, look to the national Constitution and relevant procedural and case law. <sup>3</sup>
- In Islamic Law, look to the primary sources of law as well as the specific schools of jurisprudence relevant to the context. <sup>4</sup>
- Consider also whether, in the context of COVID-19, conducting remote hearings has been made permissible as a temporary public health / state of emergency measure.



Y/N



## 1.1 If permissible,

**are there any restrictions or conditions on whether and how phone and/or video technology may be used to conduct remote hearings?**

 Consider in particular:

- Due process, including whether it is possible to require parties to participate in remote hearings, or merely offer them as an option; <sup>5</sup>
- Civil, criminal, commercial, and administrative procedure laws;
- Criminal sentencing rules, including the application of the death penalty; <sup>6</sup>
- Cyberlaw and security (which will be revisited in the Technological & Security section);
- Rules about confidentiality and attorney-client privilege.

## 1.2 If permissibility is uncertain or vague,

**is permissibility unclear because of specific language or terms in the relevant law(s), or because the law doesn't appear to directly address the issue?**

-  Clearly articulate what is uncertain or unclear before proceeding;
-  From what legal body or institution might you seek clarity and guidance?
-  Are there examples of comparable use of phone or video technology by other administrative bodies for the purpose of conducting government affairs that may be informative and, if so, can you discover whether they assessed legal permissibility?
-  Are there countries with sufficiently similar legal systems, frameworks, and practices whose response to COVID-19 and using remote hearings may be informative?



## **Y/N** 1.3 If permissible with restrictions or conditions,

**can and should relevant restrictive statutes be amended by legislation, regulation, or decree?**<sup>7</sup>

- Are there any foreseeable risks to lifting restrictions on using technology for remote hearings? If uncertain, you may consider consulting with stakeholders to identify and address any concerns with using remote hearings;
- Whose participation would be required for such an amendment? Would additional participation, e.g. in the form of an expert or advisory opinion, be helpful?<sup>8</sup>
- What is the likelihood of success?

## **X** 1.4 If impermissible,

**can amendments be made to existing legislation or can new legislation be promulgated to allow for remote hearings?**<sup>9</sup>

 Consider and weigh a variety of factors when deciding the form and substance of legislation, including but not limited to: <sup>10</sup>

- Emergency legislation <sup>11</sup> versus durable law, i.e. the need for an expedient response to COVID-related disruptions to the administration of justice versus the opportunity to create durable legislation <sup>12</sup> allowing for remote hearings;
- The possibility of issuing a decree or decision under an existing emergency or procedural law;
- Legislation that grants broad power to conduct remote hearings versus detailed and restricted powers; <sup>13</sup>
- Whether and how countries comparable in terms of legal system, framework, and administration have legislated the use of technology to conduct remote hearings.



## 1.5 For what types of cases or proceedings are remote hearings legally permissible?



Refer to research and analysis undertaken in [Question 1](#).

Consider cataloging cases by type and remote hearing permissibility like [this example](#).

## 1.6 Of the legally eligible cases and proceedings, which are appropriate for remote hearings?

Consider also which cases should receive priority, particularly with respect to parties' rights, preferences, and public interest.<sup>14</sup>

## Implementation-related permissibility

### 1.7. Will remote hearings be implemented at the national level, by local jurisdiction, or by individual judge/court? <sup>15</sup>

**Court officials should consider:**

- A national approach will provide greater uniformity across the country and may create more options for support resources, e.g. via foreign-funded legal development initiatives; however, a national approach may not be feasible due to insufficient stakeholder buy-in, structural barriers, lack of funding, or inability to implement at scale.
- A local solution will provide greater uniformity for court users in that local jurisdiction; however, it may be infeasible or challenging for the similar resource and coordination challenges that exist at the national level.
- A court official may choose to use remote hearings for an individual court. An individual solution allows intrepid court officials to continue administering justice to minimize backlog; however, it may be infeasible or challenging due to lack of technological capacity and/or access, and insufficient human resources for successful design and implementation.



If national level approach,

## 1.8 Will it involve the creation of a dedicated body within the justice administration entrusted with strategic planning and implementation of videoconferencing? <sup>16</sup>

**If yes**, ensure that those tasked with the responsibility are involved in the assessment and decision-making process.

**If no**, is it clear who within the system will have the authority to act on any devised plans?

## 1.9 Will the aim be to bring every judge or court online at once or on a rolling basis?

🔍 Consider issues of feasibility, capacity, gathering feedback and observations to improve the process.

## 1.10 If operating in a subnational court system, has research been undertaken to determine whether steps have been taken to implement remote hearings at a higher judicial level?

🔍 **If yes**, and plans are underway, consider consulting the above judicial level for resources and guidance as to legality and best practices.

🔍 **If yes**, but plans are not yet underway, consider adopting uniform approaches for greater coherence and to create the possibility of collaboration.

🔍 **If no**, determine how to discover what, if any, efforts are being undertaken at other judicial levels.



# BRANCH 2

# TECHNICAL

# & SECURITY ASPECTS



In remote hearings, judicial services are provided by courts to the public through technological means. This implies taking into account available technological resources, human resources and capacity, and cybersecurity, among other elements. The decision-making process entails strategic planning, as well as detailed tactical planning that is closely tailored to national and local circumstances.

The questions below will help determine whether the requisite technological, human and security capacity exists and, if not, whether and how to acquire it.

## Technological platform

### 2. Is phone or videoconferencing being used by other national government or administrative services?

 **If yes**, conduct consultations to learn from their experience.

 **If no**, proceed to the next question.

#### 2.1 What technology is being considered to use?

 Several technology options can be used to facilitate virtual hearings. The simplest to implement are audio hearings; however, using only audio technology limits what can be accomplished. Videoconferencing provides more robust features enabling most types of hearings.<sup>17</sup>



## Where considering telephone only:

### 2.2 Can the court guarantee that all parties will be able to access a phone call?

- How will the court establish whether participants have access and do not have disabilities that prevent them from participating, e.g. hearing impairment?
- If participants are low-income and credit is required for phone calls, is the court able to provide alternative access or vouchers?

 Particularly for national or regional efforts, coordinating with telecom providers may be desirable and/or necessary.

 **If no**, consider whether an internet-based audio platform is a preferable option ([see questions about access](#)).

If participants are in low-coverage areas,

 Consider whether an [internet-based audio platform](#) is a preferable option.

 If participants are hearing impaired, consider using video technology.

### 2.3 Is the court prepared and equipped to host a multi-line conference call?

- Does the Court have personnel skilled in audio and internet technology who can provide trainings to judges and legal practitioners?
  - If not**, does the court have a budget to hire such assistance, OR
  - Are there other ways to increase technical capacity, e.g. providing online trainings, bringing in a short-term consultant, etc.?



## 2.4 If internet-based audio<sup>18</sup> or videoconferencing:<sup>19</sup>

Is internet available in the given jurisdiction so that parties, counsel and/or witnesses are able to access internet-based hearings?

**If yes**, how will it be confirmed that participants have internet access prior to the hearing?

Consider having participants [test their internet connectivity and speed](#).<sup>20</sup>

Consider creating a pre-hearing test protocol that all participants follow prior to the hearing to verify that they will be able to use the technology.

**If yes**, but it is only available at cost, how will the court guarantee access of all participants?

Consider whether telecom companies can be consulted about providing vouchers and free access for court proceedings.

**If yes**, but service is unreliable or weak, can telecom companies be consulted about increasing internet capabilities?

**If yes**, consider the stakeholders who must be involved on the telecommunication and legal sides to move forward with such a project.

**If no**, revert to questions about using phone audio.



**If yes**, how will the court establish that participants do not have disabilities that prevent them from participating, e.g. sight impairment?

**If no**, is there a strategy to boost Internet capacity to bring connectivity to areas without?

## 2.5 Does the nature of the case or hearing require specialized videoconferencing technology?

 Consider that some hearings are more complex and may involve elements that require specialized platforms that can accommodate witness examinations, extensive use of exhibits, and/or simultaneous translation services.

- Will it be necessary to share slide presentations (e.g., PowerPoint) with participants?
- Does the platform allow for private communications between individual participants?
- Does the platform allow for breakout “rooms” during breaks?
- Is the platform better suited for simultaneous or consecutive interpretation?

 If the answer to any of these questions is **yes**, a paid videoconference service created specifically for judicial proceedings may need to be considered. **See an example.**





## 2.6 Does the technology enable public access where required or desired?

 Consider that many jurisdictions legally require that hearings be available to the public. There are helpful examples of how various courts have satisfied this requirement using tools and live feeds for remote hearings.

- How is the public going to be made aware of their ability to access remote hearings?
- Can advocacy and legal services organizations be mobilized to conduct public outreach?

## 2.7 Is it feasible to use multiple methods simultaneously should one method fail?

 Be prepared for internet connections to fail and consider using backup phone audio.

- Are there protocols to follow if the entire platform cuts out, or if a participant's connection is lost and they cannot log back into the hearing room?

**If yes**, how will the information be disseminated to hearing participants?

**If no**, who will prepare such protocols before launching remote hearings?



## Hardware and software requirements

### 2.8 Will each participant be able to connect to the hearing from a personal device or from a technology-equipped conference room?

- If yes** and participants are accessing from a personal device, is the virtual hearing platform compatible with the device's operating system?
  - Will screens be able to clearly display documents and other information, such as exhibits or transcripts, for all who would be entitled to view such documents in a live hearing?
  
- If yes** and participants will be able to convene and access the hearing in a conference room,
  - Does each room have a sufficient number of speakers and microphones to accommodate all participants?
  - Are any local safety measures in effect, such as social distancing or shelter-in-place, and, if so, is there any risk they will be violated by participants convening to access the remote hearing?
  
- If no**, stop and consider whether it is feasible to host remote hearings in such a way to satisfy obligations to provide access to justice.



## 2.9 Does the selected technology require participants to have proprietary software?

**If yes**, first consider that this will likely limit the ability of some participants to attend, which may implicate their rights and/or general procedural fairness.

To ensure success, court leaders should prioritize solutions that can be operated with the simplest and broadest array of equipment that is most readily available to all potential participants.<sup>21</sup>

**If yes** and specialized software or hardware is required for participants to participate, determine who is responsible for providing it and bearing the cost.

**If no**, proceed.

## Recording and archiving hearings

### 2.10 Is recording remote hearings in video or audio files to maintain as part of the judicial record being considered?<sup>22</sup>

- Does legislation allow for recording court proceedings? If so, under what conditions?<sup>23</sup>
- Will reviewing courts be authorized, able, and willing to accept the electronic recording as the official record?
- Does the selected remote hearing platform have the capacity to generate a recording?

**If yes**, can the files generated be safely stored and maintained?

**If no**, is there a method for simultaneously recording the proceeding on a separate platform?

**If no**, will the hearings be transcribed to create a written record?



## 2.11 Do you have an established electronic court filing system?

**If yes**, how will recordings of remote hearings be archived within the existing system?

-  Assess whether the storage system is sufficiently large and secure. Audio and video files often require more space than is available on local storage, but Cloud storage is less secure;
-  If storage is through a third-party, carefully review the terms of any contract or licensing agreement to see who owns the recordings or court-generated data to ensure that data is not misused;
-  Consider the additional staff and/or training and support required to competently archive recordings of remote hearings.

**If no**, can the system be established? <sup>24</sup>

-  **If yes**, consider what steps will be required to put a system in place, the support needed, and how digital files of remote hearings will be maintained in the interim.
-  **If no**, confirm that written transcripts of all remote hearings can be generated and stored.



## Cyber and data security

 Confirm that the planned technological platform will adhere to the laws and rules governing cyber- and data-security, confidentiality, and attorney-client privilege.<sup>25</sup>

**2.12 Can connections to the remote hearing platform be secured? Consider all security threats, including hackers, participants creating unauthorized video or audio recordings, etc.**

 **If yes**, proceed;

 **If no**, conduct research about cybersecurity measures, e.g. protected access or encryption, to determine whether there are options for ensuring security; If no options can be determined, stop and consider whether it is feasible to host remote hearings in such a way that you satisfy your legal obligations.

**2.13 How will document and data security be ensured during and after hearings?**

How will referenced documents be viewed by the court and the other parties (e.g., by sharing a screen or by reference to the electronic materials in the possession of parties and the court)?

How will any private or sensitive information be referred to and protected during and after the hearing?

 **2.14 Consider what, if any, additional security standards or protocols should be established given risks particular to the given jurisdiction?**<sup>26</sup>



# **BRANCH 3** **ORGANIZATIONAL & LOGISTICAL CAPACITIES**



In remote hearings, judicial services are provided by courts to the public through technological means. Providing this service effectively requires organizational and logistical planning and execution. This decision-making process emphasizes strategic planning but be aware that it will need to be followed by detailed tactical planning that is closely tailored to the circumstances.

The questions below will help determine whether there is the requisite organizational and logistical capacity in place and, if not, whether and how to acquire it.

## Immediate organizational considerations

### 3. Taking into consideration the previous answers regarding legal permissibility and technology and security, does the court or jurisdiction in question have the organizational and logistical capacity to conduct remote hearings? Consider, at minimum, the following factors. <sup>27</sup>

- Internet, e.g. sufficient internet bandwidth to support as many remote hearings as may be conducted at a single time;
- Electricity, e.g. sufficient and reliable electricity to support all technology required for remote hearings;
- Hardware, e.g. computers and (if necessary) webcams, microphones and other technology-enhancing hardware;
- Software, e.g. access to online court conferencing applications;
- Physical space, e.g. appropriate space for court personnel to conduct remote hearings if at the courthouse; personal protective equipment for anyone required to be in-person at the courthouse;
- Dedicated personnel for IT support, to provide trainings on remote hearing technology and/or procedure, etc. <sup>28</sup>



## ? If capacity is unknown

- 🔍 Complete a thorough logistical needs assessment for remote hearing including existing and required technical items, maintenance, services and other equipment that are available or needed.
- 🔍 If it has been determined that other administrative bodies are already using phone or video technology to conduct operations, do research and/or consultations to learn how they are meeting logistical and organizational needs.

## ? If capacity is known but incomplete

- From what institutions or donors can support be obtained?
- Is capacity unclear because courts are skeptical that personnel will be able to effectively learn and use the technology necessary to conduct remote hearings?

### If yes,

- Can trainings be offered to increase court employees' technological capacity?
- Is it possible to begin with a pilot project and/or offer remote hearings in limited scope, using the lessons learned to build confidence and capacity?



## If no capacities

**If there are generally no capacities, can the logistical needs be developed internally or provided by a third party?**

**If yes**, identify what is needed, who needs to be consulted, and what steps must be taken to meet the need.

**If no**, can courts adopt other solutions like the following which have been undertaken by other jurisdictions:

 Amend laws or freeze enforceability of certain laws to mitigate challenges created by COVID-19, e.g. <sup>29</sup>

- Halting eviction proceedings for non-payment of rental fees; <sup>30</sup>
- Extending litigation deadlines and/or waiving statutes of limitations in certain cases;
- Providing amnesty or alternative options for imprisonment in case governments cannot provide timely court services;
- Encouraging parties to consider alternative dispute resolution methods and other out-of-court settlements;
- In administrative cases, freezing collections and/or ordering administrative agencies to continue providing services;
- Emergency allocation of existing resources from another government agency.



### 3.1 Taking into consideration the previous answers regarding legal permissibility and technology and security, what services can and should the court provide to enable participants to participate in remote hearings? This is particularly important in cases involving unrepresented parties.<sup>31</sup>



#### Consider technical support

- Information or training about the hearing format and technology;
- Guidance on what to do if technology issues happen during the hearing;



#### Consider procedural support

- Information or training about the format of, procedure for, and timetable for the exchange of any documents before and during the hearing;
- Information or training about the procedures for witnesses or other necessary parties at the hearing, including how documents will be shown during examinations;



#### Consider communication or public relations support<sup>32</sup>

- Outreach to inform the public about the use of remote hearings; <sup>33</sup>
- Means for the public to access remote hearings, e.g. streaming to a dedicated live feed or channel;
- Outreach about access to archived remote hearing recordings;
- Any necessary language interpretation or translation;
- Any necessary court reporting services;
- Any support necessary to accommodate disabilities, cultural differences, and / or illiteracy.



### 3.2 Has logistical planning been done to ensure that the court and other conference participants have advance copies of evidence, hearing documents, and/or presentations?

- If yes**, proceed.
- If no**, assess the document- and evidence-related needs to conduct in-person hearings and consider what will be required to enable remote hearings. <sup>34</sup>

## Legal sector harmonization

### 3.3 If remote courts are being implemented at the national level, what efforts are being made to ensure consistency and quality?

- Who is responsible for oversight of nation wide efforts?
- Is there a database or list tracking the courts, types of cases, and remote hearing modalities being used?
- Is the introduction of technology for remote hearings part of a larger project aimed at increasing the use of technology in the justice sector?
- Who has responsibility for harmonizing the COVID-19 response with larger efforts to increase the use of technology in the courts?
- Is there a large-scale program in development or already being implemented to provide legal practitioners with training and information on remote hearings?



# BRANCH 4

## PROCEDURAL SAFEGUARDS & ACCESS TO JUSTICE



This section focuses on considerations of access to justice and due process when deciding whether and how to implement remote hearings. Courts must strike a balance between responding swiftly to the constraints imposed by COVID-19 while also thoughtfully adopting a holistic and inclusive strategy for ensuring the continued functioning of the justice system and equal access to fair, timely, and effective justice services.

The questions below will help determine whether the plan considered based on the previous three sections adequately protects access to justice and the due process of law.

## Access to justice in individual cases

### 4. Have appropriate hearing procedural accommodations been identified to ensure that courts are not infringing on access to justice? At a minimum, consider the following:

- 🔍 Lack of access to internet or mobile reception;
- 🔍 Lack of access to technological devices like smartphones or computers;
- 🔍 Ability to access
- 🔍 Ability to review evidence and key documents;
- 🔍 Illiteracy;
- 🔍 Disabilities, particularly hearing or visual; <sup>35</sup>
- 🔍 Gender;
- 🔍 Language barriers;
- 🔍 Access to an appropriate physical space to virtually attend a hearing (e.g in the case of homelessness).



 **If yes**, proceed.

 **If no**, review available resources <sup>36</sup> and consider which accommodations are appropriate in the given context.

If the court encourages the use of online alternative dispute resolution methods to process cases more quickly, are the ADR processes guaranteed to protect the domestic and international legal rights of participants? <sup>37</sup>

 **If yes**, proceed.

 **If no**, consider developing a list of court-approved online ADR providers that abide by national and international law.

**4.1 Will a monitoring and assessment system be created to determine whether and how the use of remote hearings in response to COVID-19 impacts access to justice overall, e.g. the effect on case backlogs and user feedback?** <sup>38</sup>

## Specific to criminal defendants

**4.2 What mechanisms exist or can be established to ensure effective access to lawyers, particularly for those in detention, in a way that protects the right to legal advice and representation?**

 Ensure, in particular, that:

- Defendants have access to effective modes of communication with their lawyers before, during, and after proceedings that ensure attorney-client privilege.
- Defendants have the same, if not greater, frequency of contact with lawyers while in detention that they have when represented in-person.
- Defendants are provided access to the technology necessary to participate in proceedings where they would otherwise make an in-person appearance.



## 4.3 How will it be ensured that trying a criminal defendant's case by remote hearing will not contravene the presumption of innocence or otherwise prejudice the defendant's right to a fair trial?

- Do remote hearings allow the defendant to exercise her/his Constitutional and procedural rights? These may include the right to confront witnesses and to be represented by counsel.
- Will criminal defendants be able to participate in the proceedings in a way that allows for the same level of engagement and dignity that they would have in an in-person hearing?
- Can it be ensured that criminal defendants will have timely access to all statements, evidence, and court hearing notices before, during, and following proceedings?
- In cases where criminal defendants are illiterate or not fluent in the language of the court, how will interpretation for proceedings and translation of documents be provided?

## Specific to witnesses and victims

### 4.4 How will witnesses be heard, and what measures can be taken to ensure witness protection?

- Where will witnesses testify? Is there a designated area at the courthouse or other location or will witnesses testify from home?
- What procedures or mechanisms can be put in place to ensure that the victims/witnesses giving evidence remotely are not subject to undue interference, intimidation or pressure?
- What procedures or mechanisms can be put in place to ensure that child victims/witnesses appearing in a court hearing remotely are not subject to improper or undue, interference, intimidation or pressure from their parents, guardians, custodians, caretakers or other responsible person?<sup>40</sup>



- Is there sufficient visual or other information to assess the risk of improper influence?<sup>39</sup>
- Is there technology available to provide the judge a more complete picture of the remote room and its occupants?

#### **4.5 Can alternative ways to assess and demonstrate the credibility of witnesses and evidence in a video- or teleconference hearing be adopted?**

 Consider methods such as:

- Provision of declarations (prepared and provided to the court ahead of time);
- Expanded inquiry into a witness's background to explore credibility issues,
- Expanded inquiry into preliminary matters to demonstrate context for a witness's or attorney's position;
- Selection of videoconference (not merely a teleconference) as a default method of witness-involved hearings so that the court can visually assess credibility and confirm the witness is not being improperly influenced.

- What means can be used to administer the oath in absence of a witness "appearing" in-person?

#### **4.6 Can it be ensured that witnesses and parties, including victims, are afforded the same rights and protections that they would have in an in-person hearing?**

 Consider how to ensure that statements, evidence, court hearing notices are:

- Available to witnesses and victims before, during, and after the hearing;
- Adequately explained for parties to understand their significance; and
- That the needs of illiterate parties and those who do not speak the official language of the court are considered.



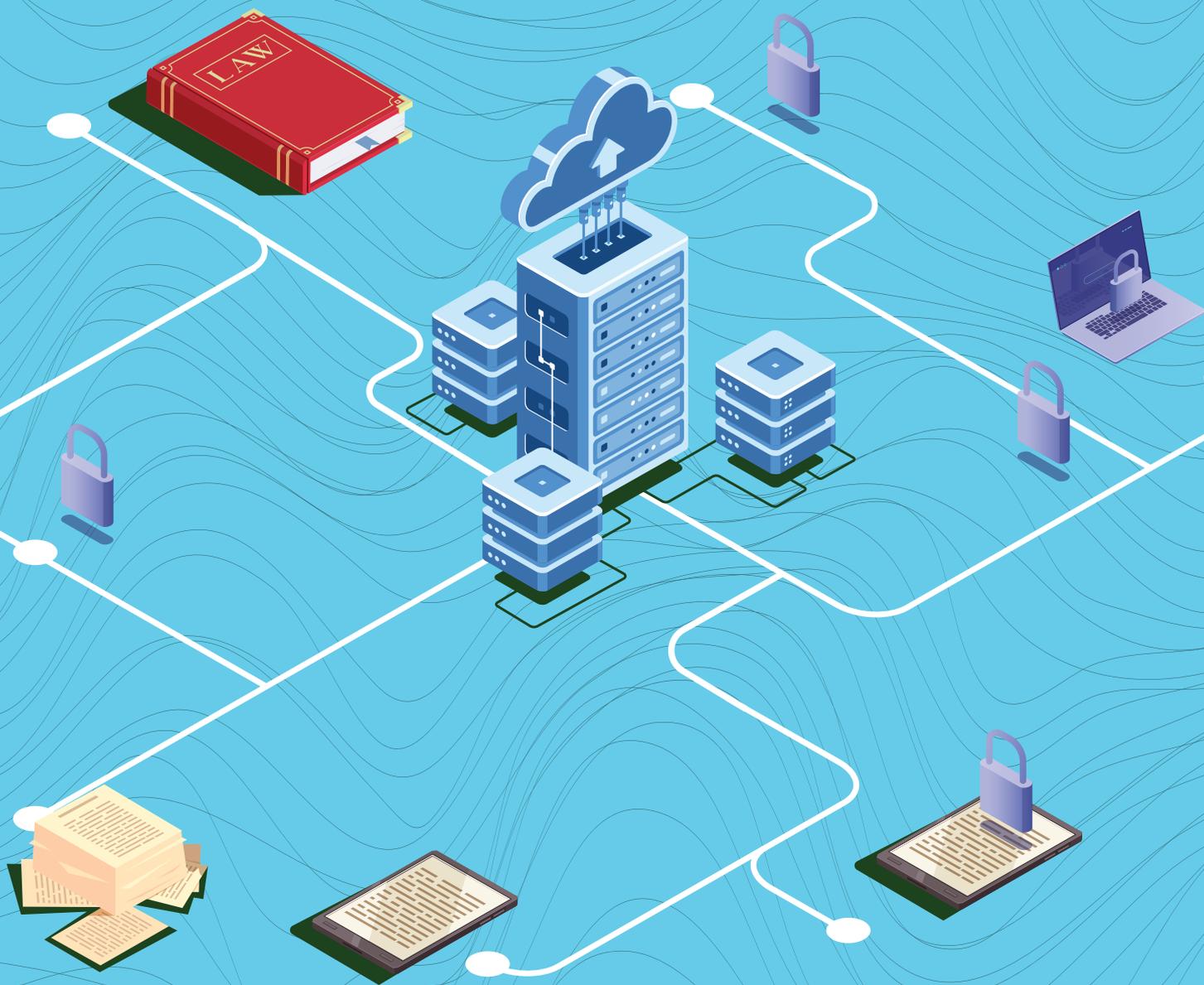
#### **4.7 What measures exist or will be established to ensure that remote hearings are accessible, gender-sensitive, and child-friendly in cases involving women and child victims/witnesses?**

🔍 Examples of measures relating to the design of a remote hearing system include <sup>41</sup>:

- Prioritizing remote hearings cases involving requests for restraining and protection orders.
- Outreach to vulnerable populations, directly or through legal aid providers, community-based paralegals, or relevant civil society organizations, to raise awareness of remote hearings and facilitate engagement.
- Enabling parties to request to postpone the hearing for a reasonable period of time, if appropriate.
- Ensuring that child-specific procedures and safeguards are in place and applied. These may include, but are not limited to, introducing regular breaks into remote hearings accommodate children's shorter attention span.

🔍 Examples of measures relating to conducting remote hearings include:

- Educational training or materials for parties who have little or no previous contact with relevant technologies;
- Appropriate support from qualified professionals for parties required to give accounts of traumatic experiences via technological means;
- Training for judges, prosecutors, and court staff on trauma, gender-based violence, and associated challenges.



# ANALYSIS AND ASSESSMENT LINKS AND OTHER IMPORTANT REFERENCES



## Completing an analysis and assessment

This Toolkit will have enabled you to analyze the four critical aspects of remote hearings: legal, technological & security, organizational & logistical, and procedural safeguards and access to justice. Your analysis should now help you reach a decision about whether and how to proceed with implementing remote hearings.

The assessment will and should look different depending on the context. It will be shaped by the outcomes of the four-part analysis, the contextual considerations, and the events and circumstances in which the decision is being made. As such, it is neither possible nor desirable to prescribe how stakeholders should aggregate the information to reach a conclusion. Instead, below are the important questions to answer, taking the outcomes of your detailed analysis into account:

Will your jurisdiction or court implement remote hearings? If so, under what conditions? Who will be responsible for design, planning, and implementation? What stakeholders must be engaged?

As noted in the beginning, remote hearings should be considered not only as an immediate response to COVID-19 but also for longer-term planning. The establishment of remote hearings may help improve access to justice in contexts where insecurity, limited transport, logistical and other obstacles will continue to severely hamper the delivery of justice services.



## Support from the United Nations

In peacekeeping contexts, supporting national authorities to establish remote alternatives to court hearings and judicial proceedings accords with the call by the Secretary-General to explore innovative approaches that are fit for the future. Remote court hearings can complement other initiatives widely supported by missions to enhance access to justice, including, mobile courts.

For assistance related to the planning, analysis, design or implementation of remote court hearings and judicial proceedings in a peacekeeping or special political mission setting, please contact the **Mission's Chief of the Justice Section**.

In other settings, please contact the **Justice and Corrections Service of the Office of Rule of Law and Security Institutions within the Department of Peace Operations** at [dpko-jcs@un.org](mailto:dpko-jcs@un.org).

The Justice and Corrections Service can help to identify expertise and channel requests to suitable United Nations System partners for assistance to set up remote court hearings.

For further information on the work of the Department of Peace Operations in the area of justice, please follow the links:

 **OROLSI Toolkit**

 **The "Justice" section of the United Nations Peacekeeping website**

To learn more about the United Nations' approach to ensuring access to justice in the context of COVID-19, see:

 **Remote Court Hearings and Judicial Processes in Response to COVID-19 in Mission and other Fragile Settings**, Justice and Corrections Service OROLSI/DPO

 **Guidance Note: Ensuring Access to Justice in the context of COVID-19**, United Nations Office on Drugs and Crime (UNODC) and United Nations Development Program (UNDP)



1. See "Our Purpose," at <http://www.remotecourts.org>

2. See e.g. Germany, Code of Civil Procedure (Zivilprozessordnung, ZPO), Sec 128a, which allows the use of videoconferencing technology without the explicit consent of the parties, subject to certain conditions.

3. See e.g. Canada, courts have a constitutional responsibility to provide access to justice, and that responsibility includes ensuring that cases are heard in the best format available given the circumstances. Superior Courts are established by section 96 of the Constitution Act, 1867 and possess inherent jurisdiction, which was further characterized in *Endean v British Columbia*. That inherent jurisdiction includes both inherent subject matter jurisdiction as well as inherent jurisdiction to control their own processes. The Ontario Superior Court's most recent Notice signals a willingness on the Court's part to embrace its jurisdiction and conduct hearings remotely.

4. The primary sources of Islamic law should be consulted as well as the relevant specific school of thought, e.g. Hanafi Fiqh. For further guidance on conducting research on Sharia law, see <https://library.law.yale.edu/guides/foreign/islamic-law-research-guide>. See e.g. Afghanistan, 'Mandatory Presence of Accused and Options for Remote Trials in Afghanistan'.

5. See e.g. United Kingdom, the Coronavirus Act 2020, s. 55, schedule 25, which provides that a court "may" direct public access or recording of proceedings, which undermines the principle of open justice.

6. As a matter of policy, the United Nations opposes the application of the death penalty in all circumstances and advocates for its abolition worldwide and continues working on concrete measures to assist States' efforts to bring this practice to an end. Consequently, the United Nations will not provide support to the establishment of courts and tribunals where the death penalty is a sentencing option or where it is imposed and carried out. The United Nations will also not provide support to criminal proceedings in which there is real risk that capital punishment will be carried out.

7. See e.g. Uganda, Administrative and Contingency Measures to Prevent and Mitigate the Spread of the Corona Virus (COVID-19) by the Judiciary, allowing court hearings via video link. Available at: [https://ulii.org/system/files/Chief%20Justice%20Circular%20on%20COVID-19\\_recognized.pdf](https://ulii.org/system/files/Chief%20Justice%20Circular%20on%20COVID-19_recognized.pdf) (last accessed 10 July 2020);

See e.g. South Africa, Directives Issued by Chief Justice Mogoeng Mogoeng in Terms of Section 8(3)(b) of the Superior Courts Act 10 of 2013 for the Management of Courts During the Lockdown Period, which allows hearings through videoconferencing or electronic means. Available at: <http://www.saflii.org/za/other/ZARC/2020/32.pdf> (last accessed 15 July 2020).

8. For guidance on how to answer these and relevant questions about statutory amendments, see <https://rm.coe.int/european-commission-for-efficiencyof-justice-cepej-checklist-for-promo/16807475cf> (last accessed 20 August 2020).

9. See e.g. Malawi, the Public Health Act, Public Health (Corona Virus Prevention, Containment and Management) Rules, 2020, Government Notice 5 of 2020, s. 18 (Judicial Proceedings), allowing a judicial officer the use of electronic means of hearing, conducting and disposing of a matter as a primary means, including the service of documents, actual hearing of the parties, receiving evidence and making determinations. Available at: <https://africanlii.org/akn/mw/act/gn/2020/5> (last accessed: 13 July 2020)

10. For a thorough discussion of the factors to consider, see <https://rm.coe.int/european-commission-for-efficiencyof-justice-cepej-checklist-for-promo/16807475cf> (last accessed 20 August 2020).

11. See e.g. Austria, 1. COVID-19 Justizbegleitgesetz, §3(1), which allows the use of video-technology in civil court hearings, provided that the involved parties in the proceedings agree and have access to the appropriate equipment. The Act also provides for the hearings of witnesses, experts, interpreters and other affected parties. The law will be in force for a limited period until 31 December 2020. (See also: <https://www.upskillinglawyers.com/remotecourts-in-austria/>)

12. See e.g. Bangladesh, where the ordinance titled "Usage of Information and Communication Technology in Court 2020" allowed courts to reopen virtually. Available at: <https://tbsnews.net/thoughts/law-e-judiciary-might-change-bangladesh-courts-forever-84148> (last accessed 20 August 2020)



13. See e.g. Norway, which passed a legislation limiting the right to appear in person before a court while increasing the types of proceedings in which a court can require participants to appear via video link. Available at: <https://perma.cc/RRK2-N8VS> (last accessed 10 June 2020).

14. See page 14 of [https://www.unodc.org/documents/Advocacy-Section/Ensuring\\_Access\\_to\\_Justice\\_in\\_the\\_Context\\_of\\_COVID-191.pdf](https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf) (last accessed 20 August 2020) and pages 1-2 of [https://www.ncsc.org/\\_data/assets/pdf\\_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf](https://www.ncsc.org/_data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf) (last accessed 20 August 2020) for guidance on how to select and prioritize the types of cases appropriate for remote hearings.

They may or may not be relevant to your legal context.

15. For a discussion of the strategic considerations when deciding which courts and types of cases are appropriate for remote hearings, see <https://www.ncjfcj.org/wp-content/uploads/2020/04/COSA-NSCSC-and-NACM-JTC-Response-Bulletin-Strategic-Issues-to-Consider-When-Starting-Virtual-Hearings-.pdf> (last accessed 20 August 2020).

16. JTC Quick Response Bulletin: Strategic Issues to Consider when Considering Starting Virtual Hearings, Version 1.0. (7 April 2020). Available at: <https://www.ncjfcj.org/wp-content/uploads/2020/04/COSA-NSCSC-and-NACM-JTC-Response-Bulletin-Strategic-Issues-to-Consider-When-Starting-Virtual-Hearings-.pdf> (last accessed 20 August 2020).

17. See e.g. Morocco: 362 remote hearings held from 29 June to 3 July 2020. Available at: <http://www.mapnews.ma/en/actualites/social/remote-trials-362-remote-hearings-june-29-july-3-cspj> (last accessed 10 July 2020)

18. For internet audio, jurisdictions have embraced applications like WhatsApp and GoogleVoice in the wake of COVID-19 and additional applications are regularly developed. In selecting a particular application, you should consider factors like stakeholders' pre-existing familiarity and use, privacy, necessary features.

19. For internet videoconferencing, jurisdictions have embraced the use of videoconferencing programs like Skype and Zoom in the wake of COVID-19. Many of these platforms support screen sharing so that participants may show slides and exhibits. These services also offer multiple connection methods so that participants can connect and participate across multiple devices. In selecting a particular application, you should consider factors like stakeholders' pre-existing familiarity and use, privacy, necessary features. We will also want to find the most appropriate spot to link resources, like this suggested checklist for preparing for remote videoconference hearings: [Checklist: Preparing Your System for a Remote Hearing](#)

20. There are websites like <https://www.speedtest.net/> that can be used to test internet speeds.

21. JTC Quick Response Bulletin: Strategic Issues to Consider when Considering Starting Virtual Hearings, Version 1.0. (7 April 2020). Available at: <https://www.ncjfcj.org/wp-content/uploads/2020/04/COSA-NSCSC-and-NACM-JTC-Response-Bulletin-Strategic-Issues-to-Consider-When-Starting-Virtual-Hearings-.pdf> (last accessed 20 August 2020).

22. See e.g. <https://www.idpcyber.com/defending-against-covid-19-cyber-scams/> (Last accessed 5 June 2020)

23. See e.g. Coronavirus Act, Schedule 25, s. 85A. Available at: <http://www.legislation.gov.uk/ukpga/2020/7/schedule/25/enacted> (Last accessed 28 May 2020)

24. See e.g. <https://www.courtserve.net> (Last accessed: 4 June 2020)

25. <https://www.idpcyber.com/defending-against-covid-19-cyber-scams/> (last accessed 5 June 2020).

26. See e.g. South Africa, Practice Direction – Supreme Court of Appeal Video or Audio Hearings During COVID-19 Pandemic, introduces directives regulating the manner in which hearings are conducted in the Supreme Court of Appeal. Available at: <https://www.supremecourtofappeal.org.za/index.php/2-uncategorised/46-practice-directions> (last accessed 15 July 2020).



27. The following checklist provides a sense of what to consider in terms of organizational and logistical needs and may or may not be relevant to your context: [https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/BestPracticesRemoteHearings/Overview\\_of\\_the\\_Best\\_Practices\\_for\\_Remote\\_Hearings\\_May\\_12\\_2020\\_FINAL\\_may13.pdf](https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/BestPracticesRemoteHearings/Overview_of_the_Best_Practices_for_Remote_Hearings_May_12_2020_FINAL_may13.pdf) (last accessed 20 August 2020).
28. The following guide is an example of what could be modified to your context and used to train judges on conducting inclusive remote hearings: <https://www.judiciary.uk/wp-content/uploads/2020/03/Good-Practice-for-Remote-Hearings-May-2020-1.pdf> (last accessed 20 August 2020).
29. See e.g. <https://www.ada-microfinance.org/en/covid-19-crisis/fiche-covid-19-crisis/2020/05/bceao-guide-report-echances-imf-umoa> (last accessed 07 July 2020). See also examples from Ethiopia <https://www.africalegalnetwork.com/covidhub/faqs/litigation> (last accessed 07 July 2020) and Equatorial Guinea <https://www.herbertsmithfreehills.com/latest-thinking/covid-19-initial-responses-of-certain-african-countries-africa> (last accessed 07 July 2020).
30. See e.g. Zimbabwe <https://africanlii.org/sites/default/files/regulations/6330/media/6330.pdf> (Last accessed 07 July 2020).
31. For ideas on how to support self-represented litigants, see <https://gato-docs.its.txstate.edu/jcr:27c725a8-4dbc-44f0-a58a-96a8b121e3d0/Best%20Practices%20for%20Courts%20in%20Zoom%20hearings%20involving%20Self%20Represented%20Litigants.pdf> (last accessed 20 August 2020).
32. For guidance about what to consider and how to make remote hearing publicly available, see pages 14-15 of this document: [https://www.ncsc.org/\\_data/assets/pdf\\_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf](https://www.ncsc.org/_data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf) (last accessed 20 August 2020).
33. See e.g. Kenya: Court Standard Operating Procedures During COVID-19 Pandemic. provides guidance on filing of pleadings. Available at: <https://www.judiciary.go.ke/wp-content/uploads/2020/04/COURT-PROCESSES-DURING-THE-UPSCALING-OF-COURT-SERVICE-AT-MILIMANI-LAW-COURTS.pdf> (last accessed 08 July 2020).
34. See the following guideline which may or may not be applicable to your jurisdiction: [https://www.ncsc.org/\\_data/assets/pdf\\_file/0014/41171/2020-06-24-Managing-Evidence-for-Virtual-Hearings.pdf](https://www.ncsc.org/_data/assets/pdf_file/0014/41171/2020-06-24-Managing-Evidence-for-Virtual-Hearings.pdf) (last accessed 20 August 2020).
35. See, e.g. <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf> (last accessed 20 August 2020).
36. See e.g. [https://www.unodc.org/pdf/criminal\\_justice/WA2J\\_Consolidated.pdf](https://www.unodc.org/pdf/criminal_justice/WA2J_Consolidated.pdf) (last accessed 20 August 2020).
37. See: [http://www.courtexcellence.com/\\_data/assets/pdf\\_file/0027/5787/checklistforpromoting.pdf](http://www.courtexcellence.com/_data/assets/pdf_file/0027/5787/checklistforpromoting.pdf) and [https://www.euromed-justice.eu/en/system/files/20090706164940\\_Coe.Checklistforpromotingthequalityofjustice.pdf](https://www.euromed-justice.eu/en/system/files/20090706164940_Coe.Checklistforpromotingthequalityofjustice.pdf) (last accessed 20 August 2020).
38. The following resources has suggestions for protecting access to justice in individual cases: [https://www.unodc.org/documents/Advocacy-Section/Ensuring\\_Access\\_to\\_Justice\\_in\\_the\\_Context\\_of\\_COVID-191.pdf](https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf) (last accessed 17 September 2020).
39. See <https://www.thelawyersdaily.ca/articles/19410/scc-poised-for-first-virtual-appeal-hearing-zoom-observers-to-see-novel-contract-criminal-cases?category=news> (Last accessed 6 June 2020)
40. Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime (2009), United Nations Office on Drugs and Crime. Available at: [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_for\\_Professionals\\_and\\_Policymakers\\_on\\_Justice\\_in\\_Matters\\_Involving\\_Child\\_Victims\\_and\\_Witnesses\\_of\\_Crime.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_for_Professionals_and_Policymakers_on_Justice_in_Matters_Involving_Child_Victims_and_Witnesses_of_Crime.pdf) (last accessed 17 October 2020).
41. For examples of measures to protect children's welfare in remote hearings, see: Capacity-Building Center for Courts, Conducting Effective Remote Hearings in Child Welfare Cases at [https://www.acf.hhs.gov/sites/default/files/cb/covid19\\_conducting\\_effective\\_hearings.pdf](https://www.acf.hhs.gov/sites/default/files/cb/covid19_conducting_effective_hearings.pdf) (last accessed 18 Sept 2020).

# REMOTE HEARING TOOLKIT

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