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We need a justice system that has the capacity to operate so that it can continue to respond effectively to the needs of children notwithstanding the limitations and restrictions imposed by Covid 19 or any other pandemic. For the justice system to be functional we need to identify what interventions are necessary to guarantee that it aligns with the best interests of the child.

Firstly, we need to assess how the restrictions imposed on the operation of the justice system have created pressures and hindered the protection of the best interests of the child?

- A major challenge that has arisen during the pandemic restrictions is the capacity for children to have access to those who represent and protect them within the justice system; namely social workers, those who provide regular interventions and supports (education, health, development etc), engagement with their guardian ad litem or legal representative – and all of these limitations impact negatively upon the protection and representation of children.

More broadly, closures and restrictions have given rise to a lack of timely, or any indeed any access to the courts – which removes a critical platform for the protection of children.

Children in Care/Under State supervision

Children in care or under state supervision have suffered from a changed justice system and the broad issue of inaccessibility. The shutdown of services, the travel restrictions and the prioritisation of non-contact or indeed any physical visits, has led to their isolation, isolated from family if in State care, (where visits would otherwise occur) and from the required services, supports and interventions. In framing a State response to this or any other pandemic, the needs of such vulnerable children must by necessity fall outside the general rules, and States must include from the outset, a specialised, supported and funded response to the needs of children in care or under state supervision, premised upon an underlying presumption that supports must continue. Failing to recognise the unique needs of these children ignores the exceptional needs of these children and causes a devastating break in their required supports structure.

Children in care who have been removed from an abusive home and who may have ordinarily have supervised access with an abusive parent, may because of enforced online access arrangements

have their newly found safe space invaded through electronic means, bringing the arm's length threat directly into their new protective foster or residential home. It is important that access facilitated in this new form must not be presumed to remain in the best interests of the child.

Separately, as regards the State's role in monitoring the wellbeing of children in care or under State supervision, this must be permitted to continue. Replacing in-person hearings may be necessary in the short term, but there needs to be a commitment to supporting the ongoing work of social workers and guardian ad litem. There needs to be an expectation that regular reports are submitted and reviewed, allowing the justice and social work systems to continue to operate to protect and promote the needs of each child.

This leads to the **broader issue of access to justice through the courts** - Where pandemic restrictions might immediately result in a closing of the courts, cases involving children must remain live, and access to the courts for such cases must be categorised under relevant regulations as urgent matters, guaranteeing access where such intervention is in the best interests of children. This must also ensure that the associated supports and access are facilitated, arrangements must be made to allow children to meet with their legal representation, guardian ad litem, social worker or other such support to fully inform the courts or other decision-making body of their current circumstances and evolving needs.

Secondly – Consider instances of threats to the best interests of children during Covid 19, and how we might better respond:

1. Parental separation

Access with non-custodial parents is immediately under threat where restrictions are placed on movement and *inter parte* engagement. In devising national responses to protect against the transmission of the virus, it is vital that regulations identify maintaining access visits between children and parents as a priority. From the outset, national regulations must expressly recognise the need to make exceptions to the travel limitations and restrictions, where maintaining established access routines can be ensured. The starting presumptive position should be an expectation that all existing orders and agreements must be honoured unless exceptional circumstances arise which prevent access as usual, such as

- Health of the child
- Health of the non-custodial parent

- Location of access
- Need to limit exposure to and contact with third parties

Where normal arrangements cannot reasonably be implemented, the State must provide supports to the parents/guardians to facilitate them to make alternative arrangements, through negotiation and agreement – establish and make available designated supports to encourage and facilitate agreement and thus access.

2. Protecting children’s best interests and rights in violence related cases

Universally, rates of domestic and intimate partner violence have increased significantly with Covid restrictions, unquestionably exposing children to even greater danger and abuse. Domestic violence and sexual exploitation have been exacerbated in households at a time when State interventions are significantly limited, causing such dangers to be further hidden from detection. Interventions and continuity of support and protection is crucial. When extending restrictions on movement and access, States must be cognizant of the hidden dangers for children and must protect them by expressly prioritizing access to children by State supports to better allow for the detection of children in danger – which includes

- prioritizing the implementation of existing supervision and care orders;
- prioritizing, through planning, funding and supports, the return of children to school, childcare or other external supportive environments

Additionally, the reporting of domestic abuse offences must be prioritized post pandemic.

In parallel, where member states have released prisoners in order to reduce the spread of the virus in prisons, as the threat lessens States need to revisit these decisions and address any ongoing threats to the safety of children that is posed by these released prisoners. Such decisions must be capable of review and reversal where appropriate.

Importance of clarity and communications

Central to the success of all measures outlined above is the clarity and breadth of the communication of State-led initiatives. There must be a shared response across all aspects of the justice system including courts services, social workers, legal representatives and guardian ad litem, to craft and implement responses from a children’s rights perspective. Further, this approach must be understood by all parties who engage with and support children, to ensure a buy-in and understanding of the child being positioned at the centre of all relevant decisions. Thus, for example, where the State expressly identifies child access visits in the context of parental separation to fall

outside travel restrictions, the State must ensure that there is absolute clarity around this position and that the information is conveyed to the parents, lawyers, and the members of the police force who are enforcing both the restrictions and the exceptions. Without such clarity, confusion and obfuscation will defeat the very best of intentions.