



## **FOREWARD**

***PROFESSOR ALAN PATERSON, CHAIR, INTERNATIONAL LEGAL AID GROUP***

Dear Colleagues,

The dramatic developments in access to justice and legal aid globally due to the COVID virus have led to a burgeoning interest in how other jurisdictions are faring and what initiatives are being taken by governments and legal aid authorities to ameliorate the host of new challenges that the virus has brought. Early out of the blocks has been the Global Access to Justice project whose survey led by Diogo Esteves, which ILAG was delighted to assist with, is reported in this special issue of the ILAG newsletter. I hope you will find the interim findings (further responses would still be welcomed by Diogo) as interesting as I did. Thanks are due not only to Diogo and his colleagues but to our tireless editor, Peter van den Biggelaar and the ILAG webmaster, Paul Ferrie. The UNODP and the UNDP have just issued a guidance note on ensuring access to justice during the COVID-19 pandemic which we will include in the next edition of the newsletter. It will be joined by work by Roger Smith and details about a Canadian initiative by Mark Benton and others to develop a network to explore the legal needs implications of the COVID-19 pandemic and contributing to the development of strategies to address them.

Stay safe and happy reading.

Alan



## **IMPACTS OF COVID-19 ON JUSTICE SYSTEMS**

***ALAN PATERSON, ANNA BARLOW, BRYANT GARTH, CLEBER ALVES, DIOGO ESTEVES, EARL JOHNSON JR., FRANKLYN ROGER, JÚLIO AZEVEDO, KIM ECONOMIDES AND PETER BIGGELAAR***



*Diogo Esteves, Professor of Law at Fesudeperj, Researcher at the Fluminense Federal University's Program of Sociology and Law and Public Defender of State of Rio de Janeiro – Brazil*

### **1. Acknowledgements**

The COVID-19 Survey could not have been accomplished and the Global Access Justice Project itself would not exist without ILAG's cooperation and unconditional support.

We also wish to thank the Global Access to Justice Project researchers, who provided invaluable support throughout the development of the survey.

## **2. Introduction**

The COVID-19 pandemic has taken all nations on the planet by surprise and continues to drive the quest for efficient and effective remedies, both scientific and social, that will contain the spread of this highly contagious virus. In addition to initiating a humanitarian crisis, the outbreak is triggering multiple impacts (social, political, economic, environmental etc.) on the global stage, whose consequences – both negative and positive – were not only unforeseen but remain unpredictable. What is already clear is that COVID has closed down or greatly hampered courts, law firms, law clinics and other providers of legal aid and with it access to justice for many of our societies' most vulnerable and deprived citizens.

In order to assess how severe the impact of COVID has been globally on access to justice, between 7 and 27 April 2020 the Global Access to Justice Project, in cooperation with the International Legal Aid Group (ILAG), initiated an empirical survey to collect both quantitative and qualitative data from across the world. To date the following 54 countries have responded: Australia, Belgium, Brazil, Bulgaria, Bhutan, Cambodia, Canada, Chile, China, Colombia, Cuba, Cyprus, Democratic Republic of Congo, Denmark, Ecuador, Ethiopia, Finland, France, Georgia, Honduras, Hungary, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Kosovo, Laos, Lithuania, Malawi, Maldives, Mongolia, Namibia, Nepal, Netherlands, New Zealand, North Macedonia, Pakistan, Paraguay, Poland, Portugal, Seychelles, Sierra Leone, Singapore, South Africa, Spain, Taiwan, Tajikistan, Tanzania, United States, Vanuatu, Zambia and Zimbabwe.

Given that the pandemic is ongoing, the survey has had to contend with a moving scenario in which the situation in each country is constantly changing and at variable speed. Notwithstanding this highly dynamic, unpredictable and unstable global context, the preliminary survey results provide, we hope, a reasonably up-to-date snapshot of the response of the access to justice movement at this particular moment of the dramatic COVID-19 pandemic.

In summary, the survey looked at some of the negative impacts of COVID-19 on both the supply and demand for legal services from four different angles, that of: (i) a summary, or 'helicopter', overview; (ii) vulnerable groups; (iii) the judicial system; and (iv) the legal aid system.

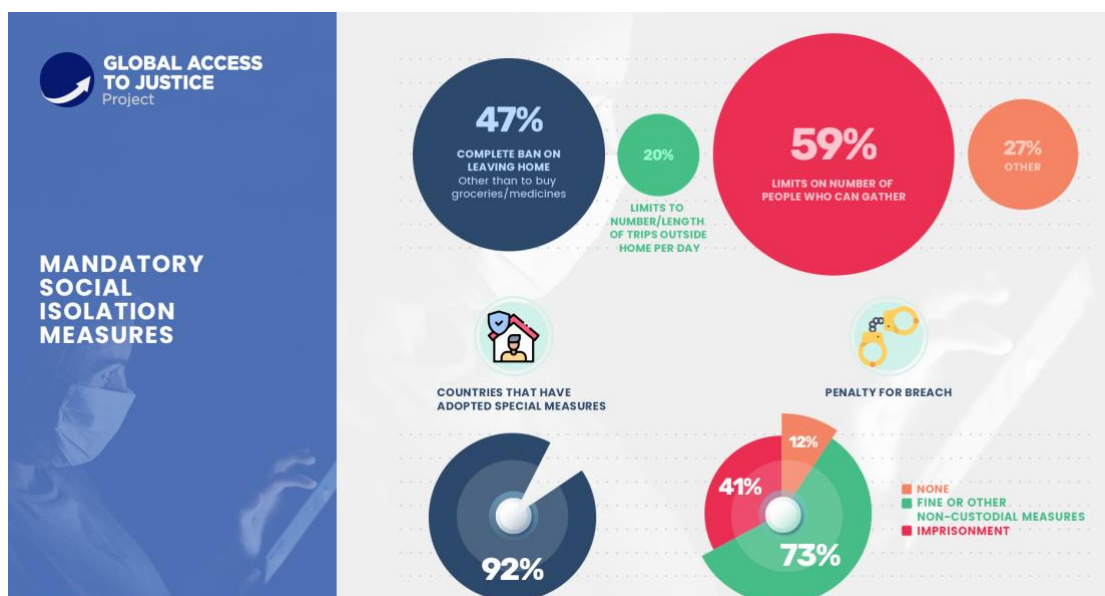
## **3. Overview of COVID-19 Impacts**

From a general standpoint, the survey collected and analyzed information on different measures imposed by national governments in order to curtail the spread of COVID-19. Although the evaluation of these sanitary measures has not been the main focus of the research, the data provides a valuable context that helps explain the responses of judicial and legal aid systems in the face of the outbreak.

According to the survey results, preventative measures such as special hygiene requirements (e.g. social distancing, use of face masks, washing hands frequently, etc.) quickly entered on to the global agenda and were adopted by all of the countries analyzed. In an attempt to flatten the COVID-19 curve and prevent or slow down its transmission, national governments also imposed a range of other measures: travel restrictions from abroad (86%), mandatory closure of educational institutions (94%) and non-essential businesses (76%).

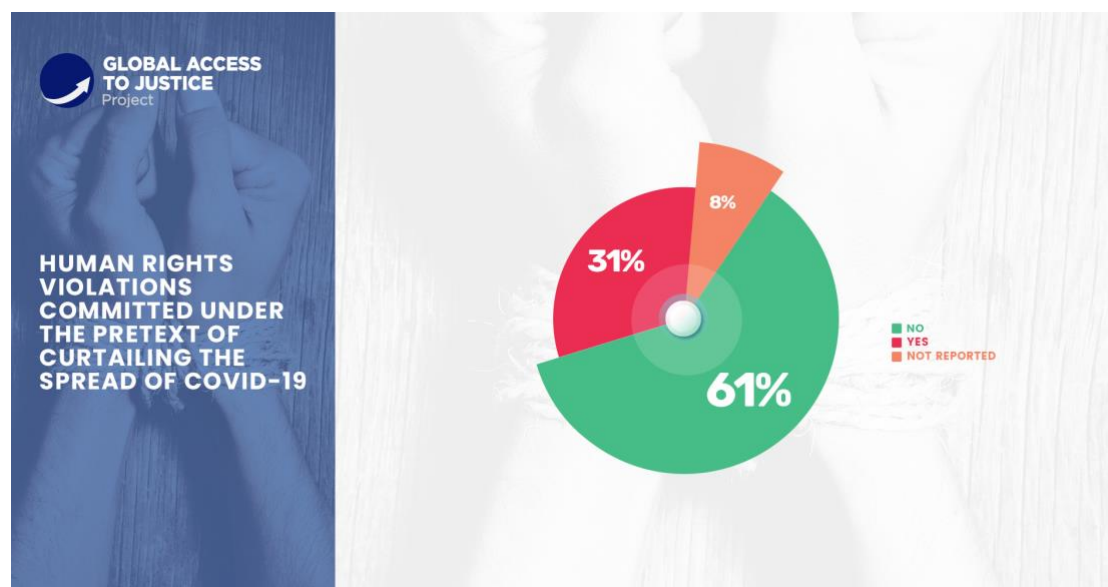


Mandatory social isolation measures were also deployed, to a greater or lesser extent, by 92% of the countries analyzed, and the drastic measure of lockdown (near total ban on leaving home) was adopted by 47% of them, with the penalty of imprisonment (41%) and/or fine (73%) for breach of these preventative measures.

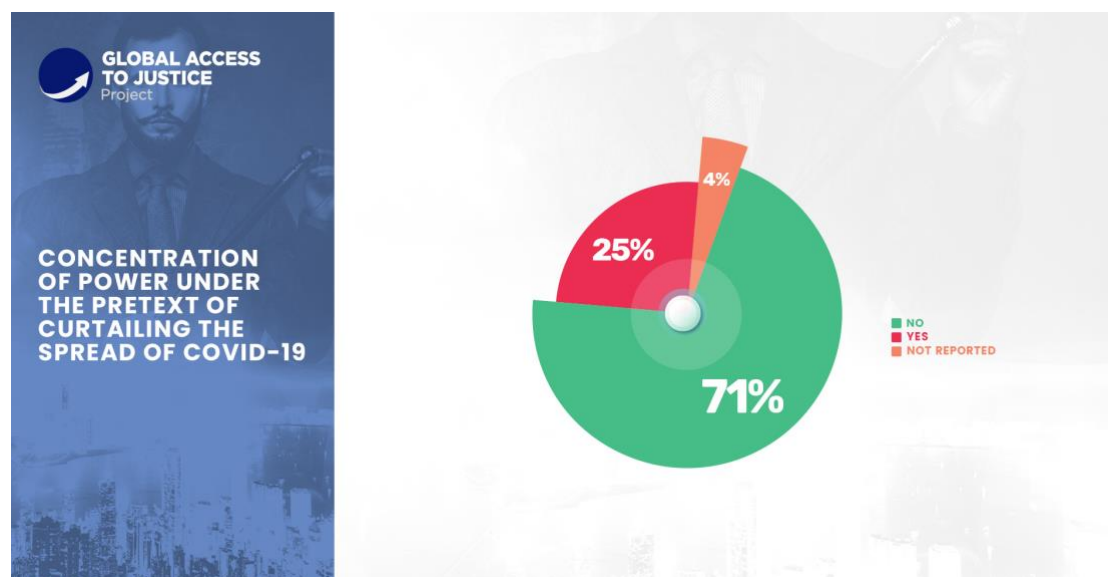


While the pandemic advances and envelops us all, from those living in developed countries to those in low income nations, human rights violations are being committed under the pretext of curtailing the threat of COVID-19 in 31% of the countries analyzed. Data made available by Heal Zimbabwe Trust indicate 27 cases of violence, perpetrated by the Zimbabwe Republic Police and the Zimbabwe National Army, on unarmed civilians who were queuing or searching for mealie-meal and other essential groceries. In Zambia, national experts reported the excessive use of force by police officers during the enforcement of guidelines on preventing the spread of coronavirus. Moreover, in South Africa eight deaths at the hands of police and military for breaches of lockdown remain under investigation. Human rights violations have also been reported in Belgium, Cambodia, Canada, Cyprus, Democratic Republic of Congo, Ethiopia, Hungary, Kenya, Kosovo, Laos, Namibia, Nepal, Pakistan and Poland. Unsurprisingly, there are also examples of the police overstepping the rule of

law by enforcing the Government Guidance rather than what the actual Regulations or Law requires.



The survey also identified that 25% of the countries analyzed had taken coercive measures to concentrate power in the hands of the Head of State (or equivalent governmental authority) under the pretext of curtailing the spread of COVID-19 (e.g. suspending parliament / sittings of the legislature). Perhaps the most draconian example is the “Authorization Act” (Act XII of 2020 on the Containment of the Coronavirus), which allows the Hungarian Government to rule by absolute decree indefinitely, practically without any debate in Parliament or any guarantee of swift and effective judicial review of the constitutionality of such measures.



#### 4. Negative impact of COVID-19 on vulnerable groups

The survey also analyzed the negative impacts of COVID-19 on some vulnerable groups, which were disproportionately affected by the outbreak.



In the context of gender-based and family violence, the data are alarming. In Brazil, the number of femicides increased 44.9% during the quarantine, while other lethal crimes committed against the rest of the population decreased by 19% (data related to the state of São Paulo). In China, the initial focal point of the pandemic, cases of gender-based violence practically doubled during the quarantine period, while Cyprus, France, Singapore and Taiwan all reported an increase of 30%. National experts also reported a significant increase in the number of such incidents in Argentina, Chile, Colombia, England, Italy, Mexico, Nepal, Scotland and Spain. Moreover, according to a survey recently published by Statistics Canada, 12% of young women aged between 15 and 24 were very, or extremely, anxious about the possibility of domestic violence.

The causes of the increase in gender-based and family violence during the pandemic are multifactorial, involving not only the confinement of victims and aggressors, but also the social anomie resulting from the distancing of women and girls from their support and protection networks (friends, family members, non-governmental organizations, etc.). Notwithstanding this evident female vulnerability, a majority of national governments failed to take special preventative measures for gender-based and family violence during lockdown (53%).



It is not only women and girls who have been left behind by public policies. The majority of the countries analyzed also remained passive in not implementing housing solutions for people experiencing homelessness during the outbreak (63%).

In an effort to curtail the spread of COVID-19 in prisons, 47% of the nations analyzed implemented measures for the early release of prisoners. In the vast majority of countries, allocation of prisoners to sole-occupancy cells proved to be impossible mainly due to the overcrowding of prisons (only 14% were able to meet this objective). Limiting visits to prisoners was the most widely used measure, adopted by 92% of the countries analyzed, although the right to be visited by a lawyer was guaranteed by some (e.g. Bulgaria, Ethiopia, Spain). In an effort to mitigate the negative effects of these restrictions, some countries experimented with: the use of videoconferences (e.g. Colombia, Ireland, Hungary), extending the right to make telephone calls (e.g. France, Italy, Netherlands, New Zealand, Singapore) and allowing greater access to television (e.g. France).



## 5. Negative impact of COVID-19 on judicial systems

According to the survey results, 92% of the judicial systems analyzed have adopted special measures in order to protect the health of court staff and court users and/or to mitigate the negative impact of COVID-19 on legal processes. Internal reorganization around remote working for staff (73%), temporary suspension of face-to-face attendance in court buildings (71%) and temporary suspension of court hearings (69%), were the most widely used measures.



While on the plus side mandatory social isolation measures appear in many instances to have motivated justice systems to invest in the use of technology in order to avoid face-to-face contact (78%) it also appears that limited resources and improvised solutions have undermined the capacity to maintain normal levels of access to justice during the pandemic (51% of the countries analyzed).

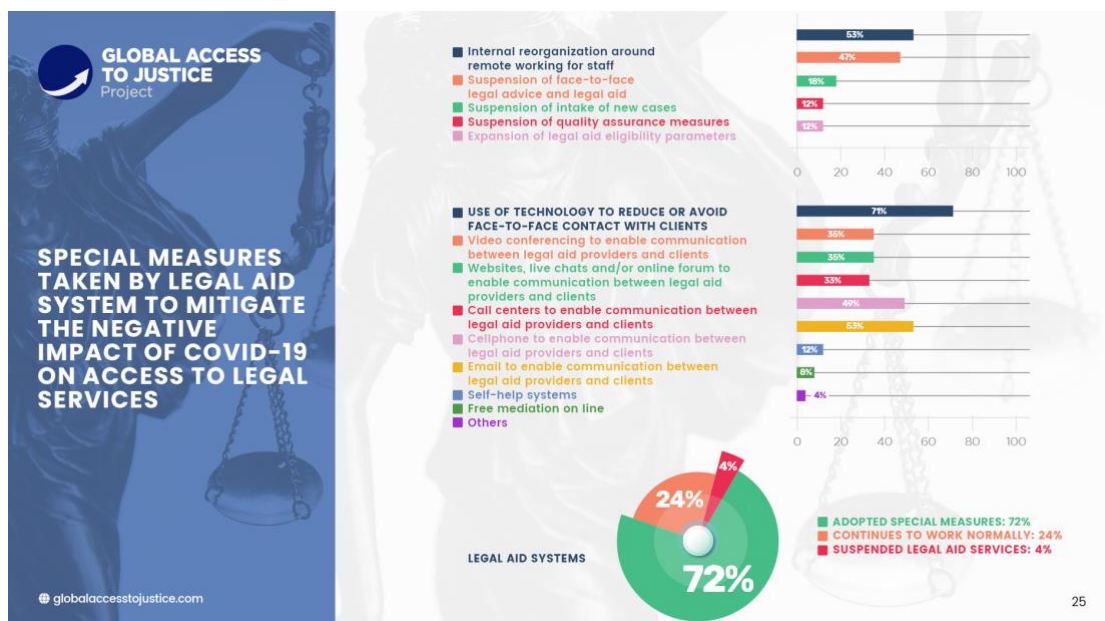


Currently, only 8% of justice systems continue to work normally; and while 92% of judicial authorities are now delaying or suspending all matters except those deemed “urgent”, in a few countries serious doubts arise as to their capacity to maintain the rule of law during the pandemic, or to prevent the arbitrary infringement of civil liberties, whether by private individuals, organizations or governmental authorities (4%).



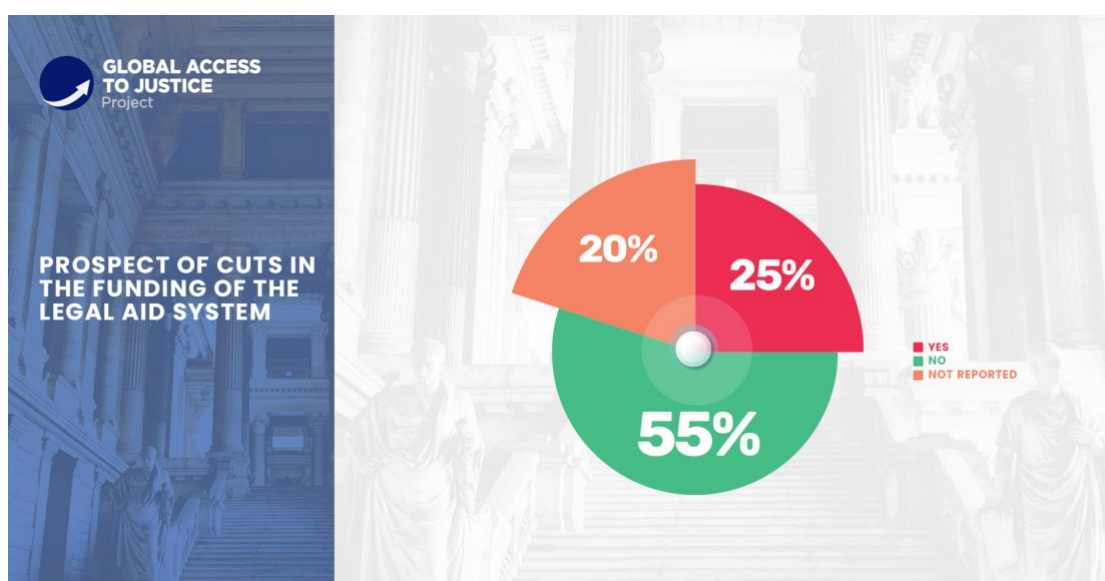
## 6. Negative impact of COVID-19 on legal aid systems

Legal aid agencies have also adopted special measures to protect staff and clients and/or mitigate the negative impacts of COVID-19 on access to legal services (72%). As in the judicial systems, internal reorganization around remote working for staff (53%) and temporary suspension of face-to-face legal advice and legal aid (47%), were the most widely used measures by the legal aid systems. Meanwhile, 4% completely suspended legal aid services and 18% suspended intake of new cases. With 92% of judicial authorities now delaying or suspending all matters except those deemed “urgent”, the knock-on effect on access to justice for legal aided clients is already becoming apparent.



Mandatory social isolation measures have also stimulated legal aid systems to invest in the use of technology in order to reduce or avoid face-to-face contact with clients (71%). Nonetheless, the most widely used technological options were in fact the least evolved, such as email (53%) and cellphone (49%).

Although the immediate focus is understandably on the scientific and medical spheres (e.g. infection, recovery and mortality rates and the quest for a vaccine), research should not ignore the longer-term legal and economic implications of the COVID-19 pandemic. The widespread disruption to justice systems and legal aid agencies is likely to continue for the foreseeable future, and it appears the economic crisis triggered by mandatory social isolation measures has already in some countries raised the prospect of cuts to legal aid funding (25%).



Although many questions remain unanswered and the lives of billions of people are still at risk, it is clear that justice systems cannot afford to remain passive or unresponsive, otherwise in some countries the rule of law itself may well be one of the victims of COVID-19.



## **SELECTED 'LEGAL AID' NEWS FROM ACROSS THE WORLD**

**PAUL FERRIE**

**ONLINE ADMINISTRATOR, ILAG AND ASSOCIATE SOLICITOR, FULTON'S**



The news items shown below are largely compiled from articles on the internet, found on the basis of a simple search for terms such as 'legal aid', 'access to justice' and 'pro bono'. Therefore, readers must, just as buyers, beware of authenticity. The links worked at the time of writing, but some will obviously fail after a period of time.

### **Australia**

[A Focus on Access to Justice – Law Week 2020 – Law Society of Western Australia](#)  
[Litigation funders give ordinary Aussies access to justice – The Australian](#)

### **Cambodia**

[Cambodia's Proposed Criminal Justice Reforms Should Go Further – Human Rights Watch](#)

### **Canada**

[Access to Justice: Visionary thinking to update a legacy system – The Lawyer's Daily](#)  
[Chief Justice of Canada and Minister of Justice Launch Action Committee on Court Operations in Response to COVID-19 - Cision](#)  
[COVID-19's profound impact on justice - Canadian Lawyer](#)  
[Cuts to Legal Aid Ontario will be obvious post-pandemic – Canadian Lawyer](#)  
[Justice Canada needs to take processes to a virtual level – CBC National](#)  
[Legal Aid wants to help Nova Scotians facing steep COVID-19 fines - CBC](#)  
[More funding needed for legal aid amidst pandemic, letters say – Law Times](#)  
[New Rules for the BC Provincial Court Aim to Increase Access to Justice – Clark Wilson](#)  
[Pandemic exposed justice system's 'vulnerabilities and frailties' – Powell River Peak](#)  
[Pro bono constitutional challenge reveals gaps in access to justice, say legal experts - CBC](#)

### **England & Wales**

[Arrested children may be given legal advice automatically – Legal Futures](#)  
[Bar Council response to civil legal aid remuneration changes – Politics Home](#)  
[Covid-19 cannot mean the collapse of the criminal justice system – New Statesman](#)  
[Law Centres to receive £3m funding to help survive COVID-19 pandemic – The Justice Gap](#)  
[Legal Aid Agency asked to publish FoI responses – The Law Society Gazette](#)  
[New justice fund issues £600,000 in grants – Legal Futures](#)  
[New UK legal advice could open door to Hong Kong citizens – The Guardian](#)  
[Shadow legal aid minister calls for claims limit to be lifted – The Law Society Gazette](#)  
[Understanding won't save legal aid firms - we need action, now – The Law Society Gazette](#)

### **Fiji**

[Legal Aid, An Affordable Way For All Fijians To Access The Law – Fiji Sun](#)  
[The deaf community in Fiji now have access to news, critical and accurate information relating to the Coronavirus Pandemic – Fiji Village](#)

### **India**

[Access to Justice. Time to Log-in? – Greater Kashmir](#)  
[India uses pandemic to push online courts – The Straits Times](#)

Legal Aid in India Amid the COVID-19 Lockdown – Jurist

Legal Aid widened as domestic violence rises amid lockdown – Times of India

Handbook of Formats: Ensuring Effective Legal Services released - Commonwealth Human Rights Initiative (CHRI) and National Legal Services Authority (NALSA), India

### Malaysia

Courts go online to regulate administration of justice – International Law Office

### Northern Ireland

Doug Beattie calls for independent review of NI legal aid bill – Lurgan Mail

### Republic of Ireland

Number of applications for interim legal aid payments down 45 per cent – Irish Legal News

Over a quarter of legal aid interim payment applications rejected – Irish Legal News

### Scotland

All female panel offers online dispute option – Daily Business Group

### United States of America

ACC Nevada Partners with Legal Aid Center for Pro Bono Record-Sealing Work – Law.com

COVID-19 Has Created A Legal Aid Crisis. FEMA's Usual Response Is Missing – WGBH

For more information about the work of the *International Legal Aid Group*, please visit our website which can be found at <http://www.internationallegalaidgroup.org>.