



México Evalúa

GUIDE TO GOOD PRACTICE

on the Use of
New Technologies
for the Administration
of Justice



TRANSPARENCIA

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Foreword

EDNA JAIME | DIRECTOR OF MÉXICO EVALÚA

On March 31, 2020, the Ministry of Health announced the agreement that listed the extraordinary actions with which the government apparatus, and society as a whole, would face the health emergency caused by COVID-19. “Non-essential” activities were immediately discontinued. Thus, we began the march through unknown territory.

The country’s courts and tribunals had to suspend their services in order to adhere to elementary measures of social distancing. However, the demand for justice never stops; its administration is an essential activity. Although the judicial powers of the various states quickly implemented on-site guards to resolve urgent matters, essentially in criminal matters and serious family matters (violence against women, defenselessness of minors), how could they continue to deal with any remaining issues in the midst of the contingency without endangering their staff or operators of the justice system? A process of adaptation began practically on the spot, and one thing was clear from the beginning: those powers that already had advances in the development of technology (electronic files, virtual courts, online courts, to mention the obvious ones) would have an advantage. Beyond that, there were only doubts: is there adequate regulation to implement judicial “teleworking”? Are the rights of parties to a lawsuit protected under these schemes? And how are cases processed in locations with low internet penetration?

In any case, a fascinating object of study was emerging, and México Evalúa’s program Transparency in Justice was devoted to it. It must be clarified that this territory was not completely unknown to us. Thanks to a long-term research project, the program had already obtained a considerable amount of evidence on the structure and functioning of different state judicial councils, including their various degrees of technological innovation. That evidence shaped the hypothesis that there are huge gaps in the field of so-called “digital justice” among the coun-

try’s judiciaries, and that the most advanced in that area are those that can best respond in times of crisis such as that caused by the pandemic. The great deal of problems that arose after the declaration of the health contingency only confirmed this hypothesis.

This *Guide to Good Practice* then emerges to answer basic questions that arose as soon as the courts closed and justice needs piled up: How do we promote in practice efficiency in the work of judges in conditions of the “new normal”, while at the same time seeking full access to justice? Do we have the basics to do so? Is it necessary to legislate on this matter? How to move forward? However, the Guide looks beyond, since throughout the months of observation of this sort of live laboratory of judicial work, the conviction was confirmed that digital justice, if well executed, has a transforming potential that transcends contingencies. Everything indicates that our decision makers in the judicial and legislative branches also consider this to be the case, since in the series of justice reform initiatives that have been developed during this six-year period, there are some that seek to regulate this type of use of new technologies. The Guide is ultimately intended to enrich the legislative process and decision-making of each judiciary in the country with evidence-based recommendations and sound ideas that have been tested nationally and internationally. This endeavor has no intention other than to favor judicial work.

I would like to thank Laurence Pantin, coordinator of the Transparency in Justice program, for her vision and tenacity, and Rodrigo Meneses for his work on this Guide. I also know that without the collaboration and willingness of numerous members of various judicial powers in Mexico and other countries, this study would not have been possible. Thanks to all of you.

I hope that this work will make us advance in the institution’s objective: to achieve good public policies for the benefit of all.



Introduction

For several years, both academics and judicial officials from various countries have explored the possibility of incorporating, developing and implementing new technologies as a mechanism to reduce physical barriers (transportation costs and times, difficulties in moving for people with disabilities), knowledge barriers (obstacles for citizens to understanding how the justice system works), linguistic barriers (people who speak a language other than the official one) and economic barriers (impossibility of people from low socioeconomic levels hiring an attorney), which make it difficult for a sector of the public to access the administration of justice service (Cappelletti and Garth, 1996; Cabral et al., 2012). The incorporation of new technologies into the jurisdictional function has also been seen by judicial policy makers as an alternative for improving court management, increasing the number of cases that can be processed and resolved by jurisdictional officials, reducing case resolution time, decreasing the amount of paper used in process documentation, preventing potential acts of corruption, and safeguarding the security of actors involved in the proceeding.¹ Furthermore, it is argued that the incorporation of new technologies into the jurisdictional function can be a significant tool in reducing the time and resources that the State invests in the processing and resolution of judicial procedures, as well as improving the conditions in which this type of authority reports back to the public (Gregorio and Meneses, 2011).

From the use of teleconferencing to facilitate the disclosure of hearings in criminal, labor and administrative proceedings in the 1970s (Toubman, McArdle and Rogers-Tomer, 1996; Lederer, 1999; Diamond et al, 2010; Sela, 2016²) to the contemporary development of comprehensive electronic justice systems (Rosa, Teixeira and Sousa Pinto, 2013), the amount of resources and technological alternatives that have been explored by the judiciary to institutionalize and process a growing number of disputes and social issues without the need for people to attend legal offices is very broad.

In exceptional cases, some projects have suggested that the use of new technologies can serve to guarantee the continuity of the service of imparting justice in times of emergency. Concrete experiences, such as those of the local justice systems in the United States following the attacks of September 11, 2001 or Hurricane Katrina in 2005, suggest that, although it is crucial to have technological tools that facilitate the continuity of the service of remote administration of justice—that is, without the actors interfacing in the same space—, information and systematic analysis of the processes that these technological alternatives set in motion and the results they produce is still scarce (Birkland and Schneider, 2007; Rosa, Teixeira and Sousa Pinto, 2013; RAND, 2020).

This document offers a brief review³ of decisions, initiatives and implementation processes of various policies designed by the judiciary to incorporate the use

¹ On the objectives with which they have been implemented and the effects that new technologies have had on the judicial process, see Santos (2005).

² In different jurisdictions, the U.S. justice system pioneered the introduction of telecommunication technologies for remote hearings or trials in the 1970s. In criminal matters, “an Illinois court held videotaped bail hearings in 1972. Shortly thereafter, in 1974, [a] Philadelphia court installed a closed circuit television system for preliminary proceedings” (Diamond, et al, 2010, p. 878). In labor matters, California’s jurisdiction pioneered the use of teleconferencing to allow employers and workers to question each other directly and in real time, without having to be in the same location. This procedure was validated by court decision in *Slattery v. California Unemployment Insurance Appeals Board* (Toubman, McArdle and Rogers-Tomer, 1996, pp. 410-411).

³ The systematic review of the measures taken by the various judiciaries was carried out until July 31, 2020. It is likely that after this date some judiciaries will have taken innovative measures that are not reflected in this document.



of new technologies in their work. We are interested in highlighting the role that these tools can play not only in diversifying the means through which the public accesses the service of imparting justice, but also in facilitating and improving the organization of work in the courts and tribunals. We also analyzed the way in which the application of certain technological developments in justiciary tasks, in particular tele or videoconferences, has redefined the traditional structure of the judicial proceeding by allowing remote, simultaneous and collective interaction of the subjects involved. We also reflect on the dilemmas, viability and not always intended effects of the use of new technologies in the administration of justice.

This reflection arises in a very specific context, when the preventive practices of social distancing and sanitary confinement derived from COVID-19 have meant the suspension and reorganization of various services and activities around the world, among which is jurisdictional activity. In most countries, court activities have been declared essential, particularly to address certain issues in the areas of criminal justice, juvenile justice, family justice and guardianship. In other matters, such as commercial or civil, authorities have often temporarily suspended activities, so the authorities decided to suspend procedural terms and deadlines. In this context, the judiciary has been faced with the task of thinking about the most appropriate means of giving continuity to the administration of justice service remotely, that is, without the actors interfacing in the same space.⁴

The way in which the judicial powers have faced the challenge of reorganizing their services in the face of health contingencies caused by COVID-19 is quite heterogeneous, since it depends both on the technological development of each community and on the legal, procedural and organizational rules that facilitate or hinder the deployment of various solutions in each country. Although the general strategy has been to promote remote work through the use of new technologies for the administration of justice, the experiences have been very specific to each jurisdiction.

In some cases, such as in Germany (Matussek, 2020) or China (Du and Yu, 2020), the health contingency has been seen as a window of opportunity for the courts to

“enter the 21st century” and finally be able to use the platforms, networks, facilities, equipment and technical capacities that had already been developed to implement virtual justice, but had not been fully exploited or used. In other cases, such as in Spain (Martialay, 2020; Cid, 2020), the judiciary foresaw a possible avalanche of lawsuits arising both from the layoffs, non-payments, evictions and bankruptcies that were declared during the suspension of activities, and from the violation of procedural guarantees arising from the suspension and postponement of procedural terms and deadlines, and therefore online trials were authorized, except in cases of serious criminal offences.

Additionally, operators of some international organizations, such as the Inter-American Court of Human Rights, expressed that in the context of the health contingency, the judicial powers were constrained to implement extraordinary policies that would guarantee and maximize the real and effective access to justice, under a human rights perspective, having to adjust to the principles of absolute necessity, proportionality and precaution.⁵ But what unconventional tools can be used in the administration of justice? At which stages of the process and under what conditions?

To answer these questions we need to consider both the substantive and procedural rules, as well as the legal culture, the technical and technological capabilities behind the context in which each court must deliver justice.⁶ This is a far-reaching task, the ramifications of which can hardly be seen.

The number of countries that have incorporated the use of new technologies for the administration of justice, as well as the number of successful and unsuccessful experiences, regulatory discussions and institutions that have developed around them, exceed the scope of this document.⁷ Our intention is to offer a referential guide, theoretically informed and empirically illustrated, to the various dilemmas that judiciaries face when they promote the use of new technologies, not only to expand access to justice, but also to make proceedings more efficient, faster and/or less costly or, ultimately, to guarantee the service of remote administration of justice under the circumstances we find ourselves in this year.

⁴ A recently published report on the state of justice in Latin America under COVID-19 indicates that, in the region, the only country that did not suspend its judicial services during the health contingency was Nicaragua (Arellano, Cora et al., 2020, p. 51).





⁵ Guaranteeing, preferably, the protection of the rights of access to justice, due process and equality of the groups that are disproportionately affected by the pandemic, as they are in a situation of greater vulnerability, such as the elderly, children, persons with disabilities, persons deprived of liberty, pregnant women or those in the post-partum period, among others (Inter-American Court of Human Rights, 2020).

⁶ There is a large number of social studies on courts and tribunals that address each of these issues. Among the most prominent are Friedman (1975) and Fix-Fierro (2003).

⁷ A systematic analysis of some of the most successful cases can be seen in Rosa, Teixeira and Sousa Pinto (2013).

There are various exercises that have been developed in the world to relate the measures taken by the judiciary in the current context.⁸ Our interest in this document is not to be exhaustive in the number of experiences included, nor to focus exclusively on the most recent efforts. We present a selection of policies and institutional measures that have been implemented in various circumstances to improve the processes of administration of justice in its various moments or facets.

We are interested in giving an account of both the means and the technological tools that the judicial powers have deployed, as well as the challenges they have had to meet in order to do so. **The cases chosen and developed in this document were selected based on four general criteria:**

-  In the first place, **solutions were favored that, having a certain degree of development and success, could represent good practice** and serve as inspiration for other judiciaries seeking to modernize.
-  Secondly—and although a natural emphasis was placed on the Mexican case—the experiences mentioned here cover a great diversity of geographical areas, circumstances and types of justice systems, since the premise of this study is that the digitalization of justice is possible and desirable in a wide variety of contexts.
-  Thirdly, experiences were sought that would help **identify the red lines or boundaries that should not be crossed** or the sensitive issues that should not be overlooked in a democratic justice system.
-  Fourth, **these are experiences focused on promoting the use of different technologies to ensure the administration of justice.** Thus, rather than analyzing a specific solution—such as videoconferences through digital platforms—, we include various strategies that range from opening e-mail accounts or telephone lines to guarantee remote access to justice, to the implementation of online courts in certain matters and with certain jurisdictions.

Additionally, the information we present includes a reflection on the temporality of the measures described—contingent or permanent—, as well as an emphasis on the experiences of local Mexican judiciaries. In all cases, any information consulted included legislative sources, regulatory devices (laws, decrees, agreements, protocols, circulars, executive orders), external evaluations when available, as well as social narratives (journalistic news, user experience reports, expert opinions) related to the topic. Most of the information sources are publicly accessible and can be consulted directly through the links provided throughout this document.

Since we decided not to focus on a few emblematic cases analyzed in an integral manner, but on various experiences that we have selected because they seem more illustrative of the development and operation of each type of technological solution, it was feasible for us to organize the information in different ways. One way would have been to examine the technological tools used in the administration of justice in the chronological order in which they were developed, or with a criterion of lesser to greater sophistication (which could have coincided, in many cases, with the chronological order). We could also have classified them by type of beneficiary (those for internal use, those dedicated to the defendants, or those offered to the general public) [Figure 1].

However, we chose to **analyze them from the focus of the procedural moment in which they intervene**, that is, from the *user's perspective*, because although technological solutions may have a wide range of objectives, it seems to us that, behind any technological development, the goal of facilitating, expanding and improving citizens' access to justice should always prevail. We report several experiences aimed at reorganizing the processing of legal proceedings in the various phases that structure them, from the **activation stage procedural** (filing of lawsuit or judicialization of a criminal investigation) to the **execution of court rulings** (judgments, arbitral awards), passing through the **processing of cases** (hearings, proceedings). We would like to emphasize that access to justice includes everything from the processing of cases to the timely enforcement of court rulings [Figure 2].⁹

Thus, the document is structured in four sections. In the first section, "Alternatives to facilitate the activation of

⁸ Some, such as the remotecourts.org site, offer general and diverse information about the actions that courts around the world have taken to reorganize their functions. Others, such as the National Center for State Courts, offer information on specific countries or jurisdictions, which are difficult to generalize.

⁹ There are several jurisdictions and experiences where this is the norm. For example, in a key judgment of March 19, 1997, *Hornsby v. Greece*, the European Court of Human Rights established the existence of a right to the enforcement of judicial decisions within a reasonable time, based on paragraphs 6 and 1 of the European Convention on Human Rights. The right to enforcement is therefore an integral part of the right to a fair trial.



Figure 1. Digital tools in the service of a better administration of justice. Classification by type of beneficiaries and degree of sophistication

<p style="text-align: center;">+ Simple</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">+ Sophisticated</p> <p style="text-align: center;">Institutional Tools (back end)</p>	<p>Digital tools in non-jurisdictional tasks: This type of tool is intended to assist judicial officials not directly involved in jurisdictional tasks or case management. That is to say, they can be oriented to generate a system that rationalizes and makes efficient the distribution of proceedings among the notifiers and executors; generate a system of shifts or assignment and distribution of equitable, specialized and, sometimes, random workloads among the courts and chambers.</p> <p>Automated file management system / Case management system: These tools systematize, operationalize and categorize different types of judicial information with the purpose of facilitating, mainly, the jurisdictional fulfillment of some formalities and procedural terms. The tool sends notices to responsible officials about the terms and deadlines to be met, as well as those that may have expired. They also allow the supervisors of the judicial function —government bodies— to remotely monitor the procedural behavior of the officials in charge of making a jurisdictional ruling. Some systems can also record all information during the case proceeding in real time, so that every movement of each case is stored in the system.</p> <p>Decision-making support system: These tools, based on the use of artificial intelligence (AI), provide additional information to judges to help them make a more informed decision about the cases they must resolve. Different algorithms have been created to help judges make decisions in terms of precautionary measures applicable to defendants in criminal trials based on probabilities or to determine the applicable penalty based on the risk the person represents in terms of recidivism.</p> <p>Automated decision-making system / robot judge: These tools, based on the use of artificial intelligence (AI), make judicial decisions without human intervention.</p>
<p style="text-align: center;">+ Simple</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Tools for users (front end focused on defendants)</p>	<p>Online court proceeding information / electronic file: These are tools that make it easier for the jurisdictional officials to provide the parties and their attorneys with information about the process, including: information about the phases of the process, transcripts, audio and/or video of the trial, case files and any legal documents that must be issued to the parties. The systematized collection of this information constitutes an electronic file.</p> <p>Virtual or electronic court / virtual judicial office / virtual parts office / electronic filing system: Tools that make it easier for the public to file a lawsuit through electronic means (e-mail, application for mobile devices, etc.), that is, without the need to physically interact with a judicial officer.</p> <p>Tele or videoconference hearings / telematic hearings / video link: Acts or procedural formalities that are carried out through a set of interactive telecommunications that allow two or more people to interact remotely, through a two-way video and audio transmission simultaneously.</p> <p>Online courts or trials: On these platforms, in addition to being able to initiate a lawsuit, request a case file, consult the case information, access the case files, and receive documents electronically, interested parties can make an appointment to meet with judges (on occasion), present evidence and documents, and even participate in hearings remotely, via video. Typically, these initiatives are accompanied by the installation of equipment in the judicial offices themselves, to facilitate human-computer interaction and, in general, the development of the litigation.</p>

 + Sophisticated	<p>Online Dispute Resolution: On these platforms, facilitation of negotiation proceedings between parties can be carried out, as well as mediation or conciliation for the resolution of disputes, where the interaction between the parties is carried out by electronic means (directly on the platform, by e-mail, telephone, text message or video conference). Sometimes, part of these proceedings may be operated by programmed computers.</p>
<p>Tools for the general public (front end focused on transparency)</p>  + Simple + Sophisticated	<p>Publication of sentences online: Sites where documentation of the judgments of some judicial bodies is disclosed to the public. Through this platform, it is hoped to enable the public to understand the work of the courts, while also allowing for follow-up on public and media reactions to any judgments.</p> <p>Streaming trials. Platforms through which courts may broadcast live trials on the platform. Anyone can watch these live videos from anywhere on the Internet.</p>

Source: Own elaboration from Zalnieriute and Bell (in press); Cordella and Contini (2020); Gregorio and Meneses (2011); Cabral et al. (2012); Pantin (2020a); Poppe (2019).

justice”, we present the main measures implemented by the judiciary to allow citizens and attorneys to request online the intervention of the courts in the resolution of disputes of very different nature. This includes everything from efforts to encourage online dispute resolution to strategies to enable digital filing of lawsuits and court filings. These range from the activation of telephone lines or special e-mail addresses for the public to promote the movement of the administration of justice service under different conditions (but without going to a jurisdictional office), to the development of online platforms dedicated to receiving demands for justice.

In the second section, “Digital Conflict Processing”, we explain the strategies that the judiciary has deployed to organize and make the operation of the administration of justice system more efficient by means of technological tools and, in particular, to enable remote service. This section is structured in three sections. The first refers to the technological tools explored or developed by the judicial powers to ensure that the parties or third parties involved in a judicial proceeding are aware of any action derived therefrom, including the registration or formal

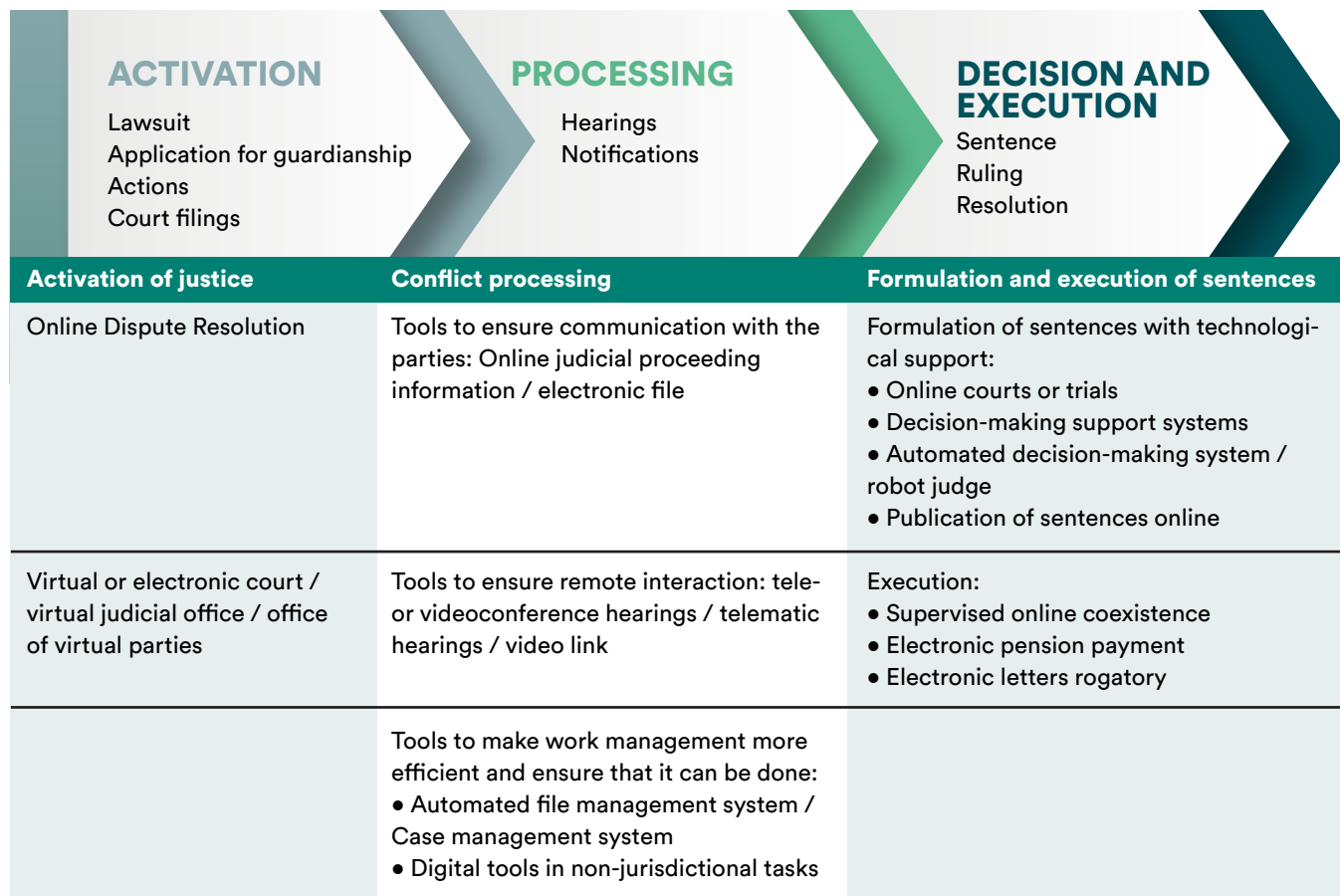
existence of a claim. The second analyses the tools for ensuring remote interaction with the parties (hearings). The third one explains the strategies to make work management more efficient and to guarantee that it can be done remotely (teleworking).

In the third section, “Formulation and execution of sentences with technological support”, we first analyze the new technologies that can intervene in the formulation of sentences, which is reflected in particular in online trials or courts, but also in the tools that have been developed to support the judge in their decision making or to replace the judge. Secondly, we reflect on one of the main challenges faced by remote justice systems: remote compliance or enforcement of judicial decisions.

We conclude the document with some public policy recommendations derived from the analysis of good practice in the use of new technologies for the administration of justice. We also propose a short list of challenges and public policy alternatives to feed the establishing of an agenda for digital justice in Mexico.



Figure 2. Large blocks of the judicial proceeding

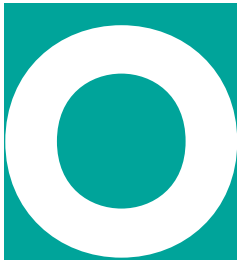


Source: Own elaboration from Zalnieriute and Bell (in press), Cordella and Contini (2020), Gregorio and Meneses (2011), Cabral et al. (2012), Pantin (2020a) and Poppe (2019).



CHAPTER 1

Alternatives to facilitate the activation of justice



Online dispute resolution

If new technologies have been used in the administration of justice, they have also been used to make alternative dispute resolution mechanisms more efficient and accessible. These mechanisms have been developed to decrease the workload of the judiciary and reduce the time it takes to resolve citizens' problems and/or disputes. They do not form part of the administration of justice per se, but it could be said that these mechanisms are its auxiliaries and sometimes predecessors, since, in some instances, the regulations establish that the defendants must first submit to an exercise of mediation or conciliation before a lawsuit can be judged. On the other hand, although in many countries these mechanisms are offered by private bodies—for profit or not—they sometimes rely on the same judicial powers, as is the case in Mexico.

Therefore, we consider it important to address in this section the case of alternative dispute resolution mechanisms involving some digital aspects. A good illustration of an online dispute resolution process—Online Dispute Resolution (ODR)—is the integrated tool to the Civil Resolution Tribunal developed by the judiciary of British Columbia, Canada, to handle small claims and disputes between joint ownerships or associations, as well as motor vehicle accidents. As explained by Salter (2017), the Civil Resolution Tribunal was created in 2011 as an online court, which can produce court ru-

Good Practice #1: Civil Resolution Tribunal developed by the judicial power of British Columbia (Canada).



lings, but encourages informal conflict resolution.¹⁰ The process consists of four stages:

1 Before filing a complaint, the citizen accesses a tool called Solution Explorer which, based on artificial intelligence and machine learning technologies,¹¹ asks the user questions about the nature of the problem they are seeking to solve and offers them information about their rights and obligations, as well as options for solving the problem (it can even offer them a set of letters or formats that they can use to contest a fine, for example).¹²

2 In the event that the Solution Explorer does not allow them to resolve their issue, the user has the possibility, based on the information they filled out in the Explorer, to formulate a complaint. Once the other party has been notified, they are given some time and some guidelines on how to negotiate with each other. If an agreement is reached, it can be converted into a court order.

3 If no agreement is reached, the parties move on to a conciliation phase, where an expert facilitator uses different communication channels (court platform, email, text messaging, telephone, video conferencing, fax or mail) to help them find an agreement. Again, an eventual agreement can be turned into a judicial resolution.

4 If the conciliation phase also fails to produce a settlement, the lawsuit is transferred to a member of the same Court, who receives briefs from the parties, evaluates the evidence, and makes a ruling, which is notified by email or mail. Sometimes the judge will ask the parties for a hearing to be held by telephone or video conference.

Comprehensive solutions like these are quite new and still rare. However, it was interesting to note that during the COVID-19 contingency several mediation and conciliation services that did not necessarily operate remotely began to offer attention via telephone or online. This has been the case for several state judiciaries in Mexico,¹³ some of which enabled this possibility only temporarily, while others formulated guidelines or reformed the regulations of their state alternative justice centers so that they can provide service through the use of electronic means (Circular No. 27/2020, 2020; Agreement of the President of the Judiciary Council of the State of Puebla, 2020; General Agreement 14/2020, 2020; Agreement that reforms and adds the regulations of the Center for Alternative Dispute Resolution Mechanisms in Family Matters, 2020).

Digital presentation of lawsuits

There are various technological alternatives that have been explored by the operators of judicial powers in order to reduce bureaucracy and speed up the way in which the public accesses the administration of justice service. Telephone lines, email addresses or the development of cellular phone applications, for example, have become popular in the world as immediate, inexpensive and safe alternatives for people to file a lawsuit or a complaint against a judicial officer without the need to go to an office or risk corruption derived from the interaction with public officials of questionable integrity (Cabral et al. 2012; Poppe, 2019; Cordella and Contini, 2020).

In some cases, such as in Canada, the United States, Italy, the Republic of Korea, Taiwan, Singapore,¹⁴ Chile or some jurisdictions in Mexico, years before the health emergency, the judiciary had already implemented some

¹⁰ Similarly, in England, the Judiciary has developed since 2002 a digital platform, Money Claim Online, that receives the lawsuits of citizens, without the need to have the advice of an attorney, in cases of disputes up to a limited amount—less than 100 thousand pounds—. As in the case of the Civil Resolution Tribunal, the Money Claim Online platform seeks to resolve disputes before they become judicial and at low cost to those involved (Cordella and Contini, 2020).

¹¹ “Machine learning is a form of AI [artificial intelligence] that allows a system to learn from data instead of learning by explicit programming” (IBM, n.d.).

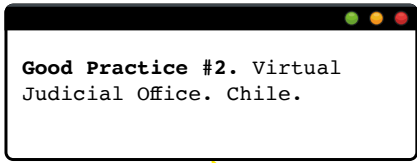
¹² This same type of system is also used by certain judicial powers to allow citizens to file lawsuits more easily, in cases or matters where the regulations allow them to dispense with the advice of an attorney and represent themselves, in order to reduce the cost of access to justice. Non-profit civil society organizations and private companies have also developed platforms based on these technologies, to offer their users pre-filled formats that allow them to go to the courts without having to go with a litigant. An example of these platforms is Ayuda Legal Puerto Rico (n.d.) (n.d.).

¹³ This was the case in Baja California Sur, Campeche, Chiapas, State of Mexico, Mexico City, Nuevo León, Puebla, Quintana Roo, Sinaloa, Tlaxcala and Yucatán.

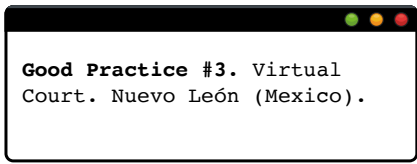
¹⁴ The specialized literature on the subject mentions that the Singaporean judiciary was one of the first to develop an electronic justice system, as it began to explore this avenue in the 1990s (Rosa, Teixeira and Sousa Pinto, 2013, p. 242). For this reason, it is a well-documented case of a national, progressive and integral process of application of new technologies in tasks of imparting justice. To understand the complexities and historical journey of this reform process, see Peck (2008) and State Courts of Singapore (n.d.). However, it is important to note that Singapore is characterized by its undemocratic system of government, controlled by a dominant party and with limited freedom of the press and expression. Therefore, while this jurisdiction is referred to in different sections of this Guide, it is not meant to be an example to follow. In fact, in one section it is mentioned rather as a counterexample.

systems¹⁵ that allow the public to interact with the jurisdictional authorities remotely, submitting new lawsuits (documents for initiating a legal proceeding) and/or court filings (documents presented throughout a trial), which are processed in part in an automated manner.¹⁶

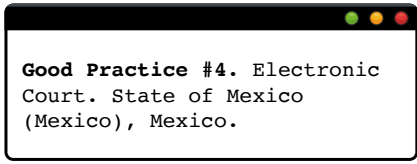
In Canada in 2005, the Federal Court implemented a pilot project to allow litigants (and then citizens, in particular those who choose to represent themselves) to file online documents regarding existing intellectual property cases. Later on, the e-filing service (Federal Electronic Filing Service) was extended to all subjects, making it available not only for court filings but also for new lawsuits (Canadian Forum on Civil Justice, 2012; Federal Court of Canada, n.d.). In the United States, the federal courts have operated an e-filing system for filing documents and new lawsuits online since 2001; it began with bankruptcy cases and then expanded to all matters and jurisdictions. Each court may determine whether, in addition to the litigants, defendants may have access (United States Courts, n.d.). At the state level, courts and tribunals have also developed systems that offer the ability to file lawsuits and court filings online, but not in a comprehensive and self-paced manner (Bridenback, 2016). In Italy, in civil matters as of 2013 and in criminal matters as of 2015, there are systems that allow the initiation of online proceedings (Portale dei servizi telematici in civil matters and Sistema Informativo della Cognizione Penal in criminal matters) although their planning began in 2003 (IT Department of the Italian Ministry of Justice, 2016; Cordella and Contini, 2020). In the Republic of Korea, the Supreme Court has developed an Electronic Case-Filing System, which allows defendants and their attorneys to file lawsuits and documents relating to certain cases remotely and receive notifications regarding the progress of these cases via e-mail and text messages (Supreme Court of Korea, n.d.). In



Good Practice #2. Virtual Judicial Office. Chile.



Good Practice #3. Virtual Court. Nuevo León (Mexico).



Good Practice #4. Electronic Court. State of Mexico (Mexico), Mexico.

Taiwan there has been an electronic system to record and process lawsuits remotely since at least 2013 (Shen, 2015: 736 and ff.). In Singapore, both in the criminal and civil fields—in the resolution of neighborhood disputes and small claims—there are systems called Integrated Case Management and Filing System and Community Justice and Tribunals System respectively, for people to file lawsuits or complaints against their neighbors online. They can even resolve their disputes through an online application, by direct negotiation between the parties or with a mediator. This system, which began to be tested in the 1990s, was supported by legislative adjustments (State Courts of Singapore, n.d.).¹⁷

In Chile, the **Virtual Judicial Office** allows parties, in civil and family matters, and the Public Prosecutor's Office, in criminal matters, to file their petitions from a computer and, in fact, in some areas and in certain matters this office is the only way to file a lawsuit (S. Piñeiro, personal communication, June 24, 2020; Brito Donoso, 2017). In the case of Mexico,¹⁸ the Judicial Branch of Nuevo León was the first to implement, in 2005, a **Virtual Court**, which allows users and their attorneys to present court filings related to ongoing civil matters (J. A. Gutiérrez Flores, personal communication, April 10, 2020; Code of Civil Procedures of the State of Nuevo León, 2018).¹⁹ For its part, the Judicial Power of the State of Mexico stands out for having, since 2018, an **Electronic Court**, a tool enabled to file lawsuits and court filings in all matters by digital means (Circular 98/2018, 2018).

In some of these cases, the initiatives are focused on building, in the medium term, a paperless process,²⁰ as well as on promoting a more efficient justice system that allows for more agile communication between the actors in the proceeding and the authorities and, above all, that favors the staggered resolution of conflicts, promoting the search

¹⁵ In English, these modalities are usually referred to as "e-filing" systems, while in Mexico they have generally been called "electronic courts" or "virtual courts".

¹⁶ Other known and documented cases are the justice systems of Australia (Zalnieriute and Bell, in press), Spain, United Kingdom (Cordella and Contini, 2020), Argentina, Austria, Colombia, Costa Rica, Finland (Brito Donoso, 2017), Portugal, Belgium and Brazil (Rosa, Teixeira and Sousa Pinto, 2013).

¹⁷ Specific legislative examples can be seen in Singapore (Criminal Procedure Code, 2020, §222-228). There are also case law examples, see in particular Anil Singh Gurm V JS & Co and others (SCSJ, 2018).

¹⁸ From a review of the websites of the state judiciaries in Mexico, carried out at the beginning of the contingency, it was possible to identify that five judiciaries had some form of virtual or electronic court: Aguascalientes, Baja California, State of Mexico, Nuevo León and Tamaulipas (Pantin, 2020b).

¹⁹ The Virtual Court is "a system of information processing, electronic or virtual, that allows for the remote settlement of jurisdictional matters" (Nuevo León Code of Civil Procedures, 2018, art. 44).

²⁰ This is particularly the case in some jurisdictions in the United States, Chile, Taiwan, Singapore and the State of Mexico.



for alternative solutions to the judicial proceeding (negotiation, mediation, conciliation) and the possibility for citizens to lawfully represent themselves in some proceedings (Salter, 2017; Shen, 2015; State Courts of Singapore, n.d.; Brito Donoso, 2017; Cordella and Contini, 2020).²¹

These experiences, and others, show that promotion, the development and incorporation of devices and technological tools to speed up the demands of justice can be the result of a long process of institutional transformation and adaptation. In the case of the judicial powers of Austria, Chile, Colombia, Costa Rica, Finland or Singapore, for example, the technological transition has required that the operators of the legal system deploy an extensive legislative review that starts with the identification of the procedural moments in which virtual communications can take place, and goes up to the homologation of various regulations and the standardization of hundreds of observations and variables among different authorities. For some of them this process began 20 years ago and has involved successive legislative adjustments (Brito Donoso, 2017).

These experiences also show that the use of new technologies in the tasks of administration of justice represents a process that goes beyond an institutional declaration, regulatory agreement or legislative reform. In the case of Mexico, the implementation of the virtual court by the operators of the Judicial Branch of the state of Nuevo León (Code of Civic Procedures of the State of Nuevo León, 2018, Article 44) required the intervention of the ministers of the Supreme Court of Justice of the Nation to validate the scope and operation of the electronic notification mechanism, almost 10 years after its implementation (SCJN/ADR 258/2017).

Beyond the investment involved in building such platforms, the main difficulty involved in developing them has to do with user identification, a key issue in supporting any legal process. In fact, in any type of procedure before a judicial power —filing a lawsuit or court filing, requesting access to a file or participating in a hearing—, a person with public trust asks the interested party to present an official ID containing their photo and signa-

ture, in order to be able to verify that they are who they claim to be. Similarly, any procedure carried out online requires a secure means of authentication, such as an electronic signature or, more appropriately, a digital signature [See Figure 3].

Good Practice #5. Certified Electronic Signature. Federation and State of Mexico (Mexico)

Judicial Power of the Federation in Mexico, which developed the **Certified Electronic Signature** of the Judicial Power of the Federation (Fired), and the Judicial Power of the State of Mexico, which implemented the Certified Electronic Signature of the Judicial Power of the State of Mexico (Fejem). Others, such as the Judicial Power of Nuevo León, have resorted to existing digital signatures for their internal users —the e-signature of the Tax Administration Service (SAT) and the Fired of the Judicial Power of the Federation, through agreements signed with these institutions to enable their use on their platform—,

and have developed, for their external users,²³ their own electronic signature -with a user name, password and code card that is updated every three months. In Mexico, the multiplicity of existing authentication mechanisms contributes to making the work of attorneys more difficult, particularly when they litigate in different states and at the federal level (Jaime, 2020).

Good Practice #6. Universal Digital Signature. Chile.

In those jurisdictions where the State has developed **universal digital signature systems**, such as Chile, both the remote interaction between authorities and users of the justice service, and the rules that coordinate them, are previously guaranteed and greatly facilitate the development of platforms that provide access to online justice (S. Piñeiro, personal communication, June 24, 2020; Brito Donoso, 2017).

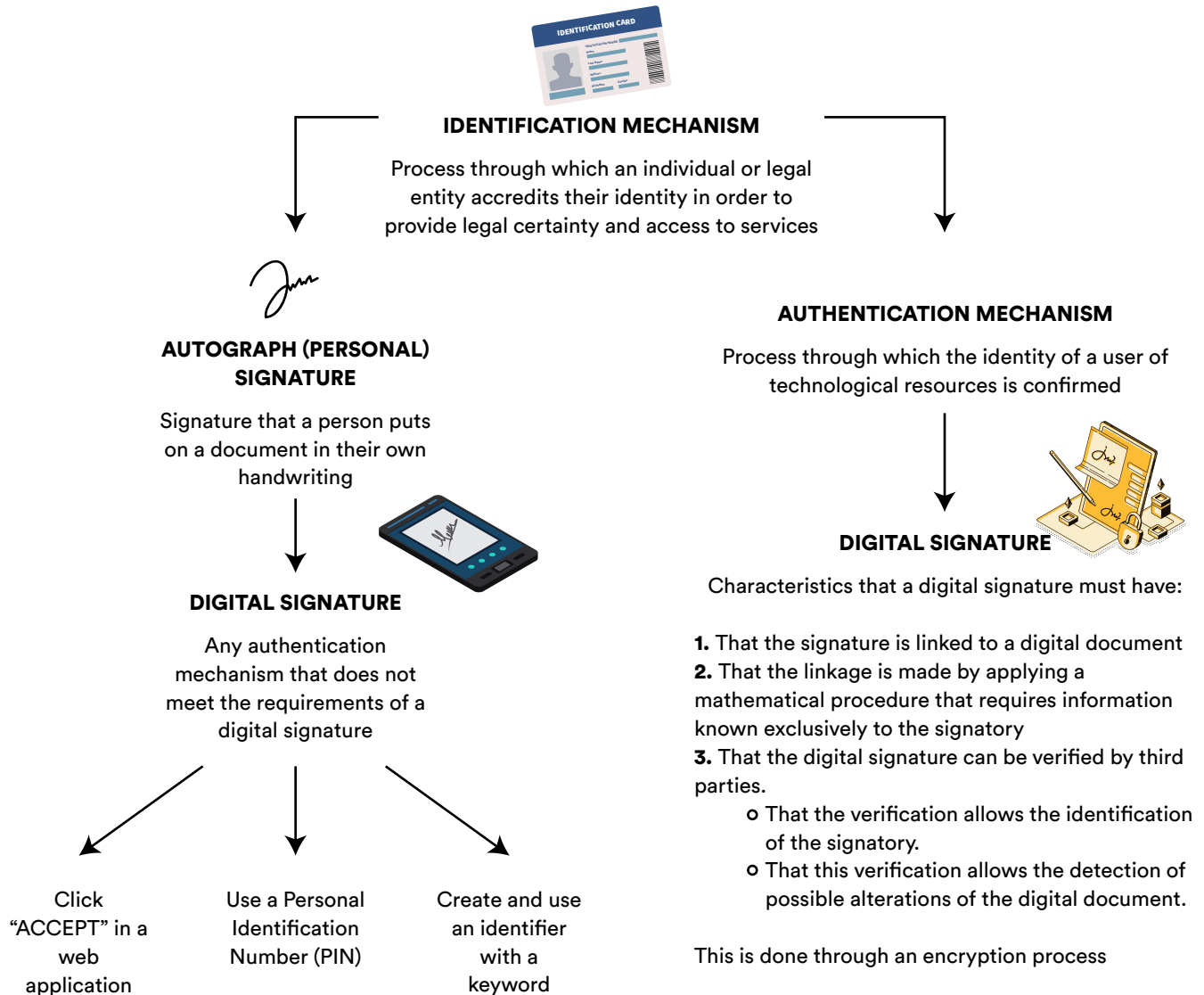
Another challenge that judiciaries face when developing this type of tool has to do with the technology required for its proper functioning. For example, deciding whether to develop your own e-mail server or use an external provider can have consequences in different areas of the judicial function, in terms of the technological capacity

²¹ It is important to mention that, while in some cases, such as Chile or Singapore, this policy has been promoted mainly in areas of public law (criminal, administrative), in most cases it seems to be more related to matters of private law (civil, commercial). This difference is probably due to the fact that, in the first cases, the existence of a universal authentication mechanism facilitates virtual interaction between the various authorities and the public.

²² In fact, when a document is digitally signed, it is kept on the server of the owner of the signature (I. Rodríguez, personal communication, April 28th 2020).

²³ This has been necessary because, on the one hand, not all attorneys litigate at the federal level and, on the other, many have resisted using e-signature for fear that the information on the matters they handle electronically will be used by SAT to pursue them fiscally (J. A. Gutierrez Flores, personal communication, April 10, 2020).

Figure 3. Identification Mechanisms



Source: Own elaboration based on Mason (2016) and United Nations Commission on International Trade Law (2001).

required to provide e-mail accounts to all users of the service who request them or the feasibility of the authority verifying that users “receive” the notifications or agreements that are sent to them in this way. For example, in the Judicial Branch of the State of Mexico, the authorities decided to guarantee the possibility of giving all users, internal and external, an e-mail address developed and hosted on the institution’s own servers. While this has represented a considerable investment of resources, it has also allowed the authority to have mechanisms to verify compliance with certain procedural formalities — for example, the receipt of a notification via e-mail— without the need for an additional step —such as requesting information from a private service provider— or violating

the privacy of user communications (I. Rodriguez, personal communication, June 18 2020).

In summary, for these tools to be functional and viable, judiciaries must guarantee a minimum level of security in the records, facilities, information and passwords of their sites and servers. The issue of security may be one reason why certain users are reluctant to use technological tools, because they do not know how the data shared on these platforms will be protected and they are suspicious of any protection that judicial powers may provide them. Cybernetic attacks such as the one suffered by the website of the Supreme Court of Justice of the Nation of Mexico on June 9, 2020 contribute to this mistrust (SCJN, 2020).



In addition, it is important for the judiciary to clearly inform the public about the conditions of use of the tools, as well as the type of license they have to operate the systems (European Commission for the Efficiency of Justice [CEPEJ], 2016).

But it is clear the powers that be who have developed digital platforms to enable the justiciable to activate online justice are still a minority. The fact is that these present certain challenges, as we will see below. Therefore, when the COVID-19 contingency arose, most of the judicial powers of the world were forced to develop and implement, within a few months or weeks, various strategies, tools and electronic or digital devices, so that the public can present any lawsuits and court filings remotely.

In some judiciaries, technology was not used directly to allow the filing of documents, but rather to request appointments —by telephone or electronically— in order to avoid crowding when it came to bringing a lawsuit or court filing. For example, in the case of Tamaulipas, which has had an Electronic Court for receiving existing court filings since 2011, but not for filing new lawsuits (Regulation for Access to Services of the Electronic Court of the Judiciary of the State, 2012), a new module was enabled in the Electronic Court during the contingency, which allows pre-registration of lawsuits and obtaining an appointment to deposit the document in the physical mailbox of the corresponding judicial body (Judicial Power of Tamaulipas, 2020).

In other cases, such as that of the Judicial Power of Querétaro (Mexico) or Argentina (at the national level), email accounts were enabled to receive documents related to lawsuits and court filings. In others, such as Colombia or British Columbia (Canada), the possibility of initiating some judicial proceedings through other means, such as fax or mail, was also recognized (Arellano, Cora et al., 2020).

In the case of the Judicial Branch of the State of Nuevo León, a Virtual Office module was enabled in the Electronic Court, so that users could file new lawsuits [Figure 4].

Good Practice #9. Virtual Office. Nuevo León (Mexico).

In many cases, moreover, judicial officials decided to suspend procedural terms and deadlines.²⁴ In general, these measures were accompanied by a determination to restrict the activation of the justice service to urgent cases or very specific matters, such as the family sphere (alimony, custody, precautionary measures) or criminal matters.²⁵

Figure 4. Examples of actions implemented by local judiciaries. Mexico, COVID-19

NUEVO LEÓN

Good Practice #7. Pre-registration of lawsuits and appointment system to deposit them. Tamaulipas (Mexico).

Good Practice #8. Enabling email accounts, fax numbers and postal addresses to receive lawsuits and court filings. Querétaro (Mexico), Argentina and British Columbia (Canada).



²⁴ For the Latin American case, see Arellano, Cora et al. For the case of institutions for the administration of justice in the European Union, see CEPEJ (2020). For the case of the African region, see AfricanLII (2020). For the case of local courts in the United States, see National Center for State Courts (2020). For the case of Mexico, see Pantin (2020b).

²⁵ The rule was that the judicial powers suspended procedural terms and deadlines, in the face of the difficulty for them to receive any lawsuits that were commonly received physically and the impossibility for the judicial powers themselves to deal with them, beyond any urgent matters.

QUERÉTARO



ESTADO DE QUERÉTARO
PODER JUDICIAL

Santiago de Querétaro, a 27 de mayo de 2020.

ACUERDO DEL CONSEJO DE LA JUDICATURA

En virtud de que la impartición de justicia es una actividad esencial que ha continuado en funcionamiento durante la emergencia sanitaria generada por el virus SARS-CoV2, de manera restringida, con el fin de proteger derechos humanos básicos y salvaguardar la salud pública; se requieren acciones extraordinarias para ampliar la prestación del servicio a la ciudadanía y continuar con las medidas de prevención y mitigación recomendadas por las autoridades sanitarias, incluso, haciendo uso de los medios electrónicos para evitar la conglomeración de personas en las diversas instalaciones del Poder Judicial.

En ese sentido, de acuerdo con los numerales 9 y 114 fracciones XXXI, XXXIII y XXXIV de la Ley Orgánica del Poder Judicial del Estado, este honorable cuerpo colegiado está facultado para implementar las acciones y los sistemas electrónicos o de control que sean necesarios para la recepción de escritos o promociones con los que se prosiga un procedimiento judicial durante la contingencia sanitaria; por tanto, emite lo siguiente:

LINEAMIENTOS PARA LA RECEPCIÓN DE PROMOCIONES DE TRÁMITE VÍA CORREO ELECTRÓNICO DURANTE LA CONTINGENCIA SANITARIA 2020

PRIMERO. De forma extraordinaria, el Consejo de la Judicatura autoriza a la Oficialía de Partes del Poder Judicial y a los órganos jurisdiccionales descritos a continuación para que, a través de los correos electrónicos oficiales, reciban los escritos y promociones de trámite para continuar un procedimiento judicial.

SEGUNDO. La recepción de escritos y promociones por medio de correos electrónicos, solamente estará habilitada del 4 al 17 de mayo de 2020, en horario de 8:00 a 12:00 horas de lunes a viernes.

TERCERO. Únicamente se habilitan los siguientes buzones electrónicos:

CORREO ELECTRÓNICO	ÁREA DE RECEPCIÓN	ÓRGANOS JURISDICCIONALES
opcvqro@tribunalqro.gob.mx	Oficialía de Partes del Centro de Justicia Querétaro	Juzgados Civiles y Familiares de Primera Instancia y los Menores de Querétaro

FORMA 8152

oppenqro@tribunalqro.gob.mx	Oficialía de Partes Juzgados Penales Tradicionales de Querétaro	Juzgados Penales de Primera Instancia de Querétaro (Sistema Tradicional)
opovqro@tribunalqro.gob.mx	Oficialía de Partes Juzgados Civiles de San Juan del Río	Juzgados Civiles de Primera Instancia y el Menor de San Juan del Río
oppenajr@tribunalqro.gob.mx	Oficialía de Partes Juzgado Único Penal de San Juan del Río	Juzgado Único Penal de San Juan del Río
jdomicoamealco@tribunalqro.gob.mx	Juzgado Mixto de Primera Instancia de Amelco	
jdomicocadereyta@tribunalqro.gob.mx	Juzgado Mixto de Primera Instancia de Cadereyta	
jdomicojalpan@tribunalqro.gob.mx	Juzgado Mixto de Primera Instancia de Jalpan	
jdomicotolimán@tribunalqro.gob.mx	Juzgado Mixto de Primera Instancia de Toluán	
jdolejucionqro@tribunalqro.gob.mx	Juzgado de Primera Instancia Especializado en Ejecución de Sanciones Penales de Querétaro	
jdomenoramealco@tribunalqro.gob.mx	Juzgado Menor Mixto de Amelco	
jdomenorarroyseco@tribunalqro.gob.mx	Juzgado Menor Mixto de Arroyo Seco	
jdomenorcolón@tribunalqro.gob.mx	Juzgado Menor Mixto de Colón	
jdomenorcadereyta@tribunalqro.gob.mx	Juzgado Menor Mixto de Cadereyta	
jdomenorcomedidora@tribunalqro.gob.mx	Juzgado Menor Mixto de Comedidora	
jdomenorelmarques@tribunalqro.gob.mx	Juzgado Menor Mixto de El Marques	
jdomenorezequielmontes@tribunalqro.gob.mx	Juzgado Menor Mixto de Ezequiel Montes	
jdomenorhuimilpan@tribunalqro.gob.mx	Juzgado Menor Mixto de Huimilpan	
jdomenorjalpan@tribunalqro.gob.mx	Juzgado Menor Mixto de Jalpan	
jdomenorlandá@tribunalqro.gob.mx	Juzgado Menor Mixto de Landá de Matamoros	
jdomenorpedroescobedo@tribunalqro.gob.mx	Juzgado Menor Mixto de Pedro Escobedo	
jdomenorpenamiller@tribunalqro.gob.mx	Juzgado Menor Mixto de Peñamiller	
jdomenorpinal@tribunalqro.gob.mx	Juzgado Menor Mixto de Pinal de Amoles	
jdomenorsanjoaquin@tribunalqro.gob.mx	Juzgado Menor Mixto de San Joaquín	
jdomenortequisquiapan@tribunalqro.gob.mx	Juzgado Menor Mixto de San Tequisquiapan	
jdomenortolimán@tribunalqro.gob.mx	Juzgado Menor Mixto de Toluán	

CUARTO. Además de lo prescrito en el Acuerdo conjunto del Pleno del Tribunal Superior de Justicia y del Consejo de la Judicatura de fecha 20 de marzo de 2020, los escritos y promociones de trámite que se recibirán son:

In order to expand the range of services they offer, judiciaries have implemented various technological mechanisms to receive “urgent” requests for justice, from emails to additional functions of virtual courts. Regardless of the means of access (e-mail, telephone, virtual system), the decision to restrict justice services to urgent cases posed an initial problem: to determine what would be considered “urgent” from a procedural point of view. Some judiciaries, such as that of British Columbia (Canada), left this determination to the discretion of the judges, while others, such as in the case of the Federal Judiciary (Mexico), proposed mixed formulas —law and judicial discretion— as a means of determining both the appropriateness of “urgent” requests received from the administration of justice service, and the assignment of the shifts in which they shall be processed (CJF, General Agreement 6/2020). Almost everywhere in the world, however, the determination of the criteria that a lawsuit must meet in order to be considered “urgent” has not been finalized.²⁶

In Mexico, for example, some federal jurisdictional bodies have begun to point out that it shall be up to the judge to determine the nature of the “urgency”, taking into account the extraordinary and unprecedented nature of the situation caused by the COVID-19 epidemic and the importance of the rights at stake, of their possible transgression and the consequences that it could bring waiting for the conclusion of the contingency period, whose extent and ramifications are different from those of a simple break. In other cases, such as that of British Columbia, judges have pointed out that, although the current context may relativize any elements that qualify a demand for justice as “urgent”, it is possible to delineate elements that may guide the decision of the judges:

- ✿ That the lawsuit requires immediate intervention by the Judiciary, i.e., that it cannot wait for a late determination.
- ✿ That the demand for justice involves a serious conflict, that is, that it affects the health, security or economic stability of the actors involved.

²⁶ In the Canadian case, some examples can be seen in *Thomas v. Wohleber* (ONSC 1965, 2020); *Ribeiro v. Wright* (ONSC 1829, 2020); *Douglas v. Douglas* (ONSC 2160, 2020); *Eden v. Eden* (ONSC 1991, 2020) and *Ivens v. Ivens* (ONSC 2194, 2020). In the Mexican case, see: <https://sise.cjf.gob.mx/consultasvp/default.aspx>, por ejemplo: *Queja 144/2020*; *Complaint*: 154/2020.



- ✱ That the lawsuit poses a definitive and material damage, rather than speculative or potential. It must relate to something tangible (health, welfare or catastrophic economic damage).
- ✱ That the lawsuit identifies and particularizes any evidence and provides descriptive examples of what an urgent request for justice means (Thomas v. Wohleber [ONSC 1965, 2020]).

Establishing the conditions that a request for justice must meet in order to be considered “urgent”, however, is only the first challenge that the judiciary must face in this process of reorganizing jurisdictional work.

The second is to determine the formal requirements that must accompany this type of application. In some countries, such as Australia, the courts have made available to the public some electronic forms or applications to be filled in by plaintiffs to justify the “urgency” of their case (Federal Court of Australia, n.d.). In other cases, such as Ontario (Canada), the courts have described in their websites the structure that must carry the requests for justice that are received electronically (Ontario Court of Justice, 2020). In both cases, the forms include entire sections to legally substantiate the application.

In addition, as already mentioned, it is important for judicial operators to consider the means of identification and authentication that users should attach to this type of request. In Querétaro (Mexico), for example, judicial officials agreed that “any court filings sent [whatever the case may be] by e-mail must contain the signature of the person responsible for the document which shall act as an autograph signature for the corresponding procedural action” and, although no copy of the ID of the interested party is requested, it is stated that on the date indicated by the authority, applicants must present any documents necessary to confirm the origin of their petition (Agreement of the Judiciary Council, 2020).²⁷ In other jurisdictions, such as Ukraine, the operators of the judiciary opted for a mixed model of identification, composed of digital mechanisms (electronic signature, digital signa-

ture) or, failing that, physical ones (autograph signature and identity documents that allow confirmation).²⁸

Third, it is important for judicial officials to consider the limitations and viability of the technology. The activation of e-mail addresses to receive demands or requests from the administration of justice service may represent a more expeditious and efficient alternative to the development of virtual justice systems, if the aim is for the public to access the service without having to go to court. However, e-mail could hardly be used as a means to ensure simultaneous, transparent and public deliberation by the jurisdictional bodies.²⁹ Furthermore, when selecting the medium, it is important that judicial operators consider such fundamental issues as their capacity to receive, store, process and protect information.³⁰ In some judiciaries, such as that of Ontario, operators have delimited the size of files that can be attached to demands for justice received by e-mail (35MB). In others, such as the Querétaro Judicial Branch, the agreements issued have specified the format (PDF) in which the documentation must be attached (Agreement of the Judiciary Council, 2020).

Fourth, it seems important for judicial officials to reflect on and determine the consequences of accepting or rejecting demands for justice received electronically. On the one hand, there are various legislations that require applicants for judicial service to comply with certain procedural instances (ratification of a criminal complaint, mediation) before opening a court case. On the other hand, it is important to consider that any demand for justice that is rejected, unanswered or with a late response, is potentially contestable.

In some countries, such as Chile, judicial operators determined that, for the duration of the epidemic, demands received by electronic means “may be carried out without the need to prove compliance with procedural requirements (e.g. prior mediation) whose fulfilment becomes difficult to satisfy, due to the restrictions imposed by the authority or the consequences caused by the health emergency” (Art. 8 inc. final of Law No. 21.226,

²⁷ The agreements issued by some jurisdictional authorities during the COVID-19 health emergency must be read in the light of the procedural laws in force, particularly in cases where they had already adapted their legislation to facilitate the use of new technologies. For example, as in other jurisdictions, in Nuevo León and the State of Mexico (Mexico), many of the formalities that must be met by requests for justice presented in the health emergency were subsumed or replaced by the procedural legislation in force. Although it can be taken for granted, a good practice in these cases is to clearly indicate in the agreements or judicial communications which legal provisions will apply in each case.

²⁸ See CEPEJ (2020).

²⁹ For example, in the midst of the COVID-19 health contingency, in Mexico the members of the Superior Court of the Electoral Tribunal determined that “the use of e-mail is an ideal means, for the discussion and resolution of matters whose ordinary resolution corresponds to public sessions as well as private sessions” (General Agreement of the Superior Court of the Electoral Tribunal of the Judiciary of the Federation number 2/2020, 2020), although they later rectified this.

³⁰ The storage and processing capacity of information available to the judiciary today is very broad and varied. This process is, among other things, the result of both the degree of technological progress that societies have, and the way in which this has been used and adapted by the jurisdictional authorities to improve the conditions in which they provide the service of justice. While all of this has increased the tools available to judicial authorities to make information transparent and accountable to citizens, it has also increased the risks and requirements that judicial authorities must have to guarantee the security of any information they generate and manage on a daily basis (Gordon and Garrie, 2020).



in Arellano, Cora et al., 2020). In other cases, such as Querétaro, the judicial operators agreed that any court filings sent by e-mail “must comply with the legal requirements of each procedural act” (Agreement of the Judiciary Council, 2020). Other judicial operators, as in Tlaxcala (Mexico), simply expressed the possibility of favoring the use of “electronic means to ensure the safe distance and health of public servants”, without specifying means or requirements (Agreement III/23/2020, 2020).

An issue that seems to be ignored in most of the cases reviewed is the time that the public shall have to wait to obtain a response to requests for justice made electronically. As mentioned above, in the face of the declaration of a health emergency, officials in most of the world’s judiciaries decided to suspend procedural terms and deadlines. In some exceptional cases, such as Nuevo León (Mexico), the suspension of procedural terms and deadlines derived from the COVID-19 health emergency constituted a favorable context to test the opening of their electronic systems for the receipt of lawsuits and court filings on all matters (J. A. Gutiérrez Flores, personal communication, June 19, 2020). In ge-

neral, however, these measures were accompanied by a determination to restrict the activation of the justice service to urgent cases or very specific matters, such as the family sphere (alimony, custody, precautionary measures) or criminal matters.³¹

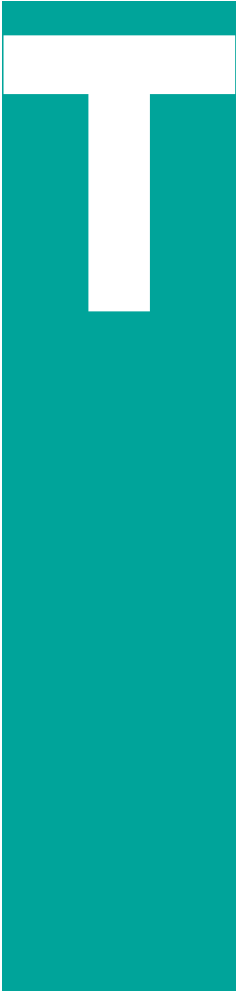
This creates a context of uncertainty for justice service applicants. On the one hand, there is no guarantee that requests for justice shall be accepted, i.e., if they meet the requirements for a judge to consider them as “urgent” and actionable. On the other hand, it is uncertain how long users shall have to wait to know whether their demand for justice is considered justiciable; much less know when their request shall begin to be processed, or what kind of response they should expect. Exceptionally, some judiciaries have clarified that service claimants may expect an official to make contact with the actors, sometimes specifying the means (British Columbia, Canada) and sometimes not, or referring to common procedural law (Querétaro, Mexico). However, in many cases, there is no certainty as to how the judicial authority shall accuse the receipt or respond to the demands for justice received through these mechanisms.

³¹ Of course, there were exceptions. In some judiciaries, such as Nuevo León, services continued in the other areas, partly because they already had online justice services. In others, such as Nicaragua, because justice services were simply not suspended or restricted (Arellano, Cora et al., 2020).



CHAPTER 2

Digital handling of disputes



Typically, the task of systematizing, coding, digitizing, and automating the diversity of decisions, procedures, communications, and interactions among the parties involved in a judicial proceeding has represented one of the main challenges for judiciaries that have explored the use of new technologies for the administration of justice.³² The stages, phases, actions, documents and proceedings that structure a judicial proceeding are diverse and based on different principles, such as that of jurisdictional guarantee, principle of defense, hearing, publicity, legality, immediacy and equality of parties. Furthermore, proceedings may vary in terms of the subject matter (civil, criminal, administrative), the position of the parties (contentious, voluntary), the claims (precautionary, executive), the jurisdiction (national, local) and even the procedure and value (ordinary, executive).

The institutional experience of different judiciaries suggests that, when exploring the use of new technologies for the administration of justice, a basic principle is to recognize that neither all actions, nor all phases and principles of the proceeding can be systematized, digitized, or automated (RAND, 2020; Zalnieriute and Bell, in press; Arellano, Blanco et al., 2020). For example, there is uncertainty about the degree to which certain rights and principles (legal assistance and representation, confidentiality in client-attorney

³² The complexity of the challenge is best appreciated if we consider that, for example, in Singapore the implementation of a video justice request system required officials involved in administration of criminal justice tasks to at least agree on a catalog of more than 100 observations (variables), plus a system for coding them (State Courts of Singapore, n.d.).



interactions, translation or interpretation,³³ publicity of the proceedings) can be guaranteed through digital means.³⁴

It is also prudent to recognize that there is uncertainty about how the use of these technologies may impact the quality of justice service, and how citizens perceive it. In fact, the physical, immediate and bureaucratic interaction is a common foundation of the judicial proceeding that has been reconfigured through the incorporation of digital technologies in the administration of justice. This has led to discussions about how the use of new technologies may condition access and quality of legal services, since not all attorneys, nor citizens, are willing or have the means to interact virtually with the judicial authority (Poppe, 2019). The implementation of new technologies may, therefore, require judiciaries to deploy training strategies to ensure that service users are in optimal conditions to interact virtually with the jurisdictional authority.³⁵ For example, in the current Mexican context, where we are far from having universal internet coverage, the incorporation of new technologies in matters of justice should not be thought of as an instrument to substitute the traditional way of carrying out procedures, but rather as a complement, in such a way that it represents a possibility to expand access to justice and not restrict it.

Even so, throughout the world there are multiple legal systems that contemplated the use of electronic means to ensure communication with the actors in the proceeding before the health contingency. In some cases, such as that of local Mexican judiciaries, the implementation of policies such as the digitalization and electronic publication of newsletters, gazettes, or court bulletin boards has been crucial in these times. There are also various agreements, regulations, or laws through which judiciaries have specified specific means (video conferences) to unburden specific procedural instances that require the simultaneous, but not physical, presence of the actors (hearings).

The measures taken by the judicial powers to reorganize their functions in the context of social distancing and confinement derived from the COVID-19 health emergency have tended to guarantee the health and safe-

ty of citizens, but also that of the jurisdictional officials themselves.³⁶ Throughout the world, many judiciaries decided to suspend procedural terms and deadlines, as well as limit service in non-priority or non-urgent areas. However, others continued with the processing of existing cases, particularly in those proceedings that were in the sentencing phase.

In general, the strategies designed by the judiciaries to rationalize, prioritize or delimit the service of justice to certain matters (criminal, family) or situations (emergency) have been accompanied by recommendations or instructions for system operators to use electronic means to continue providing the service. Different international organizations have also promoted the use of “computer technologies and the use of teleworking to address the current crisis” (Office of the UN Special Rapporteur on Judicial Independence, 2020). In some judiciaries, such as that of Tlaxcala, it was even established as a duty for judges to carry out actions to reduce the backlog in the delivery of sentences, giving priority to the use of electronic means, indicating that “failure to reduce the backlog may lead to the initiation of administrative responsibility proceedings” (Agreement III/23/2020, 2020).

However, many of these instructions, pronouncements or recommendations lack indications or criteria to determine what is meant by the use of “computer technologies”, “teleworking” or “electronic means” applied to the tasks of imparting justice; nor how they should be used by the actors involved, nor at what stages or phases of the process. This is not a minor omission.

The health contingency has revealed, however, that there are already rules, criteria and implementation practices that can illustrate and guide the use and scope of these tools in the conducting of judicial proceedings. For example, since 2008 in Mexico, the Plenary of the Federal Judiciary Council has agreed to make available to the jurisdictional bodies the use of videoconferencing as an alternative method for conducting judicial proceedings (General Agreement 74/2008, 2008). But circumstances have also shown the need for the judiciaries to ratify, expand or emphasize the use of these tools in the face of the impossibility of communicating with the parties physica-

³³ There is an idea that video conferences can allow an interpreter to do their work remotely, which could be an advantage in cases where it is difficult to access a translator at the site of a court hearing, for example. However, the audio quality of the videoconference should be impeccable, with no delays, and the different actors in the hearing should have enough patience to give space to the interpretation, so that such an exercise allows the person who needs it to understand each and every moment of the proceeding.

³⁴ *Maryland v. Craig* (U.S. Supreme Court, 1990).

³⁵ For example, in Singapore, court officials have organized and publicized certification processes for legal representation services to ensure that attorneys are able to interact virtually, at least since 2000, a process that has not been replicated in other jurisdictions.

³⁶ See Office of the UN Special Rapporteur on Judicial Independence (2020).



lly and immediately. For example, in Mexico, the Plenary of the Federal Judiciary Council has issued agreements (General Agreement 8/2020, 2020) and “reinforcement mechanisms” to guide how judges should make use of “real-time video conferencing to hold hearings” during the health emergency (Federal Judiciary Council, 2020).

But what tools, in what phases of the process and under what conditions can they be used in tasks of imparting justice? Given the diversity of sources of information available, as well as decisions, procedures, communications and interactions that make up a judicial proceeding, in this section we propose a scheme to systematically analyze some of the procedural phases in which new technologies can be used to process, deal with or carry out judicial proceedings: 1) Tools to guarantee communication with the parties, refers to technological tools explored or developed by the judicial powers to guarantee that the parties or third parties involved in a judicial proceeding are aware of any action derived from it, including the registration or formal existence of a claim; 2) Tools to allow remote interaction with the parties (hearings), and 3) Solutions to make work management more efficient and ensure that it can be done remotely (teleworking).

Tools to ensure communication with the parties

The judiciaries have explored different mechanisms to ensure that court filings and decisions implicit in the judicial proceeding are “communicated” or “made public” remotely, that is, without the need for the public to go to the judicial offices or interact physically with a judicial official to learn about any kind of procedural determination. The task has not been easy. First, because the judicial proceeding is structured by various formal and highly regulated communications among the actors involved in a dispute, and between them and the jurisdictional authority. And, secondly, because traditionally, notification at a distance or by means other than physical, immediate and documentary interaction in a court of law has been reserved for subjects whose whereabouts are unknown or whose trial is conducted in absentia.

Among the types of communication involved in a judicial proceeding are: the *summons* (a judicial call for the parties or a third party involved to appear in court, within a specified time period); the *notification* (notice, with legal effect, of a court decision or any other matter ordered

by the court); the *subpoena* (to bring to the attention of some person a mandate from the jurisdictional authority to appear at a specific time or specific procedural proceeding); and the *injunction* (act communicating to the parties or third parties to engage in or refrain from a conduct specifically ordered by the court).

Typically, it is considered that while the purpose of the notification is the action of communicating, regardless of the message, the summons, subpoena and injunction require, in addition, an action by the recipient or notified subject (which consists of appearing at a proceeding or in person as part of a trial, for example), as many legal systems prefer to communicate these acts in a personal manner. And, in general, each of these communications is subject to strict, varied and provisional rules, the failure to comply with which can have far-reaching procedural consequences.

In summary, the doctrine places acts of notification in two categories: *personal* and *non-personal*. On the one hand, personal notification is made orally, directly and in person to the interested party themselves, or to their legal representative. Personal notification is made at the address of the person to be notified. To this end, the first document submitted by each party must state the address for service, and a judicial officer (clerk of the court or notification agent) will be called upon to do so. On the other hand, among the different means that have generally been explored by the judiciaries to notify the parties remotely are postal mail or **notifications by posting on court notice board, publications and edicts**, when the address or whereabouts of the actors is unknown. Service by way of posting on court notice boards consists of fixing the document to be served for a given period of time in a place open to the public at the offices of the jurisdictional authority performing the service. The cited document is also published on a website specified by the authority. Any notifications by bulletin are those that are transmitted through a periodic document where trials in which some judicial resolution has been pronounced are listed. In this way, interested parties can go to the courts to find out about the respective agreement.

In recent years, however, various judiciaries have recognized the need to explore and develop new technological tools so that the actors involved in a judicial proceeding can learn in a remote and comprehensible manner about any act, request, communication or movement experienced in the case being processed, as well as any possible consequences and procedural derivations.

Justice systems have also developed tools to make it easier for the interested parties to seek information about

their issues. Through the Virtual Court developed by the Judicial Power of Nuevo León, besides being able to present court filings, as we mentioned in the previous section, members of the public that have access to the internet service can consult any agreements, court filings and documents in which they are involved, from any location where they have a remote connection. Within the facilities provided by this system “there is the consultation of a file, with respect to published agreements, court filings and instructions (...) the only limitation established to have access to the content (of these documents) is that the interested parties have the corresponding authorization to consult the required information” (García, 2016, p. 174).³⁷

The objectives behind this type of tool are to reduce the number of procedures and formalities that form part of the judicial proceeding, as well as the amount of paper required to record them and, above all, to guarantee effective access to justice for the public (Contini and Cordella, 2004; Velicogna, 2007). Under this approach, newly introduced information systems allow users of the justice system, whether individuals or their legal representatives, to be notified of their cases electronically through text message or email alerts, inviting them to visit an online account or communicate with their attorneys (CEPEJ, 2016). In some state jurisdictions in Mexico,³⁸ as in other countries,³⁹ these tools came into use before the health contingency, and are composed of devices (e-mail accounts, servers, platforms, applications for mobile devices) that automatically generate a record or acknowledgement of the issuing or receipt of procedural communications (Pantin, 2020a), which guarantees compliance with the terms and formalities required.

It is important to point out that making platforms or applications available to users to consult the files and the status of any court filings linked to them implies a much lower degree of difficulty than designing comprehensive tools that allow court filings or lawsuits to be presented digitally, which is why a greater number of judiciaries have been able to implement these tools (Cordella and Contini, 2020). Some judiciaries, such as the Turkish one, have also introduced new technological tools to deliver summonses and subpoenas, and to confirm the intention of the parties to appear before the requisitioning authority, through a message sent to their phone a few days before (UYAP, n.d.). In other countries, such as Lithuania, the

judiciary communicates with the parties within a “secure personal space”,⁴⁰ i.e. a personalized and reserved web site for the individual holder of the information to consult it individually and remotely, followed by information on any consequences and legal remedies available, whether online or offline (E-Service Portal of Lithuanian Courts, n.d.). In fact, here the difference between an electronic file and a virtual court is clearly reflected, since while the former allows the jurisdictional authority to communicate with any actors involved in the proceeding and their attorneys, the latter constitutes a true means of interaction, where the users of the service have the possibility to send documents and communications among themselves, with the intermediation of the jurisdictional authority, or directly with the authority (Pantin, 2020a).

Many of these tools have been used and tested in the context of the COVID-19 health contingency. For example, in several judicial powers (Ontario, Querétaro or Nuevo León) operators have decided to develop an electronic appointment scheduling system to manage, streamline or reduce the simultaneous presence of people in the courts interested in reviewing their files. And, where they already exist, they have facilitated remote communication of the courts with the public. The institutional experience of various judicial powers suggests that, in addition to facilitating remote communication, the implementation of this type of tool can generate other benefits. For example, in Turkey, it is estimated that the practice by the jurisdictional authority of sending reminders and confirmations of attendance to any actors involved in the proceedings via text message has contributed to higher rates of court appearances by the parties in the proceedings and, as a result, a lower proportion of postponed hearings (UYAP, n.d.). Furthermore, it is considered that these tools can contribute to significantly reducing procedural errors or omissions, since it is sufficient to automate any responses, reminders, and formal requirements that judicial communications must meet (Pantin, 2020a).

To be functional, however, these tools require that both the legislation and the system operators are adapted to their use. At the legislative level, most procedural regulations recognize the possibility for judicial officials to communicate with users remotely or in person—mixed—but they are not very clear about whether these channels

³⁷ According to García (2016, p. 174) for this to be possible, it is necessary for the plaintiff to establish within their statement of claim their intention to use the court as a means for the substantiation of the procedure, which also applies to the counterparts, who may request the service through the answer to the claim.

³⁸ According to an analysis of the websites of the 32 state judiciaries in that country, before the contingency the following state judiciaries had mechanisms to allow defendants and their legal representatives to access electronic files on their ongoing cases: Aguascalientes, Baja California, Coahuila, Guanajuato, State of Mexico, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Tamaulipas, Veracruz and Yucatán, at least in some matters.

³⁹ Some emblematic cases are: Chile, United States, England, Australia, Korea, Taiwan or Singapore.

⁴⁰ Similar to the one offered by the tax mailbox in Mexico.



are exclusive or transferable, or under what conditions an electronic proceeding could become physical and vice versa. Furthermore, in these same legislations, both the formalities and the deadlines established for the notifications to take effect are usually the same, which reduces any benefits associated with these tools. As for users, the implementation of this type of tool is continuously accompanied by warnings related to the potential risks of excluding or leaving in a state of defenselessness those citizens who do not have the necessary means to interact virtually with the authority.

Tools to ensure remote interaction

Various acts, principles, and even some of the communications that form part of the judicial proceeding—for example, the summons and subpoena—require the simultaneous presence and interaction of the jurisdictional authority with one or more actors involved in the proceeding. Sometimes, however, actors have difficulty presenting themselves to a judicial office or choose not to do so at all. These types of obstacles often have the effect of delaying the processing time and requiring the constant scheduling and preparation of hearings that do not take place (RAND, 2020).

One solution that judiciaries have explored to address this type of problem is the development or use of devices that make it easier for an individual or group to attend or witness a procedural action from a remote location, that is, in a place other than the jurisdictional office. The premise behind these initiatives is that technological development can facilitate the performance of various procedural actions (hearings, appearances, collection of testimony) that require the simultaneous, but not physical, interaction of the actors involved. However, the modalities and type of interactions that these video communication tools can facilitate between the actors and authorities involved in the proceeding are varied.

Throughout the world, since before the health emergency, different legal systems contemplated in their legislation the possibility that certain procedural actions, and under certain conditions, would be carried out remotely.⁴¹ In criminal matters, for example, in various jurisdictions the legislation expresses the possibility for defendants to plead guilty by video or videoconference—a closed two-way television system that transmits and receives images and sounds in both directions at the same time—. In civil and family matters, there is also a proliferation of jurisdictions where the law recognizes and even recommends the execution of certain procedural actions remotely, mainly through videoconferencing.

The health contingency has revealed that, although rules, criteria and implementation practices already existed that can illustrate and guide the use and scope of these tools in the carrying out of legal proceedings, in most jurisdictions the use of video conferencing is under development. Among the main obstacles mentioned to its complete implementation are the insufficient technological capacity installed, the processes of generating capacity among users and operators of the system and, above all, the different rates of implementation among jurisdictional bodies and entities (Pantin, 2020a). Likewise, as this is a recent and novel initiative, there is also no clarity about the differential effects that the use of videoconferencing may have on the handling and outcome of any proceeding.

The popularity that the use of videoconferencing has acquired and its application in different areas of justice has constituted a regulatory arena difficult to frame in a classification or list of procedural assumptions (Diamond et al, 2010; Lesjak, 2010; Verdier and Licoppe, 2011; Dumoulin and Licoppe, 2016; Garofano, 2007; Gertner, 2004; Henning and Ng, 2009; Rowden, 2013; Salyzyn, 2012; Wallace, 2008; McDougall, 2013; Valchev, 2020; Arellano, Blanco et al., 2020). This same literature recognizes, however, that the dilemmas and challenges posed by the use of telecommunications across different jurisdictions are similar, particularly in some provinces or states in Australia,⁴² Canada,⁴³ the United States,⁴⁴

⁴¹ See RAND (2020), CEPEJ (2016) and Pantin (2020b) for the case of the United States, European Union and Mexico, respectively.

⁴² In Australia, since 2004 most jurisdictions have used video conferencing to enable witnesses to participate in hearings. It was originally developed to enable vulnerable and child witnesses to give evidence without being intimidated or putting their physical or emotional integrity at risk. Later, given the vast size of the country, its use was expanded to allow witnesses who would not normally be able to appear to participate in certain proceedings, or to generate savings (McDougall, 2013).

⁴³ In Canada, an amendment to the Criminal Code in 1988 authorized the use of closed-circuit television to allow minors to testify when they were abused (Francis, 2015). Subsequently, the use of video conferencing in hearings at the federal level has been expanded since 1998 and in Ontario for criminal and civil cases since 1999, before expanding to other provinces.

⁴⁴ In the United States, as mentioned above, the use of telephones and closed-circuit television has been used in bail determination and pretrial hearings since the 1970s, first in Illinois, Philadelphia and Florida. Subsequently, video conferences have been used to gather testimony from child victims of abuse, and then more broadly in civil and immigration matters (Haas, 2006).

the Netherlands,⁴⁵ France⁴⁶ and Slovenia.⁴⁷ The following paragraphs summarize the content of these documents.

Legality, immediacy and due process. A video or teleconference interaction is different, both in verbal and bodily, visual and auditory terms, than one that is conducted directly, face-to-face. In certain matters (criminal, judicial protection) the direct and immediate intervention of the jurisdictional authorities is crucial to guarantee and preserve the rights, life, freedom or dignity of persons. It is sometimes considered that when judicial interactions are conducted by videoconference, users of the justice service may also experience or perceive unequal treatment by the authority if they do not feel heard or do not receive clear, accessible and timely information regarding the status of their proceedings and any consequences that may arise from them. The identification of the cases and procedural stages that require the presence or direct intervention of the jurisdictional authorities and of the actors involved in the proceeding (immediacy), as well as their adequate regulation, are fundamental tasks to guarantee the proper functioning and use of videoconferences and other telematic means of judicial interaction. There are many other instances where the use of video or teleconferencing has proven to be a solution implemented to ensure the timely intervention of jurisdictional authorities in a particular dispute, without the need to be physically present at the event. In fact, in some jurisdictions where climatic and geographic conditions make continuous and accurate displacement of the population impossible, such as Alaska (United States), legislation and practice have incorporated remote hearings or appearances via telephone (where the parties and their attorneys are in different locations), as a means of ensuring that judicial work does not stop (United States Bankruptcy Court District of Alaska, 2020). In Mexico as well: the great geographic extension of the state and the conditions of insecurity have forced the Judicial Power of Tamaulipas to allow the use of video conferences for the carrying out of some hearings (A. Huerta Rincón, personal communication, April 9, 2020). It is also important to note that, at least in the case of the United States, the use of video or teleconferencing as a means of conducting court hearings has proven to be more effi-

cient in non-contentious litigation, initiated by voluntary jurisdiction or brought in default in the absence or disinterest of one of the parties (Cabral et al., 2012). Perhaps in light of this evidence, the online courts developed by the Judicial Power of the State of Mexico, which will be detailed below, usually handle non-contentious cases or cases that approach mere formalities.⁴⁸ For this reason, when authorizing the use of video conferences to conduct hearings during this contingency, many judiciaries limited the type of hearings that could be conducted by this means (Pantin, 2020a; Pantin, 2020b). In any case, the implementation of this type of practice requires that the actors have a spirit of openness and are willing to facilitate the respectful interaction of the parties, guaranteeing the elementary principles of due process and the right to a defense (Arellano, Blanco et al., 2020).

Identity, trust and authenticity. The use of telecommunications may limit or enhance different types of interactions between the jurisdictional authority and the users of the service, such as the offer and release of testimonial or documentary evidence. In the case of testimonial evidence, attorneys and parties must ensure that the identity, legal capacity and authenticity of any witnesses to be presented before the jurisdictional authority are fully accredited. This can be resolved, for example, by previously sending some digital or digitized means (electronic signature, digitized copy of official identification) that allows the jurisdictional authority to corroborate the identity and legal capacity of the witnesses. Attorneys should also ensure that any witnesses they present are prepared and have the necessary resources to interact remotely. Another potential concern is that witnesses or experts involved in a hearing may be pressured or instructed by one of the parties or their representatives to induce or modify their testimony (S. Piñeiro, personal communication, June 24, 2020). In the case of documentary evidence presented during a proceeding, ideally both the parties and the jurisdictional authority should ensure the receipt and authenticity of the documents before the remote hearing takes place. However, remote interaction may also hinder the recognition of an object by a witness, as it could recognize it in person. For example, if the image quality of the video conference is not optimal, it can be

⁴⁵ In the Netherlands, the use of video conferencing in immigration case hearings has been adopted since 2007, with the aim of reducing the cost of transferring the experts and the detained immigrants, as well as making the scheduling of hearings more efficient and avoiding delays (Henning and Ng, 2009).

⁴⁶ In France, the use of videoconferencing was initially authorized in 1998 to allow judges from Paris to participate remotely in resolving cases in the courts of one of its overseas territories, where there was a shortage of judges. Subsequently, starting in 2007, videoconferencing equipment was installed in all courts of first and second instance, as well as in most prisons, and its use was actively encouraged, with the aim of reducing the cost and risks of transferring inmates to the courtrooms (Dumoulin and Licoppe, 2016).

⁴⁷ In Slovenia, the use of videoconferencing started more than 10 years ago, based on European legislation, which since 2000 allowed the use of videoconferencing in criminal hearings, and from 2001, in civil and commercial matters, in order to promote legal aid between member states. In the case of Slovenia, the first video conference hearings were in criminal matters, where rented equipment was used to listen to witnesses residing in other countries (Lesjak, 2010).

⁴⁸ For example, the online family court of the Judicial Power of the State of Mexico is authorized to resolve cases regarding divorce proceedings by mutual consent, identity of the person, economic dependence, accreditation of concubinage, authorization to leave the country, change of patrimonial regime, ratification of agreement, declaration of absence and presumption of death (Circular 20/2018, 2018).



difficult for the victim of a cell phone theft to categorically determine if the device appearing on the screen is indeed theirs. However, the use of technologies such as Power-Point presentations or videos to provide expert opinions or certain electronic evidence may work very effectively in a videoconference hearing (S. Piñeiro, personal communication, June 24, 2020).

Technological Prejudice. In at least one jurisdiction (Cook County, Illinois) the use of video conferencing was abolished as a means of holding pre-trial hearings (bail hearings), on the suspicion that it could have a negative effect on defendants who appear remotely versus those who appear in person, as judges tended to impose higher bails (Diamond et al., 2010). Other studies have concluded that individuals who testify live are perceived more positively and considered more credible by jurors than those who testify via video conferencing, and that people who communicate through a screen tend to speak more harshly, aggressively, and callously than in a face-to-face interaction (RAND, 2020). On the other hand, neither the infrastructure nor the personal and collective capacity to use new technologies are elements that are distributed homogeneously in society. Judiciaries must contemplate this diversity of assumptions and adjust both their practices and legislation in order to offer a wider range of possibilities and spaces for citizens to process their disputes in the courts. Users and operators of the justice system must be held accountable and identify those channels of communication and interaction that are most favorable and appropriate for them, according to their interests, capacities and expectations.

Multiple remote interactions. Despite great technological advances, video and teleconferencing systems sometimes suffer from problems related to image or sound quality. This can easily turn into intermittencies, delays or even continuous interruptions of communications. Attorneys and courts should be aware of these problems and make efforts to reduce the risk of suspensions and errors due to technical reasons. Some research has highlighted that, at least from the perspective of the service operators, the risks and shortcomings associated with the use of videoconferencing can be mitigated through various strategies; for example, ensuring that the parties have the appropriate equipment and technology to interact remotely by pre-testing sound and interaction minutes before the hearing takes place (RAND, 2020). In fact, most of the agreements made by the judiciary in Mexico to authorize the use of video conference hearings established an obligation for

judicial officials to check the connection quality of the participants prior to the start of hearings. An additional problem is that video or teleconference hearings can be particularly challenging in cases that require the presence of multiple parties or a legal representation team. Each person added to a conference increases the risk of technological interruptions or errors. Furthermore, not all platforms contemplate or allow for simultaneous and collective interaction. To avoid these problems, some courts may consider limiting the number of people who may participate in a video or teleconference hearing. Users and operators of the service, for their part, should consider whether they can conduct the hearing with such limitations.

Remote interaction with attorneys. Videoconferences and teleconferences limit an attorney's ability to communicate with their clients, the judge or their counterparts, in real time and without being heard by witnesses or outside observers. Some videoconferencing services provide chat or "private room" functions, which allow, for example, the attorney to communicate with their client before or during the hearing if they are in different locations, as has been the case in some hearings in Chile (S. Piñeiro, personal communication, June 24, 2020). One could imagine that, in addition to any device through which they may participate in the hearing, the defendant would have access to a telephone so that they could communicate with their attorney during the hearing (I. Rodríguez, personal communication, April 28, 2020). In the case of actions implemented by the Mexican judicial powers during the COVID-19 health emergency, this has been an important element particularly in criminal matters, since with the exception of Nuevo León⁴⁹ or Coahuila most of the judicial powers that authorized hearings by videoconferences provided in their agreements that the attorney or defender and the defendant were in the same physical space, and only in exceptional cases, it is established that they may be in separate spaces. And in these agreements it is specified that the judge must provide the necessary spaces and eventual breaks to give the attorney and their client the possibility to communicate privately. On the other hand, additional concerns can be raised about ex parte communications, which are highly regulated and limited in most judicial systems around the world with the exception of Mexico, where apart from being prohibited in criminal matters, they are common in other matters because of the lack of regulation. Attorneys and courts must take into account this limitation and seek alternative ways to solve this situation, such as the possibility

⁴⁹ There, the accused is expected to have contact with their attorney or public defender prior to the hearing (J. A. Gutiérrez Flores, personal communication, June 19, 2020).

of opening virtual agendas for any of the attorneys or parties to schedule remote hearings with the jurisdictional authority —after public recording of the occurrence of the act—, or the preparation of a briefing on the points discussed, to be distributed among any parties who were not present.

Security, privacy and confidentiality. The use of tele and video conferencing has been promoted in different jurisdictions to protect the identity of witnesses or victims who come forward to testify against a powerful or dangerous defendant. However, judiciaries have limited ability to control who accesses a hearing if conference information is shared electronically —particularly via streaming—. Thus, it is possible for participants to “broadcast” the hearing by other unauthorized means, or to be heard, observed, or recorded without their authorization. This presents different challenges for the holding of remote hearings to discuss sensitive or confidential matters, for cases where there is a protection order, for example. Courts should be especially sensitive to confidentiality issues, and attorneys should be vigilant in meeting their confidentiality obligations during video and teleconferences where the identity of all participants cannot be verified. In addition, judiciaries may establish rules or protocols so that parties interacting remotely are aware of the risks associated with this type of interaction with the authority, as well as specify the conditions of use of any platforms or applications they utilize. The use of unsecured or unauthorized technology while conducting a remote hearing involving the security and privacy of individuals — or confidential information, financial data or trade secrets— increases the risk of private information being compromised.

Publicity of the proceeding. Publicity is one of the fundamental principles of judicial hearings, particularly in adversarial and oral systems, although there is the possibility of identifying exceptional circumstances that justify closing certain hearings to the public. Since before the contingency most of the hearings that used video conferencing did so partially —and most of the actors were present in the courts— the rules regarding publicity of hearings were not affected by the use of this tool. In the context of the COVID-19 contingency, with some

hearings taking place by videoconference and often outside the courts or in courts closed to the public, the issue of publicity for hearings has been raised in a new light. From a technological point of view, commercial videoconferencing systems offer the possibility of recording and broadcasting live hearings. However, various considerations have led many judiciaries to close down access to hearings conducted in this way. This is a decision that involves issues such as whether hearings can be recorded or published, even by means of a screenshot. In fact, in Mexico and other countries, one challenge that judiciaries have had to face is regulating the use of electronic/mobile devices during hearings —whether remote or face-to-face—. Because they are multifunctional, they allow users to have different means of recording, storing, and distributing non-public information from proceedings —for example, audio recording, video recording, text transcripts, photographs, or screen shots—. This challenge is compounded by ensuring that the information is not disclosed and does not contaminate the testimony, statements or opinion of other actors in the proceeding.⁵⁰ On the other hand, while an escort or security service could remove an unmanageable participant from a hearing room, alternative means of stopping a disturbance during a remote hearing are available online. It is interesting to review the options that various judicial powers have found to address this issue. In Spain they were carried out behind closed doors (Velilla Antolín, 2020). In the United States, each court chose how to

handle it. Although the federal judiciary approved the use of television and video conferences for hearings on March 29, it did not rule on the possibility of making them accessible to the public (United States Courts, 2020). In Los Angeles and Miami, hearings by video conference were held without an audience; while in New

York, screens were set up in the courts so that those interested could see the hearings being held via video conference, which implied putting the health of those attending at risk. In New Orleans, each judge decided for themselves: some gave access to the public through a phone call, while others shared access to their sessions on Zoom (Lartey, 2020). Something similar happened in Argentina, where some judges decided to open their hearings to the public by videoconference.⁵¹ In Costa Rica, the **Protocol for conducting oral hearings** by te-

Good Practice #10. Protocol for conducting oral hearings by technological means in civil matters. Costa Rica.

⁵⁰ One way to reduce the risk of possible misuse of images of video conference hearings, if made public, would be to ask the person requesting access to them to sign a letter informing them that they cannot record or broadcast the hearing and the possible legal consequences of doing so.

⁵¹ For example, last April the Contraventional Criminal Court and Misdemeanors 10 of the city of Buenos Aires held a virtual hearing to deal with a company’s claim. During the 40 minutes that it lasted there were 10 people with continuous presence and, at one point, there were 14 in attendance (see Angulo, 2020). As a result, this court decided to open all its virtual hearings to interested parties, by means of an application (Contraventional Criminal Court and Misdemeanors No. 10 of the city of Buenos Aires, 2020).



chnological means in civil matters, issued by the Plenary Court on May 4, 2020, provided that persons wishing to attend a hearing must request access at least one day in advance, and be given a password to enter the session of the videoconferencing system, where their microphone would be silenced so that they could not intervene (Circular No. 93-2020, 2020). In Mexico, at the federal level, the agreement on the use of videoconferences approved by the Federal Judiciary Council on April 2, 2020 stated, in a section entitled “publicity”, that hearings by videoconference would be recorded, but it did not detail the mechanism by which a citizen or a journalist could request access to this record⁵² (CJF, 2020). At the state level, all judicial powers initially opted to close their video conference hearings to the public, except for the Coahuila Judicial Power, which provided for the possibility that interested persons could request access to a hearing. This Judiciary decided that it would give access to a limited number of attendees, as it would in a physical courtroom, giving priority to people directly involved (family members), as well as academics and journalists. Interested parties had to request access and this was not given directly to the platform where the hearing was taking place, but to a **YouTube channel only accessible by a password**, where the hearing was broadcast in real time (A. Ponce de León, personal communication, July 15, 2020; M. Lima, personal communication, April 3, 2020). Subsequently, other judicial powers also sought solutions to allow publicity for their hearings. Thus, Nuevo León developed a module in its Virtual Court where registered users, after accepting a privacy notice and verifying that they would not intervene in the trial, could access a mirror room in the virtual courtroom, set up for the public so that attendees may follow the hearing without the possibility of intervening in it. The options that were taken were of very diverse nature. But undoubtedly restricting access to remote hearings precisely during the contingency period was very bad news: judges who conducted these hearings had to learn to do so in a new way, so this was just when public scrutiny was more necessary than ever because of the doubts that exist as to whether due process can be guaranteed in these circumstances. In fact, as Susskind (2020) argues, if some of the determinations that have been made during the emergency with respect to holding hearings by videoconferencing are to survive this health contingency, it is necessary that more data on the cases that have been resolved in this context be

Good Practice #11.
Advertising for remote hearings. Coahuila and Nuevo León (Mexico)

compiled, published and analyzed in order to evaluate their successes and limitations and that the decisions made in this regard be based on evidence. From a perspective of public policy, the use of video conferencing in tasks of administration of justice have involved another series of challenges, ranging from the organization of the space where the hearings will be taken place remotely, the type of hearings or interactions that may occur by videoconference and definition of how many actors may participate simultaneously, to the planning of any

resources that should be invested to install the required technology (Arellano, Blanco et al, 2020). In the long term, investment in technology to facilitate the use of videoconferencing may be profitable, as it reduces the security costs required for travel and

communication between the parties involved in a judicial proceeding (Dumoulin and Licoppe, 2016), but in the short term it may represent a considerable expense. In addition, the investment costs required may vary according to the type of videoconference to be implemented and the purposes to be pursued. For example, in most judiciaries around the world and in Mexico that provided for telepresence or some form of online hearing prior to the health contingency, only a limited number of actors could participate remotely. The challenge for these judicial powers during the contingency has been to enable mechanisms for a greater number of actors to intervene remotely. In other cases—for example, in criminal matters—the use of video conferences has been promoted as a means of ensuring the safety of witnesses and even of some judicial operators, but the measures require the presence of the protected actors in an alternate judicial venue, which means that the parties still have to move and present themselves physically before a judicial authority.

Once the health emergency was declared, practically all the judicial powers that had already implemented this type of technology had to develop guides, agreements, protocols, and good practice manuals to guide and regulate their use (Superior Court of Justice, n.d.; Supreme Court of British Columbia, 2020; Joint General Agreement 8/2020-II, 2020; Circular No. 93-2020, 2020; Federal Judiciary Council, 2020). In some cases, these documents were necessary because not all operators nor all jurisdictional branches were prepared or open to offering the service. In others, the development of guides and protocols represented a

⁵² In fact, this posed a problem when a media case arose, as was the hearing to formulate against the former director of Pemex, Emilio Lozoya, a case of high-level corruption. Despite the insistence of the media and civil society organizations, the hearing took place remotely and without public access. The solution offered by the Federal Judiciary Council was to send messages to the media source by WhatsApp, with a recounting of the hearing (Fierro, 2020).

means for the judiciary to establish rules, entry and registration mechanisms, and to define specific platforms (Teams in Costa Rica,⁵³ Zoom in Coahuila,⁵⁴ Cisco Webex in Brazil⁵⁵) for holding hearings, including documentary hearings, by sending any documentation in advance by electronic means (Joint General Agreement number 8/2020-II, 2020; Code of Civil Procedures of the State of Nuevo León, 2018).⁵⁶ Thus, both in Coahuila and in the State of Mexico and Nuevo León, **information and training sessions** were held not only with the judicial officials who were to intervene in the remote hearings, but also with external actors (prosecutors, defenders, litigants), to make them aware of the platforms and the protocols or guidelines (A. Ponce de León, personal communication, July 15, 2020; M. Lima, personal communication, April 3, 2020; J. A. Gutiérrez Flores, personal communication, April 10, 2020). In general, these documents also served as a means for judiciaries to make available certain “manuals” or “rules of conduct” for communicating virtually with the authority, including a specification of necessary and recommended technological requirements (computer, webcam, internet connection, headphones with integrated microphone to reduce peripheral noise), as well as rules of dress and language (recommendations for tone, diction, and audio quality).⁵⁷

It is worth emphasizing the importance of this practice, insofar as it has made it easier for judicial operators, attorneys and users to have uniform rules and criteria for requesting, scheduling and interacting virtually. In other cases, such as Chile, in the absence of precise protocols issued by the judicial authorities, the operators themselves (judges, prosecutors, defenders, attorneys) met to identify good practices and jointly develop certain informal guidelines. One of the concerns they had was determining the type of hearings that could be conducted via video conferencing, without sacrificing standards of as-

Good Practice #12. Training for internal and external actors who participate in trials on platforms and guidelines. Coahuila, State of Mexico and Nuevo León (Mexico)

issues are seen and the way in which the trial shall be conducted is not discussed (S. Piñero, personal communication, June 24, 2020). This is similar to the “coordination hearing for the virtual or hybrid criminal oral trial”, which Arellano, Blanco et al. (2020) recommend to carry out “to weigh and resolve the best way to facilitate the conduct of oral proceedings in virtual or hybrid mode, in appropriate health conditions, always protecting the guarantees and standards of the accusatory adversarial process” (p. 25).

Good Practice #13. Feasibility hearing. Chile.

The establishment of agreements between certain operators of the service—Skype, Zoom, Cisco Webex—and some jurisdictional authorities has also made it easier for them to standardize the numbers of the court, registry, folio or cases with access codes and virtual rooms where the hearings shall be held (State Courts of Singapore, n.d.). These systems also allow the generation and monitoring, in real time, of different management indicators, as is the case with the judicial powers of Brazil and Nuevo León, which published microsites showing, among other data, the number of hearings held by video (with the number of users who attended and the time they lasted) or the number of sentences passed, which represented an interesting **accountability exercise** (Conselho Nacional de Justiça, 2020; Judicial Power of the State of Nuevo León, 2020). This, in general, facilitates the control, monitoring and uniform management of proceedings, regardless of the path they take. Of course, this process depends on the judiciaries themselves having prior policies for recording, storing, processing, and managing the work they do, such as those we shall discuss in the next section.

Good Practice #14. Transparency of data on the work done by new technologies during the COVID-19 contingency. Brazil and Nuevo León (Mexico)

⁵³ Circular No. 93-2020 (2020).

⁵⁴ Agreement issued by the plenary session of the Council of the Judiciary of the State of Coahuila (2020).

⁵⁵ Conselho Nacional de Justiça (2020).

⁵⁶ In fact, limitations on the presentation of witnesses or documentary evidence during remote court hearings was one of the main negative effects associated with the use of the telephone in the administration of justice during the 1990s (Toubman, et al, 1996).

⁵⁷ An example of the effects that attorney clothing may have on the perception of judges when they interact remotely can be seen in Fortin (2020). In fact, this poses a potential problem with hearings involving defendants in custody, as it may prejudice them appearing, during a remote hearing, in their inmate uniform rather than being able to wear more formal clothing if they attend a face-to-face hearing (Australian Human Rights Commission, 2018).



The degree of sophistication that the tools to guarantee remote interaction can acquire depends on the time and magnitude with which they have been practiced, as well as the economic, technological, human and legislative resources that each jurisdiction has. However, resources should not always represent a limitation. As recommended by some good practice documents (National Center for State Courts, 2020), telephone calls represent a less expensive, more direct and probably more accessible alternative to the use of video conferences for a larger part of the population. In addition, resources and the type of remote hearings can be prioritized and staggered according to the importance of the case or the procedural phase involved (National Center for State Courts, 2020), always safeguarding the rights and interests of the parties involved. The fundamental principle is that judicial powers should diversify the means of remote interaction with users, but should establish clear and homogeneous rules, criteria and procedures for doing so.

Tools to make work management more efficient and ensure that it can be done

Most of the judicial powers began to explore new technologies with the purpose of ordering, systematizing, and analyzing information about the work that judicial officials carry out on a daily basis. Before the implementation of these tools, the only possible source for classifying and systematizing information on judicial work was the forms prepared periodically by a judicial official. No matter how complex the forms were, the information was always limited, outdated and subject to human error. In recent times, with the implementation of automated case management systems, judicial powers have been able to systematize and process a greater amount of information almost in real time. This has also made it easier for them to document quantifiable goals, objectives, and indicators that are useful for verifying the degree of advance or progress that judges have in certain areas.

In Mexico, the implementation of this type of technological tool has been a policy promoted throughout the country since the reform of the criminal justice system in 2008. To a certain extent, the introduction of new principles and procedural guarantees meant a transformation in the management models of judicial work, for which the use of certain technologies—for example, audio and video recording and transmission systems, systemati-

zation of the proceeding with a single research folder number— was crucial. Even in some cases, such as that of the Judiciary of the State of Mexico, the experience accumulated by the judicial powers during this reform process was used to develop similar tools to manage judicial work in other areas or jurisdictional matters, which has allowed them to develop a management system that yields a great deal of data and monitoring indicators, such as the number of hearings that are scheduled per day per jurisdictional unit. This information can be used to identify problems or bottlenecks, and come up with solutions to solve them. For example, they were able to identify that a large number of hearings had to be rescheduled by jurisdictional authorities due to the absence of experts, as they were scheduled to attend hearings in distant municipalities which they could not reach in time. Upon realizing this situation, Judicial Powers allowed experts to connect remotely to the hearings, and the number of hearings that had to be rescheduled for this reason was significantly reduced (I. Rodríguez, personal communication, May 28, 2019). In other cases, such as that of the Judicial Power of Nuevo León, the development of this type of tool has made it possible to implement new mechanisms for assigning cases, which has made it possible to ensure crucial aspects such as randomness or equity in the distribution of workloads among the various jurisdictional units (J. A. Gutiérrez Flores, personal communication, June 19, 2020).

According to Cordella and Contini (2020), the most efficient automated file management systems are those that achieve the greatest interoperability between institutions. This is particularly important in criminal matters, where ideally the various institutions and operators involved in the proceeding, from the police who arrest the alleged perpetrator of a crime to the prison where this person shall be sent if convicted, to the public prosecutor who has the function of charging the accused, the public defender who must defend them—in the event that they

do not require a private attorney—and the judge who decides on their guilt, can communicate with each other and share information about a case, always respecting the rules that govern communication between institutions in criminal cases. In Que-

rértaro we have an example of this type of management system that allows the interconnection between all the institutions of the criminal justice system, “from the police with the task of collecting the complaint, to the penitentiary authority with the task of executing sanctions so that reinsertion is possible” (Strategic Plan “COSMOS”, 2019, p. 16140). This is the **Cosmos system**, where “institutional coordination (...) is a consensual way of

Good Practice #15.
Interconnected management systems. Querétaro (Mexico)



working that is distinguished by inter-institutional, integral and complementary processes that define a way of thinking and doing things for the same single objective: to provide the best possible criminal justice” (Strategic Plan “COSMOS”, 2019, p. 16141). The system “promotes transparency and accountability, based on automated, verifiable and available records of the operation” (Strategic Plan “COSMOS”, 2019, p. 16140), which also allow “a systemic analysis of daily activities, to generate projective methods, to correct and design technical tools for information processing, to be more efficient organizationally” (Strategic Plan “COSMOS”, 2019, p. 16146). Something similar happens in Chile, where the Government’s efforts to digitize all administrative procedures have allowed the development of the Virtual Judicial Office to be compatible with the systems of the other authorities in the criminal system and with other public institutions in other areas, for example, the civil registry. This interconnection may be key when requesting information from another administration or notifying it of progress on an issue (Brito Donoso, 2017).

In addition, these information systems have enabled judicial powers to digitize certain relevant documents, events or procedural acts and, on occasion, complete files, which has facilitated the implementation of teleworking or distance working policies by digital means among judicial personnel.⁵⁸

As in other experiences mentioned, in those cases in which the judicial powers have developed electronic records, virtual courts and/or electronic control and management systems for judicial work, teleworking practices are often more common and frequent, as these institutions have pre-established mechanisms for assigning shifts and workloads, which allows remote monitoring of the movements made by the official in charge of processing the file.⁵⁹

In addition, some Mexican local judiciaries that have some of these systems, such as in Nuevo León or Querétaro, although they suspended or restricted their face-to-face activities, practically did not stop working during the health contingency, since their systems allow

jurisdictional officials to follow up on judicial cases, and even sign and communicate their resolutions remotely. Likewise, some judicial powers have reported that their teleworking strategies allowed them to continue handling disputes and, consequently, to increase their resolution rates, in the context of the COVID-19 health contingency. For example, in the Judicial Power of Paraná (Brazil), more than 927,000 procedural acts were reported to have been carried out remotely between March 16 and April 26, 2020 alone.⁶⁰

Experience indicates, however, that for several years and in various jurisdictions there have been regulations that govern and promote teleworking strategies (home office, flexible work or remote work) among public servants, including those assigned to the Judicial Branch. Typically, these regulations define teleworking as an alternative program or modality that allows certain workers and under certain conditions to perform their tasks in a place other than the workplace, through information technologies.⁶¹ However, teleworking involves a more complex working relationship, which involves five “conditions”: 1) An authorized, trained, available and committed worker; 2) During a previously established schedule; 3) In a place other than the work site and previously agreed upon; 4) Through e-mail, messages, telephone or any other means of telematic communication; and 5) Subject to the same rules, standards, and responsibilities as other workers or functions performed on a face-to-face basis (Maryland Courts, 2017).

In no jurisdiction is teleworking contemplated as a generalized or unique modality of handling judicial disputes; nor are the means of carrying it out specified in all cases. Teleworking has been positioned as a strategy that some judicial bodies are considering to ensure the non-presential continuity of the administration of justice service, particularly in those jurisdictions that have experienced natural disasters, national emergencies or pandemics (Huff, 2007; Criminal Courts Technical Assistance Project, 2007; U.S Department of Justice, 2012; Northern Mariana Islands Judicial Branch Interim, 2020), as a way to improve the quality of life of justice system operators without diminishing the capacity to pro-

⁵⁸ For example, in the State of Mexico, the Specialized Control Court for Search and Arrest Warrants also operates online 24 hours a day, with a system of 24-hour shifts for 48 hours of rest and personnel on duty can work remotely (M. Lima, personal communication, April 3, 2020).

⁵⁹ Another advantage associated with this shift assignment system is that it makes it possible to schedule staff rotation as a measure to prevent possible acts of corruption or stagnation of judicial personnel.

⁶⁰ In that state, teleworking was instituted in March 2020 by Judicial Decree 172/2020 (2020), due to the closure of buildings as a measure to prevent the spread of COVID-19. The first judicial level, from March 16 to April 26, issued 367,728 orders, 338,722 interlocutory decisions and 132,235 sentences. With approximately 88,000 procedural acts, in 41 days of teleworking, the second instance of Justice of Paraná issued 48,714 sentences, 18,169 *decisões monocráticas* and 21,721 dispatches (Tribunal de Justiça do Estado do Paraná, 2020).

⁶¹ The International Labour Organization (2011), through its Practical Guide on Teleworking, has considered different definitions, among which one that highlights telework as “remote work (including working from home) carried out with the help of telecommunication means and/or a computer” (ILO Thesaurus, 6th edition, Geneva, 2008).



cess and resolve judicial proceedings (Maryland Courts, 2017), and/or as a way to ensure that justice service is provided 24 hours a day (Circular No. 33/2016, 2016; State Courts of Singapore, n.d.). Also, teleworking can be divided into two modes: full time (where all or most of the activities are performed remotely) or part-time (some activities are performed in person and others, fewer, remotely).

So far, there are few studies that explain the effects that working strategies may have on the handling of judicial disputes, or on the perception of users. Some studies warn that this type of strategy can make a difference in the provision of justice service: less prestigious litigants are “reduced” to providing a remote service, while prestigious litigants go to face-to-face hearings (Poppe, 2019). Other studies suggest that, if specific work schedules and spaces are not agreed upon, regulated and respected, teleworking strategies can have harmful effects on workers’ health, family life and privacy, since they can result in the public showing of a private space (home, e-mail) or in the possibility of working endless hours (Golden, 2012). In all cases the literature suggests that proper regulation, which respects labor rights and the promotion of a code of ethics or minimum rules for remote working, may contribute to reducing these risks.

Finally, apart from file management systems, judicial powers have sought to improve, facilitate or give more certainty to work that is not directly jurisdictional —such as notifications or the assignment of shifts to courts— by developing or adopting technological solutions. Thus, in 2019 in the state of Querétaro, the Judicial Power implemented an **Integral System of Coordination of Court Clerks**,⁶² with the objective of “contributing to the optimum development of the administration of justice, through the achievement of better levels of efficiency

and quality in the activities that comprise the Actuarial” (Judicial Power of the State of Querétaro, n.d.) and that allows jurisdictional personnel to perform various actions remotely and, sometimes, with automated results: from daily entry to the system of notification files received, to the printing of tickets and the list of assignment of files for court clerks, through the assignment of route

and responsibility for the file. A notification goes to the court clerk headquarters, which distributes areas to the court clerk and marks the nearest route, indicates traffic and time, and the entire municipality of Querétaro is mapped to locate streets and

references. This system has allowed that, once its services were declared open after the health contingency on June 8,⁶² the Judicial Power of Querétaro has discharged, in two weeks, more than 98% of the notifications it had pending (J. A. Ortega, personal communication, June 23, 2020).

The Judicial Power of Chile has a similar tool, although in addition court clerks travel with devices linked to the system that allow them to **take georeferenced evidence** that they were in the right place and performed or attempted to perform their diligence (S. Piñero, personal communication, June 24, 2020).

On the other hand, some judicial powers in Mexico, such as the Federal Judicial Power or those of the State of Mexico and Guanajuato, have also adopted or developed technological tools so that the assignment of shifts to courts or tribunals is automated and carried out randomly, and thus no longer depends on the intervention of an official, who could alter the shift in order to favor one party (I. Rodríguez, personal communication, May 28, 2019; General Agreement of the Plenary of the Federal Judiciary Council, 2015).

Good Practice #17.
Georeferencing of
Notifications. Chile.

Good Practice #16. Integral
System of Coordination of
Court Clerks. Querétaro
(Mexico)

⁶² The Judicial Power of Querétaro lifted the suspension of procedural terms and deadlines on June 8 and personal notifications resumed on that day. On June 16, it opened its doors to the public.

CHAPTER 3

Formulation and enforcement of court rulings with technological support

Formulation of sentences in which technologies are involved

In some jurisdictions the execution of public hearings with remote access via the Internet or television was a common practice before the health contingency, as is the case of the Supreme Court of Justice of the Nation in Mexico.⁶³ In the context of social distancing and confinement derived from the health emergency, one area of the judicial process where both teleworking strategies and the use of videoconferencing have been crucial is that of public deliberation and the formulation of court rulings in collegiate bodies, such as the chambers and/or plenary sessions of some state courts of justice in Mexico, for example, those in Coahuila. On the one hand, these strategies have made it easier for different operators in the judicial system to coordinate their schedules and workspaces to continue providing justice services, as has occurred in Brazil (Resolução No. 677, 2020; Resolução STJ/GP No. 9, 2020). On the other hand, on some occasions these strategies have guaranteed the possibility for the general public or some specific users to witness, in real time, the discussion of court rulings. Of course, this is a public policy measure that not all judiciaries are willing to explore, since it involves the public display, in real time, of the actions of the officials involved. Therefore, in Mexico, in most of the jurisdictions where hearings or full sessions were authorized to be held remotely, access is restricted.

⁶³ For example, in Mexico, the Supreme Court of Justice of the Nation has been holding public hearings with remote access for several years, although with its due specificities.



On the other hand, the Judicial Power of Tamaulipas, inspired by the Judicial Power of Quintana Roo, developed a digital tool, a kind of control panel of the matters to be dealt with, to facilitate the dynamics of the virtual sessions of its Council of the Judiciary and the registration of the vote of its members (A. Huerta Rincón, personal communication, April 9, 2020).

However, it is one thing for a trial to be moved forward online or for some hearings to be conducted via video conferencing, and another for a complete proceeding to be developed remotely.

During the COVID-19 contingency, in some judicial powers, such as Coahuila, Mexico, criminal oral trials were held entirely online, in which the judge gave their sentence by video conference (Judicial Power of Coahuila, 2020). To this end, as already mentioned, the Judiciary Council established a **very complete protocol**, with concrete examples, to establish the requirements and steps for regulating the participation of the declarants in the trial (in the courthouse), evidence of contradiction or incorporation of evidence, for example (Agreement issued by the plenary session of the Council of the Judiciary of the State of Coahuila, 2020). It also leaves open the possibility for the parties to oppose the development of the online trial and request that it be conducted in a traditional manner. In Nuevo León, too, oral trials are conducted completely online. But this was an exception in Mexico, since most of the judicial powers that authorized the holding of hearings via videoconferences did not contemplate those of oral trials.

In other countries, such as Argentina, some criminal trials conducted by videoconferencing resulted in severe sentences, even life imprisonment (Coronavirus in Argentina, 2020), although virtual hearings were commonly held there before the contingency and simple matters were resolved—for example, administrative offences or summary trials—but not oral trials in criminal matters. In fact, those carried out during the contingency have

been the subject of much debate (P. Casas, personal communication, August 10, 2020).

The case of Singapore is the most striking, since a man found guilty of drug trafficking was sentenced to death and his sentence was handed down over Zoom, which was condemned by Amnesty International and illustrates the limitations of proceedings that may be carried out remotely (Efe, 2020).

That is why in Spain, although it was authorized to carry out any type of procedural act by videoconference during the contingency, certain conditions were set: one of them, derived from a 2005 Supreme Court decision (Parera, 2020),⁶⁴ established that, for serious crimes, the accused must be physically present (Royal Decree-Law 16/2020, 2020).

On the other hand, in a still nascent way, some judiciaries have developed systems that allow the conducting of an entire trial online, from its beginning—the filing of the lawsuit—to its conclusion—the issuing of the sentence—. In Mexico, this is the case of the Judicial Power of the State of Mexico, which, in addition to having, for criminal matters, a Specialized Control Court for Search and Arrest Warrants online since 2016 (Circular No. 33/2016, 2016), has had another for family matters since 2018 (Circular No. 20/2018, 2018) and one more for civil matters since 2019 (Circular No. 25/2019, 2019).

As already mentioned, trials that can be resolved in this way are non-contentious. In the case of the Court of Control, the proceeding is carried out completely digitally. **In online courts in civil and family matters** any hearings that may be necessary are held in the telepresence rooms⁶⁵ that the Judicial Power has in 12 municipalities of the state, while the judge intervenes from his office in Toluca (in voluntary divorces without children, for example, a hearing is held so that the judge can confirm with both parties that they really want to divorce). The Judicial Power of the State of Nuevo León has also had a Virtual Family Court since 2014 (General Agreement 14/2014, 2014). Other judiciaries developed similar services during the

Good Practice #18. Protocol for criminal hearings. Coahuila (Mexico)

Good Practice #19. Online courts. State of Mexico (Mexico)

⁶⁴ "The resolution (...) determined that in the criminal order, while other documentary evidence, such as testimonies or expert evidence, allowed the possibility of correct perception despite the distance, the accused can not only be 'object' of evidence through the content of their manifestations but also represents an active subject in the practice of the actions that are developed in the instance of their own trial. To this end, as I was saying, it is very important to have both a physical presence and the constant possibility of direct communication with their attorney, who could otherwise be seriously limited in their advisory and assistance functions" (Parera, 2020, paragraph 2).

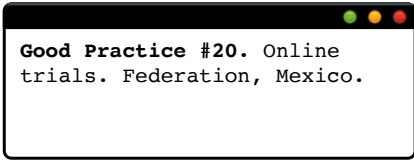
⁶⁵ These rooms have specialized equipment for videoconferences that guarantee high quality sound and image.



contingency: those in Querétaro or Mexico City began resolving divorces by mutual agreement online (J. A. Ortega, personal communication, June 8, 2020; Circular CJCDMX-24/2020, 2020).

However, these processes emphasize the importance of not only having secure authentication mechanisms to initiate trials and proceedings before the Judicial Power, but also to be able to confirm the identity and will of the parties when they interact remotely. This is demonstrated by a case related to the Judicial Power of Chile. There, a man apparently obtained a divorce sentence without his wife's knowledge: he would have used his wife's Unique Identity Key to carry out a divorce proceeding, as if it were by mutual agreement (Ayala, 2020). This was made possible because during the contingency the Judicial Power of that country determined that these trials could be carried out without the need for a hearing.

It is also worth mentioning the case of the Judicial Power of the Federation in Mexico, which, since before the contingency, offered the possibility of filing lawsuits online in administrative matters —since 2009— and amparo proceedings —since 2013—, but with respect to the remaining matters within its purview, it did not have an electronic file accessible to the parties or their representatives, much less the possibility of filing lawsuits and court filings. However, in the midst of the contingency, the Federal Judiciary Council, on which the district courts and the unitary and collegiate circuit courts depend, announced on June 8, 2020, the launch of a digital platform for filing lawsuits, court filings and appeals relating to any matter within its purview, which may be completely discharged digitally, even when hearings are needed, which may be held by videoconference (General Agreement 12/2020, 2020). A few days before, the Supreme Court of Justice of the Nation (SCJN) had announced the launch of a similar tool, with which users can file lawsuits related to all trials under its jurisdiction (General Agreement number 8/2020, 2020; General Agreement number 9/2020, 2020). This was possible because, according to Fabiana Estrada, General Coordinator of Presidential Advisors to the SCJN, the Judicial Power of the



Good Practice #20. Online trials. Federation, Mexico.

Federation had worked since the beginning of 2019 on a plan to digitalize its proceedings, which it accelerated in order to better meet the demand for justice in the health emergency (Pantin, 2020a). The interesting thing

about these agreements is that, while they recognize the particular circumstances of the contingency, they raise the cases in which trials may occur **entirely online** after the health emergency.

On the other hand, the British Columbia Civil Resolution Tribunal (Canada) and the Money Claim Online platform in England are two experiences that offer those interested the possibility of carrying out an entire proceeding online, although their main aim is to prevent cases from going to court, as they encourage negotiation and conciliation and propose interactive tools so that citizens without legal representatives can resolve their own issues.

In other cases, technological solutions have been developed to support judges in their decision making. Among the simplest are databases developed for statistical purposes, which compile judgments to allow judges to be aware of the most common decisions of their

colleagues in similar cases. For example, in Australia the **Judicial Information Research System** was developed to allow judges to access the judgments of their peers and find statistics on case types (Judicial Commission of New South Wales, n.d.).

More advanced technologies, involving the use of artificial intelligence and, in particular, machine learning, have been used in 11 states and 185 counties in the United States to create risk analysis systems to support criminal judges who have to determine whether detainees should have their trial conducted while in prison or whether they be granted provisional release,⁶⁶ according to Pruneda Gross (2020, slide 10). One such system, the Public Safety Assessment, used by the New Jersey Judiciary, is an algorithm developed by a non-profit foundation, which draws on a database of 1.5 million files from over 300 jurisdictions and assesses the risk of non-compliance with rules of parole or danger to the community.⁶⁷ While it is not mandatory that a judge's

⁶⁶ Traditionally, in the United States, when a person is detained the judge has to determine whether or not they are entitled to follow their trial at liberty. If so, the judge determines the bail they have to pay to get their provisional release. In principle, the level of bail is proportional to the probability that they shall seek to evade justice and to the risk to public safety that, according to the judge, the accused presents. However, studies have shown that many low-income people accused of misdemeanors are in jail awaiting trial because they did not have the means to pay their bail, even when it was low. As a result, in recent years, several states and counties have passed reforms to their pretrial justice system for provisional release to be determined not by the imposition of a bond, but on the basis of an evidence-based assessment of the risk to public safety and of evasion of justice posed by the defendants (Pretrial Justice Institute, 2017).

⁶⁷ It is important to note that the New Jersey Bail Reform Act provides that the analysis of the algorithm cannot take into account the defendant's demographics, such as race, gender, education, socio-economic status, or place of residence.



decision coincide with the evaluation of the algorithm, if they decide not to take it into account, they must provide a written justification. Although this type of system has had positive results (in New Jersey, for example, the number of prisoners awaiting trial has dropped substantially, without a significant increase in recidivism), some voices have pointed out that it perpetuates discrimination against the most disadvantaged groups, a bias that was perceived in the bail decisions of the judges who make up the case history from which the algorithm “learns” (Pruneda Gross, 2020; Concha, 2020). Similar systems have also been used to support judges in assessing the risk of recidivism of defendants at the time of sentencing, generating numerous criticisms of their degree of reliability and impartiality (Villasenor and Foggio, 2019).

Beyond the criticism that may arise about the quality of each algorithm, the lack of transparency involved in its use should also concern us, as pointed out by Zalnieriute and Bell (in press). The authors consider this lack of transparency to be threefold: 1) The algorithms are not disclosed because they are considered trade or security secrets; 2) Even if they were disclosed, most people would not have the capacity to analyze and evaluate them; and 3) The algorithms shall not be able to explain any results they produce, but a decision of justice must be argued.

The attempt to automate the formulation of sentences constitutes an even more advanced degree. Such is the case of the “robot judge” that Estonia announced it is developing to deal with small claims (Niiler, 2019), with the aim of enabling judges to deal with more complex cases and, in general, to make justice more expeditious. While the idea that the simplest cases can be handled by “trained” computer systems from the data of cases already solved is attractive, the problem, as Zalnieriute and Bell (in press) stress, is that disputes of this kind not only involve facts and rights, but also the assessment of evidence and the credibility of the parties, something that machines cannot do, so a red line could also be drawn there.

Finally, the need to make judgments public is another challenge where new technologies may be useful, since if databases have been developed so that judges themselves can access and obtain statistics on the judgments of their peers, platforms have also been built to facilitate their consultation by citizens. This is very common in

constitutional justice, but in ordinary justice it is less common, although examples can be found in Argentina, Chile, Colombia, France, Spain, the United Kingdom, and New Zealand (Judicial Information Center, 2020; Judicial Power of the Republic of Chile, n.d.; General Council of the Judiciary, n.d.; Judicial Branch, n.d.; Légifrance, 2017; Courts and Tribunals Judiciary, n.d.; Ministry of Justice, n.d.). In Mexico, the demands for judicial transparency changed for the better in 2020. An amendment to Article 73, Section II of the General Law of Transparency and Access to Public Information, approved on July 31 of that year, requires judicial powers to publish all their rulings, although there is a particular difficulty in this country: the law provides for the publication of “public versions” of these judgments, i.e., the versions where the personal data of all those involved in the matter are deleted. This implies additional work for judicial powers, which may make it difficult to implement this transparency obligation. However, some judicial powers in the country, such as those of the State of Mexico, Nuevo León and the Federation, have already developed software to support the officials in charge of producing these public versions. In Argentina, a private company is developing a system that, based on artificial intelligence and machine learning, would largely automate the implementation of these versions (ILDA, 2020).

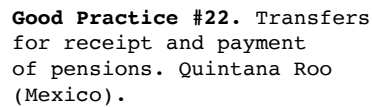
Enforcement of rulings with the support of technology

In some cases, such as in the United States or France, hearings by videoconference have facilitated simultaneous and real-time communication between authorities of various countries and jurisdictional bodies, both local, national and international, involved in the investigation of possible terrorist acts (Dumoulin and Licoppe, 2016). In others, this type of communication has facilitated the issuing of letters rogatory or procedural actions in different national or sub-national jurisdictions.⁶⁸ However, in no jurisdiction has it been formed as the main or only way to do so. This has given rise to various challenges for judicial powers, mainly related to the selection of the ideal means to continue their work in a public manner, with the technological capacity they have but, above all, with the capacity they have to enforce any rulings they may formulate in this context. Typically, the enforcement of court rulings requires the physical and direct intervention of various authorities (court clerks, secretaries,

⁶⁸ The Judicial Power of the Federation, as well as several state judicial powers in Mexico —State of Mexico and Nuevo León, for example— have proposed to the other local judiciaries to share a system to enable electronic letters rogatory between jurisdictional bodies in the country, but none has succeeded in bringing together all the judiciaries in the country (I. Rodríguez, personal communication, June 18, 2020).

notaries public, police) who, at the same moment, notify and enforce a judicial determination. As recently recognized by an international organization of law enforcement officials (International Union of Judicial Officers, 2020), the task of enforcing court orders in times of social and health uncertainty carries two fundamental risks. On the one hand, that of increasing the levels of anxiety and anguish experienced by citizens who are required or condemned to serve a sentence; on the other hand, that of demeriting and failing to comply with the recommendations of home confinement and social distancing that have been endorsed by health authorities to lessen the effects and transmission of COVID-19. Therefore, various international bodies have recommended that states suspend the enforcement of court rulings, or that they prioritize the enforcement of those rulings that are considered to be of urgent need—for example, in cases of domestic violence⁶⁹—or that can be held remotely, such as the freezing of accounts, for example. Another case is the supervision of compliance with certain obligations, restrictions or judicial sanctions, such as not going near a certain place or person or staying within the national territory. This monitoring may be done remotely by means of bracelets or other electronic devices. One can also imagine the publication on the Internet of a catalog of subjects who refuse to pay tax or alimony obligations.

In Mexico, some jurisdictions have also made use of various technological tools to increase both the degree of enforcement and compliance with various judicial decisions remotely. While these initiatives may require the involvement of other authorities, particularly administrative ones, the judicial powers can play an important role in promoting them. For example, in the State of Mexico, since 2008 there has been a program for granting the benefit of conditional release to the location and tracking system, which consists of placing a bracelet or electronic device on people who shall be paroled, in order to guarantee compliance with certain conditions—such as not approaching a specific location— or geolocating their movements and locations in real time (Agreement of the State Executive by which the regulations for granting the benefit of conditional re-

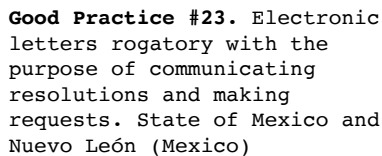


Good Practice #22. Transfers for receipt and payment of pensions. Quintana Roo (Mexico).

lease to the tracking and tracing system for the State of Mexico are issued, 2008). During the health contingency for COVID-19 this program allowed the parole of more than a thousand subjects processed for the commission of some criminal act (Pantin, 2020a).

On the other hand, in family matters, when it is determined that one of the parents of a minor has engaged in aggressive behavior, it is common for the judge to seek to protect the minor by ordering that their visitations with this family member take place in a building of the institution and under the supervision of a judicial officer. This became impossible during the contingency. However, a large number of judicial powers decided that, at this exceptional time, supervised visitations could be done remotely, by video conference or by telephone.

In family matters as well, another element that forced judicial powers to leave on-call guards during the contingency was the need to keep open the receipt and delivery of alimony payments decreed by judges. However, new simple technologies can allow these procedures to be carried out at a distance: in this respect, judicial powers such as that of Quintana Roo stand out, which offered, since before the pandemic, the possibility for users to make and receive these payments by means of **electronic bank transfers** (J. A. León, personal communication, April 10, 2020).



Good Practice #23. Electronic letters rogatory with the purpose of communicating resolutions and making requests. State of Mexico and Nuevo León (Mexico)

Finally, some local Mexican judicial powers **have developed a system of electronic letters rogatory**, both internally between courts within the same judiciary, and externally with courts in other states⁷⁰ and also with public institutions, in order to make the communication of injunctions and, in particular, the execution of resolutions faster and more efficient. Thus, for example, the judicial powers of the State of Mexico and Nuevo León transmit their judgments in matters of divorce to the state Civil Registry digitally, in such a way that they are reflected in the official records automatically and allow their fulfillment almost immediately, without the parties having to request their enforcement or carry

⁶⁹ Various jurisdictions implemented plans specifically in this area during the COVID-19 contingency. For the Latin American case, see Arellano, Cora et al. (2020). For the case of institutions for the administration of justice in the European Union, see CEPEJ (2020). For the case of the African region, see AfricanLII (2020). For the case of local courts in the United States, see National Center for State Courts (2020). For the case of Mexico, see Pantin (2020b).

⁷⁰ In fact, various judicial powers have sought to promote the creation of a National System for Sending Electronic Letters Rogatory, which could expedite communication between courts in different parts of the Republic (Emmanuel, 2015; J. A. Gutiérrez, personal communication, September 29, 2020), but this has not yet been realized.



out an additional procedure, apart from the corresponding payment (I. Rodríguez, personal communication, May 28, 2019; J. A. Gutiérrez, personal communication, September 29, 2020). Additionally, in Nuevo León, the Judicial Power may request information and seizures of accounts in civil and commercial matters from the National Banking Commission by means of electronic notices (J. A. Gutiérrez, personal communication, September 29, 2020).

However, as a report has recently highlighted (RAND, 2020), the use of technologies to ensure the administration of justice remotely can be a powerful tool for judicial officials to manage their workloads more efficiently; it can even translate into a greater number of cases concluded with a court ruling in a shorter time. But we cannot lose sight of the fact that this, too, can accelerate the already marked differences experienced by the most vulnerable groups in society when interacting with and within the justice system.⁷¹

⁷¹ In particular, it is argued that the speed of communication exchange facilitated by contemporary digital platforms, together with the limitations that state officials may experience in verifying in person and physically the fulfillment of procedural guarantees, may accelerate the processes of punishment, re-victimization or abuse that the most vulnerable groups in society have systematically experienced in the face of the justice system.

CHAPTER 4

Conclusion



Our analysis is derived from a systematic and theoretically informed reading of dozens of documents, information contained on websites, in statements, regulations, manuals, agreements, guides to good practice and rulings issued by the judicial powers of 25 countries and by various jurisdictional levels that deal with the use of new technologies in the administration of justice.⁷² As a complement, we have referred to some scientific publications that give account of the dilemmas, experiences and effects derived from the development and implementation processes of some policies, programs or tools that promote the digitalization, automation or remote interaction of the various acts, communications and actors that form part of the judicial process. Some of this information has been fed, also, with the opinion of some jurisdictional officials, applicant attorneys and academics, particularly through the organization of three virtual seminars (Pantin, 2020a; Jaime, 2020; Concha, 2020) and some interviews. This section presents a summary of the main recommendations resulting from this exercise.

1 Ensure that new technologies improve rather than restrict access to justice

In countries where the availability of the Internet does not cover the entire territory or where a significant part of the population does not have a device or computer to connect or does not know how to use it skillfully, requiring a lawsuit to be made only by electronic means may hinder, rather than improve, access to justice. Technological solutions should not create barriers to access, especially for low-income users, people with disabilities and those who need an interpreter to communicate. On the contrary, the development and implementation of new technologies in justice tasks should actively seek to lower barriers and affirmatively expand access to the service. Legislators, attorneys and judicial officials must get involved in the development of new legislative

⁷² For example, several diagnoses cited that deal with the courts in the United States, Canada, Brazil, or the European Union are representative of all their bodies and jurisdictional levels. Likewise, this document includes specific information from some Mexican local and federal jurisdictional bodies.



and procedural forms that, without violating the rights and needs of the public, enhance the benefits associated with the implementation of new technologies in justice.

2 Diversify the means by which the public accesses justice. Even the remote ones

In most of the jurisdictions analyzed, it is accepted that the remote route should not be the only way to access the justice service. It is rather a complement to improve the conditions in which the State provides the service in a face-to-face manner.⁷³ But it is also recognized that there is a need to make these tools responsive, that is, to meet the needs, expectations and possibilities of the different users of the justice service. The routes are very diverse, from email addresses, telephone lines, automated mailboxes, applications for mobile devices or virtual offices for receiving documents. The objective is the same: to guarantee the public's right to access to justice.

3 To simplify procedures through which the public accesses justice, and to inform and guide about them

Whether presented in a similar manner or virtually, all requests from the justice service must meet a series of requirements and formalities in order to be accepted by judicial bodies. In some cases, these formalities are considered to be an obstacle for the public to access justice service without the need for a legal representative; in others, they are considered to be essential to guarantee equity and equality between the parties. Actions such as making available to the public on websites of the judicial powers some pre-filled forms of requests for justice, which are automatically filled out with the answers given by the defendant to a series of questions (or at least indicating the structure and the minimum formal requirements they must gather meet), can represent an important tool to improve the conditions in which the public accesses justice, without detracting from the formality of the process. In addition, these strategies can be accompanied by triptychs, diagrams or graphic syntheses that clearly communicate the timescales and procedural consequences that can be derived from the incoming requests for justice. Providing public, easily available and relevant information on the rules and acts

that make up a judicial proceeding is an important mechanism for increasing the degrees of trust and certainty with which the public interacts with the legal system, whether electronically or in person.

4 Ensure the viability of the means through which the public accesses justice

In order for technological tools to be effective for society, states and judicial powers must invest resources to develop the necessary technical capacities among users and system operators, and ensure their functioning. But, above all, the communities where these measures are implemented need to have adequate levels of technological infrastructure and literacy to ensure a minimum quality of judicial interactions. Some attorneys have recounted experiences of anguish related to system failures when about to enter a court filing minutes before the expiration of its term (Jaime, 2020). A poor remote communication, which does not allow the statements of the actors involved to be heard in a clear way, badly coordinated by the authorities or inaccessible to any of the parties, may have differentiated and negative impacts on the remote users of the service. In addition, it is necessary for judicial powers to take into account such fundamental issues as their capacity to receive, store, process and protect information when implementing this type of initiative. A server with low capacity, with insufficient levels of protection against possible hacking or that does not have security backups that guarantee continuous operation can quickly translate into hundreds of lawsuits or appeals against the jurisdictional authorities for not complying with the deadlines and formalities of the procedural acts.

5 Regulate the administration of justice that is carried out through new technologies

In the analyzed jurisdictions that have technological tools for the administration of justice, the need to regulate the stages, actions and procedural communications that can be carried out electronically is recognized, as well as the need to develop differentiated legislation between processes that are carried out face-to-face and those that are carried out digitally. Subsuming the processes that are carried out digitally to the same rules and procedural times that govern the traditional —pre-

⁷³ For example, in Chile, where the government has endorsed the digitalization of procedures in all its offices and it is expected that the lawsuits and court filings will be presented through the Virtual Judicial Office, there is always the possibility of presenting them on paper (if necessary, the official must digitalize what they receive). However, when an attorney intervenes, they can go to an office to file their briefs, but they may also be required to submit the document already scanned, as it is considered that an attorney has the means to perform this task. In the case of family matters (which in that country do not necessarily require the hiring of an attorney), defendants can go to any court to have a statement taken by a judicial officer, which enters the system to initiate a case. The exception is in the capital city, where a special office was created to receive these statements (S. Piñeiro, personal communication, June 24, 2020). In other cases, such as in Nuevo León, Mexico, during the contingency the Judicial Power has made computers available to defendants at its facilities so that they can attend hearings if they do not have devices that allow them to connect (Pantín, 2020a).



sential— proceeding may disguise the ontological difference between receiving a notification by e-mail and the need for a person to travel several kilometers to receive a legal notification. Not regulating this difference may result in the construction of a highly inequitable justice system with which fewer and fewer users feel satisfied. Furthermore, a clear and precise regulation of the terms, means and contexts in which the users of the service can interact remotely with the jurisdictional authority represents the possibility of legally distinguishing situations, stages or procedural actions that are difficult to carry out remotely —e.g., hearings where simultaneous interpretation services are required— or that require the immediate and direct intervention or supervision of an authority —as in cases of torture, state violence or disappearance—. Above all, in the case of hearings by videoconference, it is important that the rules proposed for carrying them out leave the parties the possibility of requesting that they be carried out in person and/or the judge the power to determine whether the conditions are met to guarantee due process. Finally, an adequate regulatory framework can become the ideal mechanism for judicial powers to explore and promote the use of new technologies, reducing the risk of attorneys and litigants filing appeals against procedures and decisions taken in this way.

6 Making the justice system transparent, also paperless

In some jurisdictions studied, the judicial powers have implemented new technologies with the aim of reducing the amount of paper that has traditionally been required for the judicial processing of disputes. But the replacement of documentary records with electronic records may also induce judicial powers to expand their capacity to record, classify, systematize and analyze the enormous amount of information they continuously generate, from agreements to receive lawsuits to sentence enforcement decrees. One way in which the judicial powers have taken advantage of this transformation has been through the definition of criteria or indicators that facilitate the measuring and monitoring of any work that judicial officials carry out on a daily basis. Thus, through the classification, systematization and automated counting of the virtual interactions carried out by users and operators of the justice service, it is possible to know how many demands for justice are received, in what matters and which judicial body is in charge of processing and resolving them in a given period of time. This type of

strategy not only has the advantage of allowing judicial powers to identify potential bottlenecks, discover which jurisdiction receives more work or know the reasons why hearings are rescheduled, and make informed internal decisions based on that information —on, for example, where it is necessary to open a new courthouse or increase the number of officials assigned, or how to improve work organization or reduce service times—. It also allows the jurisdictional authorities to continuously inform the public about the type of activities they carry out. The selection of the information that judicial powers publish must be made by putting themselves in the place of the citizen (or even consulting them), and in a continuous, systematic and clear way. It is not enough for the judicial powers to develop useful information for the formulation of public policies. It is essential that this information is disseminated to the citizenry and can be assimilated by them.

7 Transforming the means by which justice is administered

Currently, both the degrees of development and the processes of implementation of new technologies in the administration of justice are very varied and uneven across different jurisdictions. Some judicial powers have been exploring innovative ways to take advantage of technological development for decades. In other cases, the implementation of new technologies is more recent. In many, the exploration of digital solutions has accelerated as a result of the COVID-19 health emergency caused. The judicial powers that have been exploring the adaptation of technological tools for the administration of justice for the longest time have accumulated a great deal of institutional experience, which has allowed them to gradually incorporate different technologies. This corpus can also be useful to document those details that decision makers must take into account when promoting a change in the registration or management of judicial processes. The judicial powers that have recently joined this process have the advantages of investing in the most advanced technology, directly utilizing a technological development that they did not have in the past, and endorsing legislative changes that shall not be obsolete in the short term. There are already technological solutions that generate little controversy —such as platforms that allow the presentation of lawsuits and court filings and the consultation of notifications, and automated file management systems—, which, if planned comprehensively and inter-institutionally,⁷⁴ and with

⁷⁴ In this regard, the development of a single digital signature, which can be used in all official procedures that a citizen can perform online, is a solution that not only makes the life of the user easier, but also encourages the construction of interconnected platforms, which speeds up and accelerates the solution and conclusion of the problems that citizens seek to solve.



a user perspective, may be capable of improving access to justice and its administration. However, the use of video conferencing and other telematic means to ensure remote interaction between parties involved in a dispute is a major challenge. The available technologies offer different possibilities still unexplored by judicial powers, for which a new regulation of time and means of interaction between the actors in a judicial proceeding is required. It is also necessary for judicial powers to reflect on the viability and risks associated with the use of new technologies to publicize and make proceedings transparent, as well as on the balance that these policies must keep in relation to the privacy of the subjects who appear on the scene. The systems developed to support (and, above all, to replace) the judges raise questions of various kinds, operational and even philosophical. They need to be analyzed in all their dimensions, because although they are usually developed officially to improve the efficiency of justice administration and/or reduce the backlog, they are also usually justified on the basis of the need to reduce costs. However, the search for savings cannot justify the reduction of the guarantees of the defendants. A separate situation is that of an emergency, like the one that arose from COVID-19, which may accredit the search for not necessarily ideal but acceptable solutions, and thus avoid worse situations (such as, for example, that a person who could be released remains in preventive detention because their proceeding could not be carried out during the contingency months).

8 Taking advantage of inertia for a second wave of digital justice in Mexico

Whatever the level of development and experience accumulated in Mexico, all judicial powers have crossed a certain threshold of computerization. For example, all high courts of justice have had a website for several years. In addition, at least in criminal matters, the use of new technologies is legally and materially feasible in all jurisdictions of the country, under certain conditions. This implies the existence of a favorable context for building a “second generation” agenda for digital justice in Mexico, which promotes the progressive, coordinated and standardized incorporation of new technologies in the work of administration of justice beyond the criminal area.

Promoting procedural uniformity and simplification

Both in material and legislative terms, the degree of development and adaptation of new technologies experienced by judicial powers in Mexico is very heterogeneous.

Some jurisdictions already have years of experience in the use of technological tools for the administration of justice; others do not yet incorporate these figures into their legislation. The lack of homogeneous criteria to register judicial files (file number or folio) or the lack of computer equipment necessary to guarantee that all personnel are in optimal condition to interact remotely with the public are common circumstances that still today restrict the digital justice service to certain matters or some specific jurisdictions. These circumstances also invalidate the advantages of activating justice by electronic or digital means, since users of the service who follow this route are almost certain that, at some point in the process, they shall have to hold and present a written copy of the file. In general, neither the security, the portability, nor the interconnectivity of the judicial information generated and reported electronically is guaranteed under these conditions. Standardizing criteria, rules and processes for the receipt, management and processing of information received by judicial powers via electronic means seems to be a necessary measure to start generating certainty and trust among the various actors, institutions and users of the justice service. The challenge behind this process is that not all authorities are in the same situation. The issuance of a national code of civil proceedings, for example, can be a way to homogenize times, forms and procedural steps throughout the country, but it can also represent the risk of over-regulating and re-bureaucratize proceedings in those jurisdictions that have already incorporated these technologies into their daily work (Pantin, 2020a). On the other hand, a reform of the justice system that seeks to promote the widespread use of new technologies can be beneficial, since it would program its implementation and focus resources on those jurisdictions that most require it or on the development of innovative tools. In this regard, the presentation on June 3, 2020 of an initiative for a National Code of Civil Procedures by the president of the Justice Commission of the House of Representatives, Pilar Ortega, which incorporates some aspects of digital justice, is good news, although it does present some challenges (Pantin, 2020c). On the other hand, it is worth noting the constitutional reform initiative presented on July 8 of the same year by Senator Ricardo Monreal, with the aim of obliging all judicial powers to develop an “online justice system, through the use of information and communication technologies in order to process trials and all their instances online” (Monreal, 2020), which also presents some challenges, but has the merit of putting the issue on the agenda of legislators. From México Evalúa we have identified an additional option, which is that Congress can discuss a General Law on the use of new technologies in the administration of justice, capable of generating certainty about the online



processes developed by judicial powers and that it sets some progressive rules for this, in order to guarantee, at all times, due process and transparency, as well as the capacity of adaptation of each judicial power (Pantin, 2020c).

Counter the perception that remote access to justice is experimental

A concern that stands out in every jurisdiction analyzed, regardless of how long they have been implementing these technologies, revolves around the perception, on the part of users and operators of the service, that justice administered by digital means is somehow experimental. In spite of the figures, statistics and indicators that are continuously shown to illustrate the advantages associated with the use of new technologies in tasks of justice administration, in most jurisdictions it is pointed out that “normal” or “traditional” justice is face-to-face, written, bureaucratized justice; while the use of new technologies is reserved for the processing of less conflictive or less complex litigation. Indeed, there are elements that may reinforce this perception of experimental status. For example, the obligation to physically present oneself to a government office in order to process an electronic means of authentication (electronic signature/digital signature) which in turn allows a lawsuit to be filed electronically, or the fact that on many occasions the electronic file is simply a replica of the paper file. Counteracting this image shall only be possible if the use of new technologies is consolidated and strengthened, which can be achieved by planning coordinated and concatenated processes of information generation; diversifying the areas in which these types of tools can be used; ensuring their interoperability and, finally, taking into account the needs of the users.

Overcoming institutional resistance to change

Almost every time the use of new technologies is mentioned in tasks of administering justice, it is said that a main obstacle to its implementation is the resistance shown by operators and users of the service to change their practices, or to train or invest resources in new ways of communicating and interacting professionally (Jaime, 2020). The new technologies must be a means to guarantee the right of the public to access justice by different means; their promotion among judicial personnel must not be a cause of instability or damage to working conditions. The development of user-friendly systems that diversify the possibilities of interacting with the jurisdictional authority according to its possibilities and conditions, as well as the design of tools that take into account the capacities and skills of the different offi-

cial workers in the judicial powers, are indispensable to overcome the so-called “resistance to technological change”. If something positive can be produced by the COVID-19 contingency, it is the change of mentalities regarding the need to develop more and better technological solutions that allow justice to continue functioning in moments of crisis and emergency.

Favor the “soft regulation” of the digital process

Another way to build trust between justice operators and users is to develop guidelines, protocols or manuals that indicate the rules, conditions and ways in which they can interact and communicate remotely. In many jurisdictions, the regulation of the use of new technologies has been incorporated into the corresponding procedural laws, which has had the effect of subsuming the digital processing of judicial conflicts to the same rules, formalities, requirements and deadlines that govern the analogous route. In others, although different ways and mechanisms are contemplated for the public to use electronic means, the information available to users is limited. The development of video tutorials, triptychs, manuals, chats or telephone lines to solve any doubts the public may have represents a good complement to guide the expectations of users that interact with the authority by digital means.

Commitment to education, certification and training for the legal profession

The processes of development and implementation of new technologies in tasks of administration of justice go beyond the will of judicial powers. To be effective they require the participation of practicing attorneys. In order for litigants to live up to these expectations, it is important to consider aspects such as the inclusion in university curricula of certain subjects or curricular activities that enhance the ability of attorneys to practice the profession digitally or the organization and coordination of training processes that validate the qualities that attorneys have to interact with the jurisdictional authority by means other than the traditional process (Jaime, 2020). The incorporation of new technologies in administration of justice tasks has reconfigured both the terms and forms of interaction between service users and the jurisdictional authority. Attorneys must be able to practice their profession in this context.

Create coordination mechanisms

The implementation of some of these changes requires the development of a coordinated, planned and consensual process among the various actors involved in



the service of justice administration. In some of the jurisdictions analyzed (Australia, Brazil, Canada, United States or Italy), policies that promote the use of new technologies in tasks of justice administration have been formulated and implemented, both at national and local levels, through a coordinating agency—usually a National Council of Justice or a Ministry of Justice—, which is responsible for developing the necessary plans and programs to ensure a gradual, progressive, orderly, regulated and supervised implementation. As Cordella and Contini (2020) point out when analyzing some experiences in the development of automated file management systems, countries with multiple judicial powers face greater challenges in implementing this type of technological progress. In Mexico, the experience derived from the reform of the criminal justice system (2008) illustrates the possibility of designing and implementing a national, progressive and coordinated reform of the justice system through a public body expressly created

for this purpose. But other experiences show that this type of process may be implemented through national agreements, which ultimately depend on the political willingness of the actors, as well as on the resources available for this purpose. In the Mexican case, the National Commission of Superior Courts of Justice of the United Mexican States (Conatrib) has sought to take some leadership on this issue, in the context of the COVID-19 contingency, by seeking to consolidate purchases of certain equipment and software that allow for video-conferencing (H. Ruiz Esparza, personal communication, May 28, 2020). These coordinated efforts could allow some judicial powers, which alone could not aspire to develop technological systems due to lack of budget, to have access to them if several powers mutualize their resources. Certainly, the immediate outlook, regardless of the health emergency, will be crucial in making the digitalization of justice a reality in Mexico.



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