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# Victims' Participation in Times of Covid-19 in Transitional Justice Accountability Mechanisms: What is Needed for Virtual Hearings to Fulfil this Right? The Case of Colombia and the Special Jurisdiction for Peace

Clara Sandoval, Professor, School of Law and Human Rights Centre, University of Essex School of Human Rights and Human Centre; Dr Michael Cruz, Researcher at the Essex Transitional Justice Network, University of Essex and Camila Ruiz Segovia, Masters student at the Geneva Academy and intern at the Essex Transitional Justice Network<sup>1</sup> [DOI: 10.5526/xgeg-xs42\_010]

## I. Introduction

The lockdown restrictions brought on by the Covid-19 pandemic have also impacted the administration of justice around the world. Faced with the impossibility of human contact, judges and prosecutors have had to postpone investigations and suspend hearings and other justice-related activities during the pandemic. Taking note of these delays, international bodies have called on States to ensure that justice remains possible. Indeed, as stressed by the UN Special Rapporteur on the Independence of Judges and Lawyers, today 'a functioning judiciary is more essential than ever.'<sup>2</sup>

Covid-19 has not only impacted justice systems in working democracies and peaceful States. It has also affected States undergoing conflict situations and engaged in transitional justice processes like Colombia. In such contexts, Covid-19 becomes one more factor to be considered when trying to fight impunity and stop human rights and humanitarian law violations. In such contexts, the question is not only about how to ensure justice but also, equally important: how to ensure that accountability mechanisms, like the Special Jurisdiction for Peace (SJP) in Colombia, are able to fulfil victims' right to justice, while at the same time providing them with meaningful participation throughout the process. This question appears crucial given that victims' participation is arguably not only a right but also, a key element of the healing and reparation process that both victims and society need, to come to terms with the legacy of mass atrocities. Victims not only need justice to be done, they also need to experience that justice is done. This can be achieved through their active participation in judicial proceedings.

This paper explores some of the challenges faced by victims to ensure that their right to participate in transitional justice accountability mechanisms remains a reality in times of Covid-19. In particular, it considers victims' participation through the use of Information and Communication Technologies (ICTs), particularly virtual hearings.<sup>3</sup> The paper looks at these issues in the context of the work of the Special Jurisdiction for Peace in Colombia, an accountability mechanism established by the Peace Agreement signed between the Colombian government and the Revolutionary Armed Forces of Colombia (*Fuerzas*

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<sup>1</sup> This article has been written as part of the AHRC funded project 'Legitimacy, Accountability, Victims' Participation and Reparation in Transitional Justice Settings – Lessons from and for Colombia'.

<sup>2</sup> Special Rapporteur on the Independence of Judges and Lawyers, 'Coronavirus Emergency: Challenges for the Justice System;', April 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25816&LangID=E>.

<sup>3</sup> The use of ICTs in Colombia to facilitate the work of transitional justice mechanisms is not new. For example, ICTs have been used both as part of the implementation of the Justice and Peace Law, the transitional justice framework set up by Law 975/2005 in Colombia to deal primarily with the accountability of demobilised members of the paramilitary, and by civil society organisations.

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*Armadas Revolucionarias de Colombia* or FARC) in 2016.<sup>4</sup> It is divided into two sections. The first one considers the possibility to ensure victims' participation in contexts of inequality, insecurity, and lack of access to ICTs in times of Covid-19. The second considers the use of virtual hearings, to identify the requirements such hearings must fulfil to ensure victims' right to participate in such mechanisms. The article concludes with some final reflections on how to ensure victims' participation at the SJP during the pandemic.

## II. Is it Possible to Ensure Victims' Participation in Transitional Justice Mechanisms in Times of Covid-19?

Impunity for mass atrocities is the rule in States undergoing transitional justice processes. It is possible because often those in power do not want the truth to be known or those guilty to be punished, as has been the case in Guatemala, Sri Lanka and El Salvador, but also because it is difficult to investigate and prosecute those responsible for serious crimes. Most States, undergoing processes of transition are still facing violence where many continue to be killed, disappeared, or displaced, and many others are under threat. Such conditions are serious impediments to justice. How can it be possible to recover and secure evidence in the middle of an armed conflict? How can it be possible to guarantee that a witness can appear in court to give her or his testimony without being killed? In addition, in countries that have been and continue to be devastated by war, the means to carry out investigations and prosecutions with due diligence are almost non-existent. For example, investigating the Rwandan genocide was a massive challenge, 'it started with the basic realities of life in a society in which both lives and institutions were shattered by genocide.'<sup>5</sup>

This means that in places devastated by conflict and with millions of victims, including Colombia, fulfilling victims' right to justice remains a major challenge, and this challenge grows exponentially with Covid-19. Indeed, Covid-19 is affecting conflict zones, where many victims are located, and where armed groups and illegal economies are at work. In those areas, as stated by the *Fundación Ideas para la Paz* (FIP), 'the institutions of the State are limited, infrastructure is reduced, access to goods and services is minimal, and people are exposed to the control of different criminal factions.'<sup>6</sup>

It is in these types of contexts where transitional justice processes and mechanisms try to do their best to ensure accountability for those responsible for crimes. But today, in contrast to what happened during the Nuremberg trials,<sup>7</sup> where victims did not participate whatsoever, victims are meant to play central stage in the fight for justice and accountability through the recognition of their right to participate in criminal proceedings both domestically and internationally. That they are allowed to participate, to exercise this right, is crucial in transitional societies as that gives recognition to victims,<sup>8</sup> to their harms and the violations suffered by them. It also helps them to rebuild trust in society and the

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<sup>4</sup> Peace Agreement between the Colombian Government and the FARC, 2016, p. 9.

<sup>5</sup> Human Rights Watch, 'Law and Reality: Progress in Judicial Reform in Rwanda', 2008, section V.

<sup>6</sup> FIP, '*Impactos y Riesgos del Covid-19 en la Paz y las Dinámicas del Conflicto*', 2020, p. 4, available at: [http://ideaspaz.org/media/website/FIP\\_COVID19\\_web\\_FINAL\\_V3.pdf](http://ideaspaz.org/media/website/FIP_COVID19_web_FINAL_V3.pdf).

<sup>7</sup> Susanne Karstedt, 'For Absence to Presence, From Silence to Voice: Victims in International and Transitional Justice Since the Nuremberg Trials', (2010) 17 Intl Rev Victimology 9.

<sup>8</sup> Hannah Arendt, *The Origins of Totalitarianism* (1951).

State's institutions and may trigger an important reparatory experience.<sup>9</sup> Today, justice without victims is simply not justice.

While this right of victims to participate in criminal proceedings has been upheld by courts and international bodies, the scope of this right remains contentious given that it clashes and is often in tension with various rights of an accused person, particularly their right to fair trial, and may also clash with the goals of the justice mechanism.<sup>10</sup> However, we would argue that at the very least, the right of victims to participate in proceedings requires that victims are able to access justice mechanisms in a voluntary manner, based on adequate and timely information about how the justice proceedings work and what they offer.<sup>11</sup> Also, their participation must be effective (and not merely symbolic) as they should be provided with a real opportunity to influence the outcomes of the justice process by, for example, being heard,<sup>12</sup> and being able to present evidence or to object to evidence.<sup>13</sup> For victims to participate, they also need *enablers* such as adequate legal representation,<sup>14</sup> security measures<sup>15</sup> and access to psychosocial support. For this participation to be truly reparatory and restorative, victims must be treated with dignity, with equality and non-discrimination, and new harm should be avoided.<sup>16</sup> Victims' participation in justice mechanisms should be the result of permanent and meaningful consultation with them.

Based on these minimum principles that give meaning to a holistic right to participation, we can determine whether in countries emerging from conflict and undergoing a transitional justice process, like Colombia, it is possible to give effect to this right. In the case of Colombia, it should be noted that this right has been recognised in various legal instruments and judicial decisions, including in the normative documents that establish the mandate of transitional accountability mechanisms like the Justice and Peace Law as well as the ones establishing the SJP.<sup>17</sup> Certainly, Covid-19 generates a new challenge for an already fragile accountability mechanism as is the SJP. According to the SJP prosecutor unit (UIA in Spanish), armed groups have been taking advantage of quarantine measures during Covid-19, to violate victims' rights.<sup>18</sup> Likewise social leaders have been murdered at a rate of one person every 64 hours.<sup>19</sup> Equally, during Covid-19, the possibility to reach out to victims is even more limited given that social distancing becomes necessary and

<sup>9</sup> Pablo de Greiff, 'Theorizing Transitional Justice' in (2012) 51 *Nomos* 44.

<sup>10</sup> Salvatore Zappalà, 'The Rights of Victims v. The Rights of the Accused', (2010) 8(1) *J Intl Crim J* 137.

<sup>11</sup> Corte Constitucional, Sentencia C-454/2006, magistrate Jaime Córdoba Triviño.

<sup>12</sup> Corte Constitucional, Sentencia C-209/2007, magistrate Manuel José Cepeda Espinosa and C-616/2014, magistrate Jorge Ignacio Pretelt Chaljub.

<sup>13</sup> Claire Garbett, 'From Passive Objects to Active Agents: Changing Conceptions of Victim Identities at the ICTY and ICC', (2016) 15(1) *J Hum Rts* 40. Corte Constitucional, Sentencia C-516/2007, magistrate Jaime Córdoba Triviño.

<sup>14</sup> Luc Walley, 'Victims' Participation in ICC Proceedings: Challenges Ahead' (2016) 16 *Intl Crim L Rev* 995.

<sup>15</sup> Corte Constitucional, Sentencia C-782/2012, magistrate Luis Ernesto Vargas Silva.

<sup>16</sup> Lorenn Walker and Katherine Wormer, *Restorative Justice Today: Practical Applications* (London, Sage, 2013).

<sup>17</sup> Ley 975 de 2005, Article 37, Decreto 3391, 29 September 2006, Article 8, Decreto 315, 7 September 2007, Article 2, JEP, Appeals Section, Interpretation Decision TP-SA-SENIT 1, 3 April 2019, par. 64-71.

<sup>18</sup> Unidad de investigación y Acusación de la JEP, *Dinámicas de Violencia, Afectación a Civiles y Control Social Durante la Cuarentena en Colombia: Un Análisis de los Factores de Riesgo en los Territorios y las Poblaciones de Interés para la jurisdicción Especial para la Paz*, 2020, p. 20, available at:

<https://www.jep.gov.co/JEP/SiteAssets/Paginas/uia/Sala-de-prensa/Un%20an%C3%A1lisis%20de%20los%20factores%20de%20riesgo%20en%20los%20territorios%20y%20las%20poblaciones%20de%20inter%C3%A9s%20para%20la%20UIA-JEP.pdf>.

<sup>19</sup> *Ibid*, p. 17.

many victims lack adequate ICTs facilities. Yet, 'technology provides new avenues for participation, enabling people to engage with the world and seek change in new ways'.<sup>20</sup> We argue in this article that ICTs offer important windows of opportunity for victims in Colombia to exercise their right to participation before the SJP even if challenges remain in place. We consider that these challenges can be surmounted through the use of specific measures that would permit the realisation of all principles that have been mentioned.

We acknowledge that victims in Colombia have expressed their concerns about using ICTs to permit their participation in the SJP proceedings. For example, the president of the *Asociación de Reclamantes de Tierra y Paz* has indicated that 'many persons in rural areas are victims, and we do not have the tools to communicate with others, we lack these resources and we would not have how to participate actively.' Another victim has also indicated that 'some could have the technology, but they do not know how to use it for a videoconference'.<sup>21</sup> In Colombia, more than half of the population has access to the internet, and the expansion of internet networks has increased significantly in recent years.<sup>22</sup> However, the digital divide remains big for the poor and those living in rural areas, many of which are victims of the conflict.<sup>23</sup>

Despite the challenges, in Colombia there are various factors that could enable the use of ICTs to fulfil the right of victims to participate in judicial proceedings. First, the SJP has taken significant steps to deliver justice for victims,<sup>24</sup> and it knows that failure to deliver will only affect its legitimacy. From early March 2020, the SJP took measures to prevent and avoid risks of contagion of staff and victims, such as suspending time limits in proceedings, changing work schedules and implementing telecommunication work, among others.<sup>25</sup> The SJP shifted its work through virtual and electronic means, to respond to information requests, habeas corpus petitions, receiving reports from victims and victims' organizations and adjudicating on issues related to the release from custody of the accused.<sup>26</sup> But, transitional justice services must not postpone their activities indefinitely taking into account victims' urgent claims and needs. Transitional justice work should continue even in the hardest of circumstances, as a tool and as a hope to victims. If necessary, justice should proceed outside the courtroom.<sup>27</sup>

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<sup>20</sup> Helena Puig Larrauri, 'The Use of New Technologies: Expanding Opportunities for Peacebuilding?' (2013) Critical Reflection, Centre for Peacebuilding KOFF, [swisspeace](http://swisspeace.ch).

<sup>21</sup> Valentina Parada Lugo, 'Las Preocupaciones de las Víctimas durante la Pandemia', *El Espectador*, 28 April 2020.

<sup>22</sup> Robert Muggah and Gustavo Diniz, 'Using Information and Communication Technologies for Violence Prevention in Latin America' in New Technology and Prevention of Violence and Conflict' in Francesco Mancini (ed), *New Technology and the Prevention of Violence and Conflict* (New York: International Peace Institute, April 2013).

<sup>23</sup> OECD, 'Colombia Must Boost Digital Transformation and Take Further Steps to Ensure Benefits are Shared by All', 25 October 2019, available at: <https://www.oecd.org/newsroom/colombia-must-boost-digital-transformation-and-take-further-steps-to-ensure-benefits-are-shared-by-all.htm>.

<sup>24</sup> Laura Dulce Romero, 'Cómo se debe preparar la JEP para las diligencias virtuales en medio de la pandemia?', *El Espectador*, 10 May 2020.

<sup>25</sup> All of the SJP and National government measures regarding Covid-19 are available at: <https://www.jep.gov.co/Paginas/covid-19.aspx>.

<sup>26</sup> See SJP, AOG 014 2020, available at:

<https://www.jep.gov.co/organosgobierno/Acuerdo%20AOG%20No%20014%20de%202020.pdf>.

<sup>27</sup> As the President of the Caribbean Court of Justice, Justice Adrian Saunders, said: 'A court is not a place; it is a service.' Adrian Saunders, 'The Court as a service not a place', 2020, available at: <https://www.unodc.org/dohadecaribbean/en/news/2020/05/the-court-as-a-service-and-not-a-place.html>.

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Second, in Colombia there are important and solid networks in place, both State institution networks as well as civil society networks. Both of these could facilitate participation. Indeed, the SJP is part of a 'system' where various mechanisms are present to achieve the goals of transitional justice including the Truth Commission, the Commission for Missing Persons and the integral system for victims. All of them working together, and in conjunction with other State institutions, such as the Prosecutor's Office, the Ombudsman's Office, the Office of the Attorney General and others, could provide an important platform for victims to come forward and make their voices heard in judicial proceedings. These networks of State institutions are not alone. Indeed, Colombia has very strong civil society organisations that reach victims across the country, regardless of race, sex, gender, ethnicity or political ideology. And while access to ICTs might be missing in some parts of the country, good coordination among State and non-State authorities could help victims to gain timely, effective, safe and secure access to ICTs if some key conditions are met.<sup>28</sup>

Third, not all the victims of the armed conflict are in the same situation and/or in the same locations, when considering access to ICTs, and responding to Covid-19 challenges.<sup>29</sup> The SJP has so far prioritised seven macro-cases to fulfil its mission, each involving different perpetrators, violations, territories and victims. For example, case 001 considers the illegal retention of people by the FARC (kidnappings); case 003 deals with deaths illegitimately presented as casualties in hostilities by State agents (false positives); case 006 concerns the crimes committed against the Patriotic Union (a political party that claims to have been exterminated by State agents and paramilitary groups working under their acquiescence); and case 007 deals with recruitment and conscription of child soldiers by the FARC. Some of the victims associated with these cases find themselves in particularly vulnerable situations like those involved in case 006 (given their age) or indigenous groups or former child soldiers. Others have better access to ICTs and other resources such as the victims of kidnappings. Therefore, victims' participation is also context and victim dependant, even in times of Covid-19.

### **III. What is Needed to Ensure that Virtual Hearings Fulfil the Right to Participation of Victims in Times of Covid-19?**

We argue that in the context of the Covid-19 pandemic, virtual proceedings offer an opportunity to bring justice outside the courtroom to deal with the legacy of mass atrocities that has taken place in Colombia. This is so, even if they are limited in their ability to ensure meaningful participation to victims.<sup>30</sup> To put it simply, justice cannot wait any longer to help the society to come to terms with the crimes of the past and must continue along its course. The crimes that have been committed and over which the SJP has jurisdiction amount to serious international crimes. Virtual hearings at the SJP could offer an opportunity for justice if they take adequate account of the necessary conditions for justice, including those related to connectivity and security, in order to enable victims' participation.

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<sup>28</sup> See for example, Jean-Marie Chenou, Lina P. Chaparro-Martínez and Ana María Mora Rubio, 'Broadening Conceptualizations of Transitional Justice through Using Technology: ICTs in the Context of Justicia y Paz in Colombia', (2019) 13(1) Intl J Transitional J 92.

<sup>29</sup> See some the public claims of civil society organizations in this regard available on the website of the Colombian Commission of Jurists, at: [https://www.coljuristas.org/sala\\_de\\_prensa/articulo.php?id=296](https://www.coljuristas.org/sala_de_prensa/articulo.php?id=296).

<sup>30</sup> International Commission of Jurists, 'Judiciaries during COVID-19: South American experience', 29 April 2020, available at: <https://www.icj.org/judiciaries-during-covid-19-south-american-experience/>.



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Certainly, the experience of attending a judicial proceeding, such as a hearing, and of physically interacting with magistrates, justice officials, lawyers, the accused and other actors, can hardly be replaced by a virtual hearing.<sup>31</sup> Given the limitations virtual hearings present, the SJP will have to decide on a case-to-case basis<sup>32</sup> whether it is possible and pertinent to conduct a virtual hearing. Virtual hearings should be considered only in relation to those cases where holding them is of utmost importance for the administration of justice and where there is no other way to secure such objectives, while at the same time fulfilling the right of victims to participate in such proceedings. The SJP decisions so far are in line with this principle.<sup>33</sup> However, questions remain as to how best to fulfil the rights of victims to participate through virtual hearings.

The SJP is currently working towards the adoption of guidelines to be applied in such situations. As part of our work under the AHRC funded grant 'Legitimacy, accountability, victims' participation and reparation in transitional justice settings – lessons from and for Colombia' we have suggested to the Victims' Participation Commission of the SJP, the inclusion of key measures to ensure the right of victims to participate in an effective manner in virtual hearings and other proceedings. Some of these key measures identify the conditions that are necessary to enable participation in such contexts such as access to ICTs as well as knowledge on how to work with them. Other measures aim to address how to compensate for what is lost when administering justice in times of the pandemic using ICTs such as providing additional opportunities for filings, or other means to present views before the SJP.

To contextualise any consideration of conducting virtual hearings before the SJP, it is important to note that the SJP can conduct more than 17 different types of hearings. Simply put, one case includes various hearings. Some are private and others are public. However, among the hearings that the SJP can conduct, there are a few that are of particular importance to victims such as the hearing on recognition of responsibility of the accused. No such hearing has taking place so far at the SJP. This hearing is crucial in terms of legitimacy of the SJP but also for the fulfilment of various rights of victims, including their right to truth, justice and reparation. Given that what is at stake for victims depends on the nature of each hearing, we believe that the more important the hearing is for the fulfilment of victims' rights, the more measures that would be required to ensure their rights and their participation. And, in relation to hearings like the one on recognition of responsibility, great creativity would also be necessary to ensure that the symbolisms and rituals victims would have had in a hearing, in person, would somehow be present, even if in a different manner and format.

While Covid-19 is causing abrupt changes in the administration of justice, ICTs were already used by the SJP to facilitate victims' participation in hearing given that not all victims of the cases under their jurisdiction have been in a position to attend them (given the amount of victims in each case, their location, their degree of vulnerability, etc), so *blended options* of participation have already been necessary and will continue to be required, even in times of Covid-19, where some victims will be able to attend in person or virtually, and others would be involved remotely or would gain access to it through other

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<sup>31</sup> Michael Reed-Hurtado, 'Covid-19 fevers: justice stalled, justice displaced, justice lost?', justiceinfo.net, 12 May 2020, available at: <https://www.justiceinfo.net/en/justiceinfo-comment-and-debate/opinion/44252-covid-19-fevers-justice-stalled-justice-displaced-justice-lost.html>.

<sup>32</sup> ICJ (n. 30) p. 65.

<sup>33</sup> Jurisdicción Especial para La Paz, Comunicado 037.

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means (Youtube videos, CDs, etc). Bearing this in mind, we suggest that the various hearings of the SJP could happen virtually if the following elements are present:

### *Victims should consent to be part of virtual hearings*

Any decision to hold a virtual hearing by the SJP shall be taken by engaging in dialogue with victims giving due weight to their views on security, biosecurity and their goals to hear and be heard in the administration of justice. This guideline is a clear manifestation of the need to obtain consent of and consult victims.<sup>34</sup> Also, it helps to understand what sort of additional measures in terms of security; bio-security and connectivity could be needed by victims in order to ensure meaningful participation.

### *Addressing ICTs gaps and enabling victims to use ICTs*

Given the lack of access to ICTs and the digital divide that exists for victims in Colombia, it is crucial to ensure that victims have access to ICTs of the right quality to be able to consider virtual participation as an option.<sup>35</sup> In considering the question of access to ICTs, the SJP should include an age, gender, ethnic, territorial and disabilities dimension to ensure equality and non-discrimination, which are key principles underpinning the right to participation.<sup>36</sup>

If access to ICTs does not exist, and it is not an option to facilitate victims' access to computers and enough data, then *blended options* should be considered, for example to host virtual hearings in a State building or communal room in the community with the help of SJP personnel and with all necessary biosecurity measures. Mobile phones should not be used to connect to ICTs as it does not provide the best experience for victims and it was not designed to facilitate engagement that can last for several hours.<sup>37</sup>

In those cases in which virtual hearings are a viable alternative, justice officials will still need to design a connectivity strategy to address the knowledge gap that victims may have about how to use ICTs. This is crucial for victims to have access to timely and adequate information about proceedings. The strategy would need to provide victims with access to adequate training in the use of communication technologies to maximise the quality of their online participation. Officials will also need to ensure that victims know how the hearing itself will be conducted and the modalities of their virtual participation. Educational materials can be developed to this end (both printed and online). Some of these could take the form of tutorials on the use of the software and hardware, online rehearsals and webinar sessions, and guidelines on the modalities of the virtual hearing itself.

In addition to training, a connectivity strategy might also need to consider the hiring of IT personnel to ensure the smooth running of virtual hearings and their security. Some of their functions might include the testing of the software before the start of the hearing so that

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<sup>34</sup> UN General Assembly, 'Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the participation of victims in transitional justice measures', UN Doc. A/HRC/34/62, 26 December 2011, para. 31.

<sup>35</sup> Richard Susskind, 'Digital exclusion; in *Online Courts and the Future of Justice* (Oxford University Press, 2019).

<sup>36</sup> Impunity Watch, "Restricted Access" Promises and Pitfalls of Victim Participation in Transitional Justice Mechanisms', July 2017, p. 47.

<sup>37</sup> BBC News, 'Remote Hearings for Family Court "Horribly Cruel"', 3 May 2020.

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victims can see that the system is working, the creation of private and secure chat rooms for confidential communication between lawyers and victims, or to access psychosocial support, solving technical issues that might arise throughout the hearing itself, and the safe voice and video recording of the proceedings. Notably, IT personnel could play a key role in supporting victims during their online participation by enabling a communication channel through which they can ask technical questions.

### *Security and bio-security measures are essential*

The SJP should also consider security measures for victims. As already noted, Covid-19 has exacerbated the power that illegal groups have in certain parts of the country and this has generated increased risks for victims who might be unable to contribute to justice proceedings. In this regard, the SPJ should consider not only bio-security measures for the victims but also for any person and staff involved in the delivery of justice to prevent and avoid risks of contagion. Likewise, it is also crucial that systems used to hold virtual hearings are not capable of being hacked, and that the identity of victims and the information and evidence they provide can be trusted as well as the one provided by witnesses, and that what victims or witnesses say could remain confidential (if the hearing is confidential), so as to ensure that their security is not endangered by the proceedings before the SJP.<sup>38</sup> Failure to do this might also jeopardise the legitimacy of the SJP.

### *Psychosocial support*

Victims who participate through ICTs continue to require psychosocial support, even more so during the pandemic, given its mental health consequences, which can be exacerbated by insecurity in their places of residence.<sup>39</sup> Special measures must be put in place for victims to have adequate access to psychosocial support before, during and after virtual hearings. Such access to psychosocial support should take into account all required biosecurity measures so that it does not endanger the health of the victim or of those providing the service.<sup>40</sup> Appropriate means for psychosocial support could be provided through ICTs but the nature, and particular situation of the victim should be taken into account when deciding what is the best way to provide such services.

### *Compensatory measures*

Virtual hearings permit an essential public service - the administration of justice, to continue its course. However, as already stated they are far from desirable in States undergoing transitional justice processes. Therefore, it becomes significantly important to consider the use and identification of adequate compensatory measures. Such measures should be considered in tandem with the planning of virtual hearings. The more that a virtual hearing could hamper the right of victims to participate, and the more that such hearing could affect their right to know the truth or to reparation, the more compensatory measures would be required. They should be identified bearing in mind the characteristics

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<sup>38</sup> Corte Constitucional. “ACUERDO 01 DE 2020. Marzo 19.” p. 1. See also, Carolina Villadiego-Burbano, ‘Judiciaries during COVID-19: South American experience’, ICJ, 29 April 2020.

<sup>39</sup> See World Health Organization, ‘Mental health and psychosocial considerations during COVID-19 outbreak,’ 18 March 2020.

<sup>40</sup> UN News, ‘UN leads call to protect most vulnerable from mental health crisis during and after COVID-19: Huge needs in conflict-hit communities’, 14 May 2020, available at: <https://news.un.org/en/story/2020/05/1063882>.



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and situation of the victims (for example, age, disabilities, linguistic and cultural differences, gender, location, etc), the potential impact of the hearing in the justice process, and whether there are (or not) other similar opportunities for victims in the justice process to convey their views or object to evidence. For instance, justice officials could invite victims to submit virtual or written opinions or create a digital platform for victims to share video testimonies before the hearing. The receipt of virtual or written submissions could also take place after the virtual hearing through email or other means. Such compensatory measures depend on the type of hearing, whether it is adversarial or not, and must be adopted taking due account of the need to balance the rights of the victims and those of the accused.

#### **IV. Conclusions**

Covid-19 has impacted the administration of justice for institutions like the SJP in Colombia. Yet, the SJP is trying to respond and adapt quickly to the new context to ensure justice is done. A key opportunity is to provide victims with participation in the work of the SJP through virtual hearings and proceedings, but we argue that if virtual hearings are organised, they need to reflect certain minimum conditions and standards. If they do not, victims will not be able to be part of and experience the justice process.

Some jurisdictions, particularly those in countries undergoing conflict and in which access to the internet is not universal, might be resistant towards the idea of virtual hearings. The Colombian case demonstrates that even in restrictive contexts, the use of virtual hearings might be possible, and even desirable, as they could provide an alternative to victims who cannot physically attend a courtroom due to their location and/or imminent security risks.

The SJP cannot resolve the problem of access to ICTs affecting victims in Colombia but one of its assets, to conduct virtual hearings, are the State and non-State networks available across the country. Courts might take advantage of existing networks to ensure that victims, particularly those without internet access, can still participate in virtual hearings. However, we recommend that such experiences are properly assessed and monitored so that the way they are carried out improves over time.

Finally, the conversation on virtual proceedings has gained new relevance in the context of the Covid-19 pandemic, the use of this type of technology will outlive the pandemic. Technological developments will continue to provide better virtual experiences of justice in the future. What is crucial in this process is to ensure that the right measures are taken, such as compensatory or enabling ones, to facilitate access to justice and to fulfil the rights of victims to truth, justice and reparation.