DIGITAL TRANSITIONS IN TRANSITIONAL JUSTICE

Mohammad Usman Zia and Aaron Acosta (Researcher, Dejusticia)[*]

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I. INTRODUCTION

The Colombian government and the FARC ended 52 years of conflict in September 2016 when both sides signed the Colombian Peace Agreement. The agreement included provisions for transitional justice institutions to make amends for the lives and livelihoods lost during the conflict. According to the International Center for Transitional Justice, transitional justice refers to the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response.[1]

Almost four years after the Colombian Peace Agreement, one of Colombia's transitional justice institutions, the Jurisdicción Especial de la Paz's (JEP) Chamber of Recognition held one of its hearings, in which a member of the public forces provided his version of the events related to Case 03 – the false positives case. False positives are innocent people extrajudicially killed by members of the Colombian Army or associated paramilitary groups. Legal representatives, victims, psychological support staff, and government officials were also in attendance. The JEP hearing was business as usual except for one unprecedented difference – it was virtual.[2] Microsoft Teams' video conferencing platform enabled individuals to connect from across the country. A member

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* Mohammad (Mo) Usman Zia is a Class of 2021 J.D. Candidate at Harvard Law School. Aaron Acosta is a Researcher at Dejusticia. *A similar version of this piece has been cross-published on Dejusticia's blog website.*

1. *See What is Transitional Justice*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, https://www.ictj.org/about/transitional-justice.

2. *See* Alejandro Arboleda, *JEP is Ready to Start The Virtual Versions in Case 03, Known as "False Positives"*, MINUTE30 (May 6, 2020), https://www.minuto30.com/politica/jep-esta-lista-para-iniciar-las-versiones-virtuales-en-el-caso-03-conocido-como-falsos-positivos-%E2%80%8B%E2%80%8B/1029430/.

of the military connected from Popayán, his lawyer joined from Bucaramanga, and representatives and victims connected from Medellín, Bogotá, and the Caribbean Coast.

COVID19 has accelerated the digital transformation that was already spurring changes across Colombia.[3] Human rights organizations have been adapting to Colombia's digital transformation by deploying tools to further transitional justice efforts in light of COVID19. Institutions such as the JEP, the Truth Commission, and the Land Restitution Unit have all transitioned to digital platforms to continue their work.

Although rooted in compelling health concerns and Colombia's state of emergency, the migration of judicial and truth-telling venues to virtual platforms has significant implications for effective transitional justice.[4] Technologies such as smartphone apps, videoconferencing software, and social media platforms present both a tool and a challenge for transitional justice efforts like documentation, truth and justice hearings, and community outreach.

II. LACK OF ACCESS

More widespread use of digital platforms in lieu of traditional in-person transitional justice functions will inevitably lead to disparate impacts on rural and low-income populations. Although Colombia has made significant progress in expanding internet access in cities, a digital divide remains between rural and urban areas.[5] In 2018, around 65.6% of Colombians had access to mobile or fixed-line internet with speeds over 1 megabit per second (Mbps).[6] Colombia's average download speed, 5.5 Mbps, is one of the lowest rates in Latin America and significantly lower than the global average — 11 Mbps. Slow and/or limited internet access is especially prevalent among lower-income groups. The internet penetration rate is only 21.7% for the lowest-income Colombians, and only 17% of Colombia's rural population has

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3. *See* OECD, *OECD Reviews of Digital Transformation: Going Digital in Colombia*, OECD REVIEWS OF DIGITAL TRANSFORMATION (2019), https://doi.org/10.1787/781185b1-en.

4. *See* Reuters Staff, *Colombian President Duque Declares New State of Emergency to Ease Pain of Virus Lockdown*, EMERGING MARKETS REUTERS (May 6, 2020), https://www.reuters.com/article/us-health-coronavirus-colombia-emergency/colombian-president-duque-declares-new-state-of-emergency-to-ease-pain-of-virus-lockdown-idUSKBN22I308.

5. Sebastian Erb, *Colombia is Becoming an Online Country, But a Digitals Divide Still Separates Cities From the Countryside*, DEUTSCHE WELLE (Feb. 18, 2019), https://www.dw.com/en/colombia-is-becoming-an-online-country-but-a-digital-divide-still-separates-cities-from-the-countryside/a-47563079.

6. *New ICT Laws and Attention to Innovation Increase Colombia's Internet Coverage*, OXFORD BUSINESS GROUP, https://oxfordbusinessgroup.com/overview/public-and-private-sector-initiatives-have-seen-positive-results-increasing-internet-coverage-and

access to internet.[7] Rural communities in Colombia are also among the most affected by the armed conflict, and as such, are usually those whose testimonies are crucial in transitional justice mechanisms like the JEP, the Truth Commission, and the Land Restitution Unit.

Among Colombians with mobile phones, 79.4% of users subscribe to pre-paid plans, compared to 20.6% for post-paid plans. These disparities are particularly relevant in light of Decree 555, which grants mobile phone users with post-paid plans certain benefits, such as free texting, during the COVID19 crisis.[8] As Dejusticia has argued to the Constitutional Court, the decree unfairly discriminates against pre-paid plan users, who form the majority of mobile phone users and who generally face greater economic vulnerability.[9] Furthermore, only about 50% of mobile phone users have smartphones, which may limit the ability to participate in videoconferencing and to use critical communication apps like WhatsApp.[10]

Access issues and the digital divide also presents an opportunity for Colombian policy makers. Large cities like Medellín have implemented urban planning through "decentralized neighborhoods."[11] This involves building community-based libraries with free computer and internet access in lower income neighborhoods at the periphery of the city. This strategy also establishes neighborhood nuclei around public infrastructure and service provision in areas historically neglected by the central government.

A similar approach would be difficult to implement in rural areas given budgetary constraints and ongoing security concerns. In the short term, the Colombian government can focus on improving internet service provision through phone data plans. For example, the Colombian government could heavily subsidize or provide free cellular data plans in areas where they are no longer able to provide critical in-person

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7. *See Todo lo que no le han contado del plan*, Plan Nacional de Desarrollo (Pactor Por Colombia Pacto Po La Equidad, 2018-2020), https://colaboracion.dnp.gov.co/CDT/Prensa/Resumen-PND2018-2022-final.pdf.

8. *See* Natalia Gaviria, *"The Essential Internet Service Must be Guaranteed After The Pandemic" Leon Fredy Munoz*, El Espectador (May 7, 2020), https://www.elespectador.com/noticias/politica/se-debe-de-garantizar-el-servicio-esencial-de-internet-tras-la-pandemia-leon-fredy-munoz-articulo-918288/.

9. *See* Intervención ciudadana del Centro de Estudios de Derecho, *Por el cual se adoptan medidas con el fin de attender la situación de emergencia económica, coial y ecológica de la que trata el Decreto 417 de 2020*, Dejusticia (May 7, 2020), https://www.dejusticia.org/wp-content/uploads/2020/05/20200506-Intervenci%C3%B3n-Decreto-555-Telefoni%CC%81a.pdf.

10. *See Use of Smartphones In Colombia is Already Greather than 50% of the Population According to Asomovil*, Asomovil, http://www.asomovil.org/uso-de-los-smartphones-en-colombia-ya-es-mayor-al-50-de-la-poblacion-segun-asomovil/.

11. Anastasia Moloney, *Could Coronavirus Lockdowns Help Close Latin America's Digital Divide?*, Reuters (May 12, 2020), https://www.reuters.com/article/us-health-coronavirus-latam-tech-trfn/could-coronavirus-lockdowns-help-close-latin-americas-digital-divide-idUSKBN22O1L5.

services. Once the security situation has improved, the government can develop public services such as libraries and community-based internet access platforms in rural areas. These service provision venues could also host trainings on how to use videoconferencing and other digital platforms for transitional justice.

III. CYBERSECURITY CONCERNS

Even if access issues are remedied with greater mobile and fixed-line internet access, institutions such as the JEP and the Truth Commission still face cybersecurity challenges. Surveillance issues are especially troubling for videoconferencing platforms critical to transitional justice functions. In light of COVID19 restrictions, the JEP has been holding virtual hearings using Microsoft Teams and communicating with victims' representatives using digital platforms, such as Twitter, YouTube, and Instagram.[12] Similarly, the Truth Commission has recently been communicating with indigenous communities and leaders of victim groups through virtual platforms, as well as receiving truth contributions virtually.[13]

With the shift to virtual platforms, concerns regarding the security of videoconferencing platforms have been a topic of debate. In particular, the exponential increase in videoconferencing, on platforms like Zoom, has provoked response from information-security professionals.[14] Although Zoom's security issues have been contested, the long list of concerns for the video platform includes its susceptibility to hackers working for the Chinese government, to its false claim that it uses end-to-end encryption.[15] Similarly, Microsoft Teams users have been the subject of an impersonation attack that has targeted over

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12. Colombia 2020*, Pandemia Del Coronavirus: Así Funciona La JEP En Medio De Emergencia*, YOUTUBE (April 15, 2020), https://youtu.be/wpNZlF3ctSg.

13. *See Commission Works at Home*, LABOR INFORMATION AGENCY AIL (May 12, 2020), https://ail.ens.org.co/noticias/la-comision-trabaja-en-casa/; *The M-19 Had a Political Ideology: Former Members of The Truth Commission*, LA OPINION (May 15, 2020), https://www.laopinion.com.co/politica/el-m-19-tenia-ideologia-politica-exmiembros-la-comision-de-la-verdad.

14. *See* BLU Radio Editorial Office, *They've Exaggerated About The Zoom App's Alleged Weakness: Expert Graham Cluley*, BLU RADIO (May 22, 2020), https://www.bluradio.com/lanube/han-exagerado-sobre-la-supuesta-debilidad-de-la-aplicacion-zoom-experto-graham-cluley-252500-ie435/.

15. *See* Paul Wagenseil, *Zoom Security Issues: Here's Everything That's Gone Wrong (So Far)*, TOM'S GUIDE (Jan. 4, 2021), https://www.tomsguide.com/news/zoom-security-privacy-woes; Josh Margolin, *Intel Report Warns Zoom Could be Vulnerable to Foreign Surveillance*, ABC NEWS (April 28, 2020), https://abcnews.go.com/International/intel-report-warns-zoom-vulnerable-foreign-surveillance/story?id=70376203; Micah Lee & Yael Grauer, *Zoom Meetings Aren't End-to-End Encrypted, Despite Misleading Marketing*, THE INTERCEPT (March 31, 2020), https://theintercept.com/2020/03/31/zoom-meeting-encryption/.

50,000 users.[16] Zoom has increased its security in light of these issues. In September 2020, Zoom added two factor authentication which requires users to provide two separate pieces of identification to log into Zoom.[17]

Despite security updates, such uncertainty regarding privacy may limit transitional justice institutions' ability to virtually advance justice and truth-telling. Victims and former combatants may be less inclined to testify or appear on video calls, and, if they do appear, they may be less candid due to security concerns.

Additionally, the security of communication apps, such as WhatsApp, which had already seen a 40% increase in usage earlier this March, has been put into question. Mandatory quarantine restrictions have prohibited the usual in person communication between victims and their advocates.[18] Communication apps have consequently become essential in maintaining contact. Recently, concern have surfaced over a WhatsApp hack that allows hackers to overtake accounts and access mobile phone data.[19] This raises serious concerns, especially in light of the 2019 WhatsApp hack, which was used to directly target journalists and human rights defenders. These recent developments highlight the risks involved with digital communication apps.[20]

The Colombian government has taken concrete legal steps to ensure that a governance framework for protecting their citizen's data is in place. Through data protection and accountability laws, such as Law 1581 of 2012, the Colombian government set guidelines on how public information can be accessed.[21] According to Privacy International, however, concerns regarding oversight and third-party verification can

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16. *See* Davey Winder, *Beware This New Microsoft Teams Password Hacking Threat to 75 Million Users*, FORBES (May 2, 2020), https://www.forbes.com/sites/davey-winder/2020/05/02/beware-this-new-microsoft-teams-password-hacking-threat-to-75-million-users/?sh=2cd191bf2fbc.

17. *See* Mike Moore, *Zoom Update Delivers a Huge Security Upgrade*, TECHRADAR (Sep. 11, 2020), https://www.techradar.com/news/zoom-update-delivers-a-huge-security-upgrade#:~:text=Zoom%20has%20announced%20a%20significant,to%20log%20in%20to%20Zoom.

18. *See* Mawo Bakasa, *Socially Antisocial: The Impact of COVID-19 on Social Media Consumption*, THE MEDIA ONLINE (May 12, 2020), https://themediaonline.co.za/2020/05/socially-antisocial-the-impact-of-covid-19-on-social-media-consumption/.

19. *See* Zak Doffman, *New WhatsApp Warning As This Malicious Hack Strikes Again: Here's What You Do*, FORBES (May 29, 2020), https://www.forbes.com/sites/zakdoffman/2020/05/29/new-whatsapp-warning-as-malicious-hack-returns-heres-what-you-must-do-now/?sh=5a04e9d2166a.

20. *See Israel: Stop NSO Group Exporting Spyware to Human Rights Abusers*, AMNESTY INTERNATIONAL (Jan. 12, 2020), https://www.amnesty.org/en/latest/news/2020/01/israel-nso-spyware-revoke-export-license/.

21. Congress of Colom. Statutory Law 1581 of 2012, OFFICIAL GAZETTE 48587 (Oct. 18, 2012), https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=49981.

still lead to improper access of public data by Colombian intelligence, police, and judicial entities.[22]

IV. CONCLUSION

As transitional justice institutions' responses to COVID19 lead to increased use of digital platforms, the challenges of technology-driven solutions will become more complex. Lack of access and cybersecurity issues need to be squarely addressed. The government and tech companies that develop videoconferencing and communication apps can take timely, concrete steps to ensure the digitalization of transitional justice is both inclusive and secure. On the one hand, the government should both increase internet access and optimize internet speeds for rural and poor populations in a non-discriminatory manner while providing more clarity on data governance mechanisms. On the other hand, technology companies like Microsoft, Zoom, and Facebook need to continuously improve the security of video call and messaging platforms. Such measures could include making publicly available the risks of digital platforms and the ways in which such risks are being mitigated.

At the end of the day, however, the digitalization of transitional justice should not be seen as a long-term solution, as it can never replace the visceral dynamics of in-person human interaction and emotion — both essential in transitional justice processes. Technology enables transitional justice institutions to conduct functions without in-person interactions, but virtual dialogues may reduce the impact of individuals integral to a nation's process of healing. Difficult conversations mediated behind computer screens may not lead to the critical closure and understanding that a truth and reconciliation process aims to cultivate. Understanding and mediating emotions is critical to transitional justice efforts, and virtual communication could alter how one perceives emotions, such as the sincerity of an apology. As such, virtually confronting questions regarding sincerity, closure, and justice may have significant implications for the long-term effectiveness of Colombia's peace process.

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22. *See State of Privacy Colombia*, PRIVACY INTERNATIONAL (Jan. 26, 2019), https://privacyinternational.org/state-privacy/58/state-privacy-colombia#dataprotection.