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Colombian Commission of Jurists

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Newsletter # 4

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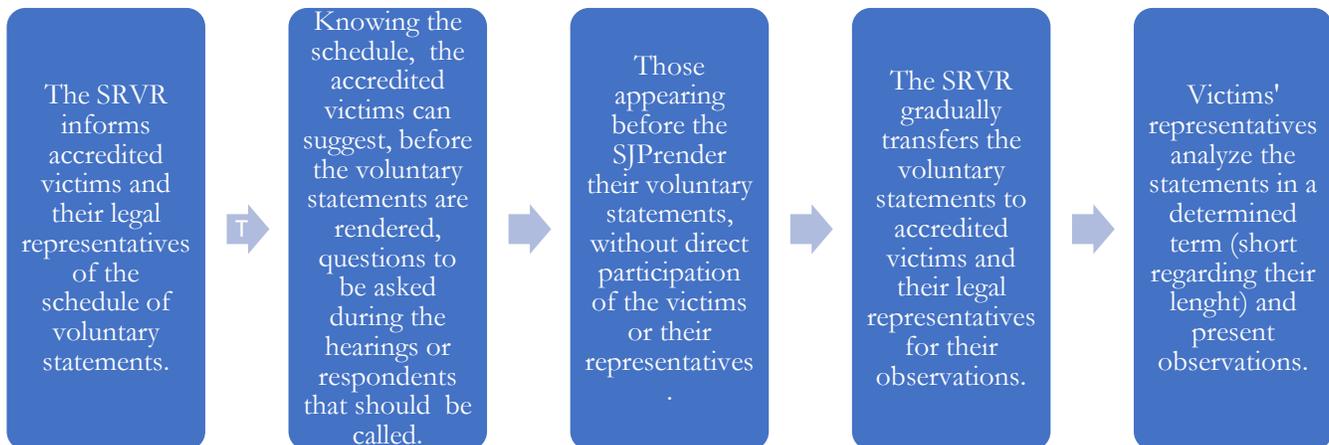
This newsletter addresses changes in victims' participation in hearings whereby voluntary statements are rendered as of [Order 080 of 2019](#) of the Judicial Panel for Acknowledgement of Truth and Responsibility and Determination of Facts and Conducts (SRVR for its Spanish acronym).

The Colombian Commission of Jurists, through the series "[Victims in the center of the Agreement](#)" has insisted on the need to guarantee the participation of victims in the proceedings of the Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (CSTJRN) mechanisms and especially the Special Jurisdiction of Peace (SJP). In this context, together with other organizations, the Colombian Commission of Jurists insisted before Congress on strengthening the standards of participation of victims, achieving the incorporation in the Legislative Bill 01 of 2017 of the clause that determines that participation as interveners will be in accordance with national and international standards.

1. The victims' participation in voluntary statement hearings before Order 080 of 2019

Law 1922 of 2019, in its article [27D](#), states that victims have the right, "after the rendering of voluntary statements, to present their observations thereto and receive a copy of the file". Given that the law does not expressly foresee the direct presence and participation of the victims in the hearing where the voluntary statements are rendered, the SRVR - before the [Order 080 of 2019](#) - had guaranteed victims' participation in the following manner:

Figure 1. Victims' participation in the rendering of voluntary statements before Order 080 of 2019



(Own elaboration based on the [Order 080 of 2019](#))

In May 2019, the Colombian Commission of Jurists, the Political Prisoners' Solidarity Committee Foundation, and the José Alvear Restrepo Lawyers' Collective Corporation, all human rights organizations whose members represent accredited victims in Case 003 - Illegitimately perpetrated deaths presented as combat casualties by Agents of the State, filed reconsideration petition against SRVR Order 062 of May 9, 2019, which called for person appearing before the SJP, to render a voluntary statement. In the reconsideration petition, the organizations requested the direct participation of the victims in the voluntary statement convened, that the victims' representatives be present at the hearings of the rendering of the voluntary statements and that a hearing room be set up where the victims could observe the telecast of the voluntary statements and suggest new questions for the person appearing before the SJP. They maintained that an indirect participation of the victims in the rendering of the voluntary statement stage was not in accordance with the centrality of the victims, restorative justice or the dialogical construction of the truth, and pointed out that the manner in which these hearings were being conducted should be considered as “a manifestation of the unilateral character of the construction of the truth”¹. The SRVR resolved this reconsideration petition by means of Order 080 of 2019, whose content is explained below.

2. Victims' participation in the hearings of the rendering of voluntary statements after Order 080 of 2019

In Order 080 of 2019, the SRVR analyzed the request submitted by the organizations in the aforementioned reconsideration petition. In its analysis, the SRVR noted that it had complied with the procedural rules and had guaranteed the victims' participation in the voluntary statements until that moment, in accordance with the principles of centrality of the victims and the dialogical construction of truth within the framework of the restorative justice paradigm. It also cautioned that the hearings of the voluntary statements were not the ideal moment to generate a first encounter between the victim and the victimizer, because it was necessary that these spaces rely on an adequate preceding preparation of the parties to avoid re-victimization. And it highlighted the importance of ensuring that the voluntary statement hearings did not become adversarial scenarios that prevented the fulfillment of their objective.

However, the SRVR also considered that it was possible to expand the victims' participation in the voluntary statements in order to more fully satisfy their right to truth and the principles of dialogical construction of truth and centrality of victims. Therefore, within the framework of the competence established in [Article 27](#) of Law 1922 of 2018, the SRVR decided to expand victims' participation in the voluntary statements as follows:

¹ Colombian Commission of Jurists, Political Prisoners Solidarity Committee Foundation and José Alvear Restrepo Lawyers Collective Corporation. Reconsideration petition against Order 062 of May 9, 2019, May 15, 2019.

Figure 2. Main changes in victims' participation in the voluntary statement hearings as of Order 080 of 2019

Main changes in victims' participation in the voluntary statement hearings as of Order 080 of 2019

1. The accredited legal representatives who might wish to do so may be present in the main chamber where the voluntary statement will be rendered.
2. Victims who wish to do so may observe the real-time broadcast or relay of the voluntary statement hearing in a separate courtroom.

Rules for victims participation in the voluntary statements hearings

a) Timely communication of interest in participating to the SRVR. Legal representatives and victims interested in being present in the voluntary statement must communicate this to the SRVR in a timely manner. In order to enable them to participate in the hearing preparation sessions, they must fulfill: i) a preparatory session with victims, to make them aware of the psychosocial risks and provide them with tools so they can comment on the versions but prevent re-victimization; and ii) a preparatory session with the legal representatives of the victims, to provide them with rules they must follow for their interventions in the voluntary version

b) Content of questions. The legal representatives of the victims must ask questions related to matters previously transferred to the person appearing before the SJP, for which the SRVR will inform them of the Order by which the transfer was made. They may also ask questions related to documents or elements that are not known, if they are provided by the party appearing before the SJP in the voluntary statement.

c) Time for questions. The legal representatives of victims must be present at the hearing and ask questions only at the time allotted for questions.

d) Proper behavior. The victim's legal representatives must behave in accordance with the protocols of judicial hearings.

e) Respect for the procedural objective of the voluntary statement. The legal representatives of the victim must respect the objective of the dialogical construction of truth of the voluntary statement and avoid generating an adversarial space.

f) Balance between victims' representatives and the persons appearing before the SJP. The victim's legal representatives must choose the same number of representatives as those accredited by the person appearing before the SJP in the version to be present in the main Chamber. The elected representatives shall be responsible for speaking at the hearing and asking questions.

(Own elaboration based on the [2019 Order 080](#))

Under the aforementioned parameters, the victims began to participate more widely in the voluntary statement hearings in the framework of Case 003 - Illegitimately perpetrated deaths presented as combat casualties by Agents of the State. In Case 004 - Territorial situation of the Uraba region, these guidelines have also begun to be implemented. However, they need to be applied in the other cases known by the SRVR.

Order 080 of 2019 made it possible to expand victims' participation in the voluntary statement hearings. However, as noted by Judge Ivan Gonzalez in his clarification on the vote on this Order, the established procedure to guarantee victims' participation in the voluntary statement also imposes important limitations thereon. Particularly, the Judge referred to the following characteristics of the procedure:

- a) That the victim must communicate his/her interest to participate in the voluntary statement hearing, despite having been recognized as a participant in the process, is a burden for the victim.
- b) The fact that the victim must ask questions about the matters that were previously brought to the attention of the party appearing before the SJP is a limitation for the victim.
- c) The fact that the number of victims' representatives who intervene in the voluntary statement must be the same number of representatives accredited by the person appearing before the SJP in the version means that the victims must abide by the selection of the representatives who will intervene on their behalf, even though Order 080 did not establish a procedure for carrying out this selection. Furthermore, this disregards the fact that victims may have different and even incompatible interests².

Additionally, in practice, victims have faced difficulties and limitations in participating in the voluntary statements. One of the main difficulties is that the SRVR has adopted a legal practice that imposes a great burden on victims, sometimes limiting their participation. The SRVR, in its exercise of notifying victims and their legal representatives regarding the rendering of voluntary statements, has not followed the guidelines set out in the Order 080 of 2019 regarding victims' participation in the rendering of voluntary statements. Specifically, it has disregarded the fact that Order 080 of 2019 establishes that the requests for participation in the voluntary statements must be communicated to the Chamber "in a timely manner", without imposing a specific term for such timely communication, which -from the perspective of the Colombian Commission of Jurists- must be analyzed in each specific case in accordance with the objective such determination of the term may pursue, especially in

² Judge Ivan Gonzalez. Clarification of vote on SRVR Order 080 of 2019. June 6, 2019.

relation to guaranteeing victims' participation and that of their representatives in the preparatory sessions of the versions. In contrast, the SRVR has imposed insufficient legal terms for the submission of said requests, which in many cases are incompatible with guaranteeing the rights of victims.

As of the time the victims began to participate in the voluntary statements, the Colombian Commission of Jurists identified these limitations. This situation led to the filing of an reconsideration petition against the SRVR's Order of November 16, 2019, which denied the participation of some victims and their legal representative in the voluntary statements of a person appearing before the SJP because it was considered to have been filed extemporaneously. In this appeal, the Colombian Commission of Jurists - in accordance with the provisions of Order 080 of 2019, the jurisprudence of the Inter-American Court of Human Rights and the Constitutional Court - stated that, firstly, insufficient terms (three days) were being set for the submission of requests for participation in the voluntary statements, which in many cases may be contrary to the SRVR's jurisprudence on the criteria for victims' participation. The mass notification by e-mail regarding the voluntary statements, wherein the information is not clearly organized, imposes on victims and their representatives a vigilant task of verifying the information in order to request their participation in the hearings. This verification task requires a reasonable amount of time, which in some cases exceeds the deadline set by the SRVR for submitting the request for participation³.

Secondly, in addition to these practical difficulties, it should be taken into account that victims who are already accredited have expressed their interest and desire to participate in the process before the SJP. Therefore, no additional and unnecessary burden should be imposed on them by requiring them to once again express their interest in participating in specific proceedings (voluntary statements) within the proceeding⁴. In this regard, it is essential that the SRVR review its legal practice related to the setting of terms for the submission of requests for participation in voluntary statement hearings by the victims and their representatives and take the necessary steps to ensure these are implemented⁵.

³ Colombian Commission of Jurists. Substantiation of Reconsideration Petition against the Order of November 16, 2019, December 18, 2019.

⁴ Ibid.

⁵ Ibid.