



March 12th, 2024

Mr Volker Türk

High Commissioner for Human Rights

Geneva, CH 1211

Geneva 10, Switzerland

Subject: Alana Institute written contribution to the Call for inputs to the High Commissioner's report on application of digital technologies in the administration of justice - Report to the General Assembly on human rights in the administration of justice

Dear High Commissioner,

This submission, made by Alana Institute, presents contributions on how technologies have been utilized in Brazil within the realm of justice administration, especially in virtual hearings conducted in Juvenile Justice. Alana Institute¹ [www.alana.org.br] is a Brazilian-based global organization that focuses on promoting integral development and children's rights through advocacy, litigation, and communication at national and international levels. Since 2022, the Alana Institute has Consultative Status in the United Nations Economic and Social Council (ECOSOC).

This submission will initially focus on the regulations governing virtual hearings in the administration of justice for children and youth. Subsequently, data will be provided on the impacts of these regulations on children's human rights, and finally, guidance will be offered for regulation that protects children's human rights.

During the coronavirus pandemic, hearings on the justice system, especially at the juvenile justice and prisional system, began to take place entirely virtually or in a hybrid format, where only some of the participants attend in person while the rest participate virtually. However, this new modality, regulated by the National Council of Justice², presents disadvantages and possible violations that still need to be widely debated within the Justice System. The normative act predicts several procedural rights, such as the presumption of innocence, the effective participation of teenagers in procedural acts, and information and connection security.

¹ If you need more information, please contact: leticia.silva@alana.org.br.

² Virtual hearings were regulated by the Resolution 330 of 2020 by the National Council of Justice. Available in Portuguese at: <https://atos.cnj.jus.br/atos/detalhar/3435#:~:text=1%C2%BA%20As%20medidas%20transit%C3%B3rias%20e%20Mundial%20de%20Sa%C3%BAde%2C%20considerando%20as>.

Virtual hearings have also been introduced in other areas related to children's rights, such as institutionalization in the foster care system. In this case, Provision No. 113 of 2021 stipulates that judges who order the institutionalization of children and adolescents may conduct hearings by videoconference³.

The virtualization of justice has not only occurred within the scope of childhood and youth but rather as a procedure across the entire Brazilian judiciary, driven by the CNJ (National Council of Justice)⁴. Despite this initiative, data and research analyzing the consequences of these shifts for ensuring human rights, especially for vulnerable groups such as children and adolescents, are still lacking.

In general, most of the available data that analyzes the virtualization of justice in Brazil reveals two crucial points: (i) most judicial state courts are not adequately prepared to cope with the virtualization of justice - many of them have not digitized processes, lack specific judiciary development systems to conduct virtual hearings, and lack of official regulations to address various issues such as data protection and privacy, and (ii) inequalities regarding the access to the internet and digital education.

According to a 2023 study conducted by a research group at the Insper Institute of Education and Research, only 36% of state courts adopted regulations governing virtual hearings. Of these, only two emphasized the preference for in-person hearings. Merely three courts addressed specific provisions regarding children and adolescents, focusing solely on adolescents within the juvenile justice system. Concerning the protection of personal data, a mere 16% of the courts established provisions regarding the safeguarding of personal data and the security of images from virtual hearings. This last point is particularly worrisome, given that, in accordance with the Child and Adolescent Statute (ECA - Law 8,069/90), all proceedings concerning children should proceed under a veil of confidentiality, prioritizing the protection and best interests of the child.

Furthermore, additional reports indicate that among the 27 Brazilian federal units, at least 18 did not have their own systems for conducting virtual hearings, not only for children and juvenile justice but in general. Consequently, these hearings were conducted using platforms provided by private companies, such as Google Meet, Zoom, and Microsoft Teams⁵.

Despite the ending of the Covid-19 pandemic, the virtual hearing model has persisted, albeit without the emergency situation, adequate regulation through legislation, amendments to procedural rights laws, or similar measures⁶. As one can observe, the absence of

³Provision No. 113 of 2021 is available here: <https://atos.cnj.jus.br/atos/detalhar/3721#:~:text=Altera%20a%20reda%C3%A7%C3%A3o%20do%20Provimento,que%20a%20medida%20%C3%A9%20determinada.>>.

⁴ To see more: <https://atos.cnj.jus.br/atos/detalhar/4842>

⁵ The article 'Intensification of Justice Virtualization in Brazil, Yields Gains and Imposes Challenges' in portuguese is available here: <https://www1.folha.uol.com.br/poder/2022/02/virtualizacao-da-justica-se-intensifica-no-brasil-gera-ganhos-e-improe-desafios.shtml>

⁶ Resolution N°481 of 2022 is available in portuguese here: <https://atos.cnj.jus.br/atos/detalhar/4842>.

regulation, particularly concerning children's rights and data protection, has posed a challenge as we evaluate the advantages and disadvantages of integrating virtual hearings into the administration of justice.

The Alana Institute commissioned the NEIDE Collective (Center for Education and Intervention in Human Rights) to conduct the research [Video Conference Hearings in the Juvenile Justice System: reflections on the model, its limits, and potentialities](#), which is available in Portuguese. The study aims to raise awareness among the judicial system and promote the improvement of this type of hearing in the Juvenile Justice System.

The research reveals that one advantage is the increased possibility of family members and witnesses participating, as there is no need for travel or displacement. However, issues with connectivity and the lack of human contact are negative points, impacting the effectiveness of participation and the guarantee of adolescent's rights. Other aspects need consideration in the discussion about the format of hearings. The difficulty for families and adolescents to understand the debates and decisions is a reality, whether due to legal technical language or connectivity issues. In the same context, due to a lack of connectivity, sometimes the judges or other professionals couldn't understand the answers. In these cases, the virtual hearing accentuated and aggravated old problems related to the guarantee of the full right to defense and possibilities for interaction between the parties. Additionally, there are changes in the working dynamics of Judiciary employees, who report feeling overwhelmed with this new practice.

The study also highlights the challenges of ensuring the rights outlined in the ECA and the Federal Constitution in remote hearings. One of the rights of adolescents is a private conversation with their lawyer to ensure the right to a fair defense and due process. The lack of this procedure can lead to the annulment of the process. However, the research shows that, in various situations, it was clear that the pre-interview did not take place.

The current scenario of virtualization of justice in cases involving children in Brazil is concerning, considering primarily: the absence of regulation designed to ensure their best interests (Articles 3 and 12 of the Convention on the Rights of the Child, Article 227 of the Federal Constitution, and various articles of the ECA); the lingering existence of norms stemming from the Covid-19 pandemic period, an exceptional scenario; the lack of ostensive data on the guarantee of rights in this modality (which goes against provisions of [General Comment No. 25 from the Committee on the Rights of the Child on children's rights in relation to the digital environment](#)⁷); the predominant absence of provisions regarding the protection of personal data (Articles 147 and 243 of the ECA and Article 14 of the Brazilian General Data Protection Law); and the lack of specific regulation regarding different issues

⁷ E. Data collection and research 30. Regularly updated data and research are crucial to understanding the implications of the digital environment for children's lives, evaluating its impact on their rights and assessing the effectiveness of State interventions. States parties should ensure the collection of robust, comprehensive data that is adequately resourced and that data are disaggregated by age, sex, disability, geographical location, ethnic and national origin and socioeconomic background. Such data and research, including research conducted with and by children, should inform legislation, policy and practice and should be available in the public domain. **CRC/C/GC/25**

that require individual attention (juvenile justice, cases of victims and witnesses of violence, children under foster care, and family guardianship are situations with specific peculiarities and regulations, suggesting that, in the use of virtual technologies in the administration of justice, they should receive individualized treatments that guarantee children's rights in each procedure).

Finally, it is imperative that following measures be implemented to safeguard children's rights amidst the virtualization of justice: 1) the judiciary must furnish data and research on the ramifications of employing technologies in justice administration, particularly regarding testimony collection and virtual hearings; 2) regulatory frameworks must be instituted to ensure the prevention, protection, and security of children's data within the justice system; 3) tailoring the utilization of technologies to each legal context and specific circumstance pertaining to children's rights is essential; 4) is crucial to acknowledge that, notwithstanding the benefits of technological usage, in-person procedural acts are inherently more advantageous to guaranteeing rights and more humane, specially for children; 5) furthermore, national-level regulation and fiscalization of technological deployment are indispensable, with explicit consideration of children's rights and best interests, to forestall regulatory vacuums or regional idiosyncrasies that may encroach upon children's rights.