

The impact of new information and communication technologies on the enjoyment of human rights in Latin America

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Abstract: *New information and communication technologies pose different and diverse challenges to the enjoyment of human rights in Latin America. This article presents a number of case studies on challenges and opportunities connected with ICTs and their impact on social movements, litigation, politics and the enjoyment of individual rights. It also refers to the attempts to promote the legal regulation of the digital sphere. The analysis highlights the gap between citizens with access to technology and connectivity and those left behind.*

Key words: *information and communication technologies (ICT); Latin America; legal regulation; digital rights; technology; connectivity; social inequality*

1 Introduction

Latin America is the most unequal region in the world (Kliksberg 2005). It is therefore unsurprising that new information and communication technologies (ICTs) have had a differential and potentially unequal impact in the enforcement of human rights in this region. Economic, geographical, age, sex, gender, linguistic, educational and cultural gaps – as well as those concerning employment and physical integrity – erode the equality of the populations of the region at the individual and collective levels, and have an impact on the possibility of access to and use of ICTs.

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The international community is committed to ensuring effective access to ICTs as reflected in the Sustainable Development Goals (SDGs). Despite this commitment and a certain decline in economic inequality in recent years in the region, can we consider that the digital gaps are the 'new inequalities' in the region? What are the differential impacts by age, gender, social class, ethnicity, physical integrity and place of residence, caused by new technologies?

Neither digital sovereignty nor the potentialities and risks of new technologies can be addressed without reference to the structural context influencing interactions in the region.

In Latin America, as elsewhere in the world, state authority to review digital content shared through the internet and the imposition of restrictions over its use should be in line with human rights and, in particular, with freedom of expression and conscience. In order to prevent illegitimate or arbitrary decisions, any limitations imposed must pursue a legitimate aim and must be proportional. Moreover, restrictions should have a basis in law and be set in advance, with citizen awareness of the purpose and limits of state control. State control cannot be intrusive and affect the right to privacy. Companies also play an essential role in ensuring this right. Legislation on data access and judicial review of these issues is essential.

Likewise, it is relevant to highlight the link between ICTs and human rights in different relevant social areas in Latin America, such as education, health and labour. In these respects, ICTs are tools providing a larger range of opportunities to fulfil and ensure these rights. Additionally, in a number of countries the development of social media applications has created new tools for denouncing human rights violations and facilitating access to information essential to victim assistance. However, it cannot be negated that ICTs pose challenges that have an impact on people's lives and their relationship with their environment in the countries in which they reside and throughout the region. The technological revolution has fostered a virtual context where both individuals who have and who do not have access to the internet face the violation of their fundamental rights.

In this context, a critical view of the potential violation of rights that occur in the internet and the problems related to it is called for. These include new forms of violence with transnational and massive impact and new challenges in terms of crime prevention. Prosecution and sanctions are additional challenges faced by states in light of the absence of appropriate regulations and clear jurisdictions as well as a collision between rights. Similarly, another issue to address is network anonymity. Although the principle of net neutrality is a guarantee for internet users, it may turn into an obstacle when investigating, prosecuting and punishing offenders.

In view of the above, it is clear that with the current technological revolution new challenges have emerged in the face of which states must provide an effective response in order to respect and ensure the human rights of all persons/users.

2 Latin America and ICTs

In Latin America the incorporation of technologies was initially associated with the idea of development. With the expansion of the internet, the issues associated with technologies focused on inclusion. The understanding that new technologies would enhance state capabilities to exchange information and gain benefits that would facilitate the production of knowledge (Camacho 2005).

From a historical point of view, it is possible to distinguish technological gaps from digital divides. The first refer to the distance or the existing separation between the people who have access to or manage technology and those who do not; the second refer to the limitations in application of ICTs, meaning the distance between the people who know how to use them and those who do not (Santoyo & Martínez 2003). Although initially it was thought that the gaps would be overcome as the context improved, nowadays it is clear that those gaps persist, have been accentuated, and engender new forms of inequalities.

Since the World Summits on Information Society held in Geneva (2003) and Tunis (2005), Latin America has set for itself the objective of overcoming these gaps and the exclusion they bring to the populations lagging behind in the digital era (ECLAC 2017). For this region, the digital era is turning into a new phase of inequality not only related to technological inequalities but also to a manifestation of the social gaps (Arenas Ramiro 2011).

2.1 The gaps

When speaking of the digital divide we refer to a situation where countries lack the same opportunities to access the benefits of technologies, to have access to connectivity, and to be an active part of a network, not only within national boundaries but also regionally and globally. The United Nations Economic Commission for Latin America and the Caribbean (ECLAC) defines it as 'the dividing line between the population group that already has the possibility of benefiting from ICTs and the group that is still unable to do so' (ECLAC 2003: 16).

It is important to recognise the digital divide as a concept that, given its multidimensional and multifactorial nature, is in constant evolution and can generate different forms of inequalities. These include inequalities between countries (international digital divide) or between citizens within each country (internal digital divide), and these inequalities are generally accentuated between those who live in urban areas and those in rural areas (De la Selva 2015). When speaking about digital gaps, those relating to access, use, quality of use and technological appropriation must be taken into account.

Regarding access to ICTs and internet connection, 43,4 percent of all Latin American households were connected to the internet in 2015 (ECLAC 2016: 7). While in 2017 the percentage rose to 56 per cent, with the number of households growing by 103 per cent from 2010 to 2016, more than half the households still lacked access to the internet (ECLAC 2017).

As far as access to fixed broadband and mobile broadband is concerned, in 2010 the penetration of these was relative parity, by 6,5 per cent. It then is evident that the penetration of mobile broadband surpassed fixed penetration. In 2016 mobile broadband reached 64 per cent in relation to 11 per cent, corresponding to fixed broadband. However, mobile data traffic in the region continued to be the lowest in the world, with an average of 449 terabytes per month (ECLAC 2017).

The second type of gap relates to the ability to use ICTs and to navigate the network. It is necessary to point out that it is not enough to 'be online' if you do not know what information to look for in the network and how to identify a reliable source from one that is not. This skill is often associated with the educational level of the user, meaning that the users with high levels of education make better use of the information in the network. In Latin America, education depends on financial income available and social stratification. This will also to a large extent determine the quality of internet use, which is related to affordability and the speed of internet service.

One of the major challenges, particularly in Latin America, is the design and execution of projects aimed at digital literacy in order to effectively include all peoples, especially those belonging to populations in vulnerable situations (Camargo & Murillo 2012). In this regard, indigenous peoples are particularly affected by technology in their ancestral lands, mainly relating to extractive projects. These have brought violence against human rights defenders – some of which have lost their lives – defending ancestral lands against large private companies. An example on the use of ICTs for the benefit of indigenous communities is addressed below.

2.2 Digital gender gaps

An analysis of digital gender gaps as a consequence of asymmetric power relations involves the consideration of two elements: the dissimilarity between men and women in the use of ICTs, and that of women among themselves. In this sense, digital gender gaps must be analysed taking into account cross-cutting perspectives, meaning that access to the internet is not the same for a young professional woman living in the city, without disability, as for an older indigenous woman living in a rural community where connectivity quality and speed are not of an equal standard.

All contextual circumstances must be considered in order to understand structural inequalities in the region. These include unequal access to opportunities for women, as well as the gender stereotypes that historically have separated women from science and technology. In this sense, digital gaps are a consequence of pre-existing inequalities they generate or enhance new forms of exclusion.

In this context there are several examples of concrete actions developed to promote the incursion of girls in the world of science, mathematics and robotics, using technologies as key tools in the digital literacy process, with women/girls as creators, designers and producers of technologies.

Since 2016 Paraguay has promoted a project titled 'Girls Code', which seeks to awaken the interest of girls – in both public and private schools – in the use of technologies and inspire them in active participation through the development of skills and technical knowledge, as well as attitudes

aimed at making them feel capable of being the next generation of entrepreneurs, creators and change makers (Girls Code 2019). In order to achieve these objectives, the project carries out an active learning process through workshops and courses where girls self-pace their own learning processes, from being software consumers to software developers. These workshops provide basic notions about programming, the creation of web pages, applications for mobile phones, game design, handling of three-dimensional printers and the introduction to robotics. The workshops are held on weekends or after school, for girls from the ages of six to nine years and from ten to thirteen years. Many of the girls who participated in the workshops progress to more advanced courses, acquire confidence to share mixed spaces, and strengthen their ability to create and learn.

2.3 Digital gaps in technological appropriation

In order to address digital gaps – especially those connected with technological appropriation and the progression from technology consumers to technology developers for the benefit of the community – a number of good practices have been developed in different countries of the region.

In the Peruvian Amazon, indigenous peoples use ICTs to report oil spills in their river waters and pollution of their ancestral lands (Collins 2018). They gather photographic evidence and record geo-referenced videos on their cell phones and drones to report oil spills and pollution, and call for state supervision and political support to monitor that the extractive companies operate under the framework of the law. Drones are also used by indigenous peoples in Colombia, Costa Rica, El Salvador, Guatemala, Honduras, México, Panamá (FAO 2016), among others in the region (UICN 2016).

Following the line of appropriation of ICTs, it is also worth mentioning the actions of Latin American governments focused on the development of the right to access information as essential in the governance modality. Thus, today open government is the way in which Latin American governments meet to ensure transparency in their efforts, participation and collaboration of citizens, with technological innovation being a cross-axis aimed at bringing people closer to state actions.

Several branches of government in the region have designed platforms enabling citizens to make online consultations, participate in activities, learn about the management, how much public officials earn, how the budget is executed of the institution, as well as access to services over the internet without having to go to the institution's headquarters, thus saving transportation costs and time.

2.4 Final thoughts

It is essential to use technologies as tools to access data, which could be transformed into information and then into knowledge. This access is key to decision making by holders of rights (citizens) and by institutions responsible for ensuring the respect, guarantee and fulfilment of those rights (states). It is also essential to identify the different types of digital gaps, the manner in which they impact on populations, and to design and implement strategies to overcome these gaps in order to ensure access to the benefits of ITC for all. Projects, programmes and initiatives on

empowerment, literacy and technological appropriation should aim to foster agile and inexpensive mechanisms to access fundamental rights, so as to contribute towards reversing inequalities in Latin American societies.

Public policies based on the principle of equality and non-discrimination are key to overcoming the gaps that reinforce the digital divide as its new face of inequalities in Latin America. These policies should strive towards quality access of technologies – that go beyond connectivity – at low cost, thus enabling accessibility and compressible capacities and contents, mainly using technology as a tool for the effective exercise of rights by individuals and communities.

3 Opportunities and challenges in the use of ICT in the area of economic, social and cultural rights

Latin America faces levels of inequality and poverty with a direct impact on the enjoyment of economic, social and cultural rights. This part will focus on the impact of ICTs either on the development of policies to ensure these rights or on the exacerbation of new types of breaches or challenges with special reference to education, health and labour.

3.1 Education

During the last two decades the implementation of ICT in the field of education has not been successful enough to achieve significant benefits for the Latin American region (UNESCO 2013). A first challenge has been the lack of sustainable policies and an adequate budget to make new devices available. A second challenge is the training of teachers in the area of ICT as a fundamental step towards the implementation of new technologies in the classroom (UNESCO 2013; Valdivia 2008). Additionally, traditional pedagogical models have not been designed in a manner conducive to the use of ICT. This creates challenges for the educational process of younger generations who are digital natives, because traditional models do not provide them with the opportunity to relate with tech devices in educational spaces (Valdivia 2008).

In response, some governments of the region have tried to implement a number of policies to improve digital accessibility and availability for populations facing socio-economic disadvantages, particularly in rural or marginal areas. One of the most successful experiences is the so-called CEIBAL – the Spanish acronym of ‘Educational Connectivity of Basic Informatics for On-Line Learning’ – Plan, established in 2007 to promote technological integration at the service of education to impulse processes of social inclusion and innovation and personal growth and reduce the access gap between the highest and lowest income quintiles (Plan Ceibal 2019).

Even though CEIBAL was only aimed at public education when it was first launched, after some years both public and private schools benefited from the programme. It included one laptop per student and wifi connectivity inside and outside of classrooms (Velasco 2011; Rivoir & Lamschtein 2012). The programme also provided students with equipment maintenance and repair (Plan Ceibal, 2019). The Plan has been supplemented with other projects such as Plan Ibirapitá, implemented in 2015 to promote the digital inclusion of low-income pensioners; Youth for

Programming, launched in 2017 in order to create new job opportunities for 1 000 17 to 26 year-olds by training them in programming. As a consequence, Plan CEIBAL is referred to as one of the most successful experiences in the implementation of ICT in education across populations in Latin America.

There have been other examples of innovative projects for education in the region, for instance through mobile and computer games. The Chilean game *Kokori* raises awareness on cell biology by defending human cells from the attacks of micro-organisms, so far with more than 60 000 downloads in 36 countries. *Qranio*, developed in Brazil, is a trivia interface where users answer a wide variety of questions relating to various categories with more than 12 million students registered (BID 2016).

Adaptive learning platforms – artificial intelligence-based software to understand learning needs and design personalised responses – are another strategy to be considered for the region (BID 2016; Smart Sparrow 2018). Two experiences worth mentioning are *Geekie* and the Latin-American implementation of *Aleks*. *Geekie* is a Brazilian platform aimed at providing training for university admission examinations through games and virtual tutorials. *Aleks* is a project developed by the McGraw Hill publishing house with Mexican universities, such as the UNAM and ITAM, and with a wide variety of universities in the United States. The system uses online evaluations to predict learning levels and adapt them to specific student needs (BID 2016).

3.2 Health

According to the Pan-American Health Organisation, it is estimated that 30 per cent of the population in the region lacks access to health services due to economic reasons, and 21 per cent gives up on looking for access because of geographical barriers (PAHO 2017). Additionally, the public spending in health measured as part of the gross domestic product (GDP) did not vary significantly between 1990 and 2007, with the exception of Cuba and Uruguay (Fernández & Oviedo 2010: 14). Recent data shows that only five countries – Canada (7,74 per cent); Costa Rica (5,65 per cent); Cuba (10,92 per cent); the United States (13,97 per cent) and Uruguay (6,5 per cent) – out of 34 countries of the Americas invest more than 5 per cent of their GDP in public health services (WHO 2016).

Advancements in ICTs in the area of health have been introduced at a slow pace despite their importance (Fernández & Oviedo 2010; 5G Americas 2016: 10). Additionally, the health sector currently faces two specific problems, namely, providing equitable access to quality services, and reducing or regulating the rising costs of these services (Rodrigues 2003). In this area, ICTs are particularly useful in a variety of processes such as monitoring the performance of health systems, electronic management of medical care procedures, logistical support for clinical work, and medical treatment of patients with chronic diseases or disabilities (Azevedo, Bouillón & Glassman 2011). Consequently, some governments or private research investigation groups have introduced the use of ICTs in specific programmes, with a variety of results.

One example of the implementation of ICT is the use of telehealth, involving telecommunications and virtual technology to deliver health care outside traditional healthcare facilities (WHO 2019), for example

through virtual health care or long distance professional assistance to obtain guidance in diagnosis, care and referral of patients. The use of the internet and mobile technologies is a fundamental part of the development of this type of remote help.

Especially during the last decade there have been several initiatives in the region to implement different forms of telehealth. Countries such as Brazil, Colombia, Venezuela, Mexico and Panama have implemented not only policies but also an adequate legal framework to promote teleservices. One relevant example is the programme of rural telemedicine in Panama, started in 2005. Another significant case is the Brazilian National Telehealth Programme, which started two years later and includes nine states and 900 cities. In the same year Colombia released a similar programme with a national scope (5G Americas 2016: 13).

ICT has been used to prevent unhealthy habits or to promote healthy practices with various results. Sex education programmes based on the use of the internet were offered at state schools in 21 Colombian cities. According to the research results, the majority of the participants experienced a significant improvement in knowledge and attitudes towards most of the topics taught. Among the topics were the prevention of sexually transmitted diseases (STDs); gender-based violence; and the use of condoms and other contraception methods (Azevedo, Bouillón & Glassman 2011: 135). The experience had positive results.

As far as the prevention of alcohol and drug consumption is concerned, the results were not positive enough. In Uruguay a programme was released for teenagers based on webpage access and text messages, but very few participants entered the website. Even though teenagers had raised awareness of the negative impacts of alcohol and drugs, most of them did not change their consumption habits. Researchers explained that the main cause for the disinterest in the website had been the non-structured and voluntary design of the whole programme (Azevedo, Bouillón & Glassman 2011: 136-137).

ICTs have been used for treating chronic diseases in the region. A negative experience can be also mentioned in Uruguay. In this country an experiment was developed with the main goal of helping patients with diabetes type II. The principal idea was to create a type of social network in order to access material for improving lifestyles and to interact with other patients. However, most of the participants did not enter the webpage, based on other variables such as civil status, age and education level (Azevedo, Bouillón & Glassman 2011: 138). In Peru, thanks to a video campaign directed at teenagers for the improvement of their blood iron levels, a significant majority visited healthcare centres to request iron pills (Azevedo, Bouillón & Glassman 2011: 139). In this sense, this campaign was aimed at reducing cases of poor nutrition and anaemia.

3.3 Labour

Thanks to the implementation of ICT, the labour sector has experienced a variety of consequences. On one hand, some studies have demonstrated that workplaces that have implemented ICT in their environments have created diverse necessities in the workforce (Chelala & Martínez-Zarzoso 2017: 154). In that way, companies have created new job opportunities, particularly in the higher and lower-skilled sectors (Dutz, Almeida &

Packard, 2018: 30-33). Also, the use of mobile applications – such as Glovo, Rappi, Uber, Cabify – have increased the dynamics of the economic sectors, but this has complicated the status of workers and their rights (Arreola 2019).

The major examples are two first instance judgments issued at the Autonomous City of Buenos Aires, Argentina. The first case refers to the massive dismissal by the company PedidosYa that affected 450 out of their 1 000 delivery workers, without any compensation. Labour attorneys state that delivery workers are bound by an employment relationship that is not fully recognised and protected by the company. Consequently, labour rights are not guaranteed in a context where there are no social security contributions, nor recognition of extra hours (McDougall 2019).

In the second case, companies that manage the applications Glovo, Rappi and PedidosYa – the three that offer delivery services in the country and, especially, in the capital city – were sued due to non-observance of traffic regulations. The delivery is made by bicycle, and most workers were not provided with health and safety accessories. Moreover, the companies failed to contract insurance against traffic accidents for its delivery workers who were expected to contract this themselves. For these reasons, the Court stated that it was necessary for companies to cover these costs, and that services should be suspended until regulations were complied with. It also found that companies must adopt appropriate measures to avoid workers' loss of profit during the suspension time (Iprofesional – Legal editorial staff 2019).

Both cases reflect the legal gaps in the protections for new forms of work relationships. Although in Argentina these problems are currently being reviewed by the judiciary, in the rest of the region these issues are still pending. Despite the creation of new income sources for many people across the region, regulations for this type of activities cannot only protect companies and production, but must also protect its workers who remain the most disadvantaged sector of the region.

3.4 Final thoughts

ICTs have provided an opportunity to understand new forms of protecting human rights, making education and health more accessible and available for different populational areas. In this way, some governments have potentiated its usefulness, and have developed important programmes aimed at satisfying the rights of marginal populations. Thanks to these policies, people who have traditionally been discriminated against have had the possibility of enjoying the benefits of ICT. Now, the challenge is that governments must maintain the sustainability of their projects and try to expand coverage to benefit wider groups.

However, in the work sector, ICT may be seen as a new possibility of reducing unemployment, but also as a new way of ignoring workers' rights. This is particularly serious in the region because ICT would start to create more breaches between those who are fully protected by law and those who are not. It is necessary for governments to consider this situation and to start legislating and to adopt adequate policies that avoid gaps and provide adequate protection to any kind of work relationship. In any of the cases, Latin America still needs to learn about the potentiality

that ICTs offer and applying them in diverse ways to human rights protection.

4 Social movements and ITC

When addressing ITCs and human rights in Latin America, some recent examples of social movements are relevant to the analysis, in particular those connected with the gender movement in Argentina and the anti-corruption movement in Guatemala.

4.1 Argentina's #8M #VivasNosQueremos

The feminist movement has gained momentum and it is spearheading in social change all around the world. In this context, the recent 'green' and 'purple' waves¹ are supported by hundreds of thousands of women in Argentina and have had an impact on social movements around the globe. Aside from its symbolism as 'international women's day', in Argentina 8 March – or #8M – has also become a reference for 8 October 2016.

In 2013 a wave of femicides, and the type of information available on these events, evidenced that there was no appropriate official data and statistics to understand and analyse the phenomenon. This led to the women's movement and civil society pushing for a debate on the issue. By 2015 the National Supreme Court's Gender Office reported that during that year 235 women were victims of femicide or gender-based violence (Registro Nacional de Femicidios de la Justicia Argentina 2015).

A number of high-profile femicides covered by the media at the time led civil society to implement a new communication strategy that was reproduced in multiple cities at the national level and abroad. This strategy included mass demonstrations, such as those carried out in connection with the so-called *miércoles negro*/Black Wednesday. *Miércoles negro* was organised in order to bring into focus the femicide of Lucía Pérez, a 16 year-old student brutally raped and killed by a gang of men.² Multiple protests and demonstrations were organised. Over a period of four months thousands of women participated in rallies and assemblies in 105 cities in a historic social protest for women's rights (Laudano & Kratje 2018). This gender-based violence case had a significant impact on Argentinian society.

In order to spread their message, the women's movement took advantage of new technologies and social media. A massive wave of communications were spread on Facebook, Twitter, YouTube and Vimeo (Laudano & Kratje 2018). Without social media platforms, the message against gender-based violence and the call for demonstrations would have not reached a massive audience in multiple locations. As indicated by Laudano and Kratje:

1 The women's movement in Argentina is currently identified by the colour green, representing support for sexual and reproductive rights; <https://www.infobae.com/cultura/2018/08/05/la-historia-del-panuelo-verde-como-surgio-el-emblema-del-nuevo-feminismo-en-argentina/> (last visited 10 April 2019).

2 See https://elpais.com/internacional/2016/10/19/argentina/1476905030_430567.html (last visited 10 April 2019).

In the communicational sense it was very important to recognize a poetical feeling linked to the audiovisual. For example, from the group *Ni una menos* the invitation to participate in the #8M march was addressed to women from different social levels and from different geographical origins, appealing to the breadth and diversity of values processed by a television aesthetic that uses the increasing speed of montage to transmit the urgency of the claim of #NiUnaMenos.

The social demonstrations against femicide promoted by the women's movement in Argentina was replicated in more than 70 countries, including Germany, Australia, England, France, Israel, Russia, Togo, Turkey and the rest of Latin America.

4.2 #RenunciaYa #JusticiaYa, the hashtags that made possible the removal of a President

Guatemala is located in the northern triangle of Central America and is considered the most unequal country in Latin America, with 0,53 points in the GINI index (ECLAC 2018). Between 1960 and 1996 Guatemala was devastated by a civil war that represents one of the darkest chapters in its political history, with more than 220 000 violent deaths and 45 000 disappearances (Historical Enlightenment Commission 1999). It was the first country in the world to request the support of the United Nations (UN) for the establishment of an international commission against impunity and illegal security forces and clandestine security gangs (Agreement between the United Nations and the Government of Guatemala regarding the establishment of an International Commission Against Impunity in Guatemala CICIG 2007).

In 2015 the country underwent a serious political crisis due to several investigations made by the CICIG. Those investigations revealed that former President Otto Perez Molina and former Vice-President Roxana Baldetti Elias were part of a criminal organisation involved in tax fraud³ and several more corruption cases.⁴ Civil society reacted with demonstrations in the central square of Guatemala City, called and organised under the hashtag #RenunciaYa.⁵ #RenunciaYa started like a collective call to show the government that the urban and middle-class were angered by the corruption cases.

As a response to calls made via Facebook, more than 40 000 people participated in the demonstrations.⁶ On 25 April 2015 thousands of Guatemalans demonstrated at the central park of Guatemala City, starting a cycle of protests that lasted for months until the resignation of Perez Molina and Baldetti Elias and their prosecution on corruption charges.⁷

3 See <https://www.mp.gob.gt/noticias/2017/10/27/caso-la-linea-juez-galvez-envia-a-debate-oral-y-publico-a-roxana-baldetti-y-otto-perez-molina-y-26-mas-implicados/> (last visited 10 April 2019).

4 See https://elpais.com/internacional/2018/10/10/america/1539127138_240195.htm (last visited 10 April 2019).

5 See <https://beersandpolitics.com/como-se-gesto-el-movimiento-renuncia-ya> (last visited 10 April 2019).

6 See <https://www.nytimes.com/es/2016/10/07/los-jovenes-que-aprendieron-a-hacer-politica-mientras-tumbaban-al-presidente-de-guatemala/> (last visited 19 April 2019).

7 See https://elpais.com/internacional/2015/06/14/actualidad/1434303266_370487.html (last visited 10 April 2019).

Some of the activists that organised the 2015 marches have gathered in a new social collective, popularly known as #JusticiaYa. This group is focused on battling corruption, inequality and the lack of transparency in Guatemala. As a backlash, some members of #JusticiaYa have been slandered and prosecuted as part of the challenges faced by social movements involved in the construction of a more inclusive and fair society.

4.3 The Xinka community and their campaign against open-pit mining

Guatemala's relations with the ITCs and the social movements did not end in Guatemala City and the mobilisations organised by the upper and middle urban class. The rural indigenous Xinka community is located in the south-east of Guatemala, 75 kilometres from Guatemala City in an area designated for a number of mining activities. The community is involved in an open fight against the government and Canadian mining companies due to the failure to comply with the right to a free, prior and informed consultation process with indigenous peoples in connection with the use and exploitation of ancestral lands.⁸ When the Xinka community brought the matter to the courts, it faced a 'media siege' by the mining company in order to block information on the case from the public.

With the purpose of sharing information on these cases with society at large, the community set up a communication strategy running in parallel with the court litigation. The communication strategy involved explaining the cases to social media influencers and inviting them to disseminate that information through their social media outlets; meetings with leaders of other indigenous communities facing the same challenges with mining activity and litigation; using the hashtag #YoSoyXinka on Twitter, Facebook and YouTube in order to make visible their cause; promoting demonstrations in Guatemala City to attract the attention of the mainstream media; calling for the demonstrations in social media in order to avoid the mainstream media siege; calling for demonstrations on the same day the hearings were held in court; and sharing short video recordings on Facebook in order to make them viral through the social networks.

Thanks to this communications strategy, the case brought before the Constitutional Court gained media profile and was well positioned in the national debate. Newspapers and television discussed the case of *San Rafael Las Flores v Mina El Escobal* (Quezada 2013). In its decision the Constitutional Court of Guatemala found that the state had failed to respect the right to a free, prior and informed consultation process with the Xinka community and that any processes to obtain a mining licence in the territory of indigenous peoples must be guided by the consultation standards. This case shows a clear strategy to avoid the media siege and place human rights cases on the national agenda (Cabrera 2012).

8 See <https://www.efc.com/efe/america/economia/la-corte-de-guatemala-ratifica-suspension-una-minera-canadiense-y-ordena-consulta/20000011-3738309> (last visited 10 April 2019).

4.4 Final thoughts

Not every relationship between social movements and social networks builds or achieves positive change in society. In fact, there have been serious cases of criminalisation and defamation of social activists and human rights defenders through social media. Social media is also used to spread fake news during electoral processes or to destroy the image or reputation of candidates. It is undeniable that social networks are powerful tools to spread political messages.

5 The dilemma of legal regulation in Latin America

Since the 1996 Declaration of the Independence of Cyberspace,⁹ the neutrality of the Web and the willingness to remain exempt from any type of regulation have been a fundamental pillar. However, since 1993 Latin America has developed laws to try and regulate the possible crimes and harmful actions derived from the use of the internet. In this sense, Argentina was one of the pioneers with Law 11.723 of 1993, for the protection of copyright through the Internet. It also adopted Law 25.690 of 2003, regulating Internet providers. For its part, Brazil issued Law 9472 in 1997 regulating Internet service providers and issued Law 9610 in 1998 and Law 12270 in 2010 on the protection of copyright. Colombia with Law 1273 of 2009 and Mexico with the Federal Law on Transparency and Access to Government Public Information of 2002, have focused their legislation on the protection of personal data, in order to guarantee citizens' access to services and the security of their data.

Currently the region is debating the possibility of regulating publications on social networks (Facebook, Twitter and Instagram, among others), a question that is directly related to the limits on freedom of expression. However, it is not the only human right that could be violated. Social networks can be used to commit perjury and the right to a good name.

We will focus on three types of responses that different countries in the region have given on the possibility of regulating digital platforms, as a way to visualise from these latitudes how they are looking for answers to these new challenges.

Based on a study of both Bills and legislation in force in the region, three regulatory scenarios are discussed, namely, those of Colombia, Argentina and Ecuador: in the first place, an example where the judicial branch focuses on good practices; in the second place a Bill that, for political reasons, failed to prosper; finally, a 'negative' example in terms of freedom of expression where – due to a lack of political consensus – the legislation could not transcend the parliamentary sphere.¹⁰

9 See <https://www.eff.org/cyberspace-independence> (last visited 10 April 2019).

10 The case of Venezuela was debated in groups and it was decided not to include it in response to the complex situation the country is going through. On this occasion, it was decided to use the 'Ecuador' case as a similar reference model, even though the latter has not enacted legislation in this regard.

5.1 Colombia: Regulation by the judicial branch

The Constitutional Court of Colombia is the judicial entity responsible for ensuring the integrity and supremacy of the Colombian Constitution. This Court has received three complaints from citizens who resorted to the judicial recourse in cases of perjury and the right to a good name against them.

In the complaint the victims argue that these are crimes contemplated in the national law and that should not vary their possibility of trial because they occur online. Thus, the distinctive point in Colombia is that the possible solution could come from the judicial sphere rather than by new sanctioned legislation.

Nowadays the Constitutional Court of Colombia is studying the processes that seek the elimination of publications with libellous content as they are offences under national laws. During the last elections, there were insults among political candidates who attacked one another on social networks. Specifically, these were situations in which one person called the other a 'thief, swindler or corrupt' and the insults were disseminated through social networks with photos of the relevant individual, messages that are common to find when reviewing posts on Instagram or the Facebook wall.¹¹ This matter led to a public hearing on 28 February 2019. The hearing was organised as follows: first the parties and related parties (the three shareholders and the representatives of Google and Facebook); then the public authorities; and later on, the experts. The position of the representatives of the companies is that 'the administrators should not be responsible for the content made by third parties'. However, the Office of the Prosecutor of Colombia, represented by Néstor Humberto Martínez, argued that the right to freedom of expression was not absolute and when it comes into tension with other fundamental rights, '[t]here is a limitation in the expression that circulates in these highways of contemporary communication, they cannot serve as an instrument of apology to crime, they cannot serve to commit a crime'. Of course, the treatment of these matters 'cannot be a response from criminalisation' (Lorenzo Villegas Carrasquilla, Google LLC representative at the hearing).

During 2018 the Court gave eight judgments dealing with digital rights, the most relevant of these being the judgment that established that 'the guardianship judge may take measures against certain communications in a digital context always and when it is necessary to protect the right to good name and honour in specific cases' (T 121-2018).

5.2 Argentina: A good initiative with no end result

The case of Argentina represents a good initiative that failed to achieve parliamentary consideration because the political conditions to discuss such laws were not in place.

In our region, there are notable initiatives from civil society or some minority political sector that are made impossible due to unfavourable political conditions. Thus, in both the case of Argentina and Ecuador,

11 See <https://www.eltiempo.com/tecnosfera/novedades-tecnologia/audiencia-sobre-redes-sociales-en-la-corte-constitucional-en-colombia-332412> (last visited 10 April 2019).

discussed below, the projects have not been approved and sanctioned by Parliament for political reasons exogenous to the initiatives.

In Argentina, the Bill¹² was promoted from the Senate by a member of the ruling coalition, Federico Pinedo (PRO), and by an opposition senator, Liliana Fellner (FPV) and obtained a half sanction. However, it was not dealt with by the Chamber of Deputies. In addition, the initiative has the support of the UN and OAS freedom of expression rapporteurs and the internet industry in Argentina, the telecommunications industry and various civil society organisations. The experts considered that it was a good Bill of responsibility of intermediaries on the internet as it states that 'intermediaries are not responsible for the contents that users upload or circulate through their platforms or services, except when they do not comply with a court order that obliges them to do so' (Project Bill number S-1865/15 y S-942/16, 2016).

Among the organisations that publicly expressed their support are Access Now; Ageia Densi; Centre for Technology and Society Studies, University of San Andrés; Datas; Faro Digital; Via Libre Foundation; and Public Knowledge. In a public letter they argue (AAVV 2017):

Intermediaries play a crucial role in the exercise of fundamental rights on the internet and, therefore, citizens must be protected from any regulation that denatures their function and grants them the authority to remove content that is exclusive to the judiciary. It should never be the private sector responsible for resolving the legality or not of the information published by an internet user.

Among the detractors of the initiative are associations that protect copyright. The Argentine Chamber of Books (CAL), the Argentine Chamber of Publications (CAP), the Reprographic Rights Administration Centre (CADRA), and the Argentine Chamber of Producers of Phonograms and Videograms (Capif). These organisations argued that the initiative eliminates the responsibility of the service providers and that, therefore, the platforms could not download content protected by copyright without a court order.

5.3 Ecuador: Challenges to freedom of expression

The last example to analyse the situation in Latin America is the Ecuadorian case, which stands out for its errors in design, analysis and implementation. In short, Ecuador is the negative example in our region.

A day before leaving the presidency, Rafael Correa sent to the National Assembly a Bill to regulate acts of hatred and discrimination on social networks and the internet. The Bill included a provision placing an obligation on social network service providers to submit quarterly reports on claims of illegal content received from users and the actions and their own actions to prevent criminal acts. It also established a series of fines and penalties for companies that do not comply (Correa 2017).¹³

12 The Bill is available at <https://drive.google.com/file/d/1EO1As7v0PNrTirzAK5o0e2x83jklQ0I9/view> (last visited 10 April 2019).

13 See <https://www.eluniverso.com/noticias/2017/05/25/nota/6199663/proyecto-rafael-correa-regular-redes-sociales-llego-asamblea> (last visited 10 April 2019).

Both in 2018 and 2019, PAIS Alliance Assemblyman Daniel Mendoza presented a draft Organic Law of Responsible Use of Social Networks.¹⁴ Its objective was to engage users in the use of networks and expressly prohibit the dissemination of fake news, hate messages or information that could compromise third parties or put national stability at risk. It provides for a penalty of one to three years in prison (Bill No. 356924). However, the project does not have the support of the other political sectors in Ecuador. It has been argued that the Bill does not conform to international standards and that it violates freedom of expression. Mendoza said in an interview with the newspaper *El Comercio* that his Bill was different from that of Correa since it does not seek to censor freedom of expression, as allegedly the former President's did, but rather to regulate the platforms.¹⁵

5.4 Final thoughts

The examples above include different strategies developed in Latin America to move forward in a complex and current challenge: Colombia seems to move forward while Argentina has failed to do so due to the lack of a broader political agreement, and Ecuador has for the moment avoided a restrictive model of regulation due to the change of government and a failed parliamentary initiative.

6 Conclusion

Latin America must focus on eradicating social inequalities. ICTs could be an instrument to contribute to that eradication, or it may become an instrument to reproduce those inequalities and increase the gap between new categories of Latin-American citizens: those integrated into the digital world and those excluded from it. For the human rights movement this is an area of concern. A failure to integrate communities into the digital age may prove to be too difficult to revert. There are some positive, mostly isolated, examples. Progress requires change. It is not clear whether states, the private sector or civil society will be the main engines of this required change.

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14 See <https://observatoriolegislativocele.com/wp-content/uploads/Ecuador-Proyecto-de-Ley-del-Uso-Responsable-de-Redes-Sociales-2019.pdf> (last visited 10 April 2019).

15 See <https://www.elcomercio.com/actualidad/daniel-mendoza-ley-redes-sociales.html> (last visited 10 April 2019).

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