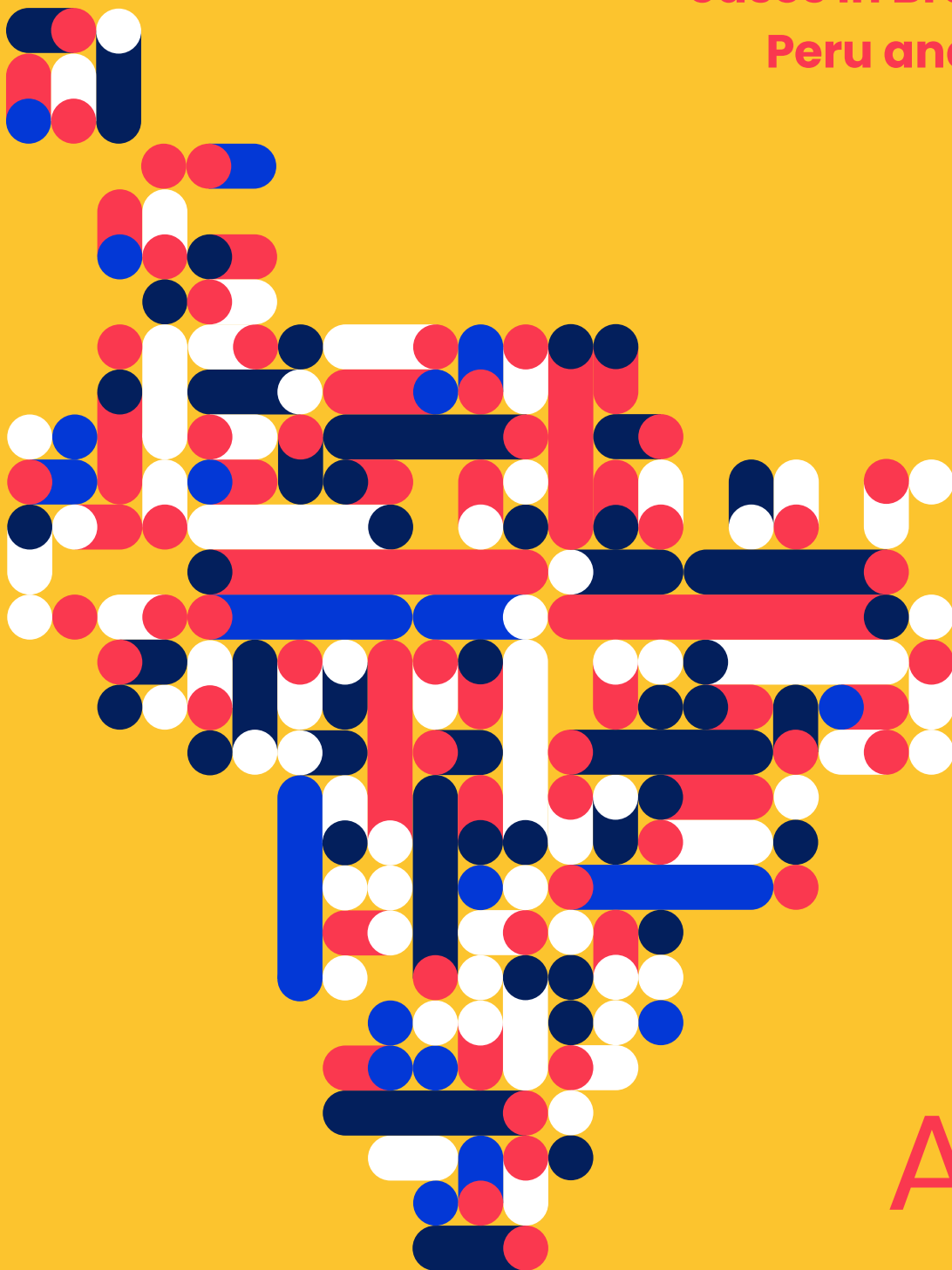


The Regulatory Pathways for AI in Latin America

Collection of study cases in Brazil, Mexico, Peru and Colombia



AI Sur

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Introduction

In Latin America, Artificial Intelligence (AI) has been promoted with a narrative centered around economic and social development. However, the lack of a structured dialogue between state entities and civil society organizations paints a complex map of ethical, methodological, and even epistemological concerns related to AI regulation in the region's countries.

At this critical juncture, the AISur consortium, comprised of 11 civil society organizations and academic institutions¹ from Latin America that aim to strengthen human rights in the region's digital environment, presents the regulatory scenarios in Brazil, Peru, Colombia, and Mexico. As a starting point, we observe a legislative reactivity without a comprehensive legal framework, as well as a lack of understanding of the material reality and the particular needs of each country. Regulation is not just a technical issue; it involves a series of social and legislative practices that impact people's lives.

In Brazil, the influence of international legislation initially led to the inclusion of a chapter on "The Guarantee of the Rights of People Affected by Artificial Intelligence Systems." Later, due to executive action, this was transformed into a vague chapter on "The Protection of the Human Species and Data Protection." This is an example of how regulations are adapted to the needs of techno-solutionist projects and interests that seem to overshadow the relationship between AI and human rights, rather than establishing limits and guarantees for the people affected by its use and implementation.

In cases like Peru, Mexico, and Colombia, there is no effective participation of civil society in the construction of AI legal frameworks, leading to constant distrust regarding the guarantee of human rights. For example, where do the contexts of mass surveillance and algorithmic racism fit in? Why aren't specific cases in which AI affects the guarantee of rights regulated, while broad spectrums of risks are regulated instead?

In the case of Peru, various institutions have been created to promote the ethical use of technologies, including Artificial Intelligence, but the analysis of risks related to the use of AI and how the state should address them has been overlooked. Moreover, effective participation of civil society has been relegated to a marginal space in the legislative initiatives.

In Colombia, although there are ethical frameworks, regulatory mechanisms, and "the roadmap to ensure the ethical and sustainable adoption of artificial intelligence," there is no dialogue between existing regulations, such as the personal data protection law or copyright legislation. Additionally, specific cases of rights violations, such as systems used to classify potential beneficiaries of social programs, are ignored. In this sense, there is a constant concern about the lack of guarantee of immediate rights.

¹ Asociación por los Derechos Civiles - ADC (Argentina), Centro de Estudios en Libertad de Expresión y Acceso a la Información - CELE (Argentina), Coding Rights (Brasil), Derechos Digitales (América Latina), Fundación Karisma (Colombia), Hiperderecho (Perú), Instituto Brasileiro de Defesa do Consumidor - IDEC (Brasil), Instituto Panameño de Derecho y Nuevas Tecnologías - IPANDETEC (Panamá), InternetLab (Brasil), Red en Defensa de los Derechos Digitales - R3D (México), TEDIC (Paraguay).

Similarly, Mexico has a generic AI regulation that also seeks to replicate the risk model of the European Union's "Artificial Intelligence Act." This poses a risk to human rights as it focuses on risks that do not yet exist and diverts attention from specific issues like mass biometric surveillance under the guise of "national security."

Similar to Colombia, an effective framework for regulating automated systems or artificial intelligence must be based on an analysis of the legal framework that already indirectly regulates this technology. For example, no analysis has been conducted on how artificial intelligence is already partially regulated by privacy legislation, personal data protection, procedures, consumer protection, economic competition, intellectual property, and copyright.

One of the main concerns is to reconcile a risk-based approach with a rights-based regulatory model that shifts the focus from regulating machines to protecting people, who are affected, impacted, and classified by these systems.

While global AI legislation is developed in a context of competition and dispute among companies from a few countries, civil society is not a passive observer. For instance, in Brazil, the actions of civil society organizations against algorithmic racism mark an alternative course of action to legislative initiatives.

In addition to exploring the different forms of AI regulation in Mexico, Brazil, Peru, and Colombia, the texts presented here highlight several common themes. These include the need to use existing legal frameworks, avoid copying regulatory models that are foreign to the local context, and develop participatory and rights-guaranteeing processes for this regulation. AI can profoundly affect social and political relationships that already disadvantage people based on their origin, gender, race, and economic resources. The widespread adoption of AI requires debates and regulations that are tailored to the risks associated with that adoption.

This publication has been prepared by the AISur organizations Derechos Digitales, Fundación Karisma, IDEC, Coding Rights, Hiperderecho, and R3D as part of a reflection and internal exchanges within our consortium. We understand that this is just a starting point and that the regulatory race concerning AI still has a long way to go. Our primary interest is to provide a critical analysis from our perspective that can be utilized by decision-makers, civil society organizations, and activists so that debates around AI are based on human rights and the specific needs of the countries in our region.

A brief state of the art of AI regulation in Colombia

Prepared by Fundación Karisma

When the term big data was slowly falling out of use, the Colombian government was already boasting about the advanced position the country would soon occupy in the field of Artificial Intelligence (AI). Since then, Colombia has highlighted its position in [OECD measurements](#), according to which we have more AI initiatives than any other country in Latin America. Both the government of former [President Ivan Duque](#) and the current one of [President Gustavo Petro](#) have made grand announcements regarding AI.

Despite the indexes and measurements, progress on this issue seems to be only partially fulfilled. In terms of regulation, one of the most important fronts for the responsible and sustainable development of this sector, we are still quite behind. So far, Colombia has only formulated ethical frameworks and mechanisms that are mostly non-binding, documents that allow the government to demonstrate progress, without specific regulations being implemented.

From these regulatory initiatives, the most important exponents are the [CONPES document² number 3975](#) (drafted in 2019) which formulates the “national policy for digital transformation and artificial intelligence” and serves as the basis for other developments, the [Ethical Framework for Artificial Intelligence in Colombia](#) (October 2021), the [Recommendations for the development and strengthening of AI in Colombia within the framework of the expert mission on AI for Colombia](#) (July 2022), and, in terms of data governance and infrastructure, the [National Data Infrastructure Plan](#) (December 2021).

In addition to these, there are several other documents, many of which never progressed beyond the draft stage, such as the [Conceptual Model for the Design of Regulatory Sandboxes and Beaches in AI](#) (August 2020), and some freshly released ones like the [Roadmap to Ensure Ethical and Sustainable Adoption of Artificial Intelligence in Colombia](#) (February 2024) elaborated by the Ministry of Sciences, which proposes five critical focuses for AI adoption (Ethics and governance; Education, research and innovation; Innovative and emerging industries; Data and organizations; and Privacy, cybersecurity, and defense), and the [National Digital Strategy 2023-2026](#) (February 2024) jointly constructed by the Presidency of the Republic, the National Planning Department (DNP), and the Ministry of Information and Communication Technologies (MinTIC), which aims to “generate opportunities for leveraging, implementing, and democratizing Artificial Intelligence and other emerging digital technologies to create economic and social value, taking ethical principles, risk management of these technologies, and the protection of human rights as a reference”. Finally, a new CONPES is being prepared, the first draft of which is available for comments.

These documents are not sufficient to guarantee that the adoption and development of Artificial Intelligence technologies in Colombia is aligned with human rights. Moreover, they have been drafted [without full guarantees of citizen participation](#). Therefore, they do not reflect the regulatory needs of the different sectors where this technology is beginning to be deployed.

2 In Colombia, the CONPES (National Council for Economic and Social Policy or Consejo Nacional de Política Económica y Social in Spanish) is the highest authority for national planning, and therefore the documents it produces set the roadmap for public policies issued by the executive branch.

For its part, draft laws, which would be the democratic mechanism to guarantee a more incisive and efficient regulation in this field, are also abundant in number, but insufficient in quality.

By the beginning of 2024, at least five initiatives were underway in Congress:

1. **Senate Bill 059 of 2023:** "Establishing guidelines for public policy for the development, use, and implementation of Artificial Intelligence and other provisions"), a project that has already been presented and rejected multiple times.
2. **House Bill 200 of 2023:** "Defining and regulating artificial intelligence, establishing limits on its development, use, and implementation, and other provisions".
3. **Senate Bill 091 of 2023:** "Establishing the duty of information for the responsible use of artificial intelligence in Colombia and other provisions").
4. **Senate Bill 130 of 2023:** "Creating the harmonization of artificial intelligence with the right to work of individuals".
5. **Senate Bill 109 of 2023:** "Regulating the hiring of persons and contributions to social security on digital platforms and other provisions".

This count does not include mentions of artificial intelligence systems in other legislative projects such as health reform or labor reform, among other legislative initiatives that may mention these technologies, complicating the regulatory landscape.

However, and although the regulatory path is indispensable as a mechanism to guarantee rights, all these projects share a series of fundamental flaws that make them insufficient. Firstly, they seek to regulate a precariously defined set of technologies; several of them rely on basic dictionary definitions of AI, which are too imprecise and non-technical to draw adequate or practical legal boundaries.

Secondly, and because of the above, most of the projects aim to regulate at the same time a very dissimilar group of technologies and applications, ranging from generative AI to automated decision systems in the hands of the State or algorithmic recommendation systems typical of social networks. By combining such a broad group of technologies in a single framework, it will not be possible to find a sufficiently precise standard to have real effects or be effective in guaranteeing fundamental rights.

Thirdly, in some cases, the projects seem more concerned with "end-of-the-world" scenarios than with the problems we have already identified as a result of the implementation of AI systems in the Colombian State, such as the systems for classifying potential beneficiaries of social programs (Sisbén / Social Household Registry / Unique Income Registry) that produce opacity and exclusion in the distribution of subsidies and programs in the country, or the lack of flexibility in copyright law that means our legislation does not authorize the use of modern research methodologies, including text and data mining and machine learning.

Furthermore, the projects do not adequately articulate their texts with regulations and laws already in force, such as the law on personal data protection or copyright legislation.

Finally, in most cases, the norms are copies of regulations from the Global North (mainly from the European Union) and disregard the material reality and regulatory needs specific to our context and Colombia's place in the AI production chain; none of them mentions, for example, the precarious work of content taggers or takes into account the need to set limits on systems like the recommendation algorithms of social networks developed in the Global North that can contribute to the spread of fake news or the invisibility of locally produced cultural content.

Meanwhile, on the international front, progress is being made at different rates, and –as is often the case– the concerns of the Global South are overshadowed by the priorities of Northern countries. This is evident in discussions held in spaces such as the [United Nations Global Digital Compact](#), the [Policy Network on Artificial Intelligence of the Internet Governance Forum \(PNAI - IGF\)](#), UNESCO, or the [Committee on Artificial Intelligence \(CAI\)](#) of the Council of Europe, among others³, where the agenda primarily responds to the needs of those who produce AI tools, rather than those who consume them. Recently, [Colombia was selected by UNESCO](#), along with 17 other countries, to be part of the early implementation of recommendations on AI ethics. Hopefully, this space, [which has previously been closed to the participation of civil society organizations](#), will become a true platform for raising these concerns.

To discuss AI regulation in Colombia it is convenient to fragment the question of regulation into specific problems that contribute to the immediate guarantee of rights. Such as prohibiting facial recognition for security purposes, guaranteeing algorithmic transparency in State systems, regulating home delivery platforms based on the welfare of delivery workers, among others already identified by civil society organizations. All this, with the aim of mitigating risks and negative consequences in people's daily lives through an articulated regulatory framework that addresses current situations rather than dystopian futures.

3 To learn about other international forums discussing AI regulation, you can consult this mapping prepared by the UK-based organization Global Partner Digital in collaboration with a broad network of civil society organizations, including Karisma. <https://www.gp-digital.org/navigating-the-global-ai-governance-landscape/>

An approach to legislation and initiatives for the regulation of artificial intelligence in Mexico

Prepared by Red de Defensa de Derechos Digitales (R3D)

The Mexican Congress has shown interest in the regulation, in general, of “artificial intelligence.” The approach to this topic has been very generic, in the sense that all automated decision-making systems continue to be encompassed within the umbrella term of AI.

a. Creation of the ANIA

This has led to the creation of the National Alliance of Artificial Intelligence (or Alianza Nacional de Inteligencia Artificial in Spanish). Congress decided to establish an interdisciplinary working group to discuss various issues regarding AI governance. This effort is driven by UNESCO and is part of pilot programs for the implementation of principles of artificial intelligence ethics.

This Alliance has held thematic online sessions with the aim of conducting a diagnostic study of the current state of public policies on automated systems. So far, there has been no in-person meeting or working document to record the results of these discussions.

b. Alternative Dispute Resolution Mechanisms (ADRs)

On January 26, 2024, the new General Law of Alternative Dispute Resolution Mechanisms was published in the Official Gazette of the Federation. This law generally regulates all forms of legal conflict resolution except litigation, for example, arbitration or conciliation. Within this law, there is a chapter on online dispute resolution that includes definitions of automated systems and algorithmic transparency.

The definition of automated systems⁴ in the law consists of an umbrella term to encompass all types of “artificial intelligence.” This includes machine learning systems, any type of data processing system, natural language processing, algorithms, and artificial neural networks.

However, there is a first approach to the concept of algorithmic transparency. The legislation defines this concept as the set of practices for the algorithms used by these automated systems to be visible, understandable, and auditable. Algorithmic transparency must be accompanied by an independent authority that can assess and supervise the use of these systems. Nevertheless, it is a good start to improve regulation in the future.

The risk is that there may be automated decision-making systems that fall within these processes. This can affect the equality between the parties to such processes. The procedural equality of the parties is at risk if the regulation does not establish with more granularity the transparency standards of automated systems. Therefore, one party to the process may have more knowledge about the system being used to resolve the dispute than its counterpart. However,

4 Automated Systems. Computer programs designed to perform tasks that require artificial intelligence and that use techniques such as machine learning, data processing, natural language processing, algorithms, and artificial neural networks, which for the purposes of this Law focus on Online Dispute Resolution.

the level of harm to this principle is more limited since both parties must accept the conditions of such systems to proceed with ADR.

c. Artificial Intelligence Regulation Initiative

Senator Ricardo Monreal presented an initiative aimed at regulating the use of artificial intelligence in Mexico. This initiative sought to replicate the controversial risk model of the “Artificial Intelligence Act” of the European Union and validate the use of intrusive automated systems by public authorities that endanger human rights.

The main issues with this initiative are:

- The definition of artificial intelligence is too broad. It could include anything from a simple text processing program to a large-scale natural language processing system.
- It uses the risk model for regulating automated systems. Risk models allow for broad exceptions to the protection of human rights.
- Within the category of unacceptable risks, it includes the prohibition of systems that alter the behavior, consciousness, or “behavior of any person, in a way that causes, or is likely to cause, physical or psychological harm through the use of subliminal techniques that transcend consciousness.” Such systems do not exist as such currently, and systems claiming to employ these techniques lack scientific backing.
- It establishes exceptions for “national security” and “public interest” to the use of mass biometric surveillance systems. This provision allows for indiscriminate state surveillance.
- It allows for automated decision-making systems with discriminatory effects, such as those for admission to studies, credit scoring, and police prediction systems. The legislation only requires providers of these systems to establish a risk management system.

On March 1, Senator Ricardo Monreal decided to withdraw the initiative to improve the proposal.

d. What's Next for Regulation in Mexico?

Mexico still has a long way to go in terms of regulating automated systems. However, lawmakers started from a wrong starting point for two reasons. First, there is no regulation proposal that centrally establishes the protection of human rights. Risk models are not sufficient to protect people from the harms generated by AI. A human rights-centered model will help delineate each of the human rights obligations that must be met at each step of the AI lifecycle.

Secondly, an effective framework for regulating automated systems or artificial intelligence must start with a diagnosis of a legal framework that already indirectly regulates this technology. For example, there has not been a serious analysis of how artificial intelligence is already regulated to some extent by legislation on privacy, personal data protection, related to procedure, consumption, economic competition, intellectual property, and copyright.

Regulation of AI in Peru

Prepared by Hiperderecho

In the Peruvian context, the regulation of Artificial Intelligence (AI) focuses on aspects addressing both its promotion and its use in various spheres. Legislation related to AI is structured around four main pillars: consumer protection, regulation of digital governance, the use of AI in the financial system, and its implementation in areas such as criminal prosecution and administration of justice. These aspects are framed within Law No. 31814, dated July 5, 2023, which establishes guidelines to promote the use of AI for the economic and social progress of the country.

Law 31814, the Law promoting the use of Artificial Intelligence for the economic and social development of the country, is the main regulation in Peru on the subject. This law establishes a series of principles for the development and use of artificial intelligence, including security standards based on risks, a plurality approach, internet governance, digital society, ethical development, and respect for citizens' privacy.

The regulation also provides for the creation of a National Authority, headed by the Presidency of the Council of Ministers through the Secretariat of Government and Digital Transformation, responsible for directing and supervising the use and development of artificial intelligence in the country. This authority aims to promote the training of professionals skilled in the use of artificial intelligence, strengthen digital infrastructure, promote the adoption of ethical guidelines, and create a national and international collaboration ecosystem in this area.

While the regulation provides for minimum principles for the development of AI, these are insufficient as the law itself does not address possible risks related to the use of AI and how the State should address them. On the contrary, it uncritically promotes the use of this technology. Similarly, while it provides for a principle of plurality of participants, its discussion and approval were far from it.

a. Consumer Protection

In the field of consumer protection, two main laws in Peru stand out that address the interaction between consumers and Artificial Intelligence (AI) systems. Law No. 31606 recognizes the consumer's right to personalized attention in situations where automated or AI-based services are employed; and, on the other hand, Law No. 31537 establishes specific provisions for contracts made through AI systems.

Under Law No. 31601, the consumer is recognized the right to opt for personal attention in case the provider offers any public service based on, among others, Artificial Intelligence. On the other hand, Law No. 31537 assigns the burden of proof to the provider in cases where the proper provision of information to the consumer and the acceptance of the terms offered are questioned. It is essential to highlight that both regulations were approved by Congress through a parliamentary process. This process, while ensuring a minimum level of dialogue and participation from all the benches and political forces represented in Congress, did not involve civil society participation at any stage. At most, Law No. 31537 had opinions from business guilds.

b. Digital Governance

In the field of digital governance in Peru, the Emergency Decree No. 007-2020 stands out, which approves the Digital Trust Framework. This decree, in its Article 12.2, establishes the responsibility of both public sector entities and the private sector in promoting and ensuring the ethical use of digital technologies, including Artificial Intelligence. It is worth noting that this decree, which has the force of law, was unilaterally issued by the Executive Branch through exceptional powers provided for in the Constitution, without initial parliamentary intervention. Although it was subsequently subjected to review by Congress, its initial issuance was exclusive to the executive.

In the regulatory field, it is worth noting Supreme Decree No. 157-2021-PCM, which regulates the National Digital Transformation System, establishing the National Center for Digital Innovation and Artificial Intelligence as an instrument to strengthen digital trust in the country. This center is responsible for promoting actions for the deployment and use of emerging technologies, with particular attention to Artificial Intelligence, with the aim of strengthening security and digital trust in Peru. Likewise, the regulation includes national strategies for digital transformation, among which the development of initiatives in the field of Artificial Intelligence stands out.

Also noteworthy is Supreme Decree No. 029-2021-PCM, regulation of the Legislative Decree approving the Digital Government Law. This decree defines in its glossary the concept of Artificial Intelligence as follows: "It refers to systems that exhibit intelligent behavior, which based on the analysis of their environment make decisions, with some degree of autonomy, to achieve specific goals."

Finally, Administrative Resolution No. 003-2019-PCM-SEGDI establishes the creation of the Government and Digital Transformation Laboratory of the State. Its mission is to promote the ethical use of emerging technologies, including Artificial Intelligence, ensuring data protection and privacy in the digital environment.

It is essential to highlight that these regulatory norms, being issued unilaterally by the executive power, are characterized by a lack of a formal process of discussion and participation during their drafting and approval. This implies that their elaboration and promulgation are not subject to parliamentary scrutiny or an open debate involving various political forces and relevant sectors.

c. Artificial Intelligence in the Financial System

The Risk Management Model Regulation, promulgated by SBS Resolution No. 00053-2023, constitutes the regulatory framework for the supervision and regulation of models used in the management of financial and operational risks in Peruvian financial and banking entities. Regarding Artificial Intelligence, Article 16.2 of this regulation specifically addresses its application in the construction and evaluation of models, outlining guidelines to ensure their integrity and effectiveness.

One of the key guidelines established in Article 16.2 is the conducting of tests and analysis to assess the interpretability of the model. This measure emphasizes the importance of understanding the decision-making process and the results generated by the model, fundamental aspects to ensure transparency and reliability in its operation.

The regulation also requires the optimization of hyperparameters as part of the model's learning process. It also highlights the need to carry out cross-validations or other techniques to prevent model overfitting problems.

It is worth noting that these are specific regulations issued by a constitutionally autonomous body with the competencies to regulate financial and banking matters. In this case, participation in its drafting process is minimal. However, it is important to highlight that there is a risk-based approach when regulating artificial intelligence.

d. Criminal Prosecution and Administration of Justice

In the context of criminal prosecution and administration of justice in Peru, regulations such as Legislative Decree No. 1611, which approves special measures for the prevention and investigation of the crime of extortion and related crimes, stand out. Article 7 addresses issues related to the identification and location of alleged authors and participants in these crimes and establishes that this process can be carried out using various expert and technological methods, including the application of artificial intelligence, as one more tool in crime investigation and prosecution.

As we know, the use of artificial intelligence algorithms for the identification and prosecution of alleged criminals raises concerns about the accuracy and impartiality of the results. There is a risk that these systems may be biased or based on incomplete or incorrect data, which could lead to unfair or discriminatory decisions.

On the other hand, within the judicial system, the approval and implementation of the “Artificial Intelligence Laboratory of the Superior Court of Justice of Lima” stands out, as provided in Administrative Resolution No. 000620-2023-P-CSJLI-PJ. This regulation is based on the Framework Law for the Modernization of State Management, Law No. 31814 promoting the use of artificial intelligence, as well as in the legal framework of digital governance established by Legislative Decree No. 1412. Regarding the Laboratory itself, it is specified that its task is to research and apply artificial intelligence to improve jurisdictional services, analyze judicial processes, train personnel, and centralize innovation initiatives in this area.

It is important to highlight that Legislative Decree No. 1611 is a law issued by the Government under delegation of legislative powers, so participation has been minimal in this case. Similarly, the regulation of the Judicial Power (specifically of the Superior Court of Justice of Lima), since it was issued by an administrative body of the Judicial Power, participation has also been minimal.

e. Conclusions

- It is important to note that, of the regulations analyzed, no space has been identified that has influenced the drafting of the regulations, nor have there been attempts to adopt standards.
- During the formulation of the analyzed regulations, none of the laws with legislative authority (be it an actual Law or Legislative Decree) involved the participation of civil society. Nonetheless, in regulatory and digital governance regulations, there are some opportunities for involvement from specialists or civil society. This is primarily attributed to the policy set forth by the leadership of the Secretariat of Transformation and Digital Government.
- The discussion in Peru, on this matter, is being led by the Secretariat of Government and Digital Transformation and by Congress. However, these two entities have little dialogue between them.
- The regulatory approach is to promote the use of Artificial Intelligence with little critical perspective. However, in banking and finance, there is a risk-based approach.
- Peruvian regulatory momentum in this area responds, more than anything, to a vision of providing immediate responses by Peruvian lawmakers. In this sense, the promotion and approval of regulations are subject to the respective political interest and momentum.

Artificial Intelligence in Brazil: 2023 Retrospective and What's to Come

Prepared by Coding Rights and IDEC

In Brazil, which will host the G20 in November 2024, the debate for a comprehensive law addressing Artificial Intelligence systems has been ongoing for years. Throughout 2023, [Bill 2338/2023](#), authored by Senator Rodrigo Pacheco (PSD-MG), was the focus of our discussion. The text was based on the proposal resulting from the work of the Senate Federal Committee of Legal Experts on Artificial Intelligence (or [Comissão de Juristas do Senado Federal](#) in Portuguese, the CJSUBIA), established temporarily in 2022 with the mission of establishing principles, rules, guidelines, and foundations to regulate the development and application of artificial intelligence in Brazil. Its ultimate goal was to draft a substitute text that would guide the consideration of previous bills on the subject: Bill No. 5,051 of 2019, No. 21 of 2020, and No. 872 of 2021.

After a series of panels and a public consultation, in which [Coding Rights](#) and IDEC participated, CJSUBIA concluded its work in December 2022, delivering a draft that attempted to be based on three pillars: guaranteeing rights to people affected by artificial intelligence systems (Chapter II); categorizing system risks (Chapter III); and governance of AI systems (Chapter IV). [The draft's explanatory memorandum](#), unlike the European text, focuses on rights terminology, emphasizing that such provisions also foster a legal environment for innovation and technological development. As it highlights: "this bill substitution starts from the premise that there is no trade-off – a mutually exclusive choice – between the protection of fundamental rights and freedoms, the valuation of work, and human dignity in the face of economic order and the creation of new value chains." Labor laws and consumer protection laws are mentioned as other laws facing the same type of challenge. The draft also highlights that its normative objective is to "conciliate a risk-based approach with a rights-based regulatory modeling." There is, therefore, also a risk approach, but mainly to account for the type of liability model of the supplier or operator of the system, i.e., to safeguard rights protection. Thus, in Article 1 of the draft, we have: "This Law establishes general norms of a national character for the development, implementation, and responsible use of artificial intelligence (AI) systems in Brazil, with the aim of protecting fundamental rights and ensuring the implementation of secure and reliable systems, for the benefit of the human person, the democratic regime, and scientific and technological development." And the second article also highlights several fundamental rights, in addition to environmental protection.

After establishing rights, similarly to the European provision, the draft established in Chapter III a risk categorization system, where it prohibits the implementation of AI systems that pose excessive risks, and lists high-risk systems, which will have obligations for impact assessment and distinct governance practices, highlighting that both lists can be updated according to some criteria also determined in the text, to be interpreted by a competent authority, to be created by the Executive to oversee the implementation of the law. The risk category also affects the liability regime of the supplier or operator of the system. Bill 2338/2023 departed from this draft without substantial changes, was introduced in May 2023, and has since been the subject of debate.

However, in August 2023, the Senate established another Temporary Committee, this time the Temporary Committee on Artificial Intelligence (CTIA), chaired by Senator Carlos Viana (PODEMOS-MG), to jointly examine Bills No. 5,051 and No. 5,691, of 2019; No. 21, of 2020; No. 872, of 2021; and No. 2,338 and No. 3,592, of 2023. Senator Eduardo Gomes (PL-TO) was appointed rapporteur. Since then, the CTIA has held a series of public hearings. On November 28, the vice-president of the CTIA, Senator astronaut Marcos Pontes (PL-SP), presented a highly controversial substitute amendment that disregards the extensive work of the jurist commission. The proposal removes the entire Chapter II, referring to how to interpret and apply fundamental rights in the development of AI systems. This chapter is replaced by vague provisions under a title that aligns with those who advocate vague theories of future existential risk, to the detriment of addressing present issues: “Principles for the protection of the human species and personal data.” The text also introduces a risk scoring system that has been heavily criticized as confusing and unworkable, and it does not address liability regimes. The amendment proposal also provides for the creation of a National Artificial Intelligence Council, whose composition does not include participation of civil society. In short, the text removes several highly grounded and justified provisions of PL2338/2023, which also relied on comparative legislation study, and instead presents a groundless legislative delusion. In addition to this amendment, on December 12, two others were presented aiming at Article 17 of PL2338/2023, which lists systems that represent high risk. One amendment requests that the competent authority cannot update this list, which is a dissent, given the rapid pace of technological changes in this field. Another requests the removal of “credit scoring” systems from the list in Article 17, as we have evidenced the risks of this system since 2018. Another provision of the same amendment would classify biometric systems as high risk only if used by the government for criminal investigation and public security purposes, which also contradicts the provisions of the General Data Protection Law that consider biometric data as sensitive data.

Faced with the amendments presented in the context of the CTIA, we observe, therefore, a setback in the Brazilian legislative process compared to what had been achieved with the arduous work of the CJSUBIA. Still, the rapporteur of PL 2338, Eduardo Gomes, stated that, once approved, the legislation will likely have a one-year period to come into effect, **which means that the country will continue without a comprehensive AI framework until 2025.** Meanwhile, three phenomena occur in parallel:

a. The proliferation of AI Systems implemented in the public sector without regulation

In August 2022, as part of Coding Rights’ contribution to the public consultation of CJSUBIA, Coding Rights published a technical note showing that out of 45 federal public entities consulted by October 2021 via the Access to Information Law, 23 declared using artificial intelligence systems for the development of their work and functions, including the implementation of public policies. All this without the existence of a comprehensive legal framework.

It is worth noting that while the legislature has not approved a comprehensive text, the Ministry of Science, Technology, and Innovation initiated the revision of the Brazilian Artificial Intelligence Strategy (EBIA) in December, which was launched in 2021. The revision process is expected to be completed by May 2024, and according to MCTI, its priorities include the “development of applications aimed at addressing problems in areas such as health, education,

agriculture, energy, and energy transition (...) with the aim of supporting the development of solutions to meet the demands and challenges of the public sector, with the perspective of modernizing and improving the services offered to citizens.” In other words, more AI projects in the public sector will be fostered, even without comprehensive legislation. MCTI is also responsible for the Artificial Intelligence Axis of the G20 Digital Economy Working Group.

b. The proliferation of bills regarding specific uses of particular AI

Finally, it is also possible to observe that while a comprehensive law is not passed, in addition to the aforementioned bills and amendments, bills aimed at specific uses of certain types of artificial intelligence according to questionable use cases that come to light. This was the case with the scandal of deep fakes produced by undergraduate students depicting peers in nude scenes, as well as the case of advertising that reproduced a synthetic media version of singer Elis Regina through AI, and likely, with cases of deep fakes of famous people reproduced in fake ads, we will also see more specific bills on the subject being presented. In 2023 alone, we can list at least 25 projects of this type presented at the federal level in the Chamber and Senate (the list is available below, in Annex I).

For 2024, it is worth noting how these specific legislations, focused on certain types of AI applied in illicit contexts, often already predefined by law, are approved and implemented. It is also important to note how they would interact with more comprehensive legislation on AI. We hope that in this case, the risk table of the astronaut senator does not prevail, but rather the wisdom learned from the series of hearings, lectures, and public consultations conducted by the Commission of jurists. Furthermore, we aim for regulation that also considers contributions such as those received during the public hearings of the CTIA, such as that of indigenous leader Time'i Awaete, president of the Janeraka Institute, who seeks to understand how new technologies developed by non-indigenous people affect and threaten his Awaete people. During his speech, he reported problems such as deforestation, water pollution, and other rights violations faced by the community in the Xingu territory, near Altamira, Pará, and emphasized:

“When we talk about AI, it is important that this is not just another tool that accumulates and accumulates, killing land to extract gold, to have more technology, killing people, killing the forest and the animals, and the planet too and life. I, as a shaman, and others from the village, have already received the warning. We also have intelligence. We just need to perceive what will really come out as positive for us, so that it is not just another tool that will monitor and colonize us. When there is an invasion in our territory, to extract the gold that is there underground, to deforest the forest, our spirituality is also connected to this technology. If we take, take, take, we will have a spiritual conflict, conflict with everyone, and diseases will appear. If we believe in wifi, why don't we believe in our connection. I am an indigenous person of recent contact, I am not literate, but my science, my education has always worked and that's how I communicate with the people of my village through ancestral spiritual technology” – Time'i Awaete Assurini do Xingu.

c. The proliferation of campaigns and lawsuits against discriminatory technologies

In the face of the advancement of the acquisition and implementation of initiatives based on artificial intelligence technologies – often without popular participation in decision-making processes – efforts to contest public investment in certain technosolutionist projects also gain prominence and impact.

In Brazil, [experts](#) point out that a growing movement has emerged advocating for the ban on facial recognition technology. This movement includes various campaigns and projects, such as open letters addressed to both public and private sectors ([#TireMeuRostoDaSuaMira](#)), petitions opposing specific implementations ([#SemCâmeraNaMinhaCara](#)), and legislative efforts at the municipal and state levels to restrict the use of these technologies by the government ([#SaiDaMinhaCara](#)). These national initiatives have been largely driven by the expansion of facial recognition technologies and the resulting negative externalities, including false positives, security incidents, and planned obsolescence. Additionally, Black activists and researchers have increasingly denounced the algorithmic racism inherent in these surveillance systems, further fueling the push for legislative and social action.

Civil society organizations have been working through various channels to address the challenges posed by facial recognition technology. While legislative efforts in Europe and the U.S. have made some headway—often focusing on specific uses or cities—Brazil has seen significant successes through legal actions and government interventions. For instance, after Idec raised concerns, [the National Consumer Secretariat fined the clothing retailer Hering for using facial recognition without customers' knowledge](#). Similarly, ViaQuatro, the operator of São Paulo's yellow metro line, [was condemned by the Court of Justice for capturing images of passengers while they watched advertisements](#). More recently, the judiciary in São Paulo temporarily halted for a couple months the installation of similar systems on several metro lines.

In 2023, after controversies, judicial challenges, a suspended bidding process, and much societal resistance, the São Paulo city government signed a contract worth R\$ 588 million to install 20,000 cameras and a mass facial recognition system on the streets of the capital. Many experts argue that the bidding process should never have taken place, as such a project puts citizens' privacy at risk and has questionable effectiveness in public safety.

The judiciary even temporarily suspended the [Smart Sampa](#) bidding process, in a class action lawsuit filed by the Feminist Bench in the City Council, but the decision was reversed a few days later. The process is still ongoing. Another action, this time filed by other entities, is also pending decision and seeks to block Smart Sampa through legal means.

d. In conclusion. The race for AI

It is worth noting that comprehensive AI legislations develop within a context of competition and rivalry among companies from a few countries, mainly the USA and China. In this sense, the year was marked by letters and statements from industry leaders hypocritically calling for a pause in AI development, under the sensationalist argument of “existential risk” to humanity. A pause they themselves would never implement. But in response to these letters, what followed was that these same industry leaders began to be directly consulted by the White House and other centers of power in the Global North for the drafting of regulations aimed at combating this so-called “existential risk”. Agreements and regulations, in turn, adopt industry terminology, using terms such as “safe”, “secure”, “trustworthy”, “ethical”, and “human-centered”.

Thus, environmental, labor, algorithmic bias, and cultural diversity issues are sidelined, as well as the risks of developing AIs solely from the perspective of the monopoly of Big Techs from the Global North. The lobbying of these companies, the theory of a remote existential risk, as well as the race to foster their respective national or regional industries, divert attention from these structural issues in regulatory focus, as highlighted in the letter published by researchers of the Global Majority.

AI Governance for Latam: Mapping the Most Relevant Global and Regional Forums⁵

Prepared by Derechos Digitales

The forums discussing artificial intelligence (AI) governance are currently so numerous and diverse that, at times, they can feel overwhelming to those of us closely following the various activities or agendas where AI is discussed with the aim of agreeing on principles, norms, or technical standards and human rights applied to its design, deployment, operation, and uses.

However, not all forums and spaces have direct or immediate relevance to Latin America. From [the myriad of forums](#) discussing this topic, only a handful involve the states of our region, and therefore, they become relevant due to the commitments these states would assume and in which citizens and civil society could participate and scrutinize.

Here we focus on these spaces, in particular, on what happens in the G20, ECLAC, BRICS+, the OAS, and the most recent Intergovernmental Council for AI. However, we know that there are scenarios that can indirectly influence our states, such as what happens, for example, in [the Council of Europe and its regulation of AI](#). But what about the secret spaces of bilateral AI regulation that we are losing sight of and that can indirectly influence the discussion at the regional and global levels?

a. AI Governance: All at Once Everywhere at the Same Time?

As we mentioned, there are other regulatory processes deliberately escaping public consensus. These are bilateral meetings between Big Tech and two specific countries: the United States and China, which, unlike countries in Latin America—and much of the world—not only consume AI systems but also produce them. The relevant agreements on the future of AI regulation and governance are happening there.

It is in these closed and non-transparent spaces, which therefore evade social scrutiny, where regulatory agreements emerge that should matter to us, perhaps as much or more than other discussions on regulation and governance taking place in the more well-known regional or global forums—of which we list only a few below.

For example, thanks to the [press](#), we know that the U.S. government and Big Tech engage in dialogues in which the latter suggests how to be regulated—a discursive strategy that might make one believe they are ‘asking’ for regulation under the narrative of ‘existential risks,’ suggesting urgency and concern, but disregarding the current and real harms associated with their products. A narrative that, fundamentally, seeks to instrumentalize decision-makers so that dominant actors in the digital ecosystem can impose their own agenda, which, to begin with, removes transparency from the equation with the public.

⁵ Originally prepared and published on April 30, 2024. The original version can be found here: <https://www.alsur.lat/en/blog/ai-governance-latam-mapping-most-relevant-global-and-regional-forums-part-1>

The relationship between Big Tech and China is even more opaque. In a recent news article published by the [Financial Times FT](#) on secret diplomacy between representatives of companies like OpenAI, Anthropic, or Cohere, and representatives of the Chinese government, they not only refused to comment on the issues discussed in these meetings, which, according to the article, included aspects related to the regulation of their products, but it is expected that the conversations will continue in the future to continue addressing the challenges of aligning AI systems with social codes and norms. From which country or countries? The article does not specify, but even there, the same narrative about ‘existential risks’ is maintained.

So, there are global and regional forums that turn a blind eye to discussions on AI governance that convene multiple parties and would allow other interests and rights at stake to be made visible and articulated—with greater or lesser obstacles, in any case. But perhaps not all discussion forums are equally relevant, or perhaps not all deserve the same level of attention if what is sought, given the unease generated by their diversity and heterogeneity, is to prioritize and focus attention on those that are more critical due to their lack of openness and transparency.

Faced with scenarios of opaque and secret interaction in which the future of a technology with far-reaching impacts for the societies of the current and future world is discussed, what strategies should be employed to make agreements between Big Tech and some states transparent, and how to open up such discussions to social participation? What counterweights can be imagined so that other values at stake are considered in bilateral decisions about the future of a critical technology?

For now, it is worth recognizing that forums and spaces open to dialogue—openness and participation which in practice may be more or less criticizable—are numerous, but the few opaque and closed environments to social participation exert a relevant counterweight in the discussion on AI governance.

b. Regional AI Governance Forums

Now, to have clarity on the relevant governance forums for Latin America, it must be said, in principle, that they are mostly facilitated by actors promoting the development agenda that seeks to prioritize the economic benefits stemming from the exploitation and production of AI systems with the aim of boosting the economy and labor market. Among these are the BRICS+, ECLAC, and the G20.

The BRICS+ is a group of developing countries seeking to counterbalance the G7 composed of Brazil, Russia, India, China, and South Africa, aiming to enhance cooperation among its members on AI matters and develop governance standards to [“make AI technologies safer, reliable, controllable, and equitable.”](#) The composition of this group, its working agenda, or the mechanisms for involving various interested parties have not been defined yet, which is expected to happen soon.

The Economic Commission for Latin America and the Caribbean (ECLAC) established a working group for AI within the eLAC agenda in 2022. The group is coordinated by the National AI Center of Chile and the Electronic Government and Information Society Agency of Uruguay (AGESIC). For now, its emphasis is on enabling conditions for the development and use of AI in LAC countries. This environment involves the states as protagonists and seems to facilitate spaces for socializing the results of the group’s work on AI with civil society, we’ll see.

The **G20** is a group of countries gathering the world's largest economies, including Brazil, Argentina, and Mexico in the region. It has an AI working group whose agenda focuses on development, capacity building, data governance, and infrastructure, among others. By 2024, the G20's work is focused on various dimensions of sustainable development (economy, society, environment) and global governance reform. It is expected that the developments of the AI working group will be discussed and adopted at the Summit to be held in November, where states, academia, civil society, among others, participate.

As a counterbalance to the agenda focused on economic development, the Organization of American States (OAS) has generated two related instances conducive to discussing the regulation or governance of AI. The first, [resulting from the order issued in 2023](#) by the General Assembly, entrusts the Secretariat of the organization with delineating a Latin American agenda dedicated to addressing emerging technologies in digital governments; and the second, associated with the commitments agreed upon at the [2022 Summit of the Americas](#), which sets the goal for member states to promote ethical and responsible use of AI, as well as respect for human rights and inclusive development. In parallel, within the OAS framework, an [ad hoc group](#) was created to address data governance and AI, whose task is to advance inter-American guidelines in this matter.

In this regional agenda, the [Intergovernmental Council for AI](#) also joins, resulting from the First Ministerial and High-Level Authorities Summit on AI Ethics for Latin America and the Caribbean, promoted by the CAF, UNESCO⁶, and the government of Chile. Its objective is to create a regional position in the discussions on AI regulation and governance that will take place at the United Nations this year. It remains to be seen what spaces for participation and open discussion will be provided there, in a process that has so far been characterized more by its impenetrability.

c. Global Forums

On a global scale, the array of discussion forums on this topic is extensive⁷, but it is worth mentioning what is happening at the United Nations through the work of its Secretariat and the [Special Envoy on Technology](#), tasked with centralizing and coordinating interested parties in three processes within the Global Digital Compact and the high-level advisory body for AI.

The [Global Digital Compact](#) (GDC) aims to define the agenda of principles for an open, free, and secure digital future, including discussions on global AI governance among its content. In fact, to advance a proposal agenda, the GDC led to the establishment of the [High-Level Advisory Board on AI](#), HLab.

The advisory body's mission this year is to advance various recommendations for global AI governance. Its initial proposal, published at the end of 2023, will be refined in a final draft to be released in [August 2024](#). It is expected that its work will serve as input for the creation of an international agency for AI governance.

6 UNESCO also plays a significant role both regionally and globally in promoting the adoption of its principles of ethics for AI. While we don't delve into its role here, we acknowledge that it is a relevant actor in the ecosystem of discussions on AI regulation and governance.

7 There's the 'Policy Network on AI' of the Internet Governance Forum; the AI Working Group of the Freedom Online Coalition; the various AI working groups of the OECD, among others like the Council of Europe - whose regulation in the digital ecosystem often resonates in LAC due to the 'Brussels effect'.

Moreover, the [Summit of the Future](#) is a global event aiming to define operational strategies to address future challenges in 2024, including discussions on AI governance, of course. The agreements reached at the Summit will be captured in a Pact for the Future, the written agreement resulting from multiple discussions that will also address the future of AI.

d. What to expect in the future

While the agendas of regional and global forums progress at varying paces and with objectives that sometimes overlap, we must not lose sight of legislative activity regarding AI in our countries. This activity is increasingly fast-paced and emerging not only in congresses or parliaments but also from various authorities and decision-makers: [consumer protection and transparency authorities](#), the [judiciary sector](#), among others.

It is in local-level legislative and public policy proposals that we can truly track and confirm the impact that the international agenda is having on approaches to AI regulation and governance. For example, we will need to see what impact the recent [UN General Assembly Resolution on AI](#) will have on multilateral regulation or governance, which, among other things, emphasizes the importance of advancing regulatory efforts with the participation of multiple stakeholders.

In the meantime, it is advisable to remain vigilant of the forums we have suggested here as the most relevant, and especially those others that are more critical and simultaneously take place away from public scrutiny.

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