PRIVACY INTERNATIONAL
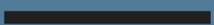
Submission to the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights of the Inter-American Commission on Human Rights regarding the situation of Economic, Social, Cultural and Environmental Rights in the region

Submitted jointly by TEDIC, InternetLab, Derechos Digitales, Fundación Karisma, Dejusticia, the Asociación por los Derechos Civiles and Privacy International

INTRODUCTION

TEDIC, InternetLab, Derechos Digitales, Fundación Karisma, Dejusticia, Asociación por los Derechos Civiles and Privacy International[1] welcome the call made by the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (ESCER) of the Inter-American Commission on Human Rights (IACHR) to inform the preparation of the Annual Report of the ESCER for the year 2019, which will be presented to the Organization of American States (OAS) during 2020.

This submission aims to outline developments from around the region as they relate to key areas of concern observed by the co-submitters in relation to the progressive realisation of Economic, Social, Cultural and Environmental Rights (ESCER), in particular with regards to the use of data and technology in relation to the access and enjoyment of these rights.

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[1] More information on each co-submitting organisation is available at the end of the document.

KEY AREAS OF CONCERN

Below we outline some key areas of concerns we have seen emerging in the region and which we recommend that the Special Rapporteurship on ESCER of the IACHR addresses and explores as part of their mandate and annual report for 2019.

I. *Digitisation and centralisation of management of public services*

Digital public services systems have been emerging since the late 1990s but what has changed over the last decade is the advancement in technology and data processing and exploitation capabilities which are providing ever increasing powers to collect, process and gather intelligence, and these developments are concerning given the rapid move to digitise and centralise all public services.

In Colombia, there are several digital systems in place to manage access to public services such as health care and social programmes – the 'carpeta cuidadana' (citizen folder)[2] and the Sistema de Identificación de Potenciales Beneficiarios de Programas Sociales (SISBEN)[3] which serves to identify those eligible to social programmes, amongst others. The history behind the development of a digital health care records system show a priority to digitise which includes retaining, centralising, analysing and re-using the personal data of citizens with the aim of exploiting this data with little or no consideration on the impact of citizens and their rights.[4]

In Paraguay, the State recognizes the Internet as an important instrument that can facilitate public management processes, or strengthen certain public policies related to issues such as health, education and work. The Digital Agenda project and the strategic axis "Digitalization of the health information system of the Ministry of Public Health and Social Welfare" combined seem to indicate the will of the government to incorporate an Electronic Medical Record, without ensuring that the current Paraguayan legal framework provides adequate guarantees to effectively protect sensitive data stored in this type of systems.[5] The digitisation of access to public services raises some serious concerns about exclusion and discrimination. The UN Committee on Economic, Social and Cultural Rights in its fourth periodic report on Paraguay in 2015, expressed concern about the absence of an effective mechanism to obtain the prior, free and informed consent of indigenous peoples in relation to the decision making that could affect the exercise of their economic, social and cultural rights.[6] According to 2011 UNICEF research that examined the access to technology per zone corresponding to indigenous communities concluded that 96.5% of the population does not have computers.[7]

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[2] For more information: https://www.mintic.gov.co/portal/inicio/7229:Carpeta-Ciudadana

[3] For more inåformation: https://www.sisben.gov.co/sisben/Paginas/Que-es.aspx

[4] López, J. (2019), *Servicios Cuidadanos Digitales e Historia Clínica Electrónica* , Fundación Karisma,

[5] See: https://www.mspbs.gov.py/dependencias/portal/adjunto/d4d287-MSPyBSPrioridadesInstitucionales.pdf

[6] UN Committee on Economic, Social and Cultural Rights, 20 March 2015, E/C.12/PRY/CO/4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/PRY/CO/4&Lang=Sp].

[7] UNICEF Paraguay, *Escuelas de comunidades indígenas en Paraguay. Análisis de datos 2006-2011,* November 2015. Available at: https://www.unicef.org/paraguay/informes/escuelas-de-comunidades-ind%C3%ADgenas-en-paraguay-an%C3%A1lisis-de-datos-2006-2011

There is no updated data but neither are there public or business policies in relation to changes in the number of Internet access and cultural heritage online, there are no indicators regarding Paraguay to show that further progress might have been made to improve internet penetration in the country.

In Brazil since 2016 the sharing and integration of databases of public institutions have been facilitated through decrees issued by the federal government in order to promote stricter control of the eligibility process and maintenance of access to welfare, labour and social security benefits. This time period, characterized by the pressure to reduce public spending - as illustrated and constitutionalised in the form of a 20-year expenditure cap - was marked by an intensified monitoring made possible by the crossing of an ever-growing amount of data, for the sharing of which agreements were waived and simplified forms of requests were provided (Decree 8.789/2016). More recently, in addition to the new data sharing regulation (Decree 10.046/2019), the Citizen's Base Registry was established. This is a reference base of information on citizens for the agencies and entities of the federal executive branch, to which it is expected that databases fed by the public services will be integrated.[8] This Registry will contain a wide variety of personal data produced and collected by the State in the course of the execution and implementation of various public policies, including health and biometric data. Excluded from it are only the "genetic attributes", as expressly provided for in paragraph 6 of Article 18 of Decree 10.046/2019. This represents a serious threat to individuals' privacy as the decrees issued in 2019 risk allowing unprecedented levels of control and discrimination as a result of the facilitated access to sensitive data by government entities responsible for approving requests for social benefits or even academic or cultural public subsidies. This concern is heightened given in the current context in which federal authorities have openly declared their will to limit some types of scientific and cultural projects[9] and issues like gender, political affiliation and religion might influence these decisions.[10]

II.   *ID as a requirement to access public services*

Digital identity systems raise some key questions in relation to the rights of individuals and the protection of their autonomy and dignity, as well as to the security and integrity of the data and the infrastructure put in place.[11]

We are concerned with the emerging practice to connect national identity with social protection programmes and in particular when making the former a

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[8] Ramiro, A., *Novas regras põem em risco a privacidade e autonomia de centenas de milhões no Brasil,* 25 October 2019. Available at: https://www.derechosdigitales.org/13961/risco-a-privacidade-de-milhoes-no-brasil/

[9] Rodas, S., *MPF move ação contra ministro por censura a projetos LGBT em edital da Ancine,* 2 October 2019. Available at: https://www.conjur.com.br/2019-out-02/mpf-move-acao-ministro-censura-projetos-lgbt

[10] See: Chade, J., *Secretário diz na Unesco que arte brasileira servia a "projeto absolutista"*, UOL Notícias, 20 November 2019. Available at: https://noticias.uol.com.br/colunas/jamil-chade/2019/11/20/secretario-diz-na-unesco-que-arte-brasileira-servia-a-projeto-absolutista.htm?cmpid=copiaecola; Jeantet, D., *Culture war underway in Brazil as financing becomes tool for censorship*, Buenos Aires Times, 5 November 2011. Available at: https://www.batimes.com.ar/news/culture/censorship-or-caution-culture-war-burns-in-brazil-as-government-pulls-financing-from-another-play.phtml

[11] For more information see: https://privacyinternational.org/topics/identity

requirement for the latter. For example, in Chile, A 9-digit number is issued as part of the birth registration process – the RUN (Rol Único Nacional – Unique National Number) in Chile. This number is featured on the Chilean ID cards. However, the exact same number is more commonly known as the "RUT" (Rol Único Tributario – Unique Tax Number) – a Chilean individual's RUT is identical to their RUN. Having a RUT number is necessary for various activities from opening a bank account to getting health insurance. It is also necessary for the signing of most legal contracts, including employment, housing, and marriage. This mandatory requirement is exclusionary[12] being challenged by civil society in Chile.[13]

III.   The use of biometrics

Increasingly biometric technology is integrated within social protection programmes [14] as well as other government programmes such as for policing and law enforcement. The given justifications vary but often include transparency, efficiency, preventing fraud, duplication, and even the empowerment of individuals.

The implementation of the so-called "Biometric System for Food Safety" in Venezuela requires citizens to verify their identity through their fingerprints to acquire food and hygiene products and medicine.[15] It has led to complaints of discrimination against foreigners -documented and undocumented- as well as transgender people.[16] The situation is particularly worrying given the circumstance of scarcity of essential goods and the humanitarian crisis that is worsening in the country, mainly affecting the rights to food and health of populations in the most vulnerable situations.[17]

Another use of biometrics which has rapidly spread in the region is the deployment of facial recognition systems. These have been deployed for example in Paraguay.[18] A new system was deployed in 2019 to digitise the use and payment of public transport. The justification given for its deployment was to improve transparency and access to public services.[19]

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[12] Privacy International, *Exclusion and identity: Life without ID,* 14 December 2018. Available at: https://privacyinternational.org/feature/2544/exclusion-and-identity-life-without-id

[13] To find out more about the campaign #NodoymiRUT led by Fundación Datos Protegidos see: https://datosprotegidos.org/no-doy-mi-rut/

[14] Sepúlveda Carmona, M.*, Is biometric technology in social protection programmes illegal or arbitrary?An analysis of privacy and data protection?,* Extension of Social Security, Social Protection Department, International Labour Office, Working Paper No. 59. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_631504.pdf

[15] Díaz, M., *Tu huella digital por un kilo de harina: biométrica y privacidad en Venezuela*, Digital Rights Lac, 16 December 2016. Available at: https://www.digitalrightslac.net/es/tu-huella-digital-por-un-kilo-de-harina-biometrica-y-privacidad-en-venezuela/

[16] Díaz, M., *El Cuerpo Como Dato*, Derechos Digitales, June 2018. Available at: https://www.derechosdigitales.org/wp-content/uploads/cuerpo_DATO.pdf

[17] *Bachelet: Las nuevas sanciones de EE.UU a Venezuela pueden tener un impacto severo en la población*, UN News, 8 August 2019. Available at: https://news.un.org/es/story/2019/08/1460361

[18] TEDIC, *¿Quién vigila al vigilante? Reconocimiento Facial en Asunción*, 16 September 2019. Available at: https://www.tedic.org/quien-vigila-al-vigilante-reconocimiento-facial-en-asuncion/

[19] TEDIC, *El billetaje electrónico, ¿nuestros derechos están en juego?,* 20 March 2019. Available at: https://www.tedic.org/el-billetaje-electronico-nuestros-derechos-estan-en-juegos/

Similarly, in São Paulo, the use of facial recognition cameras was introduced in the public transportation system in 2017 with the justification that they would help prevent fraud in the use of social benefits associated with transportation, such as discounts for seniors, students and people with disabilities. Since then, the system has blocked over 300,000 cards claiming they were used improperly, i.e. there were not by their original holders.[20] At the same time, the Municipal Government has announced the total suspension of anonymous cards[21] and has implemented measures to force their registration with unique and residential identification data.[22] This type of measure can impact the access to public transport services of unregistered persons - such as homeless people and immigrants. In a city the size of São Paulo, cards that allow discounted travel on different types of transportation are critical to get most of the population to work, school and cultural activities. Blocking or hampering access to transportation can have a major impact on people's lives and development.

In Argentina, a new facial system was launched by the City of Buenos Aires in April 2019 which would gradually be deployed across all public spaces through CCTVs.[23] In addition to being disproportionate, the system raises serious and alarming concerns on the impact of the enjoyment of fundamental freedoms and rights in public spaces as argued in the Constitutional challenge brought by the Asociación por los Derechos Civiles (ADC).[24]

In Colombia, Migration Authorities have implemented an iris scanner as an alternative to the usual passport check by migration officers. The system was created without proper discussion and without evidence of its necessity, by administrative orders which evaded a Congress discussion. Meanwhile, the Police is employing portable fingerprint scanners to verify citizen's identity in street searches that relies on the National Civil Registry biometric records.[25]

We have also seen the deployment of e-voting and biometric voting systems being implemented such as in Brazil, amongst others. The implementation of biometric validation for voting in Brazil, where electronic voting systems are already implemented, is being developed in phases and has prevented more than 3 million citizens who didn't register their fingerprints in time from voting in the past

[20] Tecmundo, *Reconhecimento facial bloqueia 331 mil Bilhetes Únicos em SP*, 12 June 2019. Available at: https://www.tecmundo.com.br/seguranca/142472-paulo-bloqueia-331-mil-bilhetes-unicos-reconhecimento-facial.htm
[21] Dia, B., Venda de Bilhete Único anônimo será suspenso, diz secretário de Transporte de SP, G1, 7 June 2018. Available at: https://g1.globo.com/sp/sao-paulo/noticia/bilhete-unico-anonimo-sera-suspenso-diz-secretario-de-transportes-de-sp.ghtml
[22] Vicente, J. P., Mudanças no Bilhete Único acendem alerta sobre coleta indevida de dados, Vice, Motherboard, 25 February 2019. Available at: https://www.vice.com/pt_br/article/panq7n/mudancas-no-bilhete-unico-acendem-alerta-sobre-coleta-indevida-de-dados
[23] Uccifferi, L., *#ConMiCaraNo: Reconocimiento facial en la Ciudad de Buenos Aires*, ADC, 23 May 2019. Available at: https://adc.org.ar/2019/05/23/con-mi-cara-no-reconocimiento-facial-en-la-ciudad-de-buenos-aires/
[24] ADC, *El reconocimiento facial para vigilancia no pertenece a nuestro espacio público*, 6 November 2019. Available at: https://adc.org.ar/2019/11/06/el-reconocimiento-facial-para-vigilancia-no-pertenece-a-nuestro-espacio-publico/
[25] Fundación Karisma, *Biometría en el Estado colombiano*, 2 July 2019. Available at: https://archive.org/details/biometria2

elections.[26] Besides affecting their right to vote, the cancellation of voting documents in Brazil, where voting is mandatory for all citizens older than 18 years old, prevents people from exercising rights such as renewing or issuing a passport or applying for social benefits like "Bolsa Família".[27] The full biometric implementation should be finished by 2022.

IV. Digital, AI and automation

In some countries, governments are deploying digital public services which are increasingly designed to integrate automated systems, often in parallel to non-automated elements.

One area in which the use of artificial intelligence has emerged has been in the identification of children who may be at risk of harm before they are harmed. Automated programmes have been deployed aimed at identifying families needing attention. Chile began in 2019 the pilot implementation of a tool that seeks to detect children and adolescents at risk.[28] According to the Ministry of Social Development and Family, Alerta Niñez is a preventive instrument that "identifies the set of individual, family, environment and peer conditions of children and adolescents, which tend to occur when there is a risk of violation of their rights." Using the statistical processing of large amounts of data from public bodies, the system gives a score to individual children and adolescents based on their probability to experience a violation of their rights.

It is an invasive initiative to collect sensitive data of minors that carries a great risk of deepening prejudice and stigmatization towards historically vulnerable groups particularly single-parental homes headed by women, and potentially non-binary families. In addition, these processes involve the transfer of personal data to third parties and the possibility that such data is used for purposes other than those agreed on; without legal bases and safeguards to guarantee that the information generated will not be used in the future for other purposes, such as predictive policing initiatives or future employment opportunities for example, that could result in discrimination against children and family members targeted by this program.

In Paraguay, automation has been implemented into the management of public services. The project of the Ministry of Labour project - called 'For Employment' (Para Empleo) - proposes an artificial intelligence system for job searches. There is not currently much information accessible to the public, however it will be important to know the technical specifications as well as data protection and human rights

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[26] DW, *STF mantém cancelados títulos de eleitor sem biometria*, 26 September 2018. Available at: https://www.dw.com/pt-br/stf-mant%C3%A9m-cancelados-t%C3%ADtulos-de-eleitor-sem-biometria/a-45652801

[27] Platonow, *Cadastramento biométrico é feito por 72% dos eleitores*, AgênciaBrasil, 6 September 2019. Available at: http://agenciabrasil.ebc.com.br/justica/noticia/2019-09/cadastramento-biometrico-e-feito-por-72-dos-eleitores

[28] See: Ministerio de Desarrollo Social Y Familia. Available at: https://cdn.digital.gob.cl/filer_public/8a/e7/8ae7acf1-230b-45b3-806f-4cd6d4d837fb/11_mindesarrollosocial-f.pdf

risk assessments that have been conducted (if at all) to justify the deployment of such a system.[29]

In Colombia, several projects to employ artificial intelligence have been announced. The Constitutional Court has approached private suppliers to implement a system to read and classify the numerous writs of protection (acciones de tutela) that the Court has to evaluate for the selection of cases that need the intervention of the Court.[30] The National Prosecutor has announced a system for the prediction of recidivism for the decision of preventive detention with the help of machine learning models.[31] Colombian government has been planning the development of the poverty scoring system (SISBEN) and the use of beneficiaries' data to identify alleged fraudsters to the system and to develop AI businesses with this data. The SISBEN system is employed in Colombia since 1994 and it scores people's poverty level on a scale of 0 to 100, from poorest to richest. The data has been acquired through extensive surveys to potential beneficiaries. However, the latest version of the program seeks to connect and analyse several official and financial databases to exclude people according to their income level. Additionally, the latest version of SISBEN is offering its data to start-ups that propose models to predict the behaviour of 'fraudsters' to the system.[32]

V.   The digital economy and labour rights

Some technological developments, from the open Internet architecture, have allowed the emergence of new companies that provide intermediation services between service providers and potential customers. These platforms have deepened the transformations of the labour-capital relationship in post-industrial societies. In societies with high unemployment rates, high informality and flexibility of labour protection laws, the appearance of these platforms, with business schemes based on technological innovation and under the intermediation screen, presents new risks for effective enjoyment of the rights to decent working conditions, fair wages and social security of the people who offer their workforce through the subscription, affiliation, membership or use of these platforms. These risks are enhanced by the scale (the high number of users and social interactions that the platform encourages) and by the absence of state regulation and supervision.

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[29] IP, *Paraguay presenta plataforma de inteligencia artificial de búsqueda de empleo*, 6 December 2018. Available at: https://www.ip.gov.py/ip/gobierno-lanza-plataforma-de-inteligencia-artificial-de-busqueda-de-empleo/

[30] Camacho, L., *¿Cómo implementar Inteligencia Artificial en la Corte Constitucional? la pregunta que nos montó en una colaboración academia, sociedad civil y la propia corte*, Fundación Karisma, 2 September 2019. Available at: https://stats.karisma.org.co/como-implementar-inteligencia-artificial-en-la-corte-constitucional-la-pregunta-que-nos-monto-en-una-colaboracion-academia-sociedad-civil-y-la-propia-corte/

[31] See: Fiscalía, General de la Nación, *Fiscalía implementa herramienta 'Prisma' para lograr de manera más efectiva que personas con alto riesgo de reincidencia criminal sean cobijadas con medida de aseguramiento*, 29 May 2019. Available at: https://www.fiscalia.gov.co/colombia/noticias/fiscalia-implementa-herramienta-prisma-para-lograr-de-manera-mas-efectiva-que-personas-con-alto-riesgo-de-reincidencia-criminal-sean-cobijadas-con-medida-de-aseguramiento/

[32] For more information see: https://www.sisben.gov.co/Documents/Compes%20IV/6285-CONPES%203877.pdf

Similarly, the development of applications (apps) that offer, online and without direct human intervention, services similar to those offered analogously by specialized workers, represents a new risk for the human right to work. These applications use and process information available publicly and by various means (big data, algorithms, etc.) on various areas of knowledge (medical, accounting, legal, linguistic, etc.) or even information initially provided by professionals in these areas of knowledge, for later, based on it, and without the need for direct human intervention, replace the expertise and workforce of these professionals.

VI.   Ed-tech

There has been a growing interest from government to integrate digital skills training in education with technology being seen as a key driver for improving quality of education. Private companies are gradually becoming responsible for the provision of digital educational platforms, and in some cases the creation of digital student records. Such developments have been seen in Brazil with the use of Google Apps for education purposes in schools and universities.[33]

This raises concerns about the increased collection of data about minors, which enables the creation of profiles and digital records that follow children well-beyond their education years and that can be used as a means of surveillance of students and teachers.

VII.   Sexual and reproductive rights

Sexual and reproductive rights, which are part of ESCER, include the right to access to contraception, the right to safe and legal abortion, the right to sexual health information including about contraception and abortion, and other reproductive health services. These rights are endangered by the data exploitation of companies aiming at limiting their exercise. For instance, Heartbeat International is a US-based affiliate organisation working to curtail sexual and reproductive rights, among others in many OAS member states. Its stated vision is "make abortion unwanted today and unthinkable for future generations."[34]

Heartbeat International claims to have affiliates in 24 OAS member states including: Argentina, the Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago , Uruguay, the United States, and Venezuela.[35]

Heartbeat International is developing and promoting data intensive and exploitative tools among its affiliates. For example, the organisation has developed a "center management solution" called Next Level which appears to

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[33] Oliveira, F., *Escolas na mira das corporações da internet*, LAVITS, 4 June 2019. Available at: http://lavits.org/escolas-na-mira-das-corporacoes-da-internet/?lang=pt
[34] See: Hearbeat, About us. Available at: https://www.heartbeatinternational.org/about-us
[35] See: Hearbeat, Worldwide Directory of Pregnancy Help. Available at: https://www.heartbeatinternational.org/worldwide-directory

collect vast amounts of information about those visiting crisis pregnancy centres.[36] The types of information that is collected by the system, which is visible in a promotional video on Next Level's website includes name, address, email address, ethnicity, marital status, living arrangements, education level, income source, alcohol, cigarette, and drug intake, medications and medical history, sexual transmitted disease history, name of the referring person/organisation, pregnancy symptoms, pregnancy history, medical testing information, and eventually even ultrasound photos.[37] Next Level markets the software as a system that "[m]akes seamless data collection possible for pregnancy centres" but it appears that the collected data by the system is sent to the US.[38]

Heartbeat co-developed Option Line which is a chat box and helpline.[39] It generally is available on Extend websites and other crisis pregnancy centre websites. Prior to a chat beginning one is required to fill in location information, if one is "abortion-minded", age range, and other personal data. It's unclear to whom this data and the chat data is sent. The near total lack of transparency around how data is being used and shared by anti-sexual and reproductive rights networks such as Heartbeat International is troubling. Such data could be used in ways that those who provide it may not have anticipated or approve of, including to potentially undermine their reproductive rights. Privacy and strong data protection are therefore crucial, in many ways, to ensuring people are able to exercise their reproductive rights. It is important that light continues to shine on the technologies being developed to trace and track those seeking medical help online.

In Argentina, the province of Salta signed an agreement with Microsoft in 2017 to use artificial intelligence to prevent teenage pregnancy and school dropout.[40] According to the company, based on data collected among populations in vulnerable situations, "intelligent algorithms identify characteristics in people that can lead to some of these problems [teenage pregnancy and school dropout] and warn the government so that they can work on prevention." The data collected is processed by Microsoft servers distributed around the world and this processing specifically targets adolescents identified as people at risk, affecting not only their privacy, but also their autonomy and generating a wide potential for discrimination. It is, finally, a mechanism of control over targeted individuals in vulnerable situations who are exposed to interventions without their consent, and which reinforces the vulnerability of people who are deprived even of the possibility to decide on such interventions. Although it could be argued that the data used for projection is voluntarily submitted, it is questionable whether girls and adolescents affected by these measures - or their guardians – are able to give explicit consent considering the implications of providing specific information

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[36] Privacy International, *How anti-abortion activism is exploiting data*, 22 July 2019. Available at: https://privacyinternational.org/long-read/3096/how-anti-abortion-activism-exploiting-data
[37] See: https://www.nextlevelcms.com/
[38] See: https://www.heartbeatinternational.org/next-level-supporter
[39] Privacy International, *How anti-abortion activism is exploiting data*, 22 July 2019. Available at: https://privacyinternational.org/long-read/3096/how-anti-abortion-activism-exploiting-data
[40] Microsoft, *Microsoft y el gobierno de Salta firman un acuerdo para aplicar la inteligencia artificial en la prevención de los problemas más urgentes*, News Center LATAM, 7 June 2017. Available at: https://news.microsoft.com/es-xl/microsoft-gobierno-salta-firman-acuerdo-aplicar-la-inteligencia-artificial-la-prevencion-los-problemas-mas-urgentes/

about their sexual habits and potential pregnancy. It should be noted that Salta was the last Argentine province that ceased to provide religious education in public schools after a ruling by the Supreme Court recognised that it violated citizens' rights to equality and non-discrimination, as well as their privacy. Reliance on the abovementioned technology is therefore nothing more than an expression of broader problems to understand the areas of autonomy and privacy of people, with a political purpose.

In Brazil, the Ministry of Citizenship signed an agreement with the government of Salta and Microsoft to implement a similar program. In this case, in addition to the prevention of teenage pregnancy and school dropout, the program is foreseen to anticipate issues such as malnutrition and diseases in early childhood. The country would be the fifth in the region to replicate the Argentinian experience. In addition to the questions about informed consent and state access to sensitive information on populations in vulnerable situations, some questions remain unanswered, such as the other uses or predictions that can be extracted from these data and the potential risks, considering its processing by Microsoft and the governments involved in the program.[41]

VIII.   *Contextual and systemic issues*

In addition to the areas of concern, we would like to highlight some key areas which must also be considered and tackled when exploring the areas of concern aforementioned.

- o *The lack of effective regulation:* Many member states of the OAS do not have a legal framework in place to regulate the processing of personal data, while member states that do have some form of regulation are failing to effectively enforce it. This means that data processing activities of both public and private entities are largely left unregulated. Furthermore, member states do not take any steps to ensure respect of their obligations in relation to other human rights, such as the principles of non-discrimination and equality, in the process of implementing digital solutions. The lack of safeguards to protect the rights to privacy and data protection, as well as the lack of consideration regarding security in the deployment of digital solutions hastily implemented to allegedly provide access and delivery of ESCE rights means that individuals are currently obliged to trade their privacy in order to have access to other fundamental rights and freedoms.

- o *The drivers:* Special attention must be given to the drivers of the use of technology for the realisation of economic, social, cultural and environmental rights; otherwise, the same systems that are intended to facilitate the enjoyment of fundamental rights will amplify pre-existing shortcomings and injustice. Contextual drivers include rising concerns around austerity and transparency, efficiency and financial management with many of the

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[41] Venturini, J., *Vigilancia, control social e inequidad: la tecnología refuerza vulnerabilidades estructurales en América Latina*, Derechos Digitales, 10 October 2019. Available at:
https://www.derechosdigitales.org/13900/vigilancia-control-social-e-inequidad/

technical, data intensive solutions, being put forward as cost-efficient solutions in support, among others, of austerity measures.

o **_Risks and harms:_** The digitalisation of public services may negatively impact individuals and communities who are already in a disadvantaged position. These include, but are not limited, to those who are: disadvantaged because of their economic, social, class, or legal status, amongst others; those who have to rely on the state to provide for themselves and their families and dependents; and those who were already marginalised and who have been and continue to be hit the hardest by austerity measures and cuts in benefits including women, ethnic minorities, LGTBIQ and gender fluid persons, as well as migrants (regular and irregular). Some of these risks have already been reported and documented, including stigmatisation, discrimination, and exposure to state and corporate surveillance.

o **_The role of the private sector:_** Attention should be paid to the role of industry in this sector. Industry not only provide solutions to governments but through the delivery of their own services they also feed the broader data exploitation ecosystem.[42] Not only should companies be transparent about how their business models operate in practice, i.e. the design of their systems, and the solutions they provide to governments, but these should also be firewalled from other areas of their business models and interests.

CONCLUSION

The use of technology and data in the realisation of economic, social, cultural and environmental rights raises some key concerns in relation to, among others, the protection, respect and promotion of the right to privacy as provided for under Article 11 of the American Convention on Human Rights, Article 17 of the International Covenant on Civil and Political Rights and Article 12 of the Universal Declaration of Human Rights. As the systems being deployed interfere with individuals' privacy, they need to comply with the principle of legality and be necessary and proportionate to the legitimate aim they are trying to achieve. Beyond the failure to protect individuals and their data as they interact with the systems put in place, these also have implications for non-discrimination and equality.[43]

In his annual report to the UN General Assembly on digital welfare states and human rights[44], the United Nations Special Rapporteur on extreme poverty and human rights presented three observations which, as highlighted by the areas of concern outlined in this submission, must also be taken into account by the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (ESCER) including that governments were risking of "stumbling, zombie-like, into a digital

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[42] See campaign by Privacy International "Tell companies to stop exploiting your data!". More information available at: https://privacyinternational.org/campaigns/tell-companies-stop-exploiting-your-data
[43] See: Privacy International's work exploring data and technology and access to economic, social and cultural rights. More information available at: https://privacyinternational.org/what-we-do/realise-our-rights-live-dignity
[44] A/74/493, 11 October 2019. Available at: https://undocs.org/A/74/493

welfare dystopia", that "big technology companies (frequently referred to as "big tech") operate in an almost human rights-free zone", and that "instead of obsessing about fraud, cost savings, sanctions, and market-driven definitions of efficiency, the starting point should be on how welfare budgets could be transformed through technology to ensure a higher standard of living for the vulnerable and disadvantaged."

There is no question that technology can help governments to address their obligations to realise economic, social, cultural and environmental rights and some of the key challenges they face in doing so to ensure individuals and communities live with dignity, but safeguards and due process guarantees need to be taken into account from the outset in order to identify and mitigate risks, and provide access to redress.

This first call from the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights is an important first step which provides the opportunity to map out the current panorama of the current situation of the ESCER in the region. We hope that it will lead to further concrete actions to address the issues raised in this submission and to call for measures to be taken by governments, industry, and other third parties to ensure the respect, promotion and protection of economic, social, cultural and environmental rights in the region.

A strong stand against data exploitation is essential to challenge current power dynamics, to ensure people's dignity and autonomy, and to prevent further violations of fundamental rights and freedoms.

INFORMATION ABOUT CO-SUBMITTERS

TEDIC
www.tedic.org

TEDIC is a non-profit organization that works in the promotion of human rights on the Internet based in Paraguay. Some of its strategies are: Develop civic technology for social change, strategic litigation, research, campaigns and political advocacy.

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InternetLab
www.internetlab.org.br

InternetLab is an independent research center that aims to foster academic debate around issues involving law and technology, especially internet policy. Our goal is to conduct interdisciplinary impactful research and promote dialogue among academics, professionals and policymakers. We follow an entrepreneurial nonprofit model, which embraces our pursuit of producing scholarly research in the manner and spirit of an academic think tank. As a nexus of expertise in technology, public policy and social sciences, our research agenda covers a wide range of topics, including privacy, freedom of speech, gender and technology.

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Derechos Digitales
www.derechosdigitales.org

Digital Rights is an organization of Latin American scope, independent and non-profit, founded in 2005 and whose fundamental objective is the development, defence and promotion of human rights in the digital environment.

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Fundación Karisma
www.karisma.org.co

Fundación Karisma is a civil society organization based in Colombia that seeks to answer to the threats and opportunities offered by the "technology for development" to the enjoyment of human rights. Karisma works on activism, embedding diverse legal and technical perspectives.

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Dejusticia
www.dejusticia.org

Founded in 2005, Dejusticia is a Colombia-based research and advocacy organization dedicated to the strengthening of the rule of law and the promotion of social justice and human rights in Colombia and the Global South. Dejusticia promotes positive social change by producing rigorous studies and fact-based policy proposals; carrying out effective advocacy campaigns or litigating in the most impactful forums; and designing and delivering education and capacity-building programs.

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Asociación por los Derechos Civiles
https://adc.org.ar/

The Asociación por los Derechos Civiles (ADC) is a non-governmental, non-partisan, non-profit organization based in Buenos Aires that promotes civil and social rights in Argentina and other Latin American countries .Founded in 1995 with the purpose of contributing to strengthen a legal and institutional culture that guarantees people's fundamental rights, while upholding the respect for the Constitution and democratic values.

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Privacy International
www.privacyinternational.org

Privacy International (PI) is a leading charity advocating for strong national, regional, and international laws that protect the right to privacy around the world. Founded in 1990 and based in London, PI challenges overreaching state and corporate surveillance so that people everywhere can have greater security and freedom through greater personal privacy. Within its range of activities, PI investigates how peoples' personal data is generated and exploited, and how it can be protected through legal and technological frameworks

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