Response to call for inputs for the thematic report on "artificial intelligence and judicial systems"

United Nations Special Rapporteur on the independence of judges and lawyers

May 2nd, 2025

Derechos Digitales

Derechos Digitales[1] is an independent non-profit Latin American organization founded in 2005, whose mission is the defense, promotion, and development of fundamental rights in digital environments in Latin America. Our organizations has ECOSOC status, and has actively contributed to the U.N and different of its thematic rapporteurs regarding the impact of digital technologies on human rights.

Introduction

In this contribution, we present cases regarding the adoption of AI systems within the judicial branches of several Latin American countries (Argentina, Brazil, Colombia, Mexico, Paraguay and Peru). Overall, we express concern over the adoption of AI systems, particularly proprietary ChatBots (both in their free and licensed versions) by some judicial bodies in the region.

We highlight several patterns across the cases cited: the lack of transparency surrounding the use of these technologies, the absence of prior debate regarding their impact on the values and principles that govern the administration of justice, including human rights and the lack of participation by other key stakeholders, such as litigants and users of judicial services and civil society organizations.

We present two cases of AI regulation within the judicial branches of Colombia and Brazil. We call attention to the absence of institutional obligations that address the risks of dependency on proprietary technologies in the administration of justice in several countries in Latin America, the lack of consideration of the impact of AI in contexts where the digital divide persists, and the need to develop regulatory frameworks that are based on human rights standards.

I.   Latin American cases of AI use in the Judiciary

In our work, we have documented over the **past six years** the use of AI systems by members of judicial institutions (judges and prosecutors) in at least six Latin American countries: **Argentina, Brazil, Colombia, Mexico, Paraguay and Peru**.

Most of these are recent cases focused on the use of Large Language Models (LLMs), particularly ChatBots designed for text generation. However, we have also documented the use and piloting of other AI systems to assist judges and prosecutors in their work, beyond LLMs. Among the identified cases, two main types of AI use persist, which we refer to as *auxiliary uses* and *substitutive uses of AI*.

Auxiliary uses of AI support tasks such as selecting, summarizing, or identifying factual patterns in judicial cases, as well as performing arithmetic calculations. In contrast, **substitutive** *uses of AI* occur when, in judicial practice, AI begins to replace or perform core judicial functions traditionally carried out by human judges such as drafting or generating the reasoning behind judicial decisions, or interpreting legal texts and socially significant expressions

However, we caution that the line between *auxiliary uses of AI* and *substitutive uses of AI* can be thin in practice. When AI systems are deployed to assist judicial actors, there is a risk that, over time, these actors may increasingly delegate tasks to the AI, granting it a more central role than originally intended. This effect may indeed be amplified in the absence of clear rules or guidelines on how to use -or not- these technologies and were the obligations and precautions lie.

We also highlight that, in the cases explored below, *substitutive uses of AI* are often deployed **under narratives of efficiency** that frame them as merely *auxiliary*. In practice, however, the distinction between one use and the other hinges on the centrality of the human factor in making decisions on legally relevant matters -and in how that human role is safeguarded-, especially when AI systems are used in the core task of deciding what is just for others.

The cases cited below were tracked and identified thanks to the work of media outlets and civil society organizations that brought them to public attention. We highlight how, in the majority of the following cases, institutional information provided by judicial authorities regarding the adoption and use of deployed AI systems is particularly scarce.

a) Auxiliary Uses of AI

Brazil

Since **2018**, the Supreme Federal Court of Brazil (STF) has used VICTOR[2], an AI system developed by the University of Brasilia that automates the analysis of appeals and identifies those with high potential social impact that may warrant review by the STF. Its

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2 Peixoto, F. (2020). Projeto Victor: Relato do Desenvolvimento da Inteligência Artificial na Repercussão Geral do Supremo Tribunal Federal. Revista Brasileira de Inteligência Artificial e Direito, Vol.1, N.1. Available at: https://rbiad.com.br/index.php/rbiad/article/view/4/4

purpose is to assist the Justices in making sensitive decisions about whether a case merits review[3] or not.

However, the system is deployed without prior or transparent disclosure to users of the judicial service[4]. Studies[5] on its adoption by the STF highlight a potential conflict between the efficiency gained through automation and fundamental principles such as impartiality, transparency, and legality. The AI tool has been found to generate imprecise case summaries, which are then used as the basis for the STF's selection decisions.

In December **2024**, the use of another AI system was added to the STF: marIA, short for "Support Module for Drafting with Artificial Intelligence"[6] an AI system developed on GalileoAI, a propietary generative AI tool own by the Galileo Company. This system is tasked with (i) drafting summaries of the votes of the Court's Justices, (ii) preparing reports on procedural appeals, and (iii) conducting the initial analysis of judicial cases. It is a development that, in theory, can be audited if necessary[7]. There's little to no information to date about the performance of this tool.

And, since March **2023**, the Office of the Attorney General of the Union (AGU) in Brazil signed an agreement with OpenAI to integrate ChatGPT into judicial information systems[8,9]. The tool is intended to summarize cases and suggest document drafts to "assist" judicial tasks, as well as to identify strategies to act and warn about cases with potentially high impact on public finances.[10]

While the AGU states that human oversight will be maintained, it does not clearly explain how the institution will address hallucinations generated by ChatGPT, nor how it plans to strengthen the digital skills of judicial personnel to ensure they engage

3 Supremo Tribunal Federal (2021). Projeto Victor avança em pesquisa e desenvolvimento para identificação dos temas de repercussão geral. Available at: https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=471331&ori=1

4 Urueña, R. (2021). ¿Máquinas de Justicia? Inteligencia Artificial y Sistema Judicial en América Latina. Agenda Estado de Derecho. Available at: https://agendaestadodederecho.com/maquinas-de-justicia-inteligencia-artificial-y-sistema-judicial-en-america-latina/

5 Lopez Valle, V.C.L.; Fuentes I Gasó; J.R.; Martins Ajus; A. (2023). Decisão judicial assistida por inteligência artificial e o Sistema Victor do Supremo Tribunal Federal. Revista de Investigações Constitucionais, Vol.10, N. 2., Maio/Agosto. Available at: https://www.scielo.br/j/rinc/a/YKZfQPLJqT7F3P445KkmwnC/?format=pdf&lang=pt

6 Prensa Latina (2025). Corte Suprema de Brasil implementa herramienta con IA. Available at: https://www.prensa-latina.cu/2024/12/16/corte-suprema-de-brasil-implementa-herramienta-con-ia/

7 Supremo Tribunal Federal (2024). STF lança MARIA, ferramenta de inteligência artificial que dará mais agilidade aos serviços do Tribunal. Available at: https://noticias.stf.jus.br/postsnoticias/stf-lanca-maria-ferramenta-de-inteligencia-artificial-que-dara-mais-agilidade-aos-servicos-do-tribunal/

8 Gonzáles, F. (2024). Abogacía General de Brasil usará IA para analizar demandas y reducir costos judiciales. WIRED. Available at: https://es.wired.com/articulos/abogacia-general-de-brasil-usara-ia-para-analizar-demandas-y-reducir-costos-judiciales

9 Advocacia-Geral da União (2023). AGU inova no uso de inteligência artificial para aprimorar eficiência e prestação de serviços à sociedade Available at: https://www.gov.br/agu/pt-br/comunicacao/noticias/agu-inova-no-uso-de-inteligencia-artificial-para-aprimorar-eficiencia-e-prestacao-de-servicos-a-sociedade

10 Caram, B.; Ayres, M. (2024). Governo contrata criadora do ChatGPT para acelerar análise de processos judiciais. UOL. Available at: https://noticias.uol.com.br/ultimas-noticias/reuters/2024/06/11/governo-contrata-criadora-do-chatgpt-para-acelerar-analise-de-processos-judiciais.htm?cmpid=copiaecola

critically with the tool. Without such measures, there is a risk that this assistance could evolve into a dependency that undermines or diminishes judges' professional role over time.

Colombia

In **2017**, the Office of the Attorney General licensed the software "Fiscal Watson", an AI tool developed by IBM focused on identifying crime patterns among cases during the judicial investigation phase. Its use continues to this day. Research[11] into its deployment has revealed that IBM maintains a copy of the Attorney General's case database, where Fiscal Watson runs. Technical specifications of the tool or characteristics of its algorithm are not disclosed to the public due to reasons related to national security protection or the company's intellectual property[12].

As of now, it is unclear whether any contractual agreements exist between the Attorney General's Office and IBM to define and frame data governance rules about the uses of this mirrored database that contains confidential and sensitive information, so its unclear what will happen to that database once the commercial agreement between IBM and the Attorney General's Office ends.

In **2020**, the Colombian Constitutional Court adopted its own AI system, PretorIA, to assist in accelerating the case selection phase for its review, replacing the previously transplanted and piloted proprietary AI tool called Prometea, developed initially by and for the Argentinian tax prosecution of the City of Buenos Aires[13].

Although PretorIA is an AI system focused on classifying and summarizing cases -an inherently human task traditionally performed by final-year law students- it was initially considered to have no impact on human rights and due process rights[14]. However, reports[15] on the initial adoption of AI systems in this Court highlight significant shortcomings in public communication regarding the deployment of these technologies, including an overly enthusiastic roll-out that generated concern and confusion among the public and key stakeholders within the judicial system.

And in **April 2024**, we identified the use of ChatGPT by the Criminal Decision Chamber of the Superior Court of the Judicial District of Pereira[16]. In a case involving a traffic

11 Palacios, L., Forero, V., Castañeda, J.D. (2024). Fiscal Watson: Study on the Use of Artificial Intelligence in the Office of the Attorney General in Colombia. Derechos Digitales. Available at: https://ia.derechosdigitales.org/wp-content/uploads/2024/11/2024-COL-Fiscal_Watson-ENG.pdf
12 Palacios, L., Forero, V., Castañeda, J.D. (2024). Fiscal Watson: Study on the Use of Artificial Intelligence in the Office of the Attorney General in Colombia. Derechos Digitales. Available at: https://ia.derechosdigitales.org/wp-content/uploads/2024/11/2024-COL-Fiscal_Watson-ENG.pdf
13 Estevez, C.; Linares, S.; Fillottrani, P. (2020). Prometea, transformando la administración de justicia con herramientas de inteligencia artificial. Banco Interamericano de Desarrollo BID. Available at: https://publications.iadb.org/es/publications/spanish/viewer/PROMETEA-Transformando-la-administracion-de-justicia-con-herramientas-de-inteligencia-artificial.pdf
14 Saavedra, V.P.; Upegui, J.C. (2021). PretorIA and automating the processing of human rights cases. Derechos Digitales. Available at: https://ia.derechosdigitales.org/wp-content/uploads/2022/03/05_Informe-Colombia-EN_180222_compressed.pdf
15 Camacho O.L.; Castañeda, J.D.; Saavedra, V.P. (2019). Enthusiasm and complexity: Learning from the "Prometea" pilot in Colombia's judicial system. Giswatch. Available at: https://www.giswatch.org/node/6166
16 Superior Court of the Judicial District of Pereira, Criminal Decision Chamber, Presiding Judge Manuel

accident that resulted in a homicide, the tool was used to delegate to AI the calculation of the victim's blood alcohol concentration (BAC). The victim, who was intoxicated and struck by a vehicle, had their BAC converted into an estimate of how many glasses of wine, aguardiente, or beer they might have consumed at the time of death. This estimation made by ChatGPT was used to explore the thesis in which the victim may have been responsible of their own fatality due to alcohol intoxication.

The response provided by ChatGPT was copied verbatim into the judicial decision, without the Criminal Chamber verifying the tool's claim or assessing their accuracy through expert reports or technical analysis conducted by a specialist in this type of evaluation.

Peru

In **March 2023**, we identified the use of ChatGPT by a judge of the Temporary Civil Court of San Juan de Miraflores to calculate child support payments for a minor[17], within the context of a civil proceeding. The judge used the tool -cited in a footnote- to "apply a mathematical proportion technique, in order to determine each parent's contribution according to their income to cover the child's maintenance costs".[18]

In his ruling, the judge did not provide any explanation to justify the use of ChatGPT -a tool used here for arithmetic purposes- whose results were cited as true and objective, despite it essentially being an AI tool whose public and free version at the time (GPT-4) was mainly focused on text -not math- generation.

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In the cases cited, we observe two trends. On one hand, the development of AI systems for certain High Courts and Prosecution offices, which use them for tasks such as summarizing, classifying, characterizing, or conducting preliminary analysis of cases; and on the other hand, the parallel adoption of proprietary LLMs -particularly ChatGPT- at both personal and institutional levels, to "assist" with auxiliary tasks that do not involve drafting the core decision in a case.

Regarding the adoption of these systems:

- It was not possible to identify the agreements signed between the judicial branches of Colombia and Brazil and private companies such as IBM (Colombia), OpenAI, and Galileo (Brazil) for the licensing of proprietary AI software.

- In the handling of cases where these AI systems have been employed (with the

Yarzagaray Bandera, Second Instance Ruling, April 3, 2024. Available at: https://www.ambitojuridico.com/sites/default/files/2024-04/Sent-7600160001932013807340124.pdf

17 Judiciary of Peru (2023). Temporary Civil Court of San Juan de Miraflores, Valle Riestra Branch, Second Instance Ruling, March 27. Available at: https://img.lpderecho.pe/wp-content/uploads/2023/03/Expediente-00052-2022-18-3002-JP-FC-01-LPDerecho.pdf

18 Text translated. Original en español: "De ahí que, mediante la asistencia de la plataforma de Inteligencia Artificial de Open AI – Chat GPT, corresponde aplicar la técnica de proporción matemática, a efectos de establecer cuál es el aporte que corresponde a cada padre, según sus ingresos, para satisfacer el gasto de manutención de su hija".

exception of the case referenced in Peru and Pereira (Colombia) disclosed through a footnote in the referenced rulings), no transparent information has been provided to the general public about their use or implications on due process and other human rights.

- The judges who used ChatGPT in the cases of Pereira (Colombia) and Peru did not carry out any due diligence actions related to verifying the information provided by the chatbot, relying exclusively on its results. This demonstrates how auxiliary uses can lead to dependency due to the perceived objectivity bias in AI tools.

b) Substitutive Uses of AI

Argentina

In **2017**, the Public Prosecution Service of the City of Buenos Aires adopted Prometea, a proprietary AI system developed by a member of the Prosecutor's Office. This tool, developed with public funds[19], claims to draft and predict the outcome of judicial rulings quickly, assisting in the expedited resolution of cases. The same tool has been offered to other judicial bodies in the region, including Colombia[20] and Paraguay[21].

According to its developers, Prometea automated at least 57% of the repetitive tasks associated with the preparation of judicial rulings, reducing processes that typically take 90 minutes to approximately 1 minute. However, these statistics were produced by the tool's own developer and are not subject to independent third-party auditing.[22]

In **2024,** the Public Prosecution Service of the City of Buenos Aires transitioned from using Prometea to using ChatGPT for drafting judicial rulings and predicting outcomes in labor cases involving salary claims[23].

This shift was driven by the need to accelerate judicial processes. Although its proponents within the judiciary argue that "legal professionals are no longer the protagonists, but merely editors"[24] this approach -and the growing reliance on ChatGPt- raises serious concerns about the quality of judicial decisions. These concerns are

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19 Estevez, C.; Linares, S.; Fillottrani, P. (2020). Prometea, transformando la administración de justicia con herramientas de inteligencia artificial. Banco Interamericano de Desarrollo BID. Available at: https://publications.iadb.org/es/publications/spanish/viewer/PROMETEA-Transformando-la-administracion-de-justicia-con-herramientas-de-inteligencia-artificial.pdf
20 Urueña, R. (2021). ¿Máquinas de Justicia? Inteligencia Artificial y Sistema Judicial en América Latina. Agenda Estado de Derecho. Available at: https://agendaestadodederecho.com/maquinas-de-justicia-inteligencia-artificial-y-sistema-judicial-en-america-latina/
21 Sequera, M (2021). Inteligencia artificial en la sala constitucional en Paraguay. TEDIC. Available at: https://www.tedic.org/inteligencia-artificial-en-la-sala-constitucional-en-paraguay/
22 Estevez, C.; Linares, S.; Fillottrani, P. (2020). Prometea, transformando la administración de justicia con herramientas de inteligencia artificial. Banco Interamericano de Desarrollo BID. Available at: https://publications.iadb.org/es/publications/spanish/viewer/PROMETEA-Transformando-la-administracion-de-justicia-con-herramientas-de-inteligencia-artificial.pdf
23 Mendizabal, V. (2024). Courts in Buenos Aires are using ChatGPT to draft rulings. Rest of World. Available at. https://restofworld.org/2024/buenos-aires-courts-adopt-chatgpt-draft-rulings/
24 Mendizabal, V. (2024). Courts in Buenos Aires are using ChatGPT to draft rulings. Rest of World. Available at. https://restofworld.org/2024/buenos-aires-courts-adopt-chatgpt-draft-rulings/

particularly acute given the risk of hallucinations[25], which such tools can produce in two main ways: by generating an incorrect response to a prompt or by introducing factual inaccuracies or misrepresenting the applicable law in a given case.[26]

Recently, in **2025**, a recent *survey titled "Preliminary Results of the Pilot Program for the Strategic and Responsible Use of Generative AI in the Argentine Judiciary"* was published. It involved 29 trials conducted across various judicial bodies in the country using ChatGPT and Gemini for judicial tasks, aiming, among other objectives, to measure its effectiveness and user perception. The survey acknowledges that although the use of these tools speeds up the drafting of judicial documents, the time saved must be reinvested in verifying the outputs of each tool, which tend to hallucinate when applying and interpreting local law.[27]

Brazil

In **November 2023**, the use of ChatGPT by a federal judge in Acre, presiding over a second-instance federal labor case, became public. The judge had copied literal excerpts generated by ChatGPT into the ruling. The incident came to light when one of the parties identified a citation of a non-existent judicial precedent, allegedly issued by the Supreme Court of Justice[28].

Once revealed, the judge blamed a supposed staff member for the mistake, although it was confirmed that the copied excerpts were generated by ChatGPT. The judge later excused his use of the tool, attributing it to work overload and describing it as a "simple error".[29] The federal court responsible for investigating judicial conduct issued a warning regarding the use of such tools[30]. Although the investigation was initially closed, the National Council of Justice, which oversees the judiciary at a national level, decided to reopen the inquiry into the non-transparent use of AI tools in this particular

25 LLM hallucinations have been described as the tendency of this type of AI model to generate false or factually inaccurate information. In the legal context, this often results in the production of imprecise, false, or entirely fabricated content related to legal precedents and other legal texts. Hallucinations involving legal content tend to increase with more complex tasks, as well as in cases involving the interpretation or citation of older or very recent precedents, among other factors. See: Ho, D. (2024). Hallucinating Law: Legal mistakes with large language models are pervasive. HAI Standford University. Available at: https://hai.stanford.edu/news/hallucinating-law-legal-mistakes-large-language-models-are-pervasive

26 Surani, F.; Ho, D. (2024). AI on trial: Legal Models Hallucinate in 1 out of 6 (or more) Benchmarking queries. HAI Standford University. Available at: https://hai.stanford.edu/news/ai-trial-legal-models-hallucinate-1-out-6-or-more-benchmarking-queries

27 VV. AA (2025). Resultados Preliminares del Programa Piloto de Uso Estratégico y Responsable de IA Generativa en la Justicia Argentina. Available at: https://www.diariojudicial.com/uploads/0000058205-original.pdf

28 G1 (2023). Juiz usa inteligência artificial para fazer decisão e cita jurisprudência falsa; CNJ investiga caso. https://g1.globo.com/politica/blog/daniela-lima/post/2023/11/13/juiz-usa-inteligencia-artificial-para-fazer-decisao-e-cita-jurisprudencia-falsa-cnj-investiga-caso.ghtml

29 O Globo (2023). Juiz usa ChatGPT para escrever uma sentença e se dá mal: ferramenta inventou jurisprudências. https://oglobo.globo.com/blogs/lauro-jardim/post/2023/11/juiz-usa-chatgpt-para-escrever-uma-sentenca-e-se-da-mal-ferramenta-inventou-jurisprudencias.ghtml

30 Tribunal Regional Federal da 1a Regiao, Circular Coger 33/2023. Ref: Inteligência artificial generativa - Utilização não recomendada para pesquisa jurisprudencial - Deveres de cautela, de supervisão e de divulgação responsável dos dados do processo quanto ao uso de IA em decisões judiciais. Available at: https://portal.trf1.jus.br/dspace/bitstream/123/340971/1/SEI_19283798_Circular_Coger_33.pdf

case[31].

Colombia

In **January 2023**, local media reported the use of ChatGPT in a case involving the protection of the right to health of a minor with autism[32]. The judge in the case relied on the tool for two critical judicial tasks: researching and interpreting applicable law to decide the case, and delegating the drafting of the ruling's reasoning to AI.

The judge merely cited what ChatGPT claimed was the applicable law, allegedly based on decisions issued by the Constitutional Court in similar cases. However, the judge did not verify or corroborate the results provided by the tool; the AI-generated text was copied directly into the reasoning section of the ruling and was accepted at face value. In several interviews[33], the judge justified its use by citing the need to speed up judicial work, cope with workload overload, and address the backlog caused by cases involving the protection of fundamental rights.

Mexico

In **March 2023,** during a public hearing[34] held by the Superior Chamber of the Electoral Tribunal of the Federal Judiciary, one of the magistrates used ChatGPT in an appeal process concerning a judicial ruling that had broadly interpreted the expression "you know who"[35].

The phrase "you know who" had been used in promotional campaigns by the political party Morena, where it was understood to imply support from then-president A.M. López Obrador. The case centered on the legality of the campaign and questioned the political involvement of the now former president of Mexico.[36] Once prompted, ChatGPT generated information linking the former president to the phrase "you know who", something that was accepted as true by the Electoral Tribunal that ruled that Morena have had indeed an unfair political advantage by the supposed endorsed of the former president A.M. López Obrador.

31 JOTA (2023). Juiz do TRF1 que usou o ChatGPT para elaborar decisão será investigado pelo CNJ. https://www.jota.info/justica/juiz-do-trf1-que-usou-o-chatgpt-para-elaborar-decisao-sera-investigado-pelo-cnj

32 Judicial Branch of Colombia, First Labor Court of the Circuit of Cartagena, Ruling No. 32, January 30, 2023. Available at: https://forogpp.com/wp-content/uploads/2023/01/sentencia-tutela-segunda-instancia-rad.-13001410500420220045901.pdf

33 El Universal (2023). Habla el juez que conectó a la justicia del país con la inteligencia artificial. https://www.eluniversal.com.co/cartagena/2023/02/05/habla-el-juez-que-conecto-a-la-justicia-del-pais-con-la-inteligencia-artificial/ ; BluRadio (2023). Sentencia la tomé yo, ChatGPT respaldó argumentación: juez de Cartagena usó inteligencia artificial. https://www.bluradio.com/judicial/sentencia-la-tome-yo-chatgpt-respaldo-argumentacion-juez-de-cartagena-uso-inteligencia-artificial-pr30

34 Electoral Tribunal of the Federal Judiciary (March, 2023). Public session, Wednesday, March 29, 2023. Available at: https://www.youtube.com/live/OwaZg3quyls?t=3679s

35 Milenio (2023). TEPJF valida que Morena use la frase "ya sabes quién" en Edomex. https://www.milenio.com/politica/tepjf-valida-morena-use-frase-edomex

36 Gutiérrez, Juan David. A jueces y magistrados de Perú y México también les cayó la "fiebre" de ChatGPT. Agenda Estado de Derecho. 2023/04/18. Disponible en: https://agendaestadodederecho.com/a-jueces-y-magistrados-de-peru-y-mexico-tambien-les-cayo-la-fiebre-de-chatgpt/

Paraguay

In **2019**, civil society raised concerns about negotiations between the developers of Prometea and the country's Supreme Court to acquire and deploy the tool in the Constitutional Chamber[37]. According to media reports[38], its use was intended to automate critical judicial tasks, including predicting the content of judicial decisions to address issues such as court delays. Although public information refers to an initial pilot phase of Prometea, the results of this pilot remain unknown, as does whether the tool was fully deployed in the Constitutional Chamber or other chambers of the Supreme Court[39].

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Some of the patterns identified in the cases discussed above generally point to:

- The use of these AI systems is aimed at delegating core tasks related to the administration of justice, such as interpreting existing laws and formulating the central reasoning behind judicial decisions. However, there is little to no information available about the impact of this shift or the evolving role of judges and magistrates. Moreover, critical discussions about labor, automation, and their broader implications within the judiciary remain largely absent, even as the deployment of AI systems continues.

- The use of AI systems, specially of ChatBots such as ChatGPT, is rarely critically disclosed to the parties involved in the proceedings or to the general public, who remains largely unaware of the technology's impact on the quality of justice and its core democratic principles and values. The use of that tool, when disclosed, is merely cited as if it were another source of information when it is not.

- Just as occurs with auxiliary uses of AI, in substitutive uses, the judges who employed ChatGPT in the cases of Mexico, Colombia, and Brazil did not undertake any verification of the results produced by the tool. This reflects the bias of neutrality and objectivity present in their interaction with such tools, which ultimately affects the quality of justice.

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37 Sequera, M (2021). Inteligencia artificial en la sala constitucional en Paraguay. TEDIC. Available at: https://www.tedic.org/inteligencia-artificial-en-la-sala-constitucional-en-paraguay/
38 HOY (2020). Corte busca implementar inteligencia artificial para agilizar procesos y reducir mora judicial. Available at: https://www.hoy.com.py/nacionales/corte-busca-implementar-inteligencia-artificial-para-agilizar-procesos-y-reducir-mora-judicial
39 Benegas, E. (2020). Inteligencia Artificial vs. Mora Judicial. BootCamp. Available at: https://bootcamp.tedic.org/inteligencia-artificial-versus-mora-judicial/

II. Human Rights concerns with "auxiliary" and "substitutive" uses of AI

Various human rights concerns arise from the use of AI for both auxiliary and substitutive functions in judicial work. These challenges pose serious risks in the following areas:

Right to Privacy and Data Protection

In most of the cases described, the use of proprietary tools (from IBM, OpenAI, or other providers) involves privacy policies that are not necessarily aligned with the data protection laws of the countries where they are deployed (moreover, countries as Paraguay still do not count with a Data Protection framework governing these issues, while Argentina has an outdated Data Protection Law from 2000).

This is problematic not only in terms of the use of AI systems like ChatGPT, Fiscal Watson or VICTOR by judicial authorities that do not know about the impact of their interaction with these tools and the privacy of the claimants and other parties participating in each judicial process, but also for data subjects who are unaware of how to exercise their rights if personal or sensitive information is leaked or exposed by these private providers.

This risk is exacerbated in Latin American countries where the use of AI in judicial systems takes place without established policies for case anonymization or robust data governance and cybersecurity frameworks applicable to the judiciary.

Transparency and Access to Information

As we have seen, the use of AI systems in the judiciary is mediated, in part, by agreements signed between judicial authorities and transnational companies such as IBM or OpenAI, particularly in the cases of Colombia and Brazil. The commercial nature of these agreements is not a distinguishing factor in terms of transparency, as other memorandums of understanding or collaborations with non-commercial initiatives (such as Prometea) are also, for the most part, confidential.

Most of these agreements are secret or not publicly disclosed, making them opaque to the public not only regarding their costs and the terms of the licenses acquired, but more broadly, concerning critical tecnical specifications like the source code of the algorithm (like in the case of Fiscal Watson owned by IBM) which curtails the possibility for civil society actors to independently audit the tools' performance in effectively assisting or performing core judicial tasks.

However, transparency is undoubtedly an issue that goes beyond the contractual agreements between judicial authorities and AI system providers. It also extends to the realm of judicial transparency and ethics, where it is expected that judges who use such AI tools on their own initiative (for auxiliary or substitutive uses) disclose this clearly and openly. Cases such as the one identified in Acre, Brazil, raise concerns about how, in

practice, judges may be using chatbots like ChatGPT without clearly informing the parties involved in the proceedings and, when questioned, may even deny their use, despite the possibility of such use being confirmed later.

Biases while using AI and its effects on due process

As we have seen, judges' biases in the use of AI tools can seriously affect their ability to exercise critical judicial skills, such as the verification and cross-checking of human and documentary sources, the duty of truthfulness and transparency linked to their judicial actions, among others. In cases involving the use of ChatGPT, human biases in interactions with AI become more visible.

- **The right to procedural transparency**: This was particularly affected in the case of Brazil, where the judge from Acre dismissed concerns over the use of ChatGPT and justified a serious error -namely, the hallucination of a crucial precedent in the case he ruled on- as a human mistake.

- **The right to the explainability of judicial decisions**: In the cases of Peru, Colombia, and Mexico, literal excerpts generated by ChatGPT were copied and pasted into judicial decisions and presented by judges as truthful and objective. No actions were taken to verify or contrast these results.

- **The identification of the applicable law**: The cases in Brazil (Acre) and the two in Colombia demonstrate how, due to biases of neutrality and objectivity, judges trusted that ChatGPT would accurately identify the applicable law in each case. Instead, the tool produced hallucinations that went undetected by the judges.

The use of AI tools in the judiciary and the Digital Divide

Digital inequality, still pervasive in Latin America, affects all stakeholders within the justice system differently[40]. As demonstrated during the pandemic[41] -which forced the digitalization of judicial services during general lockdowns- many actors faced[42] significant barriers, i.e[43]:

- Lawyers unable to connect to hearings,

40 International Legal Assistance Consortium (2020). Justicia en el tiempo de COVID-19. Desafíos del poder judicial en América Latina y el Caribe. Cyrus R. Vance Center for International Justice. Disponible en: https://ilacnet.org/wp-content/uploads/2020/12/ILAC_COVID19_SPANISH_FINAL_WEB.pdf
41 United Nations, General Assembly, A/HRC/47/35, 9th April 2021, "The Coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice", Report of the Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán. Available at: https://docs.un.org/en/A/HRC/47/35
42 ACIJ; CEJA; Dejusticia; FIMA; LABÁ; Red de Empoderamiento Jurídico; DPLF; Justice for All (2020). Acceso a la justicia en Latinoamérica. Reporte de resultados de la encuesta sobre la situación de acceso a la justicia en contexto de pandemia, desde la perspectiva de las organizaciones y activistas. Available at: https://acij.org.ar/wp-content/uploads/2020/11/version-11-11-20-Informe-Encuesta-REGIONAL-situacion-de-acceso-a-la-justicia-covid-19.docx-1.pdf
43 Camacho Gutiérrez, O.L. (2024). *Acceso a la justicia y la brecha digital: algunos aportes para la discusión en Colombia.* En: Urueña, R.; Ángel-Cabo, N. (2024). Derecho, poder y datos. Universidad de los Andes, Bogotá: Colombia.

- Users without digital access in remote areas,

- Judges with poor connectivity or lacking basic digital skills.

This digital divide intersects with existing layers of inequality within the region's judicial systems, including -but not limited to[44]-judicial delays, corruption, lack of independence of judges in certain countries, impunity, and widespread public dissatisfaction. These issues are particularly critical given the region's heavy societal reliance on the judiciary as a primary avenue for the defense and recognition of both established and emerging rights, often to a greater extent than in other regions of the world[45].

In this context, while technologies as AI systems may not be capable of resolving these structural challenges facing judicial systems[46], they can exacerbate them- particularly when, as seen during the COVID-19 pandemic, the use of certain technologies may represent an unfair advantage for exercising the right to access to justice just for a few. In such cases, the primary beneficiaries of AI systems in the judiciary are those already connected and digitally literate, thereby deepening existing inequalities for those on the disadvantaged side of the digital divide.

III. Attempts of regulating AI in the judiciary

Among the regional[47] efforts to regulate the use of AI in judicial branches, the cases of Colombia and Brazil stand out as the most relevant in this discussion.

Colombia

In December 2024, the **Superior Council of the Judiciary[48]**, the regulatory body for the justice system in the country, issued guidelines for the use of AI systems in the

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44 Ahrens, H.; Rojas Aravena, F.; Saisnz, J.C. (Eds.) (2015). El acceso a la justicia en América Latina: Retos y Desafíos. Cooperación Alemana GIZ, University for Peace. San José: Costa Rica.

45 Rodríguez, C. (2021). Reabrir los espacios para los derechos humanos en contextos de populismos autoritarios. En: VV.AA (2021). Resistencia civil contra los autoritarismos del siglo XXI. La defensa de los derechos humanos en el Sur Global. DEJUSTICIA. 2021.

46 Flórez, M. L.; Camacho Gutiérrez, O. L. (Abril, 2024). Desafíos y Oportunidades de la Inteligencia Artificial en la Administración de Justicia en Colombia: Reflexiones personales. Available at: https://forogpp.com/2024/04/18/desafios-y-oportunidades-de-la-inteligencia-artificial-en-la-administracion-de-justicia-en-colombia-reflexiones-personales/

47 Camacho, O.L (2024). Inteligencia artificial en la justicia latinoamericana: un asunto que es tanto público como privado. Konrad Adenauer Stiftung, Programa Estado de Derecho Latinoamérica. Available at: https://kas-encuentrotribunales.com/articulo-inteligencia-artificial-en-la-justicia-latinoamericana-un-asunto-que-es-tanto-publico-como-privado/

48 Superior Council of the Judiciary (December 2024). Agreement PCSJA24-12243, "By which guidelines are adopted for the respectful, responsible, safe, and ethical use and implementation of artificial intelligence in the Judicial Branch". Available at: https://actosadministrativos.ramajudicial.gov.co/GetFile.ashx?url=%7e%2fApp_Data%2fUpload%2fPCSJA24-12243.pdf

judiciary[49, 50]. The content of these guidelines, that were rapidly discussed in limited groups of experts and then published, places great responsibility on judicial officials (magistrates, judges, and employees across all jurisdictions) even though such oversight should arguably fall under the purview of the Council itself as the governing authority of the judiciary. Moreover, the cases of use of ChatGPT cited above demostrate the need for this authority to have an "effective control" over these issues.

For example, the guidelines delegate to judicial officials the tasks of: (i) assessing the suitability, usefulness, and selection of AI systems most appropriate for the judicial task they intend to delegate and (ii) taking on the responsibility to be informed about the risks, limitations, and constraints of the AI system they intend to use. However, this policy lacks detailed guidance on how to conduct such assessments – particularly when using proprietary tools- and fails to establish meaningful digital literacy programs for judicial officials.

Notably, the policy imposes obligations such as: *avoiding* the use of AI systems like ChatBots "in their free versions"; *publicly acknowledging and disclosing* the use of generative AI systems, including the prompts used; and *verifying and cross-checking* the results produced by these tools, among other requirements. However, the regulation does not establish oversight mechanisms to ensure compliance with these obligations, nor does it provide avenues for filing complaints or addressing irresponsible, unethical, or non-transparent use of AI by judicial officials.

Brazil

The **National Council of Justice**, the regulatory body for the justice system at the national level, was the first in Latin America to address the use of AI systems in the judiciary. In 2020, it issued a resolution on the matter[51], which was repealed in 2025 by a more comprehensive one that explicitly authorizes[52] the use of AI systems to draft judicial decisions[53].

49 In July 2024, the Superior Council of the Judiciary **launched a survey about judicial servants use and appropriation of AI systems.** According to the own Council, at least 30% of judicial officials said to be making use of AI tools, specially commercial and free online solutions such as ChatBots. See: Superior Council of Justice (July, 2024). Executive report, January 2025. Results from the survey conducted on July 2024: Experiences on the use of AI in the Judiciary. Available at: https://www.ramajudicial.gov.co/documents/10635/96912759/Reporte+Ejecutivo+Encuesta+IA.pdf/c5023729-9ad0-ec87-125b-46709ff24533?t=1740177430513

50 The Colombian Constitutional Court ordered the creation of this guidelines in the case T-323 of 2024. This ruling was the result of the reviewing of the injunction case cited in this report in which a judge used ChatGPT for interpreting the applicable law to he case and to draft the decision of whether or not the right to health of a minor with autism had to be guaranteed. Available at: https://www.corteconstitucional.gov.co/relatoria/2024/T-323-24.htm

51 Conselho Nacional de Justiça (2020). Resolução Nº 332 de 21/08/2020 "Dispõe sobre a ética, a transparência e a governança na produção e no uso de Inteligência Artificial no Poder Judiciário e dá outras providências". Available at: https://atos.cnj.jus.br/atos/detalhar/3429

52 Pontes, F. (2025). Norma do CNJ autoriza decisões escritas por IA e revisadas por juiz. Agência Brasil. Available at: https://agenciabrasil.ebc.com.br/justica/noticia/2025-02/norma-do-cnj-autoriza-decisoes-escritas-por-ia-e-revisadas-por-juiz

53 Conselho Nacional de Justiça (2025). Resolução que estabelece diretrizes para o desenvolvimento, utilização e governança de soluções desenvolvidas com recursos de inteligência artificial no Poder

For example, the 2020 Resolution, which was much shorter, emphasized the importance of protecting rights in the use of AI, as well as the duties of publicity and transparency regarding AI models, for instance, included the need of disclosure of such systems and their impact on data protection, or the identification of risks associated with their use. However, it did not explicitly state who would be responsible for these obligations or how they would be implemented in the case of proprietary AI models. Governance of AI was delegated solely to the National Council of Justice.

The recent resolution: (i) affirms the importance of ensuring that AI systems used in the judiciary align with the respect for and exercise of rights; (ii) adopts a risk classification of AI systems (excessive, high and low risk) stating that AI systems posing excessive risks should be banned from the judiciary[54]; and (iii) establishes a local AI governance ecosystem overseen by the National Committee on Artificial Intelligence of the Judiciary, which will be responsible for the supervision and implementation of the resolution.

However, to date, it remains unclear how this new resolution would align with legislative processes underway to regulate AI in Brazil, which propose a different risk taxonomy and delegate AI governance to other types of bodies, particularly those led by the national data protection authority (ANPD).

Recommendations

We respectfully request that this Rapporteur's office:

- Issue a general call for moratoriums on the adoption of AI systems in the judiciary until their use and implementation have been properly regulated with a human rights perspective. In cases where this regulation is still absent, its deployment should satisfy previous human rights impact asssessment and data protection impact assessments as well, and if these assessments are not favorable, the AI tool should be banned from its use in the judiciary.

- Highlight the need for transparency of the AI tools being currently under use in the judiciary and those AI systems that were used but discard in the past. To insist on the relevance of inform to the public about each AI system (i) capabilities and technical specifications as well as its initial purpose, (ii) their impact on human rights and specially due process, (iii) the measures taken to keep a human in the loop, and (iv) the impact of its use since its adoption.

- Highlight the accelerated adoption of AI systems in essential judicial tasks while drawing attention to how these technologies can exacerbate preexisting problems within judicial branches as well as introduce new challenges. These include the weakening of verification processes and the erosion of the independence of human judgment, which is essential to the design of democratic

Judiciário. Available at: https://s.oab.org.br/arquivos/2025/02/0125821b-0ced-4250-bc9e-f3e9f1e02ec6.pdf
54 Here are included AI systems that do not allow human review of the data used to train the tool, that assess or score personality traits, or that are used for biometric identification or authentication aimed at emotion recognition, among others. See art. 10 of the cited resolution.

justice systems.

- Urgently call on regulatory authorities within the judiciary to adopt human right-based regulation on the use of AI systems, ensuring that those frameworks crafted with the meaningful participation of all interested parties do indeed address: (i) institutional policies regarding prohibited tools and uses (particularly the deployment of LLMs in judicial functions), (ii) the broader impact on all users of the judicial system, including litigating attorneys and service users, (iii) concerns related to the digital sovereignty of judicial branches and the impact of acquiring, using, or licensing proprietary AI technologies for privacy and confidentiality of judicial information, as well as cybersecurity, and (iv) the establishment of effective remedies for the inappropriate, illegal, opaque, or unethical use of AI systems, including mechanisms for redress when such use compromises the proper administration of justice.

- Call the attention of data protection authorities to supervise, and oversee the deployment of these tools within the judiciary, and to actively participate in discussions on the implementation of AI systems in the justice sector.

- Urgently call for AI regulation in the judiciary to be fully aligned with efforts aimed at closing the digital divide, and to promote literacy and awareness policies regarding the impact of AI on judicial systems.

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