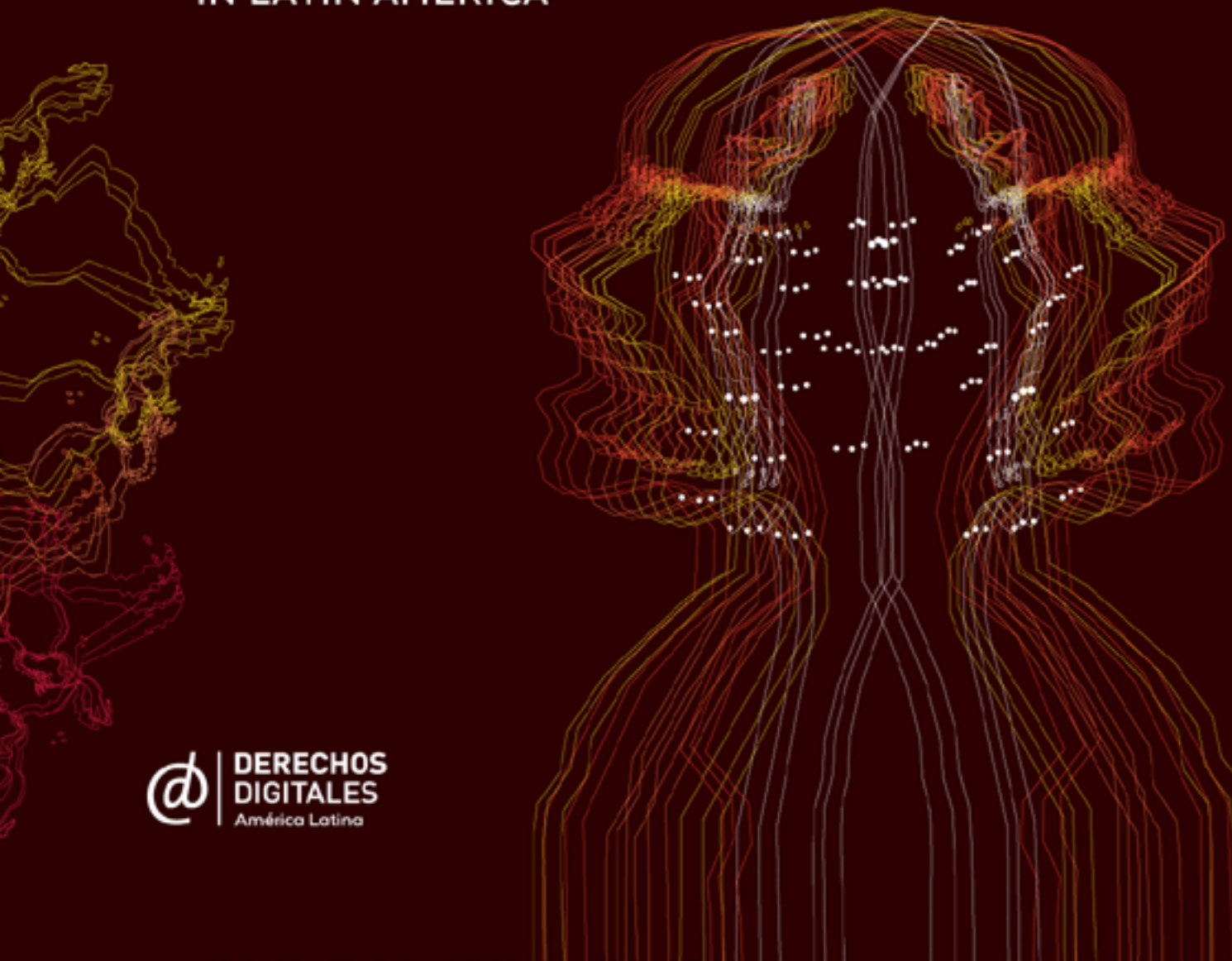
LATIN AMERICA
IN A GLIMPSE

CHAPTER 4

WHAT DO WE TALK ABOUT WHEN WE TALK ABOUT AI?

ALGORITHMIC DECISION-MAKING IN LATIN AMERICA



DERECHOS DIGITALES
América Latina

DERECHOS DIGITALES
América Latina

This report was made by Derechos Digitales.

Edited by Vladimir Garay.
Design and layout by Constanza Figueroa.
Style correction by Rocío Consales.
Translated by Alex Argüelles.

March 2020.

Access the full-length release of Latin America in a Glimpse 2020 in Spanish at: https://segu.dev/3

CHAPTER 4

WHAT DO WE TALK ABOUT WHEN WE TALK ABOUT AI?
ALGORITHMIC DECISION-MAKING IN LATIN AMERICA

By María Paz Canales

While the gap between rich and poor increases in the world, Latin America remains the region where wealth is distributed more unequally. According to the Economic Commission for Latin America and the Caribbean (ECLAC), there are marked imbalances between different socioeconomic levels in aspects such as life expectancy, infant mortality, illiteracy rate and access to water inside homes. The very high inequality levels that plague the continent directly influence the development possibilities of its inhabitants and the exercise of their fundamental rights.

The impetus that public actors in the region have given to the implementation of automated decision-making technologies and AI development is based on the belief that these would allow solving all of those issues more quickly or in a better way. In Argentina, Chile, Colombia, Mexico and Uruguay, national artificial intelligence strategies are being developed or are beginning to be implemented, creating road maps that seek to take charge of the possibilities and risks that this type of technology implies for the local context.

However, the first thing that is possible to verify is that there is no complete agreement regarding the definition of artificial intelligence. Some propose that it refers to the ability of a computer to perform tasks commonly associated with intelligent beings; or to the simulation of human intelligence processes by machines, especially computer systems, including learning, reasoning, and self-correction processes; or a technology that makes predictions based on the automatic detection of data patterns.[1]

But regardless of the definition we choose, the truth is: there is still a long way to go in order to be able to effectively refer to forms of artificial intelligence when we talk about the technologies that are being made and implemented in our region. Most of the technological developments that are announced today are more modest, covering in most cases processes of automation in decision-making or assistance to humans[2] through algorithms that simplify the processing of large volumes of information. Even so, the social impli-

1 https://medium.com/@chethankumargn/artificial-intelligence-definition-types-examples-technologies-962ea75c7b9b

2 Sometimes referred to as augmented human intelligence.

cations of this automation are relevant enough to pay careful attention. If our governments prefer to do it under the label of artificial intelligence, either as an aspirational slogan or by technical simplification, this is not an obstacle to examine from the perspective of the public interest the impact of these technologies, which we will generically call automated decision making systems or AI.

Artificial Intelligence For What?

Any use of a technological tool is also an expression of political conceptions about the degree of agency, dignity and equality that people want to be recognized: technologies impact human groups in different ways, according to issues such as gender, color of their skin and their social class, and the way in which these characteristics place them socially. Therefore, within the framework of a democratic system, the adoption of technologies requires transparency for decision makers.

For this reason, the first question that a community should ask itself in front of announcements of "intelligent" systems implementation is about the objectives of this technological deployment. Thus, far from immersing ourselves in a technosolutionism of utopian optimism, dazzled by the capacity of this type of technology, the authorities are obliged to open a democratic debate with the community regarding the aims of the technical solutions. And although the range of options can be wide, they can usually be grouped into two main variants: solutions that seek to address problems of efficiency and effectiveness in the use of public resources, and those that can be used as components to ensure the exercise of rights and the construction of social justice.

The data collected in our countries is a faithful reflection of our political, economic, social and cultural systems. Starting the machine of automated decition making would imply conditioning the future on our past of discrimination and inequality.

The above objectives are not incompatible in any case, but they are different and are not always considered together in public decision-making on the adoption of technology. A critical approach to the implementation of AI solutions is essential to ensure that their capabilities to achieve the proposed objective can be questioned and, in turn, be able to compare it with other existing alternatives regarding their greater or lesser harm to the exercise of fundamental rights whose protection may not have been among the established objectives. Thus, it could be determined, for example, that technological development is more harmful than beneficial and should be replaced by other types of measures.[3]

In our region, the question should not be whether we get on the train of technological enthusiasm and its most recent innovation: AI. The questions that the authorities and the citizens should try to answer are for what, when and in what proportion these technological tools constitute a real contribution to development with social justice and when they simply make up or, worse, amplify the inequality in which they still live mired our societies.

Data Quality

Automated decision-making and future AI developments in our region depend essentially on the existence and availability of a relevant cluster of data with which systems can be fed. The result of the automation processes can be radically different depending on the quality of the data provided.

In Latin America, this is a problem: ours is a continent in which discrimination by gender, race, income level, social status, educational level, age, sexual choice, among many others, is still sadly present in every

3 https://lpeblog.org/2019/11/25/the-second-wave-of-algorithmic-accountability/

daily decision, of the public and private world, and directly impacts the freedom and dignity of its inhabitants. The data collected in our countries is a faithful reflection of our political, economic, social and cultural systems. Starting the machine of the automation of decisions would imply conditioning the future to our past of discrimination and inequality. First, it is imperative to carry out a real and in-depth questioning exercise on how to generate the data that will allow us to meet the social justice objectives that should be drawn for these tools.

In this sense, it is interesting what an initiative like the A Plus Alliance[4] proposes; led by Ciudadanía Inteligente and to which several organizations that work for digital rights in the region have joined. It is an effort that points out the need to critically examine the data from a gender perspective, to ensure that the implementation of algorithmic systems is an opportunity to correct the historical inequality faced by women. We need more initiatives of this kind, that look at the quality of the data as a prerequisite to any development of any tool that honestly pursues social justice objectives, to avoid more mirages of progress in the region.

Ethics Is Not Enough

Having established the objectives of public interest for the implementation of automated decision systems and assuming an adequate approach to the quality of the data used to avoid betraying said objectives, we still need to analyze how to implement such systems from the perspective of the impact on the rights of the citizens whom these measures intend to serve.

Experts from multiple disciplines in the region[5] and outside of it[6] claim for an ethical treatment of AI data, as a way to face the risks that its implementation may have in the affectation of rights. However, those of us who work on the sidewalk for the promotion and protection of fundamental rights believe that ethics is a starting point that does not exhaust or satisfy the current regulatory requirements, such as the international human rights framework, as well as the constitutional guarantees that each country provides to its inhabitants.

The specific protection of such rights calls for regulations that can ensure their effectiveness in the present and also in the future, when the exercise of these rights will increasingly depend on inscrutable systems that will determine access to social protection programs,[7] the resolution of judicial conflicts[8] or the freedom of criminally prosecuted persons.[9] What all these initiatives have in common is that they are control mechanisms for people in vulnerable situations, exposed to interventions that they do not have the capacity to consent to. To impose opaque systems whose decisions limit the rights of people -without giving the affected parties any margin of autonomy regarding their participation, nor the possibility of appealing, claiming and eventually demanding reparations- reinforces and amplifies the injustices that originally produced the situations of vulnerability.

Ethics is not enough, in democratic states where there is a normative commitment to promote and protect human rights, those technologies that fundamentally impact the exercise of civil, political, economic, social and cultural rights, demand regulatory intervention, whatever the creative, multidisciplinary and flexible way in which States can approach this challenge. Innovation, far from being harmed, can be developed in a sustainable framework and provided with adequate economic incentives for integral human development.

---

4 https://aplusalliance.org/
5 See: https://publications.iadb.org/es/la-gestion-etica-de-los-datos
6 https://www.oecd.org/going-digital/ai/principles/
7 "Alerta Niñez" in Chile. http://www.crececontigo.gob.cl/wp-content/uploads/2019/12/OOTT-OLN.pdf
8 Like "Prometea" in Argentina. https://ialab.com.ar/wp-content/uploads/2019/05/prometea_oea-1.pdf
9 Like "Prisma" in Colombia. https://www.elespectador.com/noticias/judicial/prisma-el-programa-de-la-fiscalia-para-predecir-la-reincidencia-criminal-articulo-867214

6 Involved rights beyond privacy

Isn't it enough to deal with the protection of personal data to solve the risks of automation for the exercise of people's rights? More than once we have had to face this question, asked by governments, the technical community, international development organizations, academics, legislators, the press and a long etcetera. And the answer is no. Regulation of personal data is undoubtedly an essential piece for the proper operation of AI, but not the only one.

In our region, Bolivia and Ecuador totally lack legal frameworks for the protection of personal data; Brazil and Paraguay lack independent authorities to ensure adequate compliance with existing regulations; The limitations in their competencies prevent the Colombian authority from adequately supervising public organizations and the Chilean authority from supervising private ones. Not to mention the update level of the prevailing standards in the region: issues such as automated processing of large volumes of data, algorithmic transparency and explainability, human intervention obligations, and algorithmic auditing -among other concepts- are not addressed by local legislation.

All this to say that the statutes of protection of personal data are not suitable to provide a control and supervision framework for the implementation of AI in our region.

Ethics is not enough, in democratic states where there is a normative commitment to promote and protect human rights, those technologies that fundamentally impact the exercise of civil, political, economic, social and cultural rights, demand regulatory intervention, whatever the creative, multidisciplinary and flexible way in which States can approach this challenge.

Now, back to the central point, although a large number of risks involved in the implementation of automated decision-making systems can be addressed from the angle of personal data, due to the individual implications that they bring, many of these risks materialize in limiting the exercise of collective rights, of an economic, social or cultural nature, which impact not one but entire groups of individuals who may be massively discriminated against, watched over and censored by these technologies.[10]

As developed by the Global Information Society Watch 2019,[11] published by the Association for the Progress of Communications (APC), different forms of artificial intelligence or automated decision-making encompass the provision of basic services "*from transportation to health; from agriculture to waste disposal; from surveillance to wellness, and from smart home technology to space exploration. Automated decision making is increasingly used in critical services and in the provision of infrastructure in areas such as employment, housing, access to education, commerce and access to credit, which impacts people's lives in a deep way.*" The implementation of this type of technologies is a way of modeling not only individual behavior, but of complete social and economic interactions, which are intended to be redrawn through them.

Finally, it is worth asking about the role that these technologies can fit to promote the fulfillment of the United Nations Sustainable Development Goals (SDGs),[12] which require that initiatives to end poverty through economic growth address a series of social needs such as education, health, social protection and employment opportunities as a priority; while promoting environmental protection, gender equality and inclusion, in order to reduce inequality.

---

10 Monique Mann y Tobias Matzner, Challenging algorithmic profiling: The limits of data protection and anti-discrimination in responding to emergent discrimination.

11 Available at: https://giswatch.org/sites/default/files/gisw2019_artificial_intelligence.pdf

12 https://www.un.org/sustainabledevelopment/es/sustainable-development-goals/

From the framework provided by international human rights standards, the regulations developed around automated decision-making systems should aim to safeguard human dignity, ensure collective and individual agency, and materialize equity and social justice. In all this, privacy is an essential component that requires urgent updating, but does not exhaust the risk areas generated by these technologies.

How Are Intelligence Strategies Being Developed In Our Region?

Since the creation of its Digital Government Policy,[13] Uruguay pioneered the region in developing an Artificial Intelligence Strategy for Digital Government.[14] Both documents are based on the principle of digital transformation with equity. And it is precisely with that inspiring principle that the process was conducted with great openness, consulting the different social sectors, including companies of different sizes, academia, technical community and civil society. The principles of co-creation and citizen participation previously established in the National Open Government Action Plan were applied, calling for a four-stage[15] public consultation process between April and June 2019.[16] Currently, Uruguay is in the phase of preparing guides and manuals of good practices within the framework of the defined artificial intelligence strategy.

In the other countries of the region that have embarked on the design of artificial intelligence strategies, the process has been more opaque and with a lack of effective participation mechanisms that can guide them towards the multisectoral, multidisciplinary and inclusive debate that they require.

In August 2018, Argentina presented the roadmap for the design of the National Artificial Intelligence Plan,[17] which contemplated a call to various sectors for their participations in work tables by strategic axis and some virtual instances of recommendations development by axis, giving way then to a joint work on recommendations documents, proposed lines of action and objectives, all on a calendar until June 2019. During this time, several conferences have been held that seek to develop local conversations on the subject, with predominant participation from the private sector and academia.

During the month of August 2019 in Chile, the Minister of Science, Technology, Knowledge and Innovation convened a committee of ten experts to support the elaboration of the National Artificial Intelligence Policy that the government intends to present in April 2020. A diagnosis of the country's situation in AI is expected from this committee of experts, as well as proposals in three areas of work: enabling factors; development and adoption of AI and a last field related to ethics, standards, security and regulation of the use of these technologies.[18] The selected experts, of high academic level and international work for the most part, are not representative of an inclusive discussion of Chilean society and there is currently no transparency about how their activities will be developed to incorporate the contribution of different sectors into the work of the committee.

---

13 https://uruguaydigital.gub.uy/wps/wcm/connect/urudigital/6bd54ea6-1207-4cfa-bafb-c859bdac8019/Descargar+Agenda+Digital+2020+%28actualizacion+de+medio+termino%29.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=6bd54ea6-1207-4cfa-bafb-c859bdac8019

14 https://www.gub.uy/agencia-gobierno-electronico-sociedad-informacion-conocimiento/sites/agencia-gobierno-electronico-sociedad-informacion-conocimiento/files/documentos/publicaciones/Estrategia%20IA%20-%20versi%C3%B3n%20espa%C3%B1ol.pdf

15 The stages were as follows:
Stage I: Consultation on general principles that should guide the application of Artificial Intelligence in the State.
Stage II: Systematization and analysis of proposals.
Stage III: Consultation on the Artificial Intelligence Strategy.
Stage IV: Approval of the final Document of Artificial Intelligence Strategy.

16 https://www.gub.uy/agencia-gobierno-electronico-sociedad-informacion-conocimiento/comunicacion/noticias/consulta-publica-inteligencia-artificial-para-el-gobierno-digital

17 https://www.uai.edu.ar/ciiti/2019/buenos-aires/downloads/B1/JA-Plan-Nacional-IA.pdf

18 https://www.gob.cl/noticias/ministerio-de-ciencia-presenta-comite-asesor-del-gobierno-en-inteligencia-artificial/

In Colombia, the development of a digital transformation policy suddenly ended up becoming an AI strategy as well. The document approved in November 2019 contains principles such as the creation of an AI market in the country, the attraction of international talent and international cooperation.[19] The policy was developed within the framework of the "Going Digital" process promoted by the OECD, but the consultation instances developed, with the participation of the private sector, civil society and comments from international institutions, pointed primarily to the aspects of digital transformation -center of the policy in its origin- and not necessarily to the aspects related to AI that were added later.

In Mexico, in March 2018, a road map was announced for an AI strategy in the country.[20] Subsequently, and with a very short period of time that ran from August 15 to September 15, 2108, a national survey was developed.[21] The survey had 1585 participants, 62% men and 37% women, with 50% of the participants located in the State of Mexico. The participation of the social sector was 3%, while that of the government, private initiative and academia represented 92%. Although the survey was positioned as an attempt to "democratize the conversation about AI, awaken the interest of new sectors in the subject and collect the points of view of the citizens in relation to the perception of the impact of new technologies on their daily lives", The brief extension of its term, as well as the participation in it, do not give account of a true inclusive debate of broad sectors of society.

From our perspective, and taking into account the regional experience developed in the construction of National Cybersecurity Strategies,[22] it is essential to ensure broad multi-stakeholder participation processes with knowledge in various disciplines that represent an inclusive spectrum of our societies. This modality allows to incorporate different visions and approaches, as well as to gather all the necessary antecedents so that these policies are elaborated based on the evidence. Multisectoral participation not only makes the processes more open, transparent and democratic, but also has the potential to improve their quality, especially in systemic issues that involve various factors, such as AI strategies.

From Standards to Practical Applications

Strategies and standards are undoubtedly important when drawing the great lines that should inspire public policies. We have already referred to the developing strategies and their shortcomings. As for the standards, although to date there is no set of typologies that have been developed particularly for the region, around the world -and as a result of the efforts of national, public, private, academic and international entities- there are more than 80 bodies of principles, guides or technical standards referred to AI, as reported by international researchers.[23] The recent announcement of UNESCO adds up to their perspectives, seeking to develop a set of principles that represents the United Nations vision on the subject, and for which it will be conducting a series of consultations that began with a meeting in São Paulo, in the which a community of experts from Latin America met this December.

Faced with the proliferation of standards, it is worth asking whether it is worthwhile to put additional effort into the development of more bodies of principles, or if those already developed, illuminated by a progressive interpretation of the international human rights framework are sufficient guidance. From our region, there may be a relevant opportunity to focus on a more practical approach to the subject, taking advantage of everything already debated and the common trends in the principles identified that speak of transparen-

---

19 https://www.mintic.gov.co/portal/604/articles-107147_recurso_1.pdf

20 https://www.gob.mx/mexicodigital/articulos/estrategia-de-inteligencia-artificial-mx-2018

21 https://36dc704c-0d61-4da0-87fa-917581cbce16.filesusr.com/ugd/7be025_9e91bfffeea647a0a663630ea716aa8f.pdf

22 https://www.derechosdigitales.org/wp-content/uploads/ciberseguridad.pdf

23 Jobin, A., Ienca, M. & Vayena, E. The global landscape of AI ethics guidelines. Nat Mach Intell 1, 389–399 (2019) doi: 10.1038/s42256-019-0088-2, https://www.nature.com/articles/s42256-019-0088-2

cy, justice and equity, non-maleficence, responsibility and privacy, which are they repeat through different standards, although with divergence in their interpretation.[24]

From Derechos Digitales we propose an approach focused on the development of impact evaluation systems in the exercise of rights of the technologies of decision-making automation and AI, both from the perspective of public and private decision makers, as well as by agencies of international cooperation that in many cases finance the development of such technologies in the region.

As an organization, in this effort we have been linked to initiatives such as the B-Tech Project,[25] led by the Office of the United Nations High Commissioner for Human Rights, which seeks to improve the quality of implementation of the United Nations Guiding Principles on Business and Human Rights regarding technology industries. Although the work is still in progress, it would benefit from a greater participation of representatives from Latin America, who can contribute to our visions of how the automated decision-making industries and their link with the states are impacting the exercise of rights in our region.

Far from immersing ourselves in a technosolutionist optimism utopia, dazzled by the capacity of these types of technologies, the authorities are obliged to open a democratic debate with the community regarding the aims of the technical solutions.

In this same sense, an initiative that deserves particular attention is the fAIr LAC alliance, led by the Inter-American Development Bank, which brings together representatives of the public, private and civil society sectors to ensure the responsible and widespread adoption of AI in Latin America and the Caribbean.[26] The initiative emphasizes "taking advantage of the benefits of reliable artificial intelligence, which places the citizen at the center of decisions, while identifying their ethical and privacy challenges, and has mechanisms to mitigate them." Although the focus on the ethical treatment of data and privacy considerations falls short for the reasons outlined above, it has enormous potential in creating concrete guidelines for evaluating the design, implementation and monitoring of projects to support the work of the governments in the implementation of automated decision-making systems and AI focused on inclusion and social justice.

Artificial Intelligence from The South

Automated decisions differentially affect the most vulnerable groups, if this is not made visible and expressly fought from the objectives of the implementation of these technologies, it leads to reinforcing processes of social control and precariousness that have been at the base of the construction of many of our societies, both to ensure the dominance of the most privileged social and economic classes, and to facilitate the exploitation of the most vulnerable.

Although the international human rights framework is not enough to face social justice issues, it is still a tool capable of controlling technological implementations that serve human development with agency and dignity, to the extent that the collective dimensions of human rights -and not only the individual ones- are highlighted, as well as the value of economic, social, cultural and environmental rights as part of a unique and interconnected system of equal value rights for the development of a democracy with social justice in our region.

---

24 Jobin, A., Ienca, M. & Vayena, E. Op. Cit.

25 https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx

26 https://www.iadb.org/es/fairlac

The promise of technology is the improvement of our lives, and it can be of tremendous value to our region. Unlocking that value for inclusion and social justice depends on putting those objectives as central in the road map and not using limited substitutes such as the ethical treatment of data. Technological developments and deployments should not result in new forms of discrimination, which with efficiency or effectiveness as a flag deepen other inequalities as collateral damage that we must assume in favor of a supposed greater good represented by progress.

A diverse democratic debate on the implementation of technologies and a practical approach to fundamental rights from the creation of impact assessment systems in the design, implementation, and monitoring of AI projects is the most concrete way to put these technologies at the service of reducing the inequality and inclusion gaps that still prevail in our region.


DERECHOS
DIGITALES
América Latina