Inteligencia
artificial
e inclusión
en América Latina

FINAL CONSIDERATIONS AND RECOMMENDATIONS IN THE
COMPARATIVE REPORT

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DIGITALES
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The technological deployments considered in the study, beyond the specific label with which they are qualified, imply the inclusion of a new layer of complexity in the exercise of public function - an exercise, in this case, machine-based - that must be publicly monitored. This not only in reference to the principle of transparency in the exercise of public function but, mainly, because the installation of technologies such as those analyzed here suppose an orientation of efficiency with respect to public management that must be verified in practice and, and even verified its efficiency, it can never serve as a justification for the violation of rights. Rather, public scrutiny is required to anticipate that violation, rather than face its consequences.

In this way, we are witnessing a new mechanism that could widen the existing democratic legitimacy gap in the region, where active transparency procedures are often deficient, and instances of citizen participation are not the norm either. This additional layer of data processing poses a series of adaptation and training challenges for the state officials in charge of conducting the programs; in the cases analyzed, there is no further reflection on how to empower such officials in their role with the inclusion of this type of systems. It is verifiable a lack of institutional preparation at various levels regarding the challenges involved in the inclusion of technologies such as those considered.

The institutional capacity of the countries of the region can also be called into question regarding the relative enthusiasm for adopting this type of technology, as can be seen in the cases analyzed. Particularly relevant here is what is indicated regarding the existence of personal data protection regulations and the existence of an independent control authority with the necessary capacities for supervision and protection in the matter, without prejudice to the other hierarchical or political controls over the institutions that operate the systems. However, the institutional framework can also be challenged by contingent factors. In their absence, incapacity or lack of sufficient powers, the effective exercise of rights in the case of violations

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1   This document was originally published in Spanish and included in "Decisiones automatizadas en la función pública en América Latina", a comparative report by Jamila Venturini and Patricio Velasco analyzing the first four case studies published in https://ia.derechosdgitales.org/. A full English translation of the report will be available soon. The Spanish version of the report is available here: https://ia.derechosdigitales.org/wp-content/uploads/2021/03/CPC_informeComparado.pdf

resulting from the intervention of systems implemented by the State depends on the access to other justice mechanisms by the affected populations, as well as the preparation of the different actors that operate in the administrative and judicial systems to deal with the complexities of this type of situation. It is important, then, to have counterbalance mechanisms that ensure the possibility of exercising positively the granted rights in an appropriate way. This also makes the carry out of processes to anticipate these risks particularly relevant: an impact of rights assessment.

Additionally, initiatives such as those reviewed raise an important alert regarding the scope and limits of informed consent to the use and processing of data by state institutions, where that consent is taken as the basis of legitimacy for the processing of information through more advanced systems. In here it is important to safeguard the principle of purpose limitation and relevance of the data collected, an issue that may eventually be challenged regarding the configuration mode of systems such as Childhood Alert. In contrast, using imprecise legal authorizations for the processing of personal data would provide a formal legality, but they will show inadequate for the effective protection of rights, and perhaps insufficient as a legitimate expression of the democratic will on the State's margins of action on personal information.

We cannot skip the question regarding the political economy of the implemented systems and their articulation with the state function. We aim here to question the influence that private companies - such as Microsoft - acquire in the public function, particularly in the intermediation work that links technological devices with the plans and policies designed by governments. By the way, it is not that the inclusion of private parties is in itself problematic, but it may be when there are no diagnostic, participation, evaluation and audit processes contemplated by the various stakeholders from the design of the initiatives and even after their implementation.

Another relevant element to take into consideration is related to the temptation of branding technologies such as artificial intelligence applications. This is especially significant in the case of PretorIA, where the name itself states a function that for the moment has little to do with the technological device implemented. The public communication processes around these technologies and their installation need to be truthful and precise, both for the purposes of social expectations related to their implementation, as well as the potential conflicts that may arise from it.

Finally, it is important to consider the results of a recent study carried out in the region with a focus on the use of technologies and their role in the public function. As Gómez et al. Point out: "more than 70% of the respondents do not know an example of an implemented use case of AI serving the social good". This provides clear signals of the need to better articulate the relationship between public policies that include technological solutions and the different social actors that are directly or indirectly affected by this type of technologies.

The aforementioned considerations must be understood in a context of growing public discussion about the implementation of new technologies and, in particular, their role in the exercise of public function. The foregoing is verified in the context of an increase in the concern of the countries of the region to develop strategies or ethical guidelines for the implementation of Artificial Intelligence technologies. However, "despite increasing ethical frameworks, AI systems continue to be rapidly deployed in a set of subjects of considerable social relevance - such as health, education, employment, criminal justice systems and many others - without

appropriate guarantees or structures of accountability ". In this sense, recent studies carried out in the region have highlighted the importance of developing government infrastructure, ensuring transparency and accountability, and the importance of risk assessment mechanisms prior to the implementation of automated systems.

In the above context, and without obstructing the future production of specific public policy recommendations for the implementation of technological systems, it is possible to point out two large groups of recommendations based on the information collected in the four cases. On the one hand, there is the fundamental question regarding the governance of technologies, considering here both technological systems and the data they require for their operation and the articulation of public and private agents in the provision of public services; on the other hand, it is also necessary to point to the role of these technologies in the democratic deficit in the region with regard to the design and execution of plans and public policies.

In relation to technological governance, it is possible to distinguish several dimensions of the problem. In the first place, the legal and institutional system that enable the installation of the technologies is considered, in this sense, the existence of an updated regulation - which considers, for example, the distinction between the handling and processing of personal data – results a fundamental element; but the regulations must be complemented by the existence of autonomous public agencies for the protection of personal data, which are not subject to contingent pressure from the government and thus enable an institutional framework where citizens can find reliable responses to eventual abuses in the exercise of your fundamental rights through the use of their personal data. Second, it is important to favor the development of policies that have participation, evaluation and auditing mechanisms that enable citizens to exercise their rights and allow the creation of the conditions for enabling a legitimate state action.

Precisely in line with the question of legitimacy of the state action, it is necessary to address the issue of new technologies and their ability to make the exercise of public function (even more) non-transparent. Citizen participation, evaluation and even audits are central mechanisms for this purpose, from the point of view that they allow enriching the design of programs (and technologies) but, above all, they allow to make visible that the installation of technological devices is not a process that happens unproblematically. All technological deployment takes place in a space of political tensions, where the danger is to pretend that the systems considered can obviate, hide or mitigate such tensions without any mediation other than the very assumption of efficiency that sustains them. In a word: digital technocracy is not enough, neither to protect the human rights of citizens, nor - much less - to claim legitimacy for the state action.

Faced with the permanent development of new technologies, it is imperative to have a common normative horizon of reference, which enables, guides and limits the actions of the various actors involved - from citizens to private companies and, above all, the State. Latonero formulates it appropriately: "for AI to benefit the common good, at least its design and implementation should avoid violating fundamental human values. Human rights offer a robust and comprehensive formulation of these values ".