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RE-BALANCING POWER TO ENSURE DIGITAL RIGHTS IN THE GLOBAL SOUTH

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Technology policy like any other field of policy is an exercise of power dynamics by different stakeholders that is far from neutral about ideas of order and society building. The policies involved in the development and deployment of technologies and the norms that guide them demonstrate the influence of geopolitical tensions on the lens of what constitutes roles in production, control, and benefit between the Global South and Global North stakeholders.

This essay calls attention to a few areas in technology policy that could benefit from new ways of engagement to re-balance the relationship between north and south and ensure the protection of digital rights across the globe. "Global South" here refers to any stakeholder coming from less developed countries, in majority, but not exclusively, located in the southern hemisphere. Some academics have proposed a shift in the language to reflect that most inhabitants of our planet are located in those jurisdictions.[1]

DATA FLOWS FROM THE GLOBAL SOUTH, BUT WHO CONTROLS THE TECHNOLOGY?

The collection and use of data has a political economy behind it. The narrative of trusted frames for facilitating data flow so often present in trade negotiations, in the Organisation for Economic Co-operation and Development (OECD) strategies, and in World Economic Forum (WEF) work is carefully crafted to ensure the extraction of economic value on data as key elements for innovation, economic growth, and development.

Personal data is intrinsically linked to self-determination and to human dignity. But nowadays, personal data is used extensively for the personalization of products, information access, and experiences. Personalization is not only a driver of our consumer behavior, but also the filter of our perception of the world around us that contributes to the creation of our social and political views. And personalization will become increasingly important as we move toward connected bodies and spaces, like medical and wellbeing devices, smart cities and homes, and AR and VR social engagement spaces.

A fully personalized environment thanks to the data collected about human experiences poses important questions around autonomy and the rules of subtle manipulation. Heretofore, the control of the collection and use of personal data during the digital age has been concentrated in private companies predominantly from

the Global North that have created and control the technologies through which data is collected and economically exploited as the base of their business model, a sector referred to as "surveillance capitalism."[2]

As pointed out by IT for Change, the Global South represents a major source of the human-generated data. Yet, the societies of the Global South feeding the international data flow have not received equitable economic benefits and meaningful protections from powerful platforms and tools largely controlled by corporations based in the Global North.[3]

To illustrate this trend, let us take as study case AI systems' development and deployment.[4] The proliferation of AI systems in the Global South have taken place under business models of development preferentially exploited by companies from the Global North. The strong asymmetry in data governance between developed countries and the Global South represents a central political and economic challenge because developing countries are generators of data, but not producers of solutions nor able to effectively police a use of data respectful of human rights.

The political economy appears clearly here when many governments from the Global South fell into the trap of the technology race. In Latin America, for example, several countries have proposed national AI strategies to position themselves as leaders in the region,[5] but they have lost sight of how implementations might impact on quality of life and exercise of rights of their citizens, particularly vulnerable groups.[6]

Visions most often focus on the economic value of the implementation of AI and reference the concepts of digital transformation and the fourth industrial revolution borrowed from the WEF and the OECD. This is how the States appear as the facilitators of a market and primary clients for AI systems. Rather than mapping societal needs that could effectively be addressed using technology, their efforts start with mapping the industry and the employment capacities and infrastructure necessary to create a local AI market. Little attention paid to enhancing regulatory capabilities or readiness assessments of institutional frameworks.

This trend is fed and welcomed by technology providers in the Global North who are eager and able to offer their technologies in these emerging markets and reap the benefits of huge contracts and the feedback loops of knowledge for improving their technologies through a massive collection of data under limited or inexistent regulatory oversight.

What many refer to as the "AI gap" describes how those who have the ability to design and implement AI applications configure a technological development that is opaque to the majority of citizens. Gasser and Almeida propose a model to address the governance of AI based on the consideration of three challenges: informational asymmetries; the need and difficulty of generating a normative consensus; and the governance mechanisms.[7]

"Information asymmetries" refers to the concentration of knowledge about the basic technologies that support AI in a few experts, most often residing in the Global North. The consequence of this concentration of expertise is a relevant gap between users, decision-makers, and technology developers/owners.

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A primary objective of a governance system should therefore be to develop mechanisms that promote a more widespread understanding of AI and its applications in society.

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The second challenge, namely reaching a normative consensus, highlights not only the risks and challenges of AI, but also its potential benefits for humanity, including the sustainable development goals (SDGs). In this sense, a future AI governance model should address the current preparation of regulatory frameworks, the expectations of different sectors, and the interoperability between frameworks.

To ensure that the societies of the Global South countries can benefit from technology in a more balanced way, we must urgently reframe the socio-political component of its deployment. More should be done in terms of national capacities that incorporate data infrastructure, data commons access, competencies for the management of

data, and regulation to ensure technology deployment consistent with the exercise of human rights. This last point requires considering as pre-requisite of emerging technologies' deployment by implementing basic regulations for the protection of personal data, open data collection, and non-discrimination.

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To better balance the benefits with the risks of technology deployment, governance mechanisms should be part of the roadmap of technology deployment in the Global South.

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This critically includes a more participative approach and the engagement of those who control the technology, whether private or public actors, with the communities that will be impacted by the technology. The UN Guiding Principles on Business and Human Rights (UNGP) provide an interesting opportunity to anchor this business responsibility approach for technology provision within the framework of human rights protection, respect, and remedy.

This strategy aims not to undermine the value of the contribution from the private sector that predominantly holds the power on technology development today. It looks at re-balancing the current relationship with a geopolitical perspective that allows for a fairer distribution of the benefits of technology, respects the human rights of the populations of the Global South, and departs from the current dynamic of treating the region as a field for experimentation on human subjects without their informed consent.

WHAT IS THE ROLE OF INTERNATIONAL COOPERATION IN THE PROMOTION OF HUMAN DEVELOPMENT THROUGH TECHNOLOGY?

Even when cooperation is motivated by altruistic values to collaborate with the leapfrogging of developing countries in the Global South, usually with the tagline "technology for good", developed countries and their companies set the priorities, including the model for economic development. Cooperation should find a way to better connect and provide technical support to allow developing countries to define the role of the cooperation with their own strategies, including their poverty reduction and SDGs accomplishing strategies.

Civil society groups have witnessed with concern over recent years many such initiatives as biometric identification systems, predictive criminal systems, electronic voting, facial recognition in public spaces and borders, digital welfare, digital health that are promoted and financed through international cooperation. These initiatives stimulate the development and incorporation of technologies in public policy to improve a state's efficiency without a comprehensive assessment of their impact on the exercise of such human rights as privacy, freedom of expression, the right to peaceful assembly, and the right not to be discriminated against.

The private sector often holds a relevant interest in the cooperation programs to advance in the opening of new markets for their technologies. In these cases, the relationship with international cooperation bodies and their efforts should be a lot more transparent about how technical cooperation engagement with private companies take place and how this engagement influences their decision-making process about the promotion of specific technologies as part of these cooperation programs. Responsible cooperation aligned with SDGs requires that investment decision-making in the development and implementation of such technologies be transparent, participatory, and supported by evidence supported as much as possible to ensure their legitimacy and consistency with democratic values.[8] More attention should be given to the implementation of effective multi-stakeholder participation in any international cooperation engagement in order to balance the influence

of private sector in the international cooperation decision-making processes.

A particularly useful study case to illustrate the role of international cooperation in technology deployment in the Global South is the implementation of digital identity systems. Most of the initiatives are portrayed as an opportunity for the achievement of social and economic rights through digital government services like welfare, health, and public safety. The World Bank's Identification for Development (ID4D) initiative has globally championed and financially supported a digital ID model driving consensus toward an 'identification for development' concept. As has been extensively reported by the Center for Human Rights and Global Justice of the New York University School of Law,[9] the popularity of these systems in the Global South reflects the expectation that they can contribute to inclusive and sustainable development and the realization of human rights. But the ID systems that the World Bank supports are heavily infused with a 'transactional' or 'economic' identity approach. Behind them lay the promise of a 'single window' that will allow each individual to transact with both government and private sector actors, improving access to public and private services, and therefore creating digital economies and fueling economic growth. More often than not, these systems are inadequately equipped to deal with difficult questions about the legal status of marginalized or vulnerable groups and their access to the system. Digital ID systems deployed under this paradigm exacerbate pre-existing forms of exclusion and discrimination in public and private services:

"The use of new technologies may lead to new forms of harm, including biometric exclusion, discrimination, and the many harms associated with surveillance capitalism. Meanwhile, the promised benefits of such systems have not been convincingly proven."[10]
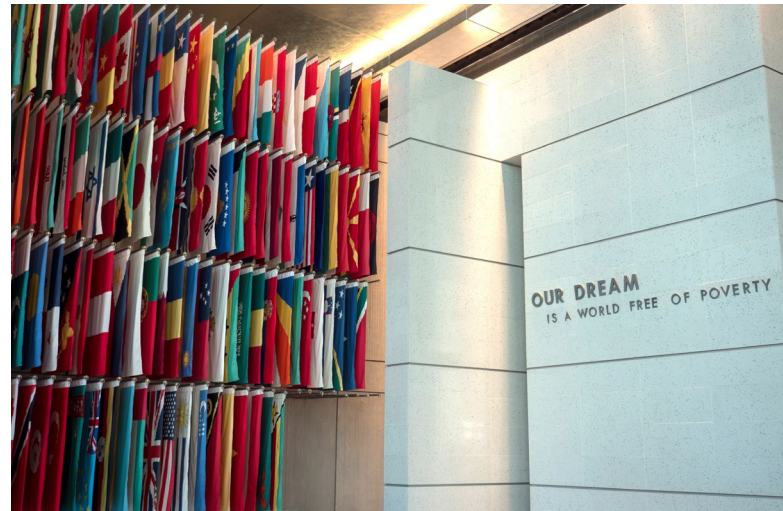
As this landmark example demonstrates, international cooperation has been key to stimulating the creation of a market for technologies around the globe, but it could play an even more fundamental role in ensuring the provision of transparent and democratic technologies that are committed to respect human rights. Thus, investment in technologies must be accompanied by requirements that public and private entities that are recipients of international cooperation funds define clear and specific regulatory frameworks for the conditions of use of such technologies in a manner compatible with the exercise of human rights and go beyond the minimum legal requirement in some countries with less regulatory development in these matters to ensure that mechanisms of independent control, transparency, and accountability to citizens impacted are in place for those technologies.

Guidelines for the development of selection criteria for technology providers that conform to a standard of probity and unrestricted commitment to human rights could also be formulated from the mechanisms of international cooperation. A human rights impact assessment requirement as pre-requisite for funding and support from international cooperation entities for technology deployment projects would advance this goal.

Last but not least, there is a relevant role for international cooperation in the mainstreaming of gender intersectional considerations in the promotion of technology deployment. Technology deployment has insufficiently focused their design and evaluation on the differential impacts that they can have on marginalized and vulnerable populations. The predominant business models do not account sufficiently for gender equality and the needs

of special protection groups, so any technological implementation made under using this same logic of implementations will fail to properly account for a gender intersectional approach.[11]

The core of the international cooperation mission should be evaluation of the differential impacts and risks to traditionally marginalized or vulnerable groups, among them women and gender diverse populations, in the deployment of data-driven technology implementations. Why is this particularly relevant in re-balancing power to ensure exercise of human rights in the Global South? Because structural inequalities related to gender and their intersectional implications are part of the institutional challenges that the countries of the Global South countries are attempting to be address with the use of technology. To succeed in that goal rather than risk replicating and escalating gender inequality, technology deployment promoted by the international cooperation needs to put gender at the center.

WHO PARTICIPATES IN THE SETTING OF GLOBAL NORMS AND THE OVERSIGHT OF THE PROMOTION OF HUMAN-RIGHTS-RESPECTING TECHNOLOGIES?

When we observe the current global regulatory trends, we identify a flourishing enthusiasm in technology regulation that is far from the hands-off approach that characterized the emergence of those technologies. This approach is still rather geographically fragmented, and jurisdictions in the Global North are considerably more nuanced in their analysis.

There is no absence of agreement, however, on the core human values in current human rights international instruments that are equally applicable to new and emerging technologies. The balancing test of legality, necessity, and proportionality that have been part of the international human rights standards developed over the last fifty years can continue to be a useful tool to measure and weigh the pertinence of new and emerging technologies.

Emphasis on innovation has tinted the discussion about global technology regulations with the perception that the problem must be addressed from ethics or regulatory sandboxes. Ethical considerations will be always helpful as complements and best practices, but the impact of technology deployment on rights should move the norms setting discussion to how to better implement protections rather than assuming the absence of protection of human rights in face of technology uses.

Although the Global South continuously struggles to ensure the effective exercise of human rights, there is no shortage of recognition for international instruments that protect them. To uncouple the conversation about technology regulation from those already well-established standards and present it as an entire new field risks limiting the debate to technical and economic aspects. We ought not exclude proper consideration for a human impact approach when identifying the risks to and opportunities for human rights at the core of the regulation. It also implies limiting the discussion to technology experts and excluding the rich experiences of human rights institutions and human rights defenders
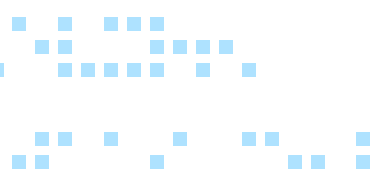
who play a fundamental role in promoting the rights of traditionally marginalized or vulnerable groups in the Global South.

In recent years, an effective way to operationalize human rights international rules has gained traction by promoting human rights due diligence throughout the entire life cycle of new and emerging technologies. There are currently no consistent practices among public or private entities to conduct human rights impact assessments as part of the design and deployment of technologies. But there is a fundamental opportunity to leverage the last ten years' experience and the normative force of the UNGP to look for ways to strengthen their implementation and create mechanisms of enforcement.

As pointed out in the first section of this essay, the control of technology rests primarily with those who build it in the Global North. Consequently, they have built the rules of use of for those technologies usually clamoring for the exclusion of state action, and in this way disputing (or even eroding) its institutional power.[12] Global south actors have been doubly absent from this process: they are not producers of technology, do not have the capacity or willingness to regulate technologies, and are always afraid of the negative impact of their regulatory action on innovation and economic development.

Today, the significant number of Global North countries and regional blocks start to be active in technology regulation, and this raises a question about the role of Global South actors will take, whether they be governments, companies, or civil society in general, in the creation of rules that will have global impact. The "Brussels effect,"[13] a term coined to describe the expansive impact of the regulatory action of the EU beyond European countries, proposes that such recent EU regulations as the Digital Market Act (DMA), the Digital Service Act (DSA) and the Artificial Intelligence Act (AI Act) will influence how technology companies function. How will those regulations impact regulations in global south markets?[14] On the same line, those regulations are a source of inspiration and sometimes even boilerplate for other governments.

Elsewhere, we see international bodies sprinting to provide regulatory guidance for the extended world, with differential consequences for Global South actors more willing and more reliant on expert advice given their capacity shortage in some of these complex issues. Here, we can take as a study case the most recent UNESCO proposal to develop a "Guidance for regulating digital platforms."[15]

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The goal is laudable: provide guidance to Member States' regulatory efforts and ensure regulatory coherence. This objective, however, can be better fulfilled through principles that can be implemented in a flexible way to adapt to the normative and institutional conditions of the countries in which they will be implemented.

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The vocation for universality of the proposal places restrictions ob the institutional capacity of the states. The different normative traditions for the protection of freedom of expression must be respected in the development of the proposed regulation.

The process was supported at the beginning by a handful of experts who were closely selected to advice. Broader information for meaningful engagement of multi-stakeholders' groups and experts from the Global South only occurred at the later stages. Regrettably, this is only one example among many of how the engagement of Global South multi-stakeholder actors, particularly civil society, in technology global norm setting seems an afterthought rather than priority for international bodies. This at the forefront of concerns today when new international oversight bodies to oversight artificial intelligence are under discussion.[16] Whatever the form of international governance taken forward, it is imperative that it is not shaped not only by Global North leadership, but also by the active engagement of the societies in which AI is being promoted by companies and economic development institutions as tools to help to overcome structural inequalities, improve access to services, and provide economic development. Deployed without a thorough social diagnosis of where and

how AI can be a concrete and efficient contribution to achieving those goals and avoid risks for the exercise of human rights is crucial.

Finally, a much less attended but equally salient issue in ensuring the respect of digital rights is how Global South actors can participate in or build their own mechanisms for the oversight of technology regulation arising at global level. This leads us to explore how the compliance with human rights of private companies' commitments that come from their own policies can be enforced from the perspective of global south actors through such mechanisms as transparency reports, voluntary external auditing, independent voluntary oversight,[17] and multistakeholder accountability mechanisms.[18] It is also worth asking what the role of Global South users in the enforcement of the legal standards created elsewhere to avoid discrimination in the provision of services by global companies could be. Agustina del Campo has argued that oversight should be at the center stage of technology regulatory debates for three reasons:

"1) it forces us to think and clearly state the objectives of the regulation (what we want to see happening and why);
2) it allows us to test the means to our ends;
3) it helps clarify the trade-offs that the substantive regulation proposes."[19]

Applying this proposed structure to the Global South regulatory efforts could be a mindful strategy to allocate always scarce resources.

There is no shortage of challenges to identifying oversight mechanisms to ensure the respect of human rights in the use of technology that will be effective for the Global South. Probably the thorniest problem is the legitimacy of voluntary mechanisms, whether they are designed by self-regulation from private companies or as part of the co-regulatory efforts from states. In all cases, ensuring independence seems as critical as ensuring the resources for their effectiveness. Another relevant issue is the interaction of this mechanism with local judicial enforcement and the supervision of cross-jurisdictional behaviors across legal traditions and institutional realities.

To address all these challenges, a robust participation of stakeholders from the Global South is necessary at early stage in the design of regulatory frameworks with the potential for global influence. Since there are not many governments, civil society organizations, research institutions, or even companies from the Global South with the financial and human resources to run research programs on tech regulation or engage effectively in regulatory process happening at global level, there is an increased need to invest in the full spectrum of skills needed to support a global south participation that can be independent and effective in representing the diversity of stakeholder visions.

CONCLUSION

The increasing role that technology plays in every aspect of social interaction makes democracy and the rule of law heavily dependent on the ability of the Global South's citizens to ensure the legitimacy of technology deployments that impact the exercise of their rights and shape their present and future development.

This is a rather socio-political debate that requires that how private corporation design technologies, how international cooperation promotes technologies, and how technology norms are set take into consideration the specific needs of the Global South populations, the diversity of their institutional and legal frameworks, and their cultural differences to frame technologies such that they ensure the exercise of human rights and break free from a colonialist pattern.

The Global South should no longer be regarded as the field of experimentation and a data source and participate in a more globally balanced technology policy shaped to deliver the technological benefits and avoid worsening local and geopolitical inequalities.
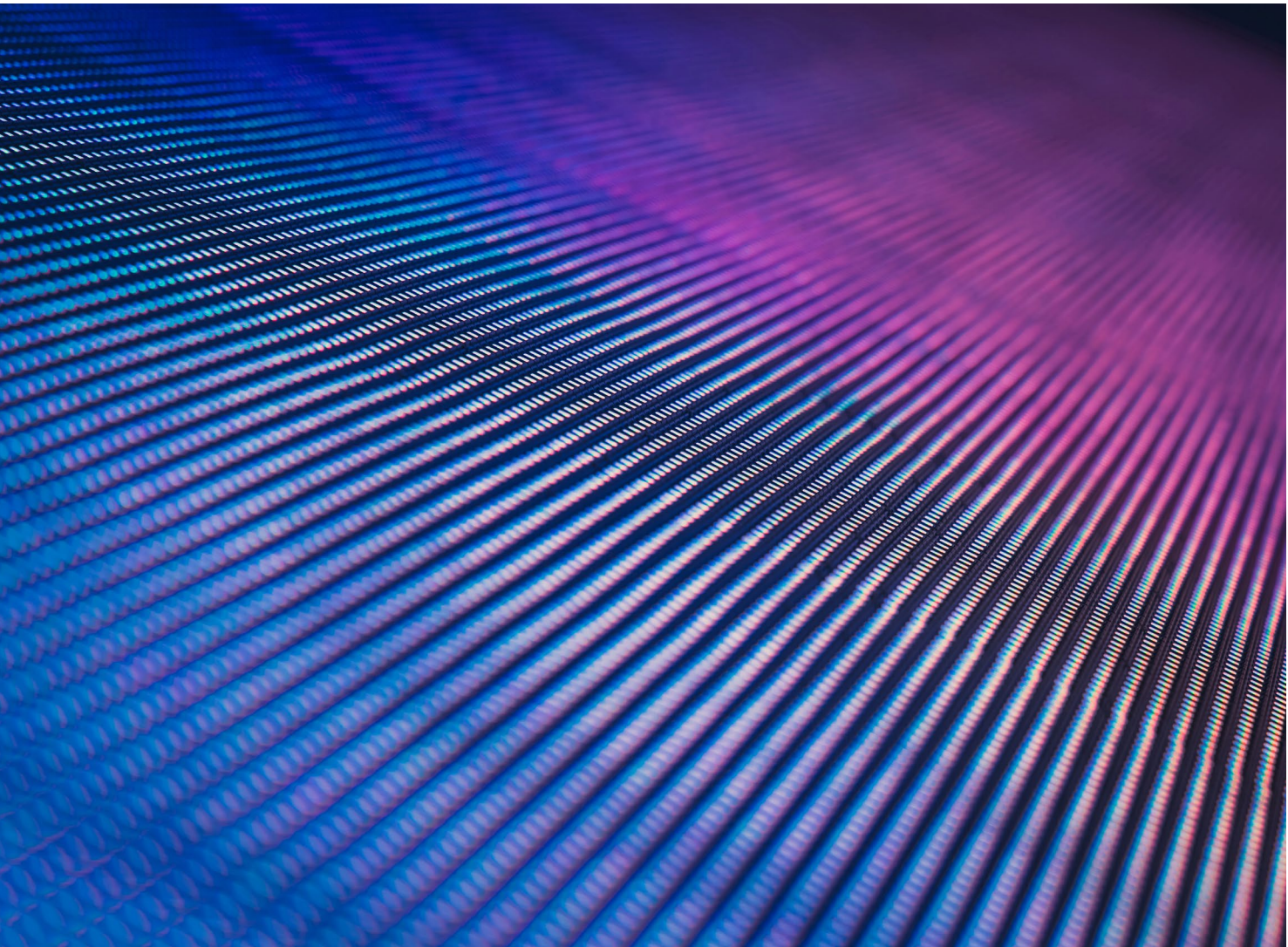
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