

Constitutional Rights, Human Rights and Information and Communication Technologies in Ecuador

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Abstract

The study analyses constitutional rights, human rights and information and communication technologies (ICTs) in Ecuador. The challenges of equitable access to technologies and the protection of human rights in the digital environment are key to economic and social growth in the country. The study addresses the Ecuadorian legal framework - Constitution of 2008 - recognising internet access as a human right and establishes principles and norms to guarantee this right. It considers international treaties and conventions, such as the United Nations (UN) human rights declarations, which have an impact on the promotion and protection of rights in the digital sphere. The research was of the documentary type with a qualitative approach. The results showed that legislation is lagging behind in comparison to technological progress, deficient access, coverage and technological illiteracy that violates constitutional rights in Ecuador. It is concluded that there is a disparity between human rights legislation on digital vulnerability and the asymmetric advance of ICTs, and suggests the need for public policies that promote the democratisation of technological access, protection of online rights and digital technologies.

Keywords: *Constitutional Rights; Human Rights; Information and Communication Technology; ICTs.*

INTRODUCTION

Information and communication technologies (ICTs) have transformed the way people interact with and access information around the world. In Ecuador, constitutional rights and human rights are protected by the 2008 Constitution, which recognizes the importance of ICTs as tools for development and democracy. However, despite these advances, there are significant challenges in the effective implementation of these rights in the digital context. To better understand this issue, this study analyzes the relationship between constitutional rights, human rights and ICTs in Ecuador. Key variables related to ICT access, personal data protection, privacy and freedom of expression are addressed. In this sense, it should be noted that since the end of the 20th century – a term used to refer to the end of one era and the beginning of another, and suggests a period of transition and change – generalized technological changes have taken place, highlighting the exponential process of Information and Communication Technologies (ICT), due to their competence to generate an interface between fields of technology through universal digital language where information follows an inexhaustible spiral whose The transition

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brings with it an increasingly digital world that translates into a transformation of the material base of the society it connects; even, to economies on a planetary scale, the advent of the network society, a kind of unstoppable interdependence, which fosters new relations between economy, society and the State (Castells, 2000). In these new realities, social changes in the new relations of work, markets, organizations, contracts, education, production, communication, health, property, sciences, among others, are accepted.

From these perspectives, ICTs require responses from the field of legal sciences as they are related to fundamental rights, hence the tendency from constitutional law to assume access to ICTs as a fundamental right (Miranda, 2021). This approach has spread internationally, with bodies such as the United Nations (UN) and the Inter-American Commission on Human Rights (IACHR) recognizing access to ICTs as a human right. This has led to a multi-level protection of this fundamental right, which means that its protection falls not only within the competence of constitutional law, but also of Community law. In the macro context, the multilevel protection of digital rights is examined, including their recognition at the supranational level by organizations such as the United Nations (UN) and the Inter-American Commission on Human Rights (IACHR). It also analyzes the challenges faced by the country in promoting universal access to ICTs and reducing the digital divide. In this order of ideas, these aspects generate a multilevel protection of this fundamental right; That is to say, what is referred to is the competence of constitutional law where fundamental rights and freedoms are addressed, in addition to the challenge of the contemporary pluralist order to ensure the constitutional guarantee, so that what is relevant is not only the foundation from constitutional law, but also its protection.

Despite the fact that ICTs have produced great benefits, such as improvements in labor productivity, real-time connections, expansion of markets and global communication – understanding that not all people have access to ICTs – which generates asymmetries and digital divides that especially affect disadvantaged sectors. According to Contreras, R. (2021) only 80% of people in developed countries have access to the internet, but this percentage is much lower in developing countries, such as Latin America, where only 41% of the population uses it. In addition, the low demand for internet in Latin America is due to various factors, such as lack of education, geographic location (urban and rural), gender, poverty, and school age at home, as well as the effectiveness of public policies that promote connectivity.

Contemporary analysts, such as Ramírez & Cabero, 2015, have also highlighted the importance of addressing digital divides to ensure a more inclusive and equitable society. These authors propose that, in order to reduce these gaps, public policies and educational programs must be implemented that promote digital literacy and technological inclusion in disadvantaged sectors. Likewise, (Ospina, 2019), it points out that the lack of access to ICTs can also affect the exercise of fundamental rights, such as freedom of expression and citizen participation, which underlines the importance of ensuring universal access to these technologies. However, from the national context (Ecuador) great efforts are being made to address challenges that the most vulnerable sectors of society constantly face, such as lack of access to ICTs, online discrimination and censorship of citizen participation; consequently, the need to consider appropriate public policies to protect online rights and ensure access to ICTs.

Ecuador's National Institute of Statistics and Census (INEC) has released more recent data confirming that there is still a significant gap in internet access between rural and urban areas of the country. According to INEC's 2021 report, internet access in households in rural areas is 38.9%, indicating that access has improved compared to 34.7% recorded in 2020, but there is still a significant gap compared to urban areas. In addition, the INEC report also shows that mobile internet access has increased across the country, but many people still lack access to high-speed internet and broadband services. Lack of access to the internet can have a negative impact on education, health,

employment, and participation in society, making it a major concern for the country's development. (ENEMDU 2013-2017).

Under the above perspective, the objective of this research was to analyze access to the internet as a human right, within the precepts of the constitutionality block, as well as the human rights enshrined in the United Nations, contrasted with the reality of the new information and communication technologies in Ecuador. It should be noted that the importance of this study is to address the problem between the constitutional rights of vulnerable people and the advancement of ICTs, to conclude with recommendations or contributions that promote public policies, in order to educate the degree of fragility of the constitutional rights of vulnerable people. by delving into the barriers that delay symmetrical access to ICTs and their possible solutions, with a consequent impact on areas of education, work, health, commerce, industry, among others.

METHOD

The rationale of this study is based on the exploration and description of the relationship between constitutional rights, human rights and information and communication technologies (ICTs) in Ecuador. To this end, a qualitative and interpretative approach has been adopted, systematically analysing each of the dimensions addressed. The study is non-experimental, since the author does not manipulate any of the variables or dimensions of the study; instead, they are described and interpreted based on the subject matter in the field of constitutional, human rights and ICTs. A documentary and bibliographic review has been carried out, which has generated key sources for discussion of interest.

Following the systematics that every scientific method must apply in the development of a research process, the interpretation of variables has been consolidated, adding meaning to the knowledge about the reality treated. In this way, the author descriptively breaks down all the strategic aspects found in the regulatory frameworks related to constitutional and human rights and information and communication technologies (ICTs) in Ecuador. In this sense, the author complied with stages of identification and selection of documentary and bibliographic sources relevant to the topic of study; systematic analysis of the selected sources was carried out, identifying the most relevant regulatory frameworks in terms of constitutional law, human rights and ICTs in Ecuador; Subsequently, the strategic aspects found in the regulatory frameworks related to the subject of study were described and interpreted; so that the integration of the information collected was finally carried out, generating a coherent and significant knowledge about the relationship between constitutional and human rights and ICTs in Ecuador.

RESULTS

Constitutional Rights

The Constitution as the supreme norm in the Ecuadorian legal system, went from the concept of the Rule of Law to the Rule of Law in force since 2008, which produced a transcendental change in which the rights of individuals prevail, taking into account that human rights can prevail even over the Constitution.

In the context of technology, and in particular in relation to access to technology, constitutional law should focus not only on the determination of rights, but also on ensuring their protection. As Martínez, F. (2013, p. 331) points out, it is essential to evaluate both the possibilities and the risks involved in technological advancement. In its role as a legitimizing and organizing law of public power, constitutional law must lead the evaluation of the risks and opportunities presented by new technologies in its area of study, and be proactive in the search for solutions to address the new problems and

challenges that arise. That is why it is essential that constitutional law assumes a relevant role in the protection of digital rights and in the promotion of universal access to technology.

The Constitution of the Republic of Ecuador (CRDE) of 2008 also clearly differentiates between hierarchy and application and establishes that the Constitution is the hierarchically superior norm, followed by international treaties. In this order, "The Constitution is the supreme norm and prevails over any other in the legal system. The rules and acts of the public authority must be in conformity with the provisions of the Constitution; otherwise, they will lack legal effect" (CRDE, Art. 424, 2008), establishing the meaning of the corresponding priority by indicating that "the hierarchical order of application of the rules shall be as follows: The Constitution; international treaties and conventions [...]" (CRDE, Art. 425, 2008).

Similarly, the preferential application of certain international human rights treaties determines that "the Constitution and international human rights treaties ratified by the State that recognize rights more favorable to those contained in the Constitution shall prevail over any other legal norm or act of public power" (CRDE, Art. 424, para. 2, 2008). It would make no sense to understand that the explicit reference to the Constitution in this second paragraph of Article 424 excludes the preferential application of international human rights treaties that establish more favorable rights for citizens, because it refers to rights more favorable to those contained in the Constitution."

In this way, constitutional norms are preferentially applied in this context, an assumption supported by the criteria of interpretation that indicate: "In case of doubt, constitutional norms shall be interpreted in the sense that most favors the full exercise of rights and that best respects the will of the constituent" (CRDE, Art. 427, 2008). In addition, direct application is expressed as: "When a judge, ex officio or at the request of a party, considers that a legal norm is contrary to the Constitution or to international human rights instruments that establish rights more favourable than those recognized in the Constitution, he or she shall suspend the processing of the case" (CRDE, Art. 428, 2008). Reference is also made to the "open clause", which explicitly states that "international treaties ratified by Ecuador shall be subject to the provisions of the Constitution". In the case of treaties and other international human rights instruments, the pro-human principles of non-restriction of rights, direct applicability and open clause established in the Constitution shall be applied" (CRDE, Art. 417, 2008).

Human rights

The inclusion of human rights within the block of constitutionality is evidenced in Latin America in the new Latin American constitutions, considering, for example, the case of Colombia, the adherence to a specific interpretation of the concept of "constitutional bloc" has been highlighted and known, replicated to other regional latitudes, where the principle of constitutional supremacy is assumed. as well as the prevalence of treaties ratified by Colombia, where they accept human rights, prohibiting their withdrawal in a state of emergency (Constitutional Court Judgment C-225/95).

In light of the above, it should be noted that, at present, access to the internet has become a fundamental necessity for the exercise of many human rights, such as freedom of expression, access to information and participation in society. For this reason, in 2011 the United Nations Human Rights Council adopted a resolution recognizing access to the internet as a human right.

This resolution highlights the importance of ICTs and internet access for the promotion and protection of human rights, freedom of expression and access to information, and points out that internet access should be considered as a human right in itself. In addition, the resolution urges States to take measures to ensure universal access to the internet and to remove barriers to access to this technology.

Subsequently, in 2016, the United Nations Human Rights Council referred to the same issue again, highlighting the following: (...) 2. Assume the global essence and openness of the internet in its different manifestations, including the achievement of the objectives of the 2030 Agenda for Sustainable Development; 3. To generally encourage all States to encourage and create mutual assistance facilities to enhance ICT development; (...) 5. Recognises the relevance of the application of a human rights-based approach to increasing access to the internet, calling on States to do what they can to close the multiple forms of digital divide (UN, 2016).

Next, the Joint Declaration of the Twentieth Anniversary: Challenges for Freedom of Expression in the Next Decade specifically shows that, in the following years, States and other entities must: Assume access to the internet as a human right (UN, 2019).

On another note, it should be noted that the Constitution of the Republic of Ecuador recognizes access to the internet as a human right and obliges the State to guarantee universal access to it as a means for the exercise of other rights and for the promotion of the development of society. Access to the internet is considered a human right in the Constitution of the Republic of Ecuador, as reflected in Article 16, which recognizes the right of individuals to free communication, through any means and without any limitations other than those established in the Constitution and the law. In addition, Article 18 of this constitution establishes the right to freedom of thought, expression and communication, including the freedom to seek, receive, exchange, produce and disseminate information, ideas and knowledge through any means. In addition, Article 26 recognizes the right of universal access to ICTs, including the Internet, as a means for the exercise of other rights, and establishes the obligation of the State to guarantee access to these technologies throughout the national territory, especially in rural areas and in vulnerable sectors.

In this vein, it should be noted that the Organic Code of the Social Economy of Knowledge, Creativity and Innovation (2016), internet access is a public service that must be guaranteed in a generalized way, in accordance with the provisions of the Constitution. To achieve this objective, measures are put in place to ensure that the service is equitable and that control and regulation mechanisms are put in place to ensure that prices are fair. In this sense, Article 40 of the aforementioned code indicates in its postulates that the agencies responsible for guaranteeing access to the Internet must monitor prices and take measures to consolidate an equitable service, establishing the necessary mechanisms for its regulation and control.

Information and communication technology (ICT). The need to avoid technological exclusion

Information and communication technology (ICT) has radically transformed the way people communicate, access information and carry out their daily activities, in this sense access to and adoption of ICTs have become key factors in driving economic, social and political development around the world. As the Internet is a human right, this duty of the State, the right of citizens, and a guarantee, is embodied at the Constitutional level within the good life, in which the Ecuadorian Constitution establishes that "For the achievement of good living, the following shall be the general duties of the State: 5. To promote the development of economic activities through a legal order and political institutions that promote them, encourage and defend by complying with the Constitution and the law. 6. To promote and catapult science, technology, the arts, ancestral knowledge and, in general, initiatives of community, associative, cooperative and private creativity" (CRDE, art. 277, 2008).

In this way, it is relevant to indicate that the Internet will become a tool of inclusion and/or empowerment for the peoples of the world if the following rights are recognized

and protected: i) widespread access to the Internet; (ii) freedom of expression and association; (iii) free access to knowledge; (iv) reciprocal collaboration in free software learning and production and technological development; (v) privacy, surveillance, and encryption; (vi) Internet governance and (vii) awareness, protection and realization of rights (Del Rio, 2012).

The universal right of access refers to the need to implement detailed, long-term action plans to ensure that the Internet is widely available, accessible and affordable. In this sense, States must adopt and promote appropriate public policies to generate an infrastructure that allows universal access, which will facilitate the construction of a knowledge society, avoiding arbitrary situations of social exclusion, as mentioned above (OAS, 2013).

However, digital inequality is determined as a discrepancy based on inequalities in access, infrastructure and connectivity (Norris, 2001). However, over time, it has been understood that this inequality also interacts with other pre-existing social inequalities, such as economic, educational, geographical, and gender inequalities, among others. Rivoir, Morales, & Casamayou (2019). It is therefore critical to address these multiple dimensions of inequality to ensure equitable and fair access to information and communication technologies.

DISCUSSION

In this study, constitutional rights, human rights, and information and communication technologies (ICTs) in Ecuador were analyzed; The results show that Ecuadorian legislation recognizes and protects both human rights and access to ICTs as fundamental rights. The Constitution of Ecuador establishes the right to universal and equitable access to ICTs, as well as the promotion of public policies that encourage their development and use. This aligns with previous literature highlighting the importance of ensuring access to ICTs as part of people's fundamental rights. The study reveals that access to ICTs in Ecuador is not only seen as a right in itself, but also as a means to exercise and protect other human rights. For example, access to information, freedom of expression, education and participation in cultural and political life are key aspects in the promotion of human rights. These findings support the idea that ensuring equitable access to ICTs can contribute to the protection and promotion of human rights in general.

In this sense, the research carried out denotes the existence of constitutional provisions that establish access to the internet as a human right in Ecuador, in line with the constitutional framework and human rights recognized by the United Nations (La Rue, 2011). In this way, there are a series of regulations ranging from the Model Law on Electronic Commerce, Data Messages and Electronic Signatures in force in Ecuador since 2002, the Commercial Code of 2018 and the Organic Law on Digital and Audiovisual Transformation of 2023. These laws are in line with Ecuador's 2008 constitutional articles and UN human rights declarations. However, in Ecuador there is still an accelerated and uneven growth of ICTs, which has generated a kind of area with a legal vacuum due to insufficient and obsolete regulation, or simply the inefficiency and low effectiveness of these regulations. In a similar vein, Pino's (2020) results reflect a similar situation in Bolivia, noting that there are regulatory gaps to serve the country's citizens, especially with regard to e-commerce. This implies the need for up-to-date regulatory frameworks to protect consumers, which translates into a legal lag in the face of social changes.

The results indicate that, despite the efforts made to ensure universal access to ICTs, inequalities still exist in the access and use of these technologies in Ecuador. Digital divides can exacerbate other pre-existing social inequalities, such as economic, educational, geographical, and gender inequalities. These findings are consistent with previous studies highlighting the need to address the multiple dimensions of inequality in

access to ICTs in order to achieve a more just and inclusive society. The analysis of public policies and regulatory frameworks in Ecuador shows a commitment on the part of the State to guarantee access to ICTs and promote their use for the benefit of society. However, the results suggest that it is necessary to strengthen and improve the implementation of these policies to effectively address inequalities in access to and use of ICTs.

In this way, the study highlights the importance of guaranteeing access to ICTs as a fundamental right and its relationship with other human rights in Ecuador. Despite progress in the legal and regulatory framework, there are still challenges in bridging digital divides and promoting equitable access to ICTs. To address these challenges, it is critical to continue strengthening public policies and implementation strategies that ensure universal and equitable access to information and communication technologies in Ecuador. Despite the fact that Ecuador has experienced an accelerated growth in the use of ICTs, this progress has been uneven and has generated areas with legal gaps due to the lack of updated regulation, inefficiency and the ineffectiveness of existing regulations. Meanwhile (Pino, 2020) reflects in its documentary contributions a similar situation in Bolivia, where there are also regulatory gaps to serve citizens, particularly those involved in e-commerce, which generates a demand for updated regulatory frameworks that protect the consumer and evidences a legal lag in the face of social changes.

On the other hand, Ecuadorian society faces inequalities in internet access and coverage, especially between urban and rural areas, which causes discrimination and inequality within the population. This is in addition to problems such as digital illiteracy, poverty, and the generation gap, mainly affecting older adults. Similarly, Villela, C., & Contreras, I. (2021). They point out that the suspension of face-to-face classes due to the COVID-19 pandemic, as of March 23, 2020, revealed a marked absence in classrooms and a lack of internet access among students. This coincides with the digital divide in households, digital illiteracy and poverty, evidencing a cascading vulnerability, as not only the right to access ICTs is affected, but also the right to education, which in turn increases pedagogical vulnerability.

The research confirms that in Ecuador there are constitutional provisions that recognize access to the internet as a human right, in line with the constitutional framework and human rights established by the United Nations (UN). Thus, regulations such as the Model Law on Electronic Commerce, Data Messages and Electronic Signatures have been implemented since 2002, the Commercial Code of 2018 and the Organic Law on Digital and Audiovisual Transformation of 2023, which are in line with the constitutional articles of 2008 in Ecuador and the UN human rights declarations.

However, there is a gap between legislation and uneven technological growth, due to lack of access, coverage and technological illiteracy, which violates constitutional rights or could indicate the ineffectiveness of public policies in relation to these regulations. It is crucial to highlight that "maintaining obsolete solutions to new problems will only generate detrimental effects: weaken the democratic legal system and create a situation of generalized injustice" (Martínez, 2013, pp. 331-332).

CONCLUSIONS

There is a significant gap between human rights legislation for vulnerable citizens in the digital realm and the uneven progress of ICTs in Ecuador. Despite the fact that since 2002 there has been recognition in the constitutional norms in line with the supranational vision of the UN, the results in terms of access to ICTs in Ecuador remain unsatisfactory. Not only are there low access figures at the national level, but Ecuador, along with Peru, also ranks at the bottom of a group of six Latin American countries. It is suggested to update legislation and/or implement public policies to address the violation of the

constitutional rights of vulnerable people in the digital sphere. It should be noted that a limitation of this research is related to the lack of up-to-date statistical information on internet coverage and access in Ecuador. This limitation is expected to be resolved with the results of the 2022 census, which is currently in the process of being conducted. With the availability of more recent data, it will be necessary to better understand the situation and develop more effective strategies to address the digital divide and ensure the fulfillment of human rights in the context of ICTs in Ecuador. It is recommended to update legislation and/or implement public policies to mitigate the violation of the constitutional rights of people in situations of digital vulnerability. In addition, it is suggested to continue researching the strategies and solutions needed to ensure equitable and universal access to ICTs, as well as to protect human rights in the digital context in the country.

Ethical and Legal Aspects.

As an author, I declare respect for ethical norms, safeguarding what is established in professional practice.

Conflict of Interest. The author declares that he has not incurred in any conflict that breaks down any personal interest in the writing of this article.

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