The Place and Challenges of Human Rights Impact Assessments in Latin American Internet Regulatory Futures

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Abstract

Human Rights Impact Assessments (HRIA) have become an important tool of corporate governance in the field of business and human rights, and—thus—have been embraced by companies in the ICT sector. This was to an extent predictable: for quite some time now, Internet companies have been accused of violating human rights through action or omission. In this context, HRIAs appear as a procedural mechanism that may help them make better decisions and, at least, curb criticism. This paper seeks to contribute to inquiries into this development by highlighting the regulatory context in which HRIAs emerged within the ICT sector, the institutional history of the tool, its ambiguous genealogy, and the challenges and opportunities for its usage in Latin America.

Keywords: business and human rights, human rights impact assessments, Internet regulation, governance, Latin America

Introduction

Self-regulation has been the main regulatory model that has shaped the Internet until now. Roughly based on American law and constitutional visions of its First Amendment, the model is becoming increasingly untenable, shaken by outside pressure to exercise the prerogatives the model reserves for private actors in rather opposite and contradictory directions (Marsden 2011:49). A certain anxiety has captured critics of how the Internet is governed, and while the direction of change is difficult to predict, it is certain it is coming. However, while the old world refuses to die, the new world cannot really be born. We currently are at this interregnum (Gramsci 1971:276). Several regulatory futures have been imagined, that go from insisting on self-regulation to the re-assertion of sovereign authority by individual states. In the middle, several innovations emerged such as audited self-regulation and co-regulation schemes (Marsden 2011; Marsden, Meyer, and Brown 2020). Furthermore, efforts at global and regional regulatory arenas have not dwindled and some of them—such as the European Union's Digital Services Act (DSA)—are prone to become models that other regions or countries may follow (European Commission 2020).

In this paper we seek to contribute to the emerging debates around Internet regulation in Latin America by highlighting the potential role of human rights impact assessments

(HRIAs) in the ICT sector within the region. Partially based on previous research (Álvarez Ugarte and Krauer 2020; Castañeda and Álvarez Ugarte 2020), this paper proceeds in the following way.

In the first section we introduce HRIAs and briefly discuss their genealogical history and review the literature of a relatively new field of inquiry. As a governance device, HRIAs are connected to other forms of well-established impact assessments (environmental and social, among others) and to other forms of governmentality based on the premise of measuring the world, but important and sometimes structural differences remain. These are relevant to critically assess the usefulness of the tool as a procedural mechanism to make decisions and assess reality (Götzmann, Vanclay, and Seier 2016; Mares 2019:524; Simons and Macklin 2014).

The second section discusses methodological challenges that we have identified in studying HRIAs in the ICT sector. These are mostly connected to the secrecy and opacity that surrounds a tool that corporations use on a voluntary basis, as well as the relatively short-history of their adoption within the ICT sector. These challenges call for further research, based on approaches that could potentially breach the opacity we have identified.

The third and final section poses and answers a question: how HRIAs in the ICT sector may be adopted in Latin America? In particular, we want to explore what features of the Latin American context can be useful to predict how that governance tool may be used within the region, what conditions may favor efforts to adopt it and what may hinder them. We dwell on the Latin American challenge mostly guided by research produced on the use of HRIAs and other forms of impact assessment (IA) in Latin America, but in different industries. This analysis is also informed by Latin American history with human rights. We finish our paper with a brief conclusion and suggest further lines of research.

Corporate Self-Regulation and HRIAs

HRIAs can be defined as "the assessment of both the potential human rights impact of future policies and the actual human rights impact of implemented policies in a way ensuring the participation of various actors" (de Beco 2009:140). They first emerged in the 1990s as a loosely conceptualized process to assess public policy, first in the UN (UN-ESC 1990, parr. 190) and then elsewhere (Bradlow 2020; Bynoe and Spencer 1999; Corkery and Isaacs 2020; Croft 2000). The first clear conceptualization was introduced to deal with health policies by Lawrence Gostin and Jonathan Mann (Gostin, Mann, and Gostin 1994). Their proposal is the first that described HRIAs as a structured process (Watchirs 2002:723–24).

HRIAs should be understood as a sub-field of impact assessment studies, a governmental technique used in different fields such as development, environmental protection, regulation, legislation, child rights, and so on (Becker and Vanclay 2003; Blakley and Franks 2021; Burchell 1994; Gertler et al. 2016). The goal of the technique is to lead decision-makers into processes that help them gain a better understanding of the issue at hand, but that also encourages them to act upon findings and assessments, evaluate results of proposed actions and revise approaches in order to either mitigate undesirable consequences or encourage desirable ones. Impact assessments are specific forms of

governmentality, based on the idea of measuring and evaluating reality (Hunt and Wickham 1994; Rosanvallon 2008:54–56). They are, then, focused on procedural considerations as well as the conditions that must be attained for the process to succeed and reach the expected outcomes.

HRIAs became a clearly defined tool thanks to the United Nations (UN) voluntary approach to business and human rights championed by then Secretary General of the United Nations Kofi Annan and imagined by John Ruggie, the Special Representative on Human Rights and Transnational Corporations to the Secretary-General. This voluntary framework was developed partially in rejection of a more command-and-control model that failed to gain consensus within member states (Khoury 2016:45). This soft law approach to the challenging question of the status of private corporations in international law (Darrow and Tomas 2005; Kinley and Tadaki 2003; Paust 2001; Ratner 2001) was the outcome of gridlock in the UN, with Western nations that traditionally house the trans-national corporations (TNCs) that invest abroad opposing an international binding treaty, and more peripheral nations demanding such a solution (Álvarez Ugarte and Krauer 2020; Miretski and Bachmann 2012). John Ruggie's protect, respect, and remedy framework has been the focal point of the debate over business and human rights ever since (Ruggie 2008).

Within this framework HRIAs came to life. The International Business Leaders Forum, the International Finance Corporation and the UN Global Compact developed a process that led to the "Guide to Human Rights Impact Assessment and Management" (Abrahams and Wyss 2010; Owens and Sykes 2005:133), a document that carefully defines and describes what a HRIA should look like. It was designed as a process to increase compliance of private companies with their human rights obligations, specially in relation to TNCs operating outside their countries of incorporation (Ruggie 2007; Weissbrodt 2005).

HRIAs differ from other forms of impact assessments in significant ways. Unlike environmental impact assessments (EIAs), HRIAs lack the kind of oversight and enforcement mechanisms that stem from traditional forms of statutory regulation, such as the ones that emerge from comprehensive environmental protection statutes (Glasson 1998:26–27). In that sense, HRIAs are more similar to social impact assessments (SIAs), but there are important differences (Gotzmann 2014:7–8; Götzmann et al. 2016). One of the main ones is that SIAs are not guided by specific benchmark or standards, while HRIAs are: they are in theory based on black-letter law, recognized in the form of binding international treaties and local statutes. For that reason, human rights standards provide a benchmark that "*potentially* gives them a more secure and precise normative foundation than, for example, social impact assessment where the theoretical and philosophical foundations that form the basis for assessment are more contested" (Götzmann et al. 2016:18). Radu Mares has argued that, for that reason, SIAs are more tolerant towards residual impacts, a tolerance not available when human rights law is used as the measuring rod against which specific actions and services will be measured (Mares 2019:524). From this standpoint HRIAs are connected to children's rights and privacy (PIAs) impact assessments, that are either grounded on human rights law or national statutes, such as e.g. data protection laws (de Beco 2009:143; De Hert 2012; Wright and De Hert 2012).

Within the UN's voluntary framework, one of the key concerns of researchers is what drives adoption of HRIAs, an issue linked to the broader question of why or whether

voluntary frameworks work for governance purposes. Nora Götzmann has argued that companies "commonly undertake environmental and social impact assessments for a range of reasons, such as regulatory requirements, as part of company standards, and to meet and answer to social expectations" (Götzmann et al. 2016:7). This correlates with some common explanations for pioneers: the extractive industry adopted HRIAs partially as a consequence of very public scandals that emerged around their operations (Banfield et al. 2005; Deonandan and Morgan 2016; Drewry, Shandro, and Winkler 2017).

Skeptics often point out that voluntary frameworks are inherently inadequate. For instance, Steven Bittle and Laureen Snider cite a study conducted on a voluntary reporting mechanism in the OECD that analyzed 96 complaints processed in a period of ten years, only to find that just five resulted in genuine changes in corporate behavior (Bittle and Snider 2013:185). Others have pointed out that HRIAs may be used "to obtain some sort of stamp of approval to demonstrate it has a legitimate" social licence to operate (SLO) (Maher 2019:68), but with little effectiveness in terms of actually guiding corporate conduct and securing human rights compliance. Penelope Simons and Audrey Macklin, while optimistic regarding the potential usefulness of the tool, highlight how certain HRIAs success stories are based on troublesome indicators or depend on priors and assumptions (such as robust state institutions) that simply do not hold in many scenarios where HRIAs are routinely used, such as the extractive industry (Simons and Macklin 2014:83–87)

The voluntary nature of HRIAs has been a source of persistent criticism. Simons and Macklin have argued—for instance—that by themselves, HRIAs cannot close the governance gap produced by powerful TNCs operating under weak institutional conditions, with poor countries competing among themselves for scarce resources and thus creating incentives to diminish costs for foreign investors by e.g. lowering regulatory requirements (Ruggie 2008:13; Shamir 2004:636; Simons and Macklin 2014:12). The lack of clear oversight procedures and the absolute absence of enforcement mechanisms that derive from the voluntary paradigm can be the source of an immanent critique: there is a fundamental contradiction between *voluntarism* and *human rights* form which HRIAs cannot escape successfully (Harrison 2011; Takahashi 2019). As Bittle and Snider put it, the UN's voluntary model is based on the assumption that companies will "respect" human rights voluntarily, even when it goes against their commercial interests (Bittle and Snider 2013 , 187). This ignores "the structural contradiction between corporate legal obligations to maximize profits for its shareholders and its non-binding human rights obligations is a huge weakness of Ruggie's work: corporations are legally bound to uphold the 'laws market … not human rights standards'"(Bittle and Snider 2013:188).

Methods and Challenges

The literature on HRIAs is diverse and has rarely consider their use in the ICT sector, with a handful of exceptions (Rees and Davis 2016; Samway 2016). Our previous research on the matter drew from insights derived from the handful of HRIAs and related documents that had been made public (Article One 2018a, 2018b; BSR 2018, 2022; Meta 2022), the procedural manuals developed by consultants and firms (Abrahams and Wyss 2010; Rights & Democracy 2011), and the policy papers of norm entrepreneurs who called for their adoption (de Beco 2009:141; Lindblad Kernell, Emil and Bloch Veinberg 2020; Ruggie 2007, 2011), as well as broader research on Internet and society. A noteworthy feature of

these sources is that a lot of the work produced on defining what HRIAs are has been done by consultants themselves, specially in an early period of conceptualization. Thus a strange form of endogamy affects the field: those who describe the process and define the tool are also the ones using it (and selling it) (*See* e.g., Boele and Crispin 2013; Gotzmann 2014).

Research on the use of HRIA in the ICT sector seem to be affected by challenges of its own. On the one hand, the sector seems to have embraced the tool, specially through the processes and programs that came out from the Global Network Initiative (GNI), an industry-wide, multi-stakeholder voluntary coalition that brings together private companies, researchers, investors, and civil society (Del Campo 2022; GNI 2020b, 2020a). In the last few years, several Internet companies and—more broadly—companies working in telecommunications have used the tool to assess their operations from a human rights standpoint. For instance, Meta (then Facebook) produced four HRIAs to assess its presence in Myanmar, Cambodia, Indonesia, and Sri Lanka. Yahoo—within the GNI context—made important investment decisions based on a HRIA developed in Vietnam (Maclay 2010:87).

But many of these reports have not been made public, a fundamental flaw of HRIAs that John Ruggie himself had identified years ago (Ruggie 2007, par. 9). But some have. For instance, that was the case with Facebook's report on Myanmar commissioned to BSR, that offers a rare glimpse into the way the tool has been used in the ICT sector (BSR 2018). Similarly, Facebook also released assessments of their presence in Cambodia, Indonesia and Sri Lanka (Article One 2018a, 2018b; Sissons and Warofka 2018). And Telefónica has developed its human rights policy following a HRIA developed by BSR (Telefónica 2019). Similarly, Wikimedia has commissioned a HRIA to assess its operations in 2020 (Article One and Wikimedia Foundation 2020) and Facebook hired BSR to develop an *ex post facto* due diligence assessment to review "the impact of Meta's policies and activities during the May 2021 crisis in Israel and Palestine" (BSR 2022:1; Meta 2022).

When compared to the extent to which the Internet affects our daily life, these handful of examples of HRIAs implementation in the ICT sector seems like too-a-small sample to adequately assess their scope and potential. Furthermore, consultants who work on these processes are often tied-up by non-disclosure agreements and other contractual obligations that prevent them from discussing specific assessments. Thus, observational or participatory qualitative methods might be necessary to penetrate the confidentiality that surrounds the object of inquiry (Jerolmack and Khan 2014; McCorquodale 2017; Small 2009). This research does not employ these methods and is based on the analysis of the small sample mentioned before.

This analysis is driven by the previous challenges we found in the use of HRIAs in the ICT sector (Castañeda and Álvarez Ugarte 2020). After an inquiry into the assessments that have been made public in the last few years, we are confident to say that these challenges remain. To summarize, we have found that ICT companies seem more willing to recognize negative impacts when they have been pushed into practices they would have rather not do by authoritarian states; that there is a lack of understanding of the effects technology has on society—based in part due to inadequate and insufficient empirical research— and that this makes the exercise of "assessing impacts" rather challenging; and that human rights standards do not offer clear cut answers because of the extended disagreement that affects

their interpretation and actual application to controversial issues (Castañeda and Álvarez Ugarte 2020).

Overall, these difficulties pose steep challenges to HRIAs as a tool of governance in the ICT sector. HRIAs—as SIAs—have often been found to be too "imprecise, overly theoretical, descriptive rather than explanatory, limited to local application, and expensive" and that "few of the theories upon which it is based are clearly defined or reliable" (Massarani, Drakos, and Pajkowska 2007:146). As Michael Kuhndt, Justus von Geibler and Martin Herrndorf put it, the "existing singular approaches fail to account for causal chains linking companies' activities to societal outcomes" (Kuhndt, von Geibler, and Herrndorf 2006:20). There is simply not enough empirical research to support conclusive evidence regarding those effects, a reason why e.g. some of the recommendations found in HRIAs that have been made public include doing or funding more research (BSR 2018:47). Consider, for instance, the issue of disinformation. The research that exists on the scope and extent of disinformation has been produced, mainly, around the US electoral process, specially since the 2016 election of Donald Trump to the presidency. That evidence suggests that even though disinformation exists, it has no substantial effect on the outcome of elections, individuals retain the capacity to tell fact from fiction, and may be even be distributed for purposes that have nothing to do with convincing others of believing false things (Lazer et al. 2018). If those findings are correct, are we to extrapolate these to different contexts, where e.g. the capacity of critically assessing information may exist within the population in different degrees? Are HRIAs supposed to produce that kind of research? We doubt it.

This challenge is related to a third, intractable problem: human rights standards do not offer the kind of clear benchmark against which conduct is supposed to be judged, nor offer precise guidance (as does, for instance, environmental standards that guide EIAs). In that sense, it is possible that the difference between SIAs and HRIAs identified before, regarding the presence of more precise guidelines in HRIAs, is purely theoretical in the ICT sector, where human rights standards are relatively fluid and the source of pervasive and recent disagreement (Waldron 1999). The Internet governance debate of the last few years and different regulatory initiatives suggests as much. Consider a simple issue. If violent speech that falls short of constituting an incitement to violence is restricted somewhat by a platform that hosts third party content, is this a proportional way of protecting those potentially affected by violence (e.g., minorities and other vulnerable groups) or does these actions constitute a breach of users' freedom of expression rights? The reader will have different answers to these questions depending on her priors. Furthermore, she may want more information to better understand the case. Without such an agreement, human rights discourses—and HRIAs, for that matter—simply cannot help us to navigate contested waters, for they are precisely the object of contention.

These obstacles ahead do not mean that HRIAs are doomed to fail as a mechanism of due diligence and accountability, but the contradictions and tensions embedded in their institutional genealogy and the challenges of their adoption in the ICT sector are to be met if that is to happen. We cautiously submit reasons for optimism. If one compares BSR report on Facebook in Myanmar in 2018 with the report produced on the Israel and Palestine crisis of 2021 interesting differences emerge (BSR 2018, 2022). While the former seems like an exercise that has not been done before, the latter shows a company that

appears more aware of its duties and responsibilities within the UN voluntary framework, that has deployed processes and structures and has secured specific budget lines to address these challenges. This evolution, that should be tested against bigger samples and other processes that unfortunately remain secret, may be an argument for HRIAs adoption in and of itself.

The Latin American Context

How may HRIAs come down to Latin America on the ICT sector? What are the main drivers that may encourage their adoption in the region, and what are the main opportunities and challenges involved? This section seeks to answer these questions, taking as point of departure the fact that—until now and to the best of our knowledge—only Telefónica has conducted an HRIA in Latin America, as part of its process to develop its Global Human Rights Policy (Telefónica 2019). The reports used as material in that process have not, however, been made public.

This is—thus—an exercise in imagination, but based on secondary literature that has explored the use of other impact assessment mechanisms in Latin America and the Caribbean. When combined with what we know about the challenges of adopting HRIAs in the ICT sector, useful insights come up. The section follows two organizing questions. First, it discusses the drivers of impact assessment adoption. Second, it discusses the conditions for impact assessments' success, based on the surveyed literature. Overall, answering both questions provides a good opportunity to discuss differences between HRIAs and other impact assessments (EIAs, SIAs, and Health IAs, generally referred as IAs) and to discuss industry-wide differences that seem extremely important to judge the potential adoption of HRIAs within the ICT sector in Latin America.

[Table 1]

The matrix in Table 1 offers four possibilities in terms of potential drivers of IAs adoption. It is organized around two axis. One is based on the *mandatory* and *voluntary* nature of the commitment, and the other one is based on the source of the pressure or demand to adopt an IA mechanism, whether it comes from *within* or from *abroad*. This second axis should be understood broadly, to include actions that stem purely from policies based on private companies' corporate social responsibility (CSR) or from the state laws where operations unfold (*within*); or when those actions come from a kind of pressure that comes from outside the company (industry-wide standards) or the country where the company has been incorporated (*abroad*).

The first, most obvious driver to IAs adoption is when these procedures are demanded by valid regulation that applies to private companies (A). This is typically the case with EIAs in Latin America, part of comprehensive national regulatory regimes designed to protect the environment (Acerbi et al. 2014). On other occasions, IAs are adopted as parts of requirements made by laws passed in the countries where the corporation has been incorporated, as when national statutes establish duties to report or to perform due diligence analysis, e.g., to secure respect for certain values in the supply chain (B) (Álvarez Ugarte and Krauer 2020). Finally, when IAs are adopted voluntarily by private companies, this may be the result of a private commitment to specific values within the scope of CSR (C)

or because there is some kind of pressure exerted at the industry level to adopt specific standards (D). This has happened most notably in the extractive industry (Bader 2016; Banfield et al. 2005).

The matrix is useful to place HRIAs in ICT in the right place, and to dismiss some alternatives for their expansion as currently unlikely. For instance, EIAs in Latin America are mandatory by statute (Acerbi et al. 2014). But researchers have found that in a handful of cases, SIAs were conducted to complement EIAs, specially in order to deal with situations of social contestation that emerged around specific projects. That has been the case, for instance, of the SIAs developed in the Huasco Valley of Chile, where a mining operation was subjected to a due diligence assessment with the support of the mining company Barrick Gold after intense social contestation, that later led to a competing, community-led HRIA (Maher 2019:64–65). Similarly, in 2014, a mining project in Puebla was subjected to an *ex ante* community-based HRIA (González Cavazos 2019). This mechanism, according to which mandatory EIAs produce other forms of IAs as voluntary and convenient complementary devices, is unlikely to operate in the ICT industry. The sector has often negligible impact on the environment. According to the examples mentioned before, this seems to be a necessary precondition for the emergence of political contestation that make SIAs appealing, and thus drive adoption.

On the other hand, the laws that impose duties to report or to conduct due diligence analyses do not seem to have reached companies in the ICT sector, except for the DSA (that is jurisdictionally limited to Europe). The statutes that more clearly seem to have been drafted to reach oversea operations have been designed to deal with other problematic sides of international commerce, such as issues related to fair-trade in conflict ridden countries, to respect for worker's rights in the supply chain, and so on (Hoff 2019). These laws, then, do not clearly mandate for HRIAs and should be discarded as potential drivers.

Local regulatory action at the national level, on the other hand, seems improbable. Even though several legislative proposals have been made in Latin America to deal with problems such as e.g. intermediary liability, hate speech, and disinformation, most of them never made it out of the legislative process [1]. While the DSA may become a viable model that local legislatures may adopt in a modelling process (Braithwaite and Drahos 2000:539), it is at this point difficult to imagine that this will happen anytime soon, even though calls to that effect has been made (Observacom 2020). Furthermore, those kinds of regulations, at the national level, would have to pass a constitutional test of validity related to freedom of expression that would push these initiative into an even more uncertain future.

Considering these challenges, the most likely scenario is one in which HRIAs are adopted by private companies voluntarily, following Ruggie's model. Gotzmann has argued that companies engage in IAs for a myriad of reasons, including to "meet and answer to social expectations" (Götzmann et al. 2016:7). This might be a good candidate for driving regional adoption of HRIAs by private companies, specially if the local digital rights movement manages to successfully place issues of concern in the agenda. Civil society organizations in Latin America have tried to put pressure on private companies, for instance

[1] On this, *see* the data available in CELE's Observatorio Legislativo, available at https://observatoriolegislativocele.com/

by extending the Electronic Frontiers Foundation (EFF) project on *Who Has Your Back* to the local context (ADC 2019; Derechos Digitales 2022). While not all Internet TNCs whose services are used in Latin America has a presence in the region, the biggest platforms (e.g. Google, Meta, and Twitter) often have field offices that employ officials who could—theoretically—be used as transmission band of concerns that may force companies to meet those demands.

In terms of successful HRIAs implementation, the region seems to fulfill certain requirements when measured according to established procedures within the field (Abrahams and Wyss 2010), such as a strong human rights *infrastructure*. Indeed, past human rights abuses have created—both at the national and regional levels—human rights bodies, organizations, and activists. For instance, the Inter-American system of human rights has issued a document of standards on business and human rights, where it embraces the UNGP general framework (CIDH 2019a, par. 50). An important part of Latin American civil society is organized around human rights discourses to frame their demands, they have human rights related goals as their main objectives, and organize their advocacy around repertoires of action closely connected to the idea of human rights (Jelin 1994; Sikkink 1993). Latin America as a region has extensively contributed to the development of international human rights law itself (Carozza 2003; Glendon 2003). These underlying conditions create opportunities: if ICT companies were to adopt HRIAs in Latin America, in most countries they would be able to find local civil society organizations capable of being involved in the process. In the field of digital rights, there are strong civil society organizations which are closely connected among themselves and—thus—offer potential partners form the kind of outreach that HRIAs demand. The involvement of local communities—praised as important for IAs success—may be more challenging (Morales et al. 2007). How are those stakeholders and local communities to be identified? The scope and scale of operations by the extractive industry is different from the scope and scale of the operations of ICT companies. As mentioned before, ICT companies that work within the physical and transport layers have little impact on the environment. This impact is even less noteworthy in the case of the companies operating at the application layer, who can provide their services from afar and unknowingly.

On the other hand, HRIAs—as all IA projects—are time consuming and costly. Companies who engage in HRIAs, whether they do so voluntarily or pressured into it by some outside agent, must allocate sufficient resources to the task (Coze et al. 2009:400). In extractive projects spending those sums may be seen as a form of investment; but what could drive ICT companies to adopt similar costly analyses absent some kind of external pressure that may threat their operations? What kind of harm can they expect to suffer if they fail to act? This seems like an important condition that cuts against HRIAs adoption in the ICT sector in the region, specially when considering ad-based revenue for Internet companies, a variable that seems much more important than the sheer number of users. When thinking about ad-revenue, only Brazil and Mexico make it to the top fifteen (Statista Digital Market Outlook 2022).

Conclusion

In the regulatory globalization processes that has shaped Internet governance, Latin America has often been at the receiving end of regulatory flows. Even in the case of the

unusual process that led to Brazil's *Marco Civil* in 2014, the solutions adopted largely followed models created elsewhere (Medeiros and Bygrave 2015:121). The influence of European data protection standards on Latin American statutes has been substantial and recognized across the board (Carrillo and Jackson 2022; Ramiro 2022). Can Latin America emerge as a site where new regulatory models (of ICT companies, of Internet platforms) will emerge? This seems very unlikely. Other regions, for reasons previously discussed, seem to be better suited to play that role within the regulatory globalization processes currently unfolding. The DSA of the European Union is a comprehensive framework that might shape the years to come, in Europe and elsewhere. The due diligence obligations included in several sections of the DSA are obvious places from where HRIAs can be harnessed (European Commission 2020:34, 35 and 58). The DSA offers a much more detailed and mandatory regime than e.g. the Inter-American standards, that until now have followed the UN's lead (CIDH 2019a, par. 50). If the DSA is to play the function of a model in regulatory globalization processes, then something akin to it may come down to the region, likely at the national level (unless a regional body such as the OAS embraces it in the form of human rights standards).

The challenges involved in the use of HRIAs in the ICT sector would—however—remain. Usage of the tool does not necessarily means that it will become an effective governance device. For that to happen, some challenges—that this paper has identified—would have to be addressed. First, the voluntary framework must give way to a system in which outside pressure make the argument for adopting HRIAs compelling. The use of the tool purely for private purposes, without oversight mechanisms and proper accountability, as well as basic forms of transparency, makes it not only ineffective, but somewhat uninteresting. If the goal of HRIAs is to bring human rights related reasons to bear on processes of corporate decision-making, the voluntary element currently implied in the tool must be progressively carved out, whether it is because of actual regulation, of modelling, or because enough pressure and momentum on private companies has been created to push for industry-wide standards. Second, to talk about impacts without proper understanding of the effects technologies have on the communities that use them is counter-intuitive and may even be counterproductive. The impact of the Internet of society is not adequately researched generally, but this is specially true in Latin America. As mentioned before, most empirical studies have been conducted elsewhere. What are the effects of disinformation on electoral processes in Latin America? What are the effects of hate speech in our communities? Careful, nuanced, well-funded and context-specific research seems like a pre-requisite we are not nearly close to fulfill in order to move into the managerial direction that HRIAs imply. Third, the idea that human rights law provides a benchmark against which we can judge conduct is simply false. Human rights law and discourse, and specially human rights law on freedom of expression, is not providing clear-cut answers to the complex questions around which the human rights and ICT debate is organized (Sullivan 2016). If the human rights standards themselves fail to provide clear guidance, the idea to measure how they are impacted is prone to unhelpful two-sides conclusions that diminish the potential use of HRIAs for governance purposes.

These global challenges have special difficulties in Latin America. The region is marked by states with insufficient capacities, and only a handful of countries can issue effective regulatory threats on ICT companies (specially platforms and intermediaries). The

peripheral position of the region *vis-à-vis* the rest of the world creates a situation in which local regulators must wait for their turn to actually regulate (or to do so efficiently). However, there is also a long and lustrous human rights history in the region, that reveals itself in two ways. On the one hand, on the local civil society and on national human rights bodies that may choose to push for HRIAs adoption in the ICT sector. On the other, at the regional level, the OAS and its human rights bodies, that have pushed for Internet-specific human rights standards (CIDH 2013, 2017) and that has followed the UN's lead on business and human rights (CIDH 2019b). If due diligence obligations and mandatory HRIAs would somehow make it to the digital rights movement agenda, or the plans developed by national and regional human rights bodies, then Latin America may get to play a more innovative and autonomous role in the field of Internet governance. Time will tell.

References

Abrahams, Desirée, and Yann Wyss. 2010. *Guide to Human Rights Impact Assessment and Management*. Washington D.C.: International Business Leaders Forum, International Finance Corporation & el Global Compact de las Naciones Unidas.

Acerbi, Marcelo, Ernesto Sánchez-triana, Santiago Enríquez, Ruth Tiffer-sotomayor, Ana Luisa, Gomes Lima, and Pilar Clemente-fern. 2014. "Environmental Impact Assessment Systems in Latin America and the Caribbean." P. 6 in *IAIA14 Conference Proceedings*. Viña del Mar, Chile: IAIA.

ADC. 2019. *¿Quién Defiende Tus Datos?* Buenos Aires: Asociación por los Derechos Civiles.

Álvarez Ugarte, Ramiro, and Laura Krauer. 2020. *El Sector TICs y Derechos Humanos: Hacia Un Marco Conceptual de Las Evaluaciones de Impacto En DDHH*. Buenos Aires, Argentina: Centro de Estudios para la Libertad de Expresión.

Article One. 2018a. *Human Rights impact assessment: Facebook in Indonesia. Executive Summary*. New York: Article One.

Article One. 2018b. *Human Rights impact assessment: Facebook in Sri Lanka. Executive Summary*. New York: Article One.

Article One, and Wikimedia Foundation. 2020. *Assessing the Human Rights Impacts of Wikimedia Free Knowledge Projects*. Article One & Wikimedia Foundation.

Bader, Christine. 2016. "Human Rights 'Intrapreneurs': Challenges and Keys to Success." Pp. 154–60 in *Business and Human Rights*, edited by D. Baumann-Pauly and J. Nolan. London & New York: Routledge.

Banfield, Jessica, Adam Barbolet, Rachel Goldwyn, and Nick Killick. 2005. *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*. London: International Alert.

Becker, H. A., and Frank Vanclay, eds. 2003. *The International Handbook of Social Impact Assessment: Conceptual and Methodological Advances*. Cheltenham, UK ; Northampton, MA, USA: Edward Elgar.

Bittle, Steven, and Laureen Snider. 2013. "Examining the Ruggie Report: Can Voluntary Guidelines Tame Global Capitalism?" *Critical Criminology* 21(2):177–92. doi: 10.1007/s10612-013-9177-4.

Blakley, Jill A. E., and Daniel M. Franks. 2021. *Handbook of Cumulative Impact Assessment*. Edward Elgar Publishing.

Boele, Richard, and Christine Crispin. 2013. "What Direction for Human Rights Impact Assessments?" *Impact Assessment and Project Appraisal* 31(2):128–34. doi: 10.1080/14615517.2013.771005.

Bradlow, Daniel. 2020. "Reforming Responsibly: Why Governments Should Assess the Human Rights Impacts of Economic Reforms."

Braithwaite, John, and Peter Drahos. 2000. *Global Business Regulation*. Cambridge [England] ; New York: Cambridge University Press.

BSR. 2018. *Human Rights Impact Assessment: Facebook in Myanmar 1*. New York: Business for Social Responsibility.

BSR. 2022. *Human Rights Due Diligence of Meta's Impacts in Israel and Palestine in May 2021. Insights and Recommendations*. ---: Business for Social Responsibility.

Burchell, Robert W. 1994. *Development Impact Assessment Handbook*. Urban Land Institute.

Bynoe, Ian, and Sarah Spencer. 1999. *Mainstreaming Human Rights: In Whitehall and Westminster*. Institute for Public Policy Research.

Carozza, Paolo G. 2003. "From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights." *Human Rights Quarterly* 25(2):281–313.

Carrillo, Arturo J., and Matías Jackson. 2022. "Follow the Leader? A Comparative Law Study of the EU's General Data Protection Regulation's Impact in Latin America." *ICL Journal* 16(2):177–262. doi: 10.1515/icl-2021-0037.

Castañeda, Alejandra, and Ramiro Álvarez Ugarte. 2020. *Human Rights Impact Assessments: Trends, Challenges, And Opportunities for ICT Sector Adoption*. Buenos Aires, Argentina: Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE).

CIDH. 2013. *Libertad de Expresión e Internet*. Washington, DC: Comisión Interamericana de Derechos Humanos.

CIDH. 2017. *Estándares Para Una Internet Libre, Abierta e Incluyente*. *Informe temático*. INF.17/17. Washington D.C.: Relatoría Especial para la Libertad de Expresión de la CIDH.

CIDH. 2019a. *Business and Human Rights: Inter-American Standards*. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19. Washington D.C.: Inter-American Commission of Human Rights.

CIDH. 2019b. *Business and Human Rights: Inter-American Standards*. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19. Washington D.C.: Inter-American Commision of Human Rights.

Corkery, Allison, and Gilad Isaacs. 2020. "Human Rights Impact Assessments and the Politics of Evidence in Economic Policymaking." *The International Journal of Human Rights* 24(9):1268–89.

Coze, Agnes Saborio, Alejandro Flores Nava, Food, and Agriculture Organization of the United Nations. 2009. "Review of Environmental Impact Assessment and Monitoring of Aquaculture in Latin America." *Environmental Impact Assessment and Monitoring of Aquaculture*.

Croft, Jeremy. 2000. *Whitehall and the Human Rights Act 1998*. Constitution Unit.

Darrow, Mac, and Amparo Tomas. 2005. "Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation." *Human Rights Quarterly* 27(2):471–538. doi: 10.1353/hrq.2005.0015.

de Beco, Gauthier. 2009. "Human Rights Impact Assessments." *Netherlands Quarterly of Human Rights* 27(2):139–66. doi: 10.1177/016934410902700202.

De Hert, Paul. 2012. "A Human Rights Perspective on Privacy and Data Protection Impact Assessments." Pp. 33–76 in *Privacy Impact Assessment*. Springer.

Del Campo, Agustina. 2022. *Platform Oversight: Lessons Learned Amidst Pervasive Dissensus*. *CELE Working Paper*. Buenos Aires: Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE).

Deonandan, Kalowatie, and Jennifer Morgan. 2016. "Extractive Industries and the Global Human Rights Regime for Business: The Marlin Human Rights Impact Assessment." in *Mining in Latin America: Critical Approaches to the New Extraction*, edited by K. Deonandan and M. L. Dougherty. Routledge.

Derechos Digitales. 2022. *¿Quién Defiende Tus Datos? Chile 2021-2022*. Santiago: Derechos Digitales.

Drewry, Jonathan, Janis Shandro, and Mirko S. Winkler. 2017. "The Extractive Industry in Latin America and the Caribbean: Health Impact Assessment as an Opportunity for the Health Authority." *International Journal of Public Health* 62(2):253–62.

European Commission. 2020. *Digital Services Act*.

Gertler, Paul J., Sebastian Martinez, Patrick Premand, Laura B. Rawlings, and Christel M. J. Vermeersch. 2016. *Impact Evaluation in Practice*. World Bank Publications.

Glasson, John. 1998. *Introduction to Environmental Impact Assessment.* Hoboken: Taylor & Francis Ltd.

Glendon, Mary Ann. 2003. "The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea." *Harv. Hum. Rts. J.* 16:27.

GNI. 2020a. "GNI Principios de Libertad de Expresión y Privacidad."

GNI. 2020b. "Increasing Transparency on Human Rights Due Diligence and Impact Assessments by GNI Company Members." *Global Network Initiative*. Retrieved August 13, 2020 (https://globalnetworkinitiative.org/increasing-transparency-on-human-rights-due-diligence-and-impact-assessments-by-gni-company-members/).

González Cavazos, Alejandro. 2019. "Mining in Mexico: Lessons from an ex ante community-based HRIA on the right to water, the right to health and the right to a healthy environment." Pp. 188–204 in *Handbook on Human Rights Impact Assessment*, edited by N. Götzmann. Cheltenham, UK ; Northampton, MA: Edward Elgar Publishing.

Gostin, Lawrence, Jonathan M. Mann, and Larry Gostin. 1994. "Towards the Development of a Human Rights Impact Assessment for the Formulation and Evaluation of Public Health Policies." *Health and Human Rights* 1(1):58. doi: 10.2307/4065262.

Gotzmann, Nora. 2014. "Human Rights and Impact Assessment: Conceptual and Practical Considerations in the Private Sector Context."

Götzmann, Nora, Frank Vanclay, and Frank Seier. 2016. "Social and Human Rights Impact Assessments: What Can They Learn from Each Other?" *Impact Assessment and Project Appraisal* 34(1):14–23. doi: 10.1080/14615517.2015.1096036.

Gramsci, Antonio. 1971. *Selection from the Prison Notebooks*. New York: International Publishers.

Harrison, James. 2011. "Human Rights Measurement: Reflections on the Current Practice and Future Potential of Human Rights Impact Assessment." *Journal of Human Rights Practice* 3(2):162–87. doi: 10.1093/jhuman/hur011.

Hoff, Anneloes. 2019. "Dutch Child Labour Due Diligence Law: A Step Towards Mandatory Human Rights Due Diligence." *OHRH*. Retrieved July 30, 2020 (https://ohrh.law.ox.ac.uk/dutch-child-labour-due-diligence-law-a-step-towards-mandatory-human-rights-due-diligence/).

Hunt, Alan, and Gary Wickham. 1994. *Foucault and Law: Towards a Sociology of Law as Governance*. Pluto Press.

Jelin, Elizabeth. 1994. "The Politics of Memory: The Human Rights Movements and the Construction of Democracy in Argentina." *Latin American Perspectives* 21(2):38–58.

Jerolmack, C., and S. Khan. 2014. "Talk Is Cheap: Ethnography and the Attitudinal Fallacy." *Sociological Methods & Research* 43(2):178–209. doi: 10.1177/0049124114523396.

Khoury, Stefanie. 2016. *Corporate Human Rights Violations: Global Prospects for Legal Action*. 1st ed. Routledge.

Kinley, David, and Junko Tadaki. 2003. "From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law." *Virginia Journal of International Law* 44(4):931–1024.

Kuhndt, Michael, Justus von Geibler, and Martin Herrndorf. 2006. *Assessing the ICT Sector Contribution to the Millennium Development Goals: Status Quo Analysis of Sustainability Information for the ICT Sector*. 3. Wuppertal Report.

Lazer, David M. J., Matthew A. Baum, Yochai Benkler, Adam J. Berinsky, Kelly M. Greenhill, Filippo Menczer, Miriam J. Metzger, Brendan Nyhan, Gordon Pennycook, David Rothschild, Michael Schudson, Steven A. Sloman, Cass R. Sunstein, Emily A. Thorson, Duncan J. Watts, and Jonathan L. Zittrain. 2018. "The Science of Fake News." *Science* 359(6380):1094–96. doi: 10.1126/science.aao2998.

Lindblad Kernell, Emil, Emil, and Cathrine Bloch Veinberg. 2020. *Guidance on Human Rights Impact Assessments on Digital Activities*. Copenhagen: The Danish Institute for Human Rights.

Maclay, Colin Miles. 2010. *Can the Global Network Initiative Embrace the Character of the Net?* edited by R. Deibert, J. Palfrey, R. Rohozinski, and J. Zittrain. Cambridge, Mass: MIT Press.

Maher, Rajiv. 2019. "Navigating a New Era of Business and Human Rights." in *Managerialism in Business and Rights: Lessons on the social impacts of a collaborative Human Rights Impact Assessment of a contested mine in Chile*, edited by M. Mullen, D. Polomski, T. Soares, J. Cassineiro, M. D'Cruz, and V. Hongsathavij. ---: Article 30 & Mahidol University.

Mares, Radu. 2019. "Securing Human Rights Through Risk-Management Methods: Breakthrough or Misalignment?" *Leiden Journal of International Law* 32(3):517–35.

Marsden, Chris, Trisha Meyer, and Ian Brown. 2020. "Platform Values and Democratic Elections: How Can the Law Regulate Digital Disinformation?" *Computer Law & Security Review* 36:105373. doi: 10.1016/j.clsr.2019.105373.

Marsden, Christopher T. 2011. *Internet Co-Regulation. European Law, Regulatory Governance and Legitimacy in Cyberspace*. Cambridge: Cambridge University Press.

Massarani, Tarek F., Margo Tatgenhorst Drakos, and Joanna Pajkowska. 2007. "Extracting Corporate Responsibility: Towards a Human Rights Impact Assessment." *Cornell International Law Journal* 40(Winter):37.

McCorquodale, Robert. 2017. "Human rights due diligence in law and practice: Good practices and challenges for business enterprises." *Business and Human Rights Journal* 195:195–224.

Medeiros, Francis Augusto, and Lee A. Bygrave. 2015. “Brazil’s Marco Civil Da Internet: Does It Live up to the Hype?” *Computer Law & Security Review* 31(1):120–30.

Meta. 2022. *Meta Response: Israel and Palestine Due Diligence Exercise*. Meta: Business for Social Responsibility.

Miretski, Pini Pavel, and Sascha-Dominik Bachmann. 2012. “The UN ‘Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’: A Requiem.” *Deakin Law Review* 17(1):5. doi: 10.21153/dlr2012vol17no1art68.

Morales, Luis F. Beltrán, Felipe García-Rodríguez, Daniel LLuch Cota, German Ponce Díaz, and Victor Sevilla Unda. 2007. “Economic Development, Environmental Conflicts and Citizen Participation in Latin America.” *International Journal of Humanities and Social Sciences* 1(9):449–51.

Observacom. 2020. *Estándares Para Una Regulación Democrática de Las Grandes Plataformas Que Garantice La Libertad de Expresión En Línea y Una Internet Libre y Abierta*. Montevideo, Uruguay: Observacom.

Owens, Jenny, and Richard Sykes. 2005. “The International Petroleum Industry Environmental Conservation Association Social Responsibility Working Group and Human Rights.” *International Social Science Journal* 57:131–41.

Paust, Jordan J. 2001. “Human Rights Responsibilities of Private Corporations.” *Vanderbilt Journal of Trasnational Law* 35:801–25.

Ramiro, Mónica Arenas. 2022. “Data Protection in Latin America.” Pp. 140–59 in *Research Handbook on Privacy and Data Protection Law*. Edward Elgar Publishing.

Ratner, Steven R. 2001. “Corporations and Human Rights: A Theory of Legal Responsibility.” *The Yale Law Journal* 111:443–545.

Rees, Caroline, and Rachael Davis. 2016. “Salient Human Rights Issues: When Severe Risks to People Intersect with Risks to Business.” in *Business and Human Rights. From Principle to Practice*, edited by D. Baumann-Pauly and J. Nolan. London & New York: Routledge.

Rights & Democracy. 2011. *Human Rights Impact Assessments*. Montreal, Canada: International Center for Human Rights and Democratic Development (Rights & Democracy).

Rosanvallon, Pierre. 2008. *Counter-Democracy: Politics in an Age of Distrust*. Cambridge, UK ; New York: Cambridge University Press.

Ruggie, John. 2007. *Human Rights Impact Assessments --- Resolving Key Methodological Questions*. A/HRC/4/74. Geneve, Switzerland: Human Rights Council. eport of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

Ruggie, John. 2008. *Protect, Respect and Remedy: A Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*. A/HRC/8/5. Geneve: Human Rights Council.

Ruggie, John. 2011. *Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework*. HR/PUB/11/04. New York: Human Rights Council. eport of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

Samway, M. 2016. "The Global Network Initiative: how can companies in the information and communications technology industry respect human rights?" in *Business and human rights*.

Shamir, Ronen. 2004. "Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility." *Law & Society Review* 38(4):635–64. doi: 10.1111/j.0023-9216.2004.00062.x.

Sikkink, Kathryn. 1993. "Human Rights, Principled Issue-Networks, and Sovereignty in Latin America." *International Organization* 47(3):411–41.

Simons, Penelope, and Audrey Macklin. 2014. *The Governance Gap Extractive Industries, Human Rights, and the Home State Advantage*. 1st ed. London and New York: Routledge.

Sissons, Miranda, and Alex Warofka. 2018. "An update on Facebook's human rights work in Asia and around the world." *About Facebook*. Retrieved (https://about.fb.com/news/2020/05/human-rights-work-in-asia/.).

Small, Mario Luis. 2009. "How Many Cases Do I Need?'On Science and the Logic of Case Selection in Field-Based Research." *Ethnography* 10(1):5–38.

Statista Digital Market Outlook. 2022. *Leading Markets Worldwide in 2022, by Social Media Advertising Spending (in Million U.S. Dollars)*.

Sullivan, David. 2016. *Business and Digital Rights: Taking Stock of the UN Guiding Principles for Business and Human Rights in the ICT Sector*. Association for Progressive Communications.

Takahashi, Saul. 2019. "Seizen-Setsu and the Inadequacy of Voluntary Frameworks." in *Managerialism in Business and Rights: Lessons on the social impacts of a collaborative Human Rights Impact Assessment of a contested mine in Chile*, edited by M. Mullen, D. Polomski, T. Soares, J. Cassineiro, M. D'Cruz, and V. Hongsathavij. ---: Article 30 & Mahidol University.

Telefónica. 2019. "Global Human Rights Policy. Approved by the Board of Directors of Telefónica S.A. On at Its Meeting of May 29, 2019."

UN-ESC. 1990. *Global Consultation on the Right to Development as a Human Right. Report Prepared by the Secretary General Persuant to Commission on Human Rights Resolution 1989/45*. E/CN.4/ 1990/9/Rev.1. Geneve: Economic and Social Council.

Waldron, Jeremy. 1999. *Law and Disagreement*. Oxford University Press.

Watchirs, Helen. 2002. "Review of Methodologies Measuring Human Rights Implementation." *The Journal of Law, Medicine & Ethics* 30(4):716–33.

Weissbrodt, David. 2005. "Business and Human Rights." (University of Cincinnati Law review):21.

Wright, David, and Paul De Hert, eds. 2012. *Privacy Impact Assessment*. Dordrecht: Springer Netherlands.

Bio

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