

Legislative trends in the regulation of artificial intelligence in Central America and the Dominican Republic

Analysis in cooperation with IPANDETEC

Unpacking current developments in the information space

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In the Central American region and the Dominican Republic, there has been a legislative trend on the regulation of artificial intelligence since 2023. These bills have been presented in three specific countries: Costa Rica, Panama and the Dominican Republic, which are still under discussion in their respective legislatures. A model law proposed by the Latin American and Caribbean Parliament also promotes AI regulation. Yet, progress is slow and data protection laws are also outdated to deal with the new challenges of AI.

What is the issue?

The advances of artificial intelligence pose new challenges to society and require adequate responses, including regulatory ones.

In **Costa Rica**, three bills have been presented so far regarding the regulation of artificial intelligence, notably:

- 1. Bill No. 23771 "Artificial Intelligence Regulation Act"** ¹: This bill was drafted with the full support of ChatGPT-4 from the Open AI company. The bill was introduced on 30 May 2023 and is still being debated in the Legislative Assembly. Its introduction raises concerns because, despite the importance of the issue, it was done without human intervention, which could be an irresponsible act. In creating it, the legislators used the following prompt:

Think like a lawyer and legislative advisor, use technical vocabulary and draft a bill to regulate artificial intelligence, taking into account the Political Constitution of Costa Rica of 1949, ask everything you have doubts about".

1. Bill No. 23771 "Artificial Intelligence Regulation Act".
<https://dlqgtien6gys07.cloudfront.net/wp-content/uploads/2023/05/23771.pdf>

2. **Bill No. 23919 “Law for the Responsible Promotion of Artificial Intelligence in Costa Rica”²**: The bill was introduced on 6 September 2023 and is still being debated in the Legislative Assembly. The bill consists of 44 articles. The explanatory memorandum of the bill states that it complies with Law 8968 of 2011 on the protection of individuals against the processing of their personal data. It also states that the principles proposed by the OECD in the Council Recommendation on Artificial Intelligence, together with the values and principles of UNESCO and the recommendations of the European Union on the regulations it has proposed, govern the bill.

The purpose of this project is to promote the use, research, design, development, deployment, use, implementation and application of Artificial Intelligence (AI) in Costa Rica. In accordance with the principles of ethics, responsibility, human dignity, equality, equity and transparency, in order to protect the rights of people in the face of new technological changes and to contribute to the improvement of social, labour, economic, environmental, productive and human conditions in the country.

The project will establish a list of concepts for the interpretation of the project. As for the Ministry of Science, Technology, Innovation and Telecommunications (MICITT), it regulates it as the governing body of Artificial Intelligence in Costa Rica, which will be responsible for dictating public policy in this area, after the entry into force of the law.

It also establishes the Interinstitutional Commission for the Development of AI, with the aim of promoting, facilitating and developing AI processes in the country, with the participation of different entities and organisations from the public and private sectors, which will be attached to the MICITT. The bill regulates risk assessment, without specifying what can be considered a risk or a high risk, leaving it to the subsequent creation of the regulation of this standard (if the bill is approved). The draft also establishes a system of liability and compensation for the defined offences.

The bill stipulates that in the event of a security crisis that endangers the public interest, the executive branch may issue a declaration of national emergency in accordance with specific legislation on the matter. The draft does not specify what could constitute a national emergency or what could be considered a security crisis that endangers the public interest.

2. Bill No. 23919 “Law for the Responsible Promotion of Artificial Intelligence in Costa Rica”.
<https://dlqggtien6gys07.cloudfront.net/wp-content/uploads/2023/09/23919.pdf>

3. **Law on the implementation of artificial intelligence (AI) systems**³:

The bill was submitted to the Legislative Assembly on 6 August 2024. This bill establishes that it is a matter of public order and mandatory compliance in the national territory, applicable to nationals or foreigners who are outside the country, when one or more of the regulated circumstances occur. The bill establishes rights applicable to individuals or groups, regardless of the degree of risk, a list of definitions and primary impact zones subject to evaluation and authorisation by the State.

The project aims to regulate the development, deployment and use of systems based on artificial intelligence, as well as the aspects and rights to be taken into account in their development.

With regard to the deployment of AI systems, they will be subject to an administrative procedure of prior evaluation for their use, which will be carried out by the Ministry of Science, Innovation, Technology and Telecommunications (MICITT) in accordance with the provisions of the law, which does not establish further details, leaving them to a subsequent regulation.

In terms of prohibitions, it prohibits the development, use and availability of AI systems or models for the exploitation of vulnerable groups or individuals, subliminal techniques for the manipulation of human behaviour, the classification of groups, the elaboration of judgments or decisions by the judiciary, the elaboration of projects by the legislature, the elaboration of decrees or regulations by the national executive, and the evaluation or classification of individuals. It is possible that these deductions are due to errors that may be made in a model or system, or to the violation of rights such as the right not to be subject to automated or semi-automated decisions, although this is not specified in the Regulation.

The bill also establishes common obligations for AI services deployed or available in the national territory, as well as for the implementation of AI by the Research, Development and Innovation Directorate of the MICITT.

In addition, the country developed a **National Artificial Intelligence Strategy (ENIA)**: It is an initiative sponsored by the Ministry of Science, Innovation, Technology and Telecommunications (MICITT). This project defines a key framework to promote and develop the use of Artificial Intelligence (AI) in the country.⁴

3. Law for the implementation of artificial intelligence (AI) systems.
<https://www.crhoy.com/wp-content/uploads/2024/08/LEY-PARA-LA-IMPLEMENTACION-DE-SISTEMAS-DE-INTELIGENCIA-ARTIFICIAL-IA.pdf>

4. IPANDETEC. (2024). *On the National Artificial Intelligence Strategy (ENIA) of Costa Rica*. Available at:
<https://www.ipandetec.org/costa-rica/sobre-la-estrategia-nacional-de-inteligencia-artificial-enia-de-costa-rica/>

In **Panama**, following the introduction of two draft laws that were not approved by the previous legislature, notably **Draft Law No. 014 " Regulation of Artificial Intelligence in the Republic"** ⁵ submitted to the National Assembly on 6 July 2023 with the participation of citizens (through the National Directorate for the Promotion of Citizen Participation) and **Draft Law No. 149 "Law on the promotion and investment in artificial intelligence"** ⁶ , submitted on 1 November 2023. A new draft law is under consideration:

1. **Draft Law No. 162. " Establishing the legal framework, the promotion and development of Artificial Intelligence in the Republic of Panama"** ⁷ . It was presented on 28 August 2024 and is in the preliminary stage, pending approval. In the explanatory statement, the legislators point out that the bill has been drafted taking into account the laws of other countries, referring to the principles and rights outlined in the model law proposed by the Latin American and Caribbean Parliament (PARLATINO).

The bill's explanatory memorandum notes that there are legitimate concerns about how AI could have harmful effects in the future if it is not adequately regulated according to "risks".

It establishes the legal framework for the development, implementation and use of artificial intelligence, with the aim of ensuring the protection of human rights, security and privacy of individuals, as well as fostering innovation and technological development, ensuring that its use is carried out in an ethical, safe and respectful manner with human rights; establishing the basis for a national policy on artificial intelligence.

The standard sets out a number of definitions, including sandboxes and what is meant by risk, which assesses likelihood and severity or impact. It sets out a list of principles for the development and use of AI, the rights of individuals and the rights of ARCOs.

It also regulates the obligations of developers and providers of AI systems; if an AI has a risk level other than the minimum risk level, it must comply with a number of requirements, such as certification of the risk level. It regulates the classification of AI systems according to risk level, from unacceptable to minimal. The categories established according to risk and the mitigation measures applicable to the risks specific to each risk level will be subject to regulation by the Executive Branch after the law enters into force.

5. Bill No. 014 "Regulating artificial intelligence in the Republic"
https://alertas.directoriolegislativo.org/wp-content/uploads/2023/07/2023_A_014.pdf

6. Bill No. 149 "Law on the promotion and investment in artificial intelligence"
<https://espaciocivico.org/sites/default/files/proyectos-ley/ap149.pdf>

7. Bill No. 162. "Establishing the legal framework, promotion and development of Artificial Intelligence in the Republic of Panama".
<https://espaciocivico.org/sites/default/files/proyectos-ley/a162.pdf>

As in Costa Rica, Panama is working on a National Artificial Intelligence Strategy: In addition, in 2023, the National Authority for Government Innovation (AIG) invited eligible consulting firms to express their interest in developing a national artificial intelligence strategy. ⁸ However, there is no known progress on its adoption.

A bill was also introduced in **the Dominican Republic:**

Law that: "Establishes the guidelines for public policies aimed at the development, use, regulation and implementation of Artificial Intelligence in the Dominican Republic". It was submitted on 5 February 2024 and sent to the committee on 28 February 2024. However, it is not available for consultation online.

Conclusions

The Central American region continues to face challenges in the defence of human rights in the digital ecosystem: for example, some countries still lack legislation on the protection of personal data (Guatemala and Honduras). In other cases, countries do have legislation, but it is outdated, such as in Costa Rica and the Dominican Republic. Law No. 8968, on the protection of natural persons against the processing of their personal data, dates from 2011 (Costa Rica), and Law No. 172-13, on the comprehensive protection of personal data stored in files, public registers, databases or any other technical means of data processing intended to provide reports, whether public or private, dates from 2013, with a particular focus on the processing of data by credit institutions.⁹

Currently, the Legislative Assembly of the Republic of Costa Rica is debating Bill No. 23097 "Law on the Protection of Personal Data", which was presented in 2022 and has not yet been approved. For its part, the government of the Dominican Republic announced in 2023 that it would update the laws on personal data protection and high-tech crimes and offences, but this has not yet happened.¹⁰

Against this backdrop in the region, Costa Rica, Panama and the Dominican Republic reflect a legislative trend towards regulating artificial intelligence. However, these legislative initiatives share several common patterns and challenges:

Most of the bills in the Central American region adopt a risk-based approach,

8. <https://www.laestrella.com.pa/panama/nacional/aig-impulsa-estrategia-inteligencia-LMLE503008>

9. ECIJA. (2020). <https://ecija.com/sala-de-prensa/republica-dominicana-y-nuestros-datos-breve-analisis-sobre-la-regulacion-actual-en-proteccion-de-datos-y-nuevas-tendencias/>

10. Diario Libre. (2023). Gobierno presentará actualización de leyes de Protección de Datos Personales y Ciberdelito.

<https://www.diariolibre.com/mundo/america-latina/2023/10/14/actualizacion-de-leyes-de-proteccion-de-datos-personales/2492177>

following international regulatory models such as those of the European Union, as described in some cases in the explanatory memorandum of these bills. This approach seeks to establish different obligations according to the impact that the AI may have, from minimal to unacceptable risks. However, not all of the Bills define what constitutes a risk and state that this will be regulated after the Bills come into force (if passed).

These bills set out definitions, rights, principles such as the ethical use of AI, security and privacy, but while they are often comprehensive, they are not very precise and clear in their regulation. They mostly depend on regulations (such as by-laws) that will be issued after the law comes into force, which may raise doubts about their content. Moreover, if these bills are passed, their actual implementation may be delayed and depend on the creation of these regulations.

It should also be considered that regulation of the development, implementation and use of AI systems must be done in such a way that it does not lead to incorrect or inappropriate interpretations in the future. Regulation with the help of AI in matters as important and sensitive as AI systems should be avoided.

Therefore, given that artificial intelligence is now another challenge in the region and especially in the digital ecosystem, its regulation should prioritise a human rights-based approach rather than a risk-based approach (which has not even been defined and it is unknown what can constitute a risk). As civil society has repeatedly stated, its regulation must be centred on the protection of human rights^{11,12,13}, taking into account international human rights instruments and standards, such as those of the Inter-American Human Rights System, which is specific to the region.¹⁴

11. AlSur. (2024). *Los caminos regulatorios para la IA en América Latina*. <https://www.alsur.lat/sites/default/files/2024-10/ALSUR%20-%20IA%20en%20Latam%20%5BESP%5D-1.pdf>

12. Access Now. (2024). *RADIOGRAFÍA NORMATIVA: ¿DÓNDE, QUÉ Y CÓMO SE ESTÁ REGULANDO LA INTELIGENCIA ARTIFICIAL EN AMÉRICA LATINA?* <https://www.accessnow.org/wp-content/uploads/2024/02/LAC-Reporte-regional-de-politicas-de-regulacion-a-la-IA.pdf>

13. Derechos Digitales. (2024). *Transformaciones y desafíos en los derechos digitales en América Latina: un balance de 2024*. <https://www.derechosdigitales.org/24717/transformaciones-y-desafios-en-los-derechos-digitales-en-america-latina-un-balance-de-2024/>

14. https://www.eff.org/files/2024/10/30/estandares_interamericanos_de_ddhh_y_uso_estatal_de_la_ia_final.pdf