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IPANDETEC
INSTITUTO PANAMEÑO DE DERECHO Y NUEVAS TECNOLOGÍAS

Access Now and IPANDETEC Joint Submission to the United Nations Human Rights Council, on the Universal Periodic Review 2020 Third Cycle for Panama

About Access Now and IPANDETEC

1. Access Now (www.accessnow.org) is an international organisation that works to defend and extend digital rights of users globally. Through representation in 14 countries around the world, including engagement with stakeholders and policymakers in Latin America, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. We engage with an action focused global community, and our Technology Arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. The Panamanian Institute of Law and New Technologies (IPANDETEC) was born in 2012, founded by Lía Hernández and her desire to group specialists in the area of technology and related subjects to promote research study of digital rights and contribute to the development of projects, laws and analysis. IPANDETEC is a non-profit organization that promotes the use and regulation of Information and Communication Technologies (ICT) and the defense of Human Rights in the digital environment in Panama and Central America.

Introduction

3. The Universal Periodic Review (UPR) is an important United Nations (U.N.) process aimed at addressing human rights issues all across the globe. Access Now welcomes this opportunity to contribute to Panama's third review cycle. This submission examines the following human rights priorities, particularly as they relate to the digital age:
 - Freedom of expression
 - Access to information, and
 - The right to privacy.
4. Panama was last reviewed in May 2015. During its second UPR, Panama received 125 recommendations in the area of human rights, of which 111 recommendations were accepted and 14 noted.

International and domestic human rights obligations

5. Panama has signed onto and ratified various international human rights instruments, including: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination

(ICERD), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).¹

6. Chapter 1 in Title III of the Constitution of Panama provides for judicially enforceable fundamental rights. Of these, Articles 37 and 43 of the Constitution of Panama establishes a fundamental right to freedom of speech and expression and the right to information and right to know. Article 20 establishes the right to equality, and Article 65 provides for the right to life and Article 21 establishes the right to liberty. Article 29 establishes the right to privacy.

The state of digital rights in Panama

7. In August 2018, the government of Panama introduced a new data protection bill in the National Assembly. Bill No. 665² was drafted by the executive power without public participation, the consequences of which can be seen in the bill. The final proposal lacks fundamental protections for data subjects, and does not take a user rights-centered approach with clear liabilities and exceptions, among other failings.³
8. The data protection bill was approved under Law No. 81 of March 26, 2019 was published on March 29, 2019.⁴
9. Previously, in 2016 a widely inclusive open consultation with civil society, academics, private sector actors, and legislators all worked together to draft a comprehensive data protection bill consistent with the principles of the EU's GDPR. This was revoked however in January 2018 due to a lack of consensus about the final content.⁵

Recommendations

Panama should improve its human rights record and treatment of digital rights in several areas. We accordingly recommend that the Panamanian government:

10. Amend its Personal Data Protection Law to ensure that it upholds rather than restrict rights. It should take a user-rights centered approach and promote fundamental protections for data subjects;
11. Regulate Law No. 81 on data protection with the help of civil society organisations and take into account the concerns raised by civil society organizations regarding these bills and reflect them in the reglementary decree after the approval of the law;

¹ [Status of Ratification Interactive Dashboard Panama](#), OHCHR, 2019

² [TRÁMITE LEGISLATIVO 2017-2018](#), Asamblea Nacional Panama, 2018

³ [Panama: civil society demands an open process for rushed Data Protection Bill](#), Access Now, 2018

⁴ [Panama: Data protection law replaces “isolated privacy and secrecy laws”](#), Data Guidance, 2019; [Ley 81 Sobre Protección de Datos Personales](#), Gaceta Oficial Digital, 29 marzo 2019.

⁵ [Panamá, rezagada en la protección de datos](#), La Estrella de Panama, 2018

12. Panamanian legislators must create a Data Protection Act, instead of adding responsibilities to existing authorities, particularly considering that the law gives responsibility to the Transparency Authority, who at the time, claimed to have neither the staff nor resources to fulfill this responsibility.
13. The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now and IPANDETEC are grateful to make this submission.
14. For additional information, please contact Access Now General Counsel Peter Micek (peter@accessnow.org).
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