

## Reflections on Access to Internet in Cuba as a Human Right

Raudiel F. Peña Barrios

Professor of Constitutional Law, University of Havana

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**Abstract:** *This article intends to offer some considerations about the access to internet as a human right; Taking as its starting point the analysis of the criteria that the legal doctrine has issued in this regard. In this sense, it will delve into its content and scope; As well as the utility of recognizing and protecting legally the same given the current development of information technologies. Together, we will address the current situation of Cuba on this issue; Placing special emphasis on the political and legal issues facing the country, and the constitutional foundations that, in our view, support the need to recognize the right to the internet. Finally, we will present some concrete proposals to solve those problems, under the maxim of considering that the widest possible use of the network by individuals is a crucial element for the democratization of contemporary societies.*

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### 1. THE RIGHT TO THE INTERNET<sup>1</sup> AS A HUMAN RIGHT. BRIEF ANALYSIS OF ITS CONTENT AND SCOPE

The first and at the same time fundamental premise to consider the internet as a human right, is supported by the famous phrase that information is power. If we accept this idea, we can only base something that clearly seems clear, although some refuse to accept it, and is that the internet is today the main source of information available. Although access to it is not developed in a homogeneous way in all countries for various reasons - cultural, social, economic, technological, political, among others -, it is crucial to have this valuable tool. It can be said that the construction of transparent and democratic societies without having all the possibilities that the network of networks provides, is a mere utopia today and with a view to the future.

One hypothesis that I defend in this respect is that the use of the internet in a free way by citizens can be considered as a power derived from the right to information, without prejudice to it being recognized normatively independently. Defining the latter from the widest possible perspective, leads us to understand that given the current technological development it is possible to bring together under one *right* certain prerogatives that are sometimes considered as separate fundamental rights. If we meditate on how interrelated they are and what is necessary of this connection for their proper exercise, we will be able to understand that they all have a common concept: information. The progress of the communicative and informative media during the twentieth century, whose peak was the development of the internet, expanded and modified the ability of people to communicate. This technological advance makes it necessary to reformulate certain legal concepts, initially conceived to protect the issuer from information against the eventual third party intervener - authority or individual - to extend its scope of protection to the recipients of information.

The traditional freedoms of expression and of the press, undoubtedly two of the most important political-juridical formulations inherited from the European and American revolutions of the late eighteenth century, have now been reduced to reach new perspectives<sup>2</sup>. That individuals can express freely opinions, ideas or thoughts, is complemented by the truthful and timely reception of them by

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<sup>1</sup> We want to let the reader know that throughout this article we will use the expressions *right to the internet* and *right of access to the internet* as synonyms. Similarly, the terms *global network* or *network of networks* will be used to refer to the internet. We also want to clarify that the references to footnotes placed after the point and apart in each paragraph allude to it. On the other hand, if they are placed before the point and apart it is because they refer only to the last sentence.

<sup>2</sup> About freedom of expression on the Internet L Cotino (ed), Freedom of Expression and Information on the Internet and Social Networks: Exercise, Threats and Guarantees, (Servei de Publicacions de la Universitat de València, 2011).

those. In addition, it is increasingly necessary to have access to the data that people store the records, both public and private entities, as well as to know information handled by the state that may be of interest to citizens, due to the essential transparency governmental. On the other hand, contemporary societies need, as history and some current experiences demonstrate, of a media sphere as heterogeneous as possible. It is thus possible to contrast the information received by each of them, and allows the consumer of this to have a critical position both with regard to the medium itself and the materials it transmits. Well, all this is impossible to do without adequate access to the internet, because this is the way, the way to have a constantly updated and diverse information flow. By becoming a source of information and knowledge, its use becomes an essential component of the right to be informed. It serves to implement, exercise and enjoy in fuller forms the freedoms of expression, opinion and other human rights that underpin the democratic ideal of any contemporary society<sup>3</sup>. This last argument is in line with the transversality of the right to information, which enables the enjoyment of others, particularly civil and political, such as the right to participation<sup>4</sup>, suffrage, transparency and surrender of counts. We must consider, by way of example, that it is now possible to vote via the internet from the development of so-called electronic ballots<sup>5</sup>.

Such relevance has reached the theme that the United Nations recognized the internet as a human right, following a report by the Office of the High Commissioner for Human Rights in May 2011. In the resolution A/HRC/20/L.13 of the Human Right Council (HRC) adopted in July, 5, 2012, and based on the reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, presented to the Council and the Assembly General, it is pointed out that the rights of individuals should also be protected in cyberspace.<sup>6</sup>

At the same time several states have been incorporating it into their legal systems with the corresponding development of actions to guarantee it materially. These are Estonia in 2000, Greece (2001), Spain and Finland (2003), Germany (2004) and Turkey (2010). A step further was given by Switzerland (2006 to start implementing it in January 2008), Finland (2009) and Spain (2011), by granting it not by any means, but by broadband, to high speed with a minimum of 1 Mb per second downstream. The Finns extended the limit to 100 Mb per second in 2015<sup>7</sup>. Meanwhile, other international organizations that established the use of the internet as a right were the European Union (EU) in 2002, and the Organization for Security and Cooperation in Europe (OSCE) since 2011.

In the case of some countries it has been recognized as an instrumental right, a consequence of freedom of expression. The most relevant examples are Portugal, Russia and Ukraine. However, the most eloquent case is France, where this position was followed following a judgment of the Constitutional Council in 2009.<sup>8</sup>

Within the Latin American context, Mexico stands out. Through the constitutional reform to be published in the Official Gazette of the Federation of June 11, 2013, among other items, states in article 6, third paragraph, that the state will guarantee the right of access to information and

<sup>3</sup> N Lucchi, "Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for Freedom of Expression", in *Cardozo Journal of International and Comparative Law (JICL)*, Vol. 19, No3, 2011. Available at [Http://www.cjicl.com/uploads/2/9/5/9/2959791/cjicl\\_19.3\\_lucchi\\_article.pdf](http://www.cjicl.com/uploads/2/9/5/9/2959791/cjicl_19.3_lucchi_article.pdf). (Consulted April, 4, 2017).

<sup>4</sup> We refer to the explicit recognition that some Latin American constitutions adopted at the end of the XX century and the beginning of the XXI make this right in particular, as are the cases of Bolivia, Ecuador and Venezuela. Yuri Pérez, "Political participation as a functional requirement of democracy. Analysis from the constitutional design of the Bolivarian Republic of Venezuela", in Viciano R. (ed), *Studies on the new Latin American Constitutionalism* (Ed Tirant lo Blanch, 2012), 241-268.

<sup>5</sup> María Elizondo, "Ballot", in Ferrer E. et al. (Coords), *Dictionary of Constitutional and Conventional Procedural Law, Volume I*, (Institute of Legal Research of the National Autonomous University of Mexico, 2014), 126.

<sup>6</sup> Julio García, "Internet (right to)", in Ferrer E. et al. (Coords), *Dictionary of Constitutional and Conventional Procedural Law, Volume II*, (Institute of Legal Investigations of the National Autonomous University of Mexico, 2014), 721.

<sup>7</sup> José Carbonell and Miguel Carbonell, "Access to the internet as a human right", in Gómez J. (coord), *selected themes of private international law and human rights. Studies in homage to Sonia Rodríguez Jiménez*, (Institute of Legal Investigations of the National Autonomous University of Mexico, 2014), 35-6.

<sup>8</sup> P García, "The right of access to an open Internet". Available at [http://tecnologia.Elderecho.com/tecnologia/internet\\_y\\_tecnologia/derecho-acceso-Internet-abierto\\_11\\_953305005.html](http://tecnologia.Elderecho.com/tecnologia/internet_y_tecnologia/derecho-acceso-Internet-abierto_11_953305005.html). (Consulted April, 17, 2017).

communication technologies, As well as to broadcasting and telecommunications services, including broadband and the internet. On the other hand, the state goal is to integrate Mexicans into the information and knowledge society through a universal digital inclusion policy with annual and six-year goals. In addition, it is established that at least 70% of all households and 85% of all SMEs at the national level must be able to use the internet with a real speed to download information in accordance with the average registered in the member countries of the OECD. Finally, actions must be taken to guarantee it through broadband, in buildings and facilities of the agencies and entities of the federal public administration, and that the federative entities will do the same in the scope of their competence.<sup>9</sup>

The most recent UN pronouncement came from the HRC, which adopted a resolution in 2016 stating that human rights should also be protected on the internet. This resolution gives special importance to freedom of expression, since it is exercisable regardless of frontiers and by any chosen procedure, in accordance with article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights<sup>10</sup>. It should be recalled that both international legal instruments refer not only to freedom of opinion and expression; But also to investigate, receive information and opinions, as well as their dissemination, specifying that they will be independent of sex, skin color, religion, language, political opinion, etc.

Based on these arguments, the HRC recognizes the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms. In this regard, it urges states to promote and facilitate access to the internet and international cooperation aimed at the development of the media and information and communication services in all countries. It also establishes it's global and open nature; Affirms that the quality of education promotes digital literacy and facilitates access to it; and encourages the analysis of security concerns in cyberspace in accordance with the international obligations of states in the field of human rights to ensure freedom of expression, association and privacy.

As an addition to the above, and in what undoubtedly constitutes the strongest element of its content, this resolution condemns torture, extrajudicial executions, enforced disappearances and arbitrary detentions; As well as the expulsion, intimidation, harassment and gender violence committed against persons for exercising their human rights and fundamental freedoms on the internet. It is clear that this way is intended to sanction any state behavior, since it is common in some national contexts the persecution of individuals who use the network to disseminate ideas that are not well received by the authorities. Related to this last aspect, states are urged to ensure accountability on this issue. Similarly, measures aimed at preventing or impeding access to or dissemination of information online are condemned; While stressing the importance of combating hate speech, which constitutes an incitement to discrimination and violence on the Internet.

From the above, we can understand the current relevance of the internet as a human right. Well be accepted as part of the right to information; as one in himself wholly independent of any other; or is only recognized as instrumental or accessory to freedom of expression; It is clear that their insertion in the legal system contributes to make our societies more democratic. If the relevance of the internet is accepted for the most effective exercise of the fundamental freedoms of the human being, then what are really important is the State commitment and the corresponding legal protection of this right, beyond the position that in the theoretical order is accepted as valid for formulation.

It should be noted that the guarantees for this right should not only be legal but also material. The latter should be understood as the actions that the state develops, in conjunction with civil society and the international community, to ensure full access to the internet. They range from the development of literacy campaigns to the implementation of an adequate communication infrastructure; Complemented by the adequate legal regulation of each aspect linked to this theme.

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<sup>9</sup> Julio García, "Internet (right to)", in Ferrer E. et al. (Coords), Dictionary of Constitutional and Conventional Procedural Law, Volume II, (Institute of Legal Investigations of the National Autonomous University of Mexico, 2014), 722.

<sup>10</sup> Human Rights Council, Thirty-second session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. The promotion, protection and enjoyment of human rights on the Internet, A/HRC/32/L.20, adopted June, 27, 2016. Available at [http://thehill.com/sites/default/files/a\\_hrc\\_32\\_l.20\\_english-Or-30-june.pdf](http://thehill.com/sites/default/files/a_hrc_32_l.20_english-Or-30-june.pdf) (Consulted March, 15, 2017).

## 2. CUBA AND THE GLOBAL NETWORK. POLITICAL-LEGAL AND SOCIAL ISSUES

As a rule, since the Cuban political discourse has identified as the main obstacle to access to the global network, the problems of infrastructure that the country faces given its economic limitations. It is widely known that in terms of Internet access, Cuba has one of the lowest penetration rates in the world, especially from home. The International Telecommunication Union (the United Nations agency of which the country is a member) places it consistently at the bottom rungs of its ICT Development Index (IDI), which integrates three dimensions: access, utilization and capabilities. According to the 2015 edition, Cuba ranked 129th out of 167 countries, placing it in a worse position than five years ago. In any case, a position below your income level or the educational effort made<sup>11</sup>.

In addition to these technical problems, we must add the existence of other limitations that have not allowed the recognition of the use of the internet as a human right, which are associated with inconsistencies inherent in the national legal system, the lack of applicability of the constitution, between other factors. In the first place, the null interpretation made by the Council of State of the Republic of Cuba of the precepts of the aforementioned legislative provision, understood as a law, should be emphasized. It gives this body, in its article 90 incise ch)<sup>12</sup>, the power to give the existing laws a general and obligatory interpretation, but to date, at least in public, no agreements have been issued that establish the content and scope of the Rights recognized in the charter. Hence, there are no pronouncements that allow the recognition of the use of the internet as a right, based on the interpretation of a constitutional postulate.

Another aspect to consider is the lack of legislative development in the area of freedom of expression and the press. Since 1976 the constitution recognizes both freedoms under the premise that its exercise will be regulated by a law<sup>13</sup>. However, this has not been adopted and the practice in the matter is still highly mediated by the information policy set by the Cuban Communist Party (CCP). In our opinion, it is not a mere legislative neglect - there are no casualties in politics - but a clear stance of inconsistency with what is established by Cuban law. At the same time, this situation can be explained on the basis of successive - and erroneous - interpretations of Article 5 of the Constitution, where it is stated that the CCP is (...) *the superior governing force of society and the State* (...), which serves for the imposition of party guidelines outside the institutional boundaries of this organization<sup>14</sup>. In the case of the press, for example, *Granma* newspaper is the *Official Organ of the CCP Central Committee*, but other media, such as television and radio, are usually guided by the same information lines as the one. This complex panorama, among other things, results in a lack of a coherent and harmonious legal system for the exercise of rights associated with the free expression of ideas; including the use of the Internet for such purposes.

Neither have the Cuban courts ruled on the recognition of access to the internet as a human right, and this has been influenced by several factors. What stands out most is the lack of direct applicability of the constitutional rules in the solution of cases that are submitted before the judicial bodies. It should be considered that the Cuban text was conceived more as a political manifesto or declaration of principles, than as a legal provision per se. Hence, article 53, where the freedoms of expression and of the press are now included<sup>15</sup>, has not been interpreted judicially; which would have allowed us to establish the use of the internet as part of them.

In this same sense two other issues that hinder jurisdictional intervention are evident. One of them is related to the fact that in Cuba there are no special procedures for the defense before the courts of the rights that the Constitution regulates; while the Civil, Administrative, Labor and Economic Procedure Act excludes the constitutional matters of knowledge of the Civil and Administrative Chambers<sup>16</sup>.

<sup>11</sup> R Torres, "Internet and the future of the Cuban economy" February 21, 2017. Available at <http://progresosemanal.us/20170221/Internet-y-el-futuro-de-la-economía-cubana/> (Consulted May, 5, 2017).

<sup>12</sup> M Prieto and L Pérez, Legislative Selection of Cuban Constitutional Law (Ed. Félix Varela, 1st edn, 1999) 37.

<sup>13</sup> The full text of the Cuban Constitution can be found in the Cuban Journal of Law, Year 5, No.11, January-June, 135-81 (1976). The article on freedom of expression and of the press was 52 and can be read on page 153.

<sup>14</sup> M Prieto and L Pérez, Legislative Selection of Cuban Constitutional Law (Ed. Félix Varela, 1st edn, 1999) 14.

<sup>15</sup> Note that the regulation of the exercise of these rights continues to be referred to a law. M Prieto and L Pérez, Legislative Selection of Cuban Constitutional Law (Ed. Félix Varela, 1st edn, 1999) 55.

<sup>16</sup> Article 657, section 4, in National Organization of Collective Bodies, Law of Civil, Administrative, Labor and Economic Procedure, Law number 7, of August 19, 1977 (ONBC Publishing, 2012).

The other has to do with the non-existence within the content of the Constitution of the open clause of rights, which indicates the progressivity of the same, and allows to incorporate new rights to the constitutional preceptive from interpreting it, without having to go to its reform<sup>17</sup>.

With everything said so far it seems obvious that the problems of Internet access in Cuba are not only economic or infrastructure. Independently of these, which should not be overlooked, there are particular anomalies that have not allowed an adequate legal protection of the freedoms of expression and of the press, as well as of the rest of the information rights, as is the case of the internet. That is why these issues should be taken into account with a view to the constitutional reform that is expected to take place in 2018 or thereafter.

Despite the complexity of the national context, public services that are provided directly by the state include the Internet, although its development as such is still in the making. The Ministry of Communications (MINCOM) has absolute control in this sector. This control is basically exercised through the Company of Telecommunications of Cuba, S.A., monopolistic entity in that it does not have any competition from another national or foreign company. The same offers services of mobile telephony with 2G technology through the company Cubacel, although some 3G networks are already in operation and there are plans to reach the 4G standard in the short term. Therefore, to date only provide facilities for voice transmission and short messages (SMS), but not data. However, Cubacel offers its users an email service accessible from the mobile phone, called Nauta, whose cost is equivalent to one US dollar per megabyte. This service requires the previous registration of the user and does not offer minimum guarantees of privacy of the communications.

On the other hand, this company enables the use of the Internet through the so-called navigation rooms (kind of cybercafé's) and other places. In June 2013, MINCOM issued Resolution N°197<sup>18</sup>, which allowed the use of the global network - through *Nauta ETECSA* - to citizens. For the first time it was possible to access massively according to the economic capacities of individuals and connectivity. As an initial step, 118 navigation halls with very high prices were established in the country in correlation with average wages. Two years later the Wi-Fi service was expanded to different public spaces in the country: 35 were the initial points and a cost reduction was established. By the end of 2016 there were 611 rooms in the country with 2005 booths, and 346 Wi-Fi access areas that in their peak hours have traffic exceeding 200 Megabits.<sup>19</sup>

In all these places it is possible to connect to Cuban websites (.cu) for about sixty cents an hour, raising the price exponentially for those who want to connect to the global network. It is valid to clarify that in the case of facilities provided by a state-owned company, access to websites that publish information considered by the government as objectionable or contrary to its interests is not allowed. Likewise, Wi-Fi hotspots can be found in hotels for use by their customers. The fixed connection, which is likewise provided by the same company, is limited to companies, universities and other agencies and state entities, with prior governmental authorization. As of today, only the first steps are taken through a so-called pilot plan, to achieve the connectivity of people from their homes.

According to some research carried out in the country about the impact of the opening of the Internet for private use, interesting issues stand out from opinions gathered among the consumers of this service. Regarding the spaces visited and the generation of content, it is recognized that Facebook has positioned itself as the site par excellence for users. Chatting, seeing pictures of friends, sharing them, among others, are some of the most frequent actions. The IMO platform for video calling services for mobile devices is the most used. In addition, for many it has become a source for the search of information for professional or student tasks. However, only for the less these spaces have been constituted as a source to cover particular information agendas, which do not harmonize with those of the traditional media<sup>20</sup>. This means, in our opinion, that those who access the Internet in this way do

<sup>17</sup> Daniela Cutié, "Rights in the Cuban Constitution of 1976. A Re-reading needed for 40 Years of Effectiveness", in Andry Matilla (coord), *The Cuban Constitution of 1976: Forty Years of Effectiveness* (UNIJURIS, 2016).

<sup>18</sup> Available at <http://www.Mincom.gob.cu/sites/default/files/marcoregulatorio/R%20197%2013%20Condiciones%20Generales%20areas%20de%20Internet.pdf> (Consulted May, 5, 2017).

<sup>19</sup> J Domínguez, "Blessed Wi-Fi that I do with you", April 20, 2017. Available at <http://progresosemanal.us/20170420/bendita-wi-fi-hago-contigo/>. (Consulted May, 5, 2017).

<sup>20</sup> J Domínguez, "Blessed Wi-Fi that I do with you", April 20, 2017. Available at <http://progresosemanal.us/20170420/bendita-wi-fi-hago-contigo/>. (Consulted May, 5, 2017).

not use it, at least not in the majority, to break the monopoly of the official press. Two elements, among others, one of objective and another subjective, could be influencing in this conjuncture; although it is opportune to clarify that it is not up to the present work to delve into the subject. First, consider the high cost of the connection, which is usually slowing down and showing instability. Secondly, there is no or little development of an information culture that leads to the diversification of Cuban information sources. The possibility that the Cuban people have internet services and that they are accessible - according to the average economic possibilities of the inhabitants of the island - will be a step forward. On the one hand, it will place society in a more favorable context to exercise better control over government work, while facilitating transparency and accountability. It would also serve to facilitate the full enjoyment of certain fundamental freedoms, such as those of expression and the press, contributing for a much needed democratization and openings, especially after the reestablishment of diplomatic relations with the United States of America.

### 3. CONSTITUTIONAL AND POLITICAL GROUNDS FOR RECOGNIZING A RIGHT WHERE ARE WE AND WHERE COULD WE GO?

The Cuban constitution dates from 1976 (reformed in 1978, 1992 and 2002), and by the historical moment in which it was adopted has a strong influence of the so-called socialist constitutionalism, coming from the Union of Soviet Socialist Republics (USSR) and the rest of the Countries of Eastern Europe. This means that from a philosophical and ideological point of view, human rights were not conceived according to the liberal logic that conceives the possibility of opposing them to the state. On the contrary, the vision that has been followed up to the present day considers those as containers of specific faculties that citizens can enjoy, but always within the limits that the state imposes, without the possibility of putting them before their goals or objectives. This position finds support in article 62 of the law of laws, which makes explicit the impossibility of exercising a constitutional right against the existence of the socialist state, or against the decision of the Cuban people to build socialism and communism. Therefore, the violation of this principle is declared punishable<sup>21</sup>.

In spite of all this, it is our opinion that its contents can be found in its contents that underlie the need to recognize the right of access to the internet, given the current circumstances. The first of these is included in article 1, which establishes Cuba as a socialist state of workers; constituted on the basis of the martianan maximum with *all and for the good of all*; for the enjoyment of *political freedom, social justice and individual and collective well-being and human solidarity*<sup>22</sup>. It is precisely these values that are considered the starting point to recognize, within the catalog of fundamental rights that could be derived from the announced constitutional reform, the right to the internet.

Given the rapid development of information technology, it is unquestionable how much can be used as a tool for political freedom and the well-being of society and individuals in the political, economic and social order. It should be noted that Cuba has a considerable advantage when compared to countries in Latin America or other countries with similar economic development, for the full use of the Internet, since a basic element in this sense is to have high indicators of educational training. Since the development of the literacy campaign in 1961 and for more than fifty-five years, the country has consolidated an education system highly valued at the international level, including by international organizations of which it is not a member such as the World Bank (WB)<sup>23</sup> and the International Monetary Fund (IMF). This places it in a very favorable position for effective use of the internet in terms of economic, political and social development, both collectively and individually.

As part of the so-called updating of the Cuban model, the management of the country should be assessed as the imprint of the global network in terms of both economic development and political participation, and its relation to the satisfaction of individual and collective interests. In the first of these fields, it is highlighted that the Internet has made it possible, among other factors, to increase the transportability of services (strategic sector of the Cuban economy), making cross-border provision viable. These same developments could facilitate the coordination of internationally dispersed

<sup>21</sup> M Prieto and L Pérez, Legislative Selection of Cuban Constitutional Law (Ed. Félix Varela, 1st edn, 1999) 31.

<sup>22</sup> M Prieto and L Pérez, Legislative Selection of Cuban Constitutional Law (Ed. Félix Varela, 1st edn, 1999) 13.

<sup>23</sup> S Lanrani, "World Bank admits Cuba has the best education system in Latin America", March 4, 2015. Available at <http://www.resumenlatinoamericano.org/2015/03/04/banco-mundial-admite-que-cuba-has-the-best-educational-system-of-america-latina/> (Consulted May, 4, 2017).

activities. Similarly, the use of the network would reduce the cost of decentralized data processing and distribution. This favors access to information and the use of information for productive purposes<sup>24</sup>.

In the case of participation in the public life of citizens internet could be just as a very effective tool<sup>25</sup>. Faced with the obstacle of directly participating in the most pressing issues of national reality, because it cannot organize spaces for such purpose without breaking the social dynamics of today, the Internet could help to make consultation of the people not as extraordinary as it has been until today. In this way one could comment on draft laws under discussion; giving different solutions to those that occur to the officials<sup>26</sup>.

In addition, it is worth noting the provisions of article 9<sup>27</sup> of the national charter, since it establishes as a state obligation to ensure the *educational, scientific, technical and cultural progress of the country*. It is undoubtedly all that the internet can propitiate in these fields; considering the breadth and diversity of sources of knowledge that come together on the web. Consequently, from the constitution itself (article 39) it is stated that the state *directs, promotes and promotes education, culture and science in all its manifestations*. In its educational and cultural policy, it maintains, among other postulates, that creative and investigative activity in science is free. Therefore, *it stimulates and makes feasible the investigation and prioritizes the one directed to solve the problems that concern the interest of the society and the benefit of the people*<sup>28</sup>. Nevertheless, the political vision on Internet like platform of distribution of contents arisen from the United States, not always was positively viewed by the Cuban leadership. The then President of the Councils of State and of Ministers Fidel Castro Ruiz in 1995 called it *Trojan horse*, destined to promote the subversion and the division; an instrument for the diffusion of imperialist propaganda and the manipulation of consciences. Years later, in 2012, it would refer to the global network *as a revolutionary instrument that allows us to receive and transmit ideas, in both directions, something that we must know how to use*<sup>29</sup>.

Since the country is in the process of economic reform and for many, including myself, it is irrefutable that transformations are also necessary in the political and legal order, I consider that the creative use of the internet is essential in both orders. During the most recent congress of the CCP, celebrated in 2016, the Conceptualization of the Cuban Economic and Social Model of Socialist Development was adopted. National Development Plan until 2030: Proposal of Vision of the Nation, Axes and Strategic Sectors. This document, whose content according to the authorities constitutes the program of planned actions to boost national development in the medium and long term, establishes some issues associated with internet. On the one hand, it recognizes that information technologies, communications and automation are being developed, so that they contribute to active citizen participation - especially for young people; to the elevation of knowledge, the level and quality of life; to innovation, to the perfection of the State, to the performance of the national economy and the social sphere. It also places information, communication and knowledge as *public assets* and *citizen's rights* that are exercised responsibly<sup>30</sup>. However, it does not refer to internet access as a human right; obviating that information cannot be conceived as such without the use of the information flows that it provides.

<sup>24</sup> R Torres, "Internet and the future of the Cuban economy" February 21, 2017. Available at <http://progresosemanal.us/20170221/Internet-y-el-futuro-de-la-economía-cubana/> (Consulted May, 5, 2017).

<sup>25</sup> About the potentialities of the global network to enable political participation, D Shah, "Information and Expression in a Digital Age: Modeling Internet Effects on Civic Participation, Communication Research," Vol. 32 No 5, October 2005, 531-565. The online version of this article can be found at: <http://crx.sagepub.com/cgi/content/abstract/32/5/531> (Consulted February, 5, 2017).

<sup>26</sup> J Fernandez, "The 'hot zone' of Cuban democracy" May 11, 2017. Available at <http://oncubamagazine.com/columnas/la-zona-caliente-de-la-democracia-cubana/> (Consulted May, 11, 2017).

<sup>27</sup> M Prieto and L Pérez, Legislative Selection of Cuban Constitutional Law (Ed. Félix Varela, 1st edn, 1999) 14.

<sup>28</sup> M Prieto and L Pérez, Legislative Selection of Cuban Constitutional Law (Ed. Félix Varela, 1st edn, 1999) 24.

<sup>29</sup> O Perez, "Fidel Castro: Internet is a revolutionary instrument", March 7, 2012. Available at <https://apupilainsomne.wordpress.com/2012/03/07/fidel-castro-internet-es-un-Instrument-revolutionary> (Consulted May, 4, 2017).

<sup>30</sup> Cuban Communist Party (CCP), Conceptualization of the Cuban Economic and Social Model of Socialist Development. National Development Plan until 2030: Proposal of Vision of the Nation, Strategic Axes and Sectors (GRANMA Newspaper, Havana, 2016), 8.

At the international level, the government's position has not been favorable regarding this issue. The most recent example was during the vote in 2016 of a resolution of the UN Human Rights Council, which affirms the need to protect and promote human rights in the digital sphere, to the same extent and commitment as in material space. They also voted against China, Russia, Saudi Arabia, Qatar, United Arab Emirates, Bolivia, Venezuela, Ecuador, Burundi, Kenya, South Africa, Republic of Congo, Indonesia, India and Bangladesh. In any case, this UN body committed itself to further examining the promotion, protection and enjoyment of human rights, including the right to freedom of expression, on the Internet and other technologies, as well as the way in which this can be an important instrument for the development and exercise of human rights<sup>31</sup>. We believe that as the country progresses in the implementation of public policies to promote access to the global network, it will have the opportunity to change its position on this issue within the multilateral agenda. The contrary would be in our judgment a gross political error, given the fundamental of the question, and taking into account the recognition of the information as *citizen right*, established by the political documents previously cited.

Despite some reluctance in Cuba today, a positive vision on the internet has been imposed from the power apparatus. However, this change of position has not so far - as an example of what has been commented on in the two previous paragraphs - a change in the policies and regulations of this field. Internet is a good mechanism for the dissemination of content, as long as they do not contravene a set of rules and principles aimed at maintaining the current socio-political and socio-economic regime. Any use of the Internet for other purposes, particularly the criticism open to the system, runs the clear risk of being removed from the network by the authorities, without prejudice to actions that can directly be taken in relation to the author of said contents. In addition, we consider that to a large extent the actions that are being carried out from the state are motivated by the intention to show some *flexibility* in the management of the internet. Note that the expansion of the service from June 2015, is incardinated with the first actions of the process of normalization of diplomatic relations between Cuba and the United States. Since President Obama announced as one of the measures aimed at easing the embargo, the start of investments in the telecommunications sector in Cuba, began by the government to implement measures to expand connectivity capabilities.

As a significant example of the current vision in this area, mention should be made of Miguel Díaz-Canel Bermúdez, member of the Political Bureau of the Central Committee of the Communist Party of Cuba and First Vice-President of the Councils of State and Ministers - and substitute of Raul Castro at the head of the country - at the closing of the *First National Workshop on Computerization and Cybersecurity in Havana*, on February 20, 2015. First, it affirms the commitment to carry out a process of computerization of society by massifying the use of information technologies to raise the well-being of the population and accelerate economic and social development, as well as *publicize the reasons of Cuba and our truth in the network*. This last idea, together with others exposed in the own discourse, emphasizes the *instrumental* character of the internet and its interrelation with the use of the new technologies for the fulfillment of the political ends of the state. In the same way, it exposes that the right to internet is accompanied by citizen's duties and of organizations and institutions towards society. This means that their use must be adequate and consistent with the *constitution and laws*, and implies the responsibility to ensure the defense of the country and its integrity, a task that must fall on the control bodies that watch over the defense of the country.

In this sense, he emphasizes that socialism gives a preferential place to the right to information to achieve the full exercise of criticism and the participation of the people; So that as long as we define the project of the country we want, it will be much clearer how the internet can be put at your service. Hence, regulations governing access to the network should be consistent with social norms, principles and policies, as well as transparent for all citizens. Finally, emphasis should be placed on discourse references to close cooperation with China and Russia on cybersecurity.<sup>32</sup>

<sup>31</sup> F Ravsberg, "Cuba votes against considering the internet as a human right". Available at <http://cartasdesdecuba.com/cuba-vota-en-contra-de-considerar-a-internet-as-un-ddhh/> (Consulted April, 19, 2017).

<sup>32</sup> R Elizalde, "Díaz-Canel: There is the Will to Put Informatization and the Internet at the Service of All (+ Video)", February 20, 2015. Available at <http://www.cubadebate.cu/noticias/2015/02/20/diaz-canel-existe-la-voluntad-del-partido-y-el-gobierno-de-poner-la-internet-al-servicio-de-todos/> (Consulted, March, 4, 2017).



Linked with this, he recalled plans to spy on governments and people using these technologies in a perverse way. These latter ideas are relevant in two senses. On the one hand, it highlights the notorious conception that these countries have in this area, which deviate from international standards accepted in the framework of the UN and other organizations. On the other hand, the reminder of the recent espionage facts using the internet could be interpreted as a manifestation of a defensive posture about the same and its potential uses. In fact, in the discourse we have been discussing, emphasis is placed on the tactical change represented by the flexibilization of US policy. Towards Cuba, but with similar aims of destroying the Revolution, penetrating subversively in the society. This is why the need to advance the use of the global network as a kind of battlefield is emphasized.

The rest of the principles defined by Diaz-Escanel can be summarized in the following ideas<sup>33</sup>:

- The development of science is inconceivable today without the Internet and the participation of our scientists in the mainstream of science is mediated by the ability to access it with quality.
- The internet strategy should be designed, developed and implemented on the basis of the broadest participation and to contribute and promote sustainable human development, otherwise the fragmentation and irrationality of the processes will multiply. The Internet is both a challenge and an opportunity, but it is a necessary option for the development of society in contemporary conditions.
- The strategy of access to the Internet must become a fundamental weapon of revolutionaries to achieve social participation in the construction of the project of society that we want, from a comprehensive country design. The strategy of using the internet for sustainable human development, in accordance with the model of Cuban society, must be led by the CCP and must involve all institutions and society in order to achieve the fullest use of their potential in terms of Development. On this aspect clarified that the whole system of work is directed by the highest instance of partisan organization, state, and government; through the *Council of Computerization and Cybersecurity* created since 2013, with the mission of protecting, coordinating and controlling the policies and integral strategies of this process.
- The Internet as a means of access to information and communication poses challenges to the prevailing forms of organization and social participation.
- The Internet poses challenges to traditional forms of social communication, to the use of the media, to the role of individuals in the public space and requires the existence of new policies, rules and ways of functioning, which should align infrastructures, services and Content to guarantee that right.
- The Internet is a space for social communication, cooperation, association and work in its various manifestations and as such should be favored.
- The Internet is a tool at the service of national identity and culture and of the sovereign and universal insertion of Cubans, including technological sovereignty.
- The promotion and universalization of access and use of the Internet should be part of the national cultural development process in its broadest sense and should be accompanied by the promotion of national cultural production, promotion of its values and the widest national and international dissemination.
- It is part of the basic infrastructure for the development of the economic and business activities of the country and of the national capacities in this field. At the same time it is an economic activity with high development potential.
- In this context, the creation of an internet infrastructure according to our possibilities should be encouraged, as a basis for the development of economic activities at all levels, state, cooperative and self-employed sectors.
- The Internet has a potential generator of services and economic activities that are themselves sources of employment and resources and economic growth.

<sup>33</sup> R Elizalde, "Diaz-Canel: There is the Will to Put Informatization and the Internet at the Service of All (+ Video)", February 20, 2015. Available at <http://www.cubadebate.cu/noticias/2015/02/20/diaz-canel-existe-la-voluntad-del-partido-y-el-gobierno-de-poner-la-internet-al-servicio-de-todos/> (Consulted, March, 4, 2017).

- The Internet is a platform for national development that is subject to social control.
- It is imperative to ensure effective management of IT resources and establish accountability mechanisms to verify the extent to which the use of the Internet is in function of the country's development goals and the improvement of social standards.
- It is an administrative duty and responsibility to control that the resources put in the way of social goals are used in that direction and that the use of the resources available are set to support the nation's priority goals.

As we said earlier, this speech by the First Vice-President of the Councils of State and Ministers was delivered at the *First National Workshop on Computerization and Cybersecurity*, held from February 18 to 20, 2015 at the *Center for Integrated Technologies Research (CITR)* located at the *José Antonio Echeverría Polytechnic Institute*<sup>34</sup>. In this space, discussed, among other issues, the problems presented by Internet access in the country, and the potential solutions to them. In addition, ideas were gathered about the bases for the information society policy and the national priorities in this sector. In short, the existence of a fragmented, sectionalized and disintegrated regulatory framework resulting from incoherent legislation was recognized as current problems of Internet access in the country; inefficiency of services; existence of illegalities; lack of transparency in the use of Cuban Internet resources; and complexity in the approval of Internet access to individuals and institutions, among others.

Officially, this meeting adopted a document called *Bases and Priorities for the Improvement of the Computerization of Society in Cuba*<sup>35</sup>, whose principles are indicated those areas in which it is strategic, according to the official vision, the use of the network of networks. One of them refers to the legal framework without raising anything regarding the possibility of recognizing the internet as a human right. It only acknowledges the need to update existing legislation; Conform the regulatory framework that guarantees to promote, promote and develop the use of information technologies; as well as to reform the regulations on intellectual property and copyright in those matters related to such technologies.

Also from the legal point of view, it is worth noting that from this space it was conceived to create a social organization, which would group the professionals of the computer branch under the name of *Union de Informáticos de Cuba (UIC)*. The main objective is unite the professionals of this sector in a single entity, to maintaining a more direct and close link with the authorities.

In practice this translates into the exercise of the strictest control from the structures of power over the new organization; taking into account that constitutionally recognized particular limitations to the right of association. According to article 7 of the Cuban constitution<sup>36</sup>, the state recognizes and encourages mass and social organizations that bring together different sectors of the population; represent their specific interests and incorporate them into the tasks of building, consolidating and defending *socialist society*. The existence of these organizations is limited by the State's interest in accepting in the sociopolitical dynamics a certain entity that adheres to the ends of the state itself. According to article 54 of the constitution<sup>37</sup>, the rights of assembly, manifestation and association are exercised by workers, manuals and intellectuals, peasants, women, students and other sectors, for which they have the necessary means to that end. The mass and social organizations will have all the facilities for the development of these activities, in which its members enjoy the widest freedom of speech and opinion, based on the unrestricted right to initiative and criticism.

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<sup>34</sup> Available at <http://www.cubadebate.cu/noticias/2015/02/19/reanudan-los-debates-del-i-taller-nacional-de-informatizacion-y-ciberseguridad/#.WOKT97hOm1s/> (Consulted May, 4, 2017).

<sup>35</sup> This document can be downloaded in PDF format at <http://www.cubadebate.cu/noticias/2015/02/19/reanudan-los-debates-del-i-taller-nacional-de-informatizacion-y-ciberseguridad/#.WOKT97hOm1s/> (Consulted May, 4, 2017).

<sup>36</sup> M Prieto and L Pérez, *Legislative Selection of Cuban Constitutional Law* (Ed. Félix Varela, 1st edn, 1999) 14. On the official website of the UIC you can see the express reference to this article of the constitution. Available at <http://www.mincom.gob.cu/?q=paneluic>.

<sup>37</sup> M Prieto and L Pérez, *Legislative Selection of Cuban Constitutional Law* (Ed. Félix Varela, 1st edn, 1999) 29.

In correspondence with these limitations, the Act of Associations, in force since 1985, develops this precept, establishing two fundamental requirements for the existence of an association. First, the presence of the so-called relationship bodies within the state structure is required, which are responsible for interacting with the organizations that are created, and in the case of the UIC is the MINCOM. In addition, there can only be one organization for each sector of society, so in the case of specialists in the area of information technology and communications the only one that is legitimated to associate them is the UIC, and it is not possible to create another similar entity.<sup>38</sup>

More recently, in March 2017, a meeting of the Council of Ministers took place, which approved the comprehensive policy for improving computerization of society in Cuba<sup>39</sup>. In that space it was fixed that an integral policy is required that defines to the computer technologies like a strategic sector for the nation, due to what it can offer for the growth of the economy, and the development of the society. Returning to take an instrumental position with regard to the internet, it was established that it should become a weapon for the defense of the Revolution that guarantees an adequate security of cyberspace in the face of threats, risks and attacks of all kinds. As a consequence, it was considered essential for the evolution of this sector to preserve and continue the massification of associated human capital, while increasing the access of citizens to the use of new technologies. The implementation of this policy implies the implementation of other actions, such as the establishment of a national platform that encourages the generation of content and guarantees the possibility of socializing them. According to the official position, they will be aimed at strengthening the identity and preserving the values of Cuban society, as well as developing and modernizing the technological infrastructure, paying special attention to the deployment of broadband in Cuba.

#### 4. BY WAY OF CONCLUSIONS

As we have seen throughout this work, the contributions made by Internet access in terms of transparency and the right to information are irrefutably present. It is a very effective tool to democratize the links between the citizens and their rulers, since it becomes a means to control the management of the latter and demand responsibility for their actions. Considering the global context, there is no doubt that the openness to knowledge that the propitious one is of extraordinary value in all orders, both for individuals and for society as a whole. Therefore, as a consequence of this, it is logical that from juridical doctrine as in the properly normative order, the access to the internet has been recognized as a human right; either considering it part of the right to information or autonomously.

In the Cuban case, there is no explicit recognition of the right to information and still less to the internet, either as part of it or as a constitutional right of its own content. Given the characteristics of the political and judicial systems, as well as the praxis in both fields, there have been no interpretations of the constitutional contents that have made possible the recognition of the aforementioned rights. This has transcended the current *Conceptualization of the Cuban Economic and Social Model of Socialist Development* and the *National Development Plan until 2030: Proposal of Vision of the Nation*, where despite the fact that the potential of accessing the Internet for economic development, Political and social of the country, there is no inclination to consider it as a fundamental right. The government's position remains focused on controlling the use of the global network by citizens, and allowing its use only as long as it is in accordance with state interests. Hence the current political discourse regarding the internet, as well as the decisions that have been taken in this field, denote a defensive posture with respect to the contents that in that one circulate. Obvious is that this constitutes a very strong obstacle to the potential recognition of access to the internet as a human right.

However, we do think that in the future and in the measure that a deeper opening of the country in its relations with the world will take place, something that will be mediated in any case by the complete normalization of its relations with the United States and the generational change in the government,

<sup>38</sup> On the limitations imposed since the constitution and the referred law to the right of association in Cuba, R Peña can be consulted, "Do we need a new Law of Associations?", March 28, 2017. Available at <http://progresosanalanal.us/20170328/we-need-a-new-law-associations/> (Consulted, March, 28, 2017).

<sup>39</sup> Y Puig, "Meeting of the Council of Ministers." Available at <http://www.granma.cu/cuba/2017-03-02/efectuada-reunion-del-concilio-de-ministros-02-03-2017-21-03-10-policy-on-internet/> (Consulted March, 2, 2017).

more progress can be achieved in this area. It will have to be imposed the idea that it is useless to pretend to contain the large amount of information circulating on the internet building political and legal dykes. The nation would win if these resources were put in function to teach the Cubans to use it, giving them tools that allow to draw even the most misleading of the currents; legitimizing its use as a space to disagree, question, dissent and question about the most complicated issues of national reality. This would be part of the achievements of a country that thinks about its future. A result at the same level of what it meant to universalize public education and health in the distant sixties. It could be considered an achievement of the new generations to promote the legal formalization of access to the network of networks as a human right; an issue that will inevitably have to form part of the necessary democratization of Cuba.

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