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THEDIALOGUE

FEATURED Q&A

Are Brazil's Courts Handling Internet Concerns Well?

Legislators debated passage of Brazil's groundbreaking Internet privacy law in April 2014. // Photo: Gustavo Lima, Brazilian Chamber of Deputies.

Q A Brazilian judge last month overturned a lower court's ruling that had suspended the popular phone messaging application WhatsApp, blocking the service of some 100 million Brazilians who use the app regularly. The lower court had banned the service for 48 hours because of WhatsApp's refusal to comply with police eavesdropping requests. The incident happened just over a year after Brazil implemented its 'Marco Civil da Internet,' or 'Internet Bill of Rights,' which, in part, aims to protect users' privacy. What does the WhatsApp incident say about the tensions in Brazil today over the Internet and privacy? Should the speed at which the WhatApp ban was enforced and then reversed give civil libertarians pause? Does legislation currently under debate in Brazil's Congress to roll back parts of the 'Marco Civil' bring improvements to the policy?

A Peter T. Knight, founding partner, researcher and member of the board of the Fernand Braudel Institute of World Economics in São Paulo: "These tensions have been present for a long time and were clearly manifested in the extensive public debate over the Marco Civil da Internet, legislation that the Snowden revelations catapulted out of congress in 2013-14 and which was signed into law by President Dilma Rouseff in April. In fact this tension is a global phenomenon, and the balance between the two goals of public safety/national security and the privacy of communications is a delicate and essentially political one. Many observers in Brazil, including at least one member of the Internet Steering Committee, noted that WhatsApp is

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Venezuelan Assembly Rejects Emergency Decree

Venezuela's opposition-led National Assembly on Friday voted down an emergency economic degree requested by President Nicolás Maduro by a two-to-one margin.

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Puerto Rican Gov. Alejandro Garcia Padilla warned that Prepa will not have enough cash to continue normal operations, increasing the risk of power outages and rate hikes.

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Haiti Cancels Vote Amid Security Concerns

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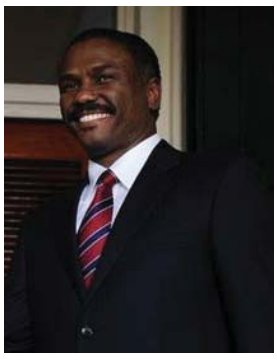

Célestin // File Photo: Kendra Helmer, U.S. Government.

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POLITICAL NEWS

Haiti Cancels Vote as Worries Mount in Political Impasse

Sunday's runoff election in Haiti to select a new president and dozens of other national posts did not take place as planned, Agence France-Presse reported. Election officials canceled the vote on Friday, just days before this weekend's scheduled runoff, amid widespread

Moise // File Photo: Moise Campaign via Twitter.

safety and security concerns. Protesters had taken to the streets last week despite a police ban, setting fires, breaking windows and blocking roads in the days leading up to the decision to cancel. Jude Célestin, the main opposition candidate, had boycotted the run-off, saying that the first round favored the ruling government-backed candidate, Jovenel Moise. Célestin said he welcomed the delay as "a victory for all of the democratic sector," The Financial Times reported. But it leaves Haiti without a clear path to fill the presidency, which constitutionally must change hands on Feb. 7. In a statement, United Nations Secretary-General Ban Ki-moon on Saturday voiced concern about the delay, saying he "strongly urges all stakeholders to work towards the peaceful completion of the electoral process without delay, " Reuters reported. Pierre Louis Opont, president of Haiti's electoral council, has not said when the election, already postponed twice before, would be rescheduled. Despite widespread evidence of fraud, international observers in the United States had been pushing for the vote to take place Sunday. The U.S. government alone has chipped in $30 million for the election process. On Sunday, Moise supporters in favor of holding the election protested for the first time, using trucks to block a northern highway that is a major trade route with the neighboring Dominican Republic, Reuters reported.

BUSINESS NEWS

Talks Collapse Over Puerto Rico Power Company Debt

Talks collapsed on Friday to restructure roughly $9 billion of the debt owed by Puerto Rico's power company, The New York Times reported. The Puerto Rico Electric Power Authority, or Prepa, had decided to let a critical expiration date pass Friday without taking action, creditors said, but Prepa said it was the creditors' fault for the breakdown. The creditors did not say whether they would now declare Prepa in default. Prepa issued its own statement early Saturday, saying that even though its restructuring deal had "terminated," it remained willing to try to get a new deal. Lisa J. Donahue, the AlixPartners executive brought in to restructure Prepa, told the US Congress recently it "would, in my opinion, be a disaster" if Prepa failed to make the payments due Friday. She said its fuel shipments could then stop, and if it ran out of fuel to generate power, "blackouts across

Legislative approval is the final hurdle to execute any agreed-upon debt-restructuring plan.

the island" would result, the Times reported. Meanwhile, local lawmakers have been slow to act, Bloomberg News reported last week. Legislative approval is the final hurdle to execute any agreed-upon debt-restructuring plan, and lawmakers are still debating a bill that would leave the door open for a future bankruptcy filing. "We have to make sure that this bill isn't

NEWS BRIEFS

Peru's Graña y Montero Wins $63 Million Contract in Colombia

Peruvian construction firm Graña y Montero said Friday its Colombian subsidiary had won a $63 million contract with the local unit of Spain's Gas Natural Fenosa. The five-year contact involves developing electricity-related services for Barranquilla-based Electricaribe. Last October, Graña y Montero said its third quarter revenues were up 14 percent compared to the year before, but that its net income fell by 97 percent during the period.

Nine Out of Ten Brazilians Cut Consumer Spending

A survey released last week shows that the economic crisis has reduced consumption levels for nine out of ten people in Brazil, Agência Brasil reported. Fifty-five percent of respondents said that the current recession is the worst crisis they have ever faced. Out of 63 percent of people who planned to buy property in 2015 but could not buy it, only 35 percent believe that they will be able to realize that goal in 2016. The interviews were conducted the Data Popular Institute from Jan. 4-12 with 3,500 consumers over 16 years old in 153 municipalities in all Brazilian states.

El Salvador Urges Women to Avoid Pregnancies Until 2018 Over Zika Spread

Health officials in El Salvador have urged women not to get pregnant until 2018 in an effort to halt a surge of birth defects that are suspected to stem from the mosquito-borne Zika virus, The New York Times reported Saturday. "If we don't make any recommendations to the population, we could have a high incidence of microcephaly," Eduardo Antonio Espinoza Fiallos, the vice minister of health, told the Times. [Editor's note: See related **Q&A** in the Jan. 20 edition of the Advisor.]

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an obstacle to the economic recovery of Puerto Rico," Sen. Ramón Luis Nieves, who chairs the Senate's energy committee and is working on the bill, told Bloomberg News. In a statement Saturday, Puerto Rico Gov. Alejandro García Padilla warned that Prepa will not have enough cash to continue normal operations, increasing the risk of power outages and rate hikes, the Associated Press reported. The deal's collapse also risks hundreds of jobs and complicates talks with Puerto Rico's other creditors over the $72 billion in debt the U.S. commonwealth owes creditors, more than the amount owed by all but a few mainland states. "I call on the legislative leadership to act with the diligence and speed that the circumstances demand," García said Saturday.

ECONOMIC NEWS

Venezuelan Assembly Rejects Emergency Economic Decree

Venezuela's opposition-led National Assembly on Friday voted down an emergency economic decree requested by President Nicolás Maduro by a two-to-one margin, El Universal reported. A legislative committee reported to the broader assembly that the measure "could favor overspending, does not ensure monetary stability, and could lead to attacks on private companies." Later in the day, Maduro accused the opposition of deepening the economic crisis. "It's very unfortunate that the National Assembly, and the majority that controls it, is turning its back on the country at this moment," he said on state television, The Wall Street Journal reported. The government has said inflation reached 275 percent in 2015, and some economists predict consumer prices could double or even triple that rate this year. Venezuela's economy will shrink 8 percent this year following a 10 percent contraction in 2015, Bloomberg News reported Sunday, citing forecasts from the International Monetary Fund. Maduro will be looking for support this week from regional leaders at the fourth CELAC Summit, scheduled to begin Wednesday in Quito, Ecuador.

COMINGS & GOINGS

Guatemalan President Names Cabinet Posts

Estrada // File Photo: Guatemalan Government.

Guatemalan President Jimmy Morales named a new cabinet after taking office Jan. 14, with several of the top positions going to trusted establishment figures. Three people in Morales' inner circle have been closely tied to the private sector and the main business lobby, CACIF, Eurasia Group analysts noted last week in a research report. Finance minister Julio Héctor Estrada has links to Grupo PDC, a major Guatemalan holding company. Estrada previously served as head of ANADIE, the state-run agency for economic infrastructure development. Other advisors include former CACIF Vice President Ricardo Castillo Sinibaldi and Emanuel Seidner who previously worked at a conservative think tank. Andrés Botrán, the creator of the Secretariat for Food Security and Nutrition, will return to head the secretariat, while the foreign ministry remains in the hands of long-time diplomat Carlos Raúl Morales. A former comedian, President Morales won an overwhelming victory last fall promising to root out corruption after citizen protests led to the imprisonment of President Otto Perez Molina, the vice president and numerous other officials in his administration.

HTC Promotes Mackenzie, Lönne in Americas Roles

HTC, the Taiwan-based maker of smartphones and tablets, on Jan. 22 announced that Jason Mackenzie would be promoted to global executive vice president and that André Lönne would serve as Mackenzie's successor as the president of HTC America. As a founding member of the HTC team in the Americas, Mackenzie helped the company bring the first 4G smartphones to every major U.S. mobile operator, the company said. As the new president of HTC America, Lönne and will oversee the company's business operations across the United States, Canada, and Latin America. He has held several leadership roles at HTC, including country manager of Germany, and vice president of sales for HTC EMEA.

Former CADE Commissioner Moves to New Firm

Olavo Chinaglia, a former commissioner at Brazil's antitrust regulator CADE, has left Brazilian law firm Veirano Advogados to join the São Paulo-based law firm Pereira Neto | Macedo Advogados as a partner, Latin Lawyer reported Jan. 22. As commissioner, Chinaglia worked on cases concerning merger control and anticompetitive behavior in the telecommunications, electricity, oil and gas, retail markets, food processing, Internet and IT and civil aviation industries. He also served as interim president of CADE. Pereira Neto has been representing Uber in a case being heard at CADE over alleged violence by taxi drivers against Uber drivers, suggesting that a climate of fear is damaging competition in Brazil's market, the firm said in an article on its Website last November. Chinaglia has also been teaching commercial and economic law for over five years at private law schools in São Paulo.

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not above the law, or in this case the Marco Civil da Internet, which states that judicial orders can be used to break the privacy of communications. Eleven of the rights in the Marco Civil specify sanctions for companies that fail to respond to a judicial order. The quick reversal of two separate judicial orders to temporarily block WhatsApp resulted in massive protests by users. Representative civil society organizations argued that the original judicial orders were disproportional and that sanctions against WhatsApp should have been limited to exacting higher fines, rather than depriving users of the service. The principal telecommunications operators complied with the judicial orders until they were reversed, though many suggested that the operators were quite happy to comply with the original orders, given the fact that

> **"The episode involving WhatsApp in Brazil is concerning..."**
>
> **— Giuseppe Marrara**

WhatsApp, Skype and other non-conventional forms of communications applications are destroying their traditional business models. This draft legislation in the Senate, known as the Law for Protection of Personal Data, is based on European models. The issue has been under debate for over 10 years in Brazil and, according to press reports, more than 100 countries have laws on the subject. The recent terrorist attacks in Europe have accelerated the debate over the proper balance between national defense/public safety and privacy. In Brazil there are three major laws that deal with the issue of privacy: the Law of Positive Registry (Cadastro), the Law of Access to Information, and the Marco Civil da Internet. The current debate, online and as part of the public consultation, aims to clarify diverse interests seeking a modicum of consensus on unifying or substituting the relevant components of the existing legislation into a single law."

Giuseppe Marrara, director of public policy and government affairs at Cisco: "The episode involving WhatsApp in Brazil is concerning, as it challenges one of the fundamental principles of an open and free Internet, which is that of net neutrality. To allow for a situation where operators are mandated to discriminate against one application, even if in order to fulfill a court order, shows how vulnerable networks can be and shows the importance of having a clear set of rules allowing operators to manage their networks and services. We believe that the provisions of the Marco Civil still need to be tested by the Brazilian courts, and need to be incorporated into day-to-day practices before improvements are made. Changes to such a well thought-out legal framework should be considered carefully, in order to avoid overregulating the Internet and thus hindering innovation. The Brazilian Marco Civil was put together as a broad, principle-based Internet Constitution and is a reference to ensure that a set of human rights and protections also apply to online interactions, and it should be preserved as such."

Dídac Sánchez, Chariman of Eliminalia in Barcelona, Spain: "A lot of countries, not only Brazil, have to understand how to govern in the digital age and must understand the new global personal relationship. Obviously, the judicial branches have to guarantee and protect individual privacy, but there is a risk of isolation if a country—like China—closes free information access and personal exchanges, with the argument that they are defending individual rights. What could happen then is a significant attack to personal liberty. And the question is: what is more important for people: liberty or government protection? For me the answer is clear: liberty."

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