

Latin America: surveillance and human rights in the digital age



Fabrizio Scrollini, a PhD candidate at the LSE and Chairman of DATA, an Uruguayan based NGO working on transparency, open data and human development, argues for the need for a human rights framework to tackle issues related to the use of surveillance technologies in Latin America.

In July 2014, the Uruguayan government **secretly purchased** the license for a piece of software to monitor citizen communications. “**The Guardian**” (or “Guardião”, as the Brazilian tool is known) is now being fully deployed with no **clear guidelines**. **Civil society organisations fiercely opposed this development and are now starting a legal procedure to access information about the purchase.** This is just one of many examples of surveillance technology being used in Latin America: Latin American democracies might be becoming increasingly established, but the intelligence and security agencies have not adjusted to a new democratic era. Regulation of these agencies is still problematic and poorly discussed. Furthermore, governments are discussing **cyber-security issues in international forums** with little consideration **of human rights issues**.

The secrecy and lack of regulation around surveillance technology poses a key question: how should we address the protection of human rights in an age of technological disruption in Latin America?

Surveillance and Technology: Latin America’s own mix

When it comes to surveillance, Latin American governments have different capacities and not all fully respect the rule of law. Yet a clear trends are emerging: there is **a small group of civil society advocates aware of these issues**, technology used for surveillance is increasing and there is a new global scenario in place.

Civil society groups have documented **worrying practices** by governments in the region. In **Colombia, security forces spied on activists**, journalists and members of the Parliament **using traditional and new technologies**. In Argentina, a new bio-metric system has created the potential to gather key data about the Argentinean population that can be accessed by security forces without clear restraints. In Mexico, a new telecommunications law allows **access to personal data** (including mobile phone geo-location data in real time) to security agencies without a warrant. In Brazil the police are using “**Guardiao**” to monitor citizen protests. In Paraguay, civil society advocates **successfully opposed** a new telecommunication law that **would allow government to store significant data on users**. The list keeps getting longer.

Surveillance technologies also include drones, CCTV, facial recognition software, body scanners, and potential identification registry systems. Governments might be getting some of this technology from local firms, but they might be also acquiring it from partners overseas in the “developed world”. It’s a lucrative business with unclear rules.

Despite these practices, several Latin American governments, led by Brazil, promoted a joint declaration **about the right to privacy in the digital age**. The region is positioning itself to counterbalance the aggressive US and UK surveillance regimes. In doing so, the region is not “walking the talk” that it promotes in global forums

Latin America: Mind the gap



A human rights framework needs to be developed and shared among stakeholders to answer crucial questions about the governance of surveillance technologies in Latin American democracies. In a post-Snowden world, the surveillance debate is linked with other Internet-associated issues such as net neutrality, copyright reform, and freedom of expression. It's a complex policy mix which needs a common language among key stakeholders.

Some **optimistic commentators** note that Latin America is the place to watch in terms of reform because of the existence of progressive governments. **The recent Marco Civil law** passed in Brazil shows partial evidence of this, as well as developments around open data, free/open public software and transparency. Yet, such faith in LatAm might be misguided.

There are at least three areas where Latin America needs a new and improved approach, advocating human rights-based policies:

a) *Governance of surveillance technologies*: In particular, transparency about technology purchases, operation protocols, reach and usage should be clearly established. Actors such as the judiciary and human rights groups should ensure adequate oversight. This demands capacity building in civil society and accountable institutions, public leaders and security forces.

b) *Re-assessing normative frameworks for freedom of association, communication and speech in the digital age*: Laws such as Marco Civil in Brazil offer an example of how national telecommunication infrastructures can play a role in securing certain guarantees in the digital age. Although debate continues in Brazil about the benefits of Marco Civil, the role of national telecommunication infrastructures remains key in this conversation. Regulation preventing encryption of communications should also be addressed. And all regulation should target criminal activity without targeting lawful exercise of freedom of speech on-line.

c) *Strengthening privacy and data protection*: Not all Latin American countries have strong data protection and privacy laws. In light of recent developments in terms of the role the private sector is playing in surveillance and other areas such as health-care, new regulation is needed. Citizens should know who has data about them, who is using it, and for what purpose.

Timing is crucial here. If no action is taken, Latin American countries might well engage in (re)-building their surveillance and security apparatus unchecked. On the other hand, if appropriate action is taken, Latin America might well develop a unique approach along a more progressive path than the ones certain European countries and the US have followed. The path ahead can still be shaped to guarantee human rights in the digital age.

This article gives the views of the author and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics and Political Science.

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