

GLOBAL INFORMATION SOCIETY WATCH 2014

Communications surveillance in the digital age

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A national approach to digital violence

Digital violence¹ is defined here as the exercise of power that violates the human rights of a person or a group of people using new communications technologies. This new concept is harnessed to protect two types of “legal rights”: on the one hand *patrimonial property rights*, namely protection against cyber crime involving technological equipment, databases and the internet’s critical infrastructure; and on the other hand *personal property rights*, which are focused on protecting people’s rights when it comes to technology and databases.

Until now, Bolivia has no record of formal discussions dealing with the mass surveillance of communications and privacy protection. As in many countries, there was media coverage of the WikiLeaks case and Snowden’s whistleblowing against the National Security Agency’s (NSA) espionage. In June 2012,² a number of female members of parliament accused the executive of phone-tapping members of the opposition. However, there is no record that shows that any legal complaint has been filed, or is in process.

The most important initiative on communications surveillance and privacy protection in Bolivia, based on the multi-stakeholder approach, formally got under way during the first half of 2014. Three clearly identified groups of governmental actors promoted the enactment of laws in the Legislative Assembly. These laws touch upon privacy protection and communications surveillance on the internet in an indirect fashion.

a) *Initiatives led by the Ombudsman of Bolivia*, in collaboration with social organisations, promoted the following laws: a comprehensive law

guaranteeing women a life free of violence (Act No. 348; Article 7, paragraphs 4 and 5 refer to media violence); Act 243 against harassment and political violence towards women (Article 8, paragraph N, speaks about the disclosure of the personal information of women politicians).

- b) *Initiatives led by the Ministry of Government* in collaboration with stakeholders, including the Ombudsman. Two laws were passed: a law on public security and a national system for a safer life. Act No. 264, Chapter IV, Articles 47 to 52, amongst other things, regulate the installation of surveillance cameras and set out agreements with internet service providers (ISPs) on the use of information technologies when it comes to public safety issues. Furthermore, Act 263, the law against human trafficking, in Article 323 deals with the production, consumption and possession of child pornography. Article 41 explicitly refers to telephone tapping, under a court order.
- c) *Initiatives led by the Telecommunications Regulatory Authority*, which, since June 2014, organised a National Campaign to Prevent Digital Violence in Bolivia.³ The main expected outcome of the campaign is the enactment of a bill on prevention of digital violence in Bolivia, developed through a multi-stakeholder approach.

All three groups of stakeholders expressly requested advice from the REDES Foundation to understand and address digital violence. Firstly, between 2012 and 2014, the Ombudsman’s Office requested training for civil society actors, national police, government ministries, the Ministry of Justice and the Public Prosecutor. This involved capacity building to fight human trafficking and protect victims, using new technologies. They also requested the training of more than 16 actors who are part of the National Roundtable Against School Violence.

Secondly, between late 2013 and mid-2014, the Ministry of Interior, through the National Directorate Against Human Trafficking and the National Department of Public Safety (in charge of the installation

1 Since 2010, the REDES Foundation has published research on “Towards a transdisciplinary approach to information society violence” in order to categorise online violence using new technologies in Bolivia, including mass communications surveillance and the violation of privacy on the internet.

2 www.la-razon.com/index.php?url=/suplementos/la_gaceta_juridica/Derecho-intimidad-privacidad-Constitucion_o_1627037350.html

3 The Telecommunications and Transport Authority (ATT) explicitly adopted the categorisation developed by the REDES Foundation in December 2013.

of surveillance cameras throughout the country) requested technical support. This was to ensure the fulfillment of people's rights in the formulation of laws and regulations related to monitoring and the protection of privacy in police investigations, and the eradication of human trafficking networks.

Finally, the third group asked the REDES Foundation in May 2014 for technical assistance in order to develop a national campaign to prevent digital violence called *No caigas en la red* ("Don't fall into the web"). This has been implemented at a national level since 12 August 2014. The main result of this campaign, apart from building awareness, will be the formulation of a bill on the prevention of digital violence in Bolivia, which will also address the needs of the two previous groups.

Raising awareness amongst national authorities

It is important to highlight that the actors involved in the current processes (regarding the rules that will allow monitoring of internet communications) are uninformed about the internet governance model.

The publication of specialised material on internet governance

Since 2010, the REDES Foundation has promoted awareness of the internet governance paradigm through the publication of the following material:

- *A Map of Internet Governance*, created by the DIPLO Foundation with the financial support of the vice-presidency and the REDES Foundation.
- *The Internet Ecosystem*, authored by the Internet Society with the financial support of the vice-presidency and the REDES Foundation.
- *Transition from IPV4 to IPV6*, authored by LAC-NIC with the financial support of the REDES Foundation.
- *Human Rights on the Internet*, authored by the Association for Progressive Communications (APC), with financial support from the National ICT Network and the REDES Foundation.

This material is currently being used to create awareness in the government, the private sector, international cooperation agencies and general users (including parents) interested in the eradication of internet violence.

High-level meetings on the principles of internet governance

We held workshops and conferences with the following high-level authorities:

- Representatives of the Ombudsman Special Affairs Department, following an agreement signed between this institution and the REDES Foundation in 2012.
- Members of the National Committee for Awareness of School Violence, in 2012.
- Members of the National Committee against Human Trafficking, in 2013 and 2014. This included holding conferences and workshops concerning the recruitment of victims and prosecution of internet crimes against children, using new technologies.
- The municipal governments of La Paz, Santa Cruz and Cochabamba, in 2014. This involved holding conferences and workshops on the prevention of digital violence against children and teenagers.
- The National Director of the Anti-Trafficking in Persons Unit, in May and July 2014. This involved holding meetings about the design of a bill to control internet content. These are considered historic meetings, due to the fact that authorities gained knowledge about net neutrality, internet governance, self-regulation, human rights on the internet, respect for privacy, and the sanctity of communications. Furthermore, they gained knowledge about the nature of international efforts on internet self-regulation and global progress regarding freedom of expression over the internet.
- The Telecommunications and Transportation Authority (ATT), to deal with cases of digital violence, between late 2013 and 2014. The meetings addressed cases of digital violence, with a focus on the importance of aligning the new telecommunications regulations with the self-regulation and internet governance approach.

Two approaches to build regulations related to communications surveillance in Bolivia

Since 2010, there has been a diversity of legal instruments regarding public violence and public security, which tackle communications monitoring. Two approaches can be clearly identified:

Legislation on national security, public safety and child protection: Initiatives on this matter are discussed above in this report. They deal with actions to penalise and punish different crimes involving public security and the criminalisation of violence against women and children. This involves taking into account the dissemination of content in traditional media and on the internet, but the approach is not directly related to the internet, and clearly lacks the inclusion of internet governance and human rights principles affecting the web.

Legislation on the prevention of digital violence: This process, led by the Telecommunications Authority, formally began in 2014 with technical assistance from the REDES Foundation. Its approach is to bring the actors and initiatives mentioned above in this report together. It also raises the issue of digital violence in the internet governance context. The authority has instructed the REDES Foundation to develop the bill considering the new paradigm of internet self-regulation.

Action steps: A bill to prevent digital violence and address mass surveillance of internet communications

Between August and November 2014 we will design the Law for the Prevention of Digital Violence in Bolivia. It is important to highlight the preventive approach we are using, to open a new era of internet-related legislation we call “regulation ex-ante” (i.e. before unlawful acts occur). It also increases the responsibility of actors in the internet ecosystem regarding the prevention and eradication of different forms of internet violence, including mass surveillance and the violation of privacy.

Preventing digital violence involves three major categories of actors:

- *Cases of digital violence by the state:* These include cases of digital surveillance, spying and harassment within the state apparatus, by the state on companies, and by the state on citizens.
- *Cases of digital violence by companies:* These include cases of digital surveillance, spying and harassment within companies, actions by companies that affect the state, and actions by companies that affect citizens/users of digital communications services.
- *Cases of digital violence by people:* These include cases of digital surveillance, spying and harassment by organised criminal groups on ordinary people, and cases of violence between individuals (bullying, coercion, mail and wire fraud, child pornography, password theft, impersonation and identity theft, plagiarism, etc.).

Preventing digital violence requires multi-sectoral coordination between government actors, namely the Ministry of Interior, the Vice-Ministry of Telecommunications, the Telecommunications and Transportation Authority, the Vice-Presidency of the State, the Agency for the Development of the Information Society in Bolivia, the Ministry of Education, the Ministry of Communication, and municipal governments. They protect human rights on the internet and prevent all forms of violence online, including through respect for privacy and the requirement of

a court order for surveillance of communications, and through always respecting what is stated in the constitution.

When it comes to civil society, key actors are the Ombudsman of Bolivia, the National ICT Network of Bolivia, the REDES Foundation, parents’ associations, and the internet and mobile phone users’ associations. They all protect privacy, freedom of expression and the responsible use of the internet among users of value-added services. They promote the creation of a responsible digital culture and freedom of speech on the web.

Internet service providers (ISPs) and mobile services in Bolivia, including companies like ENTEL, Viva and Tigo, need to work in coordination with the regulator and receive technical support from the REDES Foundation. This area of work involves ensuring network neutrality, communications privacy, and the impartiality of ISPs and mobile communications companies. It also involves consumer protection and the preservation of the multi-stakeholder business model.

Addressing the monitoring of communications and the protection of privacy is currently moving forward in Bolivia under the larger umbrella of digital violence. This approach allows us to unite scattered initiatives, and to promote communications monitoring on the grounds of public security, state security and child protection.

The categorisation of digital violence committed by states, companies and individuals allows us to organise and coordinate the national regulatory framework in line with the constitution, which protects privacy and freedom of expression. It also allows us to contextualise this debate within the paradigm of internet governance and the need to develop a new preventive law drawing on the multi-stakeholder model.

Developing a digital violence prevention bill allows delegating new functions and responsibilities to all actors that are part of the internet ecosystem, including government actors, private users, civil society, international cooperation agencies and the technical community.

Bolivia is facing a new opportunity to develop bills under the paradigm of “ex-ante regulation” and to develop co-responsibility between all actors under the model of self-regulation. The challenge is out there, and it is a civil society actor that is providing technical assistance to guarantee an approach that ensures that no arbitrary action is taken against internet or mobile phone users in Bolivia.