

RIGHT TO PRIVACY

Compliance with previous recommendations

In the previous review of Colombia in the second cycle, in 2013, no mention was made in the recommendations of privacy in the context of data protection or communications surveillance. The repeated concerns of the U.N. Human Rights Committee regarding illegal communications surveillance policies and practices in the country, expressed in its 2010 and 2016 reports, demonstrate the importance of adopting new and specific recommendations on these issues in the present cycle.

Challenges

Absence of guarantees and controls of state surveillance activities and data retention:
Whilst surveillance forms part of the tools used by governments to guarantee national security and public order, communications surveillance and data retention impact greatly the exercise of human rights. This compels the states to set up a legal framework with clear and precise limits. Also, the activities to be authorized require an evaluation according to the criteria of need, appropriateness and proportionality. This is not the case in Colombia. The Intelligence and Counterintelligence Law, and the new Police Code, confer ambiguous surveillance faculties to various authorities and do not establish effective control mechanisms for these activities. The existing controls are not operating, as is the case with the review and purging of intelligence files.

Units of the Colombian Army (GAULA) carried out almost 2,000 illegal wiretappings of telephone lines of the Association of Families of the Detained Disappeared (Asfaddes), and two of its members were disappeared, allegedly by paramilitary groups.

Since the 1990s, the former state intelligence agency intercepted the communications of journalists, politicians, magistrates and human rights defenders, an activity widely known as "chuzadas." The information thus obtained was used to feed intelligence files on those persons, files that still have not been purged.

In 2013, the General Prosecutor deactivated the communications monitoring platform for judicial investigations (PUMA) as doubts arose as to whether the way the platform was being managed was lawful.

In 2014, a military intelligence cover operation named Andrómeda was exposed. Through it, the digital communications of politicians and journalists related to the peace process between the Colombian government and the FARC guerrilla in Cuba were kept under surveillance.

On the other hand, it is unclear what types of surveillance capacities and technologies the country owns. Several investigations have revealed a system that differs substantially from what the law allows. Furthermore, while the acquisition of surveillance technology is not regulated in the country, it appears that very invasive technologies are being used by the authorities for purposes that range from criminal investigations to the suppression of dissent via intelligence information gathering.

In 2015, leaks of communications of the Italian company Hacking Team revealed that the Colombian Police was negotiating the purchase of a remote-control system that would allow it to access electronic devices and obtain information stored in such devices

Challenges

Lack of oversight mechanisms of state surveillance activities:

In order to carry out communications surveillance in the context of a criminal investigation, all authorities must request the authorization of a judge. But this is not the case if this same authority wishes to see the communications metadata,[1] or when those seeking information are part of an intelligence agency.

[1] Metadata is information on communications. This includes the time of the calls, the numbers dialed, the duration of the call and the geographical location, on the basis of the location of the telephone towers.

Inadequate protection of communications metadata:

Colombian law makes it mandatory to retain the data generated by telephone landlines, cell phones or Internet for a period of five (5) years. This is problematic, since data analysis as a whole makes it possible to find out the habits, preferences and activities of people, which can potentially violate more seriously the right to privacy than the knowledge of the contents of the communications. Also, the Colombian government has not complied with the obligation to bring data retention norms into line with the new data protection legislation.

For example, the Communications Regulatory Commission and the ICT Ministry have implemented systems for massive gathering and storage of data and metadata on the citizenry with the pretext of fighting the theft of cell phones or of facilitating electronic procedures with the state. There are no control or protection mechanisms related to the use of the data gathered by such systems, thus enabling an inappropriate use of the data for intelligence purposes.

The concepts of privacy and public space:

The new Police Code narrows the definition of privacy while at the same time it broadens the concept of public space to include, for example, the electromagnetic spectrum. On the basis of this new framework, it can be interpreted that communications that travel through this spectrum are located in public space and can therefore be intercepted.

Recommendations

1. Bring all regulations related to communications surveillance into line with international human rights norms, particularly Article 17 of the International Covenant on Civil and Political Rights, and Article 12 of the Universal Declaration of Human Rights, so that all communications surveillance activities comply with the criteria of lawfulness, necessity and proportionality, thus giving effect to the right to privacy.

2. Repeal current regulation regarding the retention of communications data because it violates the requirement of legality established in Article 17 of the International Covenant on Civil and Political Rights and Article 12 of the Universal Declaration of Human Rights.

3. Enforce the measures contained in the Intelligence Law related to the review and purging of files, and modify this legislation to include new controls and oversight of the operation of the intelligence agencies, including surveillance activities, through an independent control mechanism with the participation of civil society organizations.

4. Repeal provisions of the Police Code that unjustifiably affect the right to privacy, especially the measures related to massive surveillance with cameras, the definition of privacy and that of electromagnetic spectrum as a space for police intervention without judicial control, in order to comply with Article 17 of the International Covenant on Civil and Political Rights and Article 12 of the Universal Declaration of Human Rights.

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