

Contribution to the preparation of the report on the challenges and risks regarding discrimination and the unequal enjoyment of the right to privacy associated with the collection and processing of data

CELE

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Introduction

The Center for Studies on Freedom of Expression and Access to Information (CELE) is an academic research center affiliated with Universidad de Palermo in Argentina. The Center provides technical and legal analysis on issues affecting this fundamental right, and since 2012 has been studying freedom of expression on the Internet as a specific research area. The Center is a leading voice on the promotion and protection of freedom of expression nationally, regionally, and internationally.

This submission was prepared in response to OHCHR's invitation to submit inputs to support the preparation of the report on the challenges and risks regarding discrimination and the unequal enjoyment of the right to privacy associated with the collection and processing of data. It aims to provide an analysis of the relationship between freedom of expression and the right to privacy, offering some examples from Latin America.

Freedom of Expression and the Right to Privacy

The Right to Privacy —the right not to be subjected to arbitrary interference with one's privacy, family, home, or correspondence— has been recognized in multiple regional and international human rights instruments. These include Article 12 of the Universal Declaration of Human Rights, article 17 of the International Covenant on Civil and Political Rights, article 16 of the Convention on the Rights of the Child, article 22 of the Convention on the Rights of Persons with Disabilities, article 14 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 8 of the European Convention on Human Rights and article 11 of the American Convention on Human Rights protect the right to privacy.

Freedom of expression —the right to hold opinions and to seek, receive, and impart information and ideas— has been recognized in Article 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; Article 9 of the African Charter on Human and Peoples’ Rights; Article 13 of the American Convention on Human Rights; and Article 10 of the European Convention on Human Rights.

As stated by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/29/32), privacy and freedom of expression are interlinked. Privacy is widely considered an enabler of the protection and exercise of other rights.¹ Regarding freedom of expression, privacy guarantees a “private sphere, free from the arbitrary interference of the State or private individuals”,² where the right to freedom of thought and expression can be fully exercised. This private sphere is “necessary for an individual to be able to freely form an opinion and express his or her ideas as well as to seek and receive information, without being forced to identify him or herself or reveal his or her beliefs and convictions or the sources he or she consults”.³

Consequently, the erosion of the right to privacy is detrimental to the exercise of freedom of expression. Practices like state surveillance can have “chilling effects on how people exercise their rights, in particular the rights to freedom of expression and peaceful assembly”.⁴ This can have especially strong impacts on communities and individuals who have been marginalized because of their gender, race, political views, sexuality, class, ethnicity, and other factors—groups whose voices and perspectives have historically been excluded from public discourse and who are more likely to be targeted for surveillance.

Moreover, the persecution —and prosecution— of critical discourse can enable practices that, therefore, erode the right to privacy. Data collection, Open-Source Intelligence (OSINT) operations, interception of communications, spyware, and other forms of control used to monitor, intimidate, or silence dissent not only discourage the free exchange of ideas and weaken democratic participation, but also violate the private sphere. This is particularly concerning when carried out without proper adherence to due process, a situation that, unfortunately, is not uncommon in Latin America.

Examples from Latin America

The thematic report on The Right to Privacy in the Digital Age by the United Nations Office of the High Commissioner for Human Rights acknowledges that the mere existence of intrusive

¹ U.N. *Right to privacy*, July 20th 2022, A/77/196, para. 14. Available at <https://docs.un.org/en/A/77/196>

² Inter-American Commission on Human Rights. Office of the Special Rapporteur for Freedom of Expression. *Freedom of expression and the Internet*. December 31 2013, para. 130. Available at https://www.oas.org/en/iachr/expression/docs/reports/2014_04_08_Internet_ENG%20WEB.pdf

³ Ibid. para. 132

⁴ U.N. *The right to privacy in the digital age*. August 4 2022, A/HRC/51/17, para.47. Available at <https://www.ohchr.org/en/documents/thematic-reports/ahrc5117-right-privacy-digital-age>

surveillance practices can have “chilling effects on freedom of expression, the work of the media and public debate and participation, potentially eroding democratic governance”.⁵

The following cases from Latin America illustrate how the intersection of freedom of expression, the right to privacy, discriminatory practices, and inadequate adherence to due process can pose serious challenges to democratic principles and individual rights.

Colombia

Beginning in late November 2019 and continuing for several months during 2021, a series of mass protests took place across Colombia, in what is now referred to as the 'Paro Nacional'. Thousands took to the streets to protest social inequality, corruption, police brutality, the lack of meaningful progress in the Peace Process, and the austerity measures adopted by President Iván Duque, among other issues.

The state response ordered by the Duque government generated a serious human rights crisis due to numerous cases of police violence, including homicidal violence, eye injuries, sexual violence, personal injuries and disappearances.⁶

Many people were prosecuted in connection with incidents related to the protests, facing charges such as vandalism, criminal association, incitement to violence, and terrorism. Among them was Greissy Alexandra Perilla, who was sentenced to 10 years in prison by the Superior Court of Bogotá. She was accused of being part of the “Primera Línea” (First Line), a purportedly organized group allegedly linked to the FARC and said to have colluded to “generate chaos, destruction, and collective panic”.⁷ The conviction was based on intercepted communications and open-source intelligence gathered from her online activity.⁸

In a major reversal, Colombia’s Attorney General’s Office has asked the Supreme Court to overturn Perilla’s conviction, admitting that there is no concrete evidence linking her to violent acts or the formation of a terrorist group. The Office also argued that the case was tainted by prejudiced and stigmatizing narratives. The Procuraduría (the Attorney General’s oversight body) supported the reversal, citing logical flaws in the evidence and several inconsistencies,

⁵ Ibid. para. 10

⁶ Voz de América. *La Policía de Colombia es responsable de 11 muertes en protestas de 2020, según informe*, December 31 2021, available at

<https://www.vozdeamerica.com/a/policia-responsable-muertes-protestas-colombia-informe-onu/6352468.html>

⁷ El País. *La Justicia ratifica la condena por terrorismo a cuatro miembros de la primera línea*, May 29 2024, available at

<https://elpais.com/america-colombia/2024-05-29/la-justicia-ratifica-la-condena-por-terrorismo-a-cuatro-miembros-de-la-primera-linea.html>

⁸ Colectivo de Abogados. *La Fiscalía la llevó a juicio por ‘terrorismo’ en el paro de 2019: ahora dice que su condena se basó en prejuicios*. March 31 2025, available at

<https://www.colectivodeabogados.org/la-fiscalia-la-llevo-a-juicio-por-terrorismo-en-el-paro-de-2019-ahora-dice-que-su-condena-se-baso-en-prejuicios/>

including the fact that the intercepted communications used to convict her took place between January and February 2020, while the crimes attributed to her allegedly occurred in November 2019.⁹

This case is a clear example of how prejudice and the stigmatization of Perilla, based on her political opinions and involvement in the mass protests of 2019, not only undermined her rights to freedom of expression, political participation, and freedom of association, but also led to an unfounded erosion of her right to privacy, by being subjected to investigation techniques that imply a serious intrusion on this right, such as the interception of communications and the monitoring of her activity on social networks and instant messaging applications such as Whatsapp.

Chile

Since its inception, the Chilean State has been in an ongoing conflict with the Mapuche people, the largest Indigenous group in Chile and the original inhabitants of the land, who successfully resisted both the Inca Empire and Spanish colonization. It's a long-standing and complex struggle rooted in racism, colonial history, land rights, cultural recognition, and political autonomy.

Over the past 200 years, the conflict has taken many forms. Today, it is primarily concentrated in the south-central region of Chile, particularly in the Araucanía Region and parts of the Biobío, Los Ríos, and Los Lagos regions, where Mapuche activists are demanding the restitution of their rightful ancestral lands, many of which are currently occupied by the forestry sector and other extractivist industries.

Mapuche activism is carried out independently by different actors and different means, without central organization, and their tactics can change over time; while some actors preferred non-violent tactics and institutional negotiations, others resorted to direct action, sabotage, and sometimes violence.¹⁰ Although violence is rejected by most Mapuches,¹¹ this has led to the criminalization of Mapuche activism, the use of anti-terrorism laws against them, and the deployment of military personnel in the region. Under Gabriel Boric presidency, Araucanía region and the provinces of Arauco and Biobío in the Biobío region have been under Exceptional State

⁹ Infobae. *Fiscalía intenta tumbar condena a mujer que participó en paro en 2019, pese a que la misma entidad pidió llevarla a prisión*. May 28 2025, available at

<https://www.infobae.com/colombia/2025/03/30/fiscalia-intenta-tumbar-condena-a-mujer-que-participo-en-paro-en-2019-pese-a-que-la-misma-entidad-pidio-llevarla-a-prision/>

¹⁰ Cayul, P., Corvalan, A., Jaimovich, D., & Pazzona. *Introducing MACEDA: New micro-data on an indigenous self-determination conflict*, December 2020, Journal of Peace Research, 59 (6), pp. 903-912, available at

<https://bura.brunel.ac.uk/bitstream/2438/28031/1/FullText.pdf>

¹¹ BBC. *Estado de emergencia en Chile: 3 claves para entender el centenario conflicto mapuche (y por qué Piñera decidió enviar al ejército al sur del país)*, October 14 2021. Available at

<https://www.bbc.com/mundo/noticias-america-latina-58898514>

of Constitutional Emergency for over three years.¹² Following the policies of former President Sebastián Piñera, there has been a significant deployment of surveillance technologies and techniques in the region, both on the ground¹³ and online.

Regarding online surveillance, the most notorious case is Operación Huracán, a police operation carried out by the National Police Force in 2017 under the protection of the Intelligence Law. Eight Mapuche activists were arrested for allegedly being part of an organized terrorist network, based on intercepted WhatsApp messages and other communications that supposedly showed coordination in committing acts of violence.¹⁴ The operation collapsed in 2018 after it was revealed that the evidence had been fabricated by police intelligence, and that the messages were either manipulated or entirely invented, exposing a conspiracy within the police to frame Mapuche activists and mislead the judiciary.¹⁵

Operación Huracán illustrates how racism, prejudice, and the criminalization of dissent by Mapuche people led to the implementation of surveillance measures both online and offline. These measures not only violated the privacy of specific activists but also had a chilling effect on how Mapuche communities exercise their rights—particularly their right to freedom of expression.

Argentina

In April 2019, the Buenos Aires City Government implemented a facial recognition system. The stated goal was to identify individuals with outstanding arrest warrants¹⁶ by cross-referencing live surveillance footage with the national database of fugitives, supplemented by the RENAPER database (the National Registry of Persons).¹⁷

¹² Interferencia. *Chile alcanza 1000 días en Estado de Excepción bajo el mandato del presidente Boric*, February 7 2022, available at

<https://interferencia.cl/articulos/chile-alcanza-1000-dias-en-estado-de-excepcion-bajo-el-mandato-del-presidente-boric>

¹³ La tercera. *Tohá entrega dron especializado a Carabineros para vigilancia en La Araucanía: inversión supera los \$6.900 millones*, December 13 2024, available at

<https://www.latercera.com/nacional/noticia/toha-entrega-dron-especializado-a-carabineros-para-vigilancia-en-la-region-de-la-araucania-inversion-supera-los-6-mil-millones-en-un-ejemplar/2GJJXB5CTNGSDG464Z2OJGNMPI/>

¹⁴ For a more detailed recounting of the case, check Garay, V. & Roff, Z. *Tecnología y vigilancia en la operación Huracán una revisión del Trabajo periodístico realizado en Torno al caso*. September 2018, available at <https://www.derechosdigitales.org/wp-content/uploads/tecnologia-y-vigilancia-en-huracan.pdf>

¹⁵ CIPER. *“Operación Huracán”: testimonios y confesiones confirman que fue un montaje*. March 3 2018, available at <https://www.ciperchile.cl/2018/03/13/operacion-huracan-testimonios-y-confesiones-confirman-que-todo-fue-un-montaje/>

¹⁶ Marval. *Reconocimiento facial en la Ciudad de Buenos Aires*, June 19 2019, available at <https://www.marval.com/publicacion/reconocimiento-facial-en-la-ciudad-de-buenos-aires-13374&lang=es?lang=es>

¹⁷ Chequeado. *Video-vigilancia en Buenos Aires: la otra cara del control*, May 28 2020 <https://chequeado.com/investigacion/video-vigilancia-en-buenos-aires-la-otra-cara-del-control/>

The system was subject to significant controversy right from the start, due to concerns over privacy violations, lack of proper oversight, and potential misuse. Questions were raised about the legal framework authorizing the use of such technology and its compliance with regulations governing the collection, access, and processing of personal biometric data.¹⁸

The Observatorio de Derecho Informático Argentino — with support from other Argentine civil society organizations — took legal action against the facial recognition system,¹⁹ which was initially suspended²⁰ and ultimately declared unconstitutional.²¹

The records showed that although the database used by the system contained between 35,000 and 40,000 entries, the City Government made over 9 million queries. The list included prominent political figures, judges, human rights activists, and journalists — none of whom had outstanding arrest warrants —²² suggesting that the system may have been used for politically motivated surveillance.

Again, this case shows how the persecution of political expression, carried out without strict adherence to due process, impacts the right to privacy. At the same time, the erosion of the private sphere is a barrier to fully exercising freedom of expression.

Conclusion

It's important to remember that multiple declarations by international institutions have explicitly stated the relationship between the right to privacy and freedom of speech. The General Assembly and the Human Rights Council have repeatedly stated that Member States should

¹⁸ Clarín. *Por qué el reconocimiento facial sigue suspendido en la Ciudad de Buenos Aires: claves para entender los usos y riesgos de esta inteligencia artificial*, March 8 2023.

https://www.clarin.com/tecnologia/reconocimiento-facial-sigue-suspendido-ciudad-buenos-aires-claves-entender-usos-riesgos-inteligencia-artificial_0_eT30Dwx2Gm.html

¹⁹ ODA. *Nuestros derechos están en juego*. Available at <https://srfp.odia.legal/>

²⁰ La Capital. *Ordenan suspender el uso del reconocimiento facial en Buenos Aires*, April 13 2022, Available at <https://www.lacapital.com.ar/informacion-general/ordenan-suspender-el-uso-del-reconocimiento-facial-buenos-aires-n10013065.html>

²¹ CELS. *Confirman la inconstitucionalidad del uso del sistema de reconocimiento facial*. April 29 2023 <https://www.cels.org.ar/web/2023/04/confirman-la-inconstitucionalidad-del-uso-del-sistema-de-reconocimiento-facial/>

²² Chequeado. *Por qué se suspendió el sistema de reconocimiento facial de la Ciudad de Buenos Aires*, April 21 2022.

Available at

<https://chequeado.com/el-explicador/porque-se-suspendio-el-sistema-de-reconocimiento-facial-de-la-ciudad-de-buenos-aires/>

refrain from unlawful or arbitrary surveillance²³ and that systematic surveillance of people in the public space online and offline may constitute a threat to freedom of expression.²⁴

The Office of the Special Rapporteur for Freedom of Expression at the Inter-American Commission on Human Rights has stated that the rights to freedom of expression and privacy are undermined by state surveillance, which discourages citizens from participating in the public sphere,²⁵ emphasizing the states' obligation to create a safe environment for the exercise of the right to freedom of expression, as violations of communication privacy hinder the full exercise of the right to communicate.²⁶ But as demonstrated by the examples from Latin America, the impact of the unlawful persecution of critical speech is not limited to undermining the rights to hold opinions, seek information, and express oneself — it can also enable the erosion of the right to privacy.

We think this less explored aspect of the relationship between these two rights should also be considered.

²³ U.N. *The right to privacy in the digital age*. August 4 2022, A/HRC/51/17, para.14. Available at <https://www.ohchr.org/en/documents/thematic-reports/ahrc5117-right-privacy-digital-age>

²⁴ Ibid. para. 43

²⁵ Inter-American Commission on Human Rights. Office of the Special Rapporteur for Freedom of Expression. *Inclusión digital y gobernanza de contenidos en internet*. June 2024, para. 62. Available at https://www.oas.org/es/cidh/expresion/informes/Inclusion_digital_esp.pdf

²⁶ Inter-American Commission on Human Rights. Office of the Special Rapporteur for Freedom of Expression. *Freedom of expression and the Internet*. December 31 2013, para. 23. Available at https://www.oas.org/en/iachr/expression/docs/reports/2014_04_08_Internet_ENG%20WEB.pdf