Into the darkness: how illegal surveillance is undermining open government reforms in Latin America

The increasing scale of illegal surveillance in Latin America – enabled by state procurement of surveillance and hacking software – is raising urgent questions about its impact on civil rights. ***Fabrizio Scrollini,*** *LSE graduate and chair of DATYSOC (Data and Society), considers how democracies can keep their citizens safe in an age of aggressive surveillance technology*.

In June, the New York times reported that prominent Mexican activists and journalists were targeted by surveillance software that is allegedly only sold to governments and can only be used against very specific targets. International investigators from the Inter-American Commission of Human Rights faced illegal surveillance while researching the deaths of 43 students in the State of Guerrero.

Despite Snowden's revelations, privacy debates remain muted in Latin America (Snowden and sombrero mix, Asa Cusack, CC BY-SA 4.0)

Social Tic, RD3, and Article 19 (Mexican NGOs), with the support of Citizen Lab of Toronto University, exposed these incidents. These NGOs also took part in the Open Government Partnership, an alliance of governments and civil society organisations driving open government reforms through several dialogue mechanisms. To add complexity to this matter, some of the activists targeted were leading members of this alliance. The situation then seems as follows: civil society leaders, advancing a dialogue with the Mexican government, engaging in good faith conversations to change key aspects of public administration and policy, were spied upon by unknown security forces. This is hardly a way to enhance trust in a process of dialogue.

That illegal surveillance is a serious issue in many Latin American countries is not news, but the scale and focus of this particular act is now jeopardising a mechanism that delivered some promising reform avenues in the Mexican case, in particular its open data, anti-corruption and transparency reforms.

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In Uruguay, the last standing full democracy in Latin America according to the Economist Intelligence Unit, challenges are also emerging. The government secretly purchased "El Guardian" – an application that intercepts calls and social media – yet there is little transparency about how it is used or the operating protocols that it follows. The state also secretly acquired Predpol, a tool to potentially "anticipate crimes". The Uruguayan government even purchased a surveillance center for 20 million dollars in the coastal town of Maldonado, installing more than 2000 cameras in the area and charging residents for this service, yet without providing information about the costs or procedures of the centre.

Thus far there is no evidence that the Uruguayan government has software to run targeted operations like its Mexican counterpart, but Uruguayan authorities did meet the so called "Hacking Team", an Italian software company which has illegally sold hacking software to numerous governments in Latin America. There is also extensive evidence that the military spied on all political parties using more traditional techniques, from 1985 until at least 2007. In short, not even such a small, relatively democratic country is immune to such practices.

Citizens are today subject to an unprecedented degree of surveillance, albeit often in less obvious forms (Matthew Henry, CC0)

The current situation is problematic. On the one hand, governments might legitimately need new tools to fight crimes, particularly organised crime, which is a very serious issue in Latin America. Some surveillance technology could help to standardise operations and procedures within security and intelligence forces, thereby limiting their activities.

On the other hand, governments seem to be going on a shopping "spree" without any type of guidance or framework to ensure that basic human rights and liberties are guaranteed. Given the current technologies available to security agencies, freedom of expression, privacy and equal treatment by public authorities could be under threat.

At Abrelatam-Condatos, the most relevant open data forum in the region, the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Edison Lanza, made the case for governments "not to be two-faced". The same governments enabling collaboration, providing open data, and enhancing open government are also taking forward dubious operations and secret purchasing of new technological weapons.

There are three key policy issues to address if democracies are to remain safe in an age of aggressive surveillance technology. Security comes at a cost, but this cost can become unreasonable.

1. A clear framework should consider issues of necessity and proportionality to acquire and use these technologies, as well as identifying which agencies will be allowed to operate them. The same framework

should require a set of reports about the use of these technologies, including whether they have used third parties (such as telecoms) to carry out their operations.
2. Civil society organisations working on these issues seldom have the capacity or resources to take a stand and engage with reform processes. Surveillance has a long history in Latin America, but this new wave – of which spying software is just the tip of the iceberg – is entirely distinct given the nature, scale, and cost of these technologies. An engaged civil society aware of international developments is needed to ensure proper scrutiny and debate.
3. As LSE's Martin Lodge has persuasively argued, there is the thorny issue of accountability and enforcement. Legislative committees, strict transparency rules, and international bodies are initial policy tools to consider, but these may not be enough to counterbalance the misuse of some technologies in the context of fragile democracies.

It is not clear when or how Latin Americans are going to have the kind of conversation required to clear the fog surrounding the current state of surveillance in the region, nor on more general issues about enhancing privacy in the digital age. But if such a conversation does not take place, any noble efforts towards open government will remain tainted by the dark shadow of surveillance.

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• This is a slightly modified version of an article first published by the LSE Media Policy Project blog
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