

Derechos Digitales input on Privacy and Gender in Latin America on the draft report prepared by the Special Rapporteur on Privacy Taskforce on “Privacy and Personality”

November 14th, 2019

Regarding the request for comments on the draft report prepared by the Special Rapporteur on Privacy Taskforce on "Privacy and Personality" around privacy and gender, we would like to share the following references on relevant Latin American cases:

I. Use of invasive technologies to reinforce privacy violations regarding sexual and reproductive rights in Argentina

In Argentina, the province of Salta signed an agreement with Microsoft in 2017 [1] to use artificial intelligence to prevent teenage pregnancy and school dropout. According to the company, based on data collected among populations in vulnerable situations, "intelligent algorithms identify characteristics in people that can lead to some of these problems [teenage pregnancy and school dropout] and warn the government so that they can work on prevention." The data collected is processed by Microsoft servers distributed around the world and this processing specifically targets adolescents identified as people at risk, affecting not only their privacy, but also their autonomy and generating a wide potential for discrimination. It is, finally, a mechanism of control over targeted individuals in vulnerable situations who are exposed to interventions without their consent, and which reinforces the vulnerability of people who are deprived even of the possibility to decide on such interventions.

It should be noted that Salta was the last Argentine province [2] that ceased to provide religious education in public schools after a ruling by the Supreme Court, recognizing the existence of violations of the rights to equality and non-discrimination, as well as the privacy of citizens. This reliance on technology described above is therefore nothing more than an expression of broader problems to understand the areas of autonomy and privacy of people, with a political purpose.

At least five other Latin American countries are implementing similar programs [3], including Brazil, which recently signed an agreement with Salta and Microsoft [4].

See:

[1] <https://news.microsoft.com/es-xl/microsoft-gobierno-salta-firman-acuerdo-aplicar-la-inteligencia-artificial-la-prevencion-los-problemas-mas-urgentes/>

[2] <https://www.pagina12.com.ar/82268-la-asignatura-que-era-practica-religiosa>

[3] <http://www.proyecto-horus.org/ebook/horus-project-digital-book.pdf>

[4] <http://mds.gov.br/area-de-imprensa/noticias/2019/setembro/parceria-entre-governo-brasileiro-provincia-argentina-e-microsoft-ira-ajudar-no-monitoramento-do-crianca-feliz>

II. Violating vulnerable families' privacy to deliver public services in Chile

Chile began in 2019 the pilot implementation of a tool that seeks to detect children and adolescents at risk. According to the Ministry of Social Development and Family, Alerta Niñez [1], it is a preventive instrument that "identifies the set of individual, family, environment and peer conditions of children and adolescents, which tend to occur when there is a risk of violation of their rights."

Using the statistical processing of large amounts of data from public bodies, the system gives a score to individual children and adolescents based on their probability to suffer rights violation.

It is again an invasive initiative to collect sensitive data of minors that carries a great risk of deepening prejudice and stigmatization towards historically vulnerable groups particularly monoparental homes lead by women, and potentially other forms of non-binary families. In addition, these processes involve the transfer of personal data to third parties and the possibility that such data is used for purposes other than those agreed on; without legal bases or guarantees that the information generated will not be used in the future for other purposes, such as predictive policing initiatives or future employment opportunities for example, that could result in discrimination of children and family members targeted by this program.

See:

[1] https://cdn.digital.gob.cl/filer_public/8a/e7/8ae7acf1-230b-45b3-806f-4cd6d4d837fb/11_mindesarrollosocial-f.pdf

III. Violating privacy while excluding transgender populations from access to basic services in Venezuela

The implementation of the so-called "Biometric System for Food Safety" [1] in Venezuela requires citizens to verify their identity through their fingerprints to acquire food and hygiene products and medicine. It has led to complaints [2] of discrimination against foreigners -documented and undocumented- and transgender people. The situation is particularly worrying given the circumstance of scarcity of essential goods [3] and the humanitarian crisis that is worsening in the country, mainly affecting the rights to food and health of populations in the most vulnerable situations.

See:

[1] <https://www.digitalrightslac.net/es/tu-huella-digital-por-un-kilo-de-harina-biometrica-y-privacidad-en-venezuela/>

[2] https://www.derechosdigitales.org/wp-content/uploads/cuerpo_DATO.pdf

[3] <https://news.un.org/es/story/2019/08/1460361>

IV. Political gender violence affects women candidates, journalists and activists fundamental rights in Brazil and Mexico

During the 2017-2018 elections in Mexico, female candidates faced a hostile web environment for their campaigns. In a context in which digital media is increasingly important for electoral results, 62 candidates of 24 different states registered some type of online violence which included death threats and organized attacks, but also the sharing of their personal information [1].

In Brazil, during the 2018 election campaign, several cyberattacks against political groups and journalists were reported. In September 2018, a Facebook group "Mulheres Unidas contra Bolsonaro" (Women United against Bolsonaro) was attacked and its moderators started to receive direct threats. The administrator's personal Facebook and WhatsApp accounts were also hacked [2]. Journalist Patrícia Campos Mello was also targeted after she signed a news report on possible illegalities on Jair Bolsonaro's campaign. [3] Some of her messages were deleted and pro-Bolsonaro messages were sent to her contacts. Brazilian president Jair Bolsonaro has often attacked female journalists in his social media, sometimes exposing their personal information such as family ties and pictures [4].

Later in 2019, an independent online magazine lead by women was targeted by Brazil's minister for women, family, and human rights, after publishing an article explaining safe methods for obtaining an abortion and the circumstances under which abortion is legal in Brazil. Besides tweeting that the article was "absurd" and promoted a crime, the ministry filed a complaint with the Public Prosecutor's Office of São Paulo, which has the power to decide whether to present criminal charges against the magazine [5]. Journalists' personal data were also exposed online and they started to receive aggressive messages through social media platforms.

See:

- [1] <https://luchadoras.mx/violenciapoliticaenlinea/>
- [2] https://brasil.elpais.com/brasil/2018/09/14/politica/1536941007_569454.html
- [3] <https://www1.folha.uol.com.br/poder/2018/10/folha-pede-que-policia-federal-investigue-ameacas-a-profissionais.shtml>
- [4] https://www.cjr.org/the_media_today/bolsonaro_twitter_press_threats.php
- [5] <https://cpj.org/2019/09/brazilian-outlet-azmina-faces-criminal-complaints-.php>

V. Application of ToS punishes community-led sexual & reproductive health app in Argentina

In October 2019, Derechos Digitales was contacted by a young and independent entrepreneur who developed a sexual and reproductive health app in Argentina that was taken down from Google PlayStore [1]. She received an email informing her that the app violated Google Play's sexual content policy which reads "[w]e don't allow apps that contain or promote sexual content, such as pornography, or any content or services intended to be sexually gratifying. Content that contains nudity may be allowed if the primary purpose is educational, documentary, scientific or artistic, and is not gratuitous" [2]. Despite the alleged exception for content with educational purposes, Lunar App [3] images explaining the effects of a women's period in her body and other artistic representations of the women's body were interpreted as against the policy. Notifications received by the developer didn't explicit and were ambiguous about which specific content could be in violation, what made it more difficult for her to understand the claim and review the app for potential improvements. Lack of enough information put the developer at risk of her app and her account being permanently deleted from the platform, together with their history [4].

Derechos Digitales was able to connect with Google's staff to ask for a review of the case and the flag for policy violation was finally removed after one month. We are still in contact with Google to better understand the reasons that triggered the flagging in this case, the information procedures of the company and, more generally, to advance with recommendations for better practices in such situations. However, this case raises an alert on how platform's content policies and Terms of Service can have a differential impact on women's privacy, autonomy, freedom of expression, social, economic and reproductive rights, particularly at the Global South where the lack of institutional frameworks and public programs to address this matters make access to information through internet a key element for the effective exercise of women's rights.

See:

- [1] <https://twitter.com/aplicacionlunar/status/1177936271051755520>
- [2] https://play.google.com/about/restricted-content/inappropriate-content/#!?zippy_activeEl=sexual-content#sexual-content
- [3] <http://lunarcomunidad.com/>
- [4] https://play.google.com/intl/en_us/about/enforcement/enforcement-process/