

Report opportunities and challenges of strategic litigation on privacy in Latin America. Executive Summary:

The report proposes articulating strategic litigation in Latin America as a way to extend the boundaries of the current work done by civil society in the area, consisting on research and the creation of digital rights organizations.

The report is based on Latin American expert's interviews and the analysis of the landmark cases in several countries.

Despite limited strategic litigation experiences in regards with privacy rights in the region, these experiences have managed to achieve legal and policy changes, transcending the specific results of the single cases. The organizations involved in this litigation have also gained a more important status, because litigation -as a social impact action- achieves cohesion, visibility and promotes public debates regarding collective issues joining various public actors, media and decision makers.

As an example, among the analyzed cases, *Halabi* in Argentina achieved the overturning of a data retention law, which would have obligated Internet services providers to collect communication data from users in an indiscriminate manner. The *Atala* case, ruled by the Inter-American Court, not only triggered legislative reforms, but also opened a broad social discussion regarding sexual liberties in the region and privacy aspects related to the custody of children of same-sex couples. In the *Balloons* case in Chile, even though the surveillance balloons were not completely banned by the Chilean Supreme Court, served to highlight serious regulatory failures, and the Court established for the first time in Chile specific requisites to allow video surveillance in in public spaces. In El Salvador, the trial against "credit black list" allowed recognition to all Salvadoran people rights, to exercise their right to informational self-determination.

In recent years, a growing number of organizations have been doing strategic litigation related with privacy in Latin America. It is worth to highlight the work of "Asociación de Derechos Civiles" in Argentina, "Son Tus Datos" and "Red de Defensa de Derechos Civiles" in Mexico, and "Datos Protegidos" in Chile. These organizations lead strategic litigation against government surveillance practices, and protect personal data.

In Colombia and Brazil some organizations are seriously considering strategic litigation, nonetheless, the lack of tools and support for the litigation work discourages these intentions.

Considering all of the above, it is necessary to achieve consensus within the involved organizations, to ensure that the achievements obtained, which have been intermittent until now, succeed on the strengthening of democratic systems in each country and in the region. Those consensuses should be based on the following principles:

- Privacy should be understood as an enabling right for the exercise of other fundamental rights in Internet era. Therefore, it is necessary to promote other fundamental rights to obtain a connection among them, recognizing privacy as part of the universal and indivisible human rights system.
- Litigation should be addressed as an advocacy tool, based on enforce rights, capacity-building, and as a mechanism to be able to build an integral right to privacy in both a national and an international level.

- Litigation is an intensive process that starts before the trial and requires field investigation to identify issues and audiences.

However, there have been few spaces to litigation, due to the high costs involved, lack of technical expertise on litigation techniques, few attorneys with Internet privacy knowledge, and a lack of coordination in a regional level about which trials to embrace and how to deal with them.

Latin America presents an ideal scenario for strategic litigation, supported by strong field reports indicating that strategic litigation could be successful in scenarios where rights are not properly enforced, laws are obsolete, or laws aren't in line with Human Rights obligations, or impunity prevail.

Based on these findings, the report highlights the necessity to coordinate the various organizations that litigate in privacy matters –either at a national or an international level- providing an opportunity to correct violations of human rights and build law enforcement for both national and international level. Therefore, the report proposes an articulation of a regional network that use strategic litigation, to build a robust and comprehensive concept of privacy, and thus move forward to an express recognition of rights connected with digital era.

This network would allow to:

- Generate, systematize and store databases, workgroups, production of analysis and trends reports, helping the generation of capacities across the involved organizations, among other benefits.
- Provide a boost to the role of the organizations, moving from theoretical investigation to practical advocacy, building a privacy concept in a broad sense, building awareness that push the privacy right's current boundaries. This would empower NGO's vis-à-vis decision-makers.
- Through coordinated litigation, it is possible to generate and articulate debates, illustrate and turn people and media into participants, by creating awareness about the real situation of privacy rights.
- Create narratives to help different audiences to grasp the importance of privacy on the region.

Coordinated strategic litigation can decisively influence the human rights discourse related to privacy and new technologies in Latin America, contributing with the articulation of normative and its interpretation, and helping to establish common international protection parameters. On top of that, litigation can help overcoming and unveiling impunity, exercise legal frameworks, support awareness, rising campaigns and promote legal reforms.

If the philanthropic sector promotes and supports these initiatives, it could help setting a regional agenda for cooperation through litigation and joint actions. The proposed network will also allow more efficient approach to the convergence of donors, providing the opportunity to expand areas such as access to justice and digital rights, which are usually financed separately.