

## **Access Now submission to the United Nations Human Rights Council, on the Universal Periodic Review 2018 Cycle for Uruguay**

### **About Access Now**

1. Access Now ([www.accessnow.org](http://www.accessnow.org)) is an international organisation that works to defend and extend digital rights of users globally. Through representation in 10 countries around the world, including engagement with policymakers, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights. We engage with an action focused global community, and our Technology Arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. Access Now advocates an approach to informations and communications technology regulation that promotes user rights, including privacy and freedom of expression. Access Now has worked extensively on digital rights in Latin America, including on free expression and web blocking, implementation of Net Neutrality regulation, and data protection mandates.

### **Domestic and international human rights obligations**

3. Uruguay has signed onto various UN human rights treaties, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).
4. Article 29 of the Uruguayan Constitution protects “the expression of opinion on any subject by word of mouth, private writing, publication in the press, or by any other method of dissemination” as “entirely free.”
5. Article 28 of the Constitution touches on privacy, outlining that the papers of private individuals of any nature are inviolable and may never be searched, examined, or intercepted.
6. Article 11 of the Constitution protects against search and seizure of the home without the consent of the owner, unless ordered by a judge in writing.

### **Developments of digital rights in Uruguay**

7. In 2016, Uruguay held its first Internet Governance Forum (IGF) and was successful in holding a second IGF in September of 2017. While reports on the second IGF in 2017 are not out yet, the 2016 IGF was generally considered a success. There are still some concerns and room to improve, especially regarding balance among different sectors (civil, academic, business, government, etc.), gender balance, and the participation of young people in the

forum.<sup>1</sup> In the first IGF, the business and civil society sectors, women, and young people were all under-represented.

8. The “One Laptop Per Child” policy, called the “Ceibal program,” was first rolled out in 2007 and is still widely favored in the present. The program reports that by 2009, every child enrolled in public school was given a laptop for personal use with Wifi, and their schools were given WiFi.<sup>2</sup> According to Ceibal’s 2014 Evaluation, 67% of respondents declared they agreed and rated it as a very positive policy, while 79% of Ceibal’s beneficiaries stated that the program would produce social change.<sup>3</sup>
9. As of October 2017, 83% of households in Uruguay already have access to the web. The government has announced a goal of ensuring that 90% of the country’s households will have internet access by the end of 2020. This is a great increase from 2008, when just 41% of Uruguayans could access the internet.<sup>4</sup>

### **Violations of access to information & freedom of expression**

10. The Center of Archives and Access to Public Information (CAinfo), in collaboration with the Uruguayan Press Association (APU) and with the support of the Exchange for Freedom of Expression (IFEX) network, releases a yearly report on threats to freedom of expression in Uruguay. This report specifically focuses on freedom of expression from a journalistic viewpoint. The report found 22 cases of threats to freedom of expression, which is a decrease from 28 in the last report, and 37 in the first report in 2015.
11. The cases range from one high gravity level case of attempted shooting of a journalist, 16 cases of medium-level gravity having to do with intimidation of journalists, and 6 mild cases, mostly dealing with obstruction of journalistic work.
12. On February 13th, 2017, the right to access public information suffered a legal setback. An Executive Decree was issued, declaring that “any public official who makes public, divulges, or discloses to third parties the documents referred to in this article, except in the cases provided for by law, shall incur a very serious offense.”<sup>5</sup> The language in the decree is vague, and many fear that it could prevent public interest data from becoming public. This could

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<sup>1</sup> Frederico Rodriguez, Javier Landinelli, Maria Julia Morales Gonzalez, “Staging the First IGF in Uruguay: Challenge and Opportunities,” (Global Information Society Watch, 2017)

[https://www.giswatch.org/sites/default/files/gw2017\\_uruguay.pdf](https://www.giswatch.org/sites/default/files/gw2017_uruguay.pdf)

<sup>2</sup> “Plan Ceibal,” <https://www.ceibal.edu.uy/en/institucional>

<sup>3</sup> Fabrizio Scrollini, “Penumbra: Surveillance, security and public information in Uruguay,” (Global Information Society Watch, 2014)

[https://www.giswatch.org/sites/default/files/penumbra\\_surveillance\\_security\\_and\\_public\\_information\\_in\\_uruguay.pdf](https://www.giswatch.org/sites/default/files/penumbra_surveillance_security_and_public_information_in_uruguay.pdf)

<sup>4</sup> Narayan Ammachchi, “Uruguay Aiming for Internet Access in 90% of Homes by 2020,” (Nearshore Americas, 31 October 2017) <http://www.nearshoreamericas.com/uruguay-internet-access-2020/>

<sup>5</sup> “Journalist in Uruguay Survives Attempt on Her Life,” (Civicus, 7 March 2017)

<https://monitor.civicus.org/newsfeed/2017/03/07/journalist-survives-attempt-her-life/>

restrict the media's and the public's access to information about threats to public health and security, corruption, and human rights violations.

### **Violations of the right to privacy**

13. The Uruguayan government purchased, in secret, surveillance software called “El Guardián.” The purchased was revealed in July of 2013 in a local newspaper. The Guardian software is a radical shift towards online and phone surveillance. It is reported that through this system, it is possible to intercept the calls of 800 cellular phones and 200 land lines, as well as intervene in 100 email services and monitor three social networks.<sup>6</sup> The system was designed by a Brazilian company called Digitro Tecnologia, and is also in use in Brazil by the Brazilian Federal Police.
14. Uruguay passed a “free software” law, which outlines that the government should use free or open source software unless a good justification exists. The Guardian software did not comply with this regulation, as it is proprietary software and was kept in secret.
15. In 2013, following the reveal of this software, the secretary of the Presidency assured the public that this software will be used within the traditional legal framework. He stated that the system will “centralize” surveillance, and that the government will still, as required by law, use “an order from a competent judge or a request from the public solicitor, with the consent of the telecommunication operator.”<sup>7</sup> Government officials are still making reassurances of this kind, such as an interview of the director of the Technological Support Unit of the Police in May of 2017, dedicated to explaining the laws that still restrict this surveillance system.<sup>8</sup>

### **Recommendations**

16. Due to Uruguay's recent increase internet connectivity across the country, and resulting in increased internet reliance by the public, we recommend that the country pass legislation protecting net neutrality. Net neutrality is the principle that internet access should be offered to everyone on a nondiscriminatory basis, without favoring certain websites, applications, or services.
17. Government mass surveillance should be banned for its unnecessary and disproportionate restriction of a range of human rights.

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<sup>6</sup> “Control sobre ‘El Guardián,’” (El Pais) <https://www.elpais.com.uy/opinion/editorial/control-guardian.html>

<sup>7</sup> Fabrizio Scrollini, “Penumbra: Surveillance, security and public information in Uruguay,” (Global Information Society Watch, 2016) [https://www.giswatch.org/sites/default/files/penumbra\\_surveillance\\_security\\_and\\_public\\_information\\_in\\_uruguay.pdf](https://www.giswatch.org/sites/default/files/penumbra_surveillance_security_and_public_information_in_uruguay.pdf)

<sup>8</sup> Gabriel Pereyra, “No es sencillo que un juez disponga una interceptación,” (El Observador, 2 May 2017) <https://www.elobservador.com.uy/no-es-sencillo-que-un-juez-disponga-una-interceptacion-n1065186>

18. The government should publish and follow rights-respecting procedures for procurement, maintenance, and access to surveillance technology, and establish civilian oversight and require independent, impartial judicial authorization for its use. Uruguay should follow this protocol regarding the “El Guardián” and all other surveillance systems.
19. The government should refrain from adopting legislation similar to Executive 500/991, the broad language of which can be construed to impose liability on state whistleblowers. The Uruguayan should protect freedom of expression and provide whistleblowers with greater legal safeguards for whistleblowers.
20. The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now is grateful to make this submission.
21. For additional information, please contact Access Now staff Peter Micek ([peter@accessnow.org](mailto:peter@accessnow.org)).