

Statement by civil society organizations on the new state surveillance measures in Perú

The undersigned individuals and organizations working for the defense of human rights on the internet write to urge the rejection of Legislative Decree 1182, enacted by the President of Perú at the end of July. This decree establishes new government surveillance tools in a way that contradicts international human rights standards.

The decree creates two obligations for Peruvian telecommunications providers. First, providers are ordered to provide the Peruvian national police with real-time location information about suspects of flagrant crimes, without a warrant. Second, the decree requires providers, including those that offer internet access services, to store communications metadata for three years.

Both ordered measures are illegal because they are incompatible with the human rights standards in the international treaties ratified by Perú. In particular, surveillance, including access to location information, that is pursued without a previous warrant fails to comply with the principle establishing that legitimate use of surveillance by law enforcement should be subject to independent review, with strict guarantees against abuse.¹ A court order for communications surveillance should only issue if a judicial authority determines that the substance of an application for communications surveillance meets the legal, substantive, and procedural requirements, including the burden of proof.²

Government-mandated telecommunications data retention of all Peruvians for three years is an unnecessary and disproportionate measure for a democratic society. For this reason, such a policy harms privacy, freedom of expression, and data protection.

We understand that the fight against organized crime is a legitimate concern for governments trying to provide public security to its citizens. Nevertheless, the means and policies chosen by decision-makers should comply with basic human and civil rights standards including limits against potential abuse. We underscore that international human rights legislation and principles clearly state that surveillance measures should be preceded by considerations of necessity and proportionality, in light of their invasive nature. In order to

¹ International Legal for Support and Precedents to the International Principles on the Application of Human Rights Standards to Communications Surveillance <https://eff.org/r.o2pz>

² See Implementation Guide for the International Principles on the Application of Human Rights Standards to Communications Surveillance <http://bit.ly/1NERT36>

be deemed proportional, surveillance should be limited to serious offenses and be used only when other less detrimental measures have been exhausted or resulted useless.³

Consequently, we request the Commission of Constitution and Bylaws of the Peruvian Congress to reject Legislative Decree 1182 entirely, and we ask the three branches of government in Perú to redouble their efforts to apply human rights standards to any actual or future surveillance measures taking place in its territory.

Signatories:

³ Ver Principios Internacionales sobre la Aplicación de los Derechos Humanos a la Vigilancia de las Comunicaciones, <https://es.necessaryandproportionate.org/text>