

## RECOMMENDATIONS

1. To repeal regressive standards and practices that constrain the delivery of public information, contained among others in Articles 40, 42 and 87 of the Law of the Central Bank of Venezuela; Articles 58, 60 and 61 of the Organic Law of Citizen Power, Article 33 paragraphs 4 and 6 of the Law on Public Service, Article 79 the Organic Law of the Ombudsman, Article 120 of the Organic Law of the Public Prosecutor, Articles 1, 13, 14, 15, 16 and 17 of the Standards of Classification and Processing of Public Administration Information, Article 126 of the Law on Drugs, Article 108 of the Organic Law of the Electrical System and Service, Article 5 paragraph 3, 8 paragraph 2 and 5, 13 and 15 of the Organic Law of Social Oversight, Articles 16 and 66 of the Debate and Internal Rules of the National Assembly, Articles 3, 4, 5 and 8 of the Law on Defence of Political Sovereignty and National Self-Determination, Article 24 of the Organic Law of Emoluments, Pension and Retirement of Senior Officials of the Public Sector, Article 47 of the Telecommunications Law, Article 14 of the Law on Gaseous Hydrocarbons, Article 89 of the Organic Law of Railway Transport, Article 159 of the Organic Law of Public Administration, Articles 9 and 10 of the Creation of the Strategic Centre for Security and Protection of the Nation.
2. The creation of an independent body that guarantees access to public information Approval and support for the draft Law on Transparency, Disclosure and Access to Public Information which contains clear procedures for requesting information from institutions, rapid and effective judicial actions and sanctions for those who obstruct the exercise of this right, clear exceptions adjusted to international human rights standards and which establishes an independent body responsible for monitoring the exercise of this right.
3. Adoption of the principle of maximum disclosure, which establishes the presumption that all information is accessible under a restricted system of exceptions.
4. To respond immediately to all pending requests for information filed by individuals and civil society organisations with various State agencies.
5. To respond appropriately and timely to request for information.
6. To amend jurisprudential criteria that run counter access to public information, and in this sense, to admit the action for constitutional protection on the lack of response to requests for information; to refrain from demanding compliance with procedures or steps before admitting the judicial claim; to refrain from requiring that individuals should state the reasons for which they require the information; to accelerate judicial times of response to request for information; to remove any legal obstacle preventing a ruling in favour of this right.
7. To accept the visit of representatives of international and regional human rights organisations to Venezuela, and particularly the rapporteurs responsible for monitoring the right to freedom of expression and information.
8. Public statements by senior officials promoting guarantee of the right of access to public information and transparency in all government actions.
9. To promote good practices of access to public information in state institutions and in this regard, to provide training to civil servants about their obligations in this area, to promote proactive disclosure of public information on the websites of government institutions, to launch an awareness campaign for officials to respond adequately and timely to information requests.

Coalición Proceso  
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[coalicionproceso.org.ve](http://coalicionproceso.org.ve)

Contact: Mercedes de Freitas / [proceso@transparencia.org.ve](mailto:proceso@transparencia.org.ve) / +58 414 3312049

# REPORT EPU

Bolivarian Republic of Venezuela  
Report for the Universal Periodic  
Review Second Cycle of Venezuela,  
during the 26th Session of the  
United Nations Human Rights  
Council

Coalición  
**Pro Acceso**

## COALICIÓN PROACCESO (\*)

The **Proacceso Coalition** is a broad, plural and diverse national movement focused on the defence and promotion of Access to Public Information, through a platform made up of organisations and individuals coordinated by Instituto Prensa y Sociedad (IPYS), the National Association of Journalists (CNP), Expresión Libre, Centro al Servicio de la Acción Popular (CESAP), the Venezuelan Institute for Social and Political Studies (INVESP), Espacio Público, Transparencia Venezuela and Sinergia, which operates by demanding information, conducting research and diagnostics, exchanging experiences and resources, providing training for different types of audiences and building common agendas to influence Venezuelan opinion. The report addresses the obligations of the Venezuelan State on the right of access to Public Information, with an emphasis on the legal framework and compliance with recommendations of the first UPR cycle and regular United Nations human rights bodies. The information presented herein is based on research conducted by the organisation during the period 2012-2016.

## ACCESS TO PUBLIC INFORMATION

1. Since March 2016, Venezuela is discussing a law on transparency and access to information based on regulations in the law and OAS references. The Constitution recognises and guarantees the importance of the right to access to information in Articles 51<sup>1</sup> and 143<sup>2</sup>, which must be interpreted in relation to constitutional Articles 194 and 255. Article 19 ensures that each individual may, without any discrimination, freely enjoy human rights; and secondly, Article 25 highlights the constitutional status of human rights.

1 Article 51. Everyone has the right to petition or make representations before any authority or public official concerning matters within their competence, and to obtain a timely and adequate response. Whoever violates this right shall be punished in accordance with law, including the possibility of dismissal from office.

2 Article 143. Citizens have the right to be informed by Public Administration, in a timely and truthful manner, of the status of proceedings in which they have a direct interest, and to be apprised of any final decisions adopted in the matter. Likewise, they have access to administrative files and records, without prejudice to the limits acceptable in a democratic society in matters relating to internal and external security, criminal investigation and the intimacy of private life, in accordance with law regulating the matter of classification of documents with contents which are confidential or secret. No censorship of public officials reporting on matters for which they are responsible shall be permitted.

## OPACITY IN CITIZEN PROTESTS

15. In February 2014, San Cristobal, the capital of the state of Táchira – on the border with Colombia – was the starting point of a series of demonstrations that took place in the main cities of the nation in February, March and April, which left 43 dead, according to information provided by the Public Prosecutor. During the media coverage of these protests, the insecurity suffered by reporters on the streets was evidenced by the increased number of limitations due to physical assaults and attacks on equipment that IPYS Venezuela registered in its historical record between 2002 and the first quarter of 2016. A total of 295 physical assaults recorded that year are a clear proof of the direct intention to prevent media coverage of situations of violence and sociopolitical problems experienced in the country.
16. The 91 cases recorded in this context included 38 coverage limitations imposed by government officials, 16 by social groups and 12 by criminal groups.

## SILENCE IN THE AREAS OF HEALTH AND THE ECONOMY

17. In 2015, the 84 cases of restrictions on access to the public information show the situation of opacity and silence that has prevailed in Venezuela and affects the work of journalists and restricts the possibility for citizens to be adequately informed in order to make responsible decisions about life in society. The highest record of this type of restriction occurred in December, at the time of elections, where 26 limitations were recorded. Most of these impediments were based on restrictions regarding access to polling stations on election day.
18. Throughout 2015, no data on epidemiological indicators were disclosed, which should be released by the Ministry of Health. There were no monthly economic indicators such as inflation (National Consumer Price Index), Gross Domestic Product (GDP) and product shortage, which should be issued by the Central Bank of Venezuela (BCV). Transparencia Venezuela made a formal request to the BCV for the publication of these economic indicators and in face of the administrative silence, we took the case to the Supreme Court, which responded negatively to the request; ruling: <https://supremainjusticia.org/wp-content/uploads/2016/01/N%C2%B0-54-TSJ-subestimo-la-importancia-de-la-publicacio%C3%81nde-las-principales-est.-econ.-del-pai%CC%81s.pdf>. These two indicators appeared between January and March 2016.
19. This non-disclosure of information of public interest has intensified in Venezuela while censorship and self-censorship have been commonplace, in which silence on issues of clear public interest prevails.

12. In 2013, restrictions on access to information prevailed in the digital realm. Notorious cases included the blocking of Bit.ly domains, a service used to shorten web addresses and search results. The National Telecommunications Commission (Conatel), a central government agency proceeded to implement censorship, which prevented access to content posted on the internet. Conatel began these procedures after the President Nicolás Maduro, in an official speech on November 6, 2013, criticised several websites that posted foreign currency rates other than the official rates established by the national government<sup>12</sup>. Twelve days later, the agency began punitive administrative proceedings against eight internet providers, and blocked 50 sites that posted similar information.
13. These restrictions on internet access that started with blocking websites, continued in 2014 with more direct and other subtle actions, such as the partial blockade on Twitter, during the civil protests in February, and the slow and interrupted internet service by ABA, provided by the state-owned CANTV (Compañía Anónima Nacional de Teléfonos de Venezuela) – which provides service to more than 80% of users in the country.
14. Espacio Público and IPYS Venezuela confirmed in the first quarter of 2014 that at least 454 websites were blocked by internet providers in Venezuela. This censorship – which began in November 2013 – was ordered by the government against 523 websites<sup>13</sup>, in an attempt to prevent disclosure of information about the parallel dollar exchange rate, due to exchange controls and restrictions for handling foreign currencies in Venezuela. The measure was extended to websites that disclosed different types of information. Fourteen cases were related to death threats through social networks, smear campaigns, blockades, hacking and illegal intervention of personal communications. Mostly affected were journalists, citizen reporters and human rights activists.

<sup>12</sup> <http://ipysvenezuela.org/alerta/conatel-bloquea-acceso-dominio-informatico-bit-ly/>

<sup>13</sup> This record was prepared by IPYS Venezuela based on the list <http://orvtech.com/bloqueo-dns.txt>

## LAWS THAT LEGALISE OPACITY

2. During the period 2011-2014, there were 60 rules that reportedly violated or limited the right of access to public information, a total of 475 legal instruments. In general, these laws allow state agencies, to reserve the right or to suspend publication of information on public administration – including data to be disclosed by public officials – or to be exempted from disclosing it, based on criteria of restrictions that are inadmissible on international standards, in order to safeguard sovereignty and security of the State in face of “internal or external”<sup>3</sup> threats, contrary to recommendation E/C.12/VEN/CO/3/ para. 13.
3. To cite a few examples of these practices, the Organic Law of Citizen Power and the Organic Law of the Ombudsman point out that both the files of the Citizen Power and the Ombudsman are reserved by nature for official service. The Law of Civil Service requires that citizens must demonstrate a legitimate interest to access any public information. The Organic Law of Public Prosecutions states that the files of the Prosecutor Department, offices of prosecutors and any other entity of the Ministry of Public Prosecutions shall be considered reserved for official service. In addition, it states that any Chief Prosecutor may, by his or her sole discretion, allow access to information to individuals, provided that such information is not of criminal nature. The Law on Municipal Power states that the disclosure of all information on municipal activities may be restricted at any time to protect the public interest and safeguard public property. The Law of Public Planning Councils states that the right to request information may only be exercised by a government body, thereby excluding citizens from the enjoyment of this right. The Organic Law on Public Administration provides that the right of access to files and records of the Public Administration may be exercised by the people, provided that it does not affect the effective functioning of public services.

## CASE LAW FAVOURING OPACITY

4. In 10 judgments<sup>4</sup>, Venezuelan courts, especially the Constitutional and Political-Administrative Chambers of the Supreme Court, have used the following arguments to limit access to information:
  - a) **Lack of legitimacy and justification of the information requested:** Regarding a legal action demanding response to a request for information on acts of corruption, the Supreme Court noted that “[Transparencia Venezuela] has no legitimacy whatsoever to [request] information related to alleged acts of corruption, since such investigations must be conducted by the State agencies (...)”<sup>5</sup>.

<sup>3</sup> Transparencia Venezuela. “Es Legal pero injusto”. <https://transparencia.org.ve/es-legal-pero-injusto/>

<sup>4</sup> <https://supremainjusticia.org/category/tema/derecho-de-acceso-a-la-informacion/>

<sup>5</sup> Ruling of the Second Administrative Court No. 2015-0784 of 12/08/15. Available at: <http://goo.gl/icPOJE>

- b) Proportionality of use of the information requested: Given the refusal to respond by the Ministry of Health, on irregularities in the import and distribution of medicines, it stated: "(...) requests such as these (...), undermine the effectiveness and efficiency that should prevail in the exercise of public administration and public power in general, (...), in face of such generic requests, the Administration would have to devote time and human resources for the purpose of providing explanations about the wide range of activities to be undertaken for the benefit of the people, a situation that would encumber (...) the justice administration system (...)”<sup>6</sup>.
- c) Lack of justification in the information requested: With regard to a request for information on blockades that prevented free access to certain websites, it argued: "(...) It simply noted that the information requested is necessary for the exercise of Social Oversight, without explaining the purpose of the oversight to be performed, (...) [and did not specify] the use that it would give to it (...)”<sup>7</sup>.
- d) Amparo as a less than ideal way: In an action against the Ministry of Health for failure to respond to a request for information on expired medicines, they argued: "(...) there is no evidence (...) of a factual situation to suggest that the petitioner may suffer irreparable or inevitable injury by resorting to and exhausting all previous judicial means (...)”<sup>8</sup>.
- e) Exhausting previous judicial means: In an action for amparo, it stated: "(...) It cannot claim... with the petition for amparo, to replace the existing judicial means, because this action is subject to the petitioner not having such means (...), (...) [or] that they do not allow the remedy of the legal situation infringed (...)”<sup>9</sup>.

## FAILURE TO COMPLY WITH TRANSPARENCY OBLIGATIONS OF PUBLIC AUTHORITIES, INCLUDING THE FIGHT AGAINST CORRUPTION

5. In the period between 2011 and 2012, the Proacceso Coalition filed 292 requests for information, of which only 8 were answered and only 2 in a satisfactory manner<sup>10</sup>. In the period from September 2014 to 2015, 51 formal requests for information were filed with various government agencies, of which only one was responded in a complete and timely manner. In seven of these requests, they indicated that the information would not be provided.

<sup>6</sup> Ruling of the Political Administrative Court No. 1736 of 17/12/14. Available at: <http://goo.gl/s8Tfm7>

<sup>7</sup> Ruling of the Political Administrative Court No. 01636 of 03/12/14. Available at: <http://goo.gl/MCNWPj>

<sup>8</sup> Ruling of the Constitutional Court No. 805 of 18 June 2012. Available at: <http://goo.gl/8UswOj>

<sup>9</sup> Ruling of the Constitutional Court No. 679 of 23 May 2012. Available at: <http://goo.gl/G2n2hO>

<sup>10</sup> <http://proacceso.org.ve/solicitudes-de-informacion-publica/>

6. This opacity which hinders accountability on issues as important as public health, or the economy, also prevents accountability regarding the management of public funds. The lack of information on inflation, expenditures, oil revenues, salaries of civil servants or those who access the preferential currency system entails not only obstacles to a right but veritable windows of opportunity for corrupt practices. If there was adequate and complete information on each of these issues, opportunities for corruption would be severely diminished.

## ACCESS TO OFFICIAL SOURCES

7. In Venezuela, a total of 304 limitations to access to information of public interest were recorded in the last four years. Of these, 46 alerts were recorded in 2012; 83 in 2013; 91 in 2014 and 84 in 2015. These data show that the restrictions of this type doubled between 2011 and 2014.
8. The most common limitations were arbitrary restrictions on access to state and non-state institutions, limitations on coverage that threaten the physical integrity of journalists, and limitations to consult official data and internet content. Their nature reflects a strategy aimed at preventing Venezuelans from obtaining relevant and timely information of public interest on events and situations that affect them directly and indirectly.
9. During the media coverage, arbitrary restrictions on access to sites were common in 2012. Most cases involved the participation of members of the National Armed Forces and officials of ministries and government agencies. At least 90% of these limitations affected the work of journalists and national private media workers and foreign correspondents.
10. These restrictions were exacerbated during the last year of administration of former President Hugo Chávez, who through public speeches showed an intolerant and aggressive language against the work of journalists and media who remained critical of his administration. According to historical records of IPYS Venezuela, limitations on access to public information worsened during the first three years of administration of Nicolás Maduro, who took office after the death of Hugo Chávez, after the elections held in April 2013.
11. The events that took place when the death of President Hugo Chávez was announced, and the restrictions on media coverage in the 2013 presidential elections were marked by a climate of secrecy by public officials and state institutions<sup>11</sup>. Unlike 2012, restrictions on news coverage were accompanied by an abuse of power, threats and intimidation that generated a climate of intolerance and insecurity for street reporters.

<sup>11</sup> [http://ipysvenezuela.org/alertas/?datestartselect=01%2F01%2F2013&datestartselect\\_submit=01%2F01%2F2013&dateendselect=31%2F03%2F2013&dateendselect\\_submit=31%2F03%2F2013&violacion%5B%5D=acceso-informacion-publica](http://ipysvenezuela.org/alertas/?datestartselect=01%2F01%2F2013&datestartselect_submit=01%2F01%2F2013&dateendselect=31%2F03%2F2013&dateendselect_submit=31%2F03%2F2013&violacion%5B%5D=acceso-informacion-publica)