

Coalición Proceso



VENEZUELA

Alternative report on the application of the Covenant on Civil and Political Rights

(Responses to the list of issues - CCPR/C/VEN/Q/4)

Right to Access to Public Information

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Table of Content

Executive Summary.....	3
Presentation and methodology	6
Legal Restrictions	8
On the National Public Sector	8
On the economy.....	8
On national public services.....	9
On the Nation’s Intelligence and Counterintelligence	9
Venezuelan National Assembly	9
Petitions to Public Administration	9
Judicial Restrictions.....	11
Situation of the access to public information: cases and studies	15
Study of inquiries	16
Irregularities with medicines coming from Cuba	17
Crime statistics	18

E Executive Summary

Opacity has become legal in Venezuela. In Venezuela, a public officer is still allowed to refuse to provide public information. Important information is hidden from citizens. Requests for information made to public entities, which constitutionally and legally must be answered within 20 calendar days, are archived and no information is provided. The rules and the courts protect officers who refuse to respond.

A study conducted in 2013 showed that public institutions did not respond 94 percent of the requests for information filed. When comparing these data with those of the years 2008, 2010 and 2011, we found that the situation has deteriorated. For the year 2008, 71 percent of requests remained unanswered, by 2010, 67 percent of them remained unanswered, and for the year 2011, no response was given to 85 percent of requests, reflecting a seven-point difference from the previous year.

The Venezuelan government has not made a move in favour of the right of Access to Public Information set forth in the Universal Declaration of Human Rights, the Pact of San José and the Constitution of the Bolivarian Republic of Venezuela. For several years, national public authorities have created barriers that limit the ability of citizens to know the performance of public entities. The laws and agreements passed in recent years by the National Assembly, as well as Decrees-Law issued by the President of the Republic, together with the jurisprudence of our courts, ratify a system with great opacity and discretion in public information that can be accessed by citizens.

Venezuelan law restricts the exercise and enjoyment of the right of access to public information only to those who demonstrate a legitimate interest in the information requested, or those who justify the use they can give to the information obtained. Also, it protects access to information only for certain organisations of society, such as the communes, communal councils, trade unions, among others. This is a blatant disregard of the right of every person to request information individually or collectively.

The Venezuelan government has no policies to ensure the principles of maximum transparency and active transparency. An example of this is the failure of the Secretary of the National Assembly to publish information relating to the discussions at the Parliament and to the laws themselves (Debate Journal and Law Gazette).

There is a long list of articles of various laws passed in the last 16 years with which the President of the Republic, through the approval of Decree-Laws, and the Venezuelan Parliament, have legalised secrecy, lack of transparency, authorising government officers to refuse citizens basic public information. There are laws, agreements and decree-laws that legalise the opacity kept by the government in recent years.

Judicial warranties and Supreme Court rulings endorse these regressive practices and aggravate the situation of backwardness in the access to information, establishing additional requirements for requests. The judiciary has never ruled in favour of people seeking information, and in various occasions it offends the petitioners.

In the last 16 years, a total of six enabling laws have been passed, under which various matters have been delegated to the Executive Branch to legislate. In total, these enabling laws have been in force for more than six years (75 months), during which the President has legislated over the following matters: economy, finances and taxation, social economy, infrastructure, transport and services, citizen and legal security, science and technology, organisation and functioning of the State, transformation of state-owned institutions, people's

participation, essential values of public functions, spatial planning, security and defence, energy, systematic and continuous attention to vital and urgent human needs resulting from the social conditions of poverty, housing and habitat, comprehensive development and use of urban and rural land, international cooperation, fight against corruption and protection of the economy.

The media and public forums, as well as official announcements, show only partial, vague information based on assertions without evidence, checks or indicators, hoping that citizens believe them with closed eyes. When data is shown, it comes in a propaganda format, and reconstruction is almost impossible. This happens in all areas, even in the most sensitive sectors such as health, security, public finance, education, food, production of state-owned enterprises, etc.

The main country challenges in this subject are: 1) The information released by public entities is more related to the internal functioning of institutions than to the accountability of their activities. 2) There is no unified system for registration and requests; some institutions have modern registration services, but this is not the rule. 3) Training plans for civil servants do not include training in the area of access to information. 4) There is not a simple and prompt resource that allows people to access justice and to be informed whether their rights were violated or not.

Recommendations

- Repealing rules and regressive practices that constrain the delivery and publication of information and therefore violate the right of access to information. These include those in the Regulations for the Classification and Processing of Public Administration Information, the Decree establishing the Strategic Centre for Security and Protection of the Homeland (CESPPA), Internal and Debate Regulation of the National Assembly and the Organic Law of the Electric System and Service.
- Creation of an independent body that guarantees access to public information.
- Adoption of a law on access to Public Information based on the *Inter-American Model Law on Access to Information* of the Organisation of American States. This law establishes clear and effective procedures to request information from institutions, rapid judicial instruments and sanctions for those who obstruct the exercise of the right, clear exceptions in line with international human rights standards and an independent body responsible for monitoring protection of this right.
- Adoption of the principle of maximum disclosure, which establishes the presumption that all information is accessible, under a restricted system of exceptions.
- Responding immediately to all unanswered requests for information filed by individuals and civil society organisations to various State agencies.
- Responding adequately and timely to requests for information.
- Modifying the legal criteria that constrain access to public information and, in this sense, admit constitutional complaints about the lack of response to requests for information. Authorities should refrain from demanding fulfilment of procedures or steps before filing the judicial claim, and from requiring that individuals express the reasons for which they require the information; also, speeding up judicial response times; and removing any legal obstacle preventing a favourable judgment on this right.

- Accepting the visit of representatives of international and regional human rights organisations to Venezuela, and particularly of the rapporteurs responsible for monitoring the right to freedom of expression and information.
- Statements by senior officials of the different branches of government promoting the right of access to public information and transparency in all government actions.
- Promoting best practices for access to public information in government institutions and, in this regard, providing training to public officers about their obligations in this area, promoting proactive disclosure of public information on the websites of government institutions, launching an awareness campaign so civil servants respond adequately and timely to inquiries.

Presentation and methodology¹

Article 19. Freedom of expression.

1. Article 19 of the International Covenant on Civil and Political Rights primarily recognises the human right to freedom of expression, which includes the freedom of every individual to seek and receive information and ideas of all kinds. This freedom to seek and receive information and ideas is legally established in the right of access to information. This right has the capacity to empower individuals and societies to access information held by the public sector.
2. In Venezuela there is currently no special law on the right of access to information. There are, however, regulations in our legal system that recognise and protect this right. The Constitution recognises and guarantees the importance of the right of access to information in Articles 51² and 143³, which must be interpreted in relation to constitutional Articles 19⁴ and 25⁵. Article 19 ensures that each individual may, without discrimination, freely enjoy human rights; and Article 25 highlights the constitutional status of human rights.
3. The Organic Law on Administrative Procedures establishes in Article 2 the right of every individual to file requests before any public entity. The Organic Law on Public Administration provides in Article 9 that officials and other public administration authorities are obliged to receive and respond to requests or inquiries from individuals.
4. In its response to the list of issues, the Venezuelan State reiterated in paragraph 245 its commitment to ensuring respect for freedom of expression and information, and particularly the right of access to timely, truthful and unbiased information, without censorship⁶. In Venezuela, however, there are serious legal, judicial restrictions and practices that greatly hinder the exercise of this right.

¹ *Proacceso* is a comprehensive, plural and diverse national movement aimed at strengthening capacity and power to achieve the Access to Public Information. Its coordination team is made up of the following organisations: Espacio Público, Transparency Venezuela, the National Journalists Association, *Instituto Prensa y Sociedad* (IPYS), the Venezuelan Institute for Social and Political Studies (INVESP) and *Grupo Social Cesap*.

² Article 51. Everyone has the right to make representations or petitions before any authority, public official on matters within their competence, and to obtain timely and appropriate response. Whoever violates this right shall be punished according to law, which may imply dismissal from office.

³ Article 143. Citizens have the right to be informed timely and truthfully by the Public Administration on the state of the actions in which they are directly involved and interested, and to know the final decisions taken on the matter. They also have access to administrative files and records, subject to the limits acceptable in a democratic society in matters relating to internal and external security, to criminal investigation and the intimacy of private life, in accordance with the law governing the classification of documents as confidential or secret. No censorship shall be permitted to public officials who report on matters under their responsibility.

⁴ Article 19. The State shall guarantee to every person, in accordance with the principle of progressiveness and without discrimination, the inalienable, indivisible and interdependent enjoyment and exercise of human rights. Respect to and guarantees of this right are mandatory for public entities in accordance with this Constitution, through the human rights treaties signed and ratified by the Republic and the laws that implement them.

⁵ Article 25. Any act on the exercise of public power that violates or impairs the rights guaranteed by this Constitution and the law is void, and civil servants and public officials ordering or implementing them incur criminal, civil and administrative liability, as applicable, and cannot claim to be fulfilling orders from superiors as an excuse.

⁶ United Nations (2014). United Nations Human Rights Committee. List of issues concerning the fourth periodic report of the Bolivarian Republic of Venezuela. Addendum. Responses of the Bolivarian Republic of Venezuela to the list of issues. CCPR/C/VEN/Q/4/ Add.1. March 5, 2015. Paragraph 245.

5. Laws that restrict free access to public information. The Venezuelan State has adopted and maintains a long list of opaque rules. Opacity assigns privileges to individuals or groups with access to public information with the power to keep it undisclosed.
6. For the exercise of this right, it is essential to have unrestricted access to data on the design, creation, responsibilities, resources, implementation, results, indicators, and other information on policies aimed to guarantee civil and political rights.
7. Several Venezuelan society organisations made several requests for information to various public bodies, many of which were specifically made for the purpose of obtaining information for the preparation of reports to be submitted to this Committee, none of which received an appropriate response. We also present the results of a report prepared by *Espacio Público* Space in 2013 mentioning inquiries made to different public entities in order to measure the percentage of inquiries appropriately answered by public institutions.

Legal Restrictions

8. Venezuelan legislation establishes restrictive criteria for access to public information, without any consideration for their legitimacy in relation to constitutional obligations and international human rights law. Current laws and regulations do not guarantee the rights of individuals, but rather allow arbitrariness and discretion of officials. The rules are vague and thus contribute to greater opacity of governance.

On the National Public Sector

9. The Organic Law of Citizen Power and the Organic Law of the Ombudsman provide that the files of Citizen Power and the Ombudsman are reserved by nature to official service. The Statute of Public Service requires that every citizen must demonstrate a *legitimate interest* to access any public information. The Organic Law of the Public Ministry establishes that the files of the Prosecutor Ministry, the prosecutors' offices and any other entity of the Public Ministry are reserved for official service. In addition, the law states that any High Prosecutor may, at their own discretion, provide access to information to individuals, provided that such information is not part of a criminal investigation. The Organic Law on Municipal Power establishes that any information on municipal activity may be restricted, in order to *protect public interest and safeguard public property*. The Law of Public Planning Councils provides that the right to request information may only be exercised by a government body, thereby excluding citizens from enjoying this right. The Organic Law on Public Administration provides that the right of access to files and records of Public Administration may be exercised by individuals, as long as it does not affect the efficient operation of public services.
10. The Regulation on Classification and Processing of Public Administration Information establishes that public entities may classify as strictly confidential all information related to the operational and/or strategic management of the institution; as confidential all information related to staff, clients, technical administrative and financial information; and as internal use, any information whose access and handling is subject to the interests of the institution.
11. The Organic Law of People's Power states that social oversight is a function of the "People Power", conceived as organisations established according to particular guidelines, which does not necessarily include all of civil society.
12. Similarly, the Organic Law on Emoluments, Pensions and Retirement Allowances of Senior Officials of the Public Power establishes that information about the remuneration of senior civil servants may be recorded for security and defence the nation.

On the economy

13. The Law of the Venezuelan Central Bank provides that the Director of this public institution shall have the discretion to determine the confidentiality of any information deemed a threat to monetary security and stability. Furthermore, the Public Procurement Act provides that contracts for the acquisition, construction and services are not freely available in Venezuela, and therefore, access to records of contracts is limited only to bidders.
14. The Organic Law of Gaseous Hydrocarbons provides that any information held by the People's Ministry for Oil and Mining concerning persons performing similar activities may be confidential upon the request of the interested party.

On national public services

15. The Organic Law of the National Railway Transport establishes that the President of this institution may, for a better development of procedures, classify certain documents as confidential. The Organic Law of the Electricity System and Service provides that those who have revealed secrets concerning the security of the national electricity system shall be punished with imprisonment of 8-16 years.
16. The Organic Law on Science and Telecommunications provides that all information relating to science, technology, innovation and their applications may be classified as strategic information when they can compromise national sovereignty, adversely affect life and human rights, affect the rights of ancestral communities or affect biodiversity.
17. The Organic Law of Telecommunications sets out that all information contained in the National Telecommunications Register may be deemed confidential or secret.

On the Nation's Intelligence and Counterintelligence

18. The Presidential Decree Creating the Strategic Centre for Security and Homeland Protection (CESPPA) states that the CESPPA Director may declare "any information, fact or circumstance handled by this entity and that has strategic interest for the safety of the nation" as reserved, classified or of limited disclosure. The parameters of this provision are ambiguous and vague.

Venezuelan National Assembly

19. The Interior and Debate Regulation of the National Assembly provides that "the record of activities of the National Assembly shall be confidential". Furthermore, according to these regulations, access to the session hall of the National Assembly is restricted only to journalists of National Assembly official TV channel, prohibiting access to other media outlets or individuals.

Petitions to Public Administration

20. The Organic Law of Administrative Jurisdiction provides that in cases where individuals have made a request to a public entity, and the entity has not responded, the individual must fulfil a series of procedures before a lawsuit may be admitted against the authority that has failed to respond to the petition.
21. While the right of access to information is not absolute, and therefore is subject to restrictions aimed at ensuring public order, health, national security and morality, such restrictions cannot become abusive, much less erode the essential core of this human right. The examples of laws mentioned above show an abuse of legislation implemented to place restrictions on obtaining documents, reports or any other information.
22. The rules establish an excessive use of restrictions on the right to information, such as the application of legal concepts related to "security and defence of the Nation," "confidential or secret information," and "protection of public interest and safeguard of public property." The severity of such abuse of restrictions by public authorities on Venezuelan society transcend the mere legal realm; as a result, we show in social reality and in legal practice arbitrary consequences that not only violate the right of access to information but also the integrity of individuals and their right to act in a free and democratic society.
23. The Interior and Debate Regulation of the National Assembly allows access only to one single media outlet, the official TV station of the National Assembly for broadcasting parliamentary sessions, thereby

excluding the rest of the media and journalists interested in covering and transmitting parliamentary sessions. There are rules that allow individuals to be punished with exorbitant penalties, which disregard the principle of proportionality considering the acts committed by citizens and the due legal consequences these entail. For example, the Organic Law of the Electricity System and Service states that those who have revealed secrets concerning the security of the National Electricity System shall be punished with imprisonment of 8-16 years.

Judicial Restrictions

24. In the case of the judiciary, Venezuelan courts exacerbate the restrictive nature of the approved rules. Their decisions go against the obligations arising from the Constitution itself and those derived from treaties, covenants and conventions on human rights. Court rulings do not ensure the protection of people's rights, nor do they punish offenses committed by public officials.
25. Jurisprudence is reiterated by the highest courts in the nation. The following timeline shows the legal actions that support opacity as a public policy. We present below rulings issued by national courts related to the right of access to information:
26. **July 09, 2010.** The civil association *Espacio Público* and the Venezuelan Programme of Education-Action on Human Rights (PROVEA), filed a constitutional complaint against the People's Ministry for Health, due to its refusal to provide a timely and appropriate response to the request of epidemiological bulletins for the months of January to June 2009 and as to why these bulletins are not available on the Ministry website. The Constitutional Court, in charge of ruling on the matter, declared this action inadmissible, claiming that the complaint was not the appropriate remedy to be filed by the petitioners; the Court stated that the right way would be through the Administrative Court.
27. **July 15, 2010.** The civil association *Espacio Público* filed a constitutional complaint against the Comptroller General of the Republic, for failing to respond in a timely and appropriate manner to a inquiry made by the civil association, requesting information on base salary and other remunerations paid to staff at the Office of the Comptroller General of the Republic (hereinafter "the Comptroller"). The Constitutional Court dismissed as inadmissible the action filed by *Espacio Público*, arguing the absence of a specific rule governing the right of access to information, and proceeded to specify that in order to exercise the right of access to information, petitioners must expressly state the reasons or purposes for which they require the information; and that the extent of the information requested must be proportional to the intended use of the information requested.
28. **July 25, 2011.** A constitutional complaint was filed by journalist Carlos Miguel Subero, because the National Electoral Council denied the journalist access to public information in the files of the aforementioned institution. The Constitutional Court dismissed the action as inadmissible, as the court did not recognise the action as the most appropriate. It refrained thus from ruling on the matter and established that the action brought by the petitioners must be filed before the Electoral Chamber of the Supreme Court.
29. **May 23, 2012.** A constitutional complaint was filed by the Civil Association *Espacio Público* and the Venezuelan Programme of Education-Action in Human Rights (PROVEA) due to the refusal by the People's Ministry for Women and Gender Equality to respond to requests for information from the civil associations regarding programmes, policies and other strategies designed by that entity in preventing violence against women. Consistently, the Constitutional Court declared the action brought by the civil associations inadmissible, noting in this case that the "plaintiffs" failed to exercise an adequate recourse; and that in order to obtain a proper satisfaction to their claim, the civil associations must do so through the use of forbearance as existing legal means. Therefore, the Constitutional Court ruled again, without reference to the matter under claim, that the action could not supersede a recourse that should be previously exercised by the claimants, in this case by both civil associations. This approach is taken in spite of being a violation of a constitutional right that should be remedied as quickly as possible.

30. **June 06, 2012.** The Administrative Chamber of the Supreme Court of Justice refused to admit the appeal filed by the civil association *Espacio Público* against the decision of the First Administrative Court, noting that in this case the civil association *Espacio Público* had made a request for information to state-owned TV station “*Venezolana de Televisión, C.A.*” about the television campaign launched against Carlos Carrea, Executive Director of the civil association *Espacio Público*. This campaign stigmatised the right of organisations such as *Espacio Público*, to receive international cooperation they need and use for their work in promoting and defending human rights in Venezuela. Similarly, the Political-Administrative Chamber ruled that “*Venezolana de Televisión, C.A.*” had no obligation to respond to the request for information filed by the civil association.
31. **June 05, 2012.** The Constitutional Chamber of the Supreme Court declared inadmissible the constitutional complaint filed by the civil association *Espacio Público*. The action had been filed due to the refusal of the People’s Ministry for Communication and Information to deliver a timely and adequate response to the request for information from the civil association regarding the investment the government had made in recent years on advertising. This time, the Administrative Chamber ruled again that before filing a constitutional complaint, the concerned party should exercise all existing legal means.
32. **October 02, 2012.** The Second Administrative Court declared inadmissible the constitutional complaint filed by the civil association *Espacio Público* against the Department of Scientific and Criminal Investigations (CICPC). The Court considered in this case that the information required by the civil association, regarding crime statistics in the country, was not within CICPC competence because this information must be requested to the Ministry with jurisdiction over interior affairs and justice. The Court ruled that the information on the crime rate is prepared by the CICPC together with the National Statistics Institute (INE), but with the ultimate aim of sending these data to the Ministry of Interior Affairs and Justice, and not to be disclosed to individuals.
33. **November 29, 2013.** The Constitutional Chamber of the Supreme Court of Justice dismissed as inadmissible the request for review filed by journalist Rafael Batiz, against the judgment of the Administrative Chamber, on the refusal by the then Minister of Oil and Mining, Rafael Ramírez, to give a timely and appropriate response to an information request made by the petitioner. In this case, the request was regarding the purchase of electrical units by the oil company in 2010 to address the electricity crisis that took place in the country that year. The Constitutional Court noted that the request for review of judgments of the other courts of the Republic is a strictly exceptional, extraordinary and discretionary power of this Chamber; therefore, based on the above discretion, the Constitutional Chamber may accept or reject the request “without giving any explanation.”
34. **July 17, 2014.** The Constitutional Chamber of the Supreme Court ruled inadmissible an action for the protection of diffuse and collective interests filed by José Simón Calzadilla *et al.*, noting the refusal expressed by the Commission of Foreign Currency Administration (CADIVI) to publish the list of companies to which they had approved currencies in 2013. The Venezuelan State manages and controls foreign currencies requested by companies, whether public or private, and individuals. However, this is done through an entity with responsibilities in the administration of foreign exchange (CADIVI at the time of the action). Currently, the entity in charge of these matters is CENCOEX.
35. **August 05, 2014.** The civil association *Espacio Público*, together with the Venezuelan Programme of Education-Action in Human Rights (PROVEA) and *Acción Solidaria*, filed a constitutional complaint at the

Ministry of Health, due to its refusal to provide a timely and appropriate response with respect to health issues in relation to irregularities in the import and distribution of medicines and other pharmaceutical products. Similarly, the Constitutional Court refused to examine the case, arguing that the complaint was an inadequate course of legal action. Subsequently, the same organisations filed an appeal for abstention to the Political-Administrative Chamber of the Supreme Court. This action was declared inadmissible considering that the right of access to information cannot be exercised in an abusive way by the interested parties, as this would undermine the effectiveness and efficiency that should prevail in the Administration of Justice; it was also argued that in order to provide the requested information, the Public Administration would have to devote time and manpower to provide explanations (to the interested parties) on the wide range of activities that it performs for the benefit of society, which would entail an unnecessary hindrance and burden on the justice system.

36. **November 18, 2014.** The Administrative Chamber of the Supreme Court declared inadmissible the complaint filed by the civil association *Espacio Público* to the Ombudsman, which had been filed due to the lack of response from the Ombudsman to a request for information regarding the actions taken by the institution in the field of Sexual and Reproductive Health. In this case, the Chamber expressed that the civil association *Espacio Público* had not provided sufficient reasons for which it required the information.
37. **March 24, 2015.** The Second Administrative Court declared inadmissible the action filed by the civil association *Espacio Público* against the state-owned telephone company *Compañía Anónima Nacional Teléfonos de Venezuela* (CANTV), concerning the refusal to provide an adequate and timely response to the information requested by the civil association on blocked websites in Venezuela. The Court determined that the civil association had not provided sufficient reasons for which it required such information, nor did they specify the actions by the Administration that could have led to a possible violation or irregularity that would affect individual and collective interests.
38. In order to determine the severity of the restrictions on the right of access to information in Venezuela, we must point out again that this right derives from a constitutional right, which all citizens are entitled to exercise. However, despite the rights enshrined in our Constitution, the text also sets forth “constitutional guarantees”, intended to ensure and protect the rights set forth in the Constitution. In our case, this would be reflected in the right of civil society to make a request for information to a particular government body, and the guarantee to receive from such authority or public entity a proper and timely response. However, when civil society does not obtain a timely and adequate response from the competent authority, the constitutional right of access to public information is violated; therefore, civil society must find suitable mechanisms to enforce the “constitutional guarantee” of the violated right, which in practice means filing a complaint with the judiciary, in this case the Supreme Court of Justice.
39. As we refer to the infringement of a constitutional right, the modality enshrined in our legal system for the remediation of the violation is the “constitutional protection” (amparo). Considering that the Constitution sets out this resource as a mechanism to defend constitutional rights and guarantees of civil society, either from violation by an individual or public administration itself; together with provisions of the Organic Law on Protection of Constitutional Rights and Guarantees, which specifically states that such violations may even be caused by abstention, omission or a judicial act by a competent body.

40. This is relevant to the judgments described above, because many of the actions filed by the interested parties, including *Espacio Público*, are “constitutional protections” due to the infringement of the constitutional right of access to public information by the various State authorities.
41. The Constitutional Chamber does not recognise or rule properly on violations to constitutional rights, which is reflected in decisions where it does not issue any comment on the matter, arguing that it “does not recognise the action (*amparo*) as the most suitable resource”; or, contrary to constitutional principles, it establishes “assumptions and requirements” that must be met by those interested in obtaining public information. In addition, the Constitutional Chamber states that in order to exercise the right to information, the petitions and other requests must state “expressly the reasons or purposes for which the information is required, and the information requested must be proportional to the intended use of said information.” This requirement is also contrary to international standards on the exercise of this right.
42. Similarly, the decisions of the administrative courts, as well as those issued by the Political-Administrative Chamber of the Supreme Court, instances that are directly in charge of ensuring proper administration of justice when cases of violations related to constitutional rights arise.
43. The restrictions set forth in the International Covenant on Civil and Political Rights concerning the right to freedom of expression, which states that this right may be subject to restrictions by the States, when trying to “protect the respect to the rights or reputations of others”; as well as in cases with attempts to protect “national security, public order or public health or morals”. These are the only reasons for which the right to information may be restricted.
44. None of the requests for information made public merited the legitimate restrictions set out in international human rights law. Therefore, there are no logically substantiated reasons to refuse a response to requests for information. Also, the courts did not rule according to the only permissible limitations to the right to free expression, as they have repeatedly ruled that petitioners need to specify strictly “the motive or reason for they which they request the information and the use or purpose for such information”. These requirements are not set out as limitations established in the International Covenant on Civil and Political Rights.

Situation of the access to public information: cases and studies

45. During the submittal of reports by organisations of Venezuelan civil society to the Universal Human Rights System, *Espacio Público*, in partnership with other Venezuelan organisations, made 13 requests for information from various institutions of the Venezuelan State, with questions on compliance with obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The questions were the following:

Institution	Information requested	Date of filing of the petition	Date of delivery of second notice	Date of delivery of third notice	Response
Ministry of Indigenous Peoples	Demarcation of indigenous territory	29/01/2015	26/02/2015	25/03/2015	None
Executive Direction of the Judiciary	Number of interim and official judges	20/01/2015	17/02/2015		None
Permanent Comptroller Commission of the National Assembly	Annual report of the ministries	20/01/2015	17/02/2015	25/03/2015	None
Ministry for Interior Affairs, Justice and Peace	Protocol prepared by the General Directorate of Prevention of Crime, regarding the attention to judicialised victims	16/12/2014	12/01/2015	30/03/15	None
People’s Ministry for Interior Affairs, Justice and Peace	Crime and homicide index	21/01/2015	18/02/2015	30/03/2015	None
People’s Ministry for Food	Amount and place of origin of imported food	21/01/2015	18/02/2015		None
People’s Ministry for Agriculture and Land	“Fundos Zamoranos” land plots and land deeds	21/01/2015	18/02/2015		None
People’s Ministry for Higher Education, Science and	University student roll	20/01/2015	17/02/2015	25/03/2015	None

Technology					
People's Ministry for Penitentiary Services	Number of dead and injured in penitentiaries; Number of physicians in penitentiaries	26/01/2015	23/02/2015	25/03/2015	None
People's Ministry for Penitentiary Services	Information on the programme against procedural delays, and job and infrastructure programme	11/12/2015	14/01/2015	25/03/2015	None
People's Ministry for Ecosocialism, Habitat and Housing	Houses built in 2001-2014 / Property deeds delivered / Oil spills / Open-air dumps	20/01/2015	17/02/2015		None
National Statistics Institute	Number of dead and injured in penitentiaries	22/01/2015	23/02/2015		None
People's Ministry for Indigenous Peoples	Information about indigenous territory	29/01/2015	26/02/2015	25/03/2015	None

46. There was no response for any of the requests for information. Importantly, the letters clearly stated that the information was required for the presentation of the reports of Venezuelan civil society under the international covenants signed by the Venezuelan government.

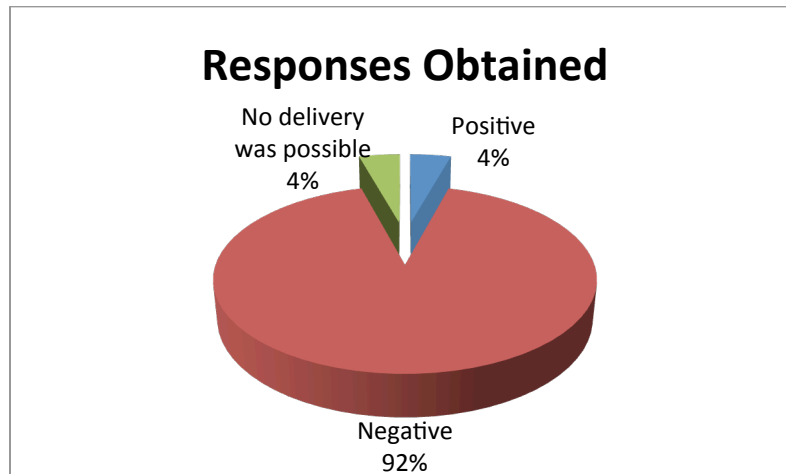
Study of inquiries

47. In 2013, *Espacio Público* conducted a study to measure the response rate of the Venezuelan state institutions to requests for public information.

48. Between September and October 2013, 70 requests for information were sent to various government entities and agencies, including all branches: Executive, Legislative, Judicial, Citizen and Electoral, at state and municipal level. This time we decided to include in the study state and municipal governments outside the capital, in order to assess the status of this right in the different regions. Requests for information were sent to states and municipalities with and without laws and ordinances on access to public information, as a way to compare results. The aforementioned requests for information contained questions of various kinds, of general interest within the competencies of each of the entities to which they were sent, in order to obtain information about their governance issues. The regulatory

framework is the right to petition enshrined in the Constitution of the Bolivarian Republic of Venezuela and the requirements set out in national laws, state laws and municipal ordinances.

49. Twenty business days after requests for information were delivered, in accordance with provisions of the Organic Law on Administrative Procedures, the results are shown below:



50. The above chart shows that 92% of the responses, i.e. 64 responses, were negative; 4% (3) were positive and 4% (3) could not be delivered.
51. None of the public institutions tend to respond to public requests for information, not even state or municipal governments with laws or ordinances on access to public information, such as the Municipality of Campo Elias, and the states of Anzoátegui and Lara.
52. When comparing with the results of this study in 2008, 2010 and 2011, we found that the situation deteriorated substantially. In 2008, 71% of responses were negative, and by 2010, 67% was negative, and for 2011, 85% of the responses were negative, reflecting a deterioration of seven percentage points from the previous year of study.
53. With regard to the positive responses, we note that only 4% are positive, adequate responses that meet the parameters of the right of access to public information. Compared with the previous two years of study, this figure shows a decrease, because in 2008, positive answers totalled 19%, by 2010, appropriate positive responses totalled 8% of the total, and by 2011, these totalled only 6%.

Irregularities with medicines imported from Cuba⁷

54. The General Comptroller of the Republic stated, consecutively, in his reports of 2010 and 2011, that there are irregularities in the import, storage and distribution of medicines from Cuba, by the People's Ministry for Health.
55. Therefore, Acción Solidaria, Transparency Venezuela, PROVEA and *Espacio Público* sent letters to the People's Ministry for Health requesting information on the implementation of the recommendations made by the General Comptroller of the Republic to solve these problems.
56. The first inquiry on this matter was sent on August 29, 2011. This letter received no reply, which is why organisations filed a complaint⁸ before the Constitutional Chamber of the Supreme Court on March 10

⁷ On the website of *Espacio Público* www.espaciopublico.org there are documents available on the cases presented below.

2012. On June 18, 2012, the Constitutional Court decided not to admit the action, arguing that the constitutional complaint was not justified in this case and that an ordinary appeal should be filed instead⁹, because *“there is no evidence in the case file of a factual situation that suggests that the plaintiff may suffer an inevitable or irreparable violation by exhausting first all previous judicial resources.”*

57. For the second time, the organisations sent a new letter on October 22, 2012, requesting information on the same matter again. After insisting with two other letters, sent on December 26, 2012 and February 6, 2013, we proceeded to file an action for abstention or absence, which was submitted to the Administrative Chamber of the Supreme Court of Justice on 23 May 2013. On August 5, 2014, the Political-Administrative Chamber declared the appeal “inadmissible”, arguing that it had failed to sufficiently substantiate the reasons for which the information was required. The judgment established that such inquiries were causing delays in public administration and in the judicial system.

Crime statistics

58. The official crime statistics in Venezuela have not been published since 2007. The Department of Scientific and Criminal Investigations (CICPC) and the People’s Ministry for Interior Affairs do not disclose these figures. The situation of public security is a problem of high concern for society as shown by several public opinion surveys.
59. On September 6, 2011, *Espacio Público* wrote to the CICPC Director General, requesting information on crime statistics in Venezuela. This request received no reply, which is why we filed a constitutional complaint before the High Courts in Civil and Administrative Matters of the Capital Region on March 22, 2012.
60. On March 29, 2012, the Third High Court in Civil and Administrative Matters of the Judicial District of the Capital Region decided not to admit the case on the grounds that the CICPC was not competent to provide such information: *“(...) since there is no relationship between the omission that allegedly generates a violation of constitutional rights and powers legally attributed to the subject in this action, this Court rules this action as inadmissible (...).”*
61. On April 18, 2012, *Espacio Público* appealed the decision, because Article 11 of the Law of the Department of Scientific and Criminal Investigations, in force at the time of the request, states in Article 11 that it is the responsibility of the CICPC to develop, analyse, in coordination with the National Statistics Institute, and submit statistics to the relevant ministry.
62. On May 7, 2012, said Court decided not to admit the appeal and to close the case, which is why a second appeal was filed, which was resolved by the Second Administrative Court, which ordered the court to hear the appeal.

⁸ The constitutional complaint (*amparo*) is an expedited judicial remedy for cases of violations to constitutional rights, in which the Court, upon admitting the case, must convene a constitutional hearing where the petitioner has the opportunity to exercise his own defence and the court may order the immediate reinstatement of the infringed legal situation. According to the Organic Law on Constitutional Protection and Guarantees, these cases should be resolved within hours or a few days.

⁹ In cases where public administration fails to fulfill one of its obligations, a case of abstention or absence can be filed, as provided in the Organic Law of Administrative Jurisdiction. This resource should be a short procedure, but in practice it can take several months to be resolved.

63. Finally, on October 2, 2012, the Second Administrative Court handled the appeal, declaring it void, claiming that *“there is no evidence showing that this body [CICPC] must provide such information to individuals, because while it is true that it cooperates with the National Statistics Institute in the preparation of crime statistics, the purpose of coordination and support is to submit the information to the Ministry with jurisdiction over internal affairs and justice, with a view to adopting prevention policies. Therefore, this Court cannot interpret from this appeal that the investigation body should be obliged to provide specific information (...).”*
64. This case was presented on March 13, 2013 to the Inter-American Commission on Human Rights, for violation of the rights of freedom of thought and expression, the right to judicial protection and the international obligation to respect and ensure these rights, according to the American Convention on Human Rights.

Article 14. Due process and procedural guarantees.

65. We must report that to date, the Venezuelan state has not published recent figures on the number of permanent judges in the Venezuelan justice system, which is worrying because most judges are freely appointed and removed, which represents a lack of stability in their decisions, which in turn has an impact on legal certainty. Provisional judges and prosecutors do not enjoy job security or a judicial career, and therefore are no guarantee of the autonomy and independence of the judiciary. The Supreme Court has not called or announced possible date for the competition to select new judges, which violates the right to information of citizens.

Recommendations

- a) Repealing regressive rules and practices that constrain the delivery and publication of information and therefore violate the right of access to information. These include those in the Regulations for the Classification and Processing of Public Administration Information, the Decree establishing the Strategic Centre for Security and Protection of the Homeland (CESPPA), the Interior and Debate Regulation of the National Assembly and the Organic Law of the Electric System and Service.
- b) Creation of an independent body that guarantees access to public information.
- c) Adoption of a law on access to public information based on the *Inter-American Model Law on Access to Information* of the Organisation of American States. This law should establish clear and effective procedures for requesting information from institutions, rapid judicial remedies, and sanctions for those who obstruct the exercise of the right, clear exceptions adjusted to international human rights standards and the creation of an independent body responsible for monitoring compliance with this law.
- d) Adoption of the principle of maximum disclosure, which establishes the presumption that all information is accessible, under a restricted system of exceptions.
- e) Responding immediately to all pending requests for information submitted by individuals and civil society organisations to the various State agencies.
- f) Providing adequate and timely responses to inquiries.
- g) Modifying the legal criteria that hinder access to public information, and in this sense, admitting the constitutional complaints about the lack of response to requests for information; refraining from demanding additional procedures or steps before responding to the judicial claim; refraining from demanding individuals to state the reasons for which they require the information; shortening judicial response times in case of inquiries; removing any legal obstacle preventing a favourable judgment in the protection of this right.
- h) Accepting 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.
- i) Public statements by senior officials in different branches of government promoting compliance with the right of access to public information and transparency of all government actions.
- j) Promoting best practices for access to public information in government institutions and in this regard, providing training to public officials about their obligations in this area, promoting proactive publication of public information on the websites of government institutions, launching an awareness campaign so civil servants can respond adequately and timely to information requests.