

SUMMARY ON THE STATUS OF RIGHTS HUMAN

from the perspective of Transparency Venezuela



SEPTEMBER 2016

ACCESS TO PUBLIC INFORMATION

On access to public information, Transparency Venezuela has identified that, of 475 legal instruments of various kinds adopted between 1999 and 2014, 60 contain provisions that establish restrictions on access to public information. These rules allow public officials to deny information to which citizens are entitled according to the Venezuelan Constitution and the American Convention on Human Rights. All this contrary to the recommendation CCPR/C/VEN/CO/4/Párr.19.

To cite some examples of these practices, the Organic Law of Citizen Branch and the Organic Law of the Office of the Ombudsman indicate that both the file Citizen Branch (one of the new government branches established in the 1998 Constitution of Venezuela) and the Office of the Ombudsman are reserved by its official service nature. The Civil Service Statute Act demands that every citizen must demonstrate a legitimate interest to access any public information. The Organic Law of the Office of the Attorney General indicates that the file of the Fiscal Unit, offices of prosecutors and any other Office of the Attorney General's entity, shall be considered reserved for the official service. In addition it states that any senior prosecutor may, by its discretion, allow access to information to individuals, provided that such information is not criminal. The Organic Law of the Municipal Power states that all the information regarding municipal activity may be restricted in its publication,

when this is to protect the public interest and safeguarding the public heritage. The Law of Public Planning Councils states that the right to request information may only be done by a government body, thereby excluding citizens of the enjoyment of this right. The Organic Law of the Public Administration states that the right of access to files and records of the Public Administration may be exercised by the people. "as long as it is not affected the effective functioning of public services" .¹

The report of the ProAcceso Coalition continues noting that in Venezuela a total of 304 restrictions of access to information of interest in the last 4 years were recorded. Of these, 46 alerts were recorded in 2012, 83 in 2013, 91 in 2014 and 84 in 2015. These data show that such restrictions doubled between 2011 and 2014.

The most common restrictions have been of arbitrary nature related to the following limitations: access to state and non-state institutions, coverage that threaten the physical integrity of journalists and consultation of official data and content on the Internet.

On passive transparency, in the period between 2011 and 2012, the ProAcceso Coalition submitted 292 requests for information, of which 8 were answered, just 2 satisfactorily². In the period September 2014-2015, 51 formal requests for information were

1. Presentación de Coalición de organizaciones agrupadas en ProAcceso sobre el cumplimiento de la República Bolivariana de Venezuela de sus obligaciones en materia de Transparencia y Acceso a la Información Pública.

ONU Examen Periódico Universal Venezuela 26ª sesión (octubre de 2016)

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

submitted to various government agencies, of which only 1 had full and timely response. For the period 2015-2016, just 7 responses (only 1 successful) of the 56 introduced were answered.

Legalization of opacity has come from the hand of the Supreme Tribunal of Justice, which in different decisions³ has used the following arguments to limit access to information, which can be systematized as follows:

- a) Lack of legitimacy of the organizations that request information⁴, that is to say, they demand proof of legitimate interest, contrary to the guarantee of the right.
- b) Disproportional use of the requested public information with the time and human resource invested by the government “to give explanations” .⁵
- c) Lack of justification on “the control intended to be exercised” nor the use that will be given⁶.
- d) The Supreme Tribunal of Justice invalidates the use of amparo (legal protection) as a defense mechanism of the right of access to public information.⁷
- e) Referral to more cumbersome processes that limit the right of access to information⁸

This opacity hinders accountability on issues as important as public health, 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 having access to the system of preferential currency involve, not only obstacles to a right, but real windows of opportunity for corrupt practices. If there is adequate and complete information on each of these points, opportunities for corruption would be severely diminished.

3. Información disponible en: <https://supremainjusticia.org/category/tema/derecho-de-acceso-a-la-informacion/>

4. Sentencia N° 2015-0784 de la Corte Segunda de lo Contencioso Administrativo de fecha 12/08/15, disponible en: <http://goo.gl/icPOJE>

5. Sentencia de la Sala Político Administrativa N° 1736 del 17/12/14. Disponible en: <http://goo.gl/s8Tfm7>

6. Sentencia de la Sala Político Administrativa N° 01636 del 03/12/14. Disponible en: <http://goo.gl/MCNWPj>

7. Sentencia de la Sala Constitucional N° 805 del 18 de junio de 2012. Disponible en: <http://goo.gl/8UswOj>

8. Sentencia de la Sala Constitucional N° 679 del 23 de mayo de 2012. Disponible via web: <http://goo.gl/G2n2hO>

