

Freedom of expression and the right to information in Venezuela

A report by the Instituto Prensa y Sociedad de Venezuela (IPYS Venezuela) for the Human Rights Committee on the occasion of the Review of the 4th periodic report by the Venezuelan State for Session Period 114th of the International Pact on Civil and Political Rights

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IPYS Venezuela

We are a non-governmental organization working in the promotion, defense and training in freedom of expression, investigative journalism and the right to information.

Our team comprises Venezuelan journalists of recognized trajectory acting as per professional criteria, nationwide and in the regions. We strive for Venezuelan citizens become more aware and exercise their right to freedom of expression and information.

IPYS Venezuela is a benchmark in fostering the independent, plural, quality exercise of journalism as a fundamental element for these rights. It works with journalists, the media, academic institutions, national and international NGOs and citizens in general.

Our work is framed within the fundamental international principles on freedom of expression and information, including: the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Civil and Political Rights; the Declaration of Principles on Freedom of Expression -promoted by the OAS´ Special Rapporteur for Freedom of Expression-; among other entities.

In the domestic realm, we base our work on the provisions regarding freedom of expression and the right to information contemplated in the Constitution of the Bolivarian Republic of Venezuela and other instruments in the Venezuelan legislation.

Our vision

IPYS Venezuela works in pro of a Venezuela where there is the full enjoyment of freedom of expression and the right to information and demands that the necessary warranties are complied with for the exercise of free and plural journalism that permits the scrutiny of the powers-that-be.

Our mission

To advance this vision, and as an organization comprised by professionals and defenders of communication, IPYS-Venezuela promotes the professional development of journalists and communicators as well as the establishment of the conditions necessary to guarantee independent and vigilant investigative journalism.

IPYS-Venezuela monitors and denounces violations on exercising the right to freedom of expression and access to information, looking out for and protecting the rights of journalists and communications professionals to do their work.

IPYS-Venezuela defends the legal framework that guarantees the exercise of freedom of expression and the right to information as per the international standards and as cornerstones of democratic cohabitation of all citizens.

Executive summary

1. The Instituto Prensa y Sociedad de Venezuela (IPYS Venezuela) recommends that the UN's Human Rights Committee urge the Venezuelan State to: 1) eliminate all norms and regulations that endorse criminal charges for slander or injury; 2) respect the independent nature, plurality and diversity of state, community and private media as a fundamental component for democratic deliberation; 3) ensure that the journalists can perform their functions unhindered by unjustified legal proceedings, and unhindered by any kind of risk, threats or pressures; 4) guarantee timely and effective access to public information; and 5) abide by international obligations in respect to freedom of expression and the right to information.

2. These urgings have become pressing in light of the adverse panorama present in Venezuela in the exercise of freedom of information and of expression. In the past 10 years the government, legislative and judiciary institutions in Venezuela have designed and executed -in a discretionary manner- a series of laws and decrees restricting these basic warranties, principally, the right to accessing public information.

3. From 2005 to 2014, the Instituto Prensa y Sociedad de Venezuela tallied 42 legal proceedings and decisions derived from information or opinions sought by, received by or broadcast by journalists, the media, human rights activists and citizens. These lawsuits and criminal accusations intensified precisely after Nicolás Maduro was sworn in as the president of the republic. At least 20 of these legal proceedings, (48% of the total number of cases) took place between 2013 and 2014, the first two years of his term as president. Several of these legal actions were accompanied by censorship orders, involving prohibitions on covering news on crime rates, violence and corruption cases.

4. Direct and indirect orders and pressures have become increasingly more frequent and have intensified in Venezuela, to the extent that the independent nature, plurality, quality of information and the rights of all citizens to know what is going on is being jeopardized. Another subtle way in which censorship and self-censorship has been imposed in Venezuela is through the change of ownership of at least 25 media -in 9 of the nation's states- and the subsequent twist in editorial lines, a situation which has also compromised their autonomy to favor government interests. This is how a dominant position by the State and forces close to the power of the government were gestated around the concentration of ownership of the media, representing a threat to freedom of expression, as per international standards for the protection of freedom of expression.

5. From 2005 to 2014, IPYS Venezuela recorded excessive pressures that restricted the freedom of TV and radiophonic media. 52 administrative procedures, i.e., investigations on alleged technical and content-related crimes, were applied by the entity that regulates telecommunications against the private and community-based radioelectric media, web portals and Internet and cable TV carriers.

6. Meanwhile, national government spokespersons insist in accusing the national and international media of promoting alleged "media-driven" and "psychological" "warfare" in the nation. Aggravating declarations are constant as well as campaigns by government authorities to criminalize the media, broadcast in media that are aligned with the national government, to berate and threat journalists and directors of the national and international media.

The General Panorama

7. Investigations conducted by the Instituto Prensa y Sociedad de Venezuela (IPYS Venezuela) have demonstrated that misinformation, the abuse of the State's power regarding communications and opacity have restricted the right to freedom of expression and the right to information in Venezuela in the past 5 years. From 2010 to 2015, coercive practices on the part of state and non-state players have been prevalent, thus making of Venezuela a nation with a compromised autonomy and independence of its institutions, including those that scrutinize the powers-that-be.

8. The scenario in Venezuela is marked by high levels of conflictivity and sociopolitical polarization derived from the absence of independent public powers, institutional asthenia, the lack of pertinent and timely responses to social and political demands voiced by the citizens, as well as the weakening of timely justice-metering mechanisms which due to the lack thereof, foster impunity.

9. There have been recurrent situations of violence, government restrictions against freedom of expression and censorship measures. This situation has derived in increased risks in exercising the job of informing by the journalists, the private and independent media, as well as for human rights activists and citizens en general.

10. These acts are considered to be arbitrary because they vulnerate the warranties on freedom of expression and information established in the Constitution of the Bolivarian Republic of Venezuela, as well as in the International Covenant on Civil and Political Rights.

11. This report consigned by IPYS Venezuela at the UN's Human Rights Committee presents a comprehensive systematization of the current situation on freedom of expression and an analysis of the Venezuelan State's obligations in this matter.

12. Nine points are broached herein: A) Regulatory restrictions; B) Legal proceedings; C) Restrictions on freedom of expression and information; D) Concentration of media in the hands of pro-official political party forces; E) Censorship orders; F) Excessive regulations on telecommunications; G) The Media ecosystem; H) Attacks against NGOs and human rights advocates; I) Paying no heed to of recommendations by international human rights protection organisms; J) Recommendations; and K) Methodological notations.

13. This report also contains a series of recommendations which should be complied with by the Venezuelan State to improve conditions for the promotion and defense of freedom of expression and the right to information, based on international standards guaranteeing said rights.

A) Regulatory restrictions

14. The Instituto de Prensa y Sociedad de Venezuela (IPYS Venezuela) recognizes the erection of a nationwide legal framework based on the provisions in the constitution of the Bolivarian Republic of Venezuela, which was passed in 1999. This regulatory structure fully guarantees freedom of expression and the right to information, fundamental pillars for

exercising democracy. It is positively valued that this right was set forth in the Constitution even in possible risk situations in the event that a state of exception is decreed¹.

15. The rule of law in Venezuela also recognizes and grants supra-constitutional status to international human rights conventions and treaties subscribed and ratified by the Venezuelan State, including the International Covenant on Civil and Political Rights.

16. Warranties for freedom of information, freedom of expression, the right to accessing public information and the right to one's honor and reputation are consecrated in articles 51, 57, 58, 60, 61, 143 and 337 of the constitution of the Bolivarian Republic of Venezuela². These provisions are in correspondence to the basic tenets on this subject matter as per articles 19 and 20 of the International Pact on Civil and Political Rights³.

17. Despite the progressive nature of this national regulatory framework, in the past 10 years the government, legislative and judiciary institutions in Venezuela have designed and executed in a discretionary manner a series of laws and decrees restricting these basic warranties, principally the right to accessing public information⁴.

18. In this context, the enactment of legal regulations and court decisions affecting the warranty and respect to freedom of expression y the right to information have generated great concern. In August 2014, the Political Administrative court of the Supreme Court of Justice⁵ considered, by means of a sentence, that the right to access public information "cannot be abusive" and requests by citizens cannot be destined to hindering the proper operation of the public administration.

19. This sentence –produced due to an appeal for abstention or lack filed by national organizations Provea, Transparencia Venezuela and Espacio Público– establishes restrictions on the citizens' right to be informed, because through these requirements, the

¹ See. Responses by the State to the Human Rights Committee. Paragraph 244. List of questions relative to the fourth periodical report of the Bolivarian Republic of Venezuela. Human rights committee https://es.scribd.com/document/downloads/267047379?secret_password=cduaDMNT02PqlvwjKMqd&extension=pdf

² Constitution of the Bolivarian Republic of Venezuela:

Article 23: Treaties, pacts and conventions related to human rights, entered into and ratified by Venezuela, have constitutional hierarchy and prevail domestically, insofar as they contain norms on the enjoyment and most favorable exercise thereof, compared to those set forth in this Constitution and in the laws of the republic, and are for immediate and direct application by the courts and all other public power entities.

Article 51: Every person has the right to represent or address petitions to any authority, male or female public official on affairs under the competency of said officials, and to obtain a timely and appropriate response thereto. Whosoever violates this right shall be sanctioned as per the law, and may be stripped of their respective position.

Article 57: Every person as the right to freely express and voice their thoughts, ideas or opinions in writing or by means of any other form of expression, and for said purpose to make use of any means of communication and dissemination, completely uncensored. Whosoever avails themselves of this right assumes full responsibility for all they express. Anonymity is not permitted and neither war propaganda, nor discriminatory messages, nor messages promoting religious intolerance. Male and female officials are forbidden from censoring when rendering account of the affairs under their responsibility.

Article 58: Communications are free and plural, and involve the duties and responsibilities indicated in the law. Every person has the right to timely, veracious, uncensored and unbiased information, as per the principles in this Constitution as well as the right to rebuttal and rectification when directly affected by inexact or aggravating information. Boys, girls and adolescents have the right to receive the proper information for their integral development.

Article 60: Every person has the right to protect their honor, private life, intimacy, their own image, confidentiality and reputation. The law shall limit the use of IT to guarantee the honor and personal and family intimacy of the male and female citizens and the full exercise of their rights.

Article 143: Male and female citizens have the right to be informed and be informed in a timely and veracious manner by the public administration on the acts they are directly involved or interested in and to learn about final resolutions adopted therein. Likewise, they have the right to access administrative files and records, without prejudice to the acceptable limits within a democratic society in regards to domestic and foreign security issues, criminal investigations and the intimacy of private life, as per the law regulating the classification of documents of a confidential or secret nature. Male and female public officials are forbidden from censoring information on affairs under their responsibility.

Article 337: The male or female president of the republic, through a ministerial council, may decree states of exception. The following are expressly classified as such: social, economic, political, natural or ecological circumstances that seriously affect homeland security, the security of the institutions and all male and female citizens, for which the faculties to face these events are insufficient. In these cases, the warranties consecrated in this Constitution may be temporarily restricted save for those referring to the right to life, the prohibition of being incommunicated or tortured, the right to due process, the right to information and all other intangible human rights.

³ International Pact on Social and Political Rights:

Article 19: Nobody is liable to be persecuted for their opinions. Every person has the right to freedom of expression; this right encompasses the freedom to seek, receive and disseminate all manner of information and ideas, regardless of borders, whether in oral, written or printed or artistic form, or any other procedure of their choice. Exercising the right as foreseen in paragraph 2 of this article entails special duties and responsibilities. Therefore, these may be subject to certain restrictions which may however be expressly established by the law and be necessary to a) Ensure respect for the rights or reputation of others; b) Protecting homeland security, public order or public health or morals.

Article 20: All propaganda in pro of war shall be forbidden by law. Any apology on national, racial or religious hatred constituting incitation to discrimination, hostility or violence shall be forbidden by law.

⁴ These acts contradict the official version presented by the State at the UN assembly. See Paragraph 80, Responses by the State to the Human Rights Committee. Paragraph 244. List of questions relative to the fourth periodical report of the Bolivarian Republic of Venezuela. Human rights committee

https://es.scribd.com/document/downloads/267047379?secret_password=cduaDMNT02PqlvwjKMqd&extension=pdf

⁵ See IPYS Venezuela alert: <http://ipys.org.ve/alerta/caracas-tsj-declaro-inadmisible-peticion-de-onq-sobre-informacion-a-la-defensoria-del-pueblo/>

persons are compelled to explain the reasons for requesting this information. These limitations promote opacity and the discretionary powers of state officials regarding their obligation to inform citizens on matters of public interest.

20. Another measure was issued in December 2014, when the TSJ declared that information related to telecommunications in the nation is a State secret, and that its public dissemination could attempt against “homeland security”. This measure was adopted after a lawsuit to abstain filed by NGO Espacio Público against the popular power ministry of university education, science and technology was declared inadmissible⁶.

21. Alarm was also raised in 2014 with the enactment of the Centro Estratégico para la Seguridad y la Protección de la Patria (the Strategic Center for Homeland Security and Protection or Cesppa for its acronyms in Spanish)⁷, the Brigada Especial contra las Actuaciones de los Grupos Generadores de Violence (Special Brigade against Acts by Groups that Generate Violence or Begv for its acronyms in Spanish)⁸, and the Sistema Popular de Protección para la Paz⁹ (Popular System for the Protection of Peace) the founding decrees of which legalize police intelligence and surveillance acts, and establish restrictions on the freedom of expression and the right to access to public information.

22. Coupled to these cases were the amendment to the Organic Criminal Procedural Code –enacted in 2012- which affected the right to privacy, since it suppressed the provision that set forth the inviolability of personal communications¹⁰. At IPYS Venezuela this change in rules was deemed to run counter to the provisions set forth in article 19 of the International Pact on Civil and Political Rights.

B) Penalties on expression

23. In parallel to the construction of this restrictive regulatory framework for exercising freedom of expression, between 2005 and 2014 the Instituto Prensa y Sociedad de Venezuela tallied the start of 42 legal proceedings and decisions derived from information or opinions sought by, received or broadcast by journalists, the media, human rights activists and citizens. Four of these cases corresponded to instructions to deprive certain persons of their freedom¹¹.

24. These lawsuits and criminal accusations intensified as of April 2013, precisely when Nicolás Maduro was sworn in as the president of the republic –under the flagship of the Partido Socialista Unido de Venezuela- and months after the demise of Hugo Chávez. According to data collected by IPYS Venezuela, 20 legal proceedings were recorded between 2013 and 2014 or 48% of the total number of cases filed in the past 10 years (2005-2014). Several of these legal decisions were based on crimes of contempt and were accompanied by censorship orders, implying the prohibition to cover topics related to crime rates, violence and corruption¹².

⁶ See IPYS Venezuela alert: <http://ipys.org.ve/alerta/caracas-tsj-sentencia-que-informacion-sobre-telecomunicaciones-es-secreto-de-estado/>

⁷ The Centro Estratégico para la Seguridad y la Protección de la Patria (Cesppa) was constituted in October 2014, ascribed to the executive branch of power. It is empowered to classify information, declare information as a State secret and determine intelligence and surveillance functions for the intention of restricting information. See official gazette N° 40.266.

⁸ The Special Brigades against Groups that Generate Violence was created on June 25, 2014 to coordinate “actions through State entities against acts by violent groups. See official gazette N° 40.444.

⁹ The Popular System for the Protection of Peace was created on January 16, 2014 to counteract “internal and external threats against our homeland”. See Official gazette 40.582.

¹⁰ See The UCAB’s Center for Human Rights (2012) Analysis of the Criminal Procedural Code http://w2.ucab.edu.ve/tl_files/CDH/recursos/COMPARATIVO%20COPP%202009%202012.pdf

¹¹ The cases detailed are in the system of alerts available on the web page of IPYS Venezuela: www.ipys.org.ve

¹² In its responses to the Human Rights Committee, the State justified the crimes for slander. It stated: “In respect to the provisions of the Criminal Code typifying the crime of slander, in no case does it collide with the free exercise of the right to freedom of expression enjoyed by all the citizens on a daily basis”. Paragraph 252. List

25. This trend has continued in 2015. One of the cases was recorded in May when the criminal judiciary circuit admitted the lawsuit for the crime of continued aggravated slander filed by Diosdado Cabello, the president of the national assembly, against 22 directors and members of the editorial councils of Tal Cual and El Nacional newspapers and La Patilla web portal, precisely media that maintain a critical line against the government's performance. This measure –which is unprecedented in the nation- was accompanied by a warrant prohibiting the accused parties from leaving the country.

26. This lawsuit was filed against 15 directors and members of El Nacional newspaper, 4 from Tal Cual newspaper and 3 from La Patilla web portal. The parties accused in the complaint are Miguel Henrique Otero Castillo; Ramiro Oscar Molina Ríos; Mariana Otero; Argenis Rafael Martínez Mota; José Simón Elarba Haddad; Oswaldo Karam Macia; Luis Carlos Serra Carmona; Juan Andrés Wallis Brandt; Omar José Delgado Lugo; Jorge Papatzikos Gianopulos; Vivianne De Lourdes Font Fernández; Ramón José Medina Simancas; Beatriz Cecilia De Majo De Algisi; Carmen Elena Macia Fortique; Leopoldo Eduardo López Mendoza; Teodoro Petkoff Malec; Juan Antonio Rafael Golia Amodio; Francisco Layrisse; Manuel Antonio Puyana Santander; Alberto Federico Ravell Arreaza; Isabel Cristina Ravell Nolck and David Alberto Morán Bohorquez.

27. This situation took place in April after Diosdado Cabello, the president of the national assembly, formalized a lawsuit requesting the deprivation of liberty and the application of a monetary fine against the 22 parties accused.

28. The criminal cases were based on the alleged crimes of “exposure to public contempt or public hatred, or offensive to his honor or reputation”, based on the provisions set forth in article 442 of the Venezuelan Criminal Code. This action took place after these newspapers replicated a journalistic note published by Spain's ABC de España newspaper in which a source involving Diosdado Cabello in alleged corruption cases was consulted. Since February, Diosdado Cabello had repeatedly insisted in threatening to file lawsuits against this media group on his TV program broadcast through the State's principal TV channel Venezolana de Television¹³.

29. In January 2014, Diosdado Cabello filed another lawsuit for slander and injury against Petkoff and the owners of Tal Cual, which was admitted by a court in Caracas which also issued a prohibition to leave the country against the accused parties and monthly presentation at the courts¹⁴. Between 2010 and 2013, El Nacional and Tal Cual faced trial for the publication of a photograph on current crime rates in Venezuela. This lawsuit ended with a sentence against these media and the payment of a fine and a censorship measure. At the time, the lawsuit for the defense of the rights of boys, girls and adolescents was filed by the Ombudsman and the Instituto Autónomo de Defensa de Niños, Niñas y Adolescentes (in English, the Autonomous Institute for the Defense of Boys, Girls and Adolescents)¹⁵.

of questions relative to the fourth periodical report of the Bolivarian Republic of Venezuela. Human rights committee https://es.scribd.com/document/downloads/267047379?secret_password=cduaDMNT02PqlvwjKMqd&extension=pdf

¹³ The records carried by IPYS Venezuela on this case are available at: <http://ipys.org.ve/page/2/?s=la+patilla%2B2015%2Bcabello>

¹⁴ See IPYS Venezuela alert <http://ipys.org.ve/alerta/caracas-22-directores-de-medios-fueron-acusados-por-difamacion/>; <http://ipys.org.ve/alerta/caracas-tal-cual-considera-inconstitucional-peticion-de-la-fiscalia/>

¹⁵ See IPYS Venezuela alert: <http://ipys.org.ve/alerta/caracas-tribunal-ratifico-medida-de-censura-y-multa-contra-dos-periodicos/>

30. Between 2002 and 2015, IPYS Venezuela has recorded 8 legal proceedings against Tal Cual and its directors for the coverage of information and critical opinions issued by its directors and columnists against the government's performance¹⁶.

31. These records demonstrate the disproportionate use of legal proceedings to threaten freedom of expression in Venezuela¹⁷, based on the legalization of penalties for exercising this freedom and also the right to information, that violate international treaties for the protection of human rights entered into and ratified by Venezuela.

C) Restrictions on freedom of expression and information

32. The records on violations against freedom of expression in Venezuela demonstrate a worsening in the conditions to exercise journalism and citizen freedoms. From 2002¹⁸ to 2014, IPYS Venezuela reported 1,651 incidents affecting these rights. Close to 50% of these cases were tallied in the past three years (2012-2014), evidencing an exponential rise and characterizing this time frame as holding the record in time frames in which the warranties of expression and information were progressively restricted.

33. Studies conducted by IPYS Venezuela on the situation of freedom of expression and the right to information in Venezuela insistently reveal that these restrictions have changed Venezuela into a society where misinformation and opacity predominate at the insistence of the diverse state and non-state players in exerting direct and indirect pressures which derive in censorship.

34. This year, 2015, began with an increase in the number of cases due to the exacerbation of the economic and social crisis in the nation, characterized through a marked lack of products, goods and basic staples, the demand for more citizen security in the streets and coherent economic policies. In this context, we registered limitations to accessing the coverage of affairs of public interest at supermarkets all over the nation, when journalists attempted to take photos or tape the long lines of person waiting in front of them to purchase the items they need. These limitations were imposed by persons working as private security guards, national guards and in some cases by the citizens themselves who were present in the establishments.

35. During the first quarter of 2015, IPYS Venezuela reported 100 cases of breaches on the freedom of expression, most of which were due to limitations accessing public information, aggression events in the streets, restrictions on the coverage of public affairs, the State wielding excessive power in the field of communications which affect plurality, diversity and freedom, fundamental pillars for the right to freedom of expression. This trend is similar to that in the first quarter of 2014, when 124 cases of breaches were tallied, most of which occurred in an algid context of street conflicts which took place in the majority of the nation's states as a result of the people making political, economic and social demands.

36. Faced with this panorama, we are concerned that more restrictions be imposed by the State. Between 2013 and 2014, public institutions in Venezuela became the main victimizer against freedom of expression, being responsible in more than 60% of the cases. This,

¹⁶ See IPYS Venezuela report: How to exert pressure on a newspaper in six steps: <http://ipys.org.ve/especiales/como-presionar-a-un-diario-en-6-pasos/>

¹⁷ See IPYS Venezuela report (2013): Legal proceedings threaten expression in Venezuela. Available at <http://ipys.org.ve/wp-content/uploads/2013/08/an%C3%A1lisis-ipys-venezuela-procedimientos-judiciales-threatn-la-expresi%C3%B3n-en-venezuela.pdf>

¹⁸ IPYS Venezuela's records began in 2002, since that was the year the organisation was founded

somehow, has granted an endorsement to impunity in which the State has naturalized restrictions on this fundamental right.

37. This figure indicates that 6 out of every 10 coercive actions -against journalists, human rights activists and the media- were started in the course of 2014 from instances of the executive, legislative, judiciary and citizen-based powers. Local, regional and national government instances appeared as victimizers in 181 of the 314 cases reported during 2014, meaning to say close to half of the reports tallied up by IPYS Venezuela throughout the year.

38. In this context, the Venezuelan State has maintained an aggressive discourse and a policy of depicting journalists, the private media and human rights activists as criminals. In 2014, at least 26 aggravating declarations and 7 tort campaigns by government authorities -promoted in the media aligned with the national government- to berate and threaten journalists and directors of national and international media were tallied.

D) Censorship orders

39. In October 2014, IPYS Venezuela presented *La orden es el silencio. Estudio de Censura y auto-censura en periodistas y los medios de Venezuela* (in English, “*Silence is the Order: A study on censorship and self-censorship on journalists and the media in Venezuela*”) ¹⁹. The results obtained from this investigation reflected that orders and direct and indirect pressures have become increasingly more frequent, to the extent that the independent nature, plurality, quality of information and the rights of all citizens to know is severely jeopardized.

40. The 225 journalists consulted –working in private, state-owned and community-based media in 13 of Venezuela’s states- referred that coercive actions by groups of state and non-state powers have become commonplace, transforming Venezuela in a misinformed society, where opacity prevails and the autonomy of its institutions, even those which should scrutinize the powers-that-be, is compromised.

41. This study by IPYS Venezuela also proved a constant campaign of criminalization and discredit of the trade of journalism through the constant use of hostile discourse and the manner in which they have been singled out as the parties interested in flaming the fires of sociopolitical conflicts, devaluing journalism as guarantor of the right to complain. This situation has somehow changed the way journalists are perceived: now they are perceived as part of the sociopolitical conflicts in Venezuela.

42. The results obtained from this investigation indicated that most direct censorship orders are issued by State institutions. The persons surveyed perceived direct censorship actions (34%) stemming directly from the executive branch of power on which national, regional and local government offices depend. They also pointed out the judiciary branch of power as censors (17%), the legislative branch of power (14%), moral powers (7%) and the elections branch of power as censors (6%).

43. This same evidence was derived from non-state powers. The persons consulted perceive direct censorship orders issued by private economic groups (16%); political groups

¹⁹ See IPYS Venezuela (2014): *La orden es el silencio. Estudio de censura y autocensura en periodistas y los medios de Venezuela*. Available at <http://ipys.org.ve/especiales/la-orden-es-el-silencio/>.

(8%); organized crime groups (6%); independent social aggrupations (3%); and civil society organizations (1%).

44. The journalists referred as the main obstacle to their work the shutting down of information sources, as well as constant limitations on the right to accessing public information. Based on these results, at IPYS Venezuela we consider that restrictions on the right of citizens to know is a form of censorship. This is a constant practice in state-owned institutions, which refuse to give information, as indicated by 79% of the persons consulted. This same situation has also persisted in private institutions, according to 32% of the persons surveyed.

45. Faced with this panorama of opacity, 93% of the journalists asked for the approval of the Law on Access to Public Information. It can then be surmised that a legal instrument of this caliber –to be applied nationwide- could aid in improving transparency in public management.

46. Direct and indirect pressures exerted on the journalists have brought on self-censorship which is increasingly felt among the journalists de Venezuela. At least 29% of the persons interviewed considered that they have self-censored themselves.

47. This factor of discouragement to fulfill the functions of informing is predominant among the journalists, even over and above the possibility of risks to their physical integrity or threats of legal or administrative actions, which affect freedom of expression. This situation has made the journalists to have a predominantly inhibited attitude to their natural functions with their supervisors in the media and in front of the citizens, but also when confronting public officials.

48. Constantly being challenged by state authorities on radio and TV stations, ranging from disqualifying entire private domestic and foreign media groups to criticisms on the approach given to journalistic information has also had an inhibiting effect on the journalists.

E) Concentration of media in the hands of pro-official political party forces

49. Another subtle way in which censorship and self-censorship is enacted in Venezuela is through the change of ownership of the media and the subsequent change in their editorial lines, a situation which has also compromised their autonomy in favor of government interests²⁰. Thus, a dominant position of the State and forces close to government power are born around the concentration of the ownership of the media²¹, which represents a threat to freedom of expression, as per the international standards for the protection of freedom of expression²².

50. The investigation entitled in English *The Owners of Censorship* presented by IPYS Venezuela in March 2015 revealed that opacity has marked the media sales and purchase processes in Venezuela. It was demonstrated that 25 media have been sold off in the past

²⁰ This situation was accounted for in the investigation entitled *Propietarios de la Censura (in English, Owners of Censorship)* presented by IPYS Venezuela jointly with web portals Poderopedia Venezuela and Armando.info. See www.ipys.org.ve/proprietariosdelcensura

²¹ In declarations given in 2013 on the dominant position in the composition of media system, Fran La Rue, the UN's former raconteur for freedom of expression, stated: "Concentration of the media in few hands is the greatest threat to freedom of expression". See <http://www.larepublica.pe/14-12-2013/relator-de-la-onu-concentracion-de-medios-es-la-mayor-threat-a-la-freedom-de-expresion>

²² See CIDH (2004) Chapter V, indirect violations to freedom of expression: The impact of concentrating the ownership of social media. 2004 Annual Report by the OAS' Special Raconteur on Freedom of Expression.

5 years in nine of the nation's states: Amazonas, Anzoátegui, Barinas, Bolívar, Carabobo, the capital district, Mérida, Monagas and Zulia.

51. The majority of the media sales processes were under coercion or pressure, including the systematic conditioning of their editorial lines, the beginning of legal proceedings and the shutting down of information sources²³.

52. After changing hands, 25 media, including newspapers, TV and radio stations, showed evident modifications to their editorial line and constant efforts to silence critical journalists. A drop in investigation units was also perceived in the printed media and on television, such as in the case of privately-owned television station Globovision and Últimas Noticias newspaper. As a result of these changes many journalists resigned or were arbitrarily fired after having been victims of censorship due to changes in editorial lines.

53. The investigation also demonstrated that 9 of the 25 media analyzed (36%) have links to factors of government power –at the local, regional and national level- dominated by the interests of the Partido Socialista Unido de Venezuela (PSUV) political party. Also, 44% of these media changed to an editorial line that is now pro-local government and 20% switched to a neutral editorial line. It was also verified that 9 other media, meaning to say 36%, shut down after changing hands.

F) Excessive regulations on telecommunications

54. During the past 10 years, IPYS Venezuela has recorded excessive restrictions on radioelectric media which have limited journalism in radio stations and TV channels all over the nation, so it can be understood that these norms run counter to international standards for the protection of freedom of expression. From 2005 to 2014, the system of alerts carried by IPYS Venezuela recorded the application of 52 administrative proceedings by Conatel, the National Telecommunications Commission, the government entity that regulates this sector, including investigations on alleged technical and content and similar crimes against private and community-based radioelectric media, web portals and Internet and cable TV carriers²⁴.

55. The years with the largest number of cases were 2013 and 2014, accruing 22 procedures –representing 42% of the total number of cases recorded. These two years have been characterized for an elevated sociopolitical polarization in Venezuela, and coincided with the year of the demise of former president Hugo Chávez, the presidential elections in which Nicolás Maduro won the elections, and street conflicts demanding political, economic and social changes, which lasted several months in various parts of the nation.

56. On March 5th, 2015, the Venezuelan State reaffirmed these acts at the Human Rights Council, informing that: “CONATEL has detected at least 18,071 infractions on television against the Law on Responsibility and another 6,740 on the radio; afterwards, it issued the respective warnings and commenced sanction-based administrative procedures in the cases that so warranted it. Precisely, in 2014 more than 35 investigations on the content of some radio and TV programs was conducted and more than 250 complaints received from

²³ Documentation of these cases attempted against the freedom, plurality and effectiveness of fully exercising freedom of expression referred to by the Venezuelan State in its report presented to the Human Rights Committee in 2012, a propos of the obligations set forth in the International Covenant on Civil and Political Rights. See Paragraph 128.

²⁴ Investigations on audiovisual media and excessive controls imposed reported by the Venezuelan State to the Human Rights Committee violate the provisions on freedom of expression set forth in the International Covenant on Civil and Political Rights. See Paragraphs 245 and 251, The State's responses to the Human Rights Committee. Paragraph 244. List of questions relating to the fourth periodical report of the Bolivarian Republic of Venezuela. Human Rights Committee

male and female users on the program scheduling of some media were processed. More than 12,683 technical reports and content valuations in the media were drafted and more than 1,600 requests for audiovisual content were processed”²⁵.

57. These administrative inquiries managed to bring about an inhibitory effect on the media, journalists and service carriers, which in light of the constant threats, prefer to avoid broadcasting information in a pertinent and timely manner on events of public interest, for fear of being sanctioned by the nation’s government telecommunication entities.

58. A point of inflection occurred during February 2014 when street conflicts arose in various cities nationwide, the epicenter of which was in Caracas and the February 12 march of students and political parties which ended in violence after the armed state security officials assassinated two persons in downtown Caracas with bullets²⁶.

59. In light of these events, the nation’s TV and radiophonic media kept silent, and preferred to self-censor themselves. This attitude was the result of a threat issued by the Board on Social Responsibility of the National Telecommunications Commission (Conatel)²⁷, which warned the media that fines and sanctions could be levied on them if they covered the news on the street conflicts, alleging that it was a strategy to promote violence in “time, treatment and language”²⁸.

60. The threats, administrative inquiries and constant warnings that the concession to broadcast would be revoked for critical audiovisual media, according to the government’s perspective demonstrates the partial nature and the discretionary powers of Conatel and its Board of Social Responsibility, but are actions that run counter to the provisions guaranteeing freedom of expression set forth in the International Pact on Civil and Political Rights.

61. The lack of autonomy and independence of these entities that regulate telecommunications derive from the conception of these institutions, which at present depend on the ministry of communications and information, but in previous years was a dependency of the Vice-presidency of the republic, which prevented it from adopting measures contrary to the political party interests of the executive branch of power in Venezuela. It also means that the National Telecommunications Commission and the Board of Social Responsibility have discretionary powers and are chaired by the same authority, as per the provisions set forth in article 20 of the Law on Social Responsibility of Radio, Television and Electronic Media²⁹.

62. This reality has been documented through investigations conducted by IPYS Venezuela that refutes the information presented by the Venezuelan State before the UN. We consider that there cannot be talk of “advances in the telecommunications sector” when entities and norms have been created to restrict the work of the media, including the Law on Social Responsibility on Radio, Television and Electronic Media (colloquially called in Venezuela

²⁵ Paragraphs 249 and 250, The State’s responses to the Human Rights Committee. Paragraph 244. List of quandaries regarding the fourth periodical report of the Bolivarian Republic of Venezuela. Human Rights Committee

https://es.scribd.com/document/downloads/267047379?secret_password=cduaDMNTto2PqlvwiKMQd&extension=pdf

²⁶ See Represión y Silencio (Repression and Silence): <http://ipys.org.ve/especiales/mas-sociedad-civil/represion-y-silencio>

²⁷ The Resorte-me Law is restrictive for freedom of expression; however the State endorses the enactment of this law. See Paragraph 245. List of quandaries regarding the fourth periodical report of the Bolivarian Republic of Venezuela. Human Rights Committee

https://es.scribd.com/document/downloads/267047379?secret_password=cduaDMNTto2PqlvwiKMQd&extension=pdf

²⁸ Conatel: Media-driven coverage of violent events could violate article 27 of the Law on Social Responsibility http://conatel.gob.ve/#http://conatel.gob.ve/index.php/principal/noticiacompleta?id_noticia=3344

²⁹ See the Law on Social Responsibility on Radio, Television and Electronic Media http://www.supercom.gob.ec/sites/default/files/document/ley_de_responsabilidad_social_en_radio_y_television-venezuela.pdf

the Ley Resorte-me), and the Organic Telecommunications Law³⁰ as well as some decrees derived therefrom. These provisions have breached the principles of plurality, freedom, diversity and independence of communications³¹.

63. Meanwhile, through the use of state-owned media, national government spokespersons insist in accusing national and international media of promoting an alleged “media-driven” and “psychological” warfare in the nation. Aggravating declarations are constant as well as campaigns by government authorities to criminalize the media, broadcast in media that are aligned with the national government to berate and threaten journalists and directors of national and international media³².

64. The majority of these allocutions are broadcast simultaneously through the vast government-owned circuit encompassing 1,116 state-owned, private and community-based radio and television channels. These programs are of compulsory and discretionary broadcast, as per article 10 of the Ley ResorteMe, a norm that contains provisions that run counter to freedom of expression.

G) An unbalanced media ecosystem

65. In Venezuela, there is no public information available –which can be consulted by the general public- on the mapping and distribution of the media that are active in the nation. This information should be systematized and disseminated by the entities in charge of the public policies for telecommunications.

66. Since 2013 and 2014, IPYS Venezuela has tackled the task of consolidating information on the mapping of the media in Venezuela, contrasting various sources and conducting an in-house cartography, so to speak. Of the data on record, IPYS Venezuela has tallied 1,466 private, state-owned and community based media existing in the nation, 831 (57%) of which are privately-owned, 512 (35%) are community-based and 123 are state-owned (8%).

67. The data obtained by IPYS Venezuela on community-based media does not match the number given by the government of Venezuela as one of its communication achievements, because the number presented at the UN reflected the creation of 1,225 alternative and community-based media³³, which are under government tutelage, thereby compromising their economic independence and the freedom of their editorial lines.

68. In order to systematically broadcast its government messages, many with aggravating messages, the Venezuelan government has also taken advantage of the platform of community-based and state-owned media, a large part of which are grouped under the Bolivarian System of Information and Communication (SIBCI for its acronyms in Spanish) which, up until 2014 defined itself as a “communicational army for all the Bolivarian revolution”, highlighting the interests of the official party forces led by the Socialist Party of Venezuela, the government party. This demonstrates the absence of plurality, freedom and autonomy in the system of state-owned, community-based and private media in Venezuela.

³⁰ Report by the State

³¹ In its report presented to the UN in 2012, the Venezuelan State declared: “fostering democratic equilibrium among its duties, rights and interests, for the purposes of promoting social justice and contributing to the forming of citizens, democracy, peace, human rights and the nation’s social and economic development”. See Paragraph 127.

³² See IPYS Venezuela report: Venezuela, a nation in chains: <https://readymag.com/u44850477/44097/>

³³ See Paragraph 128. Report presented by the Venezuelan State at the Human Rights Committee, on its obligations as set forth in the International Covenant on Civil and Political Rights.

69. Coupled to these inequities, studies conducted by IPYS Venezuela ³⁴ have demonstrated that the Venezuelan government has continuously and exponentially increased the Nation's expense budget allocated to advertising and official propaganda. In 2015 the public investment in this area accrued Bs. 612,867,446.00 (\$ 97 million), four times more than in 2012, a year which coincided with Hugo Chavez' last presidential campaign.

70. The State is also availing itself of the advertising expense budget to discriminate against any private press that shows a critical stance against the government, fostering dependency and forcing journalism to be increasingly less uncomfortable for the powers-that-be.

71. During a simultaneous session in 11 of the nation's states, IPYS Venezuela measured the distribution of advertising in 38 newspapers and determined that at least 90% of the 76 announcements paid for by the State were concentrated in 2 official media and 11 with a pro-official party tendency. While official advertising was absent in 16 newspapers with a critical and balanced view, comprising a media group which has been accused by national and regional government authorities as responsible for a "media-driven war" against the government, and which have denounced critical restrictions in the supply of paper to print press on due to excessive controls imposed by the national government.

72. Documentation gathered by IPYS Venezuela - through direct complaints by media representatives - indicates that 11 newspapers and magazines have temporarily or definitively stopped circulating, and at least 34 have denounced difficulties obtaining paper between August 2013 and March 2015.

73. This crisis arose from economic restrictions, the foreign currency regulation policy and the centralization in the government of all printing paper import and distribution activities, concentrated in the Alfredo Maneiro Editorial Complex, an institution ascribed to the ministry for the presidential secretariat, meaning to say that it is at the disposal of the President of the Republic.

H) Attacks against NGOs and human rights advocates

74. An investigation conducted by IPYS Venezuela demonstrated that, based on reports by alleged "cooperating patriots", Diosdado Cabello, the president of the national assembly, accused in the course of two months (October to December 2014) 165 persons and organizations for alleged crimes and actions he deemed as irregular. From his high and mighty position at Con el mazo dando, a program broadcast on Venezolana de Television, he pointed arbitrary accusations which have not been corroborated and are not based on prior investigations. The persons most affected were journalists, the media, NGOs and human rights activists³⁵.

75. From October to December 2014, these accusations affected 32 activists and civil society organizations, especially those dedicated to the promotion and defense of freedom of expression, as well as 23 journalists and media representatives. Although other defendants were named, representing diverse sociopolitical sectors of Venezuela, all have a common element: they exercise functions deemed by the government to be subversive

³⁴See IPYS Venezuela reports: Silence in exchange for official advertising www.ipys.org.ve/especiales/publicidadporsilencio

³⁵ IPYS Venezuela report: Los 'mazazos' contra los medios y la disidencia (in English, hammer blows against the media and dissidents): <https://readymag.com/u44850477/51577/>

and susceptible to objections. These accusations continued during the first quarter of 2015. During that time frame, IPYS Venezuela reported 8 cases of breaches on freedom of expression due to accusations by Diosdado Cabello on his weekly TV program between January and March 2015 against human rights activists and NGOs, journalists and the media.

76. The legitimacy of tactical informants is not solely circumscribed to reports arbitrarily disseminated in the TV show of the president of the national assembly. Since 2013, police investigative entities have been created in Venezuela capable of restricting freedom of expression and the right to information, such as the Centro Estratégico de Seguridad y Protección de la Patria (the Strategic Center for Homeland Security and Protection or CESPPA for its acronyms in Spanish) or the Brigada Especial contra las Actuaciones de los Grupos Generadores de Violencia (the Special Brigade against Acts by Groups Generating Violence or BEGV for its acronyms in Spanish).

77. Although there is no express declaration from state institutions, these norms serve as the legal basis to normalize surveillance and police intelligence actions that breach the warranties for the protection of private citizen communications, as exemplified in the Mazazos (the "hammer blows", tipoffs stated by the president of the national assembly in his TV show). The cooperating patriots and Diosdado Cabello, the program's host, have no qualms in ignoring a fundamental human right: Every person has a right to protect their honor, private life, intimacy, their own image, confidentiality and reputation", as per article 60 of the constitution of the Bolivarian Republic of Venezuela.

78. This, besides, is a component of freedom of expression recognized in international standards. The OAS' Declaration of Principles on Freedom of Expression states that in any state "protecting one's reputation must be guaranteed", in particular in situations in which the citizens are offended by a "public official or public person".

79. In turn, the UN's Committee against Torture pronounced itself on these cases of slander proffered by the president of the national assembly on his TV program, with the complicity of the "cooperating patriots". This declaration was issued after Diosdado Cabello addressed aggravating messages against a group of human rights activists on his TV show on November 6, 2014.

80. From the perspective of freedom of expression, these statements against human rights activists and NGOs have been recurrent in the past years. From 2013 to 2014, IPYS Venezuela tallied 11 human rights activists and NGOs affected by accusations and aggravating actions by state officials, mainly through the media³⁶.

I) Ignoring international recommendations

81. In the past 5 years, the Venezuelan government has constantly criminalized and ignored the recommendations by international human rights entities and especially the instances that watch over the faithful compliance of the principles of freedom of expression.

³⁶The Venezuelan State did not recognize these criminalization processes against human rights activists in its explanation on the situation of human rights advocates. Paragraphs 260-265. List of quandaries regarding the fourth periodical report of the Bolivarian Republic of Venezuela. Human rights committee https://es.scribd.com/document/downloads/267047379?secret_password=cduaDMNT02PqlwikMq&extension=pdf

82. Regionwide, government spokespersons have called the OAS’ Special Raconteur for Freedom of Expression a “liar”, and have rejected their pronouncements³⁷. This attitude has been exacerbated after the lawsuit filed by the American Human Rights Convention announced in September 2012. This measure – which goes against the national constitution - affects the protection of freedom of expression since, as of September 2013 the Inter-American Court of Human Rights, as an international court, has no competency to study, sentence, issue consultation opinions or issue temporary measures in cases of violations to freedom of expression not resolved at the Venezuelan justice organisms.

83. The Venezuelan State has paid no heed to the UN’s calls to attention regarding matters relating to freedom of expression. Within the framework of the Universal Periodic Review held in October 2011, the government of Venezuela rejected the 11 recommendations made by various nations, destined to ensure the respect for, and full exercise of freedom of expression and the right to accessing public information, as well as the establishment of measures to combat threats and attacks against the journalists and repeal all slander and injury laws. It also disowned a suggestion to generate the essential conditions for journalists and citizens to exercise their freedom of information and expression unencumbered by risks, threats or pressures.

³⁷ See the 2014 Annual Report by IPYS Venezuela. Available at: www.ipys.org.ve

Recommendations

- 84.** Faced with this adverse panorama for the full respect, guarantee and exercise of freedom of expression and the right to information in Venezuela, IPYS Venezuela urges the UN's Human Rights Committee to demand that Venezuela revise and implement the recommendations raised by several nations to the national government, within the framework of the Universal Periodic Review, held in 2011.
- 85.** There were 8 recommendations that at IPYS Venezuela we believe are of the essence and must be urgently adopted by Venezuela:
1. To modify the current legislation with respect to the media to eliminate criminalization for contempt (disrespect), libel and slander, as per human rights standards.
 2. To provide plurality and diversity to the media as a fundamental component in the right to information and ensure that journalists can conduct their tasks without being subjected to unjustified legal proceedings.
 3. To renew the commitment to freedom of expression and plural opinion, guaranteeing freedom to access information and measures to combat threats and attacks against journalists.
 4. To guarantee the timely and effective access to public information.
 5. To intensify the nation's efforts in striving to guarantee freedom of expression as well as the safety and security of the journalists in the nation.
 6. To act in a manner that the right to life and physical integrity is effectively guaranteed and that all state instances respect and protect the right of every person to freedom of expression.
 7. To abide by international obligations in respect to justice and freedom of expression, and to implement the recommendations, resolutions and decisions issued by the regional and international human rights protection system.
 8. To harmonize the legal framework with respect to freedom of expression with international obligations by the member states.

Methodological annotations

86. The analyses based on which this report was drafted have been consigned and presented by the Instituto Prensa y Sociedad de Venezuela at the UN's Human Rights Committee and derive from the permanent and continuous follow-up conducted by this organization by means of a systematic and rigorous monitoring based on international standards for the protection of freedom of expression and the right to information, and especially the provisions in the International Pact on Civil and Political Rights.

87. Our daily follow-up and research activities are underpinned by the work carried out by our National Network of Correspondents, with the support of a multidisciplinary team which includes journalists, investigators and human rights activists.