

Human Rights Watch

Submission in response to the UN Special Rapporteur on the situation of human rights defenders' questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

VENEZUELA

Summary

For years, President Hugo Chávez and his supporters have aggressively sought to discredit the country's human rights defenders by accusing them of receiving support from the US government to undermine Venezuelan democracy.¹

While it is true that some (though not all) of Venezuelan human rights nongovernmental organizations (NGOs) have received funding from US sources—a common practice among independent NGOs throughout Latin America—they generally receive far more assistance from supporters in Europe. Moreover there is no credible evidence that the independence and integrity of their work has been compromised by any of this reliance on international support.

Nonetheless, President Chávez and his supporters have taken steps to increase the state's capacity to sanction nongovernmental organizations that receive foreign funding. In July 2010, the Supreme Court—which is controlled by supporters of President Chávez—ruled that individuals or organizations receiving foreign funding could be prosecuted for “treason”—under a provision of the criminal code that establishes a prison sentence of up to 15 years. And in December 2010, the National Assembly enacted the “Law for the Defense of Political Sovereignty and National Self Determination,” which blocks NGOs that “defend political rights” or “monitor the performance of public bodies” from receiving international funding, and imposes stiff fines on organizations that invite foreigners who express opinions that “offend” government institutions.

While it is reasonable for governments to regulate foreign funding of civil society groups in order to promote greater transparency, these norms go well beyond legitimate forms of accountability and regulation.

In addition, while claiming to be promoting transparency for civil society, the Chávez government has enacted rules that dramatically reduce the public's right to obtain information held by the government.

In combination, these measures have significantly increased the government's ability to prevent or deter human rights defenders from obtaining the funding, information, legal standing, and public visibility that they need to be effective advocates.

Moreover, there is a strong perception among local human rights defenders that the

¹ See Human Rights Watch, *A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela*, September 2008, <http://www.hrw.org/reports/2008/09/18/decade-under-chavez> (accessed June 15, 2012).

government's aggressive efforts to cast doubt on their motives and allegiances has contributed to an environment in which they are more vulnerable to acts of violence and intimidation by low-level officials, prosecutors, and private citizens who support President Chávez.

Criminal Complaints against Human Rights Defenders

For years, President Chávez and his supporters have responded to criticism by local (and international) human rights defenders with unfounded allegations that their critics were working on behalf of the US government. In 2010, this tactic for deflecting criticism took a more troubling turn when Chávez supporters filed a series of criminal complaints against NGOs receiving international funding.

In one complaint, filed on July 7, 2010, leaders of Chávez's political party (Partido Socialista Unido de Venezuela, PSUV) sought to press criminal charges against several human rights and other NGOs—along with journalists and politicians—based on a report by the National Assembly that accused them of being “traitors” for allegedly having received funding from the US government aimed at “destabilizing the country.”²

In another case, filed on July 13, a pro-Chávez association of journalists, Movement for Necessary Journalism (Movimiento Periodismo Necesario, MPN), presented a formal complaint to the Attorney General's Office against two prominent NGOs that monitor press freedoms, Public Space (Espacio Público) and the Institute of Press and Society (Instituto de Prensa y Sociedad, IPYS), for receiving international funding and allegedly committing “crime[s] against national sovereignty.”³

² “PSUV demands celerity in investigations about foreign funding to the opposition” (PSUV exige celeridad en investigaciones sobre financiamiento externo a la oposición), *Correo del Orinoco*, August 17, 2010, <http://www.psu.org.ve/temas/noticias/exigen-celeridad-en-investigaciones-sobre-financiamiento-externo-a-la-oposicion/> (accessed May 23, 2012); National Assembly, “Report by the Permanent Commission of Science, Technology and Social Communication, in relation to the funding from the United States to journalists, social organizations and opposition policies” (Informe que presenta la Comisión Permanente de Ciencia, Tecnología y Comunicación social, en relación al financiamiento proveniente del gobierno de los Estados Unidos a periodistas, organizaciones sociales y políticas opositoras), undated, <http://www.derechos.org/pw/wp-content/uploads/informefinalinjerenciaeueu200710.pdf> (accessed May 23, 2012); “National Assembly presented report of financing to sectors that oppose the revolution” (Asamblea Nacional presentó informe de financiamiento a sectores contrarrevolucionarios), *Radio Mundial YVKE*, July 21, 2012, <http://www.radiomundial.com.ve/node/154907> (accessed May 23, 2012).

³ “Venezuelan journalists and media outlets have received more than four million dollars from the United States” (Periodistas y medios venezolanos han recibido más de 4 millones de dólares de Estados Unidos), *Correo del Orinoco*, July 14, 2010, <http://www.radiomundial.com.ve/node/232195> (accessed May 29, 2012); “Foreign interference in local politics” (Injerencia externa en la política local), *Ciudad Caracas*, July 13, 2010, <http://www.ciudadccs.org.ve/?p=85631> (accessed May 23, 2012); National Assembly, “International organizations are denounced for providing international funding to opposition sectors” (Denuncian financiamiento de organizaciones internacionales a sectores de la oposición), July 13, 2010, http://www.asambleanacional.gob.ve/index.php?catid=1%3Alatest-news&id=25920%3Avideo-manuel-villalba-organizaciones-de-oposicion-reciben-dinero-del-imperio-para-desestabilizar-el-pais&lang=es&option=com_content&view=article (accessed May 23, 2012); Movement for Necessary Journalism, “Evidences analyzed according to Eva Golinger's investigation” (Las evidencias analizadas según investigación de Eva Golinger), July 13th, 2010, http://www.asambleanacional.gob.ve/index.php?catid=1%3Alatest-news&id=25920%3Avideo-manuel-villalba-organizaciones-de-oposicion-reciben-dinero-del-imperio-para-desestabilizar-el-pais&lang=es&option=com_content&view=article (accessed May 25, 2012); “MPN reiterates request to the National Assembly to reform Media Law” (MPN reitera solicitud ante la AN para reforma de La Ley del Ejercicio del Periodismo), *Correo del Orinoco*, July 17, 2010, : <http://www.correodelorinoco.gob.ve/comunicacion-cultura/mpn-reitera-solicitud-ante-an-para-reforma-ley-ejercicio-periodismo/> (accessed May 25, 2012).

In a third, filed on August 22, several youth groups affiliated with Chávez's political party presented a complaint to the Attorney General's Office against 23 NGOs—including leading human rights organizations, such as COFAVIC, PROVEA, Citizen Watch, Public Space, and IPYS—for alleged "treason" due to having received funding from the United States government.⁴

Such criminal complaints run counter to international norms, which protect the right of human rights and other civil society organizations to work with, and receive assistance from entities outside of their host state. In Venezuela, as in other Latin American countries, moreover, raising funds from outside of their national base is key to enhancing human rights organisations' capacity to do their work in a sustainable manner. Domestic charitable giving to civil society groups in Venezuela and elsewhere in the region, while somewhat more common today than in past years, remains far more limited than in Europe or North America.⁵

In Venezuela, the majority of funding received by leading human rights NGOs comes from non-US sources, such as the European Union and European governments. Many of these NGOs receive no funding from US sources, and in the case of those who do receive such funding, it constitutes a fraction of their total income.⁶

The directors of several of these organizations told Human Rights Watch that they have never received any formal notification from the Attorney General's Office regarding the status of the

Comment [Unknown A1]: What right to receive foreign funding? What is that based on? Many countries have bans on foreign funding to political activity – eg US political funding -I as a non_US citizen cannot give one cent to Obama or anyone else. HRDs etc do have a right to work in solidarity with others beyond their borders and that is about as far as we can go.

The Movement for Necessary Journalism defines itself as a group of journalists that are independent from "party directives" but "support the revolutionary process directed by Hugo Chávez." Movement for Necessary Journalism, "Who are we?" (Quiénes somos), <http://www.periodismonecesario.org/el-movimiento-por-el-periodismo-necesario-que-es/> (accessed May 23, 2012).

⁴ "PSUV Youth filed claim against 23 NGOs for receiving US funds" (Jóvenes del PSUV denunciaron a 23 ONGs de recibir dinero de EEUU), *Correo del Orinoco*, August 25, 2010, http://issuu.com/correo_del_orinoco/docs/web_co355 (accessed May 25, 2012); "JPSUV at the Attorney General's Office" (JPSUV en Fiscalía), YouTube video posted by "noticias24venez," August 24, 2010, http://www.youtube.com/watch?v=jPjMRQfW-g&feature=player_embedded (accessed May 23, 2012); "Venezuelan NGOs are financed by the US State Department" (ONG's venezolanas son financiadas por Departamento de Estado de EEUU), *Radio Nacional de Venezuela*, August 24, 2010, <http://www.rnv.gov.ve/noticias/?act=ST&f=&t=135243> (accessed May 23, 2012).

⁵ The Index of Donors for Latin America—a website created by the Avina Foundation, an organization that focuses on promoting development in Latin America, and the Inter-American Development Bank—lists 548 organizations that donate funds to organizations in the region, including local and international donors. "Index of Donors for America," undated, <http://www.indicedonantes.org/organizations> (accessed May 23, 2012).

According to their 2010 report on the main philanthropy trends in Latin America, more than 45 percent of international financing for work in the region comes from foreign governments, 30 percent from international civil society organizations, 15 percent from private foundations, and 9 percent from corporate donations. Almost 40 percent of funds are destined to projects related to democratic governance and civil society. AVINA - IDB, "Main Philanthropy trends in Latin America," August 2010, http://www.lacdonors.org/biblio/Tendencias%20Filantropicas%20en%20America%20Latina/avina_articulo_2010_09_eng.pdf (accessed May 23, 2012), p. 3.

⁶ Human Rights Watch interview with Humberto Prado, Venezuelan Observatory of Prisons, Caracas, March 19, 2012; Human Rights Watch interview with Carlos Correa, director of Public Space, March 20, 2012; Human Rights Watch interview with Liliana Ortega, director of COFAVIC, Caracas, March 20, 2012; Human Rights Watch interview with José Gregorio Guareñas, director of the Vicaría Episcopal de Derechos Humanos de la Arquidiócesis de Caracas, Caracas, March 21, 2012; Human Rights Watch interview with Marino Alvarado, director of PROVEA, Caracas, March 21, 2012; Human Rights Watch interview with Feliciano Reyna, SINERGIA and CIVILIS, Caracas, March 19, 2012; Human Rights Watch telephone interview with Ligia Bolívar, director of the Human Rights Center at the UCAB, April 17, 2012.

cases against them.⁷ However, as discussed below, for the past two years they have had to contend with the possibility that prosecutors could move against them at any time.

Expanded Powers to Punish Human Rights Defenders

In December 2010, at the urging of President Chávez, members of the outgoing Chávez-party-dominated National Assembly passed laws that imposed additional limits on NGO activity and increased human rights defenders vulnerability to reprisals for their work.⁸

One was the Law for the Defense of Political Sovereignty and National Self Determination (hereinafter the “Sovereignty Law”), which blocks organizations that “defend political rights” or “monitor the performance of public bodies” from receiving international funding.⁹ Such organizations that receive international funds may be subject to a fine that is twice the amount of the foreign funding received, and may be subject to “sanctions included in other laws” as well.¹⁰ The law does not specify which “other laws” may apply, but the language suggests that NGOs could be subject to administrative or criminal sanctions as well.

The Sovereignty Law also states that foreigners invited to Venezuela by these groups will be summarily expelled from the country if they express opinions that “offend the institutions of the state, top officials or attack the exercise of sovereignty.”¹¹ The organizations that invite the foreigners are subject to stiff fines.¹²

The government explicitly recognized that this law could apply to human rights NGOs when officials told the Inter-American Commission on Human Rights that, “it is true that the Venezuelan State has been critical of NGOs that accept funding from foreign governments, which is why a law prohibiting it was enacted.”¹³ And in May 2012, a commission in the National Assembly cited this law as the basis for opening an investigation into the human rights NGO Transparency Venezuela.¹⁴

⁷ Human Rights Watch interviews with several human rights defenders allegedly under investigation, Caracas, February 2011 and March 2012.

⁸ National Assembly, “Speech by Commander Hugo Chávez, Constitutional President of the Bolivarian Republic of Venezuela, during the State Act in Defense of the Nation, its Sovereignty and Against Imperialism” (Discurso pronunciado por el Comandante Hugo Chávez, Presidente Constitucional de la República Bolivariana de Venezuela con Motivo del Acto de Estado en Defensa de la Patria, su Soberanía y Contra el Imperialismo), November 23, 2010 http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124&lang=es&limitstart=15 (accessed May 25, 2012). (Cómo es que aquí se sigue... permitiendo... que partidos políticos, ONG, personalidades de la contrarrevolución, continúen siendo financiados con millones y millones de dólares del imperio yanqui y anden por allí haciendo uso de la plena libertad para abusar y violar nuestra Constitución y tratar de desestabilizar al país. Imploro que se haga una ley muy severa para impedirlo.)

⁹ National Assembly, Law for the Defense of Political Sovereignty and National Self Determination (Ley de Defensa de la Soberanía Política y Autodeterminación Nacional), December 21, 2010, arts. 1, 4, 5.

¹⁰ Ibid., art. 6.

¹¹ Id., art. 8.

¹² Id., art. 8.

¹³ IACHR, “Annual Report 2010,” para. 671.

¹⁴ National Assembly, “Control Commission will investigate funding of Transparency Venezuela and Legislative Monitor” (Comisión de Contraloría investigará financiamiento a Transparencia Venezuela y Monitor Legislativo), May 16, 2012, http://www.asambleanacional.gob.ve/index.php?option=com_content&view=article&id=40634:comision-de-contraloria-investigara-financiamiento-a-transparencia-venezuela-y-monitor-legislativo&Itemid=50 (accessed May 17, 2012).

Also in December 2010, the National Assembly adopted the Organic Law on Social Control, which regulates the work of “organizations and individuals...that perform activities with an impact on general or collective interests.”¹⁵ The law states that “social control”—which may be exercised “individually or collectively through all activities in social life”—should be done on a pro bono basis and must follow “socialist principles and values.”¹⁶ Any organization that wishes to participate in these broadly defined activities must register with the government, following a procedure to be established by the president.¹⁷ Those who violate the law may be subject to administrative, civil, or criminal sanctions.¹⁸

Ruling against the Independence of NGOs

The potential impact of the criminal complaints mentioned above was greatly increased by the July 2010 Supreme Court ruling that individuals or organizations receiving foreign funding could be prosecuted for “treason”—under a provision of the criminal code that establishes a prison sentence of up to 15 years. In its ruling, the Supreme Court also held that the NGO that had brought the appeal—because it received foreign funding—had no legal standing to challenge government policies. This holding could effectively provide the basis for depriving the country’s human rights defenders of an essential tool for advocating on behalf of victims.¹⁹

The ruling came in response to an appeal brought by Súmate, a nongovernmental organization that identifies its main purpose as “promot[ing] democracy” in Venezuela, challenging the legality of the sweeping 2009 constitutional reform referendum. Rather than addressing the merits of the appeal, the court ruled that it could not evaluate the constitutionality of a constitutional referendum before it was approved.

The court also held that Súmate had no legal standing to bring the challenge given that the nongovernmental organization was partially funded by the National Endowment for Democracy, which is itself funded by the US Congress.²⁰

¹⁵ National Assembly, “Organic Law on Social Control” (Ley Orgánica de Contraloría Social), December 10, 2010, art. 4.

¹⁶ *Ibid.*, arts. 6, 7, 11.

¹⁷ *Id.*, art. 9.

¹⁸ *Id.*, art. 14.

¹⁹ Supreme Court of Justice of Venezuela, Ruling No. 796, July 22, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio/796-22710-2010-09-0555.html> (accessed May 25, 2012).

²⁰ According to the court, this foreign funding constituted “a typical manifestation of the interventionist policies of a foreign power to influence internal affairs of the Venezuelan state,” and therefore the organization’s legal appeal amounted to “defend[ing] foreign interests regarding issues of internal politics.” *Ibid.* ([E]s evidente, que la “ASOCIACIÓN CIVIL SÚMATE”, tiene como fin pretender guiar al Pueblo Venezolano en la adopción de posiciones políticas. ... las actividades públicas de la citada asociación civil fueron parcialmente financiadas por la National Endowment For Democracy, que es una organización vinculada financiera e ideológicamente a la política de otra nación, pues se encuentra supervisada y recibe permanentemente fondos del Congreso de los Estados Unidos... Tal financiamiento constituye, en el contexto expuesto, una típica manifestación de la política intervencionista de una potencia extranjera para incidir en los asuntos internos del Estado venezolano, toda vez que la aportación de recursos, es sin duda, una de las modalidades a través de las cuales se sirven los distintos centros de poder (entre ellos otros Estados), para el fomento de sus intereses, incluso, fuera de sus fronteras. Por ello, en salvaguarda de la plena soberanía de la República, de su independencia y del deber que tienen los órganos del Estado de no someterse a un poder extranjero (artículos 1 y 5 del Texto Fundamental), esta Sala, a los fines de garantizar que las funciones del Estado se desarrollen de forma unilateral en provecho de los particulares y no de intereses otro Estado, de conformidad con el artículo 19.6 de la Ley Orgánica que rige las funciones de este Alto Tribunal, desestima la cualidad de la “Asociación Civil SÚMATE” para interponer la presente demanda de nulidad, por carecer de legitimidad para

Even more problematic, the court held that “obtaining financial resources, either directly or indirectly, from foreign states with the intent of using them against the Republic, the interests of the people, political, social, economic, or other acts, could constitute...treason.”²¹ The ruling specifically cites article 140 of the Criminal Code, which establishes a 10 to 15 year prison sentence for anyone “who collaborates directly or indirectly with a foreign country or Republic...or provides or receives money from them...that could be used against the Bolivarian Republic of Venezuela, the integrity of its territory, its republican institutions, citizens, or destabilizes the social order.”²² While treason laws are permissible under international law, they cannot be overly broad – either in form or application – so that they can be applied arbitrarily, in a discriminatory manner or as retaliation for the legitimate exercise of internationally protected fundamental rights, including the rights to peaceful expression, association, and assembly. The Venezuelan law on treason and the Supreme Court’s ruling do not comply with these basic safeguards.

The Supreme Court ruling could have serious negative implications for human rights defenders in Venezuela who (like other defenders throughout Latin America) rely on foreign funding to finance their work. Under this ruling, they could be disqualified from bringing legal challenges against abusive state policies. Worse still, many are facing criminal complaints brought by supporters of President Chávez, which could now lead to criminal prosecution for alleged treason.

The Supreme Court’s ruling in this case runs counter to Venezuela’s obligation to refrain from imposing arbitrary limitations on the ability of nongovernmental organizations to solicit and receive funds for their activities. The United Nations Declaration on Human Rights Defenders specifically states that, “[e]veryone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.”²³ And, according to the Inter-American Human Rights Commission (IACHR), civil society organizations may legitimately receive money from foreign or international NGOs, or foreign governments, to promote human rights.²⁴

Limiting Public Access to Information

actuar en defensa de intereses extranjeros sobre asuntos de política interna...)

²¹ Ibid. (Adicionalmente, debe esta Sala recordar que la obtención de recursos financieros, ya sea de manera directa o indirecta, provenientes de estados extranjeros con la intención de emplearse en perjuicio de la República, los intereses del Pueblo (donde reside la soberanía a que alude el artículo 5 de la Constitución de la República Bolivariana de Venezuela), actos políticos o sociales, económicos etc., podría eventualmente configurar el delito previsto en el artículo 140 del Código Penal Venezolano, incluyendo el parágrafo único que prohíbe gozar de los beneficios procesales de ley, ni a la aplicación de medidas alternativas del cumplimiento de la pena, comprendidos en el Título Primero de los delitos contra la independencia y seguridad de la Nación, concretamente, referido a la traición a la Patria y otros delitos contra ella.)

²² Criminal Code (Código Penal), <http://www.ministeriopublico.gob.ve/LEYES/codigo%20penal/codigo%20penal.html> (accessed May 20, 2012), art. 140.

²³ “United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,” adopted March 8, 1999, G.A. res. 53/144, art. 13.

²⁴ IACHR, “Report on the Situation of Human Rights Defenders in the Americas,” March 7, 2006, OEA/Ser.L/V/II.124, IV (40).

A Decade Under Chávez documented how government officials had routinely failed to implement constitutional norms guaranteeing access to official information.²⁵ Since the report was released, the Chávez administration has enacted rules that grant government officials sweeping powers to withhold information from civil society organizations and the general public.

In June 2010, President Chávez created a Center for Situational Studies of the Nation (Centro de Estudios Situacionales de la Nación, CESNA). The decree creating the center says that CESNA's function is to "gather, process and analyze permanently" information from different sources, including information "from society on any issue of national interest," and gives its president authority to declare that any "information, facts or circumstance[s]" the center learns about in the context of its work are "reserved, classified, or of limited distribution."²⁶ The decree's language is so broad it could effectively empower the government to block civil society groups and the private media from disseminating non-official information that they themselves have gathered.

Then, in December 2010, the Chávez administration enacted rules requiring that all government offices treat as confidential "any information related to personnel, clients, financial, technical or administrative issues, and any other sensitive information that if known and made public to unauthorized people may cause harm to the institution." The rules also grant officials authority to arbitrarily treat as confidential "any other information."²⁷

²⁵ The Constitution of Venezuela guarantees the right of access to government files and records, "without prejudice to the limits acceptable in a democratic society concerning interior and external security, criminal investigation, and the intimacy of private life, in accordance with the law regulating the classification of documents whose contents are confidential or secret." The constitution also guarantees the right to "timely and truthful" information about official procedures affecting individuals directly, and access to any official resolutions adopted. And it establishes that "no censorship by public officials affecting the provision of information on matters under their responsibility will be permitted." Constitution of the Bolivarian Republic of Venezuela, art. 143. See also Organic Law of the Public Administration (Ley Orgánica de la Administración Pública), <http://www.cgr.gob.ve/contenido.php?Cod=015> (accessed May 25, 2012), arts. 141, 158-160; Organic Law of Administrative Procedures (Ley Orgánica de Procedimientos Administrativos), <http://www.tsj.gov.ve/legislacion/lopa.html> (accessed May 24, 2012), art. 5.

²⁶ Presidential Decree 7.454, Official Gazette 39,436, June 1, 2010, <http://www.controlciudadano.org/documentos/getbindata.php?docid=830&fieldname=documento> (accessed February 15, 2012). (El Centro de Estudio Situacional de la Nación, en ejercicio de sus funciones, gozará de autonomía administrativa y financiera, y será el encargado de recopilar, procesar y analizar de manera permanente la información proveniente de las distintas salas situacionales u órganos similares de las instituciones del Estado y de la sociedad sobre cualquier aspecto de interés nacional, con el objeto de proveer de apoyo analítico-informativo al Ejecutivo Nacional, suministrándole la información oportuna y necesaria que facilite la toma de decisiones estratégicas para proteger los intereses y objetivos vitales de la Nación y para facilitar la ejecución de las políticas públicas y el cumplimiento de los cometidos esenciales del Estado (art. 3). El Presidente o Presidenta del Centro de Estudio Situacional de la Nación podrá declarar el carácter de reservada, clasificada o de divulgación limitada a cualesquiera información, hecho o circunstancia, que en cumplimiento de sus funciones tenga conocimiento o sea tramitada en el Centro... (art. 9).)

²⁷ "Norms Regarding the Classification and Treatment of Information by the Public Administration" (Normativa de Clasificación y Tratamiento de la Información en la Administración Pública), December 21, 2010, <http://es.scribd.com/doc/45854432/Normas-para-Clasificacion-y-Tratamiento-de-la-Informacion-en-la-Administracion-Publica-Suscerte-2010> (accessed May 25, 2012), art. 15. (El propietario deberá asignar la clasificación de "confidencial" a los Activos de información relacionados con el personal, clientes, información infanciera, técnica, administrativa y cualquier otra información sensible de la institución, cuyo conocimiento y divulgación a personas no autorizadas causen daños a la institución. A los efectos de esta disposición, tendrán esta clasificación los siguientes activos.... [y] cualquier otro activo de información que el Propietario así establezca.)

Since these norms were adopted, government officials have repeatedly denied or failed to respond to requests for official information presented by NGOs. Based on an analysis of 61 information requests presented to several government offices between August and October 2011, NGOs documented that individuals had been unable to obtain information in 85.2 percent of the cases (Venezuelan authorities failed to respond to 83.6 percent of requests and rejected 1.6 percent).²⁸ In 2010 that figure was 67 percent and in 2008 it was 71 percent.²⁹

Examples of requests that were never answered include:³⁰

- Whether the public television station, Venezolana de Televisión (VTV), could provide information on who produced the television spots (described above) criticizing the NGO Public Space for receiving international funds, how much the spots cost, and how many times they were aired;³¹
- Whether the Ministry of Health had implemented recommendations by the Comptroller General's Office to address irregularities in the storage and distribution of medicines;³²
- Whether the government had a plan to prevent gender violence and what had been the main results obtained by government programs to reduce violence against women;³³
- Whether the minister of the penitentiary system could provide the names of inmates who fled the El Rodeo prisons during the disturbances in June 2011, as well as the names of those who had been injured;³⁴
- Whether the investigative police (Cuerpo de Investigaciones Científicas, Penales y Criminales, CICPC) could provide information on the number of homicides recorded in Venezuela in the first half of 2011;³⁵
- Whether the National Commission for Refugees (Comisión Nacional para los Refugiados, CNR) could provide information on how many requests for refugee status were received in 2011, how many were rejected and why, and how many men, women, and children

²⁸ According to the report, in 6.5 percent of the cases, authorities responded adequately, in 3.2 percent they did so inadequately, in 1.6 percent they asked Public Space to submit the request to another institution, and in 3.2 percent the information requests could not be delivered. Public Space, "Access to Public Information in Venezuela (2011). Final Report" (Acceso a la Información Pública en Venezuela (2011). Informe Final), January 17, 2012, p. 6. Copy on file at Human Rights Watch.

²⁹ Ibid.

³⁰ Information provided to Human Rights Watch via email by representatives from Public Space, December 16, 2011. Copy on file at Human Rights Watch.

³¹ Information request by Marianna Belalba, Public Space, and Antonio Puppio, PROVEA, to Mauricio Rodríguez Gelfenstein, president of VTV, from August 16, 2010; Public Space, "Judicial restrictions to Access to Public Information in Venezuela" (Restricciones judiciales al Acceso a la Información Pública en Venezuela), October 2011; Human Rights Watch interview with Carlos Correa, director of Public Space, March 20, 2012. Copy on file at Human Rights Watch.

³² Information request by Carlos Correa, director of Public Space, Feliciano Reyna, Solidarity Action (Acción Solidaria), Mercedes de Freitas, Transparency Venezuela, and Marino Alvarado, PROVEA, to Health Minister Eugenia Sader, undated; Human Rights Watch email exchange with Public Space, December 16, 2011. Copy on file at Human Rights Watch.

³³ Information request by Carlos Correa, director of Public Space, to Nancy Pérez Sierra, Ministry of Popular Power for Women and Gender Equality, and Nancy Pérez Sierra, National Institute of Women, September 7, 2011.

³⁴ Information request by Carlos Correa, Public Space, to María Iris Varela, Ministry of Popular Power for the Penitentiary System, September 26, 2011. Copy on file at Human Rights Watch.

³⁵ Information request by Carlos Correa, director of Public Space, to Wilmer Flores Trosel, CICPC, September 6, 2011. Copy on file at Human Rights Watch.

- were registered as refugees in the country;³⁶
- Whether the president’s office could provide information on the number of real estate properties that had been expropriated by the government, on whether the government had provided adequate compensation in such cases, and on when outstanding compensation payments would be made;³⁷ and
- Whether the Ministry of Education could provide information on how many schools were built in the country in 2010 and in the first half of 2011, how much they cost, where were they located, and when they opened.³⁸

The difficulty in obtaining information has been further compounded by recent Supreme Court rulings that have upheld the government’s power to limit public access to official information. In two of the cases mentioned above, the Supreme Court rejected claims filed by NGOs asking the court to uphold the right of access to official information.³⁹

Moreover, in another case, the court ruled that any individual who requests official information from government offices must explicitly state the reasons and purposes for which it is requesting such information.⁴⁰

In November 2008, the nongovernmental organization Public Space (Espacio Público) asked the Comptroller General’s Office for information regarding the salaries earned by members of its staff, including the comptroller general himself. The office denied the request, claiming that releasing this information would entail “an invasion of the privacy of public officials, which would violate the rights to honor and privacy.”⁴¹ Public Space appealed this decision to the Supreme Court.

The right to seek, receive, and impart information—recognized in the American Convention on Human Rights and the International Covenant on Civil and Political Rights—encompasses a positive obligation of states to provide access to official information in a timely and complete manner. Both regional and international organizations have stated that the right of access to official information is a fundamental right of every individual.⁴² This obligation can only be

³⁶ Information request by Carlos Correa, director of Public Space, to Yldefonso Finol, CNR, September 6, 2011. Copy on file at Human Rights Watch.

³⁷ Information request by Carlos Correa, director of Public Space, to President Hugo Chávez Frías, August 16, 2011. Copy on file at Human Rights Watch.

³⁸ Information request by Carlos Correa, director of Public Space, to Maryann Hanson, Ministry of Popular Power for Education, September 20, 2011. Copy on file at Human Rights Watch.

³⁹ Supreme Court of Justice of Venezuela, File No. 2012-0358, June 6, 2012, <http://www.tsj.gov.ve/decisiones/spa/Junio/00667-6612-2012-2012-0358.html> (accessed June 14, 2012); Supreme Court of Justice of Venezuela, File No. 12-0389, <http://www.tsj.gov.ve/decisiones/scon/Mayo/679-23512-2012-12-0389.html> (accessed June 14, 2012).

⁴⁰ Supreme Court of Justice of Venezuela, no file number, July 15, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html> (accessed February 15, 2012).

⁴¹ Supreme Court of Justice of Venezuela, no file number, July 15, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html> (accessed May 25, 2012). (implica una invasión a la esfera privada de los funcionarios públicos y que con ello se violaría el derecho al honor y privacidad consagrado en el artículo 60 de la Constitución.)

⁴² Joint declaration by Ambeyi Ligabo, U.N. Special Rapporteur on Freedom of Opinion and Expression; Miklos Haraszti, OSCE Representative on Freedom of the Media; and Eduardo Bertoni, OAS Special Rapporteur for Freedom of Expression, December 6, 2004, <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&IID=1> (accessed April 10, 2012); Declaration of Principles on Freedom of Expression, principle 4; United Nations Economic and Social

overridden under circumstances clearly defined by law, in which the release of information could undermine the rights of others or the protection of national security, public order, or public health or morals.⁴³ The Model Law on Access to Information—which was approved by the OAS General Assembly in June 2010—specifically states that every individual has the right to request information “without having to justify the reasons” for asking for it. It also states that the salaries of high-level officials, and the salary scales of all government officials, should be proactively disseminated by governments.⁴⁴

Nonetheless, in July 2010, the Supreme Court rejected Public Space’s appeal on the grounds that “information regarding the salaries of public officials is part of the officials’ privacy,” and that Public Space “did not demonstrate how the requested information would be useful for citizen participation in favor of transparency.”⁴⁵ What’s more, in the ruling the Supreme Court established additional restrictions on access to official information that are inconsistent with international norms promoting the right to information. Such restrictions include a requirement that requests for information from government offices must explicitly state the reasons and purposes for requesting such information, and that the amount of required information should be proportionate to the use the party making the request would give to it, without specifying who would make such determination.⁴⁶ These overly broad and onerous requirements impose a burden on the individual to justify why they should be entitled to information, as oppose to the

Council, Commission on Human Rights, Civil and Political Rights, Including the Question of Freedom of Expression: The Right to Freedom of Opinion and Expression, Report of the Special Rapporteur, Ambeyi Ligabo, submitted in accordance with Commission resolution 2003/42, (New York: United Nations, 2003).

⁴³ ICCPR, art. 19(3); American Convention on Human Rights, art. 13(2). The Declaration of Principles on Freedom of Expression states that the right may only be limited exceptionally and such limitations must “be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Declaration of Principles on Freedom of Expression, principle 4. Finally, the Johannesburg Principles hold that restrictions must be “necessary in a democratic society to protect a legitimate national security interest.” Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted by Article XIX, November 1996, <http://www.article19.org/pdfs/standards/joburgprinciples.pdf> (accessed April 10, 2012), principles 1 (d) and 11. The Johannesburg Principles were adopted on October 1995 by experts in international law, national security, and human rights, and were later recognized by the U.N. Special Rapporteur on Freedom of Opinion and Expression and the OAS Special Rapporteur for Freedom of Expression; UN Commission on Human Rights, “Report of the Special Rapporteur Mr. Abid Hussain,” UNCHR resolution 1993/45, E/CN.4/1996/39, March 22, 1996, para. 154; and IACHR, Annual Report 2003, Vol. III, Report of the Special Rapporteur for Freedom of Expression, chapter IV, OEA/Ser.L/V/II.118 Doc. 70 rev. 2.

⁴⁴ OAS General Assembly, Inter-American Model Law on Access to Public Information (Ley modelo interamericana sobre acceso a la información pública), AC/RES. 2607 (XL-0/10), adopted June 8, 2010, http://www.oas.org/dil/esp/AG-RES_2607-2010.pdf (accessed February 14, 2012).

⁴⁵ Supreme Court of Justice of Venezuela, no file number, July 15, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html> (accessed May 25, 2012). ((T)al información no es un dato de difusión pública, pues se trata de información que se contrae a la esfera privada o intimidad económica de los funcionarios. (...)Al respecto, cabe señalar que aun cuando efectivamente se invocó un interés que se interrelaciona con la necesidad de proteger otro bien jurídico constitucional, este es, la participación ciudadana en la gestión pública; sometida la pretensión de amparo al test de constitucionalidad, constata la Sala que la parte accionante no acredita cómo la información solicitada sería de utilidad para la participación ciudadana en pro de la transparencia de la gestión pública. En otras palabras, no parece proporcional la magnitud de la información solicitada en pro de la transparencia de la gestión fiscal, ni siquiera las acciones concretas para las cuales se utilizaría la información solicitada.)

⁴⁶ Id. (De modo que, esta Sala determina con carácter vinculante, a partir de la publicación de esta decisión, que en ausencia de ley expresa, y para salvaguardar los límites del ejercicio del derecho fundamental a la información, se hace necesario: i) que el o la solicitante de la información manifieste expresamente las razones o los propósitos por los cuales requiere la información; y ii) que la magnitud de la información que se solicita sea proporcional con la utilización y uso que se pretenda dar a la información solicitada.)

authorities justifying why certain information should be legitimately withheld; and also open the possibility for arbitrary and discriminatory determinations to be made. Citing this ruling, in September 2011, CONATEL rejected a NGO's request to obtain a list of administrative procedures had been opened under the broadcasting law, and a list of broadcasting licenses granted in 2010 and 2011.⁴⁷

⁴⁷ Letter from Pedro Rolando Maldonado Marín, general director of CONATEL, to Carlos Correa, director of Public Space, Document DG/CJ/No. 606, September 23, 2011. Copy on file at Human Rights Watch.