

GLOBAL INFORMATION SOCIETY WATCH 2011

INTERNET RIGHTS AND DEMOCRATISATION

Focus on freedom of expression and association online



This edition of Global Information Society Watch is dedicated to the people of the Arab revolutions whose courage in the face of violence and repression reminded the world that people working together for change have the power to claim the rights they are entitled to.

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VENEZUELA

REFORM LAWS THAT LIMIT AND CONTROL THE INTERNET AND ELECTRONIC MEDIA IN VENEZUELA: THE IMPACT OF REGULATIONS ON FREEDOM OF EXPRESSION



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Introduction

The following report analyses the current status and impact that reforms to legislation by the National Assembly of Venezuela in 2010 have had on freedom of expression and, particularly, the control of media such as the internet, including social networking and instant messaging. This analysis identifies some of the principles behind the reforms set out in the government's strategic plans, given the legal framework of the Venezuelan Constitution which establishes internet access as a policy priority for the development of the state. It refers to reports from international bodies such as the Inter-American Commission on Human Rights¹ and the Inter-American Press Association,² debates, treaties and campaigns, among others, that have emerged at the national and international levels expressing different views on the legislative reforms in the country. We have also identified some cases where the application of the laws and the impact they have had on the daily lives of all citizens are evident. Finally, we identified some trends that are emerging in the use of and access to the internet, and defined a series of actions and recommendations on freedom of expression in Venezuela.

Legal framework

The regulatory framework for the telecommunications sector in Venezuela has undergone a series of changes in recent years, among which are strategic legal reforms, such as the Telecommunications Act³ and the Law on Social Responsibility in Radio, Television and Electronic Media.⁴ In particular, reforms in these laws are aimed at extending new powers

to regulatory bodies, and responsibilities to new players, such as subscription television channels, electronic media, and the service providers and users who use the internet to disseminate large amounts of content. The aim, in other words, is to regulate the media (including social media) that use the internet as a platform for publication and broadcasting.

In Venezuela there are other laws that seek to control cyber crime and the general use of electronic media, such as the Law on Data Messages and Electronic Signatures⁵ and the Special Law on Cyber Crime.⁶ These new laws provide an advanced legal framework for innovative transaction mechanisms.

Other aspects of the legal framework have to do with regulations established by presidential decree in which the use and development of the internet are regulated. In particular, Decree No. 825⁷ declares the internet a priority for the development of the state. Venezuela is also part of international organisations like the International Telecommunication Union (ITU),⁸ among others, that establish regulatory codes at the international level to be adopted by member countries.

Shifts in government policy

It is important to note that amongst Latin American countries, Venezuela has the highest internet penetration, according to official statistics from the National Telecommunications Commission (CONATEL).⁹ Registered internet users in the first quarter of 2011 stood at 10,421,557, which represents a penetration of approximately 36%. However, studies estimate that 45% of Venezuelans are internet users.¹⁰ For Venezuelans, while the internet offers access to varied content and to online transactions, it is particularly important as a vehicle to express political dissent.

1 www.cidh.oas.org/DefaultE.htm

2 www.sipiapa.org/v4/index.php?idioma=us

3 Gaceta Oficial N° 39.610 de la República Bolivariana de Venezuela, Ley Orgánica de Telecomunicaciones, Año 2010. www.conatel.gob.ve/files/leyrs.pdf

4 Gaceta Oficial N° 39.610 de la República Bolivariana de Venezuela, Ley de Responsabilidad Social, Radio, Televisión y Medios Electrónicos, Año 2010. www.conatel.gob.ve/files/leyrs.pdf

5 Ley de Mensajes de Datos y Firmas Electrónicas, Año 2001. www.tsj.gov.ve/legislacion/dmdfe.htm

6 Ley Especial sobre Delitos Informáticos, Año 2001. www.tsj.gov.ve/legislacion/ledi.htm

7 Decreto presidencial N° 825, publicado en la Gaceta Oficial N° 36.955 del 22 de mayo del año 2000. www.cecalc.ula.ve/internetprioritaria/decreto825.html

8 www.itu.int/en/Pages/default.aspx

9 www.conatel.gob.ve/files/Indicadores/indicadores2011/presentacion_a_publicar_I_trim_2011.pdf

10 wiki.cecalc.ula.ve/index.php/Comunicaci%C3%B3n_Digital,_Ciencia_y_Sociedad

For the most part, the increase in the use of the internet has been driven by public policies applied since 2000, which are based on principles established in national plans and presidential decrees. The following are particularly important:

- National Plan for Telecommunications, Information Technology and Postal Services (PNTlySP) 2007-2013:¹¹ This “recognises communication as a human right and telecommunications and information technology as tools for securing that right.”
- Presidential Decree No. 825: This declares access to and use of the internet a priority policy concern, and the internet “an invaluable tool for accessing and disseminating ideas.” It states that public administration bodies should include goals that facilitate the use of the internet.

Similarly – although perhaps more ominously – the authorities have stated: “Within the government communication strategies it is necessary to increase the use of social networking as a means of communication. (...) This [can be used as a strategy] against potential disinformation.”¹²

Since 2009 the government has announced a series of decrees that contradict the principles stated above. These have caused some concern and even protests in different sectors of Venezuelan society. These are:

- Decree 6449¹³ where President Hugo Chávez decreed in 2009 that the use of the internet in the public sector was a luxury and amounted to superfluous spending. The decree stated that all processing of payments for internet services should be authorised in advance by the executive vice president. It was argued that this was based on the need to rationalise public sector spending. This move sparked a series of reactions in civil society.¹⁴ These included advocating nationally and internationally through websites¹⁵ in the interest of proposing new models of internet use. These initiatives resulted in a statement¹⁶ which was presented to the National Assembly and the Ministry of Higher Education. However, it has yet to receive a response from the government. The statement suggests the following actions: a) eliminate the classification of internet use as a luxury expenditure, b) keep the internet as a

policy priority, c) develop policies of internet best practices, and d) develop internet applications to optimise public resources and to promote formal education online.

It is important to note that at the same time the government declared the internet a luxury expenditure, as a step towards reducing public spending, it also invested heavily in National Telephone Company of Venezuela (CANTV) shares, effectively giving it full control of the company. It also acquired a communications satellite at considerable cost and funded the installation of a fibre-optic cable between Venezuela and Cuba.

- The attachment of the Telecommunications Regulatory Agency (CONATEL)¹⁷ to the Executive Vice President’s Office in 2010. Here the Inter-American Commission on Human Rights (IACHR) reiterates its concern about the current legal framework in its Annual Report 2010.¹⁸ It argues the importance of the “pursuit of a significant degree of autonomy and independence of the bodies responsible for regulating telecommunications (...) to ensure the highest degree of pluralism and diversity of the communication media in public debate. (...) The guarantees of impartiality and independence (...) [ensure] communication media [are not] controlled by political or economic groups.” In its defence the government justifies such a change as follows: “Right now telecommunications is a strategic area for Venezuelan democracy and political stability [and CONATEL] must have a top-level assignment.”¹⁹
- Partial reform of the Telecommunications Law (LOT) and the Law on Social Responsibility in Radio, Television and Electronic Media (RESORTE). These reforms generally expand the powers of CONATEL and extend regulations to new areas (e.g. subscription television services, suppliers and users who use the internet to disseminate mass content).

Amongst the limitations²⁰ imposed by RESORTE are expressions or information that “promote hatred or intolerance”, “promote anxiety among citizens” and “do not recognise the authorities.” These are prohibited, even online. However, these expressions can be extremely difficult to

11 ociweb.mcti.gob.ve/@api/deki/files/71/=pntlysp-2007-2013-CNTI.pdf

12 www.aporrea.org/medios/a98631.html

13 Gaceta Oficial N° 39.146, Decreto 6.649, Año 2009. www.cecalc.ula.ve/internetprioritaria/documentos/decreto6649.pdf

14 www.cecalc.ula.ve/internetprioritaria/documentos/internetprioritaria.pdf

15 www.cecalc.ula.ve/internetprioritaria/todosenred.wordpress.com

16 www.cecalc.ula.ve/internetprioritaria/pronunciamiento.html

17 Comisión Nacional de Telecomunicaciones de Venezuela: www.conatel.gob.ve

18 www.cidh.oas.org/annualrep/2010sp/indice2010.htm

19 www.radiomundial.com.ve/yvke/noticia.php?464903

20 Amongst other things, RESORTE: a) extends the possibility of intervening in media content and the internet, and b) increases the number of conditions to operate a national pay television service and content regulation of both subscription television and regular television.

define, leaving users with uncertainty about the scope of their right to freedom of expression and ideas. The law also requires internet service providers to develop mechanisms which would “restrict the dissemination” of these kinds of expressions and establishes the responsibility of service providers for the expressions of others when they do not take measures to restrict such speech at the request of CONATEL. With respect to LOT it says that “telecommunications services are services of public interest,” which means that they are subject to restrictions for reasons of public interest established by the Constitution, the law and the agencies under the National Executive (CONATEL).

Given these actions, various positions at the national level to justify the reforms as a way to control and regulate the sector for the benefit of a new model of socialist development have been argued. However, civil society has also expressed concern, arguing that the freedom of expression of citizens may be compromised, violating one of the inescapable duties of a democratic society. According to the IACHR, the risk of such reforms, standards and measures is that they give administrative authorities the freedom to restrict content at their discretion, and this is incompatible with the right to freedom of thought and expression.²¹

Here are a few incidents of note that took place in Venezuela in recent months that show the impact of the reforms: a) there have been reports²² filed at the Attorney General’s Office about the forum Noticiero Digital (Digital News)²³ saying it has been spreading false information issued by third parties; b) there are forums such as Aporrea.org²⁴ and Chiguire Bipolar²⁵ which published different types of content, including political, entertainment and religious content, but which may be seen as “intolerant speech”; c) The National Assembly appointed a commission to investigate website administrators “who commit crimes stipulated in the Venezuelan Penal Code and the Constitution, as well as the implementation of sanctions and measures relevant to such illegal acts” and to investigate those “web portals that use the internet inappropriately and unethically as media,” among others.²⁶

21 www.cidh.oas.org/annualrep/2010sp/indice2010.htm

22 www.noticias24.com/actualidad/noticia/147544/chavez-pide-actuar-contra-noticierodigital-por-difundir-el-falso-asesinato-de-diosdado-cabello; www.elbrollo.com/topic/410687-periodista-de-avila-tv-denuncia-a-noticiero-digital-ante-fiscalia

23 www.noticierodigital.com

24 www.aporrealos.com/forum/viewtopic.php?t=45659

25 www.elchiguirebipolar.net

26 politica.eluniversal.com/2010/03/16/pol_ava_an-investigara-a-adm_16A3597413.shtml

It is important to note that Venezuela is a member of the ITU²⁷ and that to date it has incorporated into national law all the recommendations of the organisation. International regulations on the internet establish agreements²⁸ to regulate content carriers only, and not content. That is, the ITU does not encourage rules for filtering content²⁹ through regulation; this paradigm is one of the main elements of the global agreements concerning the regulation of telecommunications.³⁰ Given this, through the reforms the government ignores the rules that it helped create.

New trends

- **The trend towards widespread use of the internet versus the tendency to control the internet for political purposes** Users utilise information and communications technologies (ICTs) to do the following: communicate, search for information, send and receive content, socialise, store videos/photos and conduct transactions. Faced with this array of users, the content managed via the internet and social networks transcends national boundaries. This makes content and political views difficult to control, a situation that is risky for the government which responds with efforts to control access to content.
- **The trend towards secrecy and anonymity** A controlled society is a society less informed and less able to express itself. The decline of democratic life implies a negative impact on freedom. Violating freedom of expression results in a society that is afraid to express its diverse opinions. This produces a tendency towards secrecy, anonymity and self-censorship.
- **The trend to establish patterns of control and interference** Four well-defined patterns already exist that disrupt and impact negatively on internet freedom: the blocking of relevant political content, cyber attacks on critical sites, the control of the telecommunications infrastructure, and manipulation of information available online.

27 The ITU membership includes 192 states, national telecommunications regulators and 700 private companies.

28 ITU agreements deal with access to ICTs, data transmission protocols, management of signals (voice and data) and the formation of networks and connecting users.

29 The ITU does not regulate content, such as the use of language, topics, the protection of minors, etc.

30 deontoscopio.wordpress.com/2010/12/14/sobre-la-pretendida-regulacion-de-internet

Action steps

Here are some actions that could be implemented in Venezuela:

- Enact good practices in the use of resources such as the internet and the electronic media at the national level, through: a) a declaration of social principles and behavioural and operational requirements which recognise the rights and commitments of the different sectors of Venezuelan society; b) implementing good-practice policies for the internet,³¹ and c) establishing a national commission for internet use (this commission would be responsible for assessing impacts and discussing and agreeing upon monitoring mechanisms, without disrupting the freedom of content).
- Establish communication policies that strengthen e-government by strengthening channels of communication through social networks and electronic media. This would promote citizen participation and recognise the potential of ICTs in the development process. Similarly, it also creates the conditions to keep users informed on various topics, such as government decisions,³² reports,³³ state services,³⁴ and critical safety information.³⁵
- Government media: Withdraw Internet Decree 6649 which defines the internet as a luxury expenditure for public institutions, and promote the rational use of ICT resources in public institutions through good practices in the interest of increasing productivity. This means promoting the appropriate use of the internet and social networks in government institutions in order to ensure that services can be properly delivered.
- Public awareness campaigns: Implement educational and information campaigns through social networks and the electronic media so that users know the benefits and risks that the reform laws LOT and RESORTE have on freedom of expression. Citizens also need to be informed of the rights they have in demanding to be heard and to participate politically.
- Evaluate international agreements and responsibilities outlined with established institutions like the ITU, the United Nations and others. Rules that determine the filtering of internet content, social networks and electronic media need to be reconsidered. The relevant government agencies can identify potential conflicts with these agreements and consider adjustments to the reforms. ■

31 buenaspracticasininternet.blogspot.com/2009/05/ideas-para-mejorar-nuestros-enlaces.html

32 www.noticias24.com/actualidad/noticia/157245/analisis-reuters-twitter-devuelve-a-chavez-a-la-realidad-de-venezuela

33 twitter.com/#!/antvenezuela

34 cubanosusa.com/mundo/noticiasenvideo/856351-mision-chavez-candanga-para-atender-denuncias-por-twitter.html; twitter.com/#!/INAMEH; twitter.com/#!/mpptc; twitter.com/#!/Corpoelect

35 twitter.com/#!/Polibaruta; twitter.com/#!/Polivalcarabobo; twitter.com/#!/POLICIA_CHACAO; twitter.com/#!/IAPMVARGAS

In the year of the Arab uprisings **GLOBAL INFORMATION SOCIETY WATCH 2011** investigates how governments and internet and mobile phone companies are trying to restrict freedom online – and how citizens are responding to this using the very same technologies.

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TORTURE IN INDONESIA The torture of two West Papuan farmers was recorded on a mobile phone and leaked to the internet. The video spread to well-known human rights sites sparking public outrage and a formal investigation by the authorities.

THE TSUNAMI IN JAPAN Citizens used social media to share actionable information during the devastating tsunami, and in the aftermath online discussions contradicted misleading reports coming from state authorities.

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GISWATCH 2011 is the fifth in a series of yearly reports that critically cover the state of the information society from the perspectives of civil society organisations across the world.

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